

Legislative protection for herpetofauna

England and Wales

Produced by ARC with input from Matthew Ellis (Natural Resources Wales). We endeavour to keep these notes up to date but legislation changes, so please check the ARC website to ensure you have the latest version. Important: this note is for information only, and is deliberately selective rather than comprehensive. For a definitive position, readers are advised to consult the original legal texts and/or seek professional advice.

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Background

Wildlife legislation in the UK is complicated, both through its steady evolution and amendment creating a range of acts, regulations and statutory orders, and because the environment is a devolved function for the different country administrations in the UK. Therefore, legislation and policy has developed differently in the countries of the UK. It is also further complicated by the interaction between national and international legislation and jurisprudence. Different levels of protection apply to different species.

This note summarises the protection afforded explicitly to native reptiles and amphibians (herpetofauna) in England and Wales through nature conservation legislation. Note that in practice, reptiles and amphibians may receive additional protection through other routes, and we do not cover those in this note. These routes include: legislation protecting sites (such as Sites of Special Scientific Interest) and landscapes (such as National Parks); animal welfare legislation; and land use planning.

Protection for herpetofauna in England and Wales

A. European Protected Species

This group comprises smooth snake, sand lizard, natterjack toad, pool frog, great crested newt, loggerhead turtle, green turtle, Kemp's ridley turtle, hawksbill turtle and leatherback turtle. European Protected Species ("EPS") are protected via a combination of Regulation 43 of the Conservation of Habitats and Species Regulations 2017 (as amended) and Sub-sections 9(4) b & c and Section 9(5) of the Wildlife & Countryside Act 1981 (as amended). Between these elements of legislation, the following acts are prohibited:

- (a) deliberate capturing, injuring or killing
- (b) deliberate disturbance; disturbance of animals includes in particular any disturbance which is likely-
 - (i) to impair their ability to survive, to breed or reproduce or to rear or nurture their young; or
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - (iii) to affect significantly the local distribution or abundance of the species to which they belong.
- (c) deliberate taking or destroying eggs; or
- (d) damaging or destroying a breeding site or resting place
- (e) intentionally or recklessly -
 - (i) disturbing an animal while it is occupying a structure or place which it uses for shelter or protection; or
 - (ii) obstructing access to any structure or place which an animal uses for shelter or protection.
- (e) possession, control, transporting, selling or exchanging, or offering for sale or exchange.

The above offences relate to 'wild animals' and apply regardless of the stage of the life of the animal in question. Unless the contrary is shown, in any proceedings for an offence under paragraph the animal in question is to be presumed to have been a wild animal.

Note there are defences and licensing regimes under the Wildlife & Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (as amended). These

allow activities that would normally be an offence to be undertaken lawfully. For example, there are defences to allow the capture of disabled animals so that they can be tended and released after recovery. Licences can allow normally prohibited actions to be undertaken for defined purposes, including conservation and research.

Aside from the better known offences outlined above, the legislation contains a number of other provisions, including duties, which are not listed exhaustively here. For example, Regulation 50 of the Conservation of Habitats and Species Regulations 2017 (as amended) requires the appropriate authority to undertake surveillance of the conservation status of species. Regulations 52 and 53 require arrangements for the monitoring of incidental capture and killing of species, and measures to ensure there is no significant negative effect on the species.

The legislation: key sections and amendments

The Conservation of Habitats and Species Regulations 2017 (as amended) is consolidated legislation replacing previous versions, and incorporating subsequent amendments. It is often abbreviated to the “Habitats Regulations”. Species protection is covered principally by Regulation 43.
http://www.legislation.gov.uk/ukxi/2017/1012/content_s

Only certain parts of Section 9 of The Wildlife & Countryside Act 1981 (as amended) apply to the European Protected Species: sub-sections 9(4) b and c, and section 9(5) [see https://www.legislation.gov.uk/ukpga/1981/69/content_s]. These are the provisions relating to disturbance, damage to places used for shelter and protection, and sale. Other notable amendments applying to European Protected Species of amphibian & reptile include:

(i) Inclusion of Marine turtles on Schedule 5 were inserted by article 2 of the Wildlife and Countryside Act 1981 (Variation of Schedules) Order 1988, S.I.1988/288.
http://www.opsi.gov.uk/si/si1988/Uksi_19880288_en_1.htm

(ii) Inclusion of reckless disturbance via Section 9(4) of the Wildlife and Countryside Act 1981 (c.69) was amended by section 81(1) of, and paragraph 5(a) of

Schedule 12 to, the Countryside and Rights of Way Act 2000 (c.37).

<http://www.opsi.gov.uk/acts/acts2000/20000037.htm>

(iii) Full amendment of Section 9(4) via Reg 7 (4) of The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007

http://www.opsi.gov.uk/si/si2007/ukxi_20071843_en.pdf

(iv) Amendment of Schedule 5 to include EPS only with regards to section 9(4)(b) and (c) and (5) only through Reg 7 (7) of The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007

http://www.opsi.gov.uk/si/si2007/ukxi_20071843_en.pdf

(v) The pool frog was added to Schedule 2 of the Habitats Regulations by The Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2008

http://www.opsi.gov.uk/si/si2008/ukxi_20082172_en_1.

The pool frog is listed on Schedule 5 of the Wildlife and Countryside Act; it was added in 2011, with protection extending only to animals of the northern clade

<https://www.legislation.gov.uk/ukpga/1981/69/schedule/5>.

B. Widespread reptiles and amphibians

This group covers six species of reptile (adder, grass snake, common lizard, slow-worm) and four species of amphibian (common frog, common toad, smooth newt, palmate newt).

Reptiles only are protected via part of Section 9(1) of the Wildlife & Countryside Act 1981 (as amended) against intentional killing and injuring (Note: the provision in Section 9(1) of Wildlife & Countryside Act 1981 prohibiting “taking” does not apply to reptiles).

Both widespread reptiles and widespread amphibians are protected via part of Section 9(5) of the Wildlife & Countryside Act 1981 (as amended) against:

(i) selling, offering or exposing for sale, or having in possession or transporting for the purpose of sale, any live or dead wild animal or any part of, or anything derived from, such an animal; or

(ii) publishing or causing to be published any advertisement likely to be understood as conveying buying or selling, or intending to buy or sell, any of those things.

The legislation relates only to 'wild animals', and in any proceedings the animal in question shall be presumed to have been a wild animal unless the contrary is shown.

This protection is solely through the Wildlife & Countryside Act 1981 (as amended), and defences and licensing provisions are given in the Act.

The legislation: key sections and amendments

The legislation can be viewed in full here:

<https://www.legislation.gov.uk/ukpga/1981/69/contents>

Key amendments include:

(i) Protection against killing and injuring (S9(1)) afforded to common lizard, grass snake and slow-worm: article 2(4) of the Wildlife and Countryside Act 1981 (Variation of Schedules) Order 1988, S.I.1988/288

http://www.opsi.gov.uk/si/si1988/Uksi_19880288_en_1.htm

(ii) Protection against killing and injuring (S9(1)) afforded to adder: article 2(1) of the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1991 S.I. 1991/361

http://www.opsi.gov.uk/SI/si1991/Uksi_19910367_en_1.htm

C. Reptiles and amphibians of 'principal importance' and the 'biodiversity duty'

Legislation designates certain species as being of "principal importance" for conserving or enhancing biodiversity, and places a duty on public authorities (in England) and Ministers (in Wales) to take appropriate steps in relation to the conservation of those species.

The key legislation is:

England – Sections 40 and 41 of the Natural Environment and Rural Communities Act 2006

<http://www.legislation.gov.uk/ukpga/2006/16/contents>

Wales – Section 7, Environment (Wales) Act 2016

<https://www.legislation.gov.uk/anaw/2016/3/section/7/enacted>

The herpetofauna species on these lists are (for both England and Wales unless otherwise stated): smooth snake (England only), adder, grass snake, sand lizard, common lizard, slow-worm, natterjack toad, pool frog (England only), common toad, great crested newt, leatherback turtle and loggerhead turtle.

D. Environmental Damage Regulations

Whilst not identifying herpetofauna specifically, these Regulations apply in relation to the prevention and remediation of "environmental damage"; this includes damage to protected species or natural habitats, or a site of special scientific interest, and applies both if the operator intended to cause environmental damage or was negligent as to whether environmental damage would be caused. In the case of protected species or natural habitat the damage must be such that it has a significant adverse effect on reaching or maintaining the favourable conservation status of the protected species or natural habitat.

These Regulations contain provisions that are especially useful in enforcement, including the ability to impose stop orders and remediation orders.

Legislation:

England –

<https://www.legislation.gov.uk/uksi/2015/810/contents>

Wales –

<https://www.legislation.gov.uk/wsi/2009/995/contents>