

**EXPLANATORY MEMORANDUM TO THE**  
**CONTROL OF TRADE IN ENDANGERED SPECIES**  
**(ENFORCEMENT)(AMENDMENT) REGULATIONS 2005**

**2005 No. 1674**

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 These Regulations create a number of offences in relation to Article 8 of Council Regulation No. 338/97, in particular, they create offences related to the purchase and sale of specimens listed in Annex A of the Council Regulation or of specimens listed in Annex B of the Council Regulation which have been imported or acquired unlawfully.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Section 307 of the Criminal Justice Act 2003 provided that Regulations made for the purpose of implementing Council Regulation 338/97/EC may, notwithstanding paragraph 1(1)(d) of Schedule 2 to the 1972 Act, create offences punishable on conviction on indictment for a term not exceeding five years and on summary conviction for a term not exceeding six months.

4. **Legislative Background**

4.1 The Control of Trade in Endangered Species (Enforcement) Regulations 1997 provide for enforcement measures, offences and penalties in order to implement Council Regulation 338/97/EC. Regulation 8 of these Regulations provided for offences related to commercial activity for endangered species listed in Annex A and listed in Annex B, which have been imported or acquired unlawfully. Penalties for offences are, on summary conviction, a fine not exceeding level 5 or a term of imprisonment not exceeding 3 months, or both, and on indictment a fine or term of imprisonment not exceeding 2 years, or both.

4.2 Section 307 of the Criminal Justice Act 2003 provided that regulations made for the purpose of implementing Council Regulation 338/97/EC may, notwithstanding paragraph 1(1)(d) of Schedule 2 to the 1972 Act, create offences punishable on conviction on indictment for a term not exceeding five years.

4.3 Section 307 also provided that regulations made for the purpose of implementing Council Regulation 338/97/EC may, notwithstanding paragraph 1(1)(d) of Schedule 2 to the 1972 Act, create offences punishable on conviction summarily for a term not exceeding six months. This provision applies to the whole territory of the United Kingdom, until the coming into force of paragraph 3 of Schedule 27 of the Criminal Justice Act 2003.

4.4 The Control of Trade in Endangered Species (Enforcement)(Amendment) Regulations 2005 create offences with respect to commercial activities, principally the selling and purchasing of specimens listed in Annex A of the Council Regulation or of specimens listed in Annex B which have been imported or acquired unlawfully, with increased maximum penalties of 5 years on indictment and 6 months on summary conviction.

4.5 This is the first time that section 307 of the Criminal Justice Act has been used.

## **5. Extent**

5.1 This instrument applies to England, Wales, Scotland and Northern Ireland.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy background**

7.1 The annexes to Regulation 338/97 list those species which are most at risk from trade. International trade in them is subject to a system of permitting to ensure that trade is strictly regulated. Within the EU, commercial activities involving Annex A species (those at greatest risk) and Annex B species which have been unlawfully acquired or imported, are also strictly controlled.

7.2 Some Annex A species are in great demand and command high prices. There is evidence that the trade has pushed some species closer to extinction, and that in some cases, individual specimens have been caught 'to order'. These arguments were accepted by Parliament, who through the Criminal Justice Act 2003 made it possible for maximum penalties to be increased to six months and five years.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument. The instrument relates entirely to the enforcement of the trade controls on protected wildlife species. It simply creates offences and sets down penalties. It has no impact on legitimate business interests, or any other group.

## **9. Contact**

Jane Bulmer at Defra, Legal Services Directorate General, B6: Tel: 020 7238 3394 and email [jane.bulmer@defra.gsi.gov.uk](mailto:jane.bulmer@defra.gsi.gov.uk)

Defra  
Zone 3C, Nobel House  
17 Smith Square  
London, SW1P 3JR