

## EXPLANATORY MEMORANDUM TO

### THE TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (COUNCIL REGULATION (EC) NO 338/97) (AMENDMENT) REGULATIONS 2023

2023 No. 106

#### 1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of His Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the retained EU law version of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (“Regulation 338/97”). That Regulation implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) in relation to Great Britain including through controls on import and export of species listed in the Annex. Those controls vary according to the part of the Annex in which the species are listed (i.e. Annex A, Annex B, Annex C or Annex D which are contained within the Annex).
- 2.2 The purpose of the instrument is to update the species listed within the Annex to implement listings agreed at the 19th meeting of the CITES Conference of Parties (“CoP19”) which concluded on 25 November 2022, and which come into force on 23 February 2023. It also amends Annexes C and D following submissions made by other Contracting Parties to include species on Appendix III of CITES, including amendments in relation to which the UK had entered a reservation (which will be withdrawn in relation to Great Britain). This will enable the UK CITES Management Authority to implement appropriate controls and issue the necessary CITES documents for these species.

#### 3. Matters of special interest to Parliament

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

#### 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 the United Kingdom. However, this instrument will only have practical application in Northern Ireland in relation to import or (re-)export to or from Great Britain.

#### 5. European Convention on Human Rights

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

## 6. Legislative Context

- 6.1 Following the UK's departure from the EU and the end of the Transition Period, EU legislation implementing CITES became retained EU law, with amendments made by the Environment and Wildlife (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 (SI 2020/1395) and the Trade in Endangered Species of Wild Fauna and Flora (Commission Regulation (EC) No 865/2006 (Amendment) Regulations 2020 (SI 2020/1668).
- 6.2 Articles 18(3) and 19(5) of the retained EU law version of Regulation 338/97 give the Secretary of State powers to amend the list of species in the Annex to that Regulation.
- 6.3 This instrument implements the additions/amendments made to the species listed in the three CITES Appendices following the decisions made at the 19<sup>th</sup> meeting of the CITES Conference of Parties (COP19), by making corresponding amendments to Annexes A, B and C to the retained EU law version of Regulation 338/97. Amendments to those Appendices will come into force and become legally binding on Parties on 23 February 2023, save for those Parties that make reservations. This instrument also makes amendments to Annex C in accordance with notifications by other Contracting Parties including amendments in respect of which the UK had entered a reservation (which will be withdrawn in relation to Great Britain). Updating the Annex will enable the UK to implement obligations under CITES in relation to amended or newly listed species.

## 7. Policy background

### *What is being done and why?*

- 7.1 The UK is a Contracting Party to CITES, an international environmental agreement which protects wild fauna and flora from unsustainable international trade. CITES regulates international trade (effectively cross-border movements) through a system of documents, including import and export permits. The Appendices to CITES list endangered species, and the Convention regulates international trade in specimens of these species to conserve them.
- 7.2 The UK plays a leading role in international efforts to address threats to endangered species and CITES is a key part of our approach to this work.

### *Explanations*

#### *What did any law do before the changes to be made by this instrument?*

- 7.3 This instrument is not changing the UK CITES regulatory framework, but rather amending the species in scope of these controls for their import, export, re-export and domestic commercial use. The animal and plant species covered by UK CITES controls are listed on four Annexes according to the level of protection they receive (species listed on Annex A have the highest level of protection). Species may be added or removed from the Annexes or moved between them, depending on the level of protection required.

#### *Why is it being changed?*

- 7.4 CITES Appendices I and II (approximately equivalent to UK Annexes A and B) are amended by the Conference of the Parties to CITES at its triennial meetings. The most recent Conference (COP19) concluded on 25 November 2022 and the species included in this instrument for amendment on Annexes A and B are the decisions of

CoP19 (summarised in Notification 2023/005) or consequential amendments to Annex C. CITES Parties can also submit amendments to Appendix III (Annex C) for their own populations of species at any time to seek international assistance on regulating species of domestic conservation concern. Once notified to other Parties those amendments take effect within 90 days. Parties can make reservations after the notification. A number of these amendments (from Notifications which were notified under Notification Numbers 2022/081, 2022/077, 2022/073, 2022/019 and 2022/014) are included in this instrument as well (amendments to Annexes C and D).

*What will it now do?*

- 7.5 When the listings amendments come into force on 23 February 2023, the included species will have greater or lesser protection within international trade.
- 7.6 Under the Protocol on Ireland/Northern Ireland, EU legislation implementing CITES will still operate in Northern Ireland, including EU Regulation 338/97. The European Commission makes corresponding amendments to that EU Regulation.

**8. European Union Withdrawal and Future Relationship**

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

**9. Consolidation**

- 9.1 Not applicable.

**10. Consultation outcome**

- 10.1 No formal consultation has taken place, although species listing proposals were discussed with interested stakeholders ahead of COP19. We have informed the Devolved Administrations of these amendments, although CITES is fully reserved.

**11. Guidance**

- 11.1 No new guidance will be produced, however online resources (primarily found through <https://www.gov.uk/guidance/cites-controls-import-and-export-of-protected-species>) will be updated where necessary and industry notified of these amendments.

**12. Impact**

- 12.1 The impact on business, charities or voluntarily bodies is variable. Traders of the species amended or newly listed would need to comply with CITES controls for the additional species being added by this instrument, including obtaining a relevant permit or certificate. Traders can obtain CITES documents from the Animal and Plant Health Agency.
- 12.2 The impact on the public sector is negligible. The Animal and Plant Health Agency may need to issue additional permits, but a cost recovery model is in operation for CITES documents.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private, voluntary or public sector is foreseen.

**13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses as no significant impact is foreseen.

13.3 We have already informed the industry of these amendments and we will use our existing channels to communicate when the changes come into force.

#### **14. Monitoring & review**

14.1 Existing monitoring of CITES permits and certificates applied for and issued in the UK will be used to understand the implications of these amendments.

#### **15. Contact**

15.1 Michelle Hollis at the Department for Environment, Food and Rural Affairs. (telephone: 07919 691937 or email: [Michelle.Hollis@defra.gov.uk](mailto:Michelle.Hollis@defra.gov.uk)) can be contacted with any queries regarding the instrument.

15.2 William Lockhart, Deputy Director for International Biodiversity and Wildlife at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State, Trudy Harrison, Minister for Environment at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.