

(England and Wales)

Questionnaire EUFJE Conference 2010 – Enforcement of European Biodiversity Law at national level

I. Natural habitats and their fauna and flora

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I. Natural habitats and their fauna and flora

A. Habitat protection

Introduction

Habitat-directive (92/43/EEC) - Special areas of conservation. According to art. 4 of the directive, a list of sites selected as sites of Community importance was adopted by the European Commission¹. Once a site of community importance has been adopted, the Member State concerned designates that site as a special area of conservation, as soon as possible and within six years of designation by the Commission at the latest.

According art. 6.2. of the directive Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the directive. Moreover, according to art. 6.3. of the directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

Birds-directive (79/409/EEC) – Special protection areas. According to art. 4.1 of the directive, the Member States shall classify as special protection areas the most suitable territories for the conservation of *Annex I* –

¹ See for the actual lists of SACs:

http://ec.europa.eu/environment/nature/natura2000/sites_hab/index_en.htm

See also: http://ec.europa.eu/environment/nature/natura2000/db_gis/index_en.htm

bird species, in order to ensure their survival and reproduction². According to art. 4.2 of the directive, Member States shall take similar measures for regularly occurring *migratory species not listed in Annex A*. To this end, they shall pay particular attention to the protection of wetlands, particularly wetlands of international importance.

Ecocrime-directive (2008/99/EC). Art. 3 (h) of the Ecocrime-directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence (...) "*h*) any conduct which causes the significant deterioration of **a habitat within a protected site** ; (...)". A 'habitat within a protected site' is any natural habitat or habitat of species for which a site is designated as a special area of conservation under the Habitat-directive or any habitat of species for which an area is classified as a special protection area under the Birds-directive.

Questions

I.A.1. Are there general habitat protection measures, applicable to all special areas of conservation an special protection areas in your country, or are they site specific, or is there a combination of general and site specific measures?

Answer I.A.1:

The habitat protection measures in England and Wales are predominantly general, not site specific, measures.

We have general habitat protection measures applicable to all Special Areas of Conservation (**SACs**) and Special Protection Areas (**SPAs**), currently implemented in England and Wales by: the Conservation of Habitats and Species Regulations 2010 (terrestrial, aquatic and inshore sites) ("the **Conservation Regulations**") which have superseded the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended); and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) which implement protection of offshore marine sites.

Part 6 of the Conservation Regulations, which implement Article 6(3) of the Habitats Directive (appropriate assessment of plans and projects), also applies to Scotland.

Regulation 25 of the Conservation Regulations provides that the appropriate authority may make a "special conservation order" in respect of any European site specifying operations which could destroy or damage the flora or fauna features for which that site was designated. A stop notice can then be issued against anyone carrying out or proposing to carry out the operations specified in the order. SCO's are issued by the Secretary of State. They are used infrequently.

² See for the actual list of SPAs:

http://ec.europa.eu/environment/nature/natura2000/sites_birds/sites_spa.htm

See also: http://ec.europa.eu/environment/nature/natura2000/db_gis/index_en.htm

Natural England also notifies all terrestrial SACs and SPAs as Sites of Special Scientific Interest (SSSI) under the Wildlife and Countryside Act 1981 (as amended) so they receive additional protection under that Act.

I.A.2. Who supervises habitat protection measures in your country? Are there (also) specialized inspectorates supervising them?

Answer I.A.1:

The Secretary of State for Environment, who heads the Department for the Environment, Food and Rural Affairs (**DEFRA**) is ultimately responsible for habitat protection and has delegated supervision of habitat protection measures to the following nature conservation bodies through the Conservation Regulations:

Country	Nature Conservation Body
England	Natural England
Wales	Countryside Council for Wales
Scotland	Scottish Natural Heritage

The UK government, the devolved administrations (Scotland, Wales and Northern Ireland) and the nature conservation bodies receive advice from the Joint Nature Conservation Committee (**JNCC**) on EU policies which affect the environment. The JNCC also assists in the SAC and SPA designation process. The JNCC has additional specific duties in relation to offshore marine nature conservation. Its powers and functions are set out in the Natural Environment and Rural Communities Act 2006.

There are no other specialised inspectorates supervising NE, CCW & SNH

I.A.3. If habitat protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

Answer I.A.3.

Examples of habitat offences

Offence	Sanction	Imposed by	Imposed on	Type	Frequency and effectiveness
Carrying out of proposing to carry out operations specified in a "special nature conservation order" – regulation 26 Conservation Regulations	The appropriate authority can serve a "stop notice" on the person prohibiting the operations, or prescribing conditions.	Appropriate authority – Secretary of State (England) or Welsh Ministers (Wales)	The person carrying out or proposing to carry out operations	Civil	
Contravention of a stop notice in respect of operations specified in a "special nature conservation order" – regulations 26 and 29 Conservation Regulations	Criminal sanction for contravening the notice: fine (either the statutory maximum if convicted in the Magistrates Court or an unlimited amount if convicted in the Crown Court). Additional, discretionary, sanction for contravening the notice: restoration order requiring the offender to carry out such operations as are specified to restore the land to its former condition.	The court	The person who carried out the operations.	Criminal	
Carrying out, causing or permitting operations specified in the notification given under s.28(1)b (notification of a SSSI) without reasonable excuse (e.g. planning permission) - s.28P(1) Wildlife and Countryside Act 1981 (as amended)	Criminal sanction for contravening the notice: fine (either £20,000 maximum if convicted in the Magistrates Court or an unlimited amount if convicted in the Crown Court)	The court	The owner/ occupier of the site	Criminal	
Statutory undertaker causing damage without reasonable excuse to the feature flora/ fauna or a SSSI while carrying out its statutory functions - s.28P(2) Wildlife and Countryside Act 1981 (as amended)	Criminal sanction: fine (either £20,000 maximum if convicted in the Magistrates Court or an unlimited amount if convicted in the Crown Court)	The court	The statutory undertaker (e.g. the Environment Agency)	Criminal	
A person other than the owner/ occupier or a statutory undertaker who intentionally or recklessly	Criminal sanction: fine (either £20,000 maximum if convicted in the Magistrates Court or an unlimited amount if convicted in	The court	The person who damages/ destroy the flora/ fauna	Criminal	

damages or destroys any of the feature flora/ fauna of the SSSI, knowing that the damage caused was within a SSSI - s.28P(6) Wildlife and Countryside Act 1981 (as amended)	the Crown Court)				
<p>Causing or failing to prevent damage or further damage to “natural habitats” (which includes SACs and SPAs) by intention or negligence.</p> <p>Environmental Damage (Prevention and Remediation) Regulations 2009</p>	<p>Civil sanction: notice requiring the operator to take specific measures to prevent the damage. Failure to comply with the notice is a criminal offence.</p> <p>Civil sanction: notice to the operator requiring remediation of the damage. Failure to comply with the notice is a criminal offence.</p> <p>A person guilty of an offence is liable to either:</p> <ul style="list-style-type: none"> • A fine of £5,000 max and/ or 3 months imprisonment (conviction in Magistrate’s Court); or • An unlimited fine and/ or 2 years imprisonment (conviction in Crown Court). 	<p>Natural England (land), Environment Agency (water but not the sea), Secretary of State (continental shelf)</p>	<p>The “operator” which includes legal persons.</p> <p>In the event that a body corporate is guilty of the offence, individuals may also be guilty if the offence was committed with their consent or connivance.</p>	<p>Civil and criminal</p>	

I.A.4. What type of sanctions can be applied if a plan or project as referred to in art. 6.3. of the Habitat-directive is carried out without an appropriate assessment? Makes it a difference if not only an appropriate assessment is lacking, but also a permit for the project or an approval of the plan?

Answer I.A.4:

If a plan or project for the purposes of article 6.3 is carried out without the necessary appropriate assessment, there is no sanction against the person carrying out the plan/project, but the decision by a competent authority to allow such a plan/project without an appropriate assessment would be open to legal challenge (judicial review) by an interested party, and consequently may be overturned.

There are sanctions for carrying out projects without the necessary permits, regardless of whether or not an appropriate assessment was carried out. The type of permit required would depend on the specific details of the project.

I.A.5. Conduct falling under article 3(h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation?

How is this conduct described in your legislation: copy- and paste or a specific national description?

What are the minimum and maximum penalties?

Is there a difference between penalties for natural and legal persons?

If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

Answer I.A.5:

Currently the Wildlife and Countryside Act 1981 (as amended) specifies the offences and penalties for destroying or causing damage to SSSI. There are three main offences which may be summarised as follows:

- s.28P(1) – states that where an owner/occupier of a SSSI carries out works on a SSSI without consent shall be guilty of an offence, the penalty for which may be a maximum fine of £20,000 in a Magistrates Court (the lowest English court) or an unlimited fine in the Crown Court (a higher court).
- s.28P(6) – states that where a person, without reasonable excuse, destroys or damages habitat and they knew that what they were destroying was a SSSI they shall be guilty of an offence the penalty for which may be a maximum fine of £20,000 in a Magistrates Court or an unlimited fine in the Crown Court.
- s.28P(6A) – states that where a person, without reasonable excuse, destroys or damages habitat they shall be guilty of an offence the penalty for which may be a maximum fine of £2500 in a Magistrates Court.

No distinction is made in these offences for whether the person is an individual or a legal person although the English courts may take account of ability to pay when sentencing and it

may be that legal persons such as companies will receive a larger fine because of their greater ability to afford such a penalty.

It is a matter for the English regulator to decide whether it has sufficient evidence to pursue these offences and whether it would be appropriate to do so in line with its enforcement policy.

Whether these offences satisfy the requirements of the Environmental Crime Directive is a matter for consideration by the UK government.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

R (Hart DC) v Secretary of State for Communities and Local Government [2008] EWHC 1204 (Admin)

In the context of a planning application for a housing development which could affect a SPA, it was found that avoidance or mitigation measures can be considered at the screening stage of appropriate assessment if they form part of the plan or project. At paragraph 61, Sullivan J said: “while it is true that “effective mitigation of adverse effects on Natura 2000 sites can only take place once those effects have been fully recognised, assessed and reported,” if the competent authority is satisfied at the screening stage that the proponents of a project have fully recognised, assessed and reported the effects, and have incorporated appropriate mitigation measures into the project, there is no reason why they should ignore such measures when deciding whether an appropriate assessment is necessary.” Sullivan J also noted that this case is not inconsistent with the ECJ case of *Waddenzee* because in that case no mitigation measures were being put forward for consideration.

R (Boggis) v Natural England [2009] EWCA Civ 1061

The court considered whether the designation of a site as a Site of Special Scientific Interest could be considered to be a plan requiring an appropriate assessment under Article 6.3 of the Habitats Directive. After considering the caselaw about plans and projects, it was decided that the SSSI designation was not a plan.

Akester v Defra [2010]CO1834/2009

The court provided clarity on the relationship between competent authorities and their duties in relation to the Natura 2000 network under the Habitats Directive. The decision arose out of a decision by Wightlink, a ferry company and the statutory harbour authority, to introduce larger ferries on a route between Lymington and Yarmouth. The ferries pass adjacent to an SAC and an SPA. Wightlink took the view that the introduction of the ferries did not constitute a plan or project for the purposes of the Conservation Regulations and therefore it was not required to carry out a formal appropriate assessment. The court disagreed. The court said that private companies could be competent authorities even where they are only exercising a very limited statutory function. The term plan or project is to be interpreted broadly and in accordance with the precautionary principle. Appropriate assessments must be made by the competent authority and not by their consultants and that the assessment must contain a reasoned explanation in light of best scientific evidence as to whether or not the plan or project will have an adverse effect on the integrity of a European site. Finally the court said that the representations of the appropriate nature conservation body must be given considerable weight and cogent and compelling reasons given for acting against that advice.

B. Species protection

Introduction

Habitat-directive (92/43/EEC) – Animal and plant species. According to art. 12 of the directive Member States shall take the requisite measures to establish a system of strict protection for the **animal species listed in Annex IV (a)** in their natural range, prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild; (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; (c) deliberate destruction or taking of eggs from the wild; (d) deterioration or destruction of breeding sites or resting places. Member States shall also prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before the directive is implemented. The protection shall apply to all stages of life of the animals. According art. 13 of the directive, Member States shall take the requisite measures to establish a system of strict protection for the **plant species listed in Annex IV (b)**, prohibiting: (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild; (b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before the directive is implemented. The prohibitions shall apply to all stages of the biological cycle of the plants.

Birds-directive (79/409/EEC). Similar provisions apply to birds. Pursuant to art. 5 of the directive, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in art. 1 of the directive, being *“all species of naturally occurring birds in the wild state in the European territory of the Member States”*, Greenland excepted. They will be prohibiting in particular: (a) deliberate killing or capture by any method; (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests; (c) taking their eggs in the wild and keeping these eggs even if empty; (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of the directive; (e) keeping birds of species the hunting and capture of which is prohibited.

Without prejudice to the provisions of art. 6.2 and art. 6.3 of the directive, which allow for some exceptions, Member States shall also prohibit for all those bird species the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds (art. 6.1 directive). Regarding the hunting, capture or killing of the birds, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, and in particular the use of those listed in Annex IV (a). Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b) (art. 8 directive).

Ecocrime-directive (2008/99/EC). Art. 3 (f) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: *“f) the killing, destruction, possession or taking of specimens of **protected wild fauna or flora** species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species”*. For the purpose of this article, ‘protected wild fauna and flora’ are, under the Habitat-directive, the Annex IV animals and plants, and under the Birds-directive, the Annex I bird species and regularly occurring migratory bird species not listed in Annex I.

Questions

I.B.1. Are the fauna (including birds) and flora protection measures organized within one coherent legislative framework, or through a patchwork of legislations, or is there a combination of general and specific measures?

Answer I.B.1:

Flora and fauna are protected under the following legislation, which gives a combination of general and specific measures:

- Conservation Regulations

Applies to European protected species. Prohibits: killing; injuring; capturing; disturbing wild animals; taking or destroying eggs of wild animals; damaging or destroying breeding sites or resting places of wild animals / picking, collecting, cutting, destroying or uprooting plants [Regulations 41 and 45]

- Wildlife and Countryside Act 1981

Prohibits: killing; injuring; taking; disturbing birds or wild animals; damaging or destroying breeding sites or resting places of birds and animals / picking, destroying or uprooting plants; of any species listed in the Schedules – overlap with European protected species. [Sections 1, 9 and 13]

- Environmental Damage (Prevention and Remediation) Regulations 2009

Obligation on operators to prevent damage to the conservation status of European protected species and their resting and breeding sites.

- Protection of Badgers Act 1992

Makes killing, injuring or taking badgers or interfering with their setts illegal, unless those actions are licensed or exempt.

- Deer Act 1991

Provides a close season for deer hunting and prohibits use of certain weapons for hunting.

- Conservation of Seals Act 1970

Provides a close season for seal culling and prohibits certain methods of killing.

- Salmon and Freshwater Fisheries Act 1975

Provides a licensing regime for salmon (and certain other fish species) fishing and requirements for fish passes and screens on watercourses.

- Eels (England and Wales) Regulations 2009

Provides a licensing regime for eel fishing, and requirement for eel passes and screens on watercourses.

I.B.2. Who supervises fauna and flora protection measures in your country? Are there (also) specialized inspectorates supervising them?

Answer I.B.2:

For England and Wales: DEFRA; Natural England; Countryside Council for Wales.

Wildlife Inspectors have powers under the Conservation Regulations (Regulations 110 and 114) to investigate species offences, take samples, search premises etc. Police constables have similar powers to wildlife inspectors

I.B.3. Do the enforcement efforts concentrate on a few types of fauna, birds or flora? Are there some topics that gather all attention, all enforcement efforts? Is there an evolution through time in the focus of enforcement efforts?

Answer I.B.3

From Natural England's perspective, enforcement efforts do not concentrate on a particular type of flora, fauna or birds.

I.B.4. If fauna and flora protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

Answer I.B.4:

Criminal sanctions can be imposed under the Conservation Regulations. The punishment for conviction is imprisonment for a term not exceeding 6 months and/ or a fine not exceeding level 5 of the standard scale (currently £5000).

Civil Sanctions are available for some protected species offences under the Wildlife and Countryside Act, introduced by the Environmental Civil Sanctions (England) Order 2010.

I.B.5. Conduct falling under article 3(f) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

Answer I.B.5

Such conduct (in respect of animals) already qualifies as a criminal offence in England and Wales under regulation 41 of the Conservation Regulations, but the wording is slightly different from the directive:

“(1) A person who—

(a) deliberately captures, injures or kills any wild animal of a European protected species,

(b) deliberately disturbs wild animals of any such species,

(c) deliberately takes or destroys the eggs of such an animal, or

(d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.”

It is also an offence for any person to be in possession of, or to control, transport, sell or exchange or offer for sale or exchange any wild animal of a European protected species.

There are several defences to the offence, including the situation where there was no satisfactory alternative *and* the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range (regulation 42(9)). This is slightly more onerous than the defence provided by the directive.

In respect of plants of a European protected species, the following offence applies under regulation 45 of the Conservation Regulations:

“(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

(a) to be in possession of, or to control,

(b) to transport,

(c) to sell or exchange, or

(d) to offer for sale or exchange,

anything to which this paragraph applies.”

This covers the scope of the Directive in respect of protection for flora. The defence of conduct concerning a negligible quantity of specimens and a negligible impact on the conservation status of the species is not provided in relation to protected flora.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

R (on the application of Woolley) v Cheshire East BC [2009] EWHC 1227 (Admin)

The Court considered whether the local authority had failed to properly consider the effect on a European protected species (bats) of granting planning permission for a development which would disturb a bat roost. It was decided that the authority had failed to discharge its duty in respect of protected species under the Conservation Regulations by assuming that the bats would be adequately protected by Natural England’s licensing process. Giving judgment, Waksman QC

decided that making the acquisition of a bat licence a condition of the planning permission did not sufficiently engage with the Habitats Directive. The planning permission was therefore unlawful.

II. International trade

Introduction

CITES-regulation (338/97/EC). The CITES-regulation³ aims to protect species of wild fauna and flora which are threatened by trade, or likely to be so threatened, by regulating trade therein. ‘Trade’ encompasses “the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the Community, including within a Member State, of specimens subject to the provisions of the regulation”. The protected species are subdivided into 4 categories of conservation status, listed in the annexes A to D. Annex A lists in essence species threatened with extinction or so rare that any level of trade would imperil the survival of the species. Annex D contains the species which are not listed in the Annexes A to C and are imported into the Community in such numbers as to warrant monitoring. The *introduction into the Community* of specimens of the species listed in the Annexes A and B is subject to the completion of checks at the border customs office of the point of introduction and of an import permit issued by a management authority of the Member State of destination. The introduction into the Community of specimens of the species in the annexes C and D is also subject to the completion of checks at the border customs office of the point of introduction and also requires an import notification. The *export or re-export from the Community* of specimens of the species listed in the Annexes A, B and C is subject to the completion of checks at the customs office at which the export formalities are completed and requires an export permit or re-export certificate issued by the management authority of the Member States in which the specimens are located. Member States had to designate customs offices for the introduction and export and re-export of the protected species. In principle, *within the Community* all *commercial activities* concerning specimens of species listed in the annexes A and B are prohibited. Any *movement within the Community of a live specimen* of a species listed in Annex A requires a prior authorization of the Member State in which the specimen is located.

The CITES-regulation also contains *enforcement provisions*. The competent authorities of the Member States shall *monitor compliance* with the provisions of the regulation. 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*. Member States shall inform the Commission and, in the case of species listed in the Appendices to the CITES-Convention, the Convention Secretariat, of any steps taken by the competent authorities in relation to significant infringements of the regulation, including seizures and confiscations. (art. 14.1 regulation) Art. 16 of the regulation, titled ‘sanctions’, states:

“1. Member States shall take appropriate **measures to ensure the imposition of sanctions for at least the following infringements** of this Regulation:

- (a) introduction into, or export or re-export from, the Community 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 Community permit or certificate 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);

³ See also: http://ec.europa.eu/environment/cites/legis_wildlife_en.htm

(i) shipment of specimens into or out of or in transit through the territory of the Community 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 Regulation;

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

2. The measures referred to in paragraph 1 **shall be appropriate to the nature and gravity of the infringement and shall include provisions relating to the seizure and, where appropriate, confiscation of specimens.**

3. Where a specimen is confiscated, it shall be entrusted to a competent authority of the Member State of confiscation which:

(a) following consultation with a scientific authority of that Member State, 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 the Community, 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 the Community 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 the Member State responsible for the point of introduction may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure."

Environmental crime-directive (2008/99/EC). Art. 3 (g) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: "**g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof**, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species". For the purpose of this article, 'protected wild fauna and flora' are those listed in Annex A or B of the CITES-regulation.

Questions

II.1. Who supervises compliance with the CITES-regulation in your country? Do the monitoring efforts concern as well the import into and export and re-export from the Community as the commercial activities and movements of life specimens within the Community, your country⁴?

Answer II.1:

Defra and its executive agency, Animal Health, are the UK CITES Management Authority and are responsible for ensuring that the Convention is properly implemented in the UK. This includes issuing permits and certificates for the import and export, or commercial use of, CITES specimens.

The UK CITES Management and Scientific Authorities work closely with UK Border Agency and the Police to enforce CITES controls within the UK.

In addition, the Partnership for Action against Wildlife Crime (PAW) is a multi-agency body comprising representatives of the organisations involved in wildlife law enforcement in the UK. It provides opportunities for statutory and non-Government

⁴ See point II.(g) of the Commission Recommendation C(2007)2551 of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) n° 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Pb. L. 2007/159).

organisations to work together to combat wildlife crime. Its main objective is to promote the enforcement of wildlife conservation legislation (including CITES-related legislation), particularly through supporting the networks of Police Wildlife Crime Officers and UK Border Agency officers.

II.2. If protection measures are infringed, what type of sanctions can be imposed by whom?

The CITES Regulation is administered and enforced in the UK through the Control of Trade in Endangered Species (Enforcement) Regulations (SI 1997/1372), as amended. The sanctions that can be imposed by the Courts under these Regulations are custodial sentences and fines.

Are these sanctions administrative, criminal or civil in nature?

The sanctions are criminal in nature.

Do they include the possibility of seizure and confiscation of specimens?

Yes, regulation 10 sets out a power of seizure; and regulation 11 makes provision with regard to forfeiture.

What is the level of fines and prison sentences?

Regulation	Offence	Sanction on summary conviction	Sanction on indictment
3.1	Knowingly or recklessly Making false statements or furnishing information or documents that are false in a material particular	a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both
3.2	Knowingly or recklessly making an import notification which is false in a material particular	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both
4.1	Knowingly falsifying or altering a permit or certificate	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or to both
4.2	Knowingly using a permit, certificate or import notification for a specimen other than that for which it was issued	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or to both
4.3	Knowingly using an Annex A specimen otherwise than in accordance with the	fine not exceeding level 5 on the standard scale, or a term of imprisonment not	imprisonment for a term not exceeding two years or to an unlimited fine, or both

	relevant authorisation	exceeding three months, or both	
6	Knowingly contravening a condition or requirement of a permit or certificate	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both
7.1	Keeping live specimens at an address other than that specified in the relevant permit or certificate, or transferring that specimen from that address without prior written authorisation	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding three months, or both	imprisonment for a term not exceeding two years or an unlimited fine, or both
8.1	Purchasing, offering to purchase, acquiring for commercial purposes, selling, keepings for sale, offering for sale or transporting for sale any specimen of a species listed in Annex A	a fine not exceeding level 5 on the standard Scale or a term of imprisonment not exceeding six months, or both	a term of imprisonment not exceeding five years or an unlimited fine, or both
8.2	Purchasing, offering to purchase, acquiring for commercial purposes, selling, keepings for sale, offering for sale or transporting for sale any specimen of a species listed in Annex B	a fine not exceeding level 5 on the standard Scale or a term of imprisonment not exceeding six months, or both	a term of imprisonment not exceeding five years or an unlimited fine, or both
8.7	Knowingly or recklessly Furnishing a statement that is false in a material particular	a fine not exceeding level 5 on the standard scale or a term of imprisonment not exceeding six months, or both	a term of imprisonment not exceeding two years or an unlimited fine, or both
9.6	Intentionally obstructing an authorised person acting in accordance with powers conferred by the COTES regulations	for every such obstruction, a fine not exceeding level 3 on the standard scale	N/A
9.7	With intent to deceive, pretending to be an authorised person	a fine not exceeding level 5 on the standard scale, or a term of imprisonment not	imprisonment for a term not exceeding two years or an unlimited fine, or both

		exceeding three months, or both	
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Are the sanctions often applied and considered to be effective?

Yes, in particular following the introduction in 2005 of more stringent penalties for the most serious offences.

Can the sanctions be applied on legal persons?

Yes, regulation 12 makes explicit provision in respect of offences by legal persons.

II.3. Conduct falling under article 3(g) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

Answer II.3:

We are still in the process of screening national legislation to determine compliance with the Environmental Crime Directive. Initial results indicate that the requirements are already met by existing legislation. The conducts covered by the Environmental Crime Directive are covered in the particular pieces of legislation transposing or putting into effect the EU legislation contained in the Annex to the Environmental Crime Directive. Transposition is thus achieved on a case by case basis.

The specific penalties for an offence will be determined by the particular piece of legislation concerned, and differences between the penalties applicable to natural and legal persons may occur.

It is not the case that prosecution will follow on automatically from the reporting of a crime. When deciding whether to proceed with a case, the prosecutor will first weigh the evidence. He may only go ahead with a prosecution where there is sufficient evidence such that there is a reasonable chance of successful conviction. Once this evidential test is met, the prosecutor then decides whether it is in the public interest to prosecute. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour of prosecution, or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal.

In some cases other types of sanction, such as a civil penalty, are available alongside a criminal sanction, and may be applied instead, in appropriate circumstances.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

R v Noonan [2010] EWCA Crim 2917

The court imposed a custodial sentence of 10 months for offences related to the advertising for sale of CITES listed specimens on ebay without the relevant permits and certificates. In so doing, the court made particular reference to the strengthening of sanctions for CITES offences as evidence of the relative importance placed on addressing illegal trade in endangered species.