

**2009 No. 1773**

**WILDLIFE**

**The Control of Trade in Endangered Species (Enforcement)  
(Amendment) Regulations 2009**

<i>Made</i>	- - - -	<i>2nd July 2009</i>
<i>Laid before Parliament</i>		<i>8th July 2009</i>
<i>Coming into force</i>	- -	<i>11th August 2009</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment, makes these Regulations in exercise of the powers conferred by that section and paragraph 1A of Schedule 2(c) to that Act.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for references in these Regulations to Council Regulation (EC) No 338/97 (on the protection of species of wild fauna and flora by regulating trade therein(d)) and to Commission Regulation (EC) No 865/2006(e) (laying down detailed rules concerning the implementation of that Council Regulation) to be construed as references to those Regulations as amended from time to time.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2009 and come into force on 11th August 2009.

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

**Amendment of regulation 2 of the COTES Regulations**

2. In regulation 2 of the COTES Regulations (interpretation)—

(a) in paragraph (1)—

(i) for the definition of “Principal Regulation” substitute—

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

(ii) for the definition of “Subsidiary Regulation” substitute—

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(a) S.I. 2008/301.

(b) 1972 c. 68.

(c) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(d) OJ No L 61, 3.3.97, p 1, amended by Commission Regulation (EC) No 407/2009 (OJ No L 123, 19.5.09, p 3); there are other amending instruments but none is relevant.

(e) OJ No L 166, 19.6.06, p 1, amended by Commission Regulation (EC) No 100/2008 (OJ No L 31, 5.2.08, p 3).

(f) S.I. 1997/1372, amended by S.I. 2005/1674 and 2007/2952.

““Subsidiary Regulation” means Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation No 338/97”; and

(b) after paragraph (4) insert—

“(5) In these Regulations—

- (a) any reference to the Principal Regulation is a reference to the Principal Regulation as amended from time to time; and
- (b) any reference to the Subsidiary Regulation is a reference to the Subsidiary Regulation as amended from time to time.”.

### **Insertion of regulation 8A into the COTES Regulations**

3. After regulation 8 of the COTES Regulations insert—

#### **“Split-listed specimens: presumption in favour of Annex A**

**8A.**—(1) For the purposes of regulation 8 (purchase and sale etc), a split-listed specimen is presumed to be of a species listed in Annex A to the Principal Regulation, provided that—

- (a) where the specimen falls within paragraph (3), it is not reasonably practicable to determine the population from which that specimen derives;
- (b) where the specimen falls within paragraph (4), it is not reasonably practicable to determine the subspecies to which that specimen belongs;
- (c) where the specimen falls within paragraph (5), it is not reasonably practicable 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 either Annex A or Annex 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 all the 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 either Annex A or Annex B to the Principal Regulation; and
- (b) one or more subspecies of that species are included in one of those Annexes and all the other 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 Annex B to the Principal Regulation; and
- (b) one or more species or subspecies of that higher taxon are included in one of those Annexes, all the other species or subspecies included in that taxon are included in the other of those Annexes, and all geographical populations of those species or subspecies are included in those Annexes.”.

2nd July 2009

*Huw Irranca-Davies*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations insert a new regulation 8A into the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (S.I. 1997/1372) (“the COTES Regulations”), describing three cases in which a specimen is presumed to be of a species listed in Annex A to Council Regulation (EC) No 338/97 (OJ No L 61, 3.3.97, p. 1) (“the Principal Regulation”). This presumption applies for the purposes of regulation 8 of the COTES Regulations, which provides for certain offences relating to the purchase, sale etc. of specimens, the details of which differ depending on whether the specimen is of a species listed in Annex A or Annex B to the Principal Regulation. The presumption in favour of Annex A relates to cases where different species, subspecies or geographical populations of species are split between Annexes A and B to the Principal Regulation.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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