



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Consultation on proposed changes to the Control of Trade in Endangered Species Regulations

February 2015

© Crown copyright **2015**

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.2. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2/ or email PSI@nationalarchives.gsi.gov.uk

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to:

Dave Wootton
COTES Review Team
Area 1/14b, Temple Quay House
2 The Square, Temple Quay
Bristol
BS1 6EB

Contents

Part 1: about this consultation	1
The current legislative base	1
Part 2: proposed changes	3
Rationale	3
Overview	3
On enforcement:	3
Proposed provisions.....	5
On ports of entry and exit:	9
Additional provisions:	10
Part 3: reviewing the existing criminal offences	11
Part 4: other issues	16
Additional measures specifically focused on trade via the Internet	16
Civil sanctions	17
Part 5: costs and benefits	18
Part 6: additional information	22
Those affected by the proposals	22
How the changes will be made.....	22
When we plan to do it.....	22
Geographical scope	22
Part 7: responding to this consultation	22
Consultation questions.....	22
Who we have consulted	23
How to respond.....	23
Annex A: proposed ports of entry and exit designations	24
Annex B: List of proposed provisions	27

Part 1: about this consultation

1.1 In relation to the regulation of trade in endangered species in the United Kingdom (UK) we are seeking views on proposed changes to the legislation which helps to deliver our obligations arising from the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We are proposing to update the Control of Trade in Endangered Species (COTES) Regulations to reflect changes already established by the EU regulations which implement CITES in the UK, remove anomalies, ensure that enforcement bodies have the necessary powers to effectively enforce CITES requirements and update the list of ports of entry and exit through which CITES controlled species and products from non-EU countries can be brought in and out of the UK.

We think this consultation will be of interest to:

- Businesses trading in CITES specimens
- Enforcement bodies
- Animal/plant trade associations
- Zoos
- Conservation organisations
- Animal/plant hobbyists
- Horticulturalists

Please provide evidence in support of your answers to the questions contained in this document.

The current legislative base

The Convention on International Trade in Endangered Species

1.2 CITES is an international conservation agreement which aims to ensure that trade in endangered species does not threaten their survival. The Convention entered into force in 1975 and the UK ratified in 1976.

1.3 Annually, global trade in wildlife is estimated to be worth billions of dollars and to include hundreds of millions of plant and animal specimens. The trade is diverse, ranging from live animals and plants to a vast array of wildlife products derived from them, including food products, exotic leather goods, wooden musical instruments, timber, tourist curios and medicines. Annual UK trade has been valued at up to £50m.

1.4 Through CITES, 180 countries work to protect endangered species of plants and animals by monitoring and restricting, where necessary, international trade in them, and their parts and derivatives. The objective of CITES is not to prohibit all trade in animals and plants, but to ensure that it is carried out in a sustainable way that ensures the long-term survival of all species. Altogether, CITES helps to protect around 5,500 species of animals and 30,000 types of plants.

1.5 Each Party to CITES must have a Management Authority. Defra and its executive agency, Animal and Plant Health Agency (APHA), are the UK CITES Management Authority and are responsible for ensuring that CITES is properly implemented in the UK through a licensing regime.

1.6 Where necessary applications for CITES permits are referred to a designated CITES Scientific Authority for advice on the conservation status of the species concerned. The UK has two independent Scientific Authorities: the Joint Nature Conservation Committee (JNCC) for fauna, and the Royal Botanic Gardens, Kew for flora.

1.7 The UK Border Force (UKBF) enforces import and export controls at the UK border, including species listed on CITES and the primary responsibility for enforcing CITES controls within the UK lies with the Police.

European regulations

1.8 CITES is implemented in the European Union primarily through Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade¹, and Commission Regulation (EC) No. 865/2006², which lays down the detailed rules concerning implementation of Council Regulation No. 338/97. Together these regulations establish the legal framework within which the UK must implement its CITES obligations, including: details of the species which are subject to control; the circumstances under which licences or permits must be sought; and the procedures and documents required for trading in the listed species.

1.9 The EU Regulations are directly applicable in all Member States. However there are certain areas where the EU Regulations require national measures or where national sovereignty remains. Specifically in the context of this consultation these are the designation of ports of entry and exit; and enforcement, including offences and penalties. These are currently enacted in UK law by the Control of Trade in Endangered Species (Ports of Entry) Regulations 1985 (COTES PoE) and Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES Enforcement).

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31997R0338>

² <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02006R0865-20120927&from=EN>

1.10 COTES (PoE) and COTES (Enforcement), and the EU Regulations that they relate to and implement, put in place controls on the places through which endangered species may be imported or exported and the penalties for breaching offences relating to those controls, as well as controls on the sale, keeping and movement of such species.

1.11 The COTES Regulations (COTES) help the UK play its role in ensuring that trade in such species does not threaten their survival in the wild, and delivers its obligations arising from CITES as well as supporting broader international commitments to halt biodiversity loss, such as those arising from the Convention on Biological Diversity.

Part 2: proposed changes

Rationale

2.1 The age of the existing legislation means that they do not take account of changing trade patterns and practices, or enforcement and investigative techniques. In addition certain EU regulatory requirements (notably relating to the sale and packaging of caviar and the designation of ports of exit) have yet to be fully addressed, and the EU regulations have continued to be developed in light of changing CITES requirements and these requires consequential amendments. The need for change has been highlighted in discussions with enforcement agencies (UKBF and Police), and notably the Environmental Audit Committee (EAC), in its inquiry into wildlife crime during the 2012-13 Parliamentary session³, included reform of COTES as one of its central recommendations.

Overview

2.2 Through a series of discussions with stakeholders we have identified and are considering a number of regulatory changes and these broadly relate to:

On enforcement:

- **Updating the COTES (Enforcement) Regulations** to reflect changes in controls already established by EU regulation to fulfil the obligation on Member States to put in place an effective enforcement regime (including reflecting new restrictions around trade in caviar and some artificially propagated plants).
- **Helping equip enforcement bodies with the necessary capability and powers to enforce the requirements of CITES** and address activity which is

³ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenvaud/140/14002.htm>

contrary to it (including widening the offences relating to providing false statements to obtain permits and certificates and the misuse of permits and certificates to include other documents issued by the UK CITES Management Authority – the licensing authority).

- **Removing existing anomalies in the legislation** that impact on the credibility of the regulations (including the requirement for vets to be present when testing is carried out on non-live animal / plant species or their derivatives).
- **Reviewing the existing criminal offences** contained in the COTES (Enforcement) Regulations.

2.3 The Environmental Audit Committee (EAC), in its inquiry into wildlife crime during the 2012-13 Parliamentary sessions, included reform of COTES as one of its central recommendations. The EAC recommended amendments to COTES which would focus on their effectiveness and their scope for consistent application by the various wildlife crime enforcement agencies to ensure the efficient operation of the CITES regime in the UK. These recommendations have been considered during the review and in drawing up the provisions upon which we are now consulting.

2.4 They raised specific concerns covering the sale of caviar, which do not currently include a sanction for non-compliance, and the certification system covering changes in ownership, both of which, they considered, could provide a loophole. We are therefore considering including a number of provisions relating to trade in caviar; incorrect labelling, trade in incorrectly labelled caviar and trade by non-licensed operators, amongst others.

2.5 The EAC also highlighted an anomaly in COTES which stipulates the presence of a vet where samples are to be taken in CITES cases. This is reasonable in cases involving live animals but no exemption is provided for plants or for dead specimens. As a result a vet might have to be called out to take a sample from, for example, a Brazilian rosewood table. We are seeking to address this anomaly where the intention is to provide for other *suitably qualified persons* to be able to take non-invasive samples from live animals or other samples from non-live specimens, parts and derivatives and plants.

2.6 In addition the EAC proposed changes to COTES which would facilitate effective enforcement, especially with regard to powers for the Police. The proposal is to introduce a new power for Police to be able to serve a retention notice when an offence is suspected.

2.7 Police are currently using the Police and Criminal Evidence Act 1984 (PACE) to issue property retention notices which allow owners of animals/plants to retain specimens while investigations are taking place (so the cost of retention does not fall to the Police). A bespoke provision within COTES would enable enforcement bodies to

- a) serve a retention notice or

- b) seize the specimens prior to the case being heard, and
- c) give them the power to seize the animals post-conviction and
- d) recover any expenses linked to this for a number of COTES offences.

2.8 To further aid enforcement efforts we will seek to include a provision providing enforcement bodies with a new power that will allow them to make “test purchases” (at full market price, paid to the seller) of CITES specimens, for example to help with identification or to check what is being traded, where the purchase of such specimens would normally be an offence.

Proposed provisions

2.9 The following is a list of the proposed specific new or amended enforcement provisions to the COTES (Enforcement) Regulations to deliver the changes outlined above:

Provision A

Amend COTES (Enforcement) Regulation Section 2 in order to align with new definitions contained in EU Regulation 865/2006 relating to dates of acquisition, semi-complete licences, travelling exhibitions, personal ownership and sample collections.

This is a tidying up exercise to ensure that definitions are consistent between the EU Regulation and domestic UK legislation.

Provision B

Amend COTES (Enforcement) Regulation Sections 3 and 4 to address trade in artificially propagated plants which is contrary to Article 7 (1) b of EU Regulation 338/97.

Article 7 (1) b provides a derogation from the requirement for import or export licences for artificially propagated plants under special conditions. Where there is trade contrary to this then this offence would be covered by COTES (Enforcement) Reg Section 3 (regarding false statements) or Section 4 (regarding misuse of permits or certificates) following the proposed amendment.

Provision C

Amend COTES (Enforcement) Regulation Sections 3 and 4 to include a reference to “any and all documents”.

It is already an offence to provide false statements to obtain permits and certificates or misuse such documents; this amendment extends these offences to include “any and all documents” issued by the UK CITES Management Authority (the licensing authority). This could include, for example, Article 10 sale certificates, applications for fee waivers, caviar labels or travelling exhibition certificates.

Provision D

Include new offences (in Sections 3, 4 and/or 6 where applicable) for not complying with registration and other requirements contained in EU Regulation 865/2006 relating to Travelling Exhibition Certificates (Art 33), Personal Ownership Certificates (Art 40) and Sample Collection Certificates (Art 44d).

The intention here would be to bring the above named certificates in line with other documentation currently issued (such as import permits and certificates) so that the same penalties can be applied where the Regulations are not being complied with in their respect.

Provision E

Amend COTES (Enforcement) Regulation Section 4 to ensure the return of expired, unused or no longer valid import/export permits and other documents as required by Arts 10.6 and 11.5 of EU Regulation 865/2006 and provide for an offence where this is not complied with.

A revision to COTES Reg 4 would make it an offence not to return those documents mentioned in the above Articles and as required by those Articles. This is an amendment to the current wording in COTES in order to tie in with the EU Regulations.

Provision F

Amend the wording of COTES (Enforcement) Regulation Section 8 (2) to include “*display to the public for commercial purposes*” for Annex B specimens (whose provenance cannot be proved) in order to reflect the requirements of Art 8.5 of EU 338/97.

This is an amendment to the current wording in COTES in order to tie in with the EU Regulations. Article 8.5 (by reference to article 8) provides that the display of Annex B specimens to the public for commercial purposes is prohibited unless they were lawfully acquired. Further article 16(1) of EU Regulation 338/1997 states that “Member states shall take appropriate measures to ensure the imposition of sanctions for at least the following infringements of this Regulation ... (j)..display to the public for commercial purposes..”. Currently there is no provision for sanctions for such an infringement.

Provision G

Amend COTES (Enforcement) Regulation Section 8 (1) and 8 (2) adding a requirement to include the number of a valid Article 10 certificate in any and all advertising for sale, commercial purposes etc, and provide for a new offence where the number is not included or where an incorrect or invalid number is used.

Article 10 certificates are granted in certain circumstances to allow the sale of specimens which would otherwise not be permitted under Section 8. In order to aid enforcement COTES would be amended to require the number of the certificate be shown in any advert placed and provide for an offence where the seller does not comply with this requirement. We believe this is an important provision to clarify the legality of products offered for sale in a straightforward and easy to interpret manner. This will be particularly relevant to items offered for sale via the internet.

Provision H

Amend COTES (Enforcement) Regulation Section 8 (1) and 8 (2) in order to allow enforcement bodies a new power to make “test purchases” of specimens where trade in such specimens would normally be an offence.

Section 8 makes it an offence to trade in certain specimens, for example those species listed in Annex A of EU Regulation 750/213, and this amendment would allow enforcement bodies, whilst undertaking investigations, to buy CITES listed goods (at full market price to the seller) where such an action would normally be an offence. This would allow them to make checks as to what is being traded which will aid their enforcement efforts.

Provision I

Amend COTES (Enforcement) Reg Section 8 (8) to address a simple textual amendment – the first “shall be” should be deleted as this is superfluous.

This is simply an amendment to the Section in order to remove superfluous text.

Provision J

Amend COTES (Enforcement) Regulation Section 9 to include a provision that the requirement to have a registered vet present would only relate to the taking of invasive samples from live animals and that a “suitably qualified person” would be able to take non-invasive samples from live animals or other samples (from dead specimens, parts and derivatives or plants).

Section 9 currently requires a registered vet to be present when samples are required to be taken from any CITES specimens for testing. So, for example, a vet might be called out to take a sample from a Brazilian rosewood table or a plant specimen. The amendment will mean that a vet would only be required to take invasive samples from

live animals and provide a power for a “suitably qualified person” to take other samples as described above. It was recommended by the EAC in their report into wildlife crime that this anomaly be addressed.

Provision K

Amend COTES (Enforcement) Regulation to include offences relating to CITES trade in Caviar where the requirements of Article 66 of EU Regulation 865/2006 are not complied with.

The EAC report into wildlife crime raised concerns about the trade in caviar in the UK and in order to address these it is proposed there will be new offences relating to: trading in caviar which is incorrectly labelled (in accordance with Article 66.6); processing, packaging, repackaging without an operator’s licence and failing to keep adequate records or making such records available to the UK Management Authority if you are a licensed operator (in accordance with Article 66.7).

Provision L

Include a new provision for a power to allow the seizure of specimens which are covered by documents which have been issued “*on the false premise that the conditions for its issuance were met*”.

COTES currently contains powers of seizure for the Police but not for specimens that are covered by documents obtained under “false premise”. There is provision in Article 11 of EU Regulation 338/97 for power of seizure in such circumstances and this amendment will provide for that and bring COTES in line with the Regulation.

Provision M

Include a new provision enabling enforcement bodies to a) serve a retention notice or b) seize the live specimens prior to the case being heard, c) give them the power to seize the live specimens post-conviction and recover any expenses linked to this.

As detailed previously in this document Police currently use the Police and Criminal Evidence Act 1984 (PACE) to serve a retention notice which allows the owner of live specimens to retain those specimens while investigations are taking place. However this can only be applied in England and Wales at present. This bespoke provision in COTES will mean similar action can be taken throughout the UK.

Provision N

Include a new provision which allows for a ban or suspension from trading in certain CITES specimens (those included in Annex A for example) to be imposed on persons who persistently transgress the Regulations.

The current regulations do not include a sanction that falls between a fine and imprisonment. There may be cases that are sufficiently serious that a fine is not sufficient but a prison sentence may be considered excessive and difficult to secure. In such cases enforcement bodies have suggested that the option of seeking a court imposed ban or suspension from trading may be an appropriate penalty. This would clearly need to be considered proportionate and is unlikely to be appropriate for first or even second time offenders but could be considered for persistent and repeated offending. Such a ban would be based on the seriousness of the transgression, previous offending history and would allow for another level of action available to enforcement bodies. A further option could be an administrative sanction where the UK Management Authority withholds the granting of further permits/certificates where applications are received from persistent offenders.

Question 1: Do you think the proposed amendments and new Provisions A- N above and P below are appropriate and will improve enforcement of CITES requirements in the UK?

On ports of entry and exit:

2.10 Member States are required to designate customs offices for the carrying out of checks and formalities for the introduction into, and export from, the European Union (Article 12 of EU Regulation 338/97). We are proposing to update the list of ports designated for this purpose. For clarity trade within the European Union is not impacted by these proposals.

2.11 At present, the United Kingdom designates seven airports and three ports as points of entry for live CITES-listed fauna. This list in the COTES regulations (which date back to 1985) is out of date. It has not kept pace with developments of ports' capacity to handle plants and animals, for example those ports designated under alternative plant and animal health legislation (such as the Trade in Animals and Related Products Regulations 2011(TARP) SI 2011⁴ in England. and similar legislation covering other parts of the UK. In addition no ports of exit are currently designated.

2.12 Our proposals will increase the number of ports of entry and designate ports of exit for the first time. In practice the designation of ports for both entry and exit is likely to bring the regulatory framework into greater alignment with current practice where trade is going through ports that are fit for the purpose and are designated under alternative plant and animal health regulations, but which meet the requirements of Article 12 of the EU Regulation 338/97.

2.13 As noted the intention in determining which ports to designate is to align controls for commercially importing CITES specimens and derivatives from outside of

⁴ http://www.legislation.gov.uk/uksi/2011/1197/pdfs/ukxi_20111197_en.pdf

the EU, wherever possible, with existing controls under relevant animal and plant health legislation. For example ports that are Border Inspection Posts will be designated for CITES. Designations for ports of exit generally align with the ports of entry designated.

2.14 We have included some exceptions to this approach to include additional ports identified as commonly used for live CITES exports, and for goods transiting between the UK and the Channel Islands and the Isle of Man which are considered external to the EU for CITES, to facilitate efficient trade. Full details of proposed designations can be found in **Annex A**.

2.15 It is not our intention to provide a list of designated ports of entry and exit as a specific annex to the SI; this would become outdated over time and require subsequent amendment. Instead we would propose to cross reference to the ports designated under the relevant plant and animal health regulations with which we are intending to align as far as possible. For example those designated for animal products and live animals⁵. These and any details of any additional ports will be provided in one consolidated source on the government's website.

Provision O

Update the list of designated ports of entry and exit through which CITES controlled species and products can be brought in and out of the UK.

Question 2: Do you think the proposed changes to ports of entry and exit, Provision O, to ensure compliance with the requirements of the EU regulation, will continue to enable traders to efficiently import and export to and from countries outside of the EU?

Additional provisions:

Provision P

Consolidation of all COTES Regulations (and related legislation) into a single statutory instrument to provide a “one-stop shop” for stakeholders for CITES related legislation.

This will avoid duplication of effort and provide ease of reference for COTES provisions for stakeholders and enforcement bodies, and will reduce the number of CITES-related pieces of domestic legislation identified through Defra's Better Regulation Red Tape Challenge initiative. The legislation to be replaced/repealed would be:

- The Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES Enforcement)

⁵ <http://www.defra.gov.uk/animal-trade/imports-non-eu/border-inspection/>

- The Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2005
- The Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2007
- The Control of Trade in Endangered Species (Enforcement) (Amendment) Regulations 2009
- Control of Trade in Endangered Species (Ports of Entry) Regulations 1985 (COTES PoE)
- Extant provisions of the Endangered Species (Import and Export) Act 1976

The full list of the proposed changes can also be found in the table at **Annex B**.

Part 3: reviewing the existing criminal offences

3.1 We are also taking this opportunity to review the existing criminal offences (but not the penalties) contained in the COTES (Enforcement) Regulations with a view to considering whether any additional changes are needed. A full list of current offences can be found below and we would be grateful for any comments you may have (please bear in mind that the proposed provisions already detailed in this document may well require the list to be amended anyway).

3.2 Where offences involving CITES species take place within the UK enforcement bodies have recourse to the following contained within COTES:

False statements – Section 3 of COTES

It is an offence for a person who:

- when obtaining a permit or certificate (including import or export permits, re-export certificates, plant health certificates, and proof that specimens taken from the wild were taken in accordance with the legislation in force on its territory), whether for himself or another, to:
 - knowingly or recklessly makes a statement or representation which is false in a material particular; or
 - knowingly or recklessly furnishes a document or information which is false in a material particular; or

- knowingly or recklessly uses or furnishes a false, falsified or invalid permit or certificate or one altered without authorisation

or,

- knowingly or recklessly makes an import notification which is false in a material particular

A person guilty of such offences shall be liable:

- on summary conviction (at a magistrates' court), to a fine, or to a term of imprisonment not exceeding three months, or to both; or
- on conviction on indictment (at the Crown Court), to imprisonment for a term not exceeding two years or to a fine, or to both.

Misuse of permits and certificates – Section 4 of COTES

It is an offence for a person to knowingly:

- falsify or alter a permit or certificate; or
- use a permit, certificate or import notification for any specimen other than that for which it was issued; or
- use a specimen of a species listed in Annex A of Council Regulation (EC) No 338/97, otherwise than in accordance with the authorisation given at the time of issue of the import permit or subsequently.

A person guilty of such offences shall be liable:

- on summary conviction, to a fine, or to a term of imprisonment not exceeding three months, or to both; or
- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Compliance with permits or certificates – Section 6 of COTES

It is an offence for a person to knowingly contravene any condition or requirement of a permit or certificate issued in accordance with Council Regulation (EC) No 338/97 or Commission Regulation (EC) No 939/97.

A person guilty of such offences shall be liable:

- on summary conviction, to a fine, or to a term of imprisonment not exceeding three months, or to both; or

- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Movement of live specimens – Section 7 of COTES

Where an import permit or any certificate issued in accordance with Council Regulation (EC) No 338/97 in respect of a live specimen of a species listed in Annex A to Council Regulation (EC) No 338/97 specifies an address at which the specimen must be kept, a person who, without reasonable excuse, and contrary to Article 9 of Council Regulation (EC) No 338/97:

- causes or permits that specimen to be transferred from that address without prior written authorisation from the Secretary of State; or
- keeps that specimen at premises other than the specified address or location without prior written authorisation from the Secretary of State,

shall be guilty of an offence.

A person guilty of such offences shall be liable:

- on summary conviction, to a fine, or to a term of imprisonment not exceeding three months, or to both; or
- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Purchase and sale etc – Section 8 of COTES

It is an offence for a person to:

- purchase, offer to purchase, acquire for commercial purposes, display to the public for commercial purposes, use for commercial gain, sell, keep for sale, offer for sale or transport for sale any specimen of a species listed in Annex A to Council Regulation (EC) No 338/97, unless:
 - it is in respect of anything done under, and in accordance with the terms of, any certificate or general derogation granted pursuant to Article 8 of Council Regulation (EC) No 338/97, and
 - at the time the alleged offence was committed the person had no reason to believe that the specimen was a specimen of a species listed in Annex A to Council Regulation (EC) No 338/97.

or,

- purchase, offer to purchase, acquire for commercial purposes, sell, keep for sale, offer for sale or transport for sale any specimen of a species listed in

Annex B to Council Regulation (EC) No 338/97 which has been imported or acquired unlawfully shall be guilty of an offence, unless:

- at the time the alleged offence was committed the person had no reason to believe that the specimen was a specimen of a species listed in Annex B to Council Regulation (EC) No 338/97, and
- he proves:
 - 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 or acquired unlawfully; and
 - that at the time the alleged offence was committed, he had no reason to believe that the specimen was imported or acquired unlawfully.

A person guilty of such offences shall be liable:

- on summary conviction, to a fine, or to a term of imprisonment not exceeding six months, or to both; or
- on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

A person shall be taken to have made such enquiries if he produces to the court a statement which was furnished by the person from whom he obtained possession of the specimen (“the supplier”), which was signed by the supplier or by a person authorised by him, and which states that:

- 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 or acquired unlawfully; and
- 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 or acquired lawfully.

A person who furnishes such a statement 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.

A person guilty of such offences shall be liable:

- on summary conviction, to a fine, or to a term of imprisonment not exceeding six months, or to both; or

- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Powers of entry – Section 9 of COTES

Any person who intentionally obstructs an authorised person acting in accordance with the powers conferred by the regulation (for example entering premises to ascertain whether they are being used in contravention of Council Regulation (EC) No 338/97) shall be guilty of an offence and shall for every such obstruction be liable:

- on summary conviction to a fine.

If a person, with intent to deceive, pretends to be an authorised person, he shall be guilty of an offence and liable:

- on summary conviction, to a fine not exceeding level 5 on the standard scale, or to a term of imprisonment not exceeding three months, or to both; or
- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Other offences available to enforcement bodies:

Offences arising under the Customs and Excise Management Act (CEMA) 1979:

It is an offence under Section 170 of CEMA 1979 for a person to knowingly:

- acquire possession of goods with respect to the importation or exportation of which a prohibition or restriction is for the time being in force under or by virtue of any enactment (for example COTES); or
- carry, remove, deposit, harbour, keep, conceal or in any manner deal with any such goods; and
- who does so to evade any such prohibition or restriction with respect to the goods.

A person guilty of such offences shall be liable:

- on summary conviction, to a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding 6 months, or to both; or
- on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding 7 years, or to both.

Question 3: Do you think the existing offences contained in COTES are fit for purpose and should remain?

Part 4: other issues

4.1 In developing the provisions for inclusion in this consultation a range of other issues were raised which are not currently addressed, or not fully addressed, in these proposals. This includes those that it was determined will not be pursued either because it was decided COTES already sufficiently addresses them; there is already other legislation in place which can be used to address the issue, the Customs and Excise Management Act 1979 or the Animal Welfare Act 2006 for example; or the specific need to address through COTES is not yet considered proven.

Additional measures specifically focused on trade via the Internet

4.2 Trade in CITES specimens and products is increasingly conducted via the internet. While the enforcement provisions of COTES apply to a transaction made via the internet in the same way as they would to any other transaction there is a question as to whether the volume and global nature of the trade require specific additional responses.

4.3 The requirements of CITES can be determined at a number of different levels: as set by the Convention itself; by the EU which may apply additional measures to those in CITES; and finally any stricter measures adopted at a national level. This creates a level of complexity with often parallel legal and illegal markets in the same products, with the legality of a trade being determined by the age, provenance, location or other criteria of the product. This can make it very challenging to determine, at first glance, whether a product being traded on the internet is legal or not. **Provision G** is in large part designed to address this by requiring the Article 10 certificate number to be included in any and all advertising for sale. Any advert not displaying this information can potentially be assumed to be trading a CITES specimen or product illegally. It is hoped that this will assist enforcement authorities and others quickly identify the legal provenance of an item being sold.

4.4 Following on from this we are aware of calls for further specific provisions to address the internet trade. For example “pop-up” warnings, outlining the requirements of CITES and penalties for illegal trading, should be mandated when searches for certain products are conducted. To date we are not convinced that there is a sufficiently strong case to justify a legislative solution at the current time.

4.5 Through **Provision G** we anticipate that there will be greater visibility of the level of potentially illegal trade currently taking place via the internet. If additional measures are needed to address this then a range of options need to be considered,

including non-regulatory options, and a better understanding of the costs and benefits of different approaches is needed. Further work to understand the breadth and impact a UK legislative requirement on what is a global trade, with Internet Service Providers and Trading Companies not based in the UK would also be beneficial.

4.6 We are also aware that previous approaches working with internet trading companies have led to unexpected outcomes, and there is a risk that focusing on the most visible online marketplaces will shift the problem of illegal trade to other parts of the internet that are more difficult to track and enforce against. As such it would also be beneficial to make broader links with work to address the illegal trade in other items via the internet to understand the most effective approaches.

Civil sanctions

4.7 During the course of the COTES Review the use of civil sanctions was considered. The use of civil sanctions as a penalty for an offence was considered as an alternative sanction to prosecution, thereby seeking to reduce the burden on enforcement agencies such as UKBF and the Police, for legitimate businesses who were trying to do the right thing.

4.8 It was noted, however, that following a ministerial statement in 2012, government was observing the following principles with regard to civil sanctions:

Powers to impose **Fixed Monetary Penalties, Variable Monetary Penalties and Restoration Notices** will, as a general rule, only be granted where their use is **restricted to undertakings with more than 250 employees;**

4.9 Businesses who should be complying with the EU and COTES Regulations are those trading in CITES specimens and analysis of the market structure indicates that the vast majority of these are small businesses, up to 49 employees, and a large proportion may be micro businesses, up to 10 employees. There are traders who are not small businesses dealing mainly in leather products (involving major fashion traders / retailers) and antiques (involving some large auction houses) but in the main we are dealing with small or micro businesses to which the above sanctions should not be applied.

Powers to impose **Enforcement Undertakings, Stop Notices and Compliance Notices** may be granted without restriction as to the size of the undertaking against whom they may be used.

4.10 These sanctions *could* be used to address offences carried out by businesses with less than 250 employees but following discussions with enforcement agencies it was felt that there were already similar sanctions available. For example Improvement Notices under the Animal Welfare Act 2006, as an alternative to Compliance Notices, and the use of formal cautions covering lower end or “one off” offences, a process which is already in place and working well.

4.11 Having fully considered the above issues it was decided not to pursue the use of civil sanctions in the new SI but to introduce specific offences to assist enforcement activity and support the efficient operation of CITES in the UK.

Part 5: costs and benefits

5.1 The potential costs to business from the proposed changes to the enforcement measures and the designated ports of entry and exit are described below:

Enforcement

5.2 The new enforcement provisions will support legitimate traders by strengthening controls and penalties on criminal activities (which can lead to legitimate business being undercut by business avoiding compliance costs) and assist with enforcement activity carried out by UKBF (at the point of import/export) and the Police (once CITES specimens have entered the UK) by incorporating the most appropriate and effective means to undertake investigations and prosecutions.

5.3 Amongst the numerous provisions to be included in the new SI we have identified only one which will have cost impact on compliant business, and only to a small degree, and this relates to:

Provision P

Consolidation of all COTES Regulations (and related legislation) into a single statutory instrument to provide a “one-stop shop” for stakeholders for CITES related legislation.

5.4 There will be some familiarisation costs here with introduction of new legislation. Based on a total of 867 businesses (a number identified in the “*Impact of Designations of ports of entry and exit for CITES specimens – Eftec (May 2009)*” report to Defra) but most probably an overestimate) taking half an hour to bring themselves up to speed at a rate of £12 per hour (the middle of the range in what is quite a diverse sector⁶) and adding 30% to allow for non-wage costs of labour, **this equates to an impact of £6,760.**

5.5 There is a further provision which outwardly appears to impact on business. This is:

⁶ Based on the hourly pay of a range of trade related professions examined in the Annual Survey of Hours and Earnings (2013 Provisional results)

Provision G

Amend COTES (Enforcement) Regulation Section 8 (1) and 8 (2) adding a requirement to include the number of a valid Article 10 certificate in any and all advertising for sale, commercial purposes etc, and provide for a new offence where the number is not included or where an incorrect or invalid number is used.

5.6 When they come to advertise certain products for sale, in print or on the internet in the main (rarely, if ever, are other media used in this respect) traders will be required to include the number of the Article 10 certificate which has been granted to them to allow sale. However we consider that the addition of a number will take a negligible amount of time and therefore will not increase the cost of advertising for legitimate traders in possession of the required certificates which are needed for trades to take place. As a result we estimate the cost of compliance with this specific article is likely to be close to zero.

5.7 With regards to possible costs we also looked at the intention to:

Provision M

Include a new provision enabling enforcement bodies to a) serve a retention notice or b) seize the live specimens prior to the case being heard, c) give them the power to seize the live specimens post-conviction and recover any expenses linked to this.

5.8 Police are currently using PACE to serve a retention notice which allows for the owner of live specimens to retain these specimens while investigations are taking place (so the Police do not have to pay to have them looked after). Initially it was thought there may costs to traders who would be unable to sell the specimens subject to a retention notice but who were subsequently found to be compliant. The Police would not provide compensation in such cases, where specimens are retained as part of a legitimate investigation. However it is considered that the impact of this provision would be minimal. There is a fairly low level of trade in live CITES specimens (of the total quantity of specimens traded in the UK between 2009 and 2013 some 28% were live animals), and few cases where retention notices would be used. Additionally and above all Police already use PACE in England and Wales in such cases so “new” impacts would only relate to Scotland and Northern Ireland, minimising the impact further.

5.9 In the main, aside from the costs of familiarisation detailed above, the new provisions in the SI will not impose costs on legitimate business. The provisions provide for aids to enforcement, ensuring the updated EU Regulations are reflected in domestic enforcement provisions, including additional or revised offences where necessary. These offences will have no impact on legitimate business because they relate to requirements with which business should already be complying under EU regulations. There will be no new costs here and no gold-plating of EU Regulations.

Question 4: Are you aware of any additional evidence on costs and benefits that would inform the assessment above, or other costs and benefits on enforcement which have not been identified?

Ports of entry and exit

5.10 The proposed changes will affect those businesses who are importing or exporting CITES specimens on a commercial basis from or to destinations outside the EU, as the designated ports of entry and exit will change from those currently available. The proposals will introduce two types of changes, relative to the 1985 COTES regulations:

- They will increase the number of available ports of entry, which could result in a direct net benefit to business compared to the status quo, where more convenient ports that are not currently used for importing good become available;
- They will, for the first time, introduce a restricted list of ports of exit, which could result in a direct cost to business compared to the status quo where export from ports currently used are prohibited and traders have to transport products through alternative ports.

5.11 The overall impact of designation of ports of exit and entry for CITES specimens was considered in the report produced for Defra by Eftec in 2009. This considered the impact on businesses trading in the main groups of CITES species and specimens imported and exported to non-EU destinations. These sectors include traders in corals, reptiles, birds, leather products and live plants.

5.12 The Eftec report assessed a different set of proposals to those now being consulted upon. While the findings from the Eftec report cannot be directly translated to the regulatory changes we are considering, the underlying data and analysis (especially at the detailed estimates of the impacts of restrictions, which are broken down by port) to estimate the net business impacts of the proposed changes can be used.

Specifically:

- We have used Eftec estimates of the cost of restricting imports to particular ports against a 'no restriction' counterfactual to estimate the benefits of the proposed changes, where in actual fact import restrictions at those particular ports under the outdated COTES regulations are going to be lifted under the current proposals. Removing the cost of restricting access to these ports –i.e. extending the designated list of ports of entry– reduces the direct costs to business of such restrictions by £285,000 per year (2013 prices).
- We have looked at the Eftec estimates of the cost of restricting exports at particular ports to estimate the business costs of the proposed changes. This would imply an

estimate of the direct costs to business associated with the designation of ports of exit at **£38,000 per year** (2013 prices).

5.13 Overall, therefore this would imply a net benefit to business of approximately **£247,000** (£285,000 deregulatory benefits minus £38,000 regulatory cost) from the proposals on ports of entry and exit.

5.14 This assessment comes with some caveats. Any business costs or benefits estimated through this method are likely to be over stated if we assume that the proposal will bring the regulatory framework into greater alignment with current practice where trade is going through ports that are fit for purpose and designated under alternative plant and animal health regulations, which meet the requirements of the EU regulations and which we propose for listing (but are not listed under the outdated 1985 COTES Regulations).

5.15 Furthermore there is some uncertainty around the original Eftec estimates due to the small sample size and uncertainty about the full size of the market. The Eftec model uses an estimate at the highest end of the range for the size of the non-EU market in CITES species and specimens. Assuming a smaller market at the other end of the estimated spectrum, and that the number of traders, and so the additional transport costs would result in smaller numbers overall.

5.16 It is also possible that in the original Eftec study the businesses that were included in the survey may have overstated the costs in terms of loss of turnover (which appear to be high compared to their estimates of increased transport costs). If this is the case, the net effect may be a reduction in both the estimated costs and benefits to business.

5.17 There are a range of benefits to business, traded live animals and other stakeholder that cannot be readily monetised from the proposed designation of specific ports of exit and increase in numbers of port of entry. These include the improved welfare of live specimens through the use of entry and exit points designated as Border Inspection Posts, as well as the reduction the risks of disease transmission and loss of revenue to the illegal trade.

Question 5: Are you aware of any additional evidence on costs and benefits that would inform the assessment above or other costs and benefits on the ports of entry and exit proposals which have not been identified?

Part 6: additional information

Those affected by the proposals

6.1 The proposals will mainly affect those businesses that trade in CITES species, the general public in some instances and licensing and enforcement agencies as previously mentioned: APHA; UKBF; NWCUC and the Police.

How the changes will be made

6.2 Once the provisions have been agreed and finalised the changes will be brought into force by way of a “negative” SI made under the European Communities Act 1972.

When we plan to do it

6.3 Subject to the outcome of this consultation the SI is intended to come into force on **1 October 2015**.

Geographical scope

6.4 The legislative changes will cover England, Wales, Scotland and Northern Ireland.

Part 7: responding to this consultation

Consultation questions

Please provide evidence to support your views where possible.

Question 1 – Do you think the proposed amendments and new Provisions A- N and P are appropriate and will improve enforcement of CITES requirements in the UK?

Question 2 – Do you think the proposed changes to ports of entry and exit, Provision O, to ensure compliance with the requirements of the EU regulation, will continue to enable traders to efficiently import and export to and from countries outside of the EU?

Question 3 – Do you think the existing offences contained in COTES are fit for purpose and should remain?

Question 4 – Are you aware of any additional evidence on costs and benefits that would inform the assessment above, or other costs and benefits on enforcement which have not been identified?

Question 5 – Are you aware of any additional evidence on costs and benefits that would inform the assessment above or other costs and benefits on the ports of entry and exit proposals which have not been identified?

Who we have consulted

A list of interested organisations Defra has approached directly for views will be published on the Defra section of the government web site. We welcome views from all interested parties or individuals by **10 March 2015**.

How to respond

You can respond to this consultation in any one of three ways:

- **Online** by completing the survey to be found via the following link:
<https://consult.defra.gov.uk/biodiversity/changing-cotes-regulations>

This is our preferred method because it is the fastest and most cost-effective way for us to collate, analyse and summarise responses. Alternatively if you are unable to respond on-line you can respond via an

- **Email to:** COTESReview@defra.gsi.gov.uk or by
- **Post to:** COTES Review Team, Area 1/14b, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB

If you wish to obtain a hard copy of this consultation please contact us via the postal or email address above.

Responses received by the deadline will be analysed and reviewed and a summary of responses will be placed on the consultations section of the government web site within 3 months from the end of the consultation.

In line with Defra's policy of openness, copies of the responses we receive will be publically available, at the end of the consultation period, for at least 6 months. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in an e-mail response will not be treated as such a request. You should also be aware that there may be circumstances in which Defra will be required to release information to comply with its obligations under the Freedom of Information Act and the Environmental Information Regulations.

Annex A: proposed ports of entry and exit designations

Airport/Port <i><u>Designated ports currently notified under Article 12 are shown in blue</u></i>	Imports			Exports		
	Live Animals	Products of animal origin	Plants/Timber	Live Animals	Products of animal origin	Plants/Timber
Belfast City Airport			X/X			X/X
Belfast International Airport		X	X/X	X	X	X/X
Belfast Port	X	X	X/X	X	X	X/X
Birmingham Airport			X/N	X		X/N
Bristol Avonmouth Port		X	X/X		X	X/X
Bristol Royal Portbury Dock		X	X/X		X	X/X
Cardiff Airport			N/X	X		N/X
Coventry Int Parcel Post Hub			X/X		X	X/X
Dover Cargo Terminal Eastern Dock			X/X	X		X/X
East Midlands Airport		X	X/X	X	X	X/X
Edinburgh Airport	X		X/X	X		X/X
Falmouth Port	X	X (fishery products only)	X/X	X	X (fishery products only)	X/X
Felixstowe Port		X	X/X	X	X	X/X

Glasgow Airport			X/X			X/X
Glasgow Prestwick Airport	X (2)		X/X	X		X/X
Grimsby Port		X	X/X		X	X/X
Grove Wharf Port (Lincs)			N/X			N/X
Heysham Port	X	X	X/X	X	X	X/X
Hull Port		X	X/X		X	X/X
Immingham Port		X	X/X		X	X/X
Invergordon Port		X	X/X		X	X/X
Liverpool Port	X	X	X/X	X	X	X/X
London Gateway		X			X	
London Gatwick Airport	X (1)	X	X/X	X	X	X/X
London Heathrow Airport	X	X	X/X	X	X	X/X
London Stansted Airport	X (2)	X	X/X	X	X	X/X
Luton Airport			X/X			X/N
Manchester Airport	X (7)	X	X/X	X	X	X/X
Manston Airport	X (2)	X	X/N	X	X	X/N
Peterhead Port		X	X/X		X	X/X
Poole Port	X	X	N/X	X	X	N/X
Portland Port				X	X	X/X
Portsmouth Port	X	X	X/X	X	X	X/X
Sheerness (Medway)			X/X			X/X

⁷ Not a Border Inspection Post for any species of animals specified in the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, as amended by the Rabies (Importation of Dogs, Cats and Other Mammals (Amendment) Order 1994

Southampton Port	X	X	X/X	X	X	X/X
Thamesport		X	X/X		X	X/X
Tilbury Port		X	X/X	X	X	X/X
Weymouth Port	X	X	X/X	X	X	X/X

(1) Other live animals (includes most CITES-listed fauna)

(2) Ungulates, registered equidae

(Ungulates include cattle, swine, sheep and goats, deer, alpaca, llama and other wild and domestic cloven hoofed animals and solipeds)

(Equidae are as defined in Directive 90/426/EEC on health conditions governing the movement of equidae and their import from third countries)

Annex B: List of proposed provisions

Provision A

Amend COTES (Enforcement) Regulation Section 2 in order to align with new definitions contained in EU Regulation 865/2006 relating to dates of acquisition, semi-complete licences, travelling exhibitions, personal ownership and sample collections.

This is a tidying up exercise to ensure that definitions are consistent between the EU Regulation and domestic UK legislation.

Provision B

Amend COTES (Enforcement) Regulation Sections 3 and 4 to address trade in artificially propagated plants which is contrary to Article 7 (1) b of EU Regulation 338/97.

Article 7 (1) b provides a derogation from the requirement for import or export licences for artificially propagated plants under special conditions. Where there is trade contrary to this then this offence would be covered by COTES (Enforcement) Reg Section 3 (regarding false statements) or Section 4 (regarding misuse of permits or certificates) following the proposed amendment.

Provision C

Amend COTES (Enforcement) Regulation Sections 3 and 4 to include a reference to *“any and all documents”*.

It is already an offence to provide false statements to obtain permits and certificates or misuse such documents; this amendment extends these offences to include “any and all documents” issued by the UK CITES Management Authority (the licensing authority). This could include, for example, Article 10 sale certificates, applications for fee waivers, caviar labels or travelling exhibition certificates.

Provision D

Include new offences (in Sections 3, 4 and/or 6 where applicable) for not complying with registration and other requirements contained in EU Regulation 865/2006 relating to Travelling Exhibition Certificates (Art 33), Personal Ownership Certificates (Art 40) and Sample Collection Certificates (Art 44d).

The intention here would be to bring the above named certificates in line with other documentation currently issued (such as import permits and certificates) so that the same penalties can be applied where the Regulations are not being complied with in their respect.

Provision E

Amend COTES (Enforcement) Regulation Section 4 to ensure the return of expired, unused or no longer valid import/export permits and other documents as required by Arts 10.6 and 11.5 of EU Regulation 865/2006 and provide for an offence where this is not complied with.

A revision to COTES Reg 4 would make it an offence not to return those documents mentioned in the above Articles and as required by those Articles. This is an amendment to the current wording in COTES in order to tie in with the EU Regulations.

Provision F

Amend the wording of COTES (Enforcement) Regulation Section 8 (2) to include “display to the public for commercial purposes” for Annex B specimens (whose provenance cannot be proved) in order to reflect the requirements of Art 8.5 of EU 338/97.

This is an amendment to the current wording in COTES in order to tie in with the EU Regulations. Article 8.5 (by reference to article 8) provides that the display of Annex B specimens to the public for commercial purposes is prohibited unless they were lawfully acquired. Further article 16(1) of EU Regulation 338/1997 states that “*Member states shall take appropriate measures to ensure the imposition of sanctions for at least the following infringements of this Regulation ... (j)..display to the public for commercial purposes..*”. Currently there is no provision for sanctions for such an infringement.

Provision G

Amend COTES (Enforcement) Regulation Section 8 (1) and 8 (2) adding a requirement to include the number of a valid Article 10 certificate in any and all advertising for sale, commercial purposes etc, and provide for a new offence where the number is not included or where an incorrect or invalid number is used.

Article 10 certificates are granted in certain circumstances to allow the sale of specimens which would otherwise not be permitted under Section 8. In order to aid enforcement COTES would be amended to require the number of the certificate be shown in any advert placed and provide for an offence where the seller does not comply with this requirement. We believe this is an important provision to clarify the legality of products offered for sale in a straightforward and easy to interpret manner. This will be particularly relevant to items offered for sale via the internet.

Provision H

Amend COTES (Enforcement) Regulation Section 8 (1) and 8 (2) in order to allow enforcement bodies a new power to make “test purchases” of specimens where trade in such specimens would normally be an offence.

Section 8 makes it an offence to trade in certain specimens, for example those species listed in Annex A of EU Regulation 750/2013, and this amendment would allow enforcement bodies, whilst undertaking investigations, to buy CITES listed goods (at full market price to the seller) where such an action would normally be an offence. This would allow them to make checks as to what is being traded which will aid their enforcement efforts.

Provision I

Amend COTES (Enforcement) Reg Section 8 (8) to address a simple textual amendment – the first “*shall be*” should be deleted as this is superfluous.

This is simply an amendment to the Section in order to remove superfluous text.

Provision J

Amend COTES (Enforcement) Regulation Section 9 to include a provision that the requirement to have a registered vet present would only relate to the taking of invasive samples from live animals and that a “*suitably qualified person*” would be able to take non-invasive samples from live animals or other samples (from dead specimens, parts and derivatives or plants).

Section 9 currently requires a registered vet to be present when samples are required to be taken from *any* CITES specimens for testing. So, for example, a vet might be called out to take a sample from a Brazilian rosewood table or a plant specimen. The amendment will mean that a vet would only be required to take invasive samples from live animals and provide a power for a “*suitably qualified person*” to take other samples as described above. It was recommended by the EAC in their report into wildlife crime that this anomaly be addressed.

Provision K

Amend COTES (Enforcement) Regulation to include offences relating to CITES trade in Caviar where the requirements of Article 66 of EU Regulation 865/2006 are not complied with.

The EAC report into wildlife crime raised concerns about the trade in caviar in the UK and in order to address these it is proposed there will be new offences relating to: trading in caviar which is incorrectly labelled (in accordance with Article 66.6); processing, packaging, repackaging without an operator’s licence and failing to keep adequate records

or making such records available to the UK Management Authority if you are a licensed operator (in accordance with Article 66.7).

Provision L

Include a new provision for a power to allow the seizure of specimens which are covered by documents which have been issued “*on the false premise that the conditions for its issuance were met*”.

COTES currently contains powers of seizure for the Police but not for specimens that are covered by documents obtained under “false premise”. There is provision in Article 11 of EU Regulation 338/97 for power of seizure in such circumstances and this amendment will provide for that and bring COTES in line with the Regulation.

Provision M

Include a new provision enabling enforcement bodies to a) serve a retention notice or b) seize the live specimens prior to the case being heard, c) give them the power to seize the live specimens post-conviction and recover any expenses linked to this.

Police are currently using PACE to serve a retention notice which allows for the owner of live specimens to retain these specimens while investigations are taking place (so the Police do not have to pay to have them looked after). Initially it was thought there may costs to traders who would be unable to sell the specimens subject to a retention notice but who were subsequently found to be compliant. The Police would not provide compensation in such cases, where specimens are retained as part of a legitimate investigation. However it is considered that the impact of this provision would be minimal. There is a fairly low level of trade in live CITES specimens (of the total quantity of specimens traded in the UK between 2009 and 2013 some 28% were live animals), and few cases where retention notices would be used. Additionally and above all Police already use PACE in England and Wales in such cases so “new” impacts would only relate to Scotland and Northern Ireland, minimising the impact further.

Provision N

Include a new provision which allows for a ban or suspension from trading in certain CITES specimens (those included in Annex A for example) to be imposed on persons who persistently transgress the Regulations.

The current regulations do not include a sanction that falls between a fine and imprisonment. There may be cases that are sufficiently serious that a fine is insufficient but a prison sentence considered excessive and difficult to secure. In such cases enforcement bodies have suggested the option of seeking a court imposed ban or suspension from trading may be an appropriate penalty. This would need to be proportionate and is unlikely

to be appropriate for first or even second time offenders but could be considered for persistent and repeated offending. Such a ban would be based on the seriousness of the transgression, previous offending history and would allow for another level of action available to enforcement bodies. A further option could be an administrative sanction where the UK Management Authority withholds the granting of further permits/certificates for persistent offenders.

Provision O

Update the list of designated ports of entry and exit through which CITES controlled species and products can be brought in and out of the UK.

Provision P

Consolidation of all COTES Regulations (and related legislation) into a single statutory instrument to provide a “one-stop shop” for stakeholders for CITES related legislation.

This will avoid duplication of effort and provide ease of reference for COTES provisions for stakeholders and enforcement bodies, and will reduce the number of CITES-related pieces of domestic legislation identified through Defra’s Better Regulation Red Tape Challenge initiative.