STATUTORY INSTRUMENTS

1985 No. 1155

ANIMALS

The Control of Trade in Endangered Species (Enforcement) Regulations 1985

Made - - - - -	*25th July* 1985
Laid before Parliament	*31st July* 1985
Coming into Operation	*22nd August* 1985

The Secretary of State, in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972**(a)**, being the Minister designated**(b)** for the purposes of that subsection in relation to the regulation and control, in the interests of conservation, of the import, export, landing, keeping, transportation and commercial display of, and trade in and disposal of, fauna and flora (including their parts and derivatives) and in relation to anything supplemental or incidental to those matters, and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, commencement, interpretation and extent

1.—(1) These regulations may be cited as the Control of Trade in Endangered Species (Enforcement) Regulations 1985 and shall come into operation on 22nd August 1985.

(2) In these regulations—

"authorised person" means a person duly authorised in writing by the Secretary of State for the purposes of these regulations;

"imported unlawfully" means imported contrary to the Principal Regulation or the Subsidiary Regulation;

"premises" includes any place and, in particular, includes any vehicle, vessel, aircraft, hovercraft, tent or movable structure;

"Principal Regulation" means Council Regulation (EEC) No. 3626/82**(c)** and "Subsidiary Regulation" means Commission Regulation (EEC) No. 3418/83**(d)**; and

"restricted specimen" means any animal or plant, whether alive or dead, or any part or product thereof to which Article 2 or 3 of the Principal Regulation applies.

(a) 1972 c. 68. **(b)** S.I. 1985/956.

(c) OJ No L 384, 31.12.1982, p. 1 and OJ No L 65, 7.3.1984, p. 14 amended by Regulations (EEC) No. 3645/83 (OJ No L 367, 28.12.1983, p. 1), by No. 3646/83 (OJ No L 367, 28.12.1983, p. 2 and OJ No L 62, 3.3.1984, p. 27), by No. 577/84 (OJ No L 64, 6.3.1984, p. 5), by No. 1451/84 (OJ No L 140, 26.5.1984, p. 21), by No. 1452/84 (OJ No L 140, 26.5.1984, p. 23), and by No. 1831/85 (OJ No L 173, 3.7.1985, p. 1).

(d) OJ No L 344, 7.12.1983, p. 1 and OJ No L 62, 3.3.1984, p. 27.

(3) In these regulations references to a permit or certificate are references to an import permit, import certificate, export permit or re-export certificate of the kind mentioned in Article 1.1 of the Subsidiary Regulation or, as the case may be, to any certificate of the kind mentioned in Article 1.2 of that Regulation (being a certificate referred to in Article 11 of the Principal Regulation).

(4) These regulations shall extend to all parts of the United Kingdom.

Offences in relation to permits and certificates etc.

2.—(1) A person who, for the purpose of obtaining, whether for himself or another, the issue of a permit or certificate—

(*a*) knowingly or recklessly makes a statement or representation which is false in a material particular, or

(*b*) knowingly or recklessly furnishes a document or information which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000 or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both.

(2) Where for the purpose of obtaining a permit or certificate a person commits an offence under paragraph (1) above, the permit or, as the case may be, the certificate shall be void.

(3) Where any restricted specimen is being imported or exported or has been imported or brought to any place for the purpose of being exported, a person commissioned by the Commissioners of Customs and Excise or a person authorised by them may require any person possessing or having control of that specimen to furnish proof that its importation or exportation is or was not unlawful by virtue of the Principal Regulation or, as the case may be, the Subsidiary Regulation and if such proof is not furnished to the satisfaction of the said Commissioners the specimen shall be liable to forfeiture under the Customs and Excise Management Act 1979**(a)**.

(4) If on an application made by an authorised person a justice of the peace is satisfied that there are reasonable grounds for believing—

(*a*) that there is any unlawfully imported restricted specimen on premises specified in the application; and

(*b*) that any of the conditions specified in paragraph (5) below applies,

he may issue a warrant authorising that person to enter and search the premises and such a warrant may authorise other persons to accompany that person.

(5) The conditions mentioned in paragraph (4)(*b*) above are that admission to the premises has been refused, or that refusal is apprehended, or that the case is one of urgency, or that an application for admission to the premises would defeat the object of the entry.

(6) An application for a warrant under this regulation shall—

(*a*) be made ex parte and supported by an information in writing, and

(a) 1979 c. 2.

(*b*) specify the premises which it is desired to enter and search, and identify, so far as practicable, the restricted specimens to be sought;

and the authorised person applying for the warrant shall answer on oath any question that the justice of the peace hearing the application asks him.

(7) A warrant issued under this regulation shall authorise an entry on one occasion only and—

(*a*) shall specify—

(i) the name of the person to whom it is issued;

(ii) the date on which it is issued;

(iii) that it is issued under this regulation; and

(iv) the premises to be searched; and

(*b*) shall identify, so far as practicable, the restricted specimens to be sought.

(8) Entry and search under a warrant issued under this regulation must be within one month from the date of its issue and must be at a reasonable hour unless it appears to the authorised person executing it that the object of the entry may be defeated on an entry at a reasonable hour.

(9) Where the authorised person seeks to execute a warrant issued under this regulation he shall, if requested by the occupier or other person appearing to him to be in charge of the premises, identify himself and produce the warrant to him.

(10) A search under a warrant issued under this regulation may only be a search to the extent required for the purpose for which the warrant was issued.

(11) Any person who intentionally obstructs a person acting in accordance with the powers conferred by this regulation shall be guilty of an offence and shall for every such obstruction be liable on summary conviction to a fine not exceeding £400.

Offences to sell etc. restricted specimens

3.—(1) Subject to paragraphs (3) and (4) below, a person who, contrary to Article 6 of the Principal Regulation, displays to the public for commercial purposes, sells, keeps for sale, offers for sale or transports for sale any specimen referred to in Article 2(*a*) or 3(1) of the Principal Regulation shall be guilty of an offence.

(2) Subject to paragraphs (3), (4) and (5) below, a person who, contrary to Article 6 of the Principal Regulation, displays to the public for commercial purposes, sells, keeps for sale, offers for sale or transports for sale any specimen referred to in Article 2(*b*) or 2(*c*) of the Principal Regulation which has been imported unlawfully shall be guilty of an offence.

(3) Paragraphs (1) and (2) above do not apply to anything done under or in accordance with the terms of any exemption granted pursuant to Article 6 of the Principal Regulation.

(4) A person shall not be guilty of an offence under paragraph (1) or (2) above if he proves to the satisfaction of the court that, at the time the alleged offence was committed he had no reason to believe that the specimen was a

specimen referred to in paragraph (1) or, as the case may be, paragraph (2) above.

(5) A person shall not be guilty of an offence under paragraph (2) above if he proves to the satisfaction of the court—

(*a*) that at the time when the specimen first came into his possession he made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported unlawfully, and

(*b*) that at the time the alleged offence was committed, he had no reason to believe that the specimen was imported unlawfully.

(6) Without prejudice to the generality of paragraph (5) above, a person shall be taken to have made such enquiries as are there mentioned if he produces to the court a certificate which was furnished by the person from whom the accused obtained possession of the specimen (the supplier), which was signed by the supplier or by a person authorised by him, and which states that—

(*a*) the supplier made enquiries at the time the specimen came into his possession in order to ascertain whether it was a specimen which had been imported unlawfully, and

(*b*) the supplier had no reason to believe at the time he relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported unlawfully.

(7) A person who furnishes for the purposes of paragraph (6) above a certificate which he knows to be false in a material particular, or recklessly furnishes for those purposes a certificate which is false in a material particular, shall be guilty of an offence.

(8) A person guilty of an offence under paragraph (1), (2) or (7) above shall be liable on summary conviction to a fine not exceeding £2,000 or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both; and the court by which any person is convicted of an offence under paragraph (1) or (2) above, may order the forfeiture of the specimen in respect of which the offence was committed.

(9) For the purposes of this regulation a specimen is displayed to the public if it is displayed to the public generally or any section of it, and (in either case) whether in return for money or otherwise.

(10) For the purposes of any proceedings under section 50 or 170 of the Customs and Excise Management Act 1979 (penalties for improper importation and evasion of restriction on importation) for an offence in connection with anything imported unlawfully this regulation shall not be taken expressly to provide a penalty for that offence.

Restricting movement of certain live animals after importation

4.—(1) Subject to paragraph (3) below, any person who without reasonable excuse causes or permits any live animal referred to in Article 2(*a*) or 3(1) of the Principal Regulation (animals threatened with extinction) to be transferred from the address specified in the import permit issued for that animal without prior written authorisation from the Secretary of State, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000.

(2) Subject to paragraph (3) below, any person who without reasonable excuse keeps any live animal referred to in Article 2(*a*) or 3(1) of the Principal Regulation at premises other than the address specified in the import permit issued under the Principal Regulation for that animal without prior written authorisation from the Secretary of State, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000.

(3) An authorised person may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter any premises which are the specified address in the import permit issued for any animal in order to ascertain whether that animal is being kept on the premises.

(4) Any person who intentionally obstructs a person acting under paragraph (3) above shall be guilty of an offence and shall for every such obstruction be liable on summary conviction to a fine not exceeding £400.

Breach of conditions of permits etc.

5.—(1) A person who knowingly contravenes any condition of a permit or certificate shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000; and the court by which any person is convicted of an offence under this paragraph may order the forfeiture of the specimen to which the permit or certificate relates.

(2) An authorised person may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter any premises where he has reasonable cause to believe that any restricted specimen is being kept in order to ascertain whether any condition of a permit or certificate has been or, is being, observed.

(3) Any person who intentionally obstructs a person acting under paragraph (2) above shall be guilty of an offence and shall for every such obstruction be liable on summary conviction to a fine not exceeding £400.

Offences by corporations

6.—(1) Where an offence under these regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In this regulation "director", in relation to a body corporate established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Patrick Jenkin,
One of Her Majesty's Principal
Secretaries of State

25th July 1985.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations provide for offences for contravention of certain provisions of Community legislation relating to the implementation in the Community of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Regulation 2 provides for offences in relation to the obtaining of permits and certificates. It provides for a permit or certificate to be void where an offence has been committed and makes the specimen liable to forfeiture. It also contains a justice's warrant procedure under which a person authorised by the Secretary of State is authorised to enter and search premises.

Regulation 3 makes it an offence to sell or display certain specimens for commercial purposes unless an exemption has been given. Certain defences to the offence are also provided in the regulation.

Regulation 4 provides for penalties in connection with unauthorised movement, without reasonable excuse, of certain live specimens. Regulation 5 makes contravention of conditions of permits or certificates an offence. Under these regulations the Secretary of State may authorise any person to enter premises to ascertain whether the terms and conditions of a permit or certificate are being complied with. Regulation 6 makes special provision where offences have been committed by corporations.

The Community legislation is contained in Council Regulation (EEC) No. 3626/82 (OJ No L 384, 31.12.1982, p. 1 and OJ No L 65, 7.3.1984, p. 14) and in Commission Regulation (EEC) No. 3418/83 (OJ No L 344, 7.12.1983, p. 1 and OJ No L62, 3.3.1984, p.27). (Council Regulation (EEC) No. 3626/82 was amended by Regulations (EEC) No. 3645/83 (OJ No L 367, 28.12.1983, p. 1), by No. 3646/83 (OJ No L 367, 28.12.1983, p. 2), by No. 577/84 (OJ No L 64, 6.3.1984, p. 5), by No. 1451/84 (OJ No L 140, 26.5.1984, p. 21), by No. 1452/84 (OJ No L 140, 26.5.1984, p. 23), and by No. 1831/85 (OJ No L 173, 3.7.1985, p. 1).

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