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STATUTORY INSTRUMENTS

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**2019 No. 527**

**The Invasive Alien Species (Enforcement  
and Permitting) Order 2019**

**PART 3**

**Defences**

**Defences: permits and licences**

**14.** Article 3 (import, keeping, breeding, purchase, release etc. of invasive alien species) does not apply to anything done under, and in accordance with—

- (a) a permit; or
- (b) a licence.

**Defences: enforcement activity**

**15.** It is a defence to a charge of committing an offence under article 3(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping), (d) (transportation) or (f) (use and exchange) of the Principal Regulation if the person accused is—

- (a) an enforcement officer or designated customs official, or a person acting at the request, or on behalf, of an enforcement officer or designated customs official; and
- (b) acting for a purpose connected with the enforcement of this Order.

**Transitional provision for non-commercial owners: companion animals**

**16.—(1)** It is a defence to a charge of committing an offence under article 3(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping) or (d) (transportation) of the Principal Regulation to show that the specimen to which the alleged offence relates—

- (a) immediately before its inclusion on the Union list, was kept as a companion animal; and
  - (b) the condition in paragraph (2) or the condition in paragraph (3) applies.
- (2) The condition in this paragraph is that, at all material times—
- (a) the purpose in keeping the animal was to keep it as a companion animal;
  - (b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.
- (3) The condition in this paragraph is that, at all material times—
- (a) the animal was kept for the purpose of transporting it to—
    - (i) a facility to which a relevant licence had been granted;
    - (ii) an establishment to which a relevant permit had been issued; or
    - (iii) a place where it was to be humanely dispatched; and

- (b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.
- (4) In this article—
  - “relevant licence” means a licence under—
    - (a) article 36(2)(d) (licences for the keeping of animals by a facility);
    - (b) any provision in legislation which applies in relation to Scotland and which enables licences to be granted for the keeping of an animal by a facility until the end of its natural life in accordance with Article 31(4) of the Principal Regulation; or
    - (c) any provision in legislation which applies in relation to Northern Ireland and which enables licences to be granted for the keeping of an animal by a facility until the end of its natural life in accordance with Article 31(4) of the Principal Regulation;
  - “relevant permit” means a permit under—
    - (a) article 35 (permits for activities relating to invasive alien species) of this Order;
    - (b) any provision in legislation which applies in relation to Scotland and which enables permits to be issued in accordance with Article 8 or 9 of the Principal Regulation; or
    - (c) any provision in legislation which applies in relation to Northern Ireland and which enables permits to be issued in accordance with Article 8 or 9 of the Principal Regulation.

#### **Transitional provision for non-commercial owners: commercial stocks**

17. It is a defence to a charge of committing an offence under article 3(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping) or (d) (transportation) of the Principal Regulation to show that the specimen to which the alleged offence relates—
- (a) was received from a keeper of commercial stocks in accordance with article 18(3)(d) (transitional provisions for commercial stocks); and
  - (b) at all material times was kept in contained holding and appropriate measures were in place to ensure that the specimen could not reproduce or escape.

#### **Transitional provisions for commercial stocks**

- 18.—(1) It is a defence to a charge of committing an offence to which this article applies for a keeper of a commercial stock of specimens to show that—
- (a) the specimens were acquired before their inclusion on the Union list; and
  - (b) the activity constituting the offence—
    - (i) was carried out for one of the purposes listed in paragraph (3); and
    - (ii) was not carried out after the end of the relevant period following the inclusion of the species to which the specimen in question belongs on the Union list.
- (2) This article applies to—
- (a) an offence under article 3(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping), (d) (transportation), (e) (placing on the market) or (f) (use or exchange) of the Principal Regulation; and
  - (b) an offence under article 3(4).
- (3) The purposes are—
- (a) sale or transfer to a research or ex situ conservation establishment which holds a relevant permit, provided that the conditions in paragraph (4) apply;

- (b) medicinal activities pursuant to a relevant permit, provided that the conditions in paragraph (4) apply;
  - (c) humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms) of the specimen to exhaust the keeper's stock; or
  - (d) sale or transfer to a non-commercial user, provided that the conditions in paragraph (4) apply.
- (4) The conditions are that, at all material times—
- (a) the specimen was kept and transported in contained holding; and
  - (b) appropriate measures were in place to ensure that the specimen could not reproduce or escape.
- (5) For the purposes of paragraph (1)(b)(ii), the relevant period is—
- (a) in relation to an activity carried out for a purpose mention in paragraph (3)(a) to (c), two years;
  - (b) in relation to an activity carried out for a purpose mentioned in paragraph (3)(d), one year.
- (6) In this article, “relevant permit” means—
- (a) for the purposes of paragraph (3)(a), a permit under—
    - (i) article 35(1)(a) (permits for research or ex situ conservation);
    - (ii) any provision in legislation which applies in relation to Scotland and which enables permits to be issued for research or ex situ conservation in accordance with Article 8 of the Principal Regulation; or
    - (iii) any provision in legislation which applies in relation to Northern Ireland and which enables permits to be issued for research or ex situ conservation in accordance with Article 8 of the Principal Regulation;
  - (b) for the purposes of paragraph (3)(b), a permit under—
    - (i) article 35(1)(b) (permits for medicinal activities);
    - (ii) any provision in legislation which applies in relation to Scotland and which enables permits to be issued for scientific production and subsequent medicinal use in accordance with Article 8 of the Principal Regulation; or
    - (iii) any provision in legislation which applies in relation to Northern Ireland and which enables permits to be issued for scientific production and subsequent medicinal use in accordance with Article 8 of the Principal Regulation.

### **Defences: due diligence**

**19.**—(1) It is defence to a charge of committing an offence under article 3(2) to (4) if the person charged (“P”) shows that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged is not, without leave of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing, the person has served on the prosecutor a notice giving such relevant information as was then in the person's possession.

(3) In paragraph (2), “relevant information” means information which identifies or assists in the identification of the other person.