

EXPLANATORY MEMORANDUM TO
THE CONTROL OF TRADE IN ENDANGERED SPECIES (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2019

2019 No. 1354

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Control of Trade in Endangered Species (Miscellaneous amendments) Regulations 2019 will update now outdated references to The Control of Trade in Endangered Species (COTES) Regulations 1997 (“COTES 1997”) and The Control of Trade in Endangered Species (COTES) Regulations 2018 (“COTES 2018”) (which repealed COTES 1997). These references include a range of offences and defences that refer to COTES related-activity.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not substantively amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The UK is a party to the Convention on International Trade in Endangered Species (CITES). Our legal obligations under CITES are implemented through EU Wildlife Trade Regulations that are directly applicable in the UK. The UK has domestic secondary legislation establishing sanctions for infringements of the EU Wildlife Trade Regulations, the most important of which is COTES 2018.

6.2 Changes are now needed to update outdated references in relevant domestic legislation from COTES 1997 to COTES 2018 (see next section for details). This will ensure associated domestic legislation remains fully operable. These changes are to be made through the Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019.

Policy background

What is being done and why?

- 6.3 The context and purpose of the Control of Trade in Endangered Species (COTES) (Amendments) Regulations 2019 is set in this section of this explanatory memorandum.
- 6.4 The illegal wildlife trade is a serious criminal issue globally with real world impacts. The UK needs to have the right legislative tools to prevent abuse of the CITES licensing system. The UK *government has made high level political commitments on the illegal wildlife trade* and is leading the global response in this area. COTES is a key part of our regime to tackle the illegal wildlife trade, to protect endangered species, and also helps to protect the welfare of animals traded.
- 6.5 Whilst there are many legitimate traders in CITES-listed species, there are also those who show clear criminal intent and disregard for the law. Internationally, individuals and organised groups are drawn to illegal trade in endangered species as a relatively low risk, high reward activity, exploiting any ‘weak links’ in trade controls. In recent years, the police and Border Force have uncovered illegal activity within the UK relating to a wide variety of valuable commodities, including ivory, rhino horn, birds of prey, tiger parts and more. This includes cases of serious, deliberate and repeat offences. The UK currently has a strong reputation for enforcement, and we see relatively low levels of serious COTES offences, but failure to maintain effective legislation would put this at risk.
- 6.6 The legislation in which this instrument will correct outdated references are:
- The Serious Crime Act 2007;
 - The Wildlife and Countryside Act 1981;
 - The Conservation (Natural Habitats etc) Regulations 1994 and The Conservation of Habitats and Species Regulations 2017; and
 - The Economic Growth (Regulatory Functions) Order 2017 and The Legislative and Regulatory Reform (Regulatory Functions) Order 2007.
- 6.7 The implications of updating the outdated references for each specific piece of legislation are set out below.
- 6.8 For The Serious Crime Act 2007, COTES 2019 updates provisions relating to COTES offences under Serious Crime Prevention Orders, which allow for additional civil controls where a person is convicted of an offence, to those offences set out in Schedule 1 of COTES 2018.
- 6.9 For The Wildlife and Countryside Act 1981, COTES 2019 updates the offence, in Scotland, of holding certain birds within a period of time following certain offences under COTES 2018.
- 6.10 For The Conservation (Natural Habitats, &c.) Regulations 1994 and The Conservation of Habitats and Species Regulations 2017, COTES 2019 updates in both Regulations

a defence of acting in the course of investigating an offence under COTES. This will mitigate potential constraints on investigations into non-compliance with COTES requirements.

- 6.11 For The Economic Growth (Regulatory Functions) Order 2017 and The Legislative and Regulatory Reform (Regulatory Functions) Order 2007, COTES 2019 updates COTES regulation to be subject to the controls under the Deregulation Act 2015 and The Legislative and Regulatory Reform Act 2006 respectively.

7. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 7.1 This instrument does not relate to withdrawal from the European Union.

8. Consolidation

- 8.1 Not applicable.

9. Consultation outcome

- 9.1 No consultation has taken place.

10. Guidance

- 10.1 No guidance is being produced for the provisions covered by this instrument as, where possible, direct equivalent provisions are being referenced in COTES 2018 as were found in COTES 1997. The amendments are of a technical nature and will be of most interest to enforcement authorities and the legal profession. Both sectors should understand the nature and intention of the amendments without additional guidance.

11. Impact

- 11.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 11.2 There is no, or no significant, impact on the public sector.
- 11.3 An Impact Assessment has not been prepared for this instrument as it is a low cost measure and a Non-Qualifying Regulatory Provision status has therefore been approved.

12. Regulating small business

- 12.1 The legislation applies to activities that are undertaken by small businesses.
- 12.2 These amendments update the regulatory framework relating to COTES offences to refer to the consolidated COTES 2018 regulations rather than the repealed COTES 1997. The provisions referenced in COTES 2018 are as closely aligned to equivalents in COTES 1997 as possible and so there is minimal change to the pre-existing regulatory framework. As such minimal outreach with small businesses is necessary.

13. Monitoring & review

- 13.1 These Regulations do not contain a review provision. There is not expected to be a significant annualised net impact on businesses as the costs anticipated which are set out in section 10, are well below the £5m threshold. There are no other factors which suggest that it would be desirable or proportionate to include a review clause.

14. Contact

- 14.1 Kristopher Blake at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 3500 or email: Kristopher.Blake@defra.gov.uk can be contacted with any queries regarding the instrument.
- 14.2 Cheryl Case, Deputy Director for International Biodiversity and Environment, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 14.3 Zac Goldsmith MP at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.