Draft Regulations laid before Parliament and the National Assembly for Wales under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament and of the National Assembly for Wales.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

WILDLIFE

The Humane Trapping Standards Regulations 2019

Made - - - -	***
Coming into force - -	***

The Secretary of State and the Welsh Ministers are Ministers designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to wild animals(**b**).

The Secretary of State, in relation to England and Scotland(**c**), and the Welsh Ministers in relation to Wales, make these Regulations in exercise of the powers conferred by section 2 of that Act.

PART 1

Introductory provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Humane Trapping Standards Regulations 2019 and come into force on 28th March 2019.

(2) These Regulations, with the exception of regulation 8, extend to Great Britain.

(3) Regulation 8 extends to Scotland only.

PART 2

Amendment of the Wildlife and Countryside Act 1981

Amendments

2. The Wildlife and Countryside Act 1981(**d**) is amended in accordance with regulations 3 to 6.

(**a**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51); and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(**b**) S.I. 2014/1890.

(**c**) Section 57(1) of the Scotland Act 1998 (c. 46) provides that, despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under EU law, any function of a Minister of the Crown shall continue to be exercisable by the Minister as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(**d**) 1981 c. 69.

Amendment of section 11

3.—(1) Section 11 (prohibition of certain methods of killing or taking wild animals)(**a**) is amended as follows.

(2) For subsection (2) substitute—

"(2) Subject to the provisions of this Part, a person shall be guilty of an offence if that person—

(a) uses any trap or snare for the purpose of killing or taking or restraining any wild animal included in Schedule 6 or 6ZA;

(b) sets in position any trap or snare of such a nature and so placed as to be—

(i) in England and Wales, calculated to cause bodily injury to any wild animal included in Schedule 6 or 6ZA;

(ii) in Scotland, likely to cause bodily injury to any such wild animal;

(c) sets in position any electrical device for killing or stunning, or any poisonous, poisoned or stupefying substance, of such a nature and so placed as to be—

(i) in England and Wales, calculated to cause bodily injury to any wild animal included in Schedule 6;

(ii) in Scotland, likely to cause bodily injury to any such wild animal;

(d) uses for the purpose of killing or taking any wild animal included in Schedule 6—

(i) any electrical device for killing or stunning;

(ii) any poisonous, poisoned or stupefying substance;

(iii) any net;

(iv) any automatic or semi-automatic weapon;

(v) any device for illuminating a target or sighting device for night shooting;

(vi) any form of artificial light or any mirror or other dazzling device;

(vii) any gas or smoke not falling within sub-paragraph (ii);

(viii) any sound recording used as a decoy; or

(ix) any mechanically propelled vehicle in immediate pursuit of any such animal;

(e) uses any mechanically propelled vehicle for the purpose of driving any wild animal included in Schedule 6; or

(f) knowingly causes or permits to be done an act mentioned in paragraphs (a) to (e).".

(3) In subsection (5), for "(2)(b), (c), (d) or (e)" substitute "(2)(a), (d) or (e)".

(4) In subsections (6) and (7)—

(a) for "subsection (2)(a)" substitute "subsection (2)(b) or (c)";

(b) for "Schedule 6" substitute "the relevant Schedule".

(5) After subsection (7), insert—

"(7A) In subsections (6) and (7), "the relevant Schedule" means—

(a) where proceedings relate to an offence under subsection (2)(b), Schedule 6 or 6ZA;

(b) where proceedings relate to an offence under subsection (2)(c), Schedule 6.".

(**a**) Subsection (2) was amended in relation to England and Wales by section 2(3) of the Wildlife and Countryside (Amendment) Act 1991 (c. 39), and in relation to Scotland by paragraph 10 of Schedule 6 to the Nature Conservation (Scotland) Act 2004 (asp 6). Subsection (5) was amended by section 2(5) of the Wildlife and Countryside (Amendment) Act 1991, and paragraph 10 of Schedule 6 to the Nature Conservation (Scotland) Act 2004. Subsection (7) was inserted by section 2(6) of the Wildlife and Countryside (Amendment) Act 1991.

Amendment of section 16

4. In section 16 (power to grant licences)(**a**), after subsection (3) insert—

"(3ZA) A licence granted under subsection (3) may permit the use of a trap or snare for the purpose of killing, taking or restraining a wild animal included in Schedule 6ZA only if the trap or snare—

(a) meets the conditions relating to certification (see subsections (3ZB) to (3ZF)); or

(b) meets the approved design conditions (see subsections (3ZG to (3ZI)).

This subsection is subject to (3ZJ).

(3ZB) For the purposes of subsection (3ZA)(a) the conditions relating to certification are that—

(a) the trap or snare is of a certified type and make;

(b) the manufacturer of the trap or snare provides instructions as to how it should be set, operated safely and maintained; and

(c) where it is manufactured on or after 28th March 2019, the trap or snare is identified by its manufacturer by means of a permanent marking as being of a certified type and make.

(3ZC) For the purposes of subsection (3ZB)(b), instructions provided by the supplier of a trap or snare with the authorisation of the manufacturer of that trap or snare are to be treated as provided by the manufacturer.

(3ZD) For the purposes of this section, a type and make of trap or snare is "certified" in relation to a wild animal included in Schedule 6ZA if it is certified by or on behalf of any of the following authorities as conforming (where the trap or snare is set in accordance with any instructions provided by the manufacturer) to the standards set out in the international trapping standards agreement in relation to the trapping of that animal—

(a) the Secretary of State;

(b) the Welsh Ministers;

(c) the Scottish Ministers;

(d) in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs(**b**);

(e) an authority in another country or territory which is designated for the purposes of the international trapping standards agreement as a certifying authority.

(3ZE) The relevant authority shall—

(a) publish in such manner as it considers appropriate a list of all traps and snares of a certified type and make of which it is aware; and

(b) make the list available to anyone who asks for it in in writing(**c**).

(3ZF) For the purposes of subsection (3ZE), "the relevant authority" means—

(a) in relation to England, the Secretary of State;

(**a**) Section 16 was amended by paragraph 11 of Schedule 9 to the Environment Protection Act 1990 (c. 43), paragraph 15 of Schedule 6 to the Nature Conservation (Scotland) Act 2004, paragraph 72 of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16), section 10 of the Marine and Coastal Access Act 2009 (c. 23), section 104 of the Marine (Scotland) Act 2010 (asp 5), sections 4(1) and (4), 9, 13(1) and (4), 17(1) and (2) and 18(1) and (2) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), and paragraph 6 of Schedule 12 to the Countryside and Rights of Way Act 2000 (c. 37), and by S.I. 1995/2825, 2007/1843, and 2013/755.

(**b**) The powers relating to traps and snares under Articles 12 and 12A of the Wildlife Order (Northern Ireland) 1985 (S.I. 1985 No. 171 (N.I.2) were transferred from the Department of the Environment to the Department of Agriculture, Environment and Rural Affairs by Article 8(1)(c) of the Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016 No. 76).

(**c**) Requests in writing can be made in England to the Wildlife Management Team, Natural Environment Policy Directorate, Defra, Horizon House, Deanery Road, Bristol, BS1 5AH. In Wales, requests in writing can be made to the Land, Nature and Forestry Division, Welsh Government, Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3UR. In Scotland, requests in writing can be made to Wildlife and Protected Areas, Natural Resources Division, Directorate for Environment and Forestry, The Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

(b) in relation to Wales, the Welsh Ministers;

(c) in relation to Scotland, the Scottish Ministers.

(3ZG) For the purposes of subsection (3ZA)(b) a trap or snare meets the approved design conditions if it—

(a) has been constructed by the person using it; and

(b) complies with a design approved for this purpose by or on behalf of the Secretary of State (where it is used in England or Scotland) or the Welsh Ministers (where it is used in Wales).

(3ZH) The relevant authority must—

(a) publish in such manner as it considers appropriate details of the design of a trap or snare approved in accordance with subsection (3ZG)(b); and

(b) make the details available to anyone who asks for them in writing(**a**).

(3ZI) In subsection (3ZH), "the relevant authority" means—

(a) the Secretary of State, for designs of traps or snares approved for use in England;

(b) the Welsh Ministers, for designs of traps or snares approved for use in Wales;

(c) the Scottish Ministers, for designs of traps or snares approved for use in Scotland.

(3ZJ) Subsection (3ZA) does not apply where the licence—

(a) is granted in accordance with any of paragraphs (a) to (d) or paragraphs (f) to (h) of subsection (3) and is subject to such conditions as the appropriate authority considers appropriate when granting the licence;

(b) does not, in the opinion of the appropriate authority, undermine the objectives of the international trapping standards agreement; and

(c) is accompanied by a written explanation of the reasons for that opinion and for the grant of the licence.

(3ZK) In this section "the international trapping standards agreement" means the Agreement on international humane trapping standards between the European Community, Canada and the Russian Federation(**b**).".

Amendment of section 22

5. In section 22 (power to vary Schedules), at the end insert—

"(6) The Secretary of State may, for the purpose of complying with the international trapping standards agreement, by order add any animal to, or remove any animal from, Schedule 6ZA.

(7) In subsection (6), "the international trapping standards agreement" has the meaning given by section 16(3ZK).".

New Schedule 6ZA

6. After Schedule 6 to that Act, insert, as Schedule 6ZA to that Act, the Schedule set out in the Schedule to these Regulations.

(**a**) Requests in writing can be made in England to the Wildlife Management Team, Natural Environment Policy Directorate, Defra, Horizon House, Deanery Road, Bristol, BS1 5AH. In Wales, requests in writing can be made to the Land, Nature and Forestry Division, Welsh Government, Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3UR. In Scotland, requests in writing can be made to Wildlife and Protected Areas, Natural Resources Division, Directorate for Environment and Forestry, The Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

(**b**) The Agreement was approved on behalf of the European Community by Council Decision 98/142/EC (OJ No. L42, 14.2.98, p. 40). The text of the Agreement is attached to the Decision (at OJ No. L 42, 14.2.98, p. 43).

PART 3

Amendment of other legislation

Amendment of the Pests Act 1954

7. In section 8 of the Pests Act 1954 (restriction on type of trap in England and Wales)(**a**)—

(a) after subsection (3), insert—

"(3A) An order made under subsection (3) may not specify any type or make of trap as approved if the trap is a leghold trap."; and

(b) after subsection (8), insert—

"(8A) In subsection (3A), "leghold trap" means a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal's limbs, thereby preventing withdrawal of the limb or limbs from the trap.".

Amendment of the Agriculture (Scotland) Act 1948

8. In section 50 of the Agriculture (Scotland) Act 1948 (prohibition of night shooting, and use of spring traps)(**b**)—

(a) in subsection (4), for "the next following subsection" substitute "subsections (4A) and (5)";

(b) after subsection (4) insert—

"(4A) An order made under subsection (3) may not specify any type or make of trap as approved, and an order made under subsection (4) may not authorise the use of any trap, where the trap is a leghold trap.";

(c) in subsection (5) for "the last foregoing subsection", in both places where it occurs, substitute "subsection (4)"; and

(d) after subsection (8) insert—

"(9) In subsection (4A), "leghold trap" means a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal's limbs, thereby preventing withdrawal of the limb or limbs from the trap.".

PART 4

Transitional provision

Transitional provision

9. Until 1st April 2020, Schedule 6ZA to the Wildlife and Countryside Act 1981, as set out in the Schedule to these Regulations, has effect as if the entry in respect of Mustela erminea (Stoat) were omitted.

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Date

(**a**) 1954 c. 68. Section 8 was amended by section 1(1) of, and Part 8 of Schedule 1 to, the Statute Law (Repeals) Act 1973 (c. 39), section 31 of, and Schedule 6 to, the Criminal Law Act 1977 (c. 45) and section 46 of the Criminal Justice Act 1982 (c. 48).

(**b**) 1948 c. 45. Section 50 was amended by section 10 of the Pests Act 1954 (c. 68).

Name
Minister for Environment under authority of the Cabinet Secretary for
Date Energy Planning and Rural Affairs, one of the Welsh Ministers

SCHEDULE

Regulation 6

Schedule to be inserted as Schedule 6ZA to the Wildlife and Countryside Act 1981

"SCHEDULE 6ZA

Section 11(2)

Animals which may not be killed or taken by trapping or snaring

Common name	*Scientific name*
Badger	Meles meles
Beaver, European	Castor fiber
Marten, Pine	Martes martes
Otter, Common	Lutra lutra
Stoat (otherwise known as Ermine)	Mustela erminea

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Wildlife and Countryside Act 1981 (c. 69) ("the Act") in order to implement in Great Britain requirements contained in the Agreement on international humane trapping standards concluded between the European Community, the Government of Canada and the Government of the Russian Federation ("the Agreement")(**a**).

The Regulations restate the existing prohibitions in section 11 of the Act (animals which may not be killed or taken by certain methods) in relation to the animals listed in Schedule 6, without substantively adding to them. They introduce a prohibition on using or setting in position any trap or snare for the purpose of killing or taking the Stoat (otherwise known as the Ermine) or the European Beaver. The European Beaver and the Stoat are protected under the Agreement together with the Badger, which is already listed in Schedule 6 to the Act as it applies to England, Wales and Scotland; and the Otter and the Pine Marten, which are already listed in Schedule 6 to the Act as it applies to England and Wales. All five species are now also listed in Schedule 6ZA (animals which may not be killed or taken by trapping or snaring).

The prohibitions in section 11(2)(a) and (b) (as revised) (relating to using or setting in position a trap or snare) do not apply in relation to any animal specified in Schedule 6ZA where the use or

(**a**) The Agreement was approved on behalf of the European Community by Council Decision 98/142/EC (OJ No. L42, 14.2.98, p.40).

setting of the trap is under and in accordance with a licence issued by Natural England, the Natural Resources Body for Wales or Scottish Natural Heritage (as the case may be), and the trap or snare is of a certified type and make and other conditions relating to certification are complied with, or is constructed by the person using it and complies with a design approved by the Secretary of State or the Welsh Ministers (as the case may be) (see section 16(3) together with new 16(3ZA) of the Act). This is subject to the exemption in new section 16(3ZJ) of the Act relating to the grant of individual licences, where in the opinion of the appropriate authority the licence does not undermine the objectives of the Agreement. For this purpose, a trap or snare is one of a certified type and make if its type and make are certified as conforming, when used in accordance with any instructions provided by the manufacturer, to the humane trapping standards set out in Annex 1 to the Agreement.

The Regulations contain a transitional provision, by virtue of which the requirement in new section 16(3ZA) does not apply to Stoat until 1st April 2020.

The Regulations also amend section 8 of the Pests Act 1954 (c. 68), and section 50 of the Agriculture (Scotland) Act 1948 (c. 45), so as to prevent the Minister and the Scottish Ministers, respectively, from approving or authorising the use of a leghold trap in an order made under those sections. This is consequential on the prohibition on the use of leghold traps contained in Council Regulation (EEC) No. 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international trapping standards(**a**).

A full impact assessment of the effect this instrument will have on the costs of business and on the private, voluntary or public sectors is available at www.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

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(**a**) OJ No. L308, 9.11.1991, p.1.

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