



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

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

**A summary of responses and the government
reply**

September 2015



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Introduction

This document provides a summary of the responses to Defra's public consultation on proposed changes to the current Control of Trade in Endangered Species Regulations, these are; the Control of Trade in Endangered Species (Ports of Entry) Regulations 1985 and the Control of Trade in Endangered Species (Enforcement) Regulations 1997.

The consultation ran from 10 February 2015 to 10 March 2015.

In relation to the regulation of trade in endangered species in the United Kingdom (UK) we sought views on proposed changes to the legislation which helps to deliver our obligations arising from the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The age of the existing legislation means that they do not take account of changing trade patterns and practices, or enforcement and investigative techniques. In addition certain EU regulatory requirements (notably relating to the sale and packaging of caviar and the designation of ports of exit) have yet to be fully addressed, and the EU regulations have continued to be developed in light of changing CITES requirements and these requires consequential amendments. The need for change has been highlighted in discussions with enforcement agencies (UKBF and Police), and notably the Environmental Audit Committee (EAC), in its inquiry into wildlife crime during the 2012-13 Parliamentary session^[1], included reform of COTES as one of its central recommendations.

The consultation sought comments on proposed changes to the COTES Regulations which we consider necessary to: reflect changes in controls already established by EU regulation to fulfil the obligation on Member States to put in place an effective enforcement regime by; helping equip enforcement bodies with the necessary capability and powers to enforce the requirements of CITES and address activity which is contrary to it; removing existing anomalies in the Regulations; reviewing the existing criminal offences. We will also be updating the list of designated ports of entry and exit through which CITES controlled species can be brought in and out of the UK and consolidate all of the COTES Regulations (and related legislation) into one Statutory Instrument to provide a one-stop-shop for stakeholders for all CITES related legislation.

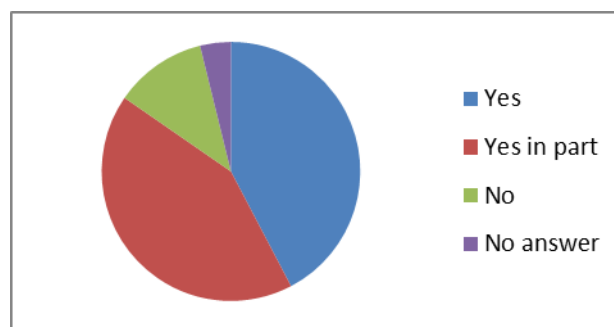
Defra received 49 responses to the consultation, of which 16 were from individuals, including a number of bird of prey keepers, and 33 were from organisations. A list of organisations that responded can be found in Annex A.

Summary of responses

The consultation received 49 responses via Citizen Space and e-mail which are summarised below.

Part 1 - Proposed changes – Enforcement

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



22 respondents (42 %) supported this proposal

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

23 respondents (46%) supported this provision.

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

23 respondents (46%) supported this provision

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

23 respondents (46%) supported this provision. One respondent noted it might be difficult to enforce this provision if introduced.

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

23 respondents (46%) supported this provision. One respondent suggested that bringing in these requirements so as to be in line with those for other documents will aid enforcement and that it may be prudent to widen the scope to future proof as new obligations arise under CITES.

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

23 respondents (46%) supported this provision. 12 (24%) respondents questioned the need to return permits, some noting they can be used as proof of parentage. Two respondents considered it disproportionate to create an offence for non-return. One respondent suggested this provision could help prevent fraud.

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

24 respondents (48%) supported this provision. Three respondents said that the proposed text should also include text saying ‘use for commercial gain’. One respondent noted that there is a trend for people to sell ‘pets and corals’ from home or over the Internet and whilst this activity may be perfectly legal it would prove difficult to check for compliance.

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

38 respondents (76%) supported this provision. Four respondents said it was necessary that customers are made aware of this requirement if introduced. Another said that the ‘burden of proof’ would lie with traders when CITES Management Authorities should have records. Another that, a simple case of human error could lead to offence.

Some birds of prey owners noted it would not be possible to issue Article 10 numbers for birds which have not yet hatched but are on order. Adverts might need to contain a large amount of permit numbers where multiple specimens are being sold. One respondent commented that introduction of the new provision may help cut down on ‘cybercrime’ (e.g. illegal sales over the Internet). Another re-iterated concerns on illegal sales of CITES specimens taking place over the Internet, recognising that Government must take a role in tackling this.

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

23 respondents (46%) supported this provision. 15 respondents (30%) say that they fundamentally object to ‘sting operations’ with some commenting that provisions should be put in place to prevent entrapment. Two asked if a defendant is found guilty following a test purchase, would costs be recovered from them.

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

23 respondents (46%) supported this provision

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

23 respondents (46%) supported this provision. One respondent suggested changing the proposed text for the Statutory Instrument (SI) from ‘identity or ancestry’ to ‘origin’. Six respondents said that anyone taking a sample from a live specimen must be suitably qualified and used to handling exotic species.

Three respondents said that the requirements for taking samples should mirror those in the Wildlife and Countryside Act 1981 (WCA) section 19 (1).

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

23 respondents (46%) supported this provision

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

36 respondents (72%) supported this provision with 14 saying that a person seizing live animals should be suitably qualified in handling exotic species, including birds of prey.

Provision M - Include a new provision enabling enforcement bodies to a) serve a retention notice or b) seize the live specimens prior to the case being heard, c) give

them the power to seize the live specimens post-conviction and recover any expenses linked to this.

23 respondents (46%) supported this provision. Four said that adequate care and accommodation should be provided for live specimens, one mentioned that specimens might be better off left with their owners. One respondent asked if seizure would take place before or after prosecution. One respondent suggested that an offence should be created if a keeper of a specimen's moves or disposes of that specimen once a retention order has been issued.

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

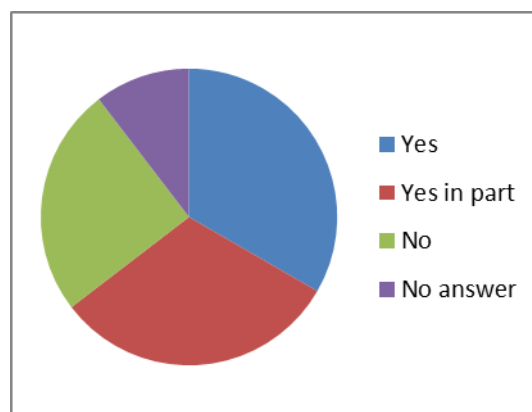
23 respondents (46%) supported this provision. Two said that a ban should be an 'additional' provision on top of a fine, or custodial sentence. Another noted that money spent on investigating paperwork offences should be minimised.

Provision P - Consolidation of all COTES regulations (and related legislation) into a single statutory instrument to provide a 'one stop shop' for stakeholders, for CITES related legalisation.

24 respondents (48%) supported this provision. One respondent noted support for a 'One stop shop'. 14 respondents note that increasingly complex legislation makes it difficult for customers to understand without legal assistance

Part 2 - Proposed changes - Ports of Entry and Exit

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



16 respondents (32%) supported this proposal

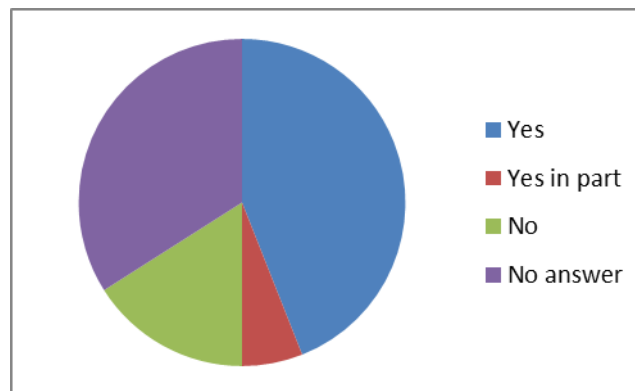
Two respondents said, introducing new Ports of Entry and Exit (PoEE) could mean that limited resources, at the point of import/export, would be too thinly spread to the detriment of the care of live animals. Two more pointed out that PoEE must comply with Article 12 of Council Regulation 338/97¹ which says that, PoEE should be provided with adequately trained staff and accommodation and transport provided is in accordance with relevant EU legislation. In addition, one respondent said that staff at PoEE should be adequately trained in spotting illegal consignments.

Five respondents say that specific ports should be designated as PoEE². For example large consignments that cannot be airfreighted are currently being imported to Dover. Some airlines are limited to certain airports, for example UAE fly to Glasgow which if designated could help with trade in falcons to and from UAE. Use of Gatwick airport would limit imports/exports to and from Jersey to the UK as those would be limited to BA.

14 respondents said that PoEE should be as geographically accessible as possible from all parts of the UK to reduce travelling time for live animals. One suggested PoEE should be within 150 miles reach of all parts of the UK.

Part 3 - Reviewing existing criminal offences

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



22 respondents (44%) agree that the existing powers in COTES are fit for purpose. One remarked that the requirements for marking caviar in Article 66 of Commission Regulation 865/2006 could be extended to create a general offence for all failures to mark specimens in accordance with the Regulations. The same respondent suggested other changes to COTES including bringing COTES into line with the warrants provisions in the Police and Criminal Evidence Act (PACE) 1984³; adding new powers so the police can stop and search a person suspected of committing an offence under COTES; a power of entry into dwellings and introduction of possession controls.

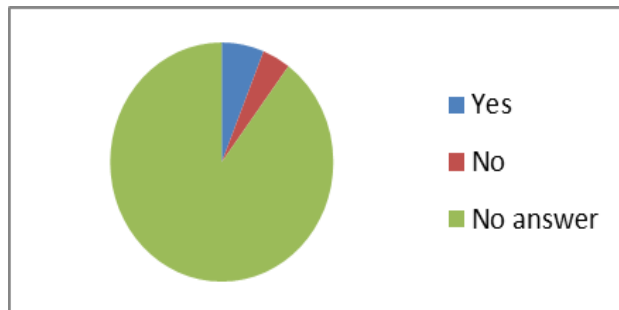
¹ [Council Regulation 338/97](#)

² Ports of Dover, Hull and Harwich, Glasgow and Southampton Airports.

³ [Police and Criminal Evidence Act \(PACE\) 1984](#)

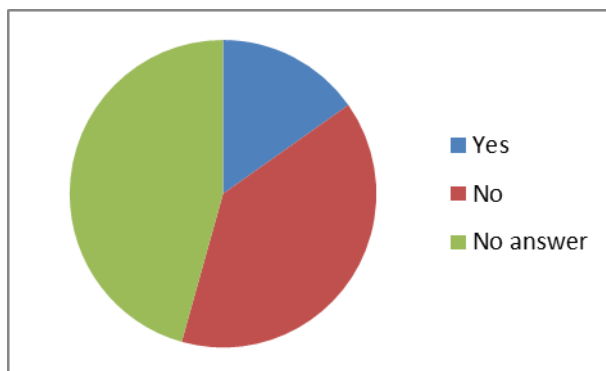
Part 4 – Costs and benefits

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



Three respondents (6%) identified an additional costs which had not been previously identified, and this related to the training of enforcement officials to implement the new provisions. One respondent suggested that procedures followed by the Pet Advertising Advisory Group (PAAG) could be used for online sales.

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



Seven respondents (14%) thought there would be additional costs incurred when designating the proposed PoEE. One, if Dover was not designated they would have to find an alternative PoEE, another cited additional costs if they had to use Heathrow airport. Two said that training of staff for the designated PoEE could incur additional costs for that training.

Government response to the main issues

This section sets out initial thoughts on some of the issues raised in the consultation responses. A number of issues were raised and it is clear further review of some of the key elements of the proposals is necessary, for example around the appropriate sanctions

regime and the proposals to designate ports of entry and exit. Defra will continue to review and refine our proposals in discussion with relevant Government departments and agencies, and with key stakeholders to find a suitable way forward before any final decisions about the proposals are made.

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

There was concern that this was an unnecessary administrative burden and that it was disproportionate to create an offence for non-compliance. This is an issue which we have previously looked at and which has been discussed with stakeholders, but we will reconsider in light on consultation responses.

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

Questions were raised about the awareness that sellers will have of this provision and therefore how proportionate enforcement would be. Legitimate practical questions were also raised; for birds of prey which have not yet hatched, and other forms of advance advertising for items not in the possession of the seller – for example corals. Additionally if multiple specimens were being advertised would all permit numbers need to be displayed. As such we recognise there is a need to revisit the precise scope of this provision to ensure it is workable.

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

Concerns were raised that this provision could be seen as entrapment, and some respondents were opposed to such “sting operations”. However, we consider these concerns are insufficient reason for not including this provision. The use of test purchases is a legitimate enforcement tool that is available in a number of other areas, for example in the context of trading standards.

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

We received requests for “*suitably qualified person*” to be more clearly defined or for a list of such persons to be developed. In addition it was suggested that the requirements for taking samples should mirror those contained in the Wildlife and Countryside Act 1981 (WCA) (section 19). We have assumed the text referred to is 19 2(a) as added by the NERC Act in 2006.

“A constable may, for the purpose of assisting him in exercising the powers conferred by subsection (1)(b) and (d) when he has entered any premises under subsection (2), take with him—

(a) any other person, and

(b) any equipment or materials”

We do not consider that providing a list of persons deemed suitable in the Regulation is a practical option here, both in terms of compiling such a list and maintaining it up to date. The flexibility of maintaining “*suitably qualified person*” would be preferable, but we will also consider further the precedent of the WCA provision to see if there is value in pursuing this approach. .

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

There were calls for a defined list of acceptable agencies / qualified people and some further concerns about prioritising the welfare of the animals seized over other concerns. Responding to these concerns will be related to how we take forward Provision J but giving priority to the welfare of any live specimen has to be a primary consideration.

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

Two respondents suggested that a ban should be used in addition to a fine or imprisonment and not as an alternative. Our feeling is that this is the correct approach with courts free to exercise the power to ban someone instead of, or in addition to, any other penalty, as it saw fit. We propose to look at the potential use of a ban as a sanction under wider discussions to be had on what the overall balance of civil/criminal sanctions should be available.

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

Some concerns were raised over proper resourcing and training for UK Border Force and Customs Officials with any extension to the currently designated list of ports of entry/exit. Some suggestions were made about individual ports, e.g. Dover, and these will need looking at. We propose to handle these concerns under the wider discussion on ports of entry and exit with the enforcement bodies concerned.

Next steps

Defra welcomes the comments and information received through this consultation relating to proposed changes to the current Control of Trade in Endangered Species Regulations and will consider these as it works towards refining and finalising provisions for inclusion in the new Statutory Instrument. In doing so we will ensure that key stakeholders interested in this consultation are informed of our emerging thinking and have the opportunity to comment on any revisions to our proposals.

Annex A: List of respondents

2K Falconry	RSPB
Born Free Foundation	Scottish Hawking Club
British Falconers Club	South Hams Hawks
British Veterinary Association	Staffordshire Police
Cadogan Tate	Traffic International
Christie Manson & Woods Ltd	Twycross Zoo
Curragh's Wildlife Park	Wildlife and Countryside Link
Cyclamen Society	WWF UK
Desert Falcons	Zoological Society of East Anglia
Durrell Wildlife Conservation Trust	Zoological Society of London
Dyfed-Powys Police	
Edinburgh Zoo	
Focus Veterinary Histopathology International	
Forensics Working Group (PAW)	
Gulfstream Falcons	
Hawk Board	
Highland Wildlife Park	
International Wildlife Consultants	
KLD Architectural Design	
Mammal Society	
National Wildlife Crime Unit	
Ornamental Aquatic Trade Association	
Origin Vets	