



**North Lowther Energy Initiative**  
**Draft Species Protection Plan**  
**Technical Appendix 8.5**

**Document Quality Record.**

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## CONTENTS

1	Introduction .....	2
2	Background Information .....	2
3	Aims & Objectives of the Species Protection Plan.....	3
4	Responsibilities .....	3
4.1	Role of the Ecological Clerks of Works.....	3
5	The Potential Effects of the Development.....	3
6	Procedures for Protecting Protected Species .....	4
6.1	Objective A – Monitoring and Protection Plan .....	4
6.1.1	Monitoring Plan .....	4
6.1.2	Protection Plan.....	4
6.2	Objective B – Procedure if Active Feature is Found.....	5
6.2.1	Procedure if previously unrecorded active feature or protected species found in advance of construction activity .....	5
6.2.2	Procedure if previously unrecorded protected feature or species found during construction .....	5
6.3	Objective C – Education and Awareness.....	5
	References and Relevant Legislation and Guidance .....	7
Annex 1.	LEGAL PROTECTION .....	7

## LIST OF TABLES

Table 4-1: SPP Responsibilities .....	3
Table 6-1: Level of Protection and Recommended Disturbance Free Zones.....	4

## 1 INTRODUCTION

MacArthur Green has prepared this Species Protection Plan (SPP) on behalf of NLEI Ltd to ensure all reasonable protection measures are undertaken with regard to protected species within the North Lowther Energy Initiative windfarm Development Area. The SPP is to be implemented during the construction and decommissioning phases of the Development.

The SPP has been produced to ensure the adequate preservation of protected species interests into all construction and decommission activities within the 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

Baseline protected species surveys as part of the EIA process were undertaken between the 30<sup>th</sup> of May and the 3<sup>rd</sup> of June and between the 6<sup>th</sup> and 8<sup>th</sup> of June 2016. Further surveys to cover off an additional access option were undertaken on the 27<sup>th</sup> and 28<sup>th</sup> July. Repeat surveys for water voles<sup>1</sup> were conducted on the watercourses within the Development Area in August 2016 (refer to Environmental Statement, Technical Appendix 8.2). Bat survey work was undertaken between 18<sup>th</sup> May and 15<sup>th</sup> September 2015. Any sections of the Development Area where access was restricted during the June and July surveys due to the presence of Schedule 1 birds were also covered off during the August surveys. A survey was also conducted in August to search suitable woodland habitats for evidence of badger and to deploy trail cameras. The SPP is designed to reflect the results of the surveys and the distinct ecology and distributions of protected species within the Development Area.

Surveys confirmed the presence of otter, badger, squirrel and reptiles within the Development Area. There was no evidence of pine marten, water vole or any other protected species using the Development Area.

Signs of otter were present within the Development Area; numerous spraints were found along the Wanlock Water, Cog Burn and along several of the smaller watercourses such as the Glensalloch Burn, Back Burn, Clackleith Burn, Glendyne Burn, Nicol Burn and Craigy Burn. No confirmed holts or couches were recorded within the Development Area, although five possible resting up areas were recorded during the surveys. These included an area under a bridge over the Wanlock Water which could offer temporary shelter for an otter (spraints were recorded here) and a cavity under an open tree root along the Cog Burn where the back of the cavity was visible and there was evidence of something entering the cavity.

Evidence of squirrel was recorded within the Study Area. Six records of stripped cones were recorded during the surveys and eaten hazelnuts were recorded in the Bank Wood. The majority of the habitat present within the Study Area is considered unsuitable for red squirrels given the predominantly open nature of the moorland and the extent of recently felled trees. The stands of forestry that are remaining within the Development Area do have the potential to support foraging and sheltering squirrels. However, there is limited connectivity between the forestry present within the Study Area and those areas outwith the survey boundary. Based on a recording of a grey squirrel on a camera trap and the lack of good habitat connectivity of the site, it is likely that grey squirrel is the only squirrel species present within the Development Area.

Signs of badger were recorded within the Study Area during the surveys. A potential four-entrance sett was recorded within the Development Area in 2016 (see the Confidential Annex to Technical Appendix 8.2 for further details). Although no badgers were recorded during the deployment of the trail cameras, it is possible that badgers could utilise the sett and therefore its potential usage cannot be ruled out.

In general the Study Area offers areas of habitat suitable for supporting badgers. Some areas of woodland offer good foraging opportunities as there is an abundance of dead timber and leaf litter that are likely to support numerous terrestrial invertebrate species which are a good food source. There are also opportunities for sett building within this woodland.

A historic record of water vole exists within the Development Area, with a record obtained from 2007 along the Glensalloch Burn. No evidence of water vole was recorded during the surveys. The watercourses within the

<sup>1</sup> Current best practise survey guidelines for water voles recommend that two survey visits are conducted during the water vole breeding season to account for the variability in habitat composition (Dean *et al*, 2016).

Study Area have variable suitability for supporting water vole. The larger watercourses have limited suitability as the generally fast water flow and lack of food source vegetation makes them sub-optimal. Many of the smaller watercourses are located on steep slopes, with several in gullies bordered by rock substrate which is unsuitable for burrowing water voles. Some of the smaller watercourses have slower flowing channels that are fringed by more suitable rush vegetation, offering more suitable water vole habitat. Although no evidence was recorded, water vole are included within this SPP as a precautionary measure.

No evidence of pine marten was recorded within the Study Area. There are large areas of forestry that have been recently clear-felled. The remaining forestry is of mixed age. The areas of young plantation are considered relatively unsuitable for supporting the species, as the trees are unlikely to possess features that can be utilised for den building. The mature forestry offers more suitable potential habitat for supporting pine marten. Pine marten are known to exploit old coniferous plantation to create dens, access prey and gain protection from predators. There is the potential that pine marten could utilise these areas if they are present within the Development Area. There is some potential for pine marten to use open, felled and rejuvenating land for hunting due to the increased access to prey species, however, these habitats offer an increased risk of predation from foxes and raptor species (MacPherson, 2014).

The habitats within the Development Area are suitable for common reptile species and several features with the potential to support hibernating and basking reptiles were recorded during the surveys.

Bat surveys were conducted between May and September 2015 (refer to Technical Appendix 8.3). Five bat species, namely common pipistrelle (*Pipistrellus pipistrellus*), soprano pipistrelle (*Pipistrellus pygmaeus*), *Nyctalus* sp., *Myotis* sp., and a possible Nathusius' pipistrelle (*Pipistrellus nathusii*) were recorded within the Development Area during the temporal and spatial surveys. Bats were mainly recorded to be commuting and feeding in the Development Area. No social calls were recorded during the surveys. Some of the buildings present within the Development Area have the potential to support roosting bats, although as these were over 200m from the nearest proposed turbine location, no further surveys were conducted as no effects would be anticipated at this distance.

### 3 AIMS & OBJECTIVES OF THE SPECIES PROTECTION PLAN

The Aim of the SPP is to ensure all reasonable precautions are taken by NLEI Ltd 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 windfarm.

The Aim of the SPP will be fulfilled by NLEI Ltd adopting the following objectives throughout the construction and decommission of the proposed windfarm:

- a) Objective A - Implement a monitoring and protection plan for protected species;
- b) Objective B – Follow an approved procedure if an active protected species 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 Development Area 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 NLEI Ltd. 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 will have the specific remit of monitoring compliance with the SPP during the construction and decommissioning phases and reporting any breaches to the NLEI Ltd Construction Project Management Team, including the Principal Contractor responsible for delivering the construction. The ECoW's role shall 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 will also agree changes to construction operations to prevent breaches of the SPP.

**Table 4-1: SPP Responsibilities**

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

## 5 THE POTENTIAL EFFECTS OF THE DEVELOPMENT

Effects 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 <sup>2</sup>
Bat (roost)	European	30/200 metres <sup>3</sup>
Badger (sett)	National	30/100 metres <sup>4</sup>
Water vole (burrow)	National	5-10 metres <sup>5</sup>
Red squirrel (drey)	National	50 metres
Pine marten (den)	National	30 metres
Reptiles (hibernacula)	National	n/a <sup>6</sup>

### 6.1 Objective A – Monitoring and Protection Plan

#### 6.1.1 Monitoring Plan

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 Development Area and to continue spot checks during construction for any new protected species features in the vicinity of the construction works.

Pre-construction protected species surveys will be undertaken in the most appropriate season prior to the commencement of construction,

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

#### Potential Features

<sup>2</sup> 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.

<sup>3</sup> The disturbance zone will be 30 metres, however turbines must be positioned 200 metres from potential roost habitats (Natural England, 2012).

<sup>4</sup> 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.

<sup>5</sup> Dependant on burrow location and bank profile.

<sup>6</sup> 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.

- a) 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 ECoW; or
- 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.

- b) 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 ECoW; 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 Development Area or disturbance free zone, and the infrastructure cannot be microsited 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, pine marten, and reptiles)

- a) Where an active badger sett exists within the Development Area or disturbance zone, and the infrastructure cannot be microsited 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.

- b) Where a water vole burrow, red squirrel drey or pine marten den exists within the Development Area or disturbance zone, and the infrastructure cannot be microsited away, the Applicant will discuss any licensing requirements and appropriate mitigation with SNH.

- c) Where reptiles are found to be occupying any infrastructure during their hibernacula period and the infrastructure cannot be microsited 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

##### All Mammals

In addition to the mitigation measures detailed above, further steps should be implemented to 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 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, badgers and pine marten 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 Development compound and those areas where lighting is absolutely necessary to ensure safe working conditions will be angled downward to reduce light spill into adjacent areas. Lighting outwith the Development 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, tree lines, watercourses/riparian habitats, mammal paths, etc.) to minimise light disturbance;
- e) Works in the vicinity of watercourses (within 50m) will commence one hour after sunrise and will cease no later than one hour before sunset;
- f) Instream works to the watercourses will not be conducted during fish spawning/incubation period from October to May, inclusive;
- g) A speed limit of 15mph for all vehicles in the Development Area;
- h) Watercourse crossings will be designed to allow the passage of small mammals in the Development Area;
- 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;
- 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 Development compound; and
- k) Any areas for location of wind turbines and infrastructure suitable for reptiles will be subject to inspection by an experienced ecologist prior to any works on-site. Development works will avoid the destruction or incidental creation of reptile refuges, e.g. piles of cut vegetation. All arisings will be avoided, reused within the Development Area or reused outwith the Development Area.

## **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 Development Area, the following procedure will 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 micrositing 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 micrositing and the demarcation of the protected site).

The Disturbance or ODD risk assessments will be submitted to SNH for consideration and a licence application will be made as necessary.

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 Development personnel discovering an unrecorded protected feature or protected species, the following procedure must be followed:

- a) Work should stop immediately within the specified disturbance zone;
- b) The ECoW should be contacted;
- c) The location should be checked by the ECoW to determine the nature of the new find and advise on an appropriate course of action; and
- d) 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**

NLEI Ltd, supported by the ECoW, will provide the necessary education and awareness as part of an induction to all Development personnel with regard to the protection of protected species that are or could be present on the Development Area, in particular the actions that should be taken if protected species are seen within the Development Area. All Development 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 Development Area.

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. Development personnel responsible for dealing with protected species.

NLEI Ltd will undertake that any person found on the Development Area by them to be inadequately trained, or to be disregarding the terms of the SPP is immediately expelled from the Development Area 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.

## REFERENCES AND RELEVANT LEGISLATION AND GUIDANCE

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## Annex 1. LEGAL PROTECTION

Bats and Otters receive protection under the Conservation Regulations (1994) (as amended) only<sup>7</sup>.

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

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

- e) deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- f) 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;
- c) deliberately or recklessly to take or destroy the eggs of such an animal; or
- d) 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.

<sup>7</sup> 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 10<sup>8</sup>.

#### **Wildlife and Countryside Act (1981)**

#### **Nature Conservation (Scotland) Act 2004**

Under Section 9 Subsection 1<sup>9</sup> it is an offence to:

- g) 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:

- h) 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.
- i) 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:

- j) 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.
- k) 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.

**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:

- l) Kill, injure or take any wild animal listed on Schedule 5;
- m) Damages or destroys or obstructs access to, any structure or place that any animal listed on Schedule 5 uses for shelter or protection;
- n) Disturbs any such animal while it is occupying a structure or place which is uses for that purpose
- o) 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.
- p) 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.

<sup>8</sup> as amended by the Nature Conservation (Scotland) Act 2004

<sup>9</sup> as amended by the Nature Conservation (Scotland) Act 2004



**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 1<sup>10</sup> it is an offence to:

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

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

- r) 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.
- s) 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)<sup>10</sup>, any person shall not be guilty of an offence by reason of:

- t) 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.
- u) 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.

<sup>10</sup> as amended by the Nature Conservation (Scotland) Act 2004