

2005 No. 1674

WILDLIFE

**The Control of Trade in Endangered Species (Enforcement)
(Amendment) Regulations 2005**

<i>Made</i> - - - -	<i>24th June 2005</i>
<i>Laid before Parliament</i>	<i>27th June 2005</i>
<i>Coming into force</i> - -	<i>21st July 2005</i>

The Secretary of State, in exercise of the powers conferred upon her by subsection (2) of section 2 of the European Communities Act 1972 (a), being the Minister designated (b) for the purposes of that subsection in relation to the regulation and control, in the interests of conservation, of the import, export, landing, keeping, transportation and commercial display of, and trade in and disposal of, fauna and flora (including their parts and derivatives) and in relation to anything supplemental or incidental to those matters, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2005 and shall come into force on 21st July 2005.

Interpretation

2. In these Regulations, “the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997(c).

Amendment of the 1997 Regulations

3. For regulation 8 of the 1997 Regulations there shall be substituted the following regulation—

“8.—(1) Subject to paragraphs (3) and (4), a person who, contrary to Article 8 of the Principal Regulation, purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex A to the Principal Regulation shall be guilty of an offence.

(a) 1972 c.68 Modifications of section 2(2) and paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 relevant to these regulations have been made by section 307 of the Criminal Justice Act 2003 (c.44). As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c.46) which provides that, despite the transfer to the Scottish Ministers by virtue of that Act of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(b) S.I. 1985/956.

(c) S.I. 1997/1372.

(2) Subject to paragraphs (4) and (5), any person who, contrary to Article 8 of the Principal Regulation, purchases, offers to purchase, acquires for commercial purposes, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex B to the Principal Regulation which has been imported or acquired unlawfully shall be guilty of an offence.

(3) Paragraph (1) does not apply to anything done under, and in accordance with the terms of, any certificate or general derogation granted pursuant to Article 8 of the Principal Regulation.

(4) A person shall not be guilty of an offence under paragraph (1) or (2) if he proves that at the time the alleged offence was committed he had no reason to believe that the specimen was a specimen of a species listed in Annex A, or as the case may be Annex B.

(5) A person shall not be guilty of an offence under paragraph (2) if he proves –

- (a) that at the time when the specimen first came into his possession he made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired unlawfully; and
- (b) that at the time the alleged offence was committed, he had no reason to believe that the specimen was imported or acquired unlawfully.

(6) Without prejudice to the generality of paragraph (5) above, a person shall be taken to have made such enquiries as are mentioned there if he produces to the court a statement which was furnished by the person from whom he obtained possession of the specimen (“the supplier”), which was signed by the supplier or by a person authorised by him, and which states that—

- (a) the supplier made enquiries at the time the specimen came into his possession in order to ascertain whether it was a specimen which had been imported or acquired unlawfully; and
- (b) the supplier had no reason to believe at the time he relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported or acquired lawfully.

(7) A person who furnishes, for the purposes of paragraph (6) above, a statement which he knows to be false in a material particular, or recklessly furnishes for those purposes a certificate which is false in a material particular, shall be guilty of an offence.

(8) A person shall be guilty of an offence under paragraph (1) or (2) above shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or to a term of imprisonment not exceeding six months, or to both; and
- (b) on conviction on indictment, to a term of imprisonment not exceeding five years or to a fine, or to both.

(9) A person guilty of an offence under paragraph (7) above shall be liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or a term of imprisonment not exceeding six months, or to both; and
- (b) on conviction on indictment, to a term of imprisonment not exceeding two years or to a fine, or to both.”

24th June 2005

Jim Knight
Parliamentary Under-Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Control of Trade in Endangered Species (Enforcement) Regulation 1997 (S.I. 1997/1372). As was the case with the 1997 Regulations before amendment, these Regulations create a number of criminal offences in relation to Article 8 of Council Regulation No. 338/97 (“the Principal Regulation”), in particular, they create offences related to the purchase and sale of specimens listed in Annex A of the Principal Regulation or of specimens listed in Annex B which have been imported or acquired unlawfully. As provided by section 307 of the Criminal Justice Act, these Regulations increase the penalties that apply for offences related to commercial activity involving Annex A and B specimens.

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