

Amendments to the Habitats Regulations 1994: changes to species protection in England and Wales

The Habitats Directive (1992) requires member States to establish a strict species protection regime for certain animal and plant species, listed in Annex IV, which occur in Great Britain and across Europe. The Habitats Regulations (1994) transpose this requirement in England and Wales. Changes are being made to the Habitats Regulations to improve this regime and thereby increase the protection afforded to these species in response to two European Court judgments. A judgment in 2005 ruled that existing species protection provisions in the Habitats Regulations were not fully compatible with the strict species protection regime required by the Habitats Directive. A separate, related judgment ruled that trade in all species listed on Annex IV of the Habitats Directive should be prohibited rather than trade in just those species found in Great Britain.

The principal offences for protecting animals under the Habitats Regulations address the deliberate capturing or killing; deliberate taking or destroying of eggs; deliberate disturbance; and damaging or destroying a breeding site or resting place of Annex IV species resident in the wild in Great Britain i.e. European Protected Species (EPS). For plants there is an offence covering deliberately picking, collecting, cutting, uprooting or destroying a wild plant of an EPS. The Habitats Regulations provide certain defences to these offences that may operate in clearly specified circumstances. There is also an offence covering the possession, transport, sale or exchange of wild animals and plants on Annex IV.

As a result of the 2005 judgment, the majority of the defences originally put into the Regulations will be removed. This includes the “incidental result defence” which applies to acts which could constitute an offence but were the incidental result of an otherwise lawful activity and could not reasonably have been avoided. In the absence of such a defence, the offence prohibiting disturbance of EPS will be amended to better reflect the terms of the Directive and to allow trivial acts of disturbance to continue without constituting an offence and therefore requiring a licence.

Depending on the activities or operations being carried out, these changes to the Regulations will affect individuals and organisations in different ways. Those carrying out activities that may affect EPS will now have to give even more careful consideration to their presence and also their breeding sites and resting places. With this knowledge operators may choose to conduct their operations in a way that avoids affecting the EPS, if that is possible, or apply for a licence to carry out an activity that would otherwise now be unlawful. Naturally, licences will not be granted unless the grounds of the application meet the conditions laid down in the Regulations in order to help ensure that the species are adequately protected.

Another change is that the prohibition covering possession and trade (including transport and exchange) of species taken from the wild will be extended to include all species listed on Annex IV of the Habitats Directive. Currently this prohibition applies only to those Annex IV species found in GB. In addition, the exception covering specimens that were lawfully taken from the wild will be restricted and its application will depend on where and when the species was taken. For species originating from the UK, for example, the exception will only apply to specimens taken from the wild before 10th June 1994 (the implementation date of the Habitats Directive in the UK). Where the restricted defence does not apply, a licence will be required to continue to possess and trade in the specimens in question.

The amendments are at an advanced stage and are likely to come into force on 21st August 2007.

More detailed information and guidance on these changes can be obtained from: <http://defraweb/wildlife-countryside/ewd/index.htm>

Further advice may be obtained from:

Countryside Council for Wales: Maes Y Ffynnon, Penrhosgarnedd, Bangor. Gwynedd LL57 2DW 0845 1306229 <http://www.ccw.gov.uk>

Welsh Assembly Government: EPS Licensing Team, Nature Conservation and Biodiversity Branch, Unit 9 Science Park, Aberystwyth, SY23 3AH
Tel: 01970 610216

Natural England:

<http://www.naturalengland.org.uk/conservation/wildlife-management-licensing/default.htm>

Forestry Commission: <http://www.forestry.gov.uk/>