

## Annex A: Draft statutory guidance for COTES civil sanctions



Department  
for Environment  
Food & Rural Affairs

# Control of Trade in Endangered Species Regulations (COTES) 2018

## Statutory guidance on the use of civil sanctions under COTES 2018

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## Glossary

**Annex:** In this context, typically referring to the [Annexes to Regulation 338/97](#) which list CITES covered by the controls in the UK Wildlife Trade Regulations. These Annexes broadly align with the CITES Appendices, i.e. Annex A approximates Appendix I, Annex B approximates Appendix II and Annex C approximates Appendix III. Annex D does not have a CITES Appendix counterpart.

**App or Appendix:** The species covered by CITES are listed in [three Appendices](#) (App I, App II and App III), according to the degree of protection they need.

**APHA:** The Animal and Plant Health Agency, the UK's CITES Management Authority.

**Assimilated law:** The body of law, originating in the UK's membership of the EU, which was assimilated into domestic UK law on 1 January 2021- see s.6(7) EU Withdrawal Act 2018. This includes the UK Wildlife Trade Regulations.

**CITES:** Convention on International Trade in Endangered Species of Wild Fauna and Flora (sometimes referred to as the Washington Convention).

**COTES:** Control of Trade in Endangered Species Regulations (COTES) 2018 (S.I.2018/703). This is CITES implementing legislation.

**EU:** European Union

**EU WTRs:** [EU Wildlife Trade Regulations](#), directly-applicable law that implements CITES in EU Member States and Northern Ireland under the UK-EU Withdrawal Agreement.

**MA:** Management Authority, the body responsible for domestic CITES implementation in its country. Defra CITES policy team and APHA's Centre for International Trade, Bristol jointly act as the UK MA.

**REUL:** Retained EU Law, the name given to the body of assimilated law between 1 January 2021 and 31 December 2023. The name was changed, without affecting the content, on 1 January 2024 – see s.5 Retained EU Law (Revocation and Reform) Act 2023.

**REUL Act:** The Retained EU Law (Revocation and Reform) Act 2023, which addresses the status of REUL and provides powers for its amendment or revocation.

**UK MA:** UK Management Authority for CITES.

**UK WTR:** UK Wildlife Trade Regulations – the umbrella term for both assimilated legislation and GB originating legislation post-EU Exit, which includes [Regulation](#)

[\(EC\) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein](#), [Commission regulation \(EC\) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation \(EC\) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein](#) and the [Control of Trade in Endangered Species \(COTES\) Regulations 2018](#).

**VMP:** Variable Monetary Penalty. A penalty monetary fine for non-compliance, to remove illicit financial benefit (either through gain or cost avoidance).

## Scope and commencement of this guidance

This guidance relates to the use of civil sanctions in the circumstances outlined under Schedule 2 of the Control of Trade in Endangered Species Regulations 2018 (“COTES 2018”)<sup>1</sup>. These regulations apply across the United Kingdom.

COTES 2018 implements the requirements of Council Regulation (EC) No 338/97 of 9 December 1996 *on the protection of species of wild fauna and flora by regulating trade*, (the EU Wildlife Trade Regulations<sup>2</sup> in Northern Ireland and the assimilated UK Wildlife Trade Regulations<sup>3</sup> in Great Britain) by providing an enforcement framework for non-compliance with the Wildlife Trade Regulations (“WTRs”).

This guidance applies to anyone who deals in CITES listed specimens, which includes:

- any member of the public
- businesses and their employees, such as a director, manager, partner or secretary
- members of an organisation where the members manage its functions
- people who want to import or export CITES listed specimens into and out of the UK(GB)

As per Schedule 2 of COTES 2018, civil sanctions for CITES species are used where:

1. an [Annex A](#) specimen is advertised without display of its valid Article 10 certificate number [Regulation 6 of COTES 2018]; and
2. for the incorrect packaging and labelling of caviar [Articles 64(2), 66(6) and 66(7) of EC regulation 286/2006].

This guidance does not affect the application of penalties under COTES 2018 included in Schedule 1 which will continue to be enforced as criminal offences.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2018/703/contents/made>

<sup>2</sup> [http://ec.europa.eu/environment/cites/legislation\\_en.htm](http://ec.europa.eu/environment/cites/legislation_en.htm)

<sup>3</sup> <https://www.legislation.gov.uk/ukxi/2020/1395/contents/made>

The above two cases of non-compliance may only be enforced through civil sanctions because they are not listed in Schedule 1 of COTES 2018, so criminal sanctions are not available in these cases.

The enforcement policy outlined in this guidance will come into force [3 months] after the publication of the final draft.

## **2. Enforcement principles for areas of non-compliance under COTES 2018**

Together the Department for Environment, Food and Rural Affairs (Defra) and the Animal and Plant Health Agency (APHA) constitute the UK CITES Management Authority. For the purposes of COTES 2018, APHA is the regulatory body. In their role as the regulator, APHA endeavours to follow the principles set out in the Regulator's Code<sup>4</sup> and to act proportionately.

Civil sanctions will be enforced in line with Defra's Enforcement Policy Statement<sup>5</sup>. The Policy Statement outlines guiding principles on proportionality, consistency, transparency and targeting.

Use of civil sanctions under COTES 2018 is intended to stop illegal activity from occurring or continuing by taking proportionate action against those responsible for non-compliance with CITES legislation and deter future illegal activity.

The civil sanction issued will depend on the seriousness, circumstances, nature (type, intent and scale) and impact of the non-compliance and what can be done to rectify it.

The type of civil penalty will depend on a range of factors, including:

- the sale value, where applicable
- whether the perpetrator is an individual or a business
- how culpable the perpetrator is
- how frequently an offence or non-compliance under COTES 2018 has been committed
- the intent to deceive
- making sure the instance of non-compliance does not continue
- the expected effect on future compliance

Civil sanctions are proportionate to the instance of non-compliance and are intended to:

1. address the non-compliance in good time;

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<sup>4</sup> <https://www.gov.uk/government/publications/regulators-code>

<sup>5</sup> <https://assets.publishing.service.gov.uk/media/5a80160340f0b623026916cf/defra-enforcement-policy-statement-2015.pdf>

2. minimise the likelihood of future non-compliance;
3. reduce any harm associated with the non-compliance; and
4. enable escalating enforcement to secure compliance.

Where a minor breach has been committed, in cases where that breach can be easily rectified, APHA may advise on the steps that need to be taken in order to return to full compliance with the Regulations. For example, if an administrative error was made on a single occasion, APHA may advise that the error should be corrected. This action would not prevent APHA from applying civil sanctions in the future for a similar or ongoing breaches where they have not been rectified following the advice provided, or in cases where evidence obtained at a later stage shows the breach was more serious than initially thought.

If written advice is provided by APHA, it will be issued in the form of an advisory letter and will be kept on file for seven years. APHA will keep official records of non-compliance history for seven years.

Our objective is to support compliance with the regulations through advice and education. If you require any or further information on CITES regulations or applications, contact: [wildlife.licensing@apha.gov.uk](mailto:wildlife.licensing@apha.gov.uk)

### **3. What are civil sanctions?**

Civil sanctions are a range of enforcement tools that can be used when people do not comply with regulations, each is a different method of enforcement with a different process and penalty as set out in Schedule 2 of COTES 2018. They ensure there is proportionate recourse for a range of non-compliant activity.

In civil cases, the burden of proof rests with the claimant and the standard of proof required is that the case against the defendant is proved “on a balance of probability”. This means that APHA, as the UK CITES Regulator, would need to be satisfied that it is more likely than not that the non-compliance had occurred based on the available evidence.

Examples of enforcement tools are enforcement undertakings, stop notices and variable monetary penalties (“VMPs”), all of which will be available for use under COTES 2018 to create an effective deterrent framework.

Any changes to the civil sanctions regime under COTES 2018 will be preceded by consultation and accompanied by guidance as required by Schedule 2 of COTES 2018.

## 4. Civil sanctions to be used under COTES 2018

Enforcement undertakings, stop notices and Variable Monetary Penalties (“VMPs”) will be used in response to non-compliant activities listed in Section 1 of this guidance.

- An enforcement undertaking is a voluntary measure that enables an agreement to be made between the parties to remedy the non-compliance and stop it reoccurring. The measures can be suggested by APHA or the non-compliant person/ organisation.
- A stop notice will be considered for ongoing non-compliance, for example. for a live advert to sell an Annex A specimen without including the corresponding Article 10 certificate number.
- VMPs will be considered where the non-compliant activity has been concluded, for example the completion of a sale in which the relevant Article 10 or EC permit number was not appropriately displayed.

For each individual or company, a historical record of civil sanctions issued under COTES 2018 will be held for seven years from when the case was closed by the MA. If no further offending comes to the attention of the MA, after seven years, historic cases of non-compliance that have been dealt with by a way of a civil sanction will not be considered as a relevant factor as part of new non-compliance civil sanctions cases.

### *Enforcement Undertakings*

If APHA have reasonable grounds to suspect non-compliant activity has occurred, an enforcement undertaking may be offered to the non-compliant person/organisation to put it right.

An enforcement undertaking is an agreement made between APHA and the non-compliant person or organisation to take specific action within a specified time period to:

- stop the non-compliance at the earliest opportunity;
- restore what would have been if the non-compliance had not been committed, where this is possible;
- make sure the instance of non-compliance does not continue to occur or happen again.

A written notice sent to the non-compliant person or organisation must be replied to within 28 days from the date of issuance by APHA.

Information contained in an enforcement undertaking must include:

1. the date when the non-compliance stopped, or when it will stop (whichever is the earliest),
2. details of each action or step to be taken,
3. the date when each action or step will be completed and how this will be evidenced.

Enforcement undertakings are more likely to be offered where willingness to repair the damage has been shown, for example if the money earned from selling the item has been repaid or the non-compliance has ceased.

If a breach of the requirements of COTES 2018 is notified to APHA, an enforcement undertaking can be proposed when bringing the non-compliance to the attention of APHA.

Proposals will be considered on a case-by-case basis and APHA have the discretion to either accept or reject an offer of an enforcement undertaking. They will aim to make a decision on whether to accept an enforcement undertaking within [28 days] of receiving a proposal. However, the decision may take longer than this if it is necessary to gather further information to allow APHA to make a fully informed decision.

### *Stop notices*

A stop notice is a formal compliance notice that requires the person or organisation to whom it is issued to immediately stop the activity concerned. It remains in force until the required actions set out in the notice are completed. A stop notice means the identified activity must immediately cease and will contain the steps which an individual or organisation must take to comply with the notice and the timeframe to do so.

The stop notice process is set out in Figure 1, including the right to appeal.

A stop notice will be considered when non-compliance with the regulations is identified, and this non-compliance is ongoing, for example when a sale is identified that has not yet been completed.

A stop notice contains:

- the grounds for serving the notice;
- the activity which is prohibited;
- the steps which the person must take to comply with the notice and the timeframe for completion;
- the right of appeal;
- the consequences of failing to comply with the notice.

The restrictions specified by the stop notice cease if the conditions set out in the stop notice have been fulfilled by the non-compliant individual within the specified timeframe.

APHA require that sufficient evidence is submitted to them by the subject of the stop notice to demonstrate fulfilment of the conditions of the stop notice in the specified timeframe.



APHA will issue a completion certificate once they are satisfied that the stop notice has been complied with in full.

A stop notice will stay in force until all of the required actions have been completed and a completion certificate issued. After the actions specified in the stop notice have been completed, a completion certificate may be requested at any time.

APHA expect a completion certificate to be applied for within 28 days of completing the actions needed or by the date specified in the stop notice, if this is later.

To request a completion certificate, the “Stop Notice Completion Certificate” form must be used. APHA will send this form together with the other documents that are part of the stop notice.

APHA will decide within 14 days from the date they receive an application whether or not to issue a completion certificate and they will provide this decision in writing.

Not adhering with the conditions of a stop notice can or may result in prosecution.

### **Completion certificate accepted**

If APHA is satisfied the stop notice has been complied with, they will issue a completion certificate. Once a completion certificate has been received, the stop notice will no longer apply.

### **Completion certificate declined**

If, following consideration of the evidence, APHA decide not to issue a completion certificate, there is a right to appeal. This right to appeal will be explained alongside the decision.

### *Variable Monetary Penalties (“VMPs”)*

A VMP is a notice requiring the payment of a fine of an amount up to the statutory maximum levels as determined by APHA. A VMP may be the more appropriate option where previous civil sanctions have failed to secure compliance.

If a VMP is considered the best option to address the non-compliance in question, a notice of intent will be served initially to allow the recipient to provide written representations as to why the VMP should not be issued within 28 days from receipt of the notice of intent. Following consideration of the representations, APHA may decide to withdraw the notice of intent or proceed with issuance of the final notice.

The level of fine imposed is at the discretion of APHA and will be determined in accordance with a sliding scale which is based on aggravating factors. The factors to be considered when determining the level of fine include, but are not limited to:

- the value of the non-compliant sale;

- the seriousness of the non-compliance, including the level of threat faced by the relevant species, the number of specimens offered for sale, and whether this is a repeat non-compliance;
- the nature of the organisation or individual responsible for the non-compliance including the volume of CITES-listed trade conducted by them.

There may be additional relevant factors which are specific to the individual circumstances of the non-compliant action. If this is the case, these factors will be set out in the notice.

The enforcement process for VMPS, including the right for appeal, is shown in Figure 2.

## 5. Appeals process

Schedule 2 of COTES 2018 gives the recipient of a stop notice or VMP the right of appeal on the following grounds:

- a) that the decision to serve the stop notice or final notice was based on an error of fact;
- b) that the decision was wrong in law;
- c) that the decision was unreasonable (including the amount of the penalty for VMPs);
- d) that any step specified in the notice is unreasonable;
- e) that the person has not contravened a relevant regulation or for stop notices would not have contravened it had the stop notice not been served.

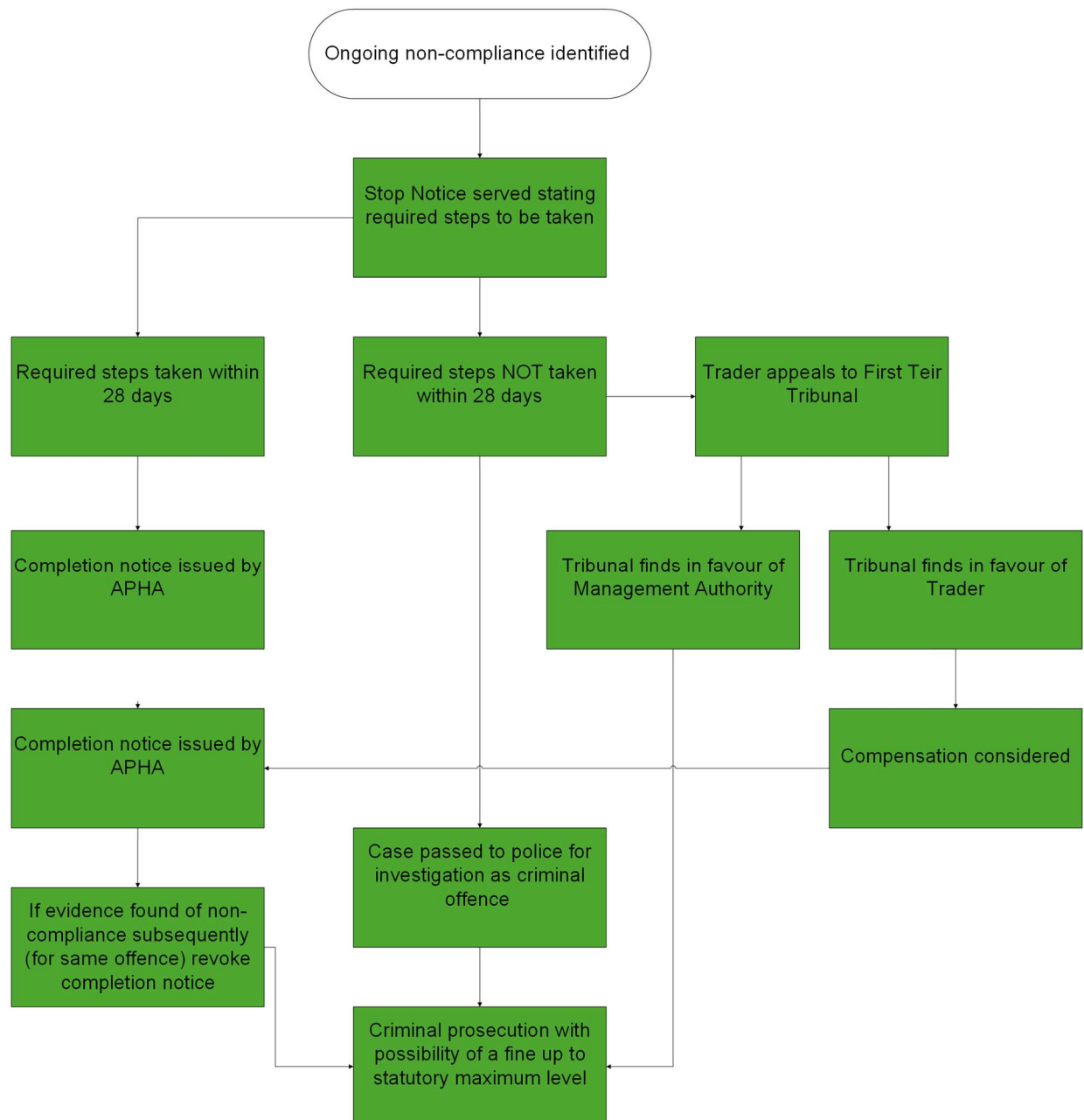
Appeals are to be made to the General Regulatory Chamber of the First Tier Tribunal within six weeks of the service of the stop notice or final VMP notice. Guidance on how to lodge an appeal is found here: <https://www.gov.uk/guidance/environmental-fines-or-notices-appeal-against-a-regulator>.

### *Compensation*

For stop notices only, Schedule 2 of COTES 2018 places a responsibility on APHA to compensate the recipient of a stop notice for loss incurred due to the service of the stop notice if the stop notice was unreasonable (as per the grounds for appeal) or the First-tier Tribunal finds in favour of the appellant for either the service of a stop notice or the decision to not issue a completion certificate.

The decision not to award compensation or the value of compensation awarded can be appealed as above.

## Figure 1 – Stop Notice flowchart



## Figure 2 – Variable Monetary Penalty flowchart

