
STATUTORY INSTRUMENTS

2018 No. 703

The Control of Trade in Endangered Species Regulations 2018

Citation and commencement

1. These Regulations may be cited as the Control of Trade in Endangered Species Regulations 2018 and come into force on 1st October 2018.

Interpretation

2.—(1) In these Regulations—

“acquired” means, in relation to a specimen, taken from the wild or the point at which it was born in captivity or artificially propagated;

“acquired unlawfully” means acquired contrary to the provisions of the Principal Regulation or the Subsidiary Regulation and “acquired lawfully” is to be construed accordingly;

“import” means introduce [^{F1}in accordance with the Principal Regulation];

“imported unlawfully” means introduced ^{F2}... contrary to the provisions of the Principal Regulation or the Subsidiary Regulation;

“premises” includes any place, plant, machinery, equipment, apparatus, vehicle, vessel, aircraft, hovercraft, tent, temporary or movable building or structure;

“Principal Regulation” means Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein;

“Subsidiary Regulation” means Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of the Principal Regulation.

(2) Unless the context otherwise requires, expressions used in these Regulations which are also used in the Principal Regulation or the Subsidiary Regulation have the same meaning as in the instrument in question.

(3) In these Regulations—

(a) any reference to the Principal Regulation is a reference to the Principal Regulation as amended from time to time;

(b) any reference to the Subsidiary Regulation is a reference to the Subsidiary Regulation as amended from time to time.

Textual Amendments

F1 Words in reg. 2(1) substituted (31.12.2020) by The Environment and Wildlife (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 (S.I. 2020/1395), regs. 1(2), 3(2)(a)

F2 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Environment and Wildlife (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 (S.I. 2020/1395), regs. 1(2), 3(2)(b)

Offences, penalties and civil sanctions

- 3.—(1) Schedule 1 makes provision for offences and penalties.
(2) Schedule 2 makes provision for civil sanctions.

Liability for offences relating to Article 8 of the Principal Regulation

4.—(1) A person is not guilty of an offence under paragraph 1 of Schedule 1 if that person proves that, at the time the alleged offence was committed, that person 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.

(3) A person is not guilty of an offence relating to Article 8 of the Principal Regulation if that person—

- (a) is a constable or a person acting at the request or on behalf of the management authority, and
- (b) purchases, or offers to purchase, a specimen for a purpose connected with the enforcement of these Regulations.

(4) A person is not guilty of an offence under paragraph 1(2) of Schedule 1, involving contravention of Article 8.5 of the Principal Regulation, if that person proves—

- (a) that reasonable enquiries were made when that person came into possession of the specimen in order to ascertain whether it was imported lawfully or acquired lawfully, and
- (b) that at the time the alleged offence was committed that person had no reason to believe that the specimen was imported unlawfully or acquired unlawfully.

(5) A person is to be taken to have made the enquiries mentioned in paragraph (3)(a) if that person produces a statement to the court provided by the person from whom possession of the specimen was obtained (“the supplier”), signed by the supplier or by a person authorised by the supplier, which states that—

- (a) the supplier made enquiries at the time when the specimen came into the supplier's possession in order to ascertain whether it was a specimen which had been imported lawfully or acquired lawfully, and
- (b) the supplier had no reason to believe at the time when possession passed to the accused that the specimen was at that time a specimen which had been imported unlawfully or acquired unlawfully.

(6) A person must not provide a false statement for the purposes of paragraph (4).

Split-listed specimens

5.—(1) For the purposes of an offence relating to Article 8 of the Principal Regulation, a split-listed specimen is presumed to be of a species listed in Annex A to the Principal Regulation, if—

- (a) where the specimen falls within paragraph (3), it is not reasonably practical to determine the population from which that specimen derives;
- (b) where the specimen falls within paragraph (4), it is not reasonably practical to determine the subspecies to which that specimen belongs;
- (c) where the specimen falls within paragraph (5), it is not reasonably practical to determine the species or subspecies to which that specimen belongs.

(2) In paragraph (1), “split-listed specimen” means a specimen falling within paragraph (3), (4) or (5).

(3) A specimen falls within this paragraph if—

- (a) the specimen is of a species or subspecies, or is included in a higher taxon than species, listed in Annex A or B to the Principal Regulation (or listed in both of those Annexes), and
 - (b) one or more geographical populations of that species, subspecies or higher taxon are included in one of those Annexes and one or more other populations of that species, subspecies or higher taxon are included in the other of those Annexes.
- (4) A specimen falls within this paragraph if—
- (a) the specimen is of a species listed in Annex A or B to the Principal Regulation, and
 - (b) one or more subspecies of that species are included in one of those Annexes and one or more subspecies of that species are included in the other of those Annexes.
- (5) A specimen falls within this paragraph if—
- (a) the specimen is included in a higher taxon than species and that taxon is listed in either Annex A or B to the Principal Regulation, and
 - (b) one or more species or subspecies of that higher taxon are included in one of those Annexes, and one or more species or subspecies included in that higher taxon are included in the other of those Annexes, and all geographical populations of those species or subspecies are included in those Annexes.

Advertising sale of Annex A specimens

6. A person offering to sell a specimen of a species listed in Annex A, in accordance with a certificate granted under Article 8(3) of the Principal Regulation, must include the reference number of the certificate in any advertisement for the sale of the specimen.

Proof of lawful import or export

- 7.—(1) Where a specimen—
- (a) is being imported or exported,
 - (b) has been imported, or
 - (c) is brought to any place for the purpose of being imported or exported,

a general customs official may require any person possessing or having control of that specimen to provide proof that its import or export is or was not unlawful by virtue of the Principal Regulation or the Subsidiary Regulation.

(2) Until proof required under paragraph (1) is provided to the satisfaction of a general customs official, the specimen may be detained by the customs official for 30 days beginning on the day on which the specimen is first detained.

(3) If that proof is not provided to the satisfaction of the general customs official before the expiry of that period of detention, the specimen is deemed to be seized as liable to forfeiture under the Customs and Excise Management Act 1979 ^{M1} on expiry of that period.

(4) In this regulation, “general customs official” means a person designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009 ^{M2} or a person authorised by a designated person.

Marginal Citations

- M1** 1979 c.2.
- M2** 2009 c.11.

Powers of entry

8.—(1) If, on an application made by a constable, a justice is satisfied that there are reasonable grounds for believing—

- (a) that there is a specimen that has been imported unlawfully or acquired unlawfully on premises specified in the application, or
- (b) that an offence under these Regulations has been or is being committed and that evidence of the offence may be found on any premises,

and that any of the conditions specified in paragraph (2) applies, a warrant may be issued authorising a constable, and any other persons as the constable thinks necessary, to enter and search those premises.

(2) The conditions referred to in paragraph (1) are that—

- (a) admission to the premises has been refused;
- (b) refusal of admission is anticipated;
- (c) the case is one of urgency;
- (d) an application for admission to the premises would defeat the object of the entry.

(3) An authorised person may, at any reasonable time and (if required to do so) upon producing evidence that the person is so authorised, enter and inspect any premises for the purpose of—

- (a) ascertaining whether contrary to Article 8 of the Principal Regulation, the premises are being used for any of the following activities in relation to that specimen—
 - (i) purchase;
 - (ii) offering to purchase;
 - (iii) acquisition for commercial purposes;
 - (iv) use for commercial gain;
 - (v) display to the public for commercial purposes;
 - (vi) sale;
 - (vii) keeping for sale;
 - (viii) offering for sale;
 - (ix) transporting for sale;
- (b) verifying information supplied by a person for the purpose of obtaining a permit or certificate;
- (c) ascertaining whether a live specimen is being kept on premises at the address specified in an import permit, or a certificate issued under Article 10 of the Principal Regulation for that specimen, as that at which the specimen is to be kept;
- (d) ascertaining whether any condition of a permit or certificate has been or is being observed.

(4) Nothing in paragraph (3) confers power to enter a dwelling.

(5) A constable or an authorised person who is, by virtue of this regulation, lawfully on any premises may, in order to determine the identity, ancestry or (in the case of a specimen which is not living) age of any specimen, require—

- (a) a sample of blood or tissue to be taken from a live animal specimen, provided that—
 - (i) the sample is taken by a registered veterinary surgeon or a suitably trained authorised person, and
 - (ii) taking the sample will not cause lasting harm to the specimen;

- (b) a non-invasive sample to be taken from any other specimen by a suitably trained authorised person.
- (6) A person must not—
 - (a) obstruct an authorised person acting in accordance with the powers conferred by this regulation;
 - (b) with intent to deceive, pretend to be an authorised person.
- (7) In this regulation—
 - “authorised person” means a person duly authorised in writing by the Secretary of State for the purposes of this regulation;
 - “justice” means—
 - (a) in England and Wales, a justice of the peace;
 - (b) in Scotland, a sheriff, summary sheriff or justice of the peace;
 - (c) in Northern Ireland, a lay magistrate;
 - “registered veterinary surgeon” means a person who is registered in the register of veterinary surgeons under section 2 of the Veterinary Surgeons Act 1966 ^{M3}.

Marginal Citations

M3 1966 c.36; section 2 was amended by S.I. 2003/2919, 2008/1824.

Powers of seizure

9.—(1) A constable who is, by virtue of regulation 8(1), lawfully on any premises, may seize any thing where the constable has reasonable grounds for believing that seizure is—

- (a) necessary for the protection of the constable or any person accompanying the constable;
- (b) otherwise necessary to effect seizure of a specimen;
- (c) necessary for the conservation of evidence;
- (d) in the interests of the welfare of a specimen.

(2) The court which convicts a person of an offence under these Regulations may order the offender to reimburse any expenses incurred by a police force or the Police Service of Northern Ireland in connection with keeping a live specimen which has been seized by a constable under paragraph (1).

(3) Where an order is made under paragraph (2) and the amount specified in the order is not paid, the unpaid amount is recoverable summarily as a civil debt owed to the police force or service named in the order.

Forfeiture and banning orders

- 10.** The court which convicts a person of an offence under these Regulations may order—
- (a) the forfeiture of any specimen or other thing in respect of which the offence was committed;
 - (b) the forfeiture of any vessel, vehicle, equipment, apparatus or other thing which was used to commit the offence;
 - (c) that the offender must not have any specimen, or a specimen of a particular description, in his or her possession or under his or her control for a specified period of up to five years.

Offences by corporations etc.

11.—(1) If an offence under these Regulations by a body corporate or a Scottish partnership is proved to have been committed with the consent or connivance of an officer, the officer (as well as the body corporate or partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate, “officer” means—

- (a) a director, manager, secretary or other similar officer of the body;
- (b) a person purporting to act in any such capacity.

(3) In relation to a Scottish partnership, “officer” means—

- (a) a partner;
- (b) a person purporting to act as a partner.

(4) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with functions of management as if the member were an officer of the body.

Management authority and scientific authority

12.—(1) For the purposes of these Regulations, the Principal Regulation and the Subsidiary Regulation, the management authority is the Secretary of State.

(2) For the purposes of the Principal Regulation and the Subsidiary Regulation, the Secretary of State may designate one or more persons as a scientific authority.

Ports of entry and exit

13. For the purposes of the Principal Regulation and the Subsidiary Regulation, the Secretary of State may [^{F3}, in relation to Northern Ireland,] designate customs offices for carrying out the checks and formalities for the introduction [^{F4} and export] of specimens.

Textual Amendments

- F3** Words in [reg. 13](#) inserted (31.12.2020) by [The Environment and Wildlife \(Miscellaneous Amendments etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1395\)](#), regs. 1(2), **3(3)(a)**
- F4** Words in [reg. 13](#) substituted (31.12.2020) by [The Environment and Wildlife \(Miscellaneous Amendments etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1395\)](#), regs. 1(2), **3(3)(b)**

Revocations

14.—(1) The following regulations are revoked—

- (a) the Control of Trade in Endangered Species (Designation of Ports of Entry) Regulations 1985 ^{M4};
- (b) the Control of Trade in Endangered Species (Enforcement) Regulations 1997 ^{M5};
- (c) the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2005 ^{M6};
- (d) the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2007 ^{M7};
- (e) the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2009 ^{M8}.

Marginal Citations

M4 S.I. 1985/1154.

M5 S.I. 1997/1372, as amended by S.I. 2005/1674, 2007/2952, 2009/1773, 2011/1043.

M6 S.I. 2005/1674.

M7 S.I. 2007/2952.

M8 S.I. 2009/1773.

Savings and transitional provisions

15.—(1) Where an act carried out before 1st October 2018 is unlawful under the 1997 Regulations, the 1997 Regulations continue to have effect in relation to that act.

(2) Where a specimen is detained before 1st October 2018 under regulation 5 of the 1997 Regulations, the 1997 Regulations continue to have effect in relation to that detention and any subsequent forfeiture.

(3) Any warrant issued before 1st October 2018 under regulation 9(1) of the 1997 Regulations continues to have effect.

(4) Where any thing is seized before 1st October 2018 under regulation 10 of the 1997 Regulations, the 1997 Regulations continue to have effect in relation to that seizure.

(5) But these Regulations apply where—

(a) an act carried out before 1st October 2018 is unlawful under the 1997 Regulations, and

(b) that act continues on or after 1st October 2018 and is unlawful under these Regulations.

(6) In this regulation, “the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997.

Department for Environment, Food and Rural
Affairs

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Changes to legislation:

There are currently no known outstanding effects for the The Control of Trade in Endangered Species Regulations 2018.