



Over Hill
Draft Species Protection Plan
Technical Appendix 9.7

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Document Quality Record. Technical Reports

Version	Status	Person Responsible	Date
1	Draft	Claudia Gebhardt	03/04/2017
2	Reviewed	Leanne Cooke	04/04/2017
3	Updated	Claudia Gebhardt	04/04/2017
4	Internal Approval		
5	Final Client Approval		

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1 INTRODUCTION

MacArthur Green has prepared this Species Protection Plan (SPP) on behalf of EnergieKontor (the 'Applicant') to ensure all reasonable protection measures are undertaken with regard to protected species on Over Hill Wind Farm (referred to within this report as 'the Proposed Development Area'). The SPP is to be implemented during the construction and decommissioning phases of the proposed wind farm.

In summary, the SPP has been produced to ensure the adequate preservation of protected species interests into all construction and decommission activities within the Proposed Development Area to safeguard the resident populations and ensure compliance with the relevant nature conservation legislation (see Annex 1).

The SPP will be a live document subject to review and updating, and will assist staff in the protection of species during construction and decommission, under the guidance of the Ecological Clerks of Works (ECOW).

2 BACKGROUND INFORMATION

The protected species surveys were undertaken as follows:

- NVC habitat surveys (June 2015 and August 2016);
- Protected species surveys (in particular badger, otter, water vole, pine marten, and red squirrel) (August 2015);
- Bat habitat assessment (November 2013);
- Bat activity surveys (May to October 2014 and September 2016); and
- 'At height' activity surveys (April to October 2015).

(refer to Environmental Statement, Appendix 9.2 to 9.6 in Volume 3 of the ES). No targeted fish surveys were undertaken. The SPP is designed to reflect the results of the surveys and the distinct ecology and distributions of protected species within the Proposed Development Area.

Protected species surveys conducted as part of the Environmental Impact Assessment (EIA) process confirmed the presence of badger (*Meles meles*), otter (*Lutra lutra*) and squirrel (*Sciurus sp.*) within the Proposed Development Area (for survey specific 'study areas', see ES Figures 9.2 to 9.6 in Volume 2 of the ES). There was no evidence of water voles (*Arvicola amphibious*), pine marten (*Martes martes*) and common lizard (*Lacerta vivipara*) using the Proposed Development Area and habitat was found to show poor suitability for great-crested newt (*Triturus cristatus*). No protected (Annex II) species of plants were found during habitat surveys.

Six bat species, namely common pipistrelle (*Pipistrellus pipistrellus*), soprano pipistrelle (*Pipistrellus pygmaeus*) Daubenton's bat (*Myotis daubentonii*), Leisler's bat (*Nyctalus leisleri*), Noctule (*N. noctula*) and brown long-eared bat (*Plecotus auritus*) were recorded within the Proposed Development Area. High risk (*Nyctalus spp.*), medium risk (common and soprano pipistrelle bats) and low risk (*Myotis sp.*) species were all recorded (refer to Environmental Statement, Appendix 9.6, 9.7 and 9.8 in Volume 3 of the ES). The survey results showed bat species foraging and commuting

around the burn habitats of the Proposed Development Area. Low levels of bat activity were confirmed on the Proposed Development Area. The Proposed Development Area was assessed to be of low local value for bats.

No badger setts were recorded within the study area during the protected species surveys. Field signs with a low likelihood to be badger snuffle holes were recorded in two locations of the study area, which may also have been deer foraging signs. As a precaution they were noted as potential snuffle holes. The habitats present within the study area have the potential to support foraging and commuting badgers. The majority of the study area consists of wet, peaty habitats which are considered sub-optimal for sett building. There is an extensive amount of commercial coniferous forestry which provides good connectivity for badgers commuting within and between the study area and its surroundings.

Evidence of otter (*Lutra lutra*) was recorded during the protected species survey in the form of spraints. No evidence of protected features (i.e. holts or couches) were recorded within the study area (see Appendix 9.2 in Volume 3 of the ES). Spraints were recorded in seven separate locations along the Black Water which flows along the north-west Site Boundary. The Black Water was considered suitable for supporting foraging otters. The Old March Burn and Beoch Water run along the eastern Site Boundary and also provide suitable foraging and commuting habitat for otters.

No field signs or protected features of water voles were recorded during the protected species surveys. The nature of the habitats present along the Black Water, Beoch Lane, House Burn and Wets Burn are considered suitable for supporting water vole, although it is possible that the water flow within the Black Water is too high and the water quality within the House Water too poor, making it less likely that water voles would utilise these watercourses.

Evidence of squirrel was recorded during the protected species surveys. Stripped cones were recorded under a tree in the corner of a forestry ride, close to the West Burn. No dreys were recorded during the surveys. It is not possible to determine species of squirrel, red or grey, from the stripped cones field sign alone. An incidental sighting of a red squirrel was recorded during a scarce breeding bird survey in July 2015. The sighting was recorded to the north-west of the study area, outwith the Proposed Development Area.

A house with associated agricultural out-buildings lies within a cut-out of the eastern part of the Proposed Development Area. The buildings present may provide potential roosting habitat for bats. The coniferous plantation was found to be generally unsuitable for roosting bats owing to the dense character of these plantations and trunks tend to be protected from damage by thick branches, reducing likelihood of crevices suitable for roosting bats. Broadleaved trees within the study area were for the most part very young with a low diameter and breast height (dbh), therefore were found to be unlikely to support roosting bats.

3 AIMS & OBJECTIVES OF THE SPECIES PROTECTION PLAN

The Aim of the SPP is to ensure all reasonable precautions are taken by the Applicant and their contractors to safeguard protected species from disturbance, injury and death and to protect any

structure or place, which any such protected species uses for growth, breeding, resting, shelter or protection during the construction and decommission of the proposed wind farm.

The Aim of the SPP will be fulfilled by the Applicant adopting the following objectives throughout the construction and decommission of the proposed wind farm:

- a) Objective A - Implement a monitoring and protection plan for protected species;
- b) Objective B – Follow an approved procedure if an active feature is found; and
- c) Objective C – Ensure adequate education and awareness of site personnel.

Objective A addresses the monitoring procedure to be followed to ensure that the Aim of this SPP is achieved. Objective B covers the detailed procedure in the event of a protected species feature being discovered. Objective C addresses the educational needs of appropriate personnel on the site to further reduce the risk of an offence being committed. The procedures to be adopted that will fulfil these objectives are detailed in Section 6.

4 RESPONSIBILITIES

The overall responsibility for ensuring that the planning conditions and the conditions of any licence granted are adhered to, in particular those conditions relating to protected species, will lie with the Applicant. The personnel responsible for the day-to-day implementation of the SPP are detailed in Table 4-1 below.

4.1 Role of the Ecological Clerks of Works

The Ecological Clerk of Works (ECoW) will have the specific remit of monitoring compliance with the SPP during the construction and decommissioning phases and reporting any breaches to the Applicant Construction Project Management Team. The ECoW's role shall involve direct monitoring of all activities in the Proposed Development Area to the extent the ECoW considers this to be required, and/or training of nominated personnel to carry these out in a manner likely to minimise the potential for impact on the protected species. The ECoW will also agree changes to construction operations to prevent breaches of the SPP.

Table 4-1: SPP Responsibilities

Task	Responsibility
Implementation of the SPP	The Applicant Construction Project Management Team
Monitoring and review of the SPP	Ecological Clerks of Works
Regular site monitoring for protected species and associated protected features for: otter, bats, pine marten, reptiles, badger and water vole	Ecological Clerks of Works or a suitably qualified ecological surveyor
On-going watching brief for the above	All site personnel

5 THE POTENTIAL IMPACTS OF DEVELOPMENT

Impacts on protected species can result from the physical effects of construction such as soil stripping, road laying, turbine foundation construction and noise disturbance. These operations can negatively affect protected species in a number of ways including:

- i. Abandonment of a holt/burrow/roost/den/sett/pond etc. due to disturbance;
- ii. Abandonment of dependant young due to disturbance;
- iii. Damage to or destruction of a protected feature or species;
- iv. Damage to navigation/commuting routes (i.e. ditches, burns, fence lines etc.);
- v. Fragmentation of territories;
- vi. Damage to foraging areas (e.g. areas containing amphibians or fish in the case of otter);
- vii. Contamination of water;
- viii. Disturbance to a protected species that results in behaviour that negatively impacts their life stage; and
- ix. Accidental injury or death to species by machinery, tools or vehicles.

6 PROCEDURES FOR PROTECTING PROTECTED SPECIES

This section details the procedures to be followed to ensure all reasonable precautions have been adopted to protect species from disturbance, injury and death and to protect any structure or place that any such species uses for growth, breeding, resting, shelter or protection.

The level of disturbance free zones for each species is shown on Table 6-1 below. If other protected species are identified suitable buffer zones will be advised by the ECoW and agreed in consultation with Scottish Natural Heritage (SNH).

Table 6-1: Level of Protection and Recommended Disturbance Free Zones

Species Feature	Level of Protection	Disturbance Free Zone
Otter (holts, etc.)	European	30/200 metres ¹
Bat (roost)	European	30/200 metres ²
Badger (sett)	National	30/100 metres ³
Water vole (burrow)	National	5-10 metres ⁴
Red squirrel (drey)	National	50 metres
Pine marten (den)	National	30/100 metres ⁵
Reptiles (hibernacula)	National	n/a ⁶

¹ The disturbance zone will be 30 metres unless a breeding/natal holt is identified, in such an instance the disturbance zone will be increased to 200 metres.

² The disturbance zone will be 30 metres, however turbines must be positioned 200 metres from potential roost habitats (Natural England, 2012).

³ Disturbance is defined by Scottish Natural Heritage as any new procedure that approaches within a minimum of 30 metres of a sett margin. For piling or blasting activities, this buffer zone is extended to 100 metres.

⁴ Dependant on burrow location and bank profile.

⁵ Dens where breeding takes place have a larger disturbance zone of 100m.

6.1 Objective A – Monitoring and Protection Plan

6.1.1 Monitoring Plan

Although no protected features for otter were recorded within the Proposed Development Area, it is assumed that this species uses the Proposed Development Area for foraging, commuting or shelter, as otter spraints and prints were observed. There is the possibility that otter use the watercourses in the Proposed Development Area for foraging.

Although only potential field signs for badger were recorded, due to presence of suitable habitat in the wider surrounding, it is assumed that badgers may occasionally use the Proposed Development Area.

Squirrel feeding signs cannot generally be used to determine the species of squirrel present. Due to a sighting of a red squirrel in an area outwith the Proposed Development Area, it is assumed that red squirrels may use the Proposed Development Area on occasion; no protected features of this species were found on Proposed Development Area.

No confirmed bat roosts were detected during bat surveys. Due to the species composition present, there is a residual low potential that bat roosts may be present on Proposed Development Area, e.g. in sub-optimal features within the plantation forest.

In summary, there are currently no licensable impacts on protected species anticipated as a result of the Development. However, it will be the duty of the ECoW to check the status of the protected species and associated protected features immediately prior to construction activity progressing across the site and to continue spot checks during construction for any new protected species features in the vicinity of the construction works.

Arrangements for pre-construction ecological surveys and, if applicable, monitoring will be conducted within 12 months of construction commencement.

Guidelines detailing the monitoring of protected species and associated protected features by the ECoW or suitably qualified ecological surveyor are described below:

Potential Features

- European Protected Species – fauna (otters and bats):

Further checks of the potential features will be completed during construction and all potential protection features will be clearly demarcated.

- i. If the potential protection feature remains unoccupied, construction may occur in the area, but not damaging the potential feature under close supervision by the Ecological Clerk of Works; or

⁶ Due to the more limited nature of their protection and their ability to avoid machinery etc. during their active phase, no specified disturbance zone for reptiles is given; however, if a hibernacula is discovered, an appropriate disturbance exclusion zone will be demarcated.

- ii. If the status of the feature changes to occupied then the under-noted procedure for occupied sites will be followed. The ECoW will be responsible for this survey work as required.

- Nationally Protected Species (badger, water vole, red squirrel, pine marten and reptiles)

Surveys of the potential features will be completed during construction and all sites will be clearly demarcated:

- i. If the status remains as unoccupied, construction may occur in the area, but not damaging the existing feature, under close supervision by the Ecological Clerk of Works; or
- ii. If the status of the feature changes to occupied then the under-noted procedure for occupied features will be followed.

Occupied Features and Habitats of Importance

- a) European Protected Species - fauna (otters and bats)

Where an occupied feature exists within the Proposed Development Area or disturbance free zone, and the infrastructure cannot be micrositied away:

- i. A licence to disturb will be applied for to Scottish Natural Heritage (SNH); or
- ii. A licence to damage or destroy will be applied for to SNH if there are no reasonable alternatives.

- b) National Protected Species (badger, water vole, red squirrel and pine marten)

- Where an active badger sett exists within the Proposed Development Area or disturbance zone, and the infrastructure cannot be micrositied away, it may be necessary to undertake a relocation exercise. This is a licensed activity which will require prior authorisation from SNH. Guidance for this process has been produced by SNH, who should be consulted throughout.
- Where a water vole burrow, red squirrel drey or pine marten den exists within the Proposed Development Area or disturbance zone, and the infrastructure cannot be micrositied away, the Applicant will discuss any licensing requirements and appropriate mitigation with SNH.
- Where reptiles are found to be occupying any infrastructure during their hibernacula period and the infrastructure cannot be micrositied away, the Applicant will discuss appropriate mitigation with SNH. Reptiles are capable of actively avoiding disturbances during their active phase.

6.1.2 Protection Plan

In addition to the mitigation measures detailed above, further steps should be implemented to increase the protection levels and reduce general disturbance from the Development:

- a) Covering/securing all excavations and piping. If this is not possible then a means of escape must be provided for any animal that could fall in e.g. a ramp with a gradient of 45° or shallower;
- b) Any temporarily exposed open pipe system should be capped in such a way as to prevent mammals gaining access, as may happen when contractors are offsite. If such pipes are left

for an extended time, periodic checks will be carried out to ensure that the pipe is inaccessible to animals;

- c) All excavations will be checked at the start of works and prior to the commencement of any works activities to ensure otters and badgers are not present or have become trapped overnight. A responsible individual will be tasked with carrying out these checks. Documentary evidence will be completed for each check;
- d) Night time working will be minimised to reduce disturbance to nocturnal and crepuscular fauna. Where this is not possible, security lighting used in the site compound and those areas where lighting is absolutely necessary to ensure safe working conditions will be angled downwards to reduce light spillage into adjacent areas. Lighting outwith the site compound will be switched off when no works are being undertaken. Other required lighting will be directed to where it is needed and away from features (including setts, treelines, watercourses/riparian habitats, mammal paths, etc.) to minimise light disturbance;
- e) Works in the vicinity of watercourses (within 50m) and their tributaries, should commence one hour after sunrise and will cease no later than one hour before sunset;
- f) Instream works in watercourses and their tributaries should not be conducted during fish spawning period from October to May, inclusive, unless due consultation with SEPA;
- g) An appropriate speed limit (of c.a. 15 to 20mph) for all vehicles on the site, and vehicle movements will be kept to pre-determined routes wherever possible;
- h) Watercourse crossings will be designed to allow the passage of small mammals on the site, where appropriate;
- i) Vegetation within 50 m of all watercourses should be left undisturbed except in areas of construction of watercourse crossings and access roads leading to crossings as well as construction associated activities (such as drainage and mitigation).
- j) Chemicals should not be stored within 100m of a sett, holt or couch, or within 10m of hibernacula, or other protected feature, or along mammal paths. All paints, chemicals and sealants used during the construction process will be removed from the working area at the end of each working day. Open tins or other containers will not be left at the works areas but will be stored in a suitable container at the site compound; and
- k) Any areas for location of wind turbines and infrastructure will be subject to inspection by an experienced ecologist prior to any works on-site. If deemed suitable for reptiles, the vegetation in these locations will be strimmed to a length of less than 300mm and cleared under supervision of the ecologist. The ECoW will monitor the site so that in-situ materials associated with works will not incidentally create reptile refuges, e.g. piles of cut vegetation. Materials will be removed from Site if advised by the ECoW.

6.2 Objective B – Procedure if Active Feature is Found

6.2.1 *Procedure if previously unrecorded active feature or protected species found in advance of construction activity*

If an active feature or protected species is found by the ECoW's monitoring in advance of construction activity progressing across the site, the following text outlines the procedure to be followed.

If Obstruction, Damage or Destruction (ODD) to a protected species is likely, a location specific ODD risk assessment will be completed. This will consider all potential mitigation measures to avoid ODD. This may include micrositeing of infrastructure away from the location and out-with the disturbance zone and the demarcation of the protected site.

If Disturbance is likely, a location specific Disturbance Risk Assessment will be completed. This should firstly consider revision to the disturbance zone as a result of the site-specific topography and habitat quality (e.g. if a ridge lies between activity and a holt then the disturbance zone may be reduced). Also, other measures which could reduce disturbance to an acceptable level should be considered (including micrositeing and the demarcation of the protected site).

The Disturbance or ODD risk assessments will be submitted to SNH for consideration.

If it is not possible to microsite and, in consideration of the risk assessment, SNH determines that ODD and/or significant levels of Disturbance is likely to occur, the procedures described in Objective A will be adopted for unoccupied and occupied features. If there is uncertainty over whether the feature is occupied a precautionary approach will be adopted and occupancy will be assumed.

6.2.2 *Procedure if previously unrecorded protected feature or species found during construction*

In the event of any site personnel discovering an unrecorded protected feature or protected species, the following procedure must be followed:

- Work should stop immediately within the specified disturbance zone;
- The ECoW should be contacted;
- The location should be checked by the ECoW to determine the nature of the new find; and
- If the protected species or feature is confirmed then the procedure detailed in Objective A above should be followed.

6.3 Objective C – Education and Awareness

The Applicant will provide the necessary education and awareness as part of a site induction to all site personnel with regard to the protection of protected species that are or could be present on the site, in particular the actions that should be taken if protected species are seen on the site. All site personnel (including contractors and sub-contractors) will be informed of the objectives of the SPP to ensure they are aware of any species present in the site.

This information will include as a minimum:

- i. The requirements and use of the SPP;
- ii. Identification of protected species and features;
- iii. Key risk activities and sensitive areas; and
- iv. site personnel responsible for dealing with protected species.

The Applicant will undertake that any person found on the site by them to be inadequately trained, or to be disregarding the terms of the SPP is immediately expelled from the site until such time that it is appropriate for them to be allowed to return. In general such persons will need to undertake retraining in the use and application of the SPP to ensure the impact on protected species is minimised.

RELEVANT LEGISLATION AND GUIDANCE

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Annex 1. LEGAL PROTECTION

Bats and **Otters** receive protection under the Conservation Regulations (1994) (as amended) only⁷.

Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

Under Regulation 39 (1) it is an offence to:

- deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- deliberately or recklessly:
 - i. to harass a wild animal or group of wild animals of a European protected species;
 - ii. to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
 - iii. to disturb such an animal while it is rearing or otherwise caring for its young;
 - iv. to obstruct access to a breeding site or resting place of such an animal, or otherwise to deny the animal use of the breeding site or resting place including bat roost sites;
 - v. to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or
 - vi. to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- a) deliberately or recklessly to take or destroy the eggs of such an animal; or
- b) to damage or destroy a breeding site or resting place of such an animal.

Regulation 44 (2e) allows a licence to be granted for the activities noted in Regulation 39 such that:

Preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.

⁷ The Conservation Amendment (Scotland) Regulations (2007) removed EPS from Schedule 5 and 8 of the Wildlife and Countryside Act 1981.

Water Vole is not protected by Section 9, subsection 1 of the Wildlife and Countryside Act but is covered by Section 9, subsection 4 and Section 10⁸.

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

Under Section 9 Subsection 1⁹ it is an offence to:

- Intentionally or recklessly kill, injure or take any wild animal included in Schedule 5.

Under Section 9, Subsection 4, Paragraphs (a) and (b)4, it is an offence to:

- Intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection.
- Intentionally or recklessly disturb any such animal while it is occupying a structure or place which it uses for that purpose.

Under Section 10, Subsection 3, Paragraph (c)4, any person shall not be guilty of an offence by reason of:

- Any act made unlawful by that section if he shows:
 - a) That each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act; or
 - b) That the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.
- Section 3A states those conditions referred to in Subsection 3c are:
 - a) That the unlawful act was the incidental result of a lawful operation or other activity;
 - b) That the person who carried out the lawful operation or other activity:
 - i. took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
 - ii. did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

That the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.

⁸ as amended by the Nature Conservation (Scotland) Act 2004

⁹ as amended by the Nature Conservation (Scotland) Act 2004

Red Squirrels and **Pine Martens** are protected by the following legislation:

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

Under Section 9, Subsection 1, it is an offence to:

Intentionally or recklessly:

- Kill, injure or take any wild animal listed on Schedule 5;
- Damages or destroys or obstructs access to, any structure or place that any animal listed on Schedule 5 uses for shelter or protection;
- Disturbs any such animal while it is occupying a structure or place which is uses for that purpose
- Sell, offer or expose for sale, or possess or transport for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal.
- Publish or cause to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things.

Badgers are protected under the **Protection of Badgers Act 1992** (as amended by the **Nature Conservation (Scotland) Act 2004 (as amended)**).

The following applies under this legislation:

Part 1.–

- (1) A person is guilty of an offence if, except as permitted by or under this Act, he wilfully kills, injures or takes, or attempts to kill, injure or take, a badger.
- (2) If, in any proceedings for an offence under subsection (1) above consisting of attempting to kill, injure or take a badger, there is evidence from which it could reasonably be concluded that at the material time the accused was attempting to kill, injure or take a badger, he shall be presumed to have been attempting to kill, injure or take a badger unless the contrary is shown.
- (3) A person is guilty of an offence if, except as permitted by or under this Act, he has in his possession or under his control any dead badger or any part of, or anything derived from, a dead badger.

Part 3. –

- (1) A person is guilty of an offence if, except as permitted by or under this Act, he interferes with a badger sett by doing any of the following things–
 - a) damaging a badger sett or any part of it;
 - b) destroying a badger sett;
 - c) obstructing access to, or any entrance of, a badger sett;
 - d) causing a dog to enter a badger sett; or
 - e) disturbing a badger when it is occupying a badger sett,intending to do any of those things or being reckless as to whether his actions would have any of those consequences.
- (2) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.

Reptiles

The three native species of **reptile** to Scotland, **adder**, **slow worm** and **viviparous lizard**, are protected by the following legislation:

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

Under Section 9 Subsection 1¹⁰ it is an offence to:

- Intentionally or recklessly kill, injure or take any wild animal included in Schedule 5.

Under Section 9, Subsection 5, Paragraphs (a) and (b)¹⁰, it is an offence to:

- Sell, offer or expose for sale, or possess or transport for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal.
- Publish or cause to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things.

Under Section 10, Subsection 3, Paragraph (c)¹⁰, any person shall not be guilty of an offence by reason of:

- Any act made unlawful by that section if he shows:
 - a) That each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act; or
 - b) That the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.
- Section 3A states those conditions referred to in Subsection 3c are:
 - a) That the unlawful act was the incidental result of a lawful operation or other activity;
 - b) That the person who carried out the lawful operation or other activity:
 - i. took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or;
 - ii. did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

That the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.

¹⁰ as amended by the Nature Conservation (Scotland) Act 2004