

Legislative protection for herpetofauna

Isle of Man

Produced by RG Selman, December 2010, for the Department of Environment, Food and Agriculture, Isle of Man Government.

Version number: December 2010

Legislative protection for herpetofauna in the Crown Dependencies – Isle of Man

The main legislation covering wildlife protection in the Isle of Man is the Wildlife Act 1990 (as amended), which provides for species protection, site designation and the control of introductions. The Isle of Man lies outside of the UK and the EU. There are restrictions on the movement of various species and specimens on and off the island for the preservation of endangered species, health controls and potential ecological or economic damage. There are also Planning controls and animal welfare provisions. This note summarises the species protection provisions relevant to herpetofauna, under the Wildlife Act.

Wildlife Act - Species Protection

The common frog, viviparous lizard and all turtles (Dermochelyidae and Cheloniidae) are listed on Schedule 5 of the Wildlife Act, bringing in the Section 9 offences, as below. Other species, considered recently introduced or escaped, do not receive this protection, though the origins of the newts are an interesting topic of debate.

Section 9 Protection of certain wild animals

(1) Subject to the provisions of this Part, if any person intentionally or recklessly kills,

injures or takes any wild animal included in Schedule 5 without reasonable excuse, he shall be guilty of an offence.

- (2) Subject to the provisions of this Part, if any person has in his possession or control any live or dead wild animal included in Schedule 5 or any part of, or anything derived from, such an animal, he shall be guilty of an offence.
- (3) A person shall not be guilty of an offence under subsection (2) if he shows that-
- (a) the animal had not been killed or taken, or had been killed or taken otherwise than in contravention of the relevant provisions; or
 - (b) the animal or other thing in his possession or control had been sold (whether to him or any other person) otherwise than in contravention of those provisions;

and in this subsection 'the relevant provisions' means the provisions of this Part.

- (4) Subject to the provisions of this Part, if any person intentionally or recklessly -
- (a) damages or destroys, or obstructs access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection; or
 - (b) disturbs any such animal while it is occupying a structure or place which it uses for that purpose,
- he shall be guilty of an offence.

- (4A) Subject to the provisions of this Part, any person who intentionally or recklessly disturbs any wild animal included in Schedule 5 or
- (a) a dolphin or whale (cetacean);
 - (b) a basking shark (cetorhinus maximus);
 - (c) a seal (all species) (pinnepedia) or
 - (d) a turtle (marine) (all species) (dermochelydiae and cheloniidae),

shall be guilty of an offence.

- (5) Subject to the provisions of this Part, if any person-
- (a) sells, offers or exposes for sale, or has in his possession or transports 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; or
 - (b) publishes or causes 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,
- he shall be guilty of an offence.
- (6) In any proceedings for an offence under subsection (1), (2) or (5)(a), the animal in question shall be presumed to have been a wild animal unless the contrary is shown.

Section 10 Exceptions to s 9

- (1) Nothing in section 9 shall make unlawful-
- (a) anything done in pursuance of a requirement by the Department under section 1 of the Prevention of Damage by Agricultural Pests Act 1956;
 - (b) anything done under section 3 of the Forestry Act 1984; or
 - (c) anything done under, or in pursuance of an order made under, the Diseases of Animals (Prevention) Acts 1948 to 1975.
- (2) Nothing in section 9(4) shall make unlawful anything done within a dwelling-house.
- (3) Notwithstanding section 9, a person shall not be guilty of an offence by reason of-
- (a) the taking of any such animal if he shows that the animal had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled;
 - (b) the killing of any such animal if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
 - (c) any act made unlawful by that section if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.
- (4) Notwithstanding section 9, an authorised person shall not be guilty of an offence by reason of the killing or injuring of a

wild animal included in Schedule 5 if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

- (5) A person shall not be entitled to rely on the defence provided by subsection (2) or (3)(c) as respects anything done in relation to a bat otherwise than in the living area of a dwelling house unless he had notified the Department of the proposed action or operation and allowed it a reasonable time to advise him as to whether it should be carried out and, if so, the method to be used.
- (6) An authorised person shall not be entitled to rely on the defence provided by subsection (4) as respects any action taken at any time if it had become apparent, before that time, that the action would prove necessary for the purpose mentioned in that subsection and either-
- (a) a licence under section 16 authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
 - (b) an application for such a licence had been determined.

A licence is therefore required to handle Schedule 5 species, for which S16 applies.

Section 16 Power to grant licences

- (3) Sections 9(1), (2) and (4), 11(1) and (2) and 12(1) and orders under section 13 do not apply to anything done-
- (a) for scientific or educational purposes;
 - (b) for the purpose of ringing or marking, or examining any ring or mark on, wild animals;
 - (c) for the purpose of conserving wild animals or wild plants or introducing them to particular areas;
 - (d) for the purpose of protecting any zoological or botanical collection;
 - (e) for the purpose of photography;
 - (f) for the purposes of preserving public health or public safety;
 - (g) for the purpose of preventing the spread of disease; or
 - (h) for the purposes of preventing serious damage to livestock, foodstuffs for

livestock, crops, vegetables, fruit,
growing timber or any other form of
property or to fisheries,
if it is done under and in accordance with the
terms of a licence granted by the
Department.

(4) The following provisions, namely-

- (a) section 6(1) and (2);
- (b) sections 9(5) and 12(2); and
- (c) section 14,

do not apply to anything done under and in
accordance with the terms of a licence
granted by the Department.

(5) Subject to subsection (6), a licence
under the foregoing provisions of this
section-

- (a) may be, to any degree, general or
specific;
- (b) may be granted either to persons of a
class or to a particular person;
- (c) may be subject to compliance with
any specified conditions;
- (d) may be modified or revoked at any
time by the Department; and
- (e) subject to paragraph (d), shall be
valid for the period stated in the licence;

and the Department may charge therefor such
sum (if any) as it may determine.

(8) For the purposes of a licence granted
under this section, the definition of a
class of persons may be framed by
reference to any circumstances whatever
including, in particular, their being
authorised by any other person.

(9) The Department-

- (a) shall from time to time consult with
the Wildlife Committee as to the exercise
of its functions under this section; and
- (b) shall not grant a licence of any
description unless it has been advised by
the Committee as to the circumstances in
which, in their opinion, licences of that
description should be granted.

Other sections of likely interest are:

- 11. *Prohibition of certain methods
of killing or taking wild
animals.*
- 13. *Areas of special protection:
animals and plants.*
- 14. *Introduction of new species
etc.*
- 27. *Areas of special scientific
interest.*
- 28. *Restoration where s 27
contravened.*
- 29. *Compensation.*
- 30. *Management agreements with
owners etc. of land.*
- 31. *National nature reserves.*
- 32. *Marine nature reserves.*
- 33. *Byelaws for protection of
marine nature reserves.*

Important note: this was considered correct on
6th December 2010. Please check for any later
changes. This note does not constitute legal
advice, just a summary of the main provisions
considered to be of interest to readers of this
site. Full copies of the legislation can be
requested from the Tynwald Library
<http://www.tynwald.org.im/>. Further advice and
licence application forms can be obtained from
the Department of the Environment, Food and
Agriculture, www.gov.im/defa.



Isle of Man
Government

Reillys Ellan Vannin