

**2018 No. 703**

**WILDLIFE**

**The Control of Trade in Endangered Species Regulations 2018**

<i>Made</i>	- - - -	<i>7th June 2018</i>
<i>Laid before Parliament</i>		<i>11th June 2018</i>
<i>Coming into force</i>	- -	<i>1st October 2018</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”)(a).

The Secretary of State is designated for the purposes of section 2(2) of the 1972 Act in relation to the environment(b).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act 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(c) and to Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of that Council Regulation(d) to be construed as references to those instruments as amended from time to time.

**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 into the European Union;

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(a) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

(b) S.I. 2008/301.

(c) OJ No L 61, 3.3.1997, p 1, as last amended by Commission Regulation (EU) 2017/160 (OJ No L 27, 1.2.2017, p 1).

(d) OJ No L 166, 19.6.2006, p 1, as last amended by Commission Regulation (EU) 2015/870 (OJ No L 142, 6.6.2015, p 3).

“imported unlawfully” means introduced into the European Union 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.

### **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(2) 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(a) 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(b) or a person authorised by a designated person.

### **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.

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(a) 1979 c.2.  
(b) 2009 c.11.

(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(a).

### **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;

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

- (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 designate customs offices for carrying out the checks and formalities for the introduction into, and export from, the European Union of specimens.

#### **Revocations**

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

- (a) the Control of Trade in Endangered Species (Designation of Ports of Entry) Regulations 1985(a);
- (b) the Control of Trade in Endangered Species (Enforcement) Regulations 1997(b);
- (c) the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2005(c);
- (d) the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2007(d);
- (e) the Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2009(e).

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(a) S.I. 1985/1154.

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

(c) S.I. 2005/1674.

(d) S.I. 2007/2952.

(e) 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.

7th June 2018

*David Rutley*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

## **SCHEDULE 1**

Regulation 3(1)

### **Offences and penalties**

#### **Article 16(1)(j) of the Principal Regulation**

**1.**—(1) The penalty for the offence specified in sub-paragraph (2) is as follows—

- (a) on summary conviction, imprisonment for a maximum term of six months or a fine (not exceeding the statutory maximum in Scotland or Northern Ireland, as the case may be) or both;
- (b) on conviction on indictment, imprisonment for a maximum term of five years or a fine or both.

(2) The offence referred to in sub-paragraph (1) is the conduct specified in Article 16(1)(j) of the Principal Regulation in relation to a specimen, in contravention of Article 8 of the Principal Regulation, as follows—

- (a) purchasing;
- (b) offering to purchase;
- (c) acquiring for commercial purposes;
- (d) using for commercial gain;
- (e) displaying to the public for commercial purposes;
- (f) selling;
- (g) keeping for sale;
- (h) offering for sale;
- (i) transporting for sale.

## Other offences and penalties

2. The penalty for the offences described in the following table is as follows—

- (a) on summary conviction, imprisonment for a maximum term of three months or a fine (not exceeding the statutory maximum in Scotland or Northern Ireland, as the case may be) or both;
- (b) on conviction on indictment, imprisonment for a maximum term of two years or a fine or both.

<i>Column 1</i> <i>Provision of the Principal Regulation or these Regulations</i>	<i>Column 2</i> <i>Subject matter</i>
Article 9 of the Principal Regulation	Without reasonable excuse, causing any movement within the European Union of a live specimen of a species listed in Annex A from the location indicated in the import permit or in any certificate issued in compliance with the Principal Regulation, contrary to the provisions of Article 9 of the Principal Regulation, or the provisions of the Subsidiary Regulation
Article 16(1)(b) of the Principal Regulation	Knowingly contravening the stipulations specified on a permit or certificate issued in accordance with the Principal Regulation or the Subsidiary Regulation
Article 16(1)(c) of the Principal Regulation	Knowingly or recklessly making a false declaration or providing false information in order to obtain a permit or certificate
Article 16(1)(d) of the Principal Regulation	Knowingly or recklessly using a false or invalid permit or certificate or one altered without authorisation as a basis for obtaining a permit or certificate or for any other official purpose in connection with the Principal Regulation or the Subsidiary Regulation
Article 16(1)(e) of the Principal Regulation	Knowingly or recklessly making a false import notification
Article 16(1)(f) of the Principal Regulation	Without reasonable excuse, causing the shipment of live specimens not properly prepared so as to minimise the risk of injury, damage to health or cruel treatment (as required by Article 9(5) of the Principal Regulation)
Article 16(1)(g) of the Principal Regulation	Knowingly using specimens listed in Annex A to the Principal Regulation other than in accordance with the authorisation given at the time of issuance of the permit or subsequently
Article 16(1)(k) of the Principal Regulation	Knowingly using a permit or certificate for any specimen other than the one for which it was issued
Article 16(1)(l) of the Principal Regulation	Knowingly falsifying or altering any permit or certificate issued in accordance with the Principal Regulation or the Subsidiary Regulation
Article 16(1)(m) of the Principal Regulation	Without reasonable excuse failing to disclose the rejection of an application for an import, export or re-export permit or certificate, in accordance with Article 6(3) of the Principal Regulation
Regulation 4(6) of these Regulations	Knowingly or recklessly providing a false statement relating to whether a specimen was imported unlawfully or acquired lawfully
Regulation 8(6) of these Regulations	Intentionally obstructing entry or, with intent to deceive, pretending to be an authorised person

## SCHEDULE 2

Regulation 3(2)

### Civil sanctions

#### PART 1

##### Introduction

##### **Interpretation**

**1.** In this Schedule—

“completion certificate” has the meaning given in paragraph 14(1);

“compliance notice” has the meaning given in paragraph 2(2);

“discharge certificate” has the meaning given in paragraph 20(1);

“enforcement undertaking” has the meaning given in paragraph 17;

“final notice” has the meaning given in paragraph 7(2);

“non-compliance penalty” has the meaning given in paragraph 23(1);

“notice of intent” has the meaning given in paragraph 4(1);

“relevant regulation” means—

(a) regulation 6 of these Regulations;

(b) Article 64(2) of the Subsidiary Regulation;

(c) Article 66(6) and (7) of the Subsidiary Regulation;

“stop notice” has the meaning given in paragraph 11(1);

“third party undertaking” has the meaning given in paragraph 6(1);

“variable monetary penalty” has the meaning given in paragraph 3(1).

#### PART 2

##### Compliance notices etc.

##### **Compliance notice**

**2.—**(1) This paragraph applies where the management authority is satisfied on the balance of probabilities that a person has failed to comply with a relevant regulation.

(2) The management authority may by notice (“a compliance notice”) impose on that person a requirement to take such steps as the management authority may specify, within such period as it may specify, to secure that the failure to comply does not continue or recur.

(3) A compliance notice may not be served on more than one occasion in relation to the same act or omission.

##### **Imposition of a variable monetary penalty**

**3.—**(1) This paragraph applies where the management authority is satisfied on the balance of probabilities that a person has failed to comply with a relevant regulation.

(2) The management authority may by notice impose on that person a requirement to pay a monetary penalty to the management authority in such amount as it may determine (“a variable monetary penalty”).

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) The amount of a variable monetary penalty may not be more than £5,000.

(5) Before serving a notice imposing a variable monetary penalty, the management authority may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the failure to comply.

(6) The management authority may recover any variable monetary penalty imposed under this paragraph as if payable under order of the court.

### **Notice of intent**

**4.**—(1) If the management authority proposes to serve on a person a compliance notice or notice imposing a variable monetary penalty, it must serve on that person a notice of what is proposed (“a notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed notice or penalty;
- (b) the requirements of the notice and, in the case of a penalty, the amount to be paid;
- (c) information as to—
  - (i) the right to make representations within 28 days beginning with the day on which the notice of intent is received;
  - (ii) the circumstances in which the management authority may not serve the notice.

### **Making representations**

**5.** A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice is received make written representations to the management authority in relation to the proposed service of a compliance notice or notice imposing a variable monetary penalty.

### **Third party undertakings**

**6.**—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence (“a third party undertaking”).

(2) The management authority may accept or reject a third party undertaking.

(3) The management authority must take into account any third party undertaking that it accepts in its decision on whether or not to serve a final notice and, if it serves a notice imposing a variable monetary penalty, the amount of that penalty.

### **Final notice**

**7.**—(1) After the end of the period for making representations, the management authority must decide whether to impose the requirements described in the notice of intent, with or without modifications.

(2) Where the management authority decides to impose a requirement, the notice imposing it (“a final notice”) must comply with paragraph 8 or 9, as the case may be.

### **Contents of final notice: compliance notice**

**8.** A final notice relating to a compliance notice must include information as to—

- (a) the grounds for serving the notice;
- (b) what compliance is required and the period within which it must be completed;
- (c) the rights of appeal;
- (d) the consequences of failing to comply with the notice.

### **Contents of final notice: variable monetary penalty**

- 9.** A final notice relating to a variable monetary penalty must include information as to—
- (a) the grounds for imposing the penalty;
  - (b) the amount to be paid;
  - (c) how payment may be made;
  - (d) the period within which payment must be made, which must be not less than 28 days;
  - (e) the rights of appeal;
  - (f) the consequences of failing to comply with the notice.

### **Appeals against a final notice**

- 10.—**(1) A person on whom a final notice is served may appeal against it.
- (2) The grounds of appeal are—
- (a) that the decision to serve the final notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
  - (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
  - (e) that the decision was unreasonable for any other reason;
  - (f) that the decision was wrong for any other reason.

## **PART 3**

### **Stop notices**

#### **Stop notices**

**11.—**(1) This paragraph applies where the management authority is satisfied on the balance of probabilities that a person is—

- (a) carrying on an activity, and
- (b) the management authority reasonably believes that the activity as carried on by that person involves or is likely to involve a contravention of a relevant regulation.

(2) The management authority may by notice (“a stop notice”) prohibit that person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(3) The steps referred to in sub-paragraph (2) must be steps to eliminate the risk of the contravention being committed or occurring.

#### **Contents of a stop notice**

- 12.** A stop notice must include information as to—
- (a) the grounds for serving the notice;
  - (b) the activity which is prohibited;
  - (c) the steps which the person must take to comply with the notice and the period within which they must be completed;
  - (d) the rights of appeal;
  - (e) the consequences of failing to comply with the notice.

## **Appeals**

- 13.—**(1) A person on whom a stop notice is served may appeal against it.
- (2) The grounds of appeal are—
- (a) that the decision to serve the stop notice was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable;
  - (d) that any step specified in the notice is unreasonable;
  - (e) that the person has not contravened a relevant regulation or would not have contravened it had the stop notice not been served;
  - (f) that the decision was wrong for any other reason.

## **Completion certificates**

- 14.—**(1) The management authority must issue a certificate (“a completion certificate”) if, after service of a stop notice, it is satisfied on the balance of probabilities that the person on whom it was served has taken the steps specified in the notice.
- (2) A stop notice ceases to have effect on the issue of a completion certificate.
- (3) The management authority may require the person on whom the stop notice was served to provide sufficient information to determine that the steps specified in the notice have been taken.
- (4) A person on whom a stop notice is served may at any time apply for a completion certificate.
- (5) The management authority must decide whether to issue a completion certificate and give written notice of the decision to the applicant (including information as to the rights of appeal) within 14 days of the application.
- (6) The applicant may appeal against a decision not to issue a completion certificate on the grounds that the decision—
- (a) was based on an error of fact;
  - (b) was wrong in law;
  - (c) was unreasonable;
  - (d) was wrong for any other reason.

## **Compensation**

- 15.—**(1) The management authority must compensate a person for loss suffered as the result of the service of a stop notice or the decision not to issue a completion certificate if a person has suffered loss as a result of the notice or decision and—
- (a) the stop notice is subsequently withdrawn or amended by the management authority because the decision to serve it was made on the basis of any of the grounds mentioned in paragraph 13(2)(a) to (f);
  - (b) a person successfully appeals against the stop notice and the First-tier Tribunal allows the appeal on any of the grounds mentioned in paragraph 13(2)(a) to (f);
  - (c) a person successfully appeals against the decision not to issue a completion certificate and the First-tier Tribunal allows the appeal on any of the grounds mentioned in paragraph 14(5)(a) to (d).
- (2) The management authority must give written notice of a decision on whether or not to award compensation, which must include information as to—
- (a) the amount of any compensation to be awarded;
  - (b) the rights of appeal.
- (3) A person may appeal against a decision not to award compensation or the amount of compensation awarded on the grounds that—

- (a) the management authority's decision was unreasonable;
- (b) the amount of compensation awarded was based on incorrect facts;
- (c) the decision was wrong for any other reason.

### **Offence**

16. If a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable on summary conviction to a fine (not exceeding the statutory maximum in Scotland or Northern Ireland, as the case may be).

## **PART 4**

### **Enforcement undertakings**

#### **Enforcement undertakings**

17. The management authority may accept a written undertaking ("an enforcement undertaking") given by a person to the management authority to take such action as may be specified in the undertaking within such period as may be specified where the management authority has reasonable grounds to suspect that the person has failed to comply with a relevant regulation.

#### **Contents of an enforcement undertaking**

18.—(1) An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the failure to comply with a relevant regulation does not continue or recur;
  - (b) action to secure that the position is, so far as possible, restored to what it would have been if the failure to comply had not occurred;
  - (c) action (including the payment of a sum of money) to be taken by the person giving the undertaking to benefit any person affected by the failure to comply.
- (2) It must specify the period within which the action must be completed.
- (3) It must include—
- (a) a statement that the undertaking is made in accordance with this Schedule;
  - (b) the terms of the undertaking;
  - (c) information as to how and when a person is considered to have discharged the undertaking.

(4) An enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if the management authority and the person who gave the undertaking agree in writing.

#### **Acceptance of an enforcement undertaking**

19.—(1) If the management authority has accepted an enforcement undertaking from a person, it may not serve on that person a compliance notice or stop notice, or impose a non-compliance penalty or a variable monetary penalty, in respect of the act or omission that is the subject of the undertaking.

(2) Paragraph (1) does not apply if the person who gave the undertaking has failed to comply with it or any part of it.

### **Discharge of an enforcement undertaking**

**20.**—(1) The management authority must issue a certificate (“a discharge certificate”) if it is satisfied on the balance of probabilities that an enforcement undertaking has been complied with.

(2) An enforcement undertaking ceases to have effect on the issue of a discharge certificate.

(3) The management authority may require the person who gave the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(4) The person who gave the undertaking may at any time apply for a discharge certificate.

(5) The management authority must decide whether to issue a discharge certificate and give written notice of the decision to the applicant (including information as to the rights of appeal) within 14 days of the application.

(6) The applicant may appeal against a decision not to issue a discharge certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unreasonable;
- (d) was wrong for any other reason.

### **Inaccurate, incomplete or misleading information**

**21.**—(1) A person who gives inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) The management authority may by notice in writing revoke a discharge certificate if it was issued on the basis of inaccurate, incomplete or misleading information.

### **Non-compliance with an enforcement undertaking**

**22.**—(1) If a person does not comply with an enforcement undertaking, the management authority may serve a compliance notice or stop notice, or impose a non-compliance penalty or variable monetary penalty, in respect of the act or omission that was the subject of the undertaking.

(2) If a person has only complied partly with an undertaking, that partial compliance must be taken into account in the imposition of any sanction.

## **PART 5**

### **Non-compliance penalties**

#### **Non-compliance penalties**

**23.**—(1) If a person fails to comply with a compliance notice, stop notice, third party undertaking or enforcement undertaking, irrespective of whether a variable monetary penalty is also imposed, the management authority may serve a notice on that person imposing a monetary penalty (“a non-compliance penalty”).

(2) The amount of the non-compliance penalty must be determined by the management authority as a percentage of the costs of fulfilling the remaining requirements of the notice, third party undertaking or enforcement undertaking.

(3) The percentage must be determined by the management authority having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) A notice served under paragraph (1) must include information as to—

- (a) the grounds for imposing the penalty;
- (b) the amount to be paid;

- (c) how payment may be made;
- (d) the period within which payment must be made, which must not be less than 28 days;
- (e) the rights of appeal;
- (f) the consequences of failure to comply with the notice;
- (g) any circumstances in which the management authority may reduce the amount of the penalty.

(5) If the requirements of the compliance notice, stop notice, third party undertaking or enforcement undertaking are fulfilled before the time specified for payment of the non-compliance penalty, the penalty is not payable.

### **Appeals**

**24.**—(1) A person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the penalty is unreasonable;
- (d) that the decision was unreasonable for any reason;
- (e) that the decision was wrong for any other reason.

## **PART 6**

### **Withdrawal and amendment of notices**

#### **Withdrawing or amending a notice**

**25.** The management authority may at any time in writing—

- (a) withdraw a compliance notice or stop notice, or amend the steps specified in such a notice in order to reduce the amount of work necessary to comply with the notice;
- (b) withdraw a notice imposing a variable monetary penalty or a non-compliance penalty notice, or reduce the amount of the penalty specified in such a notice.

## **PART 7**

### **Appeals**

#### **Appeals**

**26.**—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.

(2) In any appeal the Tribunal must determine the standard of proof.

(3) All notices (other than stop notices) are suspended until determination or withdrawal of the appeal.

(4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—

- (a) withdraw the requirement or notice;
- (b) confirm the requirement or notice;
- (c) vary the requirement or notice;
- (d) take such steps as the management authority could take in relation to the act or omission giving rise to the requirement or notice;

- (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the management authority.

## PART 8

### Guidance and publicity

#### **Guidance as to use of civil sanctions**

- 27.**—(1) The management authority must publish guidance about its use of civil sanctions.
- (2) The management authority must revise and update the guidance where appropriate.
  - (3) The management authority must have regard to the guidance or revised and updated guidance in exercising its functions.
  - (4) In the case of guidance about compliance notices, stop notices, variable monetary penalties and non-compliance penalties, the guidance must contain information as to—
    - (a) the circumstances in which the civil sanction is likely to be imposed;
    - (b) the circumstances in which it is not likely to be imposed.
  - (5) In the case of guidance about variable monetary penalties and non-compliance penalties, the guidance must contain information as to—
    - (a) the matters likely to be taken into account by the management authority in determining the amount of the penalty (including voluntary reporting by a person of their own non-compliance);
    - (b) the rights to make representations and the rights of appeal.
  - (6) In the case of guidance about enforcement undertakings, the guidance must contain information as to—
    - (a) the circumstances in which the management authority is likely to accept an enforcement undertaking;
    - (b) the circumstances in which the management authority is not likely to accept an enforcement undertaking.

#### **Consultation on guidance**

**28.** The management authority must consult such persons as it considers appropriate before publishing any guidance or revised or updated guidance.

#### **Publication of enforcement action**

- 29.**—(1) The management authority must from time to time publish—
- (a) the cases in which civil sanctions have been imposed;
  - (b) where the civil sanction is a compliance notice, stop notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;
  - (c) the cases in which an enforcement undertaking has been given.
- (2) In sub-paragraph (1)(a), the reference to cases in which civil sanctions have been imposed does not include cases where the sanction has been imposed but overturned on appeal.
- (3) This paragraph does not apply in cases where the management authority considers that publication would be inappropriate.

## EXPLANATORY NOTE

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

These Regulations provide for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild flora and fauna by regulating trade therein (OJ No L 61, 3.3.97, p 1) (“the Principal Regulation”) and Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of that Council Regulation (OJ No L 166, 19.6.2006, p 1) (“the Subsidiary Regulation”). In addition, they confer powers and functions on the Secretary of State.

The Principal Regulation implements in the European Union the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). Contravention of articles 4 and 5 of the Principal Regulation is an offence under the Customs and Excise Management Act 1979 (c.2).

Regulation 3(1) (and Schedule 1) provides that a person who fails to comply with certain provisions of this Regulation, the Principal Regulation or the Subsidiary Regulation (“the instruments”) is guilty of an offence. Regulation 3(2) (and Schedule 2) provides for civil sanctions for failure to comply with certain provisions of the instruments.

Regulation 4 provides for defences to offences under Article 8 of the Principal Regulation.

Regulation 5 relates to the case where it is possible that a specimen is both of a category listed in Annex A and a category listed in Annex B, and in this case provides for a statutory presumption in favour of Annex A.

Regulation 6 requires that an advertisement for the sale of an Annex A specimen includes a reference to the certificate authorising commercial use of the specimen.

Regulation 7 provides for seizure of specimens by a general customs official and forfeiture of a seized specimen.

Regulation 8 provides for powers of entry for police and wildlife inspectors.

Regulation 9 provides for powers of seizure by the police and provides for reimbursement of expenses incurred by police in connection with seizure.

Regulation 10 provides powers for the courts to order forfeiture of specimens and other items, and to impose a ban on a convicted person preventing the person from holding a specimen for a period of time.

Regulation 11 provides for offences by corporations and Scottish partnerships.

Regulation 12 provides that the Secretary of State is the management authority for the purposes of the instruments and that the Secretary of State may designate scientific authorities for the purposes of the instruments.

Regulation 13 provides that the Secretary of State may designate ports of entry and exit for the purposes of the instruments.

Regulation 14 provides for revocations.

Regulation 15 provides for savings and transitional provisions.

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





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