

Subsidiary Legislation made under s.24.

Invasive Alien Species (Enforcement and Permitting) Regulations 2020

LN. 2020/058

Commencement **31.1.2020**

Amending
enactments

Relevant current
provisions

Commencement
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Implementing:

Regulation (EU) No 1143/2014

1991-11

Nature Protection

2020/058

**Invasive Alien Species (Enforcement and Permitting)
Regulations 2020**

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1991-11

Nature Protection

2020/058

Invasive Alien Species (Enforcement and Permitting) Regulations 2020

In exercise of the powers conferred upon the Minister and the Government by section 23(g)(i) and (ii) of the Interpretation and General Clauses Act as read with section 24 of the Nature Protection Act, 1991 for the purposes of implementing in the law of Gibraltar Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species, the Minister and the Government have made the following Regulations-

PART 1 INTRODUCTORY PROVISIONS

Title.

1. These Regulations may be cited as the Invasive Alien Species (Enforcement and Permitting) Regulations 2020.

Commencement.

2. These Regulations come into operation on the day of publication.

Scope.

3. The provisions of these Regulations apply without prejudice to the Imports and Exports Act, 1986.

Interpretation.

4.(1) In these Regulations-

“contained holding” means keeping an organism in closed facilities from which escape or spread is not possible;

“customs officer” has the same meaning as in the Imports and Exports Act, 1986;

“enforcement officer” means-

- (a) a police officer;
- (b) a Wildlife Warden;

“ex situ conservation” means the conservation of components of biological diversity outside their natural habitat;

“invasive alien species” means any species of animal, plant, fungus or micro-organism included from time to time on the list of species of special concern;

“licence” means a licence granted in accordance with regulation 33 (licences for activities relating to invasive alien species);

“the licensing authority” means the Department of the Environment;

“the list of species of special concern” means the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council, as amended from time to time;

“permit” means a permit issued in accordance with regulation 32 (permits for activities relating to invasive alien species);

“permitting authority” means the Department of the Environment;

“premises” includes any place or land (including buildings) and, in particular, includes any place, plant, machinery, apparatus, vehicle, vessel, aircraft, boat, ship, hovercraft, trailer, container, tent or movable building or structure;

“Principal Regulation” means Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species, as the same may be amended from time to time;

“relevant organism” means a live animal, plant, fungus or micro-organism, and includes any part, gamete, seed, egg, or propagule that might grow, hatch or reproduce, as the case may be;

“research” means descriptive or experimental work, undertaken under regulated conditions, to obtain new scientific findings or to develop new products, including the initial phases of identification, characterisation and isolation of genetic features (other than those features which make a species invasive) of invasive alien species in so far as essential to enable the breeding of those features into non-invasive species;

“seize” includes “detain” and cognate words are to be construed accordingly; “species” includes-

- (a) any hybrid, variety or breed of a species that might survive and subsequently reproduce; and

(b) any subspecies or lower taxon of a species.

“specimen” means a specimen of any live invasive alien species, and includes any part, gamete, seed, egg, or propagule of such a species that might grow, hatch or reproduce, as the case may be.

(2) Any reference in these Regulations to five working days, in relation to the detention of a relevant organism, excludes a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank or public holiday under the Interpretation and General Clauses Act or the Banking and Financial Dealings Act.

PART 2 OFFENCES

Import, keeping, breeding, purchase, release etc. of invasive alien species.

5. A person who contravenes Article 7 or 8 of the Principal Regulation is guilty of an offence.

Aggravated offence: environmental damage.

5A.(1) A person who intentionally or by gross negligence contravenes Article 7(1) of the Principal Regulation, and whose conduct causes or is likely to cause death of, or serious injury to, any person, or substantial damage to the quality of air, the quality of soil or the quality of water, or substantial damage to an ecosystem, animals or plants, commits an offence.

(2) A person who intentionally or by gross negligence contravenes a condition of a permit issued under regulation 32 or of a licence granted under regulation 33, and whose conduct causes or is likely to cause death of, or serious injury to, any person, or substantial damage to the quality of air, the quality of soil or the quality of water, or substantial damage to an ecosystem, animals or plants, commits an offence.

(3) A person who commits an offence under this regulation is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(4) In this regulation, whether damage is or is likely to be substantial is to be interpreted in accordance with the Environmental Crime Regulations 2026.

(5) The defences in regulations 13 to 17 apply to an offence under this regulation as they apply to an offence under regulation 5.

False statements.

6. A person who, for the purpose of obtaining the issue of a permit or the grant of a licence (whether for that person or another), knowingly or recklessly-

(a) makes a statement or representation which is false in a material particular; or

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

is guilty of an offence.

Misuse of permits or licences.

7. A person who knowingly falsifies or alters a permit or a licence is guilty of an offence.

Compliance with permits and licences.

8. A person who knowingly contravenes a condition of a permit or of a licence is guilty of an offence.

Obstruction and deception.

9.(1) A person who intentionally obstructs an enforcement officer or a customs officer acting in accordance with the powers conferred in Part 5 is guilty of an offence.

(2) A person who, without reasonable excuse, fails to give any assistance or information reasonably required by an enforcement officer or a customs officer acting in accordance with the powers conferred in Part 5 is guilty of an offence.

(3) A person who, with intent to deceive, pretends to be an enforcement officer or a customs officer is guilty of an offence.

(4) A person who furnishes to an enforcement officer or a customs officer any information knowing it to be false or misleading is guilty of an offence.

Attempts to commit offences etc.

10.(1) A person who attempts to commit an offence under regulations 5 to 8 is guilty of an offence.

(2) A person who, for the purposes of committing an offence under regulations 5 to 8 is in possession of anything capable of being used for committing the offence is guilty of an offence.

Offences by bodies corporate.

11.(1) If an offence under this Part committed by a body corporate is proved-

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subregulation (1), “officer”, in relation to a body corporate, means-

- (a) a director, manager, secretary or other similar officer of the body; or
- (b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subregulation (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as it applies to an officer of a body corporate.

Offences by partnerships and unincorporated associations.

12.(1) Proceedings for an offence under this Part alleged to have been committed by a partnership or an unincorporated association must be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate.

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under this Part is to be paid out of the funds of the partnership or association.

(4) If an offence under this Part committed by a partnership is proved-

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subregulation (4), “partner” includes a person purporting to act as a partner.

(6) If an offence under this Part committed by an unincorporated association (other than a partnership) is proved-

(a) to have been committed with the consent or connivance of an officer of the association; or

(b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In subregulation (6), “officer”, in relation to an unincorporated association, means-

(a) an officer of the association or a member of its governing body; or

(b) a person purporting to act in such a capacity.

PART 3 DEFENCES

Defences: permits and licences.

13. Regulation 5 (import, keeping, breeding, purchase, release etc. of invasive alien species) does not apply to anything done under, and in accordance with-

(a) a permit; or

(b) a licence.

Defences: enforcement activity.

14. It is a defence to a charge of committing an offence under regulation 5 in relation to breach of the restrictions in Article 7(1)(b) (keeping), (d) (transportation) or (f) (use and exchange) of the Principal Regulation if the person accused is-

- (a) an enforcement officer or customs officer, or a person acting at the request, or on behalf, of an enforcement officer or customs officer; and
- (b) acting for a purpose connected with the enforcement of these Regulations.

Transitional provision for non-commercial owners: companion animals.

15.(1) It is a defence to a charge of committing an offence under regulation 5 in relation to a breach of the restrictions in Article 7(1)(b) (keeping) or (d) (transportation) of the Principal Regulation to show that the specimen to which the alleged offence relates-

- (a) immediately before its inclusion on the list of species of special concern, was kept as a companion animal; and
 - (b) the condition in subregulation (2) or the condition in subregulation (3) applies.
- (2) The condition in this subregulation is that, at all material times-
- (a) the purpose in keeping the animal was to keep it as a companion animal;
 - (b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.
- (4) The condition in this subregulation is that, at all material times-
- (a) the animal was kept for the purpose of transporting it to-
 - (i) a facility to which a relevant licence had been granted;
 - (ii) an establishment to which a relevant permit had been issued; or
 - (iii) a place where it was to be humanely dispatched; and
 - (b) the animal was kept in contained holding and appropriate measures were in place to ensure that the animal could not reproduce or escape.
- (5) In this regulation-

“relevant licence” means a licence under regulation 33(2)(d) (licences for the keeping of animals by a facility);

“relevant permit” means a permit under regulation 32 (permits for activities relating to invasive alien species) of these Regulations;

Transitional provision for non-commercial owners: commercial stocks.

16. It is a defence to a charge of committing an offence under regulation 5(1) in relation to a breach of the restrictions in Article 7(1)(b) (keeping) or (d) (transportation) of the Principal Regulation to show that the specimen to which the alleged offence relates-

- (a) was received from a keeper of commercial stocks in accordance with regulation 17(3)(d) (transitional provisions for commercial stocks); and
- (b) at all material times was kept in contained holding and appropriate measures were in place to ensure that the specimen could not reproduce or escape.

Transitional provisions for commercial stocks.

17.(1) It is a defence to a charge of committing an offence to which this regulation applies for a keeper of a commercial stock of specimens to show that-

- (a) the specimens were acquired before their inclusion on the list of species of special concern; and
- (b) the activity constituting the offence-
 - (i) was carried out for one of the purposes listed in subregulation (3); and
 - (ii) was not carried out after the end of the relevant period following the inclusion of the species to which the specimen in question belongs on the list of species of special concern.

(2) This regulation applies to an offence under regulation 5 in relation to a breach the restrictions in Article 7(1)(b) (keeping), (d) (transportation), (e) (placing on the market) or (f) (use or exchange) of the Principal Regulation.

(3) The purposes are-

- (a) sale or transfer to a research or ex situ conservation establishment which holds a relevant permit, provided that the conditions in subregulation (4) apply;
- (b) medicinal activities pursuant to a relevant permit, provided that the conditions in subregulation (4) apply;

- (c) humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms) of the specimen to exhaust the keeper's stock; or
 - (d) sale or transfer to a non-commercial user, provided that the conditions in subregulation (4) apply.
- (4) The conditions are that, at all material times-
 - (a) the specimen was kept and transported in contained holding; and
 - (b) appropriate measures were in place to ensure that the specimen could not reproduce or escape.
- (5) For the purposes of subregulation (1)(b)(ii), the relevant period is-
 - (a) in relation to an activity carried out for a purpose mention in subregulation (3)(a) to (c), two years;
 - (b) in relation to an activity carried out for a purpose mentioned in subregulation (3)(d), one year.
- (6) In this regulation, "relevant permit" means-
 - (a) for the purposes of subregulation (3)(a), a permit under regulation 32(1)(a) (permits for research or ex situ conservation);
 - (b) for the purposes of subregulation (3)(b), a permit under regulation 32(1)(b) (permits for medicinal activities).

PART 4 PENALTIES

Penalties etc.

18.(1) A person guilty of an offence under these Regulations, other than an offence under regulation 5A, is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine at level 5 on the standard scale, or to both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (2) A permit or licence in relation to which an offence under regulation 6 or 7 (false statements and misuse of permits or licences) has been committed is void-
 - (a) in the case of an offence under regulation 6, as from the time when it was granted; and
 - (b) in the case of an offence under regulation 7 as from the time when the falsification or alteration was made.
- (3) The court by which any person is convicted of an offence under these Regulations, other than an offence under regulation 5A, may order that the person convicted may not, for a period of up to five years-
 - (a) be issued with any permit, or issued with a permit for a particular activity; or
 - (b) be granted any licence, or granted a licence for a particular purpose.

PART 5 ENFORCEMENT

General.

19.(1) These Regulations are enforced by enforcement officers and customs officers.

(2) The Minister with responsibility for the environment is the competent authority for the purpose of the official controls referred to in Article 15 of the Principal Regulation (which requires the designation of competent authorities responsible for official controls to prevent the introduction into the Union of invasive alien species).

Power to stop and search persons.

20. If a police officer or a customs officer has reasonable grounds to suspect that any person is committing or has committed an offence under these Regulations, the police officer or customs officer may, without warrant-

- (a) stop and detain that person for the purpose of a search;

- (b) search that person if the police officer or customs officer suspects with reasonable cause that evidence of the commission of the offence is to be found on that person; or
- (c) search or examine anything which that person may be using or which is in that person's possession if the police officer or customs officer suspects with reasonable cause that evidence of the commission of the offence is to be found on it.

Power to enter and search vehicles.

21.(1) If a police officer or customs officer has reasonable grounds to suspect that there is relevant evidence in a vehicle, other than a vehicle used wholly or mainly as a private dwelling, the police officer or customs officer may, at any time-

- (a) stop and detain the vehicle for the purposes of entering and searching it; and
- (b) enter the vehicle and search it for that evidence.

(2) Where-

- (a) a police officer or customs officer has stopped a vehicle under this regulation; and
- (b) the police officer or customs officer considers that it would be impracticable to search the vehicle in the place where it has stopped,

the police officer or customs officer may require the vehicle to be taken to such place as the police officer or customs officer directs to enable the vehicle to be searched.

(3) A police officer or customs officer may require-

- (a) any person travelling in a vehicle; or
- (b) the registered keeper of a vehicle,

to afford such facilities and assistance with respect to matters under that person's control as the police officer or customs officer considers would facilitate the exercise of any power conferred by this regulation.

(4) The powers conferred by this regulation may be exercised in any place to which the police officer or customs officer has access (whether or not it is a place to which the public has access).

(5) In this regulation-

“vehicle” includes any vessel, including any aircraft;

“relevant evidence” means evidence that an offence under these Regulations has been committed.

Powers of entry.

22.(1) Where an enforcement officer has reasonable grounds to suspect a specimen is being kept at premises, other than premises used wholly or mainly as a private dwelling, the enforcement officer may, at a reasonable time and on giving reasonable notice, enter, search and inspect those premises, for the purpose of-

- (a) ascertaining whether an offence under these Regulations is being or has been committed;
- (b) verifying information supplied by a person for the purpose of obtaining a permit or a licence; or
- (c) ascertaining whether a condition of a permit or of a licence is being or has been complied with.

(2) The requirement to give notice does not apply-

- (a) where reasonable efforts to agree an appointment have failed;
- (b) where the enforcement officer reasonably believes that giving notice would defeat the object of the entry;
- (c) where the enforcement officer has reasonable grounds for suspecting that an offence under these Regulations is being or has been committed; or
- (d) in an emergency.

(3) Subregulation (4) applies where-

- (a) on an application made by an enforcement officer, a justice of the peace is satisfied that-

- (i) there are reasonable grounds to suspect that an offence under these Regulations is being or has been committed and that evidence of the offence may be found on any premises, or
 - (ii) there is a need to ascertain whether a condition of a permit or of a licence is being or has been complied with; and
 - (b) one of the conditions specified in subregulation (5) applies.
- (4) Where this subregulation applies, the justice of the peace may issue a warrant authorising an enforcement officer to enter, search and inspect premises, and such a warrant may authorise persons to accompany the enforcement officer who is executing it.
- (5) The conditions referred to in subregulation (3)(b) are that-
- (a) entry to the premises has been refused, or is likely to be refused, and notice of the intention to apply for a warrant has been given to the occupier; or
 - (b) one of the grounds specified in subregulation (6) justifying the absence of such notice applies.
- (6) The grounds justifying absence of notice are-
- (a) asking for admission to the premises, or giving such notice, would interfere with the purpose or effectiveness of the entry;
 - (b) entry is required urgently; or
 - (c) the premises are unoccupied or the occupier is temporarily absent.
- (7) An enforcement officer entering any premises which are unoccupied, or from which the occupier is temporarily absent, must-
- (a) where entry is by virtue of subregulation (4), leave a copy of the warrant in a prominent place on the premises; and
 - (b) leave the premises as effectively secured against unauthorised entry as they were before entry.
- (8) An enforcement officer who enters premises by virtue of this regulation may-

- (a) examine, photograph or mark any part of the premises or any object on the premises;
 - (b) open any bundle, container, package, packing case or item of personal luggage, or require the owner or any person in charge of it to open it in the manner specified by the enforcement officer;
 - (c) make copies of any documents or records (in whatever form they may be held); and
 - (d) require any person to-
 - (i) produce any document or record that is in that person's possession or control; and
 - (ii) render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.
- (9) An enforcement officer who is, by virtue of subregulation (1) or (4), lawfully on premises may-
- (a) be accompanied by such other persons, and
 - (b) bring onto the premises such equipment, vehicles or materials, as the enforcement officer considers necessary.
- (10) A person accompanying an enforcement officer under subregulation (9)(a) may-
- (a) remain on the premises and from time to time re-enter the premises without the enforcement officer;
 - (b) bring onto the premises any equipment or vehicle that the person considers necessary; and
 - (c) carry out work on the premises in the manner directed by an enforcement officer.
- (11) A warrant granted under this regulation continues in force for three months.
- (12) An enforcement officer must, if requested to do so, produce evidence of his or her authority before entering premises by virtue of subregulation (1) or (4).

Examining relevant organisms and taking samples.

23.(1) An enforcement officer may, for the purpose of ascertaining whether an offence under these Regulations is being or has been committed-

- (a) require that any relevant organism in the possession of any person is made available for examination by the enforcement officer;
- (b) in order to determine the identity or ancestry of any relevant organism, require the taking of a sample of that relevant organism, provided that-
 - (i) where the sample is to be taken from a live animal-
 - (aa) it is taken by a veterinary surgeon; and
 - (bb) the taking of the sample will not cause any avoidable pain, distress or suffering; and
 - (ii) where the sample is to be taken from a live plant or fungus, the taking of the sample will not cause lasting harm to the plant or fungus.

(2) An enforcement officer may destroy or otherwise dispose of any sample taken under this regulation when the sample is no longer required.

(3) In this regulation, “sample” means a sample of blood, tissue or other biological material.

Power of seizure for purposes of investigation etc.

24.(1) An enforcement officer exercising the powers conferred by this Part may seize anything where the enforcement officer has reasonable grounds for believing that-

- (a) seizure is necessary for the purpose of determining whether an offence under these Regulations is being or has been committed;
- (b) it is a specimen which has been imported or is being kept in contravention of the Principal Regulation;
- (c) seizure is necessary for the conservation of evidence; or
- (d) seizure is necessarily incidental to seizure of a thing pursuant to paragraph (a), (b) or (c).

(2) If, in the opinion of the enforcement officer, it is not for the time being practicable for the enforcement officer to seize and remove any item from premises, the enforcement officer may require any person on the premises to secure that the item is not removed or otherwise interfered with until such time as the enforcement officer may seize and remove it.

(3) Where-

- (a) any item which an enforcement officer wishes to seize is in a container, and
- (b) the enforcement officer reasonably considers that it would facilitate the seizure of the item if it remained in the container for that purpose,

any power to seize the item conferred by this regulation includes power to seize the container.

(4) The enforcement officer must make reasonable efforts to give a written receipt for anything that is seized to each of the following persons-

- (a) in the case of an item seized from a person, the person from whom the item was seized;
- (b) in the case of an item seized from a vehicle, any person who appears to the enforcement officer to be the owner of the vehicle, or otherwise in charge of the vehicle;
- (c) in the case of an item seized from premises, any person who appears to the enforcement officer to be the occupier of the premises, or otherwise in charge of the premises;
- (d) in any other case, or where the enforcement officer believes that the item may belong to any person not falling within paragraph (a) to (c), to the person to whom the enforcement officer believes the item belongs.

(5) Where an item is seized from a vehicle or premises and it is not reasonably practicable to give written notice to the person referred to in subregulation (4), the officer must leave a copy of the receipt in a prominent place in the vehicle or on the premises.

(6) Any relevant organism seized by an enforcement officer must, unless the enforcement officer is satisfied that it is not a specimen, be held and transported in contained holding.

(7) Any such relevant organism-

- (a) may be transferred-

- (i) to another enforcement officer; or
- (ii) to an establishment or facility which is authorised to keep it by a permit or licence (as the case may be); or
- (b) where the enforcement officer is satisfied it is a specimen, may be humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro-organisms) as the enforcement officer sees fit.

Power of seizure to facilitate functions of an enforcement officer.

25.(1) A customs officer may, for the purpose of facilitating the exercise by an enforcement officer of any functions conferred on an enforcement officer by or under these Regulations, seize any relevant organism which is being imported or exported or which has been imported or brought to a place for the purpose of export-

- (a) where the customs officer suspects that it is a specimen; or
 - (b) on the request of an enforcement officer.
- (2) Any relevant organism seized under subregulation (1) may be detained for not more than five working days.
- (3) A request under subregulation (1)(b)-
- (a) may identify the relevant organism in any relevant way; and
 - (b) must be made in writing or be made orally and confirmed in writing as soon as reasonably practicable thereafter.
- (4) Any relevant organism seized under subregulation (1)-
- (a) must, if seized following a request under subregulation (1)(b), be dealt with during the period of its detention in such manner as the requesting enforcement officer may direct;
 - (b) may, if the customs officer considers it appropriate, be transferred to an enforcement officer, who may hold it for a period not longer than the remainder of the detention period referred to in subregulation (2).

(5) A relevant organism held by an enforcement officer under subregulation (4)(b) must be held in contained holding.

Power to use reasonable force.

26. Customs officers and enforcement officers may use reasonable force, if necessary, in the exercise of the powers conferred by regulations 20 to 25.

Proof of lawful import or export.

27.(1) Where a relevant organism is being imported or exported, or has been imported or brought to a place for the purpose of being exported, a customs officer who suspects that the relevant organism is a specimen may require a person possessing or having control, or appearing to possess or have control, of that relevant organism to furnish relevant proof.

(2) Until relevant proof is provided to the satisfaction of the customs officer, the customs officer may detain the relevant organism for not more than five working days.

(3) Any relevant organism detained under this regulation may, if the customs officer considers it appropriate, be transferred to an enforcement officer, who may hold the relevant organism for a period not longer than the remainder of the detention period referred to in subregulation (2).

(4) A relevant organism held by an enforcement officer under subregulation (3) must be held in contained holding.

(5) In this regulation, and in regulation 29, “relevant proof” in relation to the importation or exportation of a relevant organism, means proof-

- (a) that the relevant organism is not a specimen; or
- (b) that such importation or exportation (as the case may be) is or was authorised by a permit or a licence, or (if it would otherwise be unlawful) is lawful by virtue of a defence under regulations 14 to 17.

Action following seizure.

28.(1) This regulation applies where a relevant organism has-

- (a) been seized under regulation 24 whilst being imported or exported, or once imported or brought to a place for the purpose of export,

(b) been seized under regulation 25 or 27(2), or

(c) otherwise been seized following the official controls referred to in Article 15 of the Principal Regulation,

and the customs officer or enforcement officer (as the case may be) suspects that the relevant organism is a specimen.

(2) In a case where the relevant organism has been imported or was being imported and relevant proof is not provided to the satisfaction of the customs officer or enforcement officer, as the case may be, within 5 working days of seizure, the relevant organism must be re-dispatched to a destination outside of Gibraltar, except in a case within subregulation (3) or (4).

(3) Where the relevant organism is required for enforcement purposes, an enforcement officer may arrange for the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(4) Where re-dispatch of the relevant organism under subregulation (2) would contravene the Principal Regulation, or is not reasonably practicable, an enforcement officer may arrange-

(a) where the enforcement officer is satisfied it is a specimen, for its humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms); or

(b) for the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(5) In a case where a relevant organism was being exported, or has been brought to a place for the purpose of export, and relevant proof is not provided to the satisfaction of the customs officer or enforcement officer, as the case may be, within 5 working days of seizure-

(a) where an enforcement officer considers it appropriate, the relevant organism may be released to the exporter, provided such release would not result in the commission of an offence under regulation 5; or

(b) an enforcement officer may arrange-

(i) where the enforcement officer is satisfied it is a specimen, for its humane dispatch (in the case of animals) or destruction (in the case of plants, fungi or micro-organisms); or

- (ii) the transfer of the relevant organism to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

(6) Where relevant proof is provided within five working days of seizure, the relevant organism must be released to the importer or exporter (as the case may be).

(7) In subregulations (5) and (6) “importer” and “exporter” include any authorised representative of the importer or exporter, as the case may be.

Information sharing.

29.(1) The competent authority, a customs officer and an enforcement officer may exchange information for the purposes of these Regulations.

(2) Disclosure of information which is authorised by this regulation does not breach-

- (a) an obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

(3) But nothing in this regulation authorises the disclosure of information where doing so breaches-

- (a) the Data Protection Act 2004; or
- (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

(4) This regulation does not limit the circumstances in which information may be exchanged apart from this regulation.

Recovery of costs.

30.(1) The importer or exporter (as the case may be) is responsible for-

- (a) the costs of storing a relevant organism detained under regulation 25(2) or 27(2) during its period of detention;
- (b) the costs incurred by an enforcement officer under regulation 28(2), (4) and (5).

(2) The court which convicts a person of an offence under these Regulations must order the offender to reimburse any costs incurred in connection with keeping a relevant specimen by the person-

(a) holding it following its seizure by an enforcement officer under regulation 24(1);
or

(b) to whom it was transferred under regulation 28(3).

(3) Where-

(a) the costs referred to in subregulation (1) are not paid; or

(b) an order is made under subregulation (2), and the amount specified in the order is not paid, the unpaid amount is recoverable summarily as a civil debt.

(4) In this regulation-

“importer” and “exporter” include any authorised representative of the importer or exporter, as the case may be;

“relevant specimen” means the specimen in relation to which the offence was committed.

Forfeiture.

31.(1) The court by which any person is convicted of an offence under these Regulations-

(a) must order the forfeiture of a specimen or other thing in respect of which the offence was committed; and

(b) may order the forfeiture of any vehicle, equipment or other thing which was used to commit the offence.

(2) In subregulation (1)(b), “vehicle” includes aircraft, hovercraft and boats.

(3) A specimen forfeited under this regulation must be-

(a) humanely dispatched (in the case of animals) or destroyed (in the case of plants, fungi or micro- organisms); or

(b) transferred to an establishment or facility authorised to keep it by a permit or a licence (as the case may be).

PART 6
PERMITS

Permits for activities relating to invasive alien species.

32.(1) A permitting authority may issue to an establishment a permit which authorises it to carry out any prohibited action in relation to a specimen where it is carried out in the course of one or more of the following activities-

- (a) research on, or ex situ conservation of, an invasive alien species;
- (b) scientific production, and subsequent medicinal use, where the use of products derived from an invasive alien species is necessary for the advancement of human health; or
- (c) in exceptional circumstances, such other activities as are justified by reasons of compelling public interest, including those of a social or economic nature, in accordance with Article 9 of the Principal Regulation (authorisations).

(2) A permit may only be issued under subregulation (1) where the activity to be authorised is to be carried out in accordance with the conditions specified in paragraphs 2 and 3 of Article 8 of the Principal Regulation (permits).

(3) A permit may not be issued under subregulation (1)(a) or (b) to authorise-

- (a) placing on the market; or
- (b) release into the environment.

(4) An application for a permit must be accompanied by sufficient evidence to enable the permitting authority to ascertain whether the requirement in subregulation (2) is met.

(5) The permit may be subject to such other conditions as the permitting authority considers appropriate, including but not limited to any conditions required to ensure that the requirement in subregulation (2) is met.

(6) The permitting authority may revoke or suspend a permit at any time if-

- (a) an adverse impact on biodiversity or related ecosystem services results, or in the opinion of the permitting authority is likely to result, from-
 - (i) any failure to comply with a condition of a permit; or

(ii) any unforeseen event; or

(b) the specimen to which the permit relates has-

(i) in the case of a specimen of an animal species, escaped from contained holding;

(ii) in the case of a specimen of a species of plant, fungus or micro-organism, spread beyond contained holding.

(7) For the purposes of subregulation (6)(b)(ii), “spread beyond contained holding” means that a specimen deriving from the specimen to which the permit relates is outside the contained holding.

(8) A decision to revoke or suspend a permit under subregulation (6)(a) must be justifiable-

(a) on scientific grounds; or

(b) where scientific information is insufficient, by the application of the precautionary principle.

(9) The permitting authority must make available the relevant permit information in respect of any permit issued under this regulation-

(a) by publishing it on the internet; and

(b) by providing it to any person who asks for it in writing.

(10) For the purposes of subregulation (9), “the relevant permit information” means-

(a) the scientific and common names of the invasive alien species to which the permit relates;

(b) the number or the volume of specimens concerned;

(c) the purpose for which the permit has been issued; and

(d) the codes of Combined Nomenclature as provided by Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

(11) A permitting authority must undertake such inspections as it considers appropriate of establishments to which a permit issued under subregulation (1) relates in order to ensure that the conditions of that permit are being complied with.

(12) For the purposes of Article 8(2)(b) of the Principal Regulation (permitting activities to be carried out by qualified personnel), “qualified personnel” means employees of the establishment to which a permit has been issued who have been trained in the activity allowed by the permit.

(13) In this regulation-

“biodiversity” means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems;

“ecosystem services” means the direct and indirect contributions of ecosystems to human wellbeing;

“prohibited action” means any action specified in Article 7(1)(a) to (h) of the Principal Regulation.

PART 7 LICENCES

Licences for activities relating to invasive alien species.

33.(1) Subject to the provisions of this regulation, the licensing authority may grant a licence for the purposes specified in subregulation (2).

(2) The purposes are-

- (a) implementation of an eradication measure pursuant to Article 17 of the Principal Regulation (rapid eradication at an early stage of invasion);
- (b) implementation of a management measure pursuant to Article 19 of the Principal Regulation (management measures);
- (c) the commercial use, on a temporary basis, of an invasive alien species as part of a management measure pursuant to Article 19(2) of the Principal Regulation (commercial use of invasive alien species which are already established); or

- (d) the keeping of an animal by a facility (including any necessary ancillary activities such as transportation) until the end of its natural life in accordance with Article 31(4) of the Principal Regulation (transitional provisions for non-commercial owners).
- (3) A licence under this regulation may only be granted to such persons as are named in the licence.
- (4) A licence under this regulation must specify-
- (a) the invasive alien species to which the licence relates;
 - (b) where the licensing authority considers it appropriate, the number or volume of specimens to which the licence relates;
 - (c) the conditions subject to which the action authorised by the licence may be taken and in particular-
 - (i) the methods, means and arrangements by which the action authorised by the licence may be taken;
 - (ii) the area or areas within which the action authorised by the licence may be taken;
 - (iii) when or over what period the action authorised by the licence may be taken; and
 - (iv) any other conditions that the licensing authority considers are appropriate.
- (5) The licensing authority must not grant a licence under this regulation unless satisfied-
- (a) in relation to a licence for a purpose mentioned in subregulation (2)(a), that the licence is subject to such conditions as are, in the opinion of the licensing authority, necessary to meet the aim of ensuring that the eradication plan to which the licence relates will be effective in achieving the complete and permanent removal of the population of the invasive alien species concerned;
 - (b) in relation to a licence for a purpose mentioned in subregulation (2)(c), that there is strict justification and that all appropriate controls are in place to avoid any further spread of the invasive alien species concerned;

- (c) in relation to a licence for a purpose mentioned in subregulation (2)(d), that all appropriate controls are in place to ensure that reproduction or escape of the animal to which the licence relates is not possible.

(6) A licence may be modified, suspended, or revoked at any time by the licensing authority, but is otherwise valid for the period stated in the licence.

PART 8 NATURE PROTECTION ACT, 1991

Relation to permits and licences issued under the Act.

34.(1) Any act that is authorised by a permit or licence issued under these Regulations and which would otherwise be an offence under the Nature Protection Act, 1991 is authorised for the purposes of the Act to the extent authorised by the permit or licence.

(2) Subject to subregulation (3), any act that is authorised by a permit or licence issued under the Nature Protection Act, 1991 and which would otherwise be an offence under these Regulations is authorised for the purposes of these Regulations to the extent authorised by the permit or licence.

(3) Subregulation (2) does not apply to an act that is prohibited under the Principal Regulation.

Restriction on prosecutions.

35. A person may not by reason of the same act be convicted of both an offence under the Nature Protection Act, 1991 and these Regulations.

Amendments to Nature Protection Act 1991.

36. The Nature Protection Act, 1991 is amended as follows-

- (a) after section 12(4) insert the following subsection-

“(5) Subsection (1)(a) does not apply to species included on the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, as amended from time to time.”;

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(b) after section 12A(4) insert the following subsection-

- “(5) Subsection (1)(a) does not apply to species included on the list of invasive alien species of Union concern adopted by the European Commission in accordance with Articles 4(1) and 10(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, as amended from time to time.”.