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Council Regulation (EC) No 338/97

of 9 December 1996

on the protection of species of wild fauna and flora by regulating trade therein

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Council Regulation (EC) No 338/97

of 9 December 1996

on the protection of species of wild fauna and flora by regulating trade therein

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s (1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 189c of the Treaty,

(1) Whereas Regulation (EEC) No 3626/82 applies the Convention on International Trade in Endangered Species of Wild Fauna and Flora in the Community with effect from 1 January 1984; whereas the purpose of the Convention is to protect endangered species of fauna and flora through controls on international trade in specimens of those species;

(2) Whereas, in order to improve the protection of species of wild fauna and flora which are threatened by trade or likely to be so threatened, Regulation (EEC) No 3626/82 must be replaced by a Regulation taking account of the scientific knowledge acquired since its adoption and the current structure of trade; whereas, moreover, the abolition of controls at internal borders resulting from the Single Market necessitates the adoption of stricter trade control measures at the Community's external borders, with documents and goods being checked at the customs office at the border where they are introduced;

(3) Whereas the provisions of this Regulation do not prejudice any stricter measures which may be taken or maintained by Member States, in compliance with the Treaty, in particular with regard to the holding of specimens of species covered by this Regulation;

(4) Whereas it is necessary to lay down objective criteria for the inclusion of species of wild fauna and flora in the Annexes to this Regulation;

(5) Whereas the implementation of this Regulation necessitates the application of common conditions for the issue, use and presentation of documents relating to authorization of the introduction into the Community and the export or re-export from the Community of specimens of the species covered by this Regulation; whereas it is necessary to lay down specific provisions relating to the transit of specimens through the Community;

(6) Whereas it is for a management authority of the Member State of destination, assisted by the scientific authority of that Member State and, where appropriate, taking into account any opinion of the Scientific Review Group, to decide on the requests for introduction of specimens into the Community;

(7) Whereas it is necessary to supplement the provisions on re-export with a consultation procedure, in order to limit the risk of infringement;

(8) Whereas, in order to guarantee effective protection of species of wild fauna and flora, additional restrictions may be imposed on the introduction of specimens into, and the export thereof from, the Community; whereas, with regard to live specimens, these restrictions may be supplemented by restrictions at Community level on the holding or movement of such specimens within the Community;

(9) Whereas it is necessary to lay down specific provisions applicable to captive-born and bred, or artificially propagated specimens, to specimens which are personal or household effects, and to non-commercial loans, donations or exchanges between registered scientists and scientific institutions;

(10) Whereas there is a need, in order to ensure the broadest possible protection for species covered by this Regulation, to lay down provisions for controlling trade and movement of specimens within the Community, and the conditions for housing specimens; whereas the certificates issued under this Regulation, which contribute to controlling these activities, must be governed by common rules on their issue, validity and use;

(11) Whereas measures should be taken to minimize the adverse effects on live specimens of transport to their destination, from or within the Community;

(12) Whereas, to ensure effective controls and to facilitate customs procedures, customs offices should be designated, with trained personnel responsible for carrying out the necessary formalities and corresponding checks where specimens are introduced into the Community, in order to assign them a customs-approved treatment or use within the meaning of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, or where they are exported or re-exported from the Community; whereas there should also be facilities guaranteeing that live specimens are adequately housed and cared for;

(13) Whereas the implementation of this Regulation also calls for the designation of management and scientific authorities by the Member States;

(14) Whereas informing the public and making them aware of the provisions of this Regulation, particularly at border crossing points, is likely to encourage compliance with these provisions;

(15) Whereas, in order to ensure effective enforcement of this Regulation, Member States should closely monitor compliance with its provisions and, to that end, cooperate closely between themselves and with the Commission; whereas this requires the communication of information relating to the implementation of this Regulation;

(16) Whereas the monitoring of levels of trade in the species of wild fauna and flora covered by this Regulation is of crucial importance for assessing the effects of trade on the conservation status of species; whereas detailed annual reports should be drawn up in a common format;

(17) Whereas, in order to guarantee compliance with this Regulation, it is important that Member States impose sanctions for infringements in a manner which is both sufficient and appropriate to the nature and gravity of the infringement;

(18) Whereas it is essential to lay down a Community procedure enabling the implementing provisions and amendments to the Annexes of this Regulation to be adopted within a suitable period; whereas a Committee must be set up to permit close and effective cooperation between the Member States and the Commission in this field;

(19) Whereas the multitude of biological and ecological aspects to be considered in the implementation of this Regulation requires the setting up of a Scientific Review Group, whose opinions will be forwarded by the Commission to the Committee and the management bodies of the Member States, to assist them in making their decisions,

HAS ADOPTED THIS REGULATION:

Article 1

Object

The object of this Regulation is to protect species of wild fauna and flora and to guarantee their conservation by regulating trade therein in accordance with the following Articles.

This Regulation shall apply in compliance with the objectives, principles and provisions of the Convention defined in Article 2.

Article 2

Definitions

For the purposes of this Regulation:

(a) *Omitted*

(b) ‘convention’ shall mean the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites);

(c) ‘country of origin’ shall mean the country in which a specimen was taken from the wild, captive-bred or artificially propagated;

(d) ‘import notification’ shall mean the notification given by the importer or his agent or representative, at the time of the introduction into Gibraltar of a specimen of a species included in Annexes C or D, on a

form prescribed in regulations made by the Minister with responsibility for the Environment;

(e) ‘introduction from the sea’ shall mean the introduction into Gibraltar of any specimen which was taken in, and is being introduced directly from, the marine environment not under the jurisdiction of any State, including the air-space above the sea and the sea-bed and subsoil beneath the sea;

(f) ‘issuance’ shall mean the completion of all procedures involved in preparing and validating a permit or certificate and its delivery to the applicant;

(g) management authority’ shall mean the Collector of Customs designated in accordance with Article 13(1)(a);

(h) *Omitted*

(i) ‘offering for sale’ shall mean offering for sale and any action that may reasonably be construed as such, including advertising or causing to be advertised for sale and invitation to treat;

(j) ‘personal or household effects’ shall mean dead specimens, parts and derivatives thereof, that are the belongings of a private individual and that form, or are intended to form, part of his normal goods and chattels;

(k) ‘place of destination’ shall mean the place at which at the time of introduction into Gibraltar, it is intended that specimens will normally be kept; in the case of live specimens, this shall be the first place where specimens are intended to be kept following any period of quarantine or other confinement for the purposes of sanitary checks and controls;

(l) ‘population’ shall mean a biologically or geographically distinct total number of individuals;

(m) ‘primarily commercial purposes’ shall mean all purposes the non-commercial aspects of which do not clearly predominate;

(n) ‘re-export from Gibraltar’ shall mean export from Gibraltar of any specimen that has previously been introduced;

(na) ‘Regulation 338/97 (pre-exit) shall mean Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, as it had effect immediately before 1 January 2021;

(o) ‘reintroduction into Gibraltar’ shall mean introduction into the Community of any specimen that has previously been exported or re-exported;

(p) ‘sale’ shall mean any form of sale. For the purposes of this Regulation, hire, barter or exchange shall be regarded as sale; cognate expressions shall be similarly construed;

(q) ‘scientific authority’ shall mean a scientific authority designated, in accordance with Article 13(2) or, in the case of a third country party to the Convention, in accordance with Article IX of the Convention;

(r) *Omitted*

(s) ‘species’ shall mean a species, subspecies or population thereof;

(t) ‘specimen’ shall mean any animal or plant, whether alive or dead, of the species listed in Annexes A to D, any part or derivative thereof, whether or not contained in other goods, as well as any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals or plants of those species, unless such parts or derivatives are specifically exempted from the provisions of this Regulation or from the provisions relating to the Annex in which the species concerned is listed by means of an indication to that effect in the Annexes concerned.

A specimen will be considered to be a specimen of a species listed in Annexes A to D if it is, or is part of or derived from, an animal or plant at least one of whose ‘parents’ is of a species so listed. In cases where the ‘parents’ of such an animal or plant are of species listed in different Annexes, or of species only one of which is listed, the provisions of the more restrictive Annex shall apply. However, in the case of specimens of hybrid plants, if one of the ‘parents’ is of a species listed in Annex A, the provisions of the more restrictive Annex shall apply only if that species is annotated to that effect in the Annex;

(ta) ‘third country’ shall mean any country or territory other than Gibraltar;

(tb) ‘third country authority’ shall mean the authority of a third country party to the Convention designated in accordance with Article IX of the Convention

(u) ‘trade’ shall mean the introduction into Gibraltar, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within Gibraltar, of specimens subject to the provisions of this Regulation;

(v) ‘transit’ shall mean the transport of specimens between two points outside Gibraltar through the territory of Gibraltar which are shipped to a named consignee and during which any interruption in the movement arises only from the arrangements necessitated by this form of traffic;

(w) ‘worked specimens that were acquired more than 50 years previously’ shall mean specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, before 3rd March 1947 and that have been, to the satisfaction of the management authority, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to effect their purpose;

(x) ‘checks at the time of introduction, export, re-export and transit’ shall mean documentary checks on the certificates, permits and notifications provided for in this Regulation and — in cases where Gibraltar legislation so provides or in other cases by representative sampling of the consignments — examination of the specimens, where appropriate accompanied by the taking of samples with a view to analysis or more detailed checks.

Article 3

Scope

1. Annex A shall contain:

(a) the species listed in Appendix I to the Convention for which Gibraltar has not entered a reservation;

(b) any species:

(i) which is, or may be, in demand for utilization in Gibraltar or for international trade and which is either threatened with extinction or so rare that any level of trade would imperil the survival of the species; or

(ii) which is in a genus of which most of the species or which is a species of which most of the subspecies are listed in Annex A in accordance with the criteria in subparagraphs (a) or (b)(i) and whose listing in the Annex is essential for the effective protection of those taxa.

2. Annex B shall contain:

(a) the species listed in Appendix II to the Convention, other than those listed in Annex A, for which Gibraltar has not entered a reservation;

(b) the species listed in Appendix I to the Convention for which a reservation has been entered;

(c) any other species not listed in Appendices I or II to the Convention:

(i) which is subject to levels of international trade that might not be compatible:

- with its survival or with the survival of populations in certain countries, or

- with the maintenance of the total population at a level consistent with the role of the species in the ecosystems in which it occurs: or

(ii) whose listing in the Annex for reasons of similarity in appearance to other species listed in Annex A or Annex B, is essential in order to ensure the effectiveness of controls on trade in specimens of such species;

(d) species in relation to which it has been established that the introduction of live specimens into the natural habitat of Gibraltar would constitute an ecological threat to wild species of fauna and flora indigenous to Gibraltar.

3. Annex C shall contain:

(a) the species listed in Appendix III to the Convention, other than those listed in Annexes A or B, for which Gibraltar has not entered a reservation;

(b) the species listed in Appendix II to the Convention for which a reservation has been entered.

4. Annex D shall contain:

(a) species not listed in Annexes A to C which are imported into Gibraltar in such numbers as to warrant monitoring;

(b) the species listed in Appendix III to the Convention for which a reservation has been entered.

Article 4

Introduction into Gibraltar

1. The introduction into Gibraltar of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by the management authority.

The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when the following conditions have been met:

(a) the competent scientific authority, has advised that the introduction into Gibraltar:

(i) would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species;

(ii) is taking place:

- for one of the purposes referred to in Article 8(3)(e), (f) and (g), or

- for other purposes which are not detrimental to the survival of the species concerned;

(i) the applicant provides documentary evidence that the specimens have been obtained in accordance with the legislation on the protection of the species concerned which, in the case of import from a third country of specimens of a species listed in the Appendices to the Convention, shall be an export permit or re-export certificate, or copy thereof, issued in accordance with the Convention

by a competent authority of the country of export or re-export;

(ii) however, the issuance of import permits for species listed in Annex A in accordance with Article 3(1)(a) shall not require such documentary evidence, but the original of any such import permit shall be withheld from the applicant pending presentation of the export permit or re-export certificate;

(b) the competent scientific authority is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

(c) the management authority is satisfied that the specimen is not to be used for primarily commercial purposes;

(d) the management authority is satisfied, following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the import permit; and

(e) in the case of introduction from the sea, the management authority is satisfied that any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

2. The introduction into Gibraltar of specimens of the species listed in Annex B shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by the management authority.

The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when:

(a) the competent scientific authority, after examining available data, is of the opinion that the introduction into Gibraltar would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of the current or anticipated level of trade. This opinion shall be valid for subsequent imports as long as the abovementioned aspects have not changed significantly;

(b) the applicant provides documentary evidence that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

(c) the conditions referred to in paragraph 1(b)(i), (e) and (f) have been met.

3. The introduction into Gibraltar of specimens of the species listed in Annex C shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import notification and:

(a) in the case of export from a country mentioned in relation to the species concerned in Annex C, the applicant shall provide documentary evidence, by means of an export permit issued in accordance with the Convention by an authority of that country competent for the purpose, that the specimens have been obtained in accordance with the national legislation on the conservation of the species concerned; or

(b) in the case of export from a country not mentioned in relation to the species concerned in Annex C or re-export from any country, the applicant shall present an export permit, a re-export certificate or a certificate of origin issued in accordance with the Convention by an authority of the exporting or re-exporting country competent for the purpose.

4. The introduction into Gibraltar of specimens of the species listed in Annex D shall be subject to completion of the necessary checks and the prior presentation of an import notification at the border customs office at the point of introduction.

5. The conditions for the issuance of an import permit as referred to in paragraph 1(a) and (d) and in paragraph 2(a), (b) and (c) shall not apply to specimens for which the applicant provides documentary evidence:

(a) that they had previously been legally introduced into or acquired in Gibraltar and that they are, modified or not, being reintroduced into Gibraltar; or

(b) that they are worked specimens that were acquired more than 50 years previously.

6. In consultation with the countries of origin concerned, and taking account of any opinion from the scientific authority, the Minister with responsibility for the Environment may, by regulations, establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into Gibraltar:

(a) on the basis of the conditions referred to in paragraph 1(a)(i) or (e), of specimens of species listed in Annex A;

(b) on the basis of the conditions referred to in paragraph 1(e) or paragraph 2(a), of specimens of species listed in Annex B; and

(c) of live specimens of species listed in Annex B which have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span; or

(d) of live specimens of species for which it has been established that their introduction into the natural environment of Gibraltar presents an ecological threat to wild species of fauna and flora indigenous to Gibraltar.

The Minister with responsibility for the Environment must on a quarterly basis publish a list of such restrictions, if any.

7. Where special cases of transhipment, air transfer or rail transport occur following introduction into Gibraltar, derogations from completion of the checks and presentations of import documents at the border customs office at the point of introduction which are referred to in paragraphs 1 to 4 may, by regulations, be prescribed by the Minister with responsibility for the Environment in order to permit such checks and presentations to be made at another customs office designated in accordance with Article 12(1).

Article 5

Export or re-export from Gibraltar

1. The export or re-export from Gibraltar of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by the management authority.

2. An export permit for specimens of the species listed in Annex A may be issued only when the following conditions have been met:

(a) the competent scientific authority has advised in writing that the capture or collection of the specimens in the wild or their export will not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species;

(b) the applicant provides documentary evidence that the specimens have been obtained in accordance with the legislation in force on the protection of the species in question;

(c)
the management authority is satisfied that:

(i)
any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(ii)
- the specimens of species not listed in Annex I to the Convention will not be used for primarily commercial purposes, or

- in the case of export to a State party to the Convention of specimens of the species referred to in Article 3(1)(a) of this Regulation, an import permit has been issued; and

(d) the management authority is satisfied, following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the export permit.

3. A re-export certificate may be issued only when the conditions referred to in paragraph 2 (c) and (d) have been met and when the applicant provides documentary evidence that the specimens:

(a) were introduced into Gibraltar in accordance with the provisions of this Regulation;

(aa) were introduced into Gibraltar before 1 January 2021 and in accordance with the requirements of Regulation 338/97 (pre-exit);

(b) if introduced into Gibraltar before the entry into force of Regulation 338/97 (pre-exit); were introduced in accordance with the provisions of Regulation (EEC) No 3626/82; or

(c) if introduced into Gibraltar before 1984, entered international trade in accordance with the provisions of the Convention; or

(d) were legally introduced into the territory of Gibraltar before the provisions of the Regulations referred to in (aa) and (b) or of the Convention became applicable to them.

4. The export or re-export from Gibraltar of specimens of the species listed in Annexes B and C shall be subject to completion of the necessary checks and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by the management authority.

An export permit may be issued only when the conditions referred to in paragraph 2 (a), (b), (c) (i) and (d) have been met.

A re-export certificate may be issued only when the conditions referred to in paragraph 2 (c) (i) and (d) and in paragraph 3 (a) to (d) have been met.

5. *Omitted*

6. The conditions for the issuance of an export permit or re-export certificate as referred to in paragraph 2 (a) and (c) (ii) shall not apply to:

(i) worked specimens that were acquired more than 50 years previously; or

(ii) dead specimens and parts and derivatives thereof for which the applicant provides documentary evidence that they were legally acquired before the provisions of Regulation 338/97 (pre-exit), or of Regulation (EEC) No 3626/82 or of the Convention became applicable to them.

7.

(a) The competent scientific authority shall monitor the issuance of export permits by the management authority for specimens of species listed in Annex B and actual exports of such specimens. Whenever such scientific authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystem in which it occurs, and well above the level at which that species might become eligible for inclusion in Annex A in accordance with Article 3 (1) (a) or (b) (i), the scientific authority shall advise the management authority, in writing, of suitable measures to be taken to limit the issuance of export permits for specimens of that species

(b) Whenever the management authority is advised of the measures referred to in (a), it shall inform and send comments to the Minister with responsibility for the Environment who may make regulations

restricting exports of the species concerned.

Article 6

Rejection of applications for permits and certificates referred to in Articles 4, 5 and 10

1. *Omitted.*

2. *Omitted.*

3. When an application is made for a permit or certificate relating to specimens for which such an application has previously been rejected, the applicant must inform the competent authority to which the application is submitted of the previous rejection.

Article 7

Derogations

1. *Specimens born and bred in captivity or artificially propagated*

(a) Save where Article 8 applies, specimens of species listed in Annex A that have been born and bred in captivity or artificially propagated shall be treated in accordance with the provisions applicable to specimens of species listed in Annex B.

(b) In the case of artificially propagated plants, the provisions of Articles 4 and 5 may be waived under special conditions set out in regulations made by the Minister with responsibility for the Environment, relating to:

(i) the use of phytosanitary certificates;

(ii) trade by registered commercial traders and by the scientific institutions referred to in paragraph 4 of this Article; and

(iii) trade in hybrids.

(c) (c) The criteria for determining whether a specimen has been born and bred in captivity or artificially propagated and whether for commercial purposes, as well as the special conditions referred to in (b), shall be specified in writing, and published, by the Minister with responsibility for the Environment.

2. *Transit*

(a) By way of derogation from Article 4, where a specimen is in transit through Gibraltar, checks and presentation at the border customs office at the point of introduction of the prescribed permits, certificates and notifications shall not be required.

(b) In the case of species listed in the Annexes in accordance with Article 3 (1) and Article 3 (2) (a) and (b), the derogation referred to in (a) shall apply only where a valid export or re-export document provided for by the Convention, relating to the specimens that it accompanies and specifying the destination of the specimens, has been issued by the competent authorities of the exporting or re-exporting third country.

(c) If the document referred to in (b) has not been issued before export or re-export, the specimen must be seized and may, where applicable, be confiscated unless the document is submitted retrospectively in compliance with the conditions set out in regulations made, by the Minister with responsibility for the Environment.

3. *Personal and household effects*

By way of derogation from Articles 4 and 5, the provisions therein shall not apply to dead specimens, parts and derivatives of species listed in Annexes A to D which are personal or household effects being introduced into Gibraltar, or exported or re-exported therefrom, in compliance with provisions that shall be specified in writing, and published, by the Minister with responsibility for the Environment.

4. *Scientific institutions*

The documents referred to in Articles 4, 5, 8 and 9 shall not be required in the case of non-commercial loans, donations and exchanges between scientists and scientific institutions, registered by the management authorities of the States in which they are located, of herbarium specimens and other preserved, dried or embedded museum specimens, and of live plant material, bearing a label, the model for which has been issued or approved by a management authority of a third country.

Article 8

Provisions relating to the control of commercial activities

1. The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited.

2. *Omitted*

3. In accordance with the requirements of other Gibraltar legislation on the conservation of wild fauna and flora, exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by the management authority, on a case-by-case basis where the specimens:

(a) were

(i) acquired in, or were introduced into, a member State before the provisions relating to species listed in Appendix I to the Convention or in Annex Ci to Regulation (EEC) No 3626/82 or in Annex A to Regulation 338/97 (pre-exit) became applicable to the specimens; and

(ii) introduced into Gibraltar before 1 January 2021; or

(aa) were acquired in, or were introduced into, Gibraltar before the provisions relating to species listed in Appendix 1 to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 or in Annex A to Regulation 338/97 (pre-exit) became applicable to the specimens; or

(b) are worked specimens that were acquired more than 50 years previously; or

(c) were introduced into Gibraltar in compliance with the provisions of this Regulation and are to be used for purposes which are not detrimental to the survival of the species concerned; or

(d) are captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens; or

(e) are required under exceptional circumstances for the advancement of science or for essential biomedical purposes pursuant to Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes(1) where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species which have

been born and bred in captivity; or

(f) are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned; or

(g) are intended for research or education aimed at the preservation or conservation of the species; or

(h) originate in Gibraltar and were taken from the wild in accordance with the legislation in force in Gibraltar.

4. General derogations from the prohibitions referred to in paragraph 1 based on the conditions referred to in paragraph 3, as well as general derogations with regard to species listed in Annex A in accordance with point (ii) of Article 3(1)(b) may be defined by the Minister with responsibility for the Environment in regulations. Any such derogations must be in accordance with the requirements of other Gibraltar legislation on the conservation of wild fauna and flora.

5. The prohibitions referred to in paragraph 1 shall also apply to specimens of the species listed in Annex B except where it can be proved to the satisfaction of the management authority that such specimens were acquired and, if they originated outside Gibraltar, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora.

6. The management authority shall have discretion to sell any specimen of the species listed in Annexes B to D they have confiscated under this Regulation, provided the specimen is not thus returned directly to the person or entity from whom it was confiscated or who was party to the offence. Such specimens may then be treated for all purposes as if they had been legally acquired.

Article 9

Movement of live specimens

1. Any movement within Gibraltar of a live specimen of a species listed in Annex A from the location indicated in the import permit or in any certificate issued in compliance with this Regulation, or Regulation 338/97 (pre exit), shall require prior authorization from the management authority. In other cases of movement, the person responsible for moving the specimen must be able, where applicable, to provide proof of the legal origin of the specimen.

2. Such authorization shall:

(a) be granted only when the competent scientific authority, is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

(b) be confirmed by issuance of a certificate;

3. However, no such authorization shall be required if a live animal must be moved for the purpose of urgent veterinary treatment and is returned directly to its authorized location.

4. Where a live specimen of a species listed in Annex B is moved within Gibraltar, the holder of the specimen may relinquish it only after ensuring that the intended recipient is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for.

5. When any live specimens are transported into, from or within Gibraltar or are held during any period of transit or transhipment, they shall be prepared, moved and cared for in a manner such as to minimize the risk of injury, damage to health or cruel treatment and, in the case of animals, in conformity with any applicable Gibraltar legislation on the protection of animals during transport.

6. The Minister with responsibility for the Environment may, by regulations, establish restrictions on the holding or movement of live specimens of such species in relation to which restrictions on introduction into Gibraltar have been established in accordance with Article 4(6).

Article 10

Certificates to be issued

On receiving an application, together with all the requisite supporting documents, from the person concerned and provided that all the conditions governing their issuance have been fulfilled, the management authority may issue a certificate for the purposes referred to in Article 5 (2) (b), 5 (3) and (4), Article 8 (3) and Article 9 (2) (b).

Article 11

Validity of and special conditions for permits and certificates

1. *Omitted*

2. *Omitted*

3. Any permit or certificate issued in accordance with this Regulation may stipulate conditions and requirements imposed by the management authority to ensure compliance with the provisions thereof.

4. Any import permit issued on the basis of a copy of the corresponding export permit or re-export certificate shall be valid for the introduction of specimens into Gibraltar only when accompanied by the original of the valid export permit or re-export certificate.

5. The Minister for the Environment may, by regulations, establish time limits for the issuance of permits and certificates.

Article 12

Places of introduction and export

1. The Minister with responsibility for the Environment must designate customs offices for carrying out the checks and formalities for the introduction into and export from Gibraltar, in order to assign to them a customs-approved treatment or use, of specimens of species covered by this Regulation and shall state which offices are specifically intended to deal with live specimens.

2. All offices designated in accordance with paragraph 1 shall be provided with sufficient and adequately trained staff. The Minister with responsibility for the Environment ensure that accommodation is provided in accordance with relevant Gibraltar legislation as regards the transport and accommodation of live animals and that, where necessary, adequate steps are taken for live plants.

3. A list of the customs offices designated in accordance with paragraph 1 must be published in such form and manner as the Minister for the Environment considers appropriate.

4. In exceptional cases and in accordance with the criteria set out in regulations made by the Minister with responsibility for the Environment, the management authority may authorise the introduction into Gibraltar or the export or re-export therefrom at a customs office other than one designated in accordance with paragraph 1.

5. The Minister with responsibility for the Environment shall ensure that at border crossing-points the public are informed of the implementing provisions of this Regulation.

Article 13

Management and scientific authorities and other competent authorities

1.

(a) The Minister with responsibility for the Environment shall designate a management authority with primary responsibility for implementation of this Regulation (the management authority):

(b) The Minister with responsibility for the Environment may also designate additional management authorities and other competent authorities to assist in implementation, in which case the primary management authority shall be responsible for providing the additional authorities with all the information required for correct application of this Regulation.

2. The Minister with responsibility for the Environment shall designate one or more scientific authorities with appropriate qualifications whose duties shall be separate from those of any designated management authority.

Article 14

Monitoring of compliance and investigation of infringements

1.

(a) The competent authorities must monitor compliance with the provisions of this Regulation.

(b) If, at any time, the competent authorities have reason to believe that these provisions are being infringed, they shall take the appropriate steps to ensure compliance or to instigate legal action.

2. *Omitted*

Article 15

Communication of information

1. *Omitted*

2. The Minister with responsibility for the Environment must communicate with the Convention Secretariat so as to ensure that the Convention is effectively implemented throughout the territory to which this Regulation applies.

3. *Omitted*

4.

(a) *Omitted*

(b) The Minister with responsibility for the Environment make publicly available, before 31 October each year a Union-wide overview on the introduction into, and the export and re-export from Gibraltar of specimens of the species to which this Regulation applies and shall forward to the Convention Secretariat information on the species to which the Convention applies.

(c) *Omitted*

(d) The Minister for the Environment must publish a report on the implementation and enforcement of this Regulation when reporting that information under the Convention, to the Convention Secretariat.

(e) The Minister with responsibility for the Environment must communicate to the Convention Secretariat before 31st October each year all the information relating to the preceding year for drawing up the annual illegal trade report referred to in CITES Resolution Conf. 11.17 (rev. CoP17).

5. *Omitted*

6. The Minister with responsibility for the Environment shall take appropriate measures to protect the confidentiality of information obtained in implementation of this Regulation, having regard to the Freedom of Access to Information on the Environment Regulations 2005.

Article 16

Sanctions

1. The following are infringements of this Regulation:

(a) introduction into, or export or re-export from, Gibraltar of specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate or one altered without authorization by the issuing authority;

(b) failure to comply with the stipulations specified on a permit or certificate issued in accordance with this Regulation;

(c) making a false declaration or knowingly providing false information in order to obtain a permit or certificate;

(d) using a false, falsified or invalid permit or certificate or one altered without authorization as a basis for obtaining a permit or certificate issued in accordance with this Regulation or for any other official purpose in connection with this Regulation;

(e) making no import notification or a false import notification;

(f) shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment;

(g) use of specimens of species listed in Annex A other than in accordance with the authorization given at the time of issuance of the import permit or subsequently;

(h) trade in artificially propagated plants contrary to the provisions laid down in accordance with Article 7(1)(b);

(i) shipment of specimens into or out of or in transit through Gibraltar without the appropriate permit or certificate issued in accordance with this Regulation and, in the case of export or re-export from a third country party to the Convention, in accordance therewith, or without satisfactory proof of the existence of such permit or certificate;

(j) purchase, offer to purchase, acquisition for commercial purposes, use for commercial gain, display to the public for commercial purposes, sale, keeping for sale, offering for sale or transporting for sale of specimens in contravention of Article 8;

(k) use of a permit or certificate for any specimen other than one for which it was issued;

(l) falsification or alteration of any permit or certificate issued in accordance with this Regualation;

(m) failure to disclose rejection of an application for an import, export or re-export permit or certificate, in accordance with Article 6 (3).

2. *Omitted*

3. Where a specimen is confiscated, it shall be entrusted to a competent authority of Gibraltar which:

(a) following consultation with a scientific authority of Gibraltar, shall place or otherwise dispose of the specimen under conditions which it deems to be appropriate and consistent with the purposes and provisions of the Convention and this Regulation; and

(b) in the case of a live specimen which has been introduced into Gibraltar, may, after consultation with the State of export, return the specimen to that State at the expense of the convicted person.

4. Where a live specimen of a species listed in Annex B or C arrives at a point of introduction into Gibraltar without the appropriate valid permit or certificate, the specimen must be seized and may be confiscated or, if the consignee refuses to acknowledge the specimen, the competent authorities of Gibraltar may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure.

Article 17

Omitted

Article 18

Omitted

Article 19

1. Minister with responsibility for the Environment may, by regulations, prescribe the design of the documents referred to in Articles 4, 5, 7(4) and 10.

2. *Omitted*

3. The Minister with responsibility for the Environment must, by regulations, prescribe conditions and criteria for:

(a) the issue, validity and use of the documents referred to in Articles 4, 5, 7(4) and 10;

(b) the use of phytosanitary certificates referred to in Article 7(1)(b)(i);

(c) the establishment of procedures, where necessary, for marking specimens in order to facilitate identification and ensure enforcement of the provisions.

4. The Minister with responsibility for the Environment may, by regulations, implement resolutions of the Conference of the Parties to the Convention, decisions or recommendations of the Standing Committee of the Convention and recommendations of the Convention Secretariat.

5. The The Minister with responsibility for the Environment may, by regulations, amend Annexes A to D except in the case of amendments to Annex A which do not result from decisions of the Conference of the Parties to the Convention. Before amending Annex B with respect to species described at Article 3(2)(c) or

(d), or amending Annex D with respect to species described at Article 3(4)(a), the Minister with responsibility for the Environment must consult the scientific authority regarding the amendment.

Article 20

Omitted

Article 21

Omitted

Article 22

Omitted

It shall apply from 1 June 1997.

Articles 12, 13, 14 (3), 116, 17, 18, 19 and 21(3) shall apply from the date of entry into force of this Regulation.