# Technical Appendix 7.4
# Species Protection Plan

# Species Protection Plan

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# 1 Species Protection Plan

## 1.1 Introduction

1.1.1 SLR Consulting has prepared this outline Species Protection Plan (SPP) on behalf of the Applicant to ensure all reasonable protection measures are undertaken with regard to protected species present, or potentially present, at Hagshaw Hill III Energy Project (hereafter referred to as the Proposed Development).

1.1.2 The SPP is to be implemented during the construction and decommissioning phases of the Proposed Development, although it can also be used for guidance should the need arise for maintenance during the operational period.

1.1.3 The SPP will ensure the adequate preservation of protected species interests into all construction and decommissioning activities within the site to safeguard the resident populations and ensure compliance with the relevant nature conservation legislation (see **Annex A** Legal Protection).

1.1.4 The SPP will be 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 Clerk of Works (ECoW).

## 1.2 Background Information

1.2.1 Baseline habitats and protected species surveys, including associated desk studies, have been undertaken to inform the Environmental Impact Assessment (EIA Report) for the Proposed Development. Full details and results are reported within **Technical Appendices 7.1** to **7.3**. The SPP is designed to reflect the results of the surveys and the distinct ecology and distributions of protected species within the site.

1.2.2 These baseline surveys have recorded the confirmed or likely presence of the following protected or notable species within or in the vicinity of the site:

- badger (Meles meles);
- bats: common pipistrelle (*Pipistrellus pipistrellus*), Daubenton's bat (*Myotis daubentonii*), Leisler's bat (*Nyctalus leisleri*), *Myotis* spp., Natterer's bat (*Myotis nattereri*) and soprano pipistrelle (*Pipistrellus pygmaeus*);
- common lizard (*Zootoca vivipara*);
- brown trout (*Salmo trutta*)[1]; and,
- otter (Lutra lutra).

1.2.3 In terms of protected features, eight badger setts were recorded within the Survey Area, seven of which are within the site boundary. The setts ranged in size, from a single entrance to ten entrances, and were all recorded to be active (**Technical Appendix 7.2, Confidential Annex E**).

1.2.4 With regard to bats, a collection of farm buildings (farmhouse, farm outbuilding and shed) with high suitability to support roosting bats was recorded within 200 m of T8 and assessed further to determine the presence of bats. The shed was confirmed as a bat roost for a small number of bats due to the presence of bat droppings. No bat signs were recorded at the farmhouse, but anecdotal evidence of a bat being present in 2024 suggests that this building may support low numbers of roosting bats (**Technical Appendix 7.3b**). Two trees were recorded to have moderate roosting suitability in 2022; dawn/dusk surveys were undertaken in 2023, no bats were recorded, and the trees were re-classified as suitable for individual/low numbers of roosting bats (PRF-I[2]). Further

[1] *Evidenced by desk-based information only (refer to **Technical Appendix 7.2: Protected Species Survey Report**).*

[2] *PRF-I is described as "PRF is only suitable for individual bats or very small number of bats either due to size or lack of suitable surrounding habitats"; Collins, J. (ed.) (2023). Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edn.). The Bat Conservation Trust, London. ISBN-978-1-7395126-0-6..*

surveys undertaken in 2025 identified three further trees with bat roosting suitability; no further surveys were conducted to determine roost presence due to distance from works (**Technical Appendix 7.3a**).

1.2.5 Nine otter spraints were recorded at watercourses within the Survey Area. No otter couches or holts were recorded during surveys.

1.2.6 One common lizard sighting was recorded within the Survey Area, with five features recorded to offer suitability as potential hibernacula.

1.2.7 No other protected species, or protected plant species (**Technical Appendix 7.1**), were recorded within the Survey Area during baseline surveys. Some suitable habitat was recorded within the Survey Area for water vole (*Arvicola amphibius*) and pine marten (*Martes martes*), but this is limited in extent and no field signs were recorded during surveys.

1.2.8 Two ponds were assessed for great crested newt (GCN) (*Triturus cristatus*) using the Habitat Suitability Index (HSI), returning results of 'Poor' for both (Oldham *et al*., 2000, and taking cognisance of O'Brien *et al*., 2017) respectively. Further, habitat within the site was considered unsuitable for beaver (*Castor fiber*) and wildcat (*Felis silvestris*), the site being outwith the known range or distribution of these species. As such these species are not considered further (**Technical Appendix 7.2**).

## 1.3 Aims & Objectives of the Species Protection Plan

1.3.1 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.

1.3.2 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.

1.3.3 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 1.6**.

## 1.4 Responsibilities

1.4.1 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 the Applicant. The personnel responsible for the day-to-day implementation of the SPP are detailed in **Table 1.1** below.

### *Role of the Ecological Clerk of Works (ECoW)*

1.4.2 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 Applicant's Construction Project Management Team. The ECoW's role shall involve direct monitoring of all activities on 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 1.1 – SPP Responsibilities**

| Task | Responsibility |
|---|---|
| Implementation of the SPP | The Applicant's Construction Project Management Team |
| Monitoring and review of the SPP | ECoW |
| Regular monitoring for protected species and associated protected features, including, but not limited to; bats, reptiles, badger, red squirrel (*Sciurus vulgaris*), otter, pine marten, mountain hare (*Lepus timidus*), water vole and plants listed on Annex II of the Habitats Directive (Council Directive 92/43/EEC) | ECoW or a suitably qualified ecological surveyor |
| Ongoing watching brief for the above | All site personnel |

## 1.5 The Potential Impacts of Development

1.5.1 Impacts on protected species can result from the physical effects of construction such as soil stripping, track laying, turbine foundation construction and noise disturbance. These operations can adversely affect protected species in a number of ways including:

- abandonment of a holt/burrow/roost/den/sett/pond etc. due to disturbance;
- abandonment of dependant young due to disturbance;
- damage to or destruction of a protected feature or species;
- damage to navigation/commuting routes (i.e. ditches, burns, fence lines etc.);
- fragmentation of territories;
- damage to foraging areas (e.g. areas containing amphibians or fish in the case of otter);
- contamination of water;
- disturbance to a protected species that results in behaviour that adversely impacts their life stage; and
- accidental injury or death to species by machinery, tools or vehicles.

## 1.6 Procedures for Protecting Protected Species

1.6.1 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.

1.6.2 The level of disturbance free zones for each species is shown on **Table 1.2** below. If other protected species are identified during pre-construction surveys or during construction, suitable buffer zones will be advised by the ECoW and agreed in consultation with NatureScot, if necessary.

**Table 1.2 – Level of Protection and Recommended Disturbance Free Zones**

| Species Feature | Level of Protection | Disturbance Free Zone |
|---|---|---|
| Otter (holts, etc.) | European | 30/200 metres[3] |
| Bat (roost) | European | 30/200+ metres[4] |

[3] *The disturbance zone will be 30 m unless a breeding/natal holt is identified, in such an instance the disturbance zone will be increased to 200 m.*

[4] *The disturbance zone will be 30 m, however turbines must be positioned 200 m plus rotor radius from confirmed roost sites that could support maternity roosts and significant hibernation and/or swarming sites (NatureScot et al., 2021).*

| Species Feature | Level of Protection | Disturbance Free Zone |
|---|---|---|
| Wildcat (den) | European | 200 metres[5] |
| Badger (sett) | National | 30/100 metres[6] |
| Water vole (burrow) | National | 5-10 metres[7] |
| Red squirrel (drey) | National | 5/50 metres[8] |
| Pine marten (den) | National | 30/100 metres[9] |
| Reptiles (hibernacula) | National | n/a[10] |

### *Objective A – Monitoring and Protection Plan*

**Monitoring Plan**

1.6.3 It will be the duty of the ECoW to check the status of the protected species and any 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. Where construction work is staggered across the site, any watercourses within the vicinity of the works due to be carried out should be monitored and checked immediately prior to the commencement of works. This should occur during each phase of construction.

1.6.4 If it is not possible to determine the status of features during ECoW checks, further monitoring by use of camera traps may be required.

1.6.5 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) and Nationally Protected Species (badger, red squirrel, pine marten, water vole and reptiles)
- Further checks of the potential features will be completed during construction and all potential protection features will be clearly demarcated.
  - If the status of the potential protected feature remains unoccupied, construction may occur in the area, but not damaging the potential feature under close supervision by the ECoW[11]; or
  - if the status of the feature changes to occupied then the undernoted procedure for occupied sites will be followed. The ECoW will be responsible for this survey work as required.

*Occupied Features*

- European Protected Species – fauna (otters and bats)

*[5] If physical evidence of a den site is found (NatureScot, 2024).*
*[6] Disturbance is defined by NatureScot as any new procedure that approaches within a minimum of 30 m of a sett margin. For piling or blasting activities, this buffer zone is extended to 100 m (NatureScot, 2024).*
*[7] Dependant on burrow location and bank profile.*
*[8] The disturbance zone will be 5 m or one tree's distance (whichever is less) unless a breeding drey is identified, in such instances the disturbance zone will be increased to 50 m during the red squirrel breeding season (February to September inclusive) (SNH, 2020).*
*[9] 100 m applied if breeding.*
*[10] 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 hibernaculum is discovered, an appropriate disturbance exclusion zone will be demarcated.*
*[11] If the infrastructure cannot be microsited away from the potential feature, the monitoring and checks by the ECoW will be used to assess the likelihood of current use, with appropriate species-specific monitoring undertaken as required. For badger, if it is proven the potential feature is not in use, or has not been in recent use, then it would not be considered a protected feature, and could be sensitively destroyed under supervision of the ECoW.*

- Where an occupied feature exists within the site or disturbance free zone, and the infrastructure cannot be microsited away:
  - a licence to disturb will be applied for to NatureScot; or
  - a licence to damage or destroy will be applied for to NatureScot if there are no reasonable alternatives.
- National Protected Species (badger, water vole, red squirrel, pine marten and reptiles)
  - Where an active badger sett exists within the site 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 NatureScot. Guidance for this process has been produced by NatureScot, who should be consulted throughout.
  - Where a water vole burrow, red squirrel drey or pine marten den exists within the site or disturbance zone, and the infrastructure cannot be microsited away, the Applicant will discuss any licensing requirements and appropriate mitigation with NatureScot.
  - 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 NatureScot. Reptiles are capable of actively avoiding disturbances during their active phase.

**Protection Plan**

1.6.6 In addition to the mitigation measures detailed above, further general steps should be implemented to increase the protection levels and reduce general disturbance from the Proposed Development.

- 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.
- 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 off-site. If such pipes are left for an extended time, periodic checks will be carried out to ensure that the pipe is inaccessible to animals.
- All excavations will be checked at the start of works and prior to the commencement of any works activities to ensure otters and badgers 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.
- Nighttime working will be minimised to reduce disturbance to nocturnal and crepuscular fauna. Where this is not possible, security lighting used in the site compound and those areas where lighting is absolutely necessary to ensure safe working conditions will be angled downwards to reduce light spillage into adjacent areas. Lighting outwith the site 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, treelines, watercourses/riparian habitats, mammal paths, etc.) to minimise light disturbance.
- All works undertaken in proximity to watercourses will be undertaken in line with pollution prevention measures outlined in a detailed Construction Environment Management Plan (CEMP).
- Instream works at watercourse crossings in relevant sensitive watercourses (i.e. where there are spawning fish/spawning gravels/redds in the vicinity of the instream works area) will not be

conducted during the salmonid spawning/incubation period from October to May, inclusive, without prior survey and approval from the Scottish Environmental Protection Agency (SEPA)[12].

- An appropriate speed limit (of c.a. 15 to 20 mph) for all vehicles on the site, and vehicle movements will be kept to pre-determined routes wherever possible.
- Watercourse crossings will be designed to allow the passage of small mammals on the site, where appropriate.
- 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 as well as construction associated activities (such as drainage and mitigation).
- Chemicals should not be stored within 100 m of a sett, holt, couch, den or within 10 m 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 site compound.
- Any areas for location of wind turbines and infrastructure will be subject to inspection by an experienced ECoW immediately prior to any works. The ECoW will monitor the site so that in-situ materials associated with works will not incidentally create reptile refuges, e.g. piles of cut vegetation. Materials will be removed from site if advised by the ECoW.
- If mountain hare is known to be present on-site, any initial groundworks or vehicular activity over uncleared ground during mountain hares' breeding season (March to October, inclusive) must be preceded by a sweep survey for young hares in line with NatureScot guidance (NatureScot, 2023a). This pre-construction search must take place in all areas that will be affected by earth-moving/ground clearance operations and must be undertaken immediately ahead of the machinery coming on site. There must be no delay between the search and any subsequent works or vehicular activity.

### *Objective B – Procedure if Active Feature is Found*

**Procedure if previously unrecorded active feature or protected species found in advance of construction or decommissioning activity**

1.6.7 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 will be completed. This will consider all potential mitigation measures to avoid ODD. This may include micrositing of infrastructure away from the location and outwith 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 NatureScot for consideration.

*[12] The likelihood of spawning fish/redds in any watercourse will be determined by the ECoW or suitably qualified ecologist in advance of construction works.*

- If it is not possible to microsite and, in consideration of the risk assessment, NatureScot 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.

**Procedure if previously unrecorded protected feature or species found during construction or decommissioning**

1.6.8 In the event of any site personnel discovering an unrecorded protected feature or protected species, the following procedure must be followed:

- work should stop immediately within the specified disturbance zone;
- the ECoW should be contacted;
- the location should be checked by the ECoW to determine the nature of the new find; and
- if the protected species or feature is confirmed then the procedure detailed in Objective A above should be followed.

### *Objective C – Education and Awareness*

1.6.9 The Applicant will 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 site. All site 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 site.

1.6.10 This information will include as a minimum:

- the requirements and use of the SPP;
- identification of protected species and features;
- key risk activities and sensitive areas; and
- site personnel responsible for dealing with protected species.

1.6.11 The Applicant will ensure 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 will need to undertake retraining in the use and application of the SPP to ensure the impact on protected species is minimised. Species-specific Toolbox Talk handouts will be provided by the ECoW as required.

## 1.7 References


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# Annex A Legal Protection

1.7.1 A full list of protected species and the associated legislation can be found on the NatureScot website (NatureScot, 2022). The following provides a summary of relevant protected species' legal protection, however the specific legislation should be consulted for the true terminology.

### *Bats, Beaver, GCN, Otter and Wildcat*

1.7.2 **Bat species, beaver, GCN, otter** and **wildcat** receive protection in Scotland under the Conservation (Natural Habitats, &c.) Regulations (1994) (as amended) (the Habitats Regulations), being classified as European protected species of animals[13].

1.7.3 For European protected species, NatureScot guidance (NatureScot, 2023b) sets out that it is an offence to deliberately or recklessly:

- capture, injure or kill an animal;
- harass an animal or group of animals;
- disturb an animal while it is occupying a structure or place used for shelter or protection;
- disturb an animal while it is rearing or otherwise caring for its young;
- obstruct access to a breeding site or resting place, or otherwise deny an animal use of a breeding site or resting place;
- disturb an animal in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species;
- disturb an animal in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- disturb an animal while it is migrating or hibernating;
- take or destroy an animal's eggs (GCN); or
- damage or destroy a breeding site or resting place of such an animal (these sites and places are protected even when the animal is not present)[14].

1.7.4 Regulation 44(2)(e) of the Habitats Regulations allows a licence to be granted for activities ordinarily prohibited, where that purpose is:

"*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*."

1.7.5 **Otter** is also listed on Appendix I of the Convention of International Trade in Endangered Species (CITES), Appendix II of the Bern Convention, and Annexes II and IV of the Habitats Directive[15]. It is also listed as globally threatened on the IUCN/WCMC Red Data List.

### *Mountain Hare, Pine Marten and Red Squirrel*

1.7.6 **Mountain hare, pine marten** and **red squirrel** are protected in Scotland under the Wildlife and Countryside Act 1981 (the Wildlife and Countryside Act)[16].

[13] *At Schedule 2.*
[14] *Note that this is a summary of offences. Refer to Regulations 39 and 40 of the Habitats Regulations for legislative context.*
[15] *European Union Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora.*
[16] *At Schedule 5.*

1.7.7 Under Sections 9(1) and 9(2) of the Wildlife and Countryside Act, it is an offence to intentionally or recklessly kill, injure or take such an animal, or be in possession or control of such an animal (whether live or dead)[17].

1.7.8 Under Section 9(4)(a) and (b), it is an offence to intentionally or recklessly:

- damage or destroy, or obstruct access to, any structure or place which any wild animal included in Schedule 5[18] uses for shelter or protection; or
- disturb any such animal while it is occupying a structure or place which it uses for that purpose.

1.7.9 Further, Section 9(5) sets out that it is an offence to:

- 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; or
- 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.

### *Water Vole*

1.7.10 **Water vole** is protected in Scotland under Sections 9(4) and 10 of the Wildlife and Countryside Act[19].

1.7.11 Under Section 9(4)(a) and (b) of the Wildlife and Countryside Act, it is an offence to intentionally or recklessly:

- damage or destroy, or obstruct access to, any structure or place which any wild animal included in Schedule 5[20] uses for shelter or protection; or
- disturb any such animal while it is occupying a structure or place which it uses for that purpose.

1.7.12 Section 10(3)(c) provides for exceptions under Section 9, such that a person shall not be guilty of an offence where that person shows:

- that each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act; or
- 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.

1.7.13 Subsection (3A) states those conditions referred to in Section 10(3)(c) are:

- that the unlawful act was the incidental result of a lawful operation or other activity;
- that the person who carried out the lawful operation or other activity:
  - took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
  - 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.

[17] *See exceptions under Section 9(3).*
[18] *Animals which are protected under Section 9 of the Wildlife and Countryside Act.*
[19] *as amended by the Nature Conservation (Scotland) Act 2004.*
[20] *Animals which are protected under Section 9 of the Wildlife and Countryside Act.*

### *Badger*

1.7.14 **Badgers** are protected in Scotland under the Protection of Badgers Act 1992 (the Badgers Act)[21]

1.7.15 Under Section 1(1) of the Badgers Act, "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."

1.7.16 Where it can reasonably be concluded that a person had been attempting to kill, injure or take a badger, then it will be presumed that that person had been attempting to do so, unless it can be proven otherwise[22].

1.7.17 Under Section 1(3), unless authorised under the Badgers Act, a person is guilty of an offence where *"he has in his possession or under his control any dead badger or any part of, or anything derived from, a dead badger."*

1.7.18 Under Section 3(1), unless authorised under the Badgers Act, it is an offence to interfere with a badger sett[23]. The following actions are described as interference:

- damaging a badger sett or any part of it;
- destroying a badger sett;
- obstructing access to, or any entrance of, a badger sett;
- causing a dog to enter a badger sett; or
- 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.

1.7.19 It is also an offence if a person knowingly causes or permits any of the above actions to be carried out[24].

### *Reptiles*

1.7.20 The three native species of reptile to Scotland, **adder, slow worm** and **viviparous lizard**, are protected under Section 9(1) (insofar as the action relates to killing or injuring the animal), and Section 9(5) of the Wildlife and Countryside Act.

1.7.21 Under Section 9(5), it is an offence to:

- 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; and
- 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.

1.7.22 Section 10(3)(c) provides for exceptions under Section 9, such that a person shall not be guilty of an offence where that person shows:

- that each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act; or
- 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.

[21] *as amended by the Nature Conservation (Scotland) Act 2004 (as amended).*
[22] *Section 1(2) of the Badgers Act.*
[23] *A badger sett is defined under the Badgers Act as any structure or place which displays signs of current use by a badger (refer to Section 14).*
[24] *Section 3(2).*

1.7.23 Subsection (3A) states those conditions referred to in Section 10(3)(c) are:

- that the unlawful act was the incidental result of a lawful operation or other activity;
- that the person who carried out the lawful operation or other activity:
  - took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or;
  - 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.