

TA6.6 Species Protection Plan



Glenshero Wind Farm
Species Protection Plan
Technical Appendix 6.6

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Document Quality Record.

Version	Status	Person Responsible	Date
1	Draft	Nicola Goodship	21/06/2018
2	Reviewed	Ashleigh Wylie	08/07/2018
3	Updated	Nicola Goodship	09/07/2018
4	Internal Approval	Brian Henry	10/07/2018
5	Final Approval	Rafe Dewar	11/09/2018

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1 INTRODUCTION

MacArthur Green was commissioned by RES Ltd on behalf of Simec Wind One Ltd to prepare this Species Protection Plan (SPP) to ensure all reasonable protection measures are undertaken with regard to protected species on the proposed Glenshero Wind Farm (referred to within this report as 'the proposed development') site ('the site'). The SPP is to be implemented during the construction and decommissioning phases of the proposed development.

This report has been produced by MacArthur Green and in accordance with Scottish Natural Heritage (SNH) guidelines. All staff contributing to this technical appendix have undergraduate and/or postgraduate degrees in relevant subjects, have deep professional ecological impact assessment and ecology survey experience, and hold professional membership of the Chartered Institute of Ecology and Environmental Management (CIEEM). The report has been reviewed and approved by David MacArthur of MacArthur Green and a copy of his CV is included in EIAR Volume 4: Technical Appendix 1.2.

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

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

2 BACKGROUND INFORMATION

The protected species surveys were undertaken between May to October 2017 and June 2018 (refer to EIAR Volume 4: Technical Appendices 6.2 and 6.3). The SPP is designed to reflect the results of the surveys and the distinct ecology and distributions of protected species within the proposed development.

Protected species surveys conducted as part of the Environmental Impact Assessment (EIA) process confirmed the presence of bat, water vole and otter in the site. There was no evidence of badger, pine martin, red squirrel or wildcat using the site.

Three bat species, namely common pipistrelle (*Pipistrelle pipistrellus*), soprano pipistrelle (*P. pygmaeus*) and Daubenton's bat (*Myotis daubentonii*) were recorded within the site, additional records of *Myotis* spp. were identified to genus level. Two medium risk species (common and soprano) and one low risk species (Daubenton's bat) were all recorded (refer to Environmental Impact Assessment Report (EIAR), Volume 4: Technical Appendix 6.3). The survey results showed bat species foraging and commuting around the burn habitats of the site. Very low levels of bat activity were confirmed on the site resulting in the assessment of the proposed development of low local value for bats.

Signs of otter were present within the Protected Species Survey (PSS) study area (EIAR Volume 3: Figure 6.6); three spraints were recorded within the site including: one old and one fresh spraint on Blackcorrie Burn and one old spraint on an unnamed tributary to the Allt Féith a' Mhoraire. One old

spraint was also recorded on the Allt Luaidhe watercourse 70 m outside the site. There were no other otter signs or confirmed otter holts or couches recorded.

There was evidence of water vole within the PSS study area, with burrows recorded at 113 locations across the study area during both the June and August 2017 surveys, with each record relating to either a single burrow, or a collection of burrows within an area. There were at least 14 records of latrines recorded across the PSS study area, although there were numerous additional records of droppings and latrines recorded within the vicinity of water vole burrows. There were four sightings of water voles during the surveys. Water vole runs were also recorded within the PSS study area.

There was no evidence of badger found within the PSS study area. The site is considered to have variable suitability for badgers. The substrate throughout the majority of the study area is considered to be sub-optimal for sett building, given its very wet and peaty nature as well as the lack of trees for shelter and foraging. There are a number of suitable habitats present within the local area, such as the forested habitat located to the south of the site. It is possible that badgers would utilise the habitats within the PSS study area for foraging and commuting if they are present within the wider area.

There was no evidence of red squirrel recorded during the surveys. The open habitat present within the study area does not offer suitable habitat for red squirrel. There are several blocks of coniferous forestry present to the south of the site, which have the potential to support red squirrel. These forestry blocks also have good connectivity with the other woodland which fringe the River Spey. Given the lack of suitable habitat, it is unlikely that red squirrel would use the study area for foraging, commuting or shelter.

There was no evidence of pine marten recorded during the surveys. There is limited suitable habitat within the study area for pine marten. The study area is considered to be sub-optimal for the species considering its open nature and lack of tree cover.

No evidence of wildcat was recorded during the survey. The PSS study area offered limited resources for wildcat, given the lack of structures which could be utilised for denning. Probable wildcat presence has been recorded in the wider Glenshero Estate and some habitats present at lower altitudes to the south of the site boundary offer greater suitability.

Specific reptile surveys were not carried out, however, features with the potential to be used by reptiles (e.g. possible hibernacula) and incidental sightings were recorded within the PSS study area. Three common lizards (*Zootoca vivipara*) were recorded. No sightings of adder (*Vipera berus*) or slow-worm (*Anguis fragilis*) were recorded during surveys. The site offers suitable habitat for common lizards, given the availability of open, sunny areas for basking and prey resource present on site.

3 AIM & 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 decommissioning of the proposed development.

The Aim of the SPP will be fulfilled by the Applicant adopting the following objectives throughout the construction and decommissioning of the proposed development:

- 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, would 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 ECoW would have the specific remit of monitoring compliance with the SPP during the construction and decommissioning phases and reporting any breaches to the Applicant's Construction Project Management Team. The ECoW's role would involve direct monitoring of all activities in the site 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 would also agree changes to construction operations to prevent breaches of the SPP.

Table 6.4.1: 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, wildcats, 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 would be 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 6.6.2 below. If other protected species are identified suitable buffer zones will be advised by the ECoW and agreed in consultation with SNH.

Table 6.6.2: 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
Wildcat (den)	European	200 metres ³
Badger (sett)	National	30/100 metres ⁴
Water vole (burrow)	National	5-10 metres ⁵
Red squirrel (drey)	National	50 metres
Pine marten (den)	National	30/100 metres ⁶
Reptiles (hibernacula)	National	n/a ⁷

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 If physical evidence of a den site is found (Forestry Commission, 2009).

⁴ 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.

⁵ Dependant on burrow location and bank profile.

⁶ 100m applied if breeding.

⁷ 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.

6.1 Objective A – Monitoring and Protection Plan

6.1.1 Monitoring Plan

The results from the ecological surveys highlighted water vole burrows as a protected feature of the site. As seen in Table 6.6.1, a burrow has a disturbance zone of 5-10 metres (m). As the burrows were found close to watercourses within the site, and these watercourses already have a 50 m construction buffer put in place, the burrows are within the disturbance free zone.

Although no protected features for otter were recorded within the site, evidence indicates that this species uses the site for foraging, commuting or shelter, as otter spraints were observed. There is the possibility that otter use the watercourses in the site for foraging.

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 monitoring would be put in place and implemented no less than 6 months prior to construction commencement as set out in a draft Construction and Environmental Management Plan (EIAR Volume 4: Technical Appendix 2.1)).

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 would be completed during construction and all potential protection features would be clearly demarcated.

- i. If the potential protection feature remains unoccupied, construction could occur in the area, but not damaging the potential feature under close supervision by the ECoW; or
- ii. If the status of the feature changes to occupied then the under-noted procedure for occupied sites would be followed. The ECoW would be responsible for this survey work as required.

- Nationally Protected Species (water vole and reptiles)

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

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

Occupied Features and Habitats of Importance

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

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

- i. A licence to disturb would be applied for to SNH; or
 - ii. A licence to damage or destroy would be applied for to SNH if there are no reasonable alternatives.
- b) National Protected Species (badger, water vole, red squirrel, pine marten, and reptiles)
- i. Where an active badger sett exists within the site or disturbance zone, and the infrastructure cannot be micrositied away, it could be necessary to undertake a relocation exercise. This is a licensed activity which would require prior authorisation from SNH. Guidance for this process has been produced by SNH, who would be consulted throughout.
 - ii. Where a water vole burrow, red squirrel drey or pine marten den exists within the site or disturbance zone, and the infrastructure cannot be micrositied away, the Applicant would discuss any licensing requirements and appropriate mitigation with SNH.
 - iii. Where reptiles are found to be occupying any areas for proposed infrastructure during their hibernacula period and the infrastructure cannot be micrositied away, the Applicant would 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 would be implemented to increase the protection levels and reduce general disturbance from the proposed 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 45o or shallower;
- b) Any temporarily exposed open pipe system should be capped in such a way as to prevent mammals gaining access, as could happen when contractors are offsite. If such pipes are left for an extended time, periodic checks would be carried out to ensure that the pipe is inaccessible to animals;
- c) All excavations would be checked at the start of works and prior to the commencement of any works activities to ensure otters and field voles are not present or have become trapped overnight. A responsible individual would be tasked with carrying out these checks. Documentary evidence would be completed for each check;
- d) Night time working would be minimised to reduce disturbance to nocturnal and crepuscular fauna. Where this would not be possible, security lighting used in the site compound and those areas where lighting is absolutely necessary to ensure safe working conditions would be angled downwards to reduce light spillage into adjacent areas. Lighting outwith the site compound would be switched off when no works are being undertaken. Other required lighting would 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 50 m) and their tributaries, should commence one hour after sunrise and would cease no later than one hour before sunset, unless under the supervision of the appointed ECoW and in consultation with SNH;
- f) Instream works in watercourses and their tributaries should not be conducted on fish-holding watercourses during the fish spawning and incubation period from October to May, inclusive, unless under the direct supervision of the appointed ECoW;
- g) An appropriate speed limit (of c.a. 15 to 20 mph) for all vehicles on the site, and vehicle movements would 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 would 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 would not be stored within 100 m of a sett, holt or couch, or within 10 m of hibernacula, or other protected feature, or along mammal paths. All paints, chemicals and sealants used during the construction process would be removed from the working area at the end of each working day. Open tins or other containers would not be left at the works areas but would be stored in a suitable container at the site compound; and
- k) Any areas for location of wind turbines and infrastructure would be subject to inspection by an experienced ecologist prior to any works on-site. If deemed suitable for reptiles, the vegetation in these locations would be cut to a length of less than 300 mm and cleared under supervision of the ecologist. The ECoW would monitor the site so that in-situ materials associated with works will not incidentally create reptile refuges, e.g. piles of cut vegetation. Materials would 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 would be completed. This would consider all potential mitigation measures to avoid ODD. This could include micro-siting 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 (DRA) would 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 micro-siting and the demarcation of the protected site).

The DRA or ODD risk assessments would 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 would be adopted for unoccupied and occupied features. If there is uncertainty over whether the feature is occupied a precautionary approach would be adopted and occupancy would 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 would be followed:

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

6.3 **Objective C – Education and Awareness**

The Applicant would 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) would be informed of the objectives of the SPP to ensure they are aware of any species present in the site.

This information would 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 would 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 would need to undertake retraining in the use and application of the SPP to ensure the impact on protected species would be minimised.

REFERENCES AND RELEVANT LEGISLATION AND GUIDANCE

- Capreolus Wildlife Consultancy. (2005). The ecology and conservation of water voles in upland habitats. Scottish Natural Heritage Commissioned Report No. 099 (ROAME No. F99AC320).
- Collins, J. (ed.) (2016) Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edn.) The Bat Conservation Trust, London. ISBN-13 978-1-872745-96-1
- European Commission. (1979). Directive 79/409/EEC: Conservation of Wild Birds. HMSO, London.
- European Commission. (1992). Directive 92/43/EEC: Conservation of Natural Habitats and of Wild Flora and Fauna. HMSO, London.
- Forestry Commission. (2006). Forest operations and red squirrels in Scotland's forests – the law and good practice. FCS Guidance Note 33.
- Forestry Commission. (2009). Forest operations and great crested newts in Scotland. FCS Guidance Note 35b.
- Forestry Commission (2009). Forest operations and wildcats in Scotland. FSC Guidance Note 35d.
- Gent, T. & Gibson, S. (1998). Herpetofauna Workers' Manual. JNCC, Peterborough.
- HMSO. (1994). Biodiversity: The UK Action Plan. HMSO, London.
- HMSO. (1981). Wildlife & Countryside Act 1981. HMSO, London.
- HMSO. (1994). The Conservation (Natural Habitats, &c.) Regulations 1994. HMSO, London.
- HMSO. (1992). Protection of Badgers Act 1992. HMSO, London.
- Mitchell-Jones, A. J. (2004). Bat Mitigation Guidelines. English Nature, Peterborough.
- Mitchell-Jones, A. J. & McLeish, A. P. (2004). Bat Workers Manual – 3rd Edition. JNCC, Peterborough.
- Morris, P.A., Morris, M.J., MacPhearson, D., Jefferies, D.J., Strachan, R & Woodroffe, G.L. (1998). Estimating numbers of the water vole *Arvicola terrestris*: a correction to the published method. *Journal of Zoology* 246: 61 – 62.
- Natural England (2014). Bats and onshore wind turbines: interim guidance. TIN051. Third Edition.
- Scottish Natural Heritage. (2001). Scotland's Wildlife: Badgers and Development. SNH, Battleby.
- Scottish Natural Heritage. (1997). Scotland's Wildlife: Otters and Development. SNH, Battleby.
- Strachan, R., Moorhouse, T. & Gelling, M. (2011). Water Vole Conservation Handbook 3rd Edition. Wildlife Conservation Research Unit, Oxford.

Annex 1. LEGAL PROTECTION

Bats and Otters receive protection under the Conservation Regulations (1994) (as amended) only⁸.

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

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

- g) deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- h) 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;
- i) deliberately or recklessly to take or destroy the eggs of such an animal; or
- j) 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.

⁸ 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 10⁹.

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

Under Section 9 Subsection 1¹⁰ it is an offence to:

- k) 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:

- l) 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.
- m) 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:

- n) 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.
- o) 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.

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

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

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 1¹¹ it is an offence to:

- p) 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:

- q) 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.
- r) 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:

- s) 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.
- t) 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.

¹¹ as amended by the Nature Conservation (Scotland) Act 2004