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CONTROL OF TRADE IN ENDANGERED SPECIES ACT, 1998

Principal Act

Act. No. 1998-11

Commencement 29.1.1998

Assent 29.1.1998

Amending
enactments

Relevant current
provisions

Commencement
date

LN. 1998/042 s. 13

29.1.1998

EU Legislation/International Agreements involved:

Regulation (EC) No. 338/97

Regulation (EC) No. 939/97

ARRANGEMENT OF SECTIONS.

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AN ACT TO MAKE PROVISION FOR THE ENFORCEMENT OF COUNCIL REGULATION (EC) NO. 338/97 ON THE PROTECTION OF SPECIES OF WILD FLORA AND FAUNA BY REGULATING TRADE THEREIN AND OF COMMISSION REGULATION (EC) NO. 939/97 WHICH IMPLEMENTS THE FORMER REGULATIONS.

PART 1 PRELIMINARY.

Title.

1. This Act may be cited as the Control of Trade in Endangered Species Act 1998.

Interpretation.

2. (1) In this Act—

“acquired” means, in relation to a specimen, taken from the wild or the point at which it was born in captivity or artificially propagated;

“acquired unlawfully” means acquired contrary to the provisions of the Principal Regulation or the Subsidiary Regulation;

“authorised person” means a person duly authorised in writing by the Minister for the purposes of this Act;

“import” means introduce into Gibraltar;

“imported unlawfully” means introduced into the Community contrary to the provisions of the Principal Regulation or the Subsidiary Regulation;

“the Minister” means the Minister charged with responsibility for the Environment;

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

“Principal Regulation” means Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein;

“Subsidiary Regulation” means Commission Regulation (EC) No. 939/97 on the implementation of Council Regulation (EC) No. 338/97 on

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

(2) For the purposes of this Act a reference to a permit or certificate is a reference to any of the following—

- (a) an import permit of the kind referred to in Article 4 of the Principal Regulation;
- (b) an export permit or re-export certificate of the kind referred to in Article 5 of the Principal Regulation;
- (c) a certificate of any of the kinds referred to in Article 10 of the Principal Regulation;
- (d) a certificate of the kind referred to in Article 18 of the Subsidiary Regulation;
- (e) a label of the kind referred to in Article 7(4) of the Principal Regulation;
- (f) in so far as, in accordance with Article 43 of the Subsidiary Regulation, reliance may be placed on a permit or certificate issued under Council Regulation (EEC) No. 3626/82 and Commission Regulation (EEC) No. 3418/83, a permit or certificate issued under those Regulations.

(3) Unless the context otherwise requires, expressions used in this Act, and which are also used in the Principal or Subsidiary Regulations, shall have the meaning they bear in those Regulations.

PART 2

ENFORCEMENT OF PRINCIPAL REGULATIONS.

False statements etc.

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

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular; or
- (b) knowingly or recklessly furnishes a document or information which is false in a material particular; or

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- (c) for any purpose in connection with the Principal Regulation or the Subsidiary Regulation, knowingly or recklessly uses or furnishes a false, falsified or invalid permit or certificate or one altered without authorisation,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(2) A person who knowingly or recklessly makes an import notification which is false in a material particular shall be guilty of an offence and liable—

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

(3) Without prejudice to Article 11(2)(a) of the Principal Regulation—

- (a) a permit or certificate in relation to which an offence under subsection (1) has been committed shall be void; and
- (b) an import notification in relation to which an offence under subsection (2) has been committed shall be void.

Misuse of permits and certificates.

4. (1) A person who knowingly falsifies or alters any permit or certificate shall be guilty of an offence and liable—

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

(2) A person who knowingly uses a permit, certificate or import notification for any specimen other than that for which it was issued shall be guilty of an offence and liable—

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

(3) A person who knowingly uses a specimen of a species listed in Annex A of the Principal Regulation otherwise than in accordance with the authorisation given at the time of issue of the import permit or subsequently, shall be guilty of an offence and liable—

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

Proof of lawful import or export.

5. Where any specimen is being imported or exported or has been imported or brought to any place for the purpose of being exported, a person commissioned by the Collector of Customs or a person authorised by him may require any person possessing or having control of that specimen to furnish proof that its importation or exportation is or was not unlawful by virtue of the Principal Regulation or, as the case may be, the Subsidiary Regulation and, until such proof is furnished, the specimen shall be liable to detention under the Imports and Exports Act 1986 and, if such proof is not furnished to the satisfaction of the Collector, the specimen shall be liable to forfeiture under that Act.

Compliance with permits or certificates.

6. Any person who knowingly contravenes any condition or requirement of a permit or certificate issued in accordance with the Principal Regulation or Subsidiary Regulation shall be guilty of an offence and liable—

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

Movement of live specimens.

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7. (1) Where an import permit or any certificate issued in accordance with the Principal Regulation in respect of a live specimen of a species listed in Annex A to the Principal Regulation specifies an address at which the specimen must be kept, any person who, without reasonable excuse, and contrary to Article 9 of the Principal Regulation—

- (a) causes or permits that specimen to be transferred from that address without prior written authorisation from the Minister; or
- (b) keeps that specimen at premises other than the specified address or location without prior written authorisation from the Minister,

shall be guilty of an offence.

(2) Any person guilty of an offence under subsection (1) shall be liable—

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

Purchase and sale etc.

8. (1) Subject to subsections (3) and (4), a person who, contrary to Article 8 of the Principal Regulation, purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex A to the Principal Regulation shall be guilty of an offence.

(2) Subject to subsections (4) and (5), any person who, contrary to Article 8 of the Principal Regulation, purchases, offers to purchase, acquires for commercial purposes, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex B to the Principal Regulation which has been imported or acquired unlawfully shall be guilty of an offence.

(3) Subsection (1) does not apply to anything done under, and in accordance with the terms of, any certificate or general derogation granted pursuant to Article 8 of the Council Regulation.

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(4) A person shall not be guilty of an offence under subsection (1) or (2) if he proves to the satisfaction of the court that at the time the alleged offence was committed he had no reason to believe that the specimen was a specimen of a species listed in Annex A, or as the case may be Annex B.

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

- (a) that at the time when the specimen first came into his possession he made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired unlawfully; and
- (b) that at the time the alleged offence was committed, he had no reason to believe that the specimen was imported or acquired unlawfully.

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

- (a) the supplier made enquiries at the time the specimen came into his possession in order to ascertain whether it was a specimen which had been imported or acquired unlawfully; and
- (b) the supplier had no reason to believe at the time he relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported or acquired unlawfully.

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

(8) A person guilty of an offence under subsection (1), (2) or (7) shall be liable—

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

Powers of entry.

9. (1) If, on an application made by a constable, a justice of the peace is satisfied that there are reasonable grounds for believing—

- (a) that there is any unlawfully imported or acquired specimen on premises specified in the application; or
- (b) that an offence under this Act has been or is being committed and that evidence of the offence may be found on any premises,

and that any of the conditions specified in subsection (2) applies, he may issue a warrant authorising any constable to enter upon and search those premises; and such a warrant may authorise persons to accompany any constable who is executing it.

(2) The conditions referred to in subsection (1) are—

- (a) that admission to the premises has been refused; or
- (b) that refusal is apprehended; or
- (c) that the case is one of urgency; or
- (d) that an application for admission to the premises would defeat the object of the entry.

(3) A constable who is, by virtue of subsection (1), lawfully on any premises may, in order to determine the identity or ancestry of any specimen, require the taking from any specimen of a sample of blood or tissue provided that—

- (a) the sample is taken by a veterinary surgeon; and
- (b) the taking of such a sample will not cause lasting harm to the specimen.

(4) An authorised person may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter and inspect for the purpose of—

- (a) ascertaining whether the premises are being used for any of the following activities: purchase, offering to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain, sale, keeping for sale,

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offering for sale or transporting for sale contrary to Article 8 of the Principal Regulation; or

- (b) verifying information supplied by a person for the purpose of obtaining a permit or certificate; or
- (c) ascertaining whether any live specimen is being kept on premises at the address specified in the import permit issued for that specimen as that at which the specimen is to be kept; or
- (d) ascertaining whether any condition of a permit or certificate has been or is being observed,

any premises where he has reasonable cause to believe a specimen is being kept.

(5) An authorised person who is, by virtue of subsection (4), lawfully on any premises may, in order to determine the identity or ancestry of any specimen for the purposes specified in that subsection, require the taking from any specimen of a sample of blood or tissue provided that—

- (a) the sample is taken by a veterinary surgeon; and
- (b) the taking of such a sample will not cause lasting harm to the specimen.

(6) Any person who intentionally obstructs an authorised person acting in accordance with the powers conferred by this section shall be guilty of an offence and shall for every such obstruction be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) If a person, with intent to deceive, pretends to be an authorised person, he shall be guilty of an offence and liable—

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

Powers of seizure.

10. A constable who is, by virtue of section 9(1), lawfully on any premises may seize any thing where he has reasonable grounds for believing that such seizure is—

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- (a) necessary for the protection of the constable or any person accompanying him; or
- (b) otherwise essential to effect seizure of the specimen referred to in that paragraph; or
- (c) necessary for the conservation of evidence; or
- (d) in the interests of the welfare of the specimen.

Forfeiture.

11. (1) The court by which any person is convicted of an offence under this Act—

- (a) shall order the forfeiture of any 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 subsection (1)(b) “vehicle” includes aircraft, hovercraft and boat.

Offences by corporations.

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

(2) For this purpose “director”, in relation to any body corporate whose affairs are managed by its members, means any member of the body.

PART 3

AMENDMENT TO ENDANGERED SPECIES ACT, 1990

Section 13 inserts a new Schedule 1 in the Endangered Species Act, 1990 .