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STATUTORY INSTRUMENTS

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**2010 No. 490**

**The Conservation of Habitats and Species Regulations 2010**

**PART 7**

**ENFORCEMENT**

*Wildlife inspectors*

**Wildlife inspectors**

**108.**—(1) In this Part, “wildlife inspector” means a person authorised in writing under this regulation by the appropriate authority.

(2) An authorisation under paragraph (1) is subject to any conditions or limitations specified in it.

*Powers of entry*

**Powers of entry: constables**

**109.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (4), the constable may, for the purposes of exercising the powers conferred by regulation 112 (constables’ powers of search, etc.) or arresting a person in accordance with section 24 of the Police and Criminal Evidence Act 1984<sup>(1)</sup> (arrest without warrant: constables) for such an offence, enter any premises other than a dwelling.

(2) A constable may—

- (a) be accompanied by any other person that the constable considers necessary; and
- (b) bring any equipment or materials that the constable considers necessary.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for suspecting that an offence specified in paragraph (4) has been committed and that evidence of the offence may be found on any premises, the justice may by signed warrant authorise a constable to enter and search those premises for the purpose of obtaining that evidence.

(4) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 52 (introduction of new species from ships);
- (c) an offence under regulation 57 (false statements made for obtaining licence); and
- (d) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

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<sup>(1)</sup> 1984 c. 60; section 24 was substituted by the Serious Organised Crime and Police Act 2005 (c. 15), section 110(1).

**Powers of entry: wildlife inspectors**

**110.**—(1) A wildlife inspector may, at all reasonable hours, enter and inspect any premises other than a dwelling—

- (a) for the purpose of ascertaining whether a species offence is being or has been committed; or
- (b) for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier of the premises in connection with an application for, or the holding of, a licence granted under regulation 53 (licences for certain activities relating to animals or plants).

(2) The power in paragraph (1) to enter and inspect premises includes power to board and inspect a ship within the marine area, subject to paragraphs (3) to (6).

(3) Paragraph (4) applies in relation to—

- (a) a third country ship;
- (b) a warship which is being used by the government of a State other than the United Kingdom (whether or not it is a third country ship); and
- (c) any other ship which is being used by the government of a State other than the United Kingdom for any non-commercial purpose.

(4) A wildlife inspector must not, in the exercise of the power in paragraph (1), board or inspect a ship to which this paragraph applies unless—

- (a) in the case of a third country ship (other than a ship which is being used as mentioned in paragraph (3)(b) or (c)), the United Kingdom is entitled under international law to exercise that power without the consent of the flag state; or
- (b) the Commissioners have given authority to exercise that power.

(5) The Commissioners must not give their authority under paragraph (4)(b) unless the flag state has consented to the United Kingdom exercising that power (whether generally or in relation to the ship in question).

(6) In giving their authority under paragraph (4)(b), the Commissioners must impose such conditions or limitations on the exercise of the power as may be necessary to give effect to any conditions or limitations imposed by the flag state.

(7) A wildlife inspector must, if requested to do so, produce a duly authenticated authorisation document before entering any premises.

(8) A wildlife inspector may be accompanied by a veterinary surgeon if the wildlife inspector has reasonable grounds for believing that such a person will be needed for the exercise of powers under regulation 114 (powers in relation to specimens and samples: wildlife inspectors).

(9) In this regulation—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“flag state”, in relation to a ship, means the State whose flag that ship is flying or is entitled to fly; and

“third country ship” means a ship which—

- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
- (b) is not registered in a member State.

### **Powers of entry: other authorised persons**

**111.**—(1) A person authorised in writing by the appropriate nature conservation body may, at all reasonable hours, enter any land except a dwelling—

- (a) to ascertain whether a special nature conservation order should be made under regulation 25 (power to make special nature conservation order), whether a stop notice should be served under paragraph (1) of regulation 26 (restriction on carrying out operations specified in order) or whether an offence under regulation 26(8) is being, or has been, committed on that land;
- (b) to ascertain the amount of any compensation payable under regulation 28 (compensation for effect of stop notice) in respect of an interest in that land; or
- (c) to affix a notice in accordance with regulation 26(3) or paragraph 2(5) of Schedule 1 (procedure in connection with special conservation orders).

(2) An officer of the Valuation Office or a person authorised in writing by the appropriate nature conservation body may enter any land for the purpose of surveying it, or of estimating its value, in connection with any claim for compensation under regulation 32 (compensation for effect of byelaws) in respect of that or any other land.

(3) A person authorised in writing by the authority having power to acquire land or an interest in land may enter that land for the purpose of surveying it in connection with the acquisition of that land or of any interest in that land, whether by agreement or compulsorily, in the exercise of any power conferred by these Regulations.

(4) A person authorised under this regulation must, if requested to do so, produce a duly authenticated authorisation document before entering any land.

(5) A person authorised under paragraph (1) may not demand admission as of right to any land which is occupied unless either—

- (a) 24 hours' notice of the intended entry has been given to the occupier; or
- (b) the purpose of the entry is to ascertain whether an offence under regulation 26(8) is being, or has been, committed on that land.

(6) A person authorised under paragraph (2) or (3) may not demand admission as of right to any land which is occupied unless at least 14 days' notice in writing of the intended entry has been given to the occupier.

### *Powers of search, etc.*

### **Constables' powers of search, etc.**

**112.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (2), the constable may without warrant—

- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
- (b) search or examine anything which that person may be using or which is in that person's possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing; or
- (c) seize and detain, for the purposes of proceedings in relation to an offence specified in paragraph (2), anything which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 122 (forfeiture).

(2) The offences specified for the purposes of this regulation are—

- (a) a species offence;

- (b) an offence under regulation 52 (introduction of new species from ships);
- (c) an offence under regulation 57 (false statements made for obtaining licence); and
- (d) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

*Powers in relation to specimens and samples*

**Powers in relation to samples: constables**

**113.**—(1) If a constable suspects with reasonable cause that a specimen found in the exercise of powers conferred by this Part is one in respect of which an offence specified in paragraph (5) is being or has been committed, the constable may require a sample to be taken from the specimen.

(2) If a constable suspects with reasonable cause that an offence specified in paragraph (5) is being or has been committed in respect of any specimen (“the relevant specimen”), the constable may require any person to make available for the taking of a sample any other specimen in that person’s possession or control which—

- (a) is alleged to be, or
- (b) the constable suspects with reasonable cause to be,

a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

(3) Where a sample from a live animal or plant is to be taken, any person who has possession or control of the animal or plant must give the person taking the sample such assistance as that person may reasonably require for that purpose.

(4) This regulation is subject to regulation 115 (restrictions on taking samples from live specimens).

(5) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants); and
- (c) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

**Powers in relation to specimens and samples: wildlife inspectors**

**114.**—(1) The powers conferred by this regulation are exercisable where a wildlife inspector has entered premises for a purpose mentioned in paragraph (1)(a) or (b) of regulation 110 (powers of entry: wildlife inspectors).

(2) The wildlife inspector, or accompanying veterinary surgeon, may—

- (a) for any such purpose, examine any specimen; and
- (b) subject to paragraph (3) and regulation 115 (restrictions on taking samples from live specimens), take a sample from it.

(3) No sample may be taken under paragraph (2) from a live animal or plant except for the purpose of establishing its ancestry or identity.

(4) The wildlife inspector may require an occupier of the premises to give such assistance as is reasonable in the circumstances for the purpose of—

- (a) making an examination under paragraph (2)(a); or

(b) taking a sample under paragraph (2)(b).

(5) The wildlife inspector may take and remove from the premises a specimen which is not a live animal or plant, if there are reasonable grounds for believing that it is evidence of a species offence.

### **Restrictions on taking samples from live specimens**

**115.**—(1) No sample may be taken by virtue of regulation 113 or 114 from a live animal except by a veterinary surgeon.

(2) No sample may be taken by virtue of those regulations from a live animal or plant unless the person taking it is satisfied on reasonable grounds that taking it will not cause lasting harm to the specimen.

## *Offences*

### **Attempts and possession of means of committing offence**

**116.**—(1) A person who attempts to commit an offence specified in paragraph (3) is guilty of an offence and punishable in the same manner as for that offence.

(2) A person who, for the purposes of committing an offence specified in paragraph (3), is in possession of anything capable of being used for committing such an offence, is guilty of an offence and punishable in the same manner as for that offence.

(3) The offences specified for the purposes of this regulation are—

(a) a species offence; and

(b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants).

### **Obstruction of persons exercising powers of entry under regulation 111**

**117.** A person who intentionally obstructs a person exercising powers under regulation 111 (powers of entry: other authorised persons) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Obstruction in connection with constables' powers to take samples**

**118.**—(1) A person who, without reasonable excuse, fails—

(a) to make available any specimen in accordance with a requirement under paragraph (2) of regulation 113 (powers in relation to samples: constables), or

(b) to give any assistance reasonably required under paragraph (3) of that regulation, commits an offence.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Offences in connection with wildlife inspectors' enforcement powers**

**119.**—(1) A person who—

(a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by regulation 110 (powers of entry: wildlife inspectors) or paragraph (2) or (5) of regulation 114 (powers in relation to specimens and samples: wildlife inspectors), or

- (b) fails without reasonable excuse to give any assistance reasonably required under regulation 114(4),  
commits an offence.
- (2) A person who, with intent to deceive, falsely pretends to be a wildlife inspector, commits an offence.
- (3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person guilty of an offence under paragraph (2) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both; or
  - (b) on conviction on indictment, to imprisonment not exceeding two years or to a fine, or to both.

### *Codes of practice*

#### **Codes of practice**

- 120.**—(1) The appropriate authority may—
  - (a) issue a code of practice in connection with any of the provisions of regulations 108 (wildlife inspectors), 110 (powers of entry: wildlife inspectors), 114 (powers in relation to specimens and samples: wildlife inspectors), 115 (restrictions on taking samples from live specimens), 118 (obstruction in connection with constables' powers to take samples) and 119 (offences in connection with wildlife inspectors' enforcement powers); and
  - (b) revise or replace such a code.
- (2) In discharging any function under the regulations specified in paragraph (1)(a)—
  - (a) a wildlife inspector authorised by the Secretary of State must have regard to any relevant provision of a code issued by the Secretary of State;
  - (b) a wildlife inspector authorised by the Welsh Ministers must have regard to any relevant provision of a code issued by them.
- (3) But a wildlife inspector's failure to have regard to any provision of a code does not make that inspector liable to criminal or civil proceedings.
- (4) A code—
  - (a) is admissible in evidence in any proceedings; and
  - (b) must be taken into account by any court in any case in which it appears to the court to be relevant.

### *Miscellaneous*

#### **Advice and assistance from nature conservation bodies**

- 121.**—(1) The appropriate nature conservation body may advise or assist any constable or wildlife inspector in, or in connection with, enforcement action in relation to an offence specified in paragraph (2).
- (2) The offences specified for the purposes of this regulation are—
  - (a) a species offence;

- (b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants); and
- (c) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

### **Forfeiture**

- 122.**—(1) The court by which a person is convicted of an offence specified in paragraph (3)—
- (a) must order the forfeiture of any animal, plant or other thing in respect of which the offence was committed; and
  - (b) may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence.
- (2) In paragraph (1)(b) “vehicle” includes any aircraft, hovercraft or boat.
- (3) The offences specified for the purposes of this regulation are—
- (a) a species offence;
  - (b) an offence under regulation 57 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 53 (licences for certain activities relating to animals or plants); and
  - (c) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

### **Proceedings for offences: venue and time limits**

**123.**—(1) For the purposes of conferring jurisdiction, an offence specified in paragraph (5) is deemed to have been committed in any place where the offender is found or to which the offender is first brought after the commission of the offence.

(2) Summary proceedings for such an offence may be commenced within the period of six months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor’s opinion, to justify proceedings.

(3) But no such proceedings may be commenced more than two years after the commission of the offence.

- (4) For the purposes of paragraph (2)—
- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
  - (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.
- (5) The offences specified for the purposes of this regulation are—
- (a) a species offence;
  - (b) an offence under regulation 52 (introduction of new species from ships);
  - (c) an offence under regulation 57 (false statements made for obtaining licence); and
  - (d) an offence under regulation 116(1) or (2) (attempts and possession of means of committing offence).

**Offences by bodies corporate etc.**

**124.**—(1) If an offence under these Regulations committed by a body corporate (other than a limited liability partnership or a Scottish partnership) 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) If the affairs of a body corporate are managed by its members, paragraph (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.

(3) If an offence under these Regulations committed by a partnership (including a limited liability partnership and a Scottish 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.

(4) If an offence under these Regulations committed by an unincorporated body (other than an unincorporated partnership) is proved—

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

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

(5) In this regulation—

- (a) “officer” includes a person purporting to act as an officer; and
- (b) “partner” includes a person purporting to act as a partner.

**Application of criminal offences to the Crown**

**125.**—(1) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable, but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding paragraph (1), these Regulations apply to persons in the public service of the Crown as they apply to any other person.

*Interpretation of Part 7***Interpretation of Part 7**

**126.** In this Part—

- (a) a “species offence” means an offence under—
  - (i) regulation 41 (protection of certain wild animals: offences),
  - (ii) regulation 43 (prohibition of certain methods of capturing or killing wild animals),
  - (iii) regulation 45 (protection of certain wild plants: offences), or
  - (iv) regulation 58 (offence of breaching licence condition); and



- (b) “premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport.