

# By Hook or by Crook



**TRAFFIC** INTERNATIONAL

**A reference manual on  
illegal wildlife trade and  
prosecutions in the  
United Kingdom**

**by Jane Holden**

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# 1. Introduction

*“At a time when the protection of our planet has become a common concern of all peoples, there is an urgent need for officials from all over the world to co-operate in preventing animal and plant species disappearing altogether”.*

James Shavar, Secretary General of the World Customs Organisation and Izgrev Topkov, Secretary General of CITES (WCO, 1998).

## 1.1 Outline

The aim of this manual is to outline the significance, prevalence and trends of illegal wildlife trade in the UK, and place this in an international context. It is aimed at anyone with an interest in wildlife crime issues, but particularly those involved in enforcing wildlife crime laws and bringing cases to court. Topics covered include the international illegal wildlife trade and the illegal wildlife trade in the UK, both in native and exotic species. Enforcement of wildlife related laws in the UK is a focus, and in particular the treatment of the cases in court. A number of case studies are presented to illustrate many points raised in the text, and the types of wildlife crime occurring in the UK. To place all this in context, treatment of drug smuggling in the UK is considered, as well as the treatment of wildlife crime in two other countries, the United States and Greece. Detailed guides to the relevant legislation are included in the Appendices.

## 1.2 Background

The removal of plants and animals from the wild for commercial purposes is one of the most significant factors, after habitat destruction, currently driving species to extinction. The total trade in live and dead wild animals and plants and their products is enormous, with an annual turnover of as much as US\$20 billion (UK£11.8 billion) and includes 25,000 to 30,000 primates, 2 to 5 million wild birds, 10 million reptile skins, 7 to 8 million cacti and over 500 million tropical fish (Le Duc, 1996; WCO, 1998).

The extent of over-exploitation for this trade aroused such grave concern that an international treaty, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), was drawn up in 1973 to regulate international wildlife trade. It has now been joined by over 140 countries. In addition a number of countries such as Mexico have completely banned all commercial exports of their live wild plants and animals, and in 1996 the European Union (EU) enacted new, stricter, wildlife trade regulations.

However, despite these stricter controls, the illegal trade in wildlife and wildlife products has flourished and become increasingly more organized. Smuggling of wild birds and reptiles is commonplace, as is the illegal trade in derivatives such as traditional medicines containing endangered species. For some species including the tiger, the black rhinoceros and Lear's macaw, trapping for the commercial trade has become the most immediate threat to their long-term survival in the wild.

Whilst the focus of this manual is the illegal trade in wildlife, it should be noted there are many other crimes against wildlife committed in the UK that are outside this mandate, including illegal persecution of birds of prey, illegal egg collecting, illegal badger baiting and other animal welfare issues.

### 1.3 Setting the scene; legal and illegal wildlife trade in the UK

The UK is one of the more significant wildlife consumer nations in the world. The pet trade in exotic species in the UK is flourishing, and in particular trade in reptiles and amphibians is booming. Iguanas are the most commonly traded reptile and green iguanas (*Iguana iguana*) (CITES Appendix II), are legally imported into the UK in quantities of two to five thousand per shipment (WCMC, *in litt.*, 1998). Boas, pythons, chameleons and geckos are also frequently imported and traded privately and in pet shops across the country. Bird keeping has long been popular, and exotic parrots and finches are traded in large numbers. Falconry has steadily increased over the past two decades, and in 1991 approximately 10,000 people were registered holding live birds of prey, with a total of nearly 13,000 birds (Robinson, 1991) (In 1994, the requirement of registration with the DETR was removed for most commonly kept raptor species including kestrels, common buzzards, the Sparrow Hawk and all non-indigenous birds of prey other than those globally threatened. As a result, in 1995 only 1300 people were registered, holding approximately 1400 birds) (L. Garvey, Wildlife Enforcement Co-ordinator DETR, *pers. comm.*, 1998). In 1990, a popular bird trade magazine *Cage and Aviary Birds* carried advertisements for over 94,700 birds from 961 different species. At least 186 of these birds from 31 species were listed on CITES Appendix I (see below), and another 1,403 birds from 49 species were listed on the EU Wildlife Trade Regulations Annex A (see below) (RSPB, 1991). The tropical fish and aquarium trade is also very large, although being mostly unregulated is difficult to quantify. Butterfly houses and wildlife parks are opening regularly, and the local popularity of plants is such that the UK has been called a country of gardeners. Stuffed animals, both native and exotic are favoured amongst collectors, and the taxidermy trade is widespread. There has also been a dramatic increase in recent years in the use of traditional and herbal medicines, frequently containing wild plant and animal derivatives.

Some plants and animals commonly traded in the UK are bred in captivity or artificially propagated. Many are legally imported into the UK, often taken from the wild in countries in Africa and Asia. Summary information of legal imports of some CITES-listed species are shown in Table 1, however even larger numbers of non-CITES species are also imported, for example the UK has been estimated to import at least 1 million live reptiles and amphibians each year (Smart and Bride, 1993).

**Table 1: Legal imports of some CITES-listed plants and animals into the UK (1996).**

Live birds	<i>circa.</i> 16,000
Live plants	<i>circa.</i> 3000
Live reptile and amphibians	<i>circa.</i> 25,000
Live mammals	<i>circa.</i> 2800
Reptile skins	<i>circa.</i> 90,000 pieces
Corals	<i>circa.</i> 42,200 pieces

Source: WCMC (*in litt.*, 1998)

The popularity of wildlife and wildlife products in the UK has been accompanied by a growing number of laws and regulations aimed at controlling the trade and ensuring it is sustainable. However, whilst the majority of wildlife trade in the UK is perfectly legal, there is a persistent illegal trade, particularly in native birds of prey, rare and exotic parrots and reptiles, wild orchids and cacti, taxidermy specimens and traditional medicines containing endangered species. This illegal trade has proved lucrative, and has become increasingly more organized and dominated by criminals motivated purely by financial gain. In

recognition of this situation, increased resources have been placed into enforcing wildlife laws in the UK, principally with the instigation of the Partnership for Action against Wildlife Crime, the Police Wildlife Liaison Officer network, HM Customs CITES Liaison Officers and the CITES Enforcement Teams based at Heathrow airport and the Port of Dover. Despite this increased effort however, a number of factors have allowed wildlife crime to continue to flourish, including the seemingly light penalties often handed down for wildlife trading offences.

#### **1.4. The legislative regime for trade in wildlife and wildlife products in the UK**

The laws surrounding trade in wildlife and wildlife products in the UK are complex. The summaries below briefly outline the operation of the major relevant legislation, with key points listed in bullet points. Not all these laws apply equally throughout the UK, and the differences in Northern Ireland and Scotland are noted. More detailed guides to this legislation as well as summaries of other relevant legislation can be found in Appendices 1 to 5. In the remainder of this manual, in references to legislation, Article is abbreviated to A, regulation to reg. and section to s.

##### **1) The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

- *Regulates international trade in endangered species,*
- *Prohibits international commercial trade in Appendix I specimens,*
- *Allows controlled commercial trade in Appendix II specimens with export permits or re-export permits required,*
- *Allows controlled commercial trade in Appendix III specimens with export permits, re-export permits or certificates of origin required.*

CITES, signed in 1973 and entered into force in 1975, is an international treaty which provides world-wide controls on international trade in endangered species. The control is achieved by requiring permits and certificates before allowing international trade to proceed, with the level of control depending on how endangered the species is. The most endangered species are listed on Appendix I, and commercial trade in these is generally prohibited. In the exceptional circumstances when trade is allowed, import and export permits or re-export permits are both required. Species which are threatened by commercial trade are listed on Appendix II, with commercial trade generally permitted but requires permits from the exporting country. Appendix III contains species protected by one or more countries in which they are found, and cannot be traded from these countries without an export permit. Certificates of origin are required to export these species from other countries. CITES applies to all plants and animals of species listed in the Appendices, whether alive or dead, as well as to parts and products such as skins, carvings and medicines.

CITES is a complex treaty which has evolved over the past 25 years, and has a large number of resolutions relating to its interpretation, definition and application. The UK became a signatory to CITES in 1976, however CITES does not apply directly to UK domestic law, but instead is implemented through the EU Wildlife Trade Regulations (see below).

##### **2) The European Union Wildlife Trade Regulations**

Council Regulation (EC) no 338/97 of 9th December 1996 on the protection of species of wild fauna and flora by regulating trade therein

Commission Regulation (EC) No 939/97 of 26 May 1997 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein

- *Import permits for Annex A and Annex B specimens required at first point of introduction into the EU,*
- *Import notifications for Annex C and Annex D specimens required at first point of introduction into the EU,*
- *Export or re-export permits required for Annex A, B and C specimens when exporting to outside the EU,*
- *Commercial trade within the EU in Annex A specimens generally prohibited, but with some exceptions.*

The current EU Wildlife Trade Regulations came into force on the 1<sup>st</sup> of June 1997, replacing the previous regulations (3626/82 and 3418/83). They deal with imports and exports of wildlife and wildlife products to and from the EU, as well as trade within the EU both between and within individual Member States. All the provisions of CITES are incorporated as well as some additional stricter measures. Species covered are listed on four Annexes, with the most endangered listed on Annex A (broadly equivalent to CITES Appendix I). Species threatened by commercial trade are listed on Annex B (broadly equivalent to CITES Appendix II). Wildlife products labeled as containing species listed on the Annexes are treated as if they did, without the need for further proof.

The new EU Regulations reflect the adoption of the single market by the EU in January 1993, which abolished controls on trade between Member States. In general, import *permits* are required at the first point of introduction into the EU only, for species listed on Annexes A and B, and import *notifications* are required for species listed on Annexes C and D (A4). Export or re-export permits are required for export from the EU only, of species listed on Annexes A, B and C (A5). Import and export permits are not required for trade between Member States. Special rules have been created for cases such as captive bred animals, artificially propagated plants, pre-CITES specimens, and scientific institutions.

Commercial trade in Annex A species within the EU (both between and within Member States) is prohibited, although Member States may authorize transactions on a case by case basis, and there are a number of general derogations (A8).

There are no specific offences contained within EU Wildlife Trade Regulations for infringements. These offences are found instead in the UK in CEMA and COTES (see below). The EU Wildlife Trade Regulations apply throughout the UK, including England, Wales, Scotland and Northern Ireland.

### **3) The Customs and Excise Management Act 1979 (CEMA)**

*Contains offences for:*

- *Importing wildlife and wildlife products into the UK contrary to the EU Wildlife Trade Regulations,*
- *Exporting wildlife and wildlife products from the UK contrary to the EU Wildlife Trade Regulations,*
- *Possessing or dealing in illegally imported wildlife or wildlife products, and*
- *Evading charges and failure to pay duty.*

CEMA is the legislation under which the import and export of all goods, to and from the UK, are regulated. Under CEMA it is an offence to import wildlife and wildlife products into the UK contrary to the EU Wildlife Trade Regulations. This primarily involves the import from outside the EU, of an Annex A or B specimen without an import permit, or an Annex C or D specimen without an import notification (s50). Similarly, it is an offence to export wildlife and wildlife products from the UK contrary to the EU Wildlife Trade Regulations, which is primarily the export of an Annex A, B or C specimen to outside the EU without an export or re-export permit (s68). There is also an offence for knowingly possessing or dealing with illegally imported wildlife and wildlife products (s170). Other offences include forging documents, making untrue declarations and statements to HM Customs and Excise (HMCE), and avoiding charges through failure to declare goods.

CEMA offences can be tried either summarily or on indictment, and knowledge and intent must be proved as an element of all offences. The penalties that can be handed down under CEMA are comparatively high, with a maximum 7 years imprisonment and unlimited fine available. CEMA applies throughout the UK.

#### **4) The Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES)**

Statutory Instrument No. 1372 1997

*Offences created for:*

- *The purchase, sale and other commercial trade in Annex A specimens without sales certificates,*
- *The purchase, sale and other commercial trade in Annex B specimens which have been illegally imported into the UK,*
- *Using false information to illegally obtain a permit or certificate,*
- *Misusing CITES permits, certificates or import notifications,*
- *Non-compliance with conditions of permits,*
- *Unauthorized movement of Annex A specimens,*
- *Impersonating a Wildlife Inspector, and*
- *Refusing to provide blood or tissue samples for DNA testing.*

COTES established a series of offences and penalties for infringements of the EU Wildlife Trade Regulations, the most important being for the trade in Annex A and Annex B specimens (reg. 8). A person is guilty of an offence if they trade (including purchase and offer to purchase, as well as sale, display and transport for sale) an Annex A specimen without an exemption certificate authorizing that individual transaction. The prosecution does not need to prove knowledge or intention, or that the wildlife was illegally imported. It is up to the individual to prove they come within one of the other general derogations to this rule, such as the specimens were worked specimens acquired more than 50 years ago, or were artificially propagated plants. The same rules apply to trade in Annex B specimens however the prosecution must also prove the specimens were illegally imported into the UK.

COTES offences can be heard either summarily or on indictment. The maximum penalty that can be given is two years imprisonment and an unlimited fine. It applies throughout the UK.

#### **5) The Wildlife and Countryside Act 1981 (The WCA)**

*Includes offences for:*

- *Taking birds, Schedule 5 animals and Schedule 8 plants from the wild without a licence,*

- *Possessing wild birds, Schedule 5 wild animals and Schedule 8 wild plants without a licence,*
- *Selling and commercially trading in wild birds, Schedule 5 animals and Schedule 8 plants without a licence, and*
- *Keeping Schedule 4 birds that are not close ringed and registered with the DETR.*

The WCA is the main legislation in Britain for the protection of its native wildlife. Under the WCA (Part 1) it is an offence to intentionally take from the wild, or to possess, a wild bird or egg, or a Schedule 5 wild animal (s1, s9). Any bird in captivity which is listed on Schedule 4 must be closed ringed and registered with the Department of Environment, Transport and the Regions (DETR) (s7). The intentional picking of wild plants listed on Schedule 8 is also an offence, as is the picking of any other wild plant by an unauthorized person (s13). The sale of wild birds, eggs, Schedule 5 wild animals and Schedule 8 wild plants is also prohibited.

The main exceptions to the above prohibitions are the issue of specific and general licences by appropriate authorities such as the DETR (s16). Specific licences can be issued to individuals, whilst general licences authorize any person complying with the conditions of the licence to carry out the otherwise prohibited act.

Proceedings can be brought under the WCA at the summary level only (with the exception of s14, release of exotic wildlife), and it is currently not possible to order a prison sentence under the WCA, with the maximum fine available being £5000. It is worth noting however, that a person convicted under the WCA for most bird related offences is automatically banned from keeping Schedule 4 birds for up to 5 years after the offence.

The WCA applies in England, Wales and Scotland. In Northern Ireland, the equivalent legislation is the *Wildlife (Northern Ireland) Order 1985*.

## **6) The Endangered Species (Import and Export) Act 1976**

- *Offence for the sale of certain restricted species*

The Endangered Species (Import and Export) Act previously controlled the import, export and sale of all CITES-listed species into and from the UK, however this function was replaced by the EU Wildlife Trade Regulations in 1984. Its only relevant section now is s4(1A), which controls the sale of certain live and dead animals, plants and their derivatives, listed on Schedules 4 and 5 (see

Statutory Instruments 2677 and 2684 of 1996). These include a limited number of species such as vicuna (*Vicugna vicugna*) and the salt water crocodile (*Crocodylus porosus*) which have been partially down listed from CITES Appendix I and EU Wildlife Trade Regulations Annex A to allow limited commercial trade in some populations to recommence

Section 4(1A) makes the sale of the listed animals and plant species without a licence from the Secretary of State, illegal. It is a defence if the person proves that they had made reasonable inquiries to ascertain if it was a restricted item, and had no reason to believe it was. As a result of the 1996 amendments, the Endangered Species (Import and Export) Act could no longer be used to implement the EC Seals Directive. The Import of Seal Skins Regulations 1996 (SI 1996 No 2686) now effects this by banning the import of harp and hooded seal pup skins. This Act applies throughout the UK.

## **7) The Theft Act 1968**

- *Offence for dishonestly taking a person's property, including their money*

The Theft Act creates an offence for taking someone's property, including their money by deception. It applies in wildlife cases primarily where a person sells wildlife or wildlife products by deception, fraudulently claiming they came from a legitimate origin. The Theft Act has been used to convict people for selling peregrine falcons taken from the wild by falsely claiming the birds were bred in captivity.

Proceedings can be brought under the Theft Act either summarily or on indictment. The range of penalties includes fines of any amount, and up to 10 years imprisonment. The Theft Act applies in England and Wales. In Northern Ireland, the equivalent legislation is the Theft Act (Northern Ireland) 1969. There is no single legislative equivalent in Scotland.

## **8) Other legislation**

- i. The EU Wild Birds Directive 1979  
(Council Directive 79/490/EEC on the conservation of wild birds)

The Wild Birds Directive applies to all species of bird naturally occurring in the wild state in Member States of the EU. It requires Member States to establish a system of protection for (wild) birds of these species, including the prohibition of the deliberate killing, capture, or possession of these birds, with the exceptions of birds listed on Annex II. It further requires that Member States prohibit the sale of these birds, including live or dead birds or readily recognizable parts, with the exception of birds listed on Annex III (A6). Member States may allow exceptions to these rules in special circumstances such as for research purposes.

In the UK, this directive is implemented through the WCA, but only insofar as it relates to birds native to the UK. Species that are endemic to other parts of Europe but are not native to the UK are not covered by the WCA. Thus there is no prohibition on the possession of wild birds such as European raptor species, which are illegally taken from the wild and smuggled into the UK.

- ii. The EU Habitats Directive 1992  
(Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna)

The Habitats Directive provides for the creation of a network of protected areas across the EU known as "Natura 2000". It also requires Member States set up an effective system to prohibit the capture, killing, injuring or damaging disturbance of certain endangered species listed on Annex IV(a).

In the UK, the EU Habitats Directive is implemented through the *WCA Conservation (Natural Habitats) Regulation 1994*. Animals on Annex IV(a) that have a natural range in Great Britain are listed on Schedule 2. It is an offence to deliberately capture, kill, disturb, take or destroy the eggs or damage the breeding site, or to keep or trade in live or dead animals on this schedule. It is a defence if the person shows the animal was lawfully taken or sold. Similarly plants covered by the Habitats Directive which occur naturally in Great Britain are listed on Schedule 4. It is an offence to deliberately pick, collect, cut, uproot or destroy one of these plants, or to keep or trade in a live plant or derivative, and it is a defence if the person can show the plant was lawfully sold. The penalty for offences involving animals is up to £5000, and for plants up to £2500.

### iii. The Dangerous Wild Animals Act 1976

The Dangerous Wild Animals Act was introduced to deal with the problem of people keeping exotic pets that might be dangerous to the public. Under this Act a person cannot keep these animals without a licence issued by a local authority. Species covered include various primates, big cats, bears, reptiles, spiders and scorpions, many of which are also listed on CITES and the EU Wildlife Trade Regulations, making this Act a useful supplement to COTES and CEMA. Proceedings can be brought under the Dangerous Wild Animals Act at the summary level only, with the maximum penalty available being £5000. It applies in England, Scotland and Wales, but not Northern Ireland.

### iv. The Protection of Animals Act 1911

Illegal wildlife trade is often accompanied by animal welfare issues. The Protection of Animals Act provides general protection from cruelty to all domestic animals, or wild animals kept in captivity. In particular it creates a general offence for causing unnecessary suffering to an animal. In Scotland the equivalent legislation is the *Protection of Animals (Scotland) Act 1912*, and in Northern Ireland is *The Welfare of Animals Act (NI) 1972*.

### v. The Wild Mammals Protection Act 1996

The Wild Mammals Protection Act is the principle legislation for the protection of wild animals from cruelty. It creates a single offence for any person who mutilates, kicks, beats, nails, impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering. This Act applies in England, Scotland and Wales, but not Northern Ireland.

## **9) Quarantine Requirements**

Most imports and exports of animals, plants and their products are subject to some form of quarantine regulation, regardless of their conservation status. The principle legislation are the Plant Health Act 1967 and the Animal Health Act 1981, and there are numerous regulations made under these Acts as well as relevant orders.

In brief, the importation of all birds into the UK requires a licence issued in advance by the Ministry of Agriculture, Fisheries and Food (MAFF), the Scottish Office of Agriculture, Environment and Fisheries Department (SOAEFD) or the Welsh Office Agriculture Department (WOAD). This incorporates a certificate of health to be signed in the country of export, and which must accompany the birds on their journey from the exporting country. All commercial consignments of birds flown into the UK must be brought through Gatwick or Heathrow, and must pass through the quarantine facilities at Heathrow (where they are also checked by HMCE). The birds are then sent to approved quarantine facilities (with compulsory air filtering systems) where they are kept for 35 days. Commercial consignments by sea are checked at Dover Port. Shipments of less than ten birds of prey, exhibition poultry, zoological garden specimens or scientific specimens may arrive at any port in the UK if they are coming from the EU, or Heathrow, Gatwick, Manchester or Glasgow if arriving from outside the EU. These shipments need not pass through the quarantine facilities at Heathrow, but may proceed directly to approved quarantine facilities (air filtering system not compulsory) for 35 days. If the bird is a family pet, it may be quarantined in the home provided no other birds are present.

The importation of mammals also requires a licence to be issued in advance by MAFF, SOAEFD or WOAD, and the animals must be quarantined for six months at an approved quarantine premises. All live fish, eggs and gametes as well as live shellfish imported into the UK from within the EU must be accompanied by a Movement Document, while imports from outside the EU must be licenced, and some species must also be accompanied by a health certificate. There are no quarantine requirements for reptiles and amphibians, but all plants imported into the UK from outside the EU require a phytosanitary certificate.

## 2. Illegal Wildlife Trade: The International Picture

*“The illegal trade in fauna and flora, and in their parts and products, is one of the major problems of our time”.*

(J. P. Le Duc, CITES Secretariat, 1996)

The illegal trade in wildlife has been prolific ever since controls were put in place restricting the legal trade. Trafficking in wildlife has become a lucrative business, with wild fauna and flora and their parts and derivatives attracting very high prices on the international black market. The US Fish and Wildlife Service (USFWS) have placed wildlife smuggling second only to drug smuggling in terms of value of the crime. Typical prices illegal wildlife can attract on the international black market are shown in Box 1.

<b>Box 1. Wildlife prices on the international black market</b>	
rare orchid	US \$10,000 (UK £6070)
rare cacti	US \$7000 (UK £4250)
trained falcon	US \$5000 - \$20,000 even up to US \$50,000 (UK £3035 - £12,140, up to £30,350)
rare macaw	US \$20,000 - \$40,000 (UK £12,140 - £24,280)
shahtoosh shawl (from the Tibetan antelope)	US \$35,000 (UK £21,245)
Musk (from the musk deer)	US \$50,000 per kilo (UK £30,350)

source: WCO, 1998

Wildlife crime is often not taken seriously by police, customs and judicial authorities, which has led to a lack of investment in resources to support wildlife law enforcement. Penalties are generally so low they do not impinge on the profits, nor act as a significant deterrent for future activities. This is particularly notable when compared with the resources applied to counter and the penalties given for smuggling other commodities such as drugs (Le Duc, 1996; WCO, 1998).

As a result of a combination of these factors, particularly the low risks and high profits, illegal wildlife trade has flourished and become significantly more organized in recent years. International networks have built up with transit centres, couriers and procedures for laundering the profits (Le Duc, 1996). The upper level criminals involved are organized professionals driven by financial gain, and are sometimes involved and known to the police for trafficking other commodities such as drugs, weapons and alcohol. The smuggling methods, techniques and transit routings are also often the same as for other prohibited substances, and couriers or mules are regularly used to carry the wildlife. (Le Duc, 1996; McDowell, 1997; WCO, 1998). The large legal trade in wildlife is commonly used as a cover for this illicit trade (WCO, 1998).

There are a large variety of ways in which wildlife is smuggled around the world. Eggs are strapped onto courier's bodies, often in specially modified underwear, which can then be crushed to avoid identification if the courier is intercepted. Live animals and plants are concealed in false bottoms of suitcases and crates, frequently perishing during the journey.

**Box 2. Smuggling birds of prey**

The illegal international trade in birds of prey has grown rapidly in recent years, and become a matter of serious concern. Changes of government in Eastern European countries and the Commonwealth of Independent State (CIS) republics led to a large increase in birds of prey being smuggled from these countries, and with some birds worth tens of thousands of pounds, international smuggling rings have developed (CITES Secretariat, 1994). In one example, in 1991 a joint investigation by the Police in Denmark and Customs in Germany and France revealed an international smuggling ring for birds of prey operating in Europe, North America, and countries in the Mediterranean, with the main organization based in Spain. The case in question involved smuggling to France four Gyr falcons (*Falco rusticolus*) (CITES Appendix I) valued at a total of US\$200,000, illegally taken from the wild in Greenland. The main instigator, a German citizen, fled to Spain to avoid prosecution (CITES Secretariat, 1994).

Illegal commercial shipments of CITES-listed specimens are often hidden in with legal shipments, for example crocodile skin has been hidden in with cow skin, and ivory has been dyed to look like wood. Paperwork fraud is common worldwide, with smugglers using counterfeit or falsified CITES documents (Le Duc, 1996; WCO, 1998). In one example, in 1994 the Management Authority of Malaysia uncovered 7 missing security stamps and 25 missing numbered export permit forms. A subsequent investigation by the CITES Secretariat revealed these had been used on at least 47 occasions between 1990 and 1994, to fraudulently export at least 100,000 reticulated python (*Python reticulatus*) skins and 285,000 water monitor (*Varanus salvator*) skins (CITES Secretariat, 1997).

**Links with drugs and other organized crime**

There is evidence that illegal wildlife trade has been linked with other forms of organized crime, particularly drug smuggling (Le Duc, 1996). Countries of origin for many CITES specimens are also well-known drug supply sources, and it has been known for drugs to be smuggled in with CITES shipments (WCO, 1998). One example occurred in June 1993 at Miami Airport when 41 boxes containing 312 boa constrictors (*Boa constrictor*) (CITES Appendix II) arrived on a flight from Columbia, with valid CITES documents. They were seized when an officer noticed an unnatural bulge in one of the snakes. X-rays subsequently revealed 2 condoms inside the snake containing cocaine. Each condom contained 60g of cocaine, and a total of 39kg of cocaine was recovered from the 225 boas. 57 snakes without cocaine survived, while the others died (TRAFFIC International, 1993; WCO, 1998). Another case involved the interception in 1995 of a boat arriving in Reunion (Island of) from Madagascar, illegally carrying 300 CITES Appendix I listed turtles, and 1.37 tonnes of the drug marijuana (Le Duc, 1996). The USFWS have discovered heroin filled condoms in the stomachs of goldfish, and liquid cocaine in the tanks of tropical fish, and in 1993 seized over \$US 26,000,000 worth of drugs alongside wildlife shipments (Speart, 1994).

### 3. Illegal Wildlife Trade in the United Kingdom – Native Species

*“In the UK wildlife crime takes three main forms: the illegal trade in endangered species, badger baiting, and the illegal trade in wild birds, principally birds of prey, but the legislation and various controls are more far reaching, and the overall problem beyond the capabilities of any one agency”.*

Sir Paul Condon, Commissioner of Police of the Metropolis (Taylor, 1996)

The aim of this section is to examine the illegal trade in wildlife species with a natural range in the UK. Illegal trade occurs in a whole range of native species, including mammals, birds, reptiles, insects, frogs and plants. The actual size of this illicit trade is impossible to determine, and the Royal Society for the Protection of Birds (RSPB) estimates that reported offences represent only a small proportion of the incidents that take place, with many remaining undetected particularly in remoter areas (Nurse, 1996). A hard core of habitual offenders has been identified, who operate in organized gangs and have numerous convictions (WLESG, 1995). A recent study by the Police Wildlife Liaison Officer for Northumbria showed that up to 50% of offenders prosecuted in Northumbria for wildlife crime over a 12 month period had previous convictions for offences including drug dealing, burglary, assault, criminal damage and fire arms offences (Metropolitan Police, 1997).

#### 3.1 Live Mammals

A number of native mammals are protected under the WCA from being taken from the wild and traded, including many species of bats, the wild cat (*Felis silvestris*), the common otter (*Lutra lutra*), the red squirrel (*Sciurus vulgaris*) and the dormouse (*Muscardinus avellanarius*). Although illegal trade in the live animals of these species occurs, it is fairly minor compared to the illegal trade in the taxidermy specimens (see below).

#### 3.2 Live birds

##### 1) Birds of prey

In the last two decades there has been a steady increase of people keeping birds of prey in the UK. Under the WCA it is illegal to take, possess or sell native wild birds of prey without a licence (WCA s1, s6), and many native birds of prey in captivity listed on the WCA Schedule 4 must be close ringed and registered with the DETR (WCA s7). However despite these controls, there have been frequent incidences of illegal capture and sales of these birds, with over 240 reported cases in 1993. The market for birds of prey in the UK is a lucrative one, and some species attract hundreds of pounds. The peregrine falcon (*Falco peregrinus*) remains the most targeted species with 42 nests known to have been robbed in 1997 (RSPB Investigations Section, 1998) (see Box 3). Other species commonly raided include Northern goshawks (*Accipiter gentilis*), merlins (*Falco columbarius*) and common buzzards (*Buteo buteo*). In 1997 thefts were reported for rare species including golden eagles (*Aquila chrysaetos*) and ospreys (*Pandion haliaetus*). A high degree of organization has been shown by individuals and gangs responsible for some of these robberies of birds of prey and their eggs (Robinson, 1991), with examples illustrated in case studies 7.1 (DC), 7.5(4) (*The Eleanora’s falcon case*) and 7.5(5) (*Operation Dutch Lady*).

##### 2) Smuggling birds of prey from the UK

In recent years there has been a resurgence in birds of prey nest robberies for eggs and chicks, and evidence indicates this is primarily for the illegal export market (G. Elliot, Director

of Investigations RSPB, *pers. comm.*, 1998). The largest black market for wild British birds of prey occurs in Germany. In 1994 for example, two men were convicted and fined £8100 in Germany, after failing to appear in court in Britain, for attempting to steal peregrine falcon eggs from Scotland (Anon. (a), 1994). Birds of prey from the UK may also be smuggled from Germany to the Middle East where a significant market for these birds exists.

### **Box 3. The Peregrine Falcon**

The peregrine falcon (*Falco peregrinus*) is a rare bird of prey with little over 1000 pairs remaining in the wild in the UK. It is one of the swiftest birds in the world, reaching speeds of over 150kph when stooping on its prey. In 1963 the British peregrine population had crashed to 350 pairs, primarily due to the presence of organochlorine pesticide residue in the food chain. Following the elimination of these pesticides during the 1970's and 1980's the population made a recovery, however numbers have still not recovered in east Yorkshire and south east England, and in north Scotland there have been declines over the last decade. One of the reasons for these declines is that the birds are being illegally taken from the wild for use in falconry and commercial exploitation. This process effectively launders the wild birds into the captive bred bird of prey market, where individual birds are worth between £350 and £700. The significance and extent of this problem has become apparent with the increasing use of DNA fingerprinting to check the legitimacy of claims of captive breeding. The peregrine falcon is listed on Appendix I of CITES, Annex A of the EU Wildlife Trade Regulations, and Schedule 4 of the WCA. (British Trust for Ornithology *et. al*, 1997)

### **3) Other birds**

Finches are also commonly targeted for illegal trapping, possession and sale. There is a ready market in the UK for trapped wild finches with many species attracting up to £70 each. Finches such as linnets (*Caruelis cannabina*) and goldfinches (*C. carduelis*) can only be legally sold if captive bred and closed ringed, however there is evidence to suggest people involved in large scale finch trapping are abusing the closed ringed schemes, and accruing large sums of money by falsely claiming the wild birds are captive bred (Nurse, 1992). In 1996, of the 63 incidents of illegal trapping, possession and sale of wild birds reported to the RSPB, 34 concerned finches (see case study 7.5(6) (*The Golden Feather Case*)).

### **3.3 Live reptiles and amphibians**

The UK is home to several species of rare reptiles and amphibians, including the adder (*Vipera breus*), the grass snake (*Natrix helvetica*), the sand lizard (*Lacerta agilis*) and the natterjack toad (*Bufo calmita*). Although collectors are occasionally caught trapping these species, trade in native reptiles and amphibians is minimal, in stark contrast to the booming trade in exotic reptiles and amphibians in the UK, discussed in greater detail below.

### **3.4 Live invertebrates**

Numerous invertebrates are protected under the WCA, including many species of beetles, butterflies, moths, snails and spiders. Illegal collectors often target these, with butterflies most commonly found in illegal trade. In 1993 for example, two men from Lincolnshire were convicted and fined £490 for the sale of wild chequered skippers (*Carterocephalus palaemon*) (WCA Schedule 5) at an entomological fair in Leicester.

### 3.5 Live plants

A number of rare hardy orchid species are found in the UK, and these have a history of being raided by and for specialist collectors. In some cases this illegal collection from the wild, driven by commercial demand, has been so intense that wardening schemes have been introduced to safeguard the remaining wild populations. In one case 100 rare green winged orchids (*Orchis morio*) were stolen overnight from a nature reserve (Jenkins and Oldfield, 1992).

Bulbs are also taken from the wild for the commercial markets both legally and illegally, although the full extent of this trade is unknown. Commercial collection concentrates on snowdrops (*Galanthus nivalis*) and bluebells (*Hyacinthoides non-scripta*) for the domestic market and for export, and may amount to as much as £1 to £3 million annually. Commercial bluebell diggers can strip entire woods, and the bluebell populations can take decades to recover (Jenkins and Oldfield, 1992). In one recent example two men were convicted under the Theft Act for unlawfully uprooting 3000 to 4000 snowdrops and 300 to 400 aconites from a Norfolk estate. Given the quantities involved it was clear the uprooting had been done for commercial purposes, and the men were given a two year probation order plus community service orders (Crampton, 1997).

### 3.6 Plant products

The collection of plants for medicinal purposes in the UK is largely undocumented, however it has been estimated 60 tonnes of *Sumbucus nigra* flowers are collected annually, almost all for the making of the popular elderflower drink. Factories in Scotland and Wales are also involved in the collection of wild seaweed (*Laminaria hyperborea*, *Asophyllum nodosum* and *Porphyra umbilicalis*) primarily for the food trade (Lange, 1998).

### 3.7 Taxidermy specimens

The trade in taxidermy specimens of native species is common throughout Britain. This includes the trade in the stuffed animals, as well as in body parts such as skeletons and feathers. Birds of prey and mammals such as red squirrels are particularly popular taxidermy specimens. The trade is regulated by the WCA, which previously required registration of taxidermists selling bird specimens. This scheme was however effectively abolished in 1995 by a general licence issued by the DETR, which meant registration was no longer required for the sale of most bird specimens, provided the birds were bred in captivity, sold in small numbers, and transactions records kept. Licences are still required to sell Schedule II Part 1 and Schedule 3 Parts II and III bird specimens, and specimens of Schedule 5 wild animals.

There is also a sizeable illegal trade in taxidermy specimens of native species. Some of this derives from offshoots of other wildlife crimes such as illegal persecution of birds of prey, with landowners making profit by selling the illegally killed birds to taxidermists for subsequent sale to the public. For an example of a case involving a taxidermist illegally trading in native species, see case study 7.5(6) (PJ).

### 3.8 Scotland and Northern Ireland

The preceding discussion on wildlife crime applies equally throughout the UK. There are however some wildlife trading issues outlined below which are specific to Northern Ireland and Scotland.

## **1) Scotland**

Although illegal persecution is one of the greatest threats to bird of prey populations in Scotland, illegal trade in these species has also become a serious problem. Scotland has a significant population of birds of prey, in particular peregrine falcons, and in many avicultural circles it is believed that wild peregrine falcons from Scotland are superior to other birds. Thus, wild sourced birds of prey from Scotland are often sought after, even if the same species bred in captivity are readily available. This has resulted not only in an ongoing illegal trade in wild Scottish birds of prey in the UK, but also large numbers of wild birds being illegally exported from the UK, primarily to Germany but also possibly to the Middle East. With the increasing use of DNA technology to confirm captive breeding claims, it was believed this illegal trade had diminished in the past few years, however in 1997 it again experienced resurgence. It is difficult to estimate the conservation impact of this illegal trade, however it is suspected that the rare golden eagle (*Aquila chrysaetos*) has also been targeted and removed from the wild to be exported overseas, where they can attract up to £5000 (K. Merton, RSPB Scotland, *pers. comm.*, 1998).

The illegal trapping of endemic finches for sale in Scotland is another chronic problem. With finches such as goldfinches (*Carduelis carduelis*) attracting up to £70 on the black market, there is a clear incentive for collectors to illegally take and sell these birds, although the actual scale of this trade and its conservation impact is unknown (K. Merton *pers. comm.*, 1998).

Illegal destruction of Scottish fresh water pearl mussels (*Margaritifera avellanarius*) for their pearls has also emerged as a recent issue. Whereas fishers formerly removed the pearls using tongs without killing the mussels, now some are using jackknives, and destroying mussels in the hundreds to remove the few pearls found (D. Phillips, Scottish Natural Heritage, *pers. comm.*, 1998). This is prohibited under the WCA, which lists freshwater pearl mussels on Schedule 5. Currently, the first case for the illegal take and kill of fresh water pearl mussels in Scotland, bought under the WCA, is pending.

## **2) Northern Ireland**

Illegal trade in wildlife may be less of a problem in Northern Ireland than in the rest of the UK. Whilst birds of prey are certainly being taken from the wild, this does not appear to be occurring on a large scale and there are relatively few incidences reported. The most significant wildlife trading problem appears to be the illegal border movement of CITES specimens over the Eire border. Eire, although a member of the EU, is the only EU State which is not a party to CITES. Although it is bound by the EU Wildlife Trade Regulations, its wildlife controls are weaker than most other States. There have been a few instances of wildlife being illegally traded this way, particularly involving travelling circuses. Northern Ireland is also hampered by the lack of a Dangerous Wild Animals Act (C. Millan, RSPB Northern Ireland, *pers. comm.*, 1998; Inspector M. Mason, Royal Ulster Constabulary, *pers. comm.*, 1998).

## 4. Smuggling Exotic Wildlife into the UK

*“Our experience has shown that London is a major centre for the illegal trade in endangered species, and that virtually any species from anywhere in the world can turn up here, whether alive or dead, or in the form of a derivative”.*

(Metropolitan Police, 1997)

The aim of this chapter is to examine the illegal trade in exotic species in the UK, and place this in the context of international legal and illegal wildlife trade.

Any species, live or dead, can theoretically be smuggled into the UK. This includes mammals, reptiles, amphibians, invertebrates and plants, both as live specimens and dead for the taxidermy trade. There is also a significant illegal trade in derivatives and products derived from exotic plants and animals, such as ornaments, reptile skins, mammal wool, foodstuffs and traditional medicines. In 1996 for example, the biggest seizure of rhino horn in the world to date occurred in the UK with 127 rhino horns (highly valued in traditional Chinese medicine, and for making dagger handles in Yemen) seized from a warehouse in London (see case study 7.5(3) (*Operation Morello*)).

The illicit nature of the trade makes it impossible to estimate the overall quantity of wildlife and wildlife products involved. In 1995 alone, HMCE made over 30,000 seizures of CITES-listed plants and animals illegally entering the UK (DETR, 1997). However a great number of wildlife and wildlife products continue to avoid Customs controls and illegally enter the country, where they are often subsequently found in commercial trade.

The most worrying trend of wildlife smuggling into the UK is the increasing phenomenon of wildlife being smuggled into other EU countries with weaker border controls, and then transported unimpeded by Customs checks into the UK. This trend developed as a result of the establishment of the EU single market in 1993, which meant CITES import permits were no longer required to bring wildlife from other countries within the EU. Quarantine permits are still required from MAFF, however these are often forged or overlooked. Due to both the volume of traffic and lack of resources, there are comparatively few checks done on goods, vehicles and people entering the UK across the English channel, and it is relatively easy to bring wildlife and wildlife products into the UK in this way without making any declarations to MAFF at all. Alternatively, countries such as Belgium which are recognised as having low disease risk are commonly used as exit points, because the animals do not need to be re-quarantined in the UK (CITES Enforcement Team Heathrow *pers. comm.*, 1998). Although in these situations prosecution can still take place for illegal import under the EU Wildlife Trade Regulations and CEMA, the prosecution must prove the wildlife was illegally imported into the other EU country which is more difficult to do. In any case, once the wildlife has illegally entered the UK, it becomes very difficult to track (C. Allan, Enforcement Officer TRAFFIC International, *pers. comm.*, 1998).

Another worrying trend has been the apparent increase in paperwork fraud, with numerous traders importing CITES listed animals and plants into the UK by claiming they have been bred in captivity or artificially propagated. Although a significant number of these claims of captive breeding and artificial propagation are suspect, there are currently not the resources available to fully validate the permit applications or the overseas captive breeding operation's (C. Allan, *pers. comm.*, 1998). This phenomenon has dramatically increased over recent years, particularly for birds of prey such as vultures and eagles, for which once it was very difficult to get an import permit from DETR on the basis on captive breeding (G. Elliot, *pers. comm.*, 1998).

## 4.1 Live mammals

### ***Internationally***

Primates are the most common live mammals found in trade, usually for scientific purposes but also as pets. There are a number of trade restrictions in place for primates, with all apes listed on Appendix I or II of CITES. Approximately 25,000 to 30,000 are legally traded each year around the world, however illegal trade in primates remains an ongoing problem, particularly in chimpanzees and gorillas (CITES Secretariat, 1994; CITES Secretariat, 1997).

### ***The UK***

Primates are occasionally smuggled into the UK although this market is fairly small compared to that for birds and reptiles. In 1995 there was only one mammal seizure by HMCE (a woolly tailed monkey (*Lagothrix lagothricha*) CITES Appendix II), and in 1996 three mammals were seized (DETR, 1997).

Picture – Orangutan (*Pongo pymaues*).

The least social of the great apes, orangutans are often picked up by sailors in Indonesia and sold through dealers in Thailand and Bangkok. Their population is estimated at less than 30,000 individuals, representing a decline of 30 to 50% in the last decade (WWF, 1997; Emanoil and IUCN SSC, 1994). They are classified as vulnerable (IUCN, 1996) listed on CITES Appendix I, and have an estimated black market value of up to US\$50,000 (UK£30,350). A stuffed orangutan was offered for sale in the UK in 1993 for £16,000 (C. Allan *pers. comm.*, 1998).

## 4.2 Live birds

### ***Internationally***

Millions of wild birds are legally traded on the international market, the most common being finches followed by parrots. These high levels of trade have led to many bird species, including virtually all parrot species, to be placed on the CITES Appendices. However hundreds of thousands of wild birds continue to be illegally smuggled each year, with an estimated 250,000 birds smuggled annually into the US alone (Thomsen *et al*, 1992; Melville, 1994). Birds smuggled include many endangered species such as salmon-crested cockatoos (*Cacatua moluccensis*), Bali starlings (*Leucopsar rothchildi*) and red siskins (*Carduelis cucullata*), destined for aviculturists motivated by the desire to own a rare bird (Thomsen *et al*, 1992). For many species, this commercial trade has now become a serious threat to their survival in the wild, including the hyacinth macaw (*Anodorhynchus hyacinthinus*), the Mollucan cockatoo (*Cacatua molluccensis*) and the red and blue lory (*Eos histrio*). Trapping for the commercial market, combined with habitat loss has completely wiped out the last remaining wild population of Spix macaws (*Cyanopsitta spixii*) (Thomsen *et al*, 1992; Melville, 1994).

### ***The UK***

There is a long history of birds being smuggled into the UK, and a significant and profitable market exists in the UK for unusual and endangered exotic species. Rare parrots such as hyacinth macaws can fetch up to £25,000 each (RSPB 1991), and red-tailed black cockatoos (*Calyptorhynchus banksii*) from Australia have fetched up to £20,000 for a pair on the black market (CITES Enforcement Team Heathrow *pers. comm.*, 1998; C. Allan *pers. comm.*, 1998). Investigations over the past few years have exposed international organised crime-rings working through, and often based in the UK. These rings have smuggled rare parrots into the UK primarily from Australia and Asia, with both New Zealand and South Africa used as laundering points, (see the case study 7.2 (*Operation Dorian*) (CITES Enforcement Team Heathrow *pers. comm.*, 1998; Holden, 1997).

Recently, the numbers of live birds being smuggled directly into the UK has started to decline. Instead, birds are more frequently entering the UK illegally by being smuggled into other countries in Europe, and then bought into the UK by ferry, vans and trucks by-passing UK customs controls (C. Allan *pers. comm.*, 1998). Birds are smuggled both in small numbers, and large commercial consignments, particularly from Belgium and Holland (Bromfield, 1995). In one example, investigations have revealed hummingbirds (*Trochilidae* spp.) are being smuggled from South America to Suriname, where export permits are obtained to export the birds to Holland, a process facilitated by Suriname being a former Dutch dependency. Specialized buyers from the UK go to Holland to pick up the birds and secretly return to the UK, generally by van or ferry, where the birds are then sold to small but highly profitable market (CITES Enforcement Team Heathrow *pers. comm.*, 1998). Spain is also used as an entry point into the EU, largely due to its weaker border controls. In 1994 investigations uncovered large scale smuggling of African grey parrots (*Psittacus erithacus*) into Spain using timber ships from West Africa (Nurse, 1994).

Picture:

Hyacinth Macaw: Prized for its brilliant blue coloring, large size, intelligence and rarity, these birds have a black market value of \$US15,000 to \$20,000 (UK£9,100 to £12,100). Illegal trapping has caused the wild population to decline dramatically to less than 3000 surviving individuals scattered throughout Bolivia, Brazil and Paraguay. They are classified as vulnerable (IUCN, 1996) and listed on CITES Appendix I. In 1996 a well-known bird expert was convicted and sentenced to 5 years imprisonment in the US for smuggling hundreds of rare birds. He is believed to be personally responsible for the demise of 5 to 10% of the entire world population of hyacinth macaws in the wild.

### ***Birds of prey***

The lifting of trade controls between EU Member States has also facilitated the movement of illegally acquired European birds of prey into the UK (G. Elliot, *pers. comm.*, 1998). The illegal trade in these birds from countries in Eastern Europe has been identified as a particular problem, with Czechoslovakia often being used as a transit point for birds going from the former USSR to Germany, and then on to the rest of western Europe.

## **4.3 Live reptiles and amphibians**

### ***Internationally***

There are no estimates available on the size of the live reptile and amphibian trade, however it is thought to be huge (Risk and Policy Analysts, 1995). Unlike the trade in live birds and mammals, the live reptile and amphibian trade is largely unregulated, with comparatively few species listed on CITES. Most reptiles found in trade have been collected from the wild, and the large profit margins, coupled with low transport costs have made the reptile trade a lucrative business (Hoover, 1998). In recent years reptile and amphibian exports have boomed from non-CITES parties such as Madagascar, and the islands of the South Pacific (Hoover, 1998). The illegal trade in protected species of reptiles and amphibians is also increasing, and is now widespread throughout much of the world (Le Duc, 1996).

### ***The UK***

Within the UK, the exotic reptile trade is rapidly expanding, and has become a massive growth area. Whilst much of this trade is in legally obtained, or captive bred specimens, a large illegal trade in exotic reptiles and amphibians has also flourished (C. Allan, *pers. comm.*, 1998). Although it is impossible to predict the size of this illegal trade, in 1995 over 4000 live reptiles were seized by HMCE (DETR, 1997). Illegal reptiles and amphibians now enter the UK mainly through other EU countries, in particular the Netherlands (CITES Enforcement Team Heathrow *pers. comm.*, 1998). Indeed the Netherlands has been identified internationally as a hub for illegal reptile trade around the world, and for example

the USFWS has uncovered active smuggling rings involving the Netherlands, Australia, Indonesia and the US (Hoover, 1998; CITES Enforcement Team Heathrow, *pers. comm.*, 1998). Post is a common means of smuggling reptiles directly into the UK and other countries in Europe (McDowell, 1997; CITES Secretariat, 1997). HMCE have also intercepted passengers carrying large quantities of reptiles and amphibians in their personal luggage.

Prohibited species such as black-headed pythons (*Aspidites melanocephalus*) from Australia have been found in commercial trade in the UK, and the very rare CITES Appendix I tuatara lizards (*Sphenodon punctatus*) from New Zealand have purportedly been offered in the UK for £10,000 each (CITES Enforcement Team Heathrow *pers. comm.*, 1998). Poison-arrow frogs, including rare and dangerous specimens, are commonly traded illegally and can be priced at £50 to £80 each for some of the more unusual species (CITES Enforcement Team Heathrow *pers. comm.*, 1998). Furthermore, there is some indication that illegal reptile trade in the UK has been linked to other forms of organised crime, including drug smuggling (CITES Enforcement Team Heathrow *pers. comm.*, 1998).

Pictures:

Shingleback lizard (*Trachydosaurus rugosus*)

There are cases of overseas collecting groups going to Australia where the commercial export of live reptiles is banned, to collect reptiles such as these. Shinglebacks are commonly found in illegal trade and can fetch up to US\$2500 (UK £1500) each.

Poison Arrow Frogs (Dendrobatidae family)

Colourful and collectable, these small uniquely patterned frogs from South and Central America are highly desirable to the specialized collector. Protected in many countries of origin, and listed on CITES Appendix II, they are often smuggled in hand luggage or laundered through loopholes into the EU. UK collectors will purchase them in the Netherlands and Germany for up to several hundred pounds per frog (C. Allan *pers. comm.*, 1998).

#### **4.4 Live invertebrates**

##### ***Internationally***

Rare butterflies, beetles and other insects as well as spiders, scorpions, leeches and snails are all found in international trade both legally and illegally. Rarer species in which international trade is restricted, such as Birdwing butterflies from South East Asia can fetch up to \$US2500 (UK £1500) per pair. Live coral is also traded in significant quantities. Although this is generally legal, illegal trade in coral continues on a large scale from the Philippines where traders enjoy considerable local influence (Risk and Policy Analysts, 1995). Concerns have been raised internationally over the coral trade (both live and dead), with extensive damage being done to coral reefs by over-harvesting and the use of cyanide (Bentley, 1998).

##### ***The UK***

Many different types of invertebrates are illegally bought into the UK. Insects, spiders and scorpions tend to be carried in passenger's personal belongings, whilst live coral and other marine invertebrates are moved in commercial shipments, often mixed in or concealed by non-CITES specimens. In a recent case, in June 1995 69 pieces of live coral and 19 starfishes, destined for the UK ornamental fish trade, were seized by HMCE entering the UK without any CITES permits. The importers, regular offenders, had mixed the CITES specimens in with non-CITES specimens in an attempt to avoid detection (TRAFFIC International, 1995a).

## 4.5 Live fish

### ***Internationally***

Over 500 million live tropical fish are traded each year largely for the aquarium trade (Le Duc, 1996), primarily from the Asian and Pacific regions. There are few fish species listed on CITES and illegal trade in these species is rare. The main exception is Asian arrowana (*Scleropages formosus*) which is listed on CITES Appendix II, and occasionally illegally imported into the UK.

### ***The UK***

Large numbers of these fish are imported into the UK each year however this trade is however primarily legal.

#### Picture Arrowana

The Asian boneytongue or golden arrowana (*Scleropages formosus*) is subject to frequent illegal trade, and can fetch up to \$US5000 (UK £3035) in the East Asian markets where it is kept as a good luck fish. They are classified as endangered (IUCN, 1996) and listed on CITES Appendix I. To prevent dealing in the wild fish, farmed fish are now tagged with an electronic microchip attached under the supervision of a government agent. The number of the chip is then recorded on the export licence (Le Duc, 1996).

## 4.6 Live plants

*“Unscrupulous collectors remain a major threat to the very existence of some plant species. For the most avid, even fanatical collector, there is considerable status in owning a wild collected plant”.*

(UK CITES Scientific Authority for Plants, Royal Botanic Gardens Kew, 1996)

### ***Internationally***

Horticulture around the world is big business, with Europe the major world centre for horticultural development and plant trade. Whilst the great majority of plants, including most orchids and cacti, available in commerce have been artificially propagated by nurseries, a large number still find their way into trade, taken directly and usually illegally from the wild (Jenkins and Oldfield, 1992).

Many specialist collectors are motivated by a straightforward desire to own a wild collected plant and will pay hundreds, even thousands of pounds for a wild specimen. Some specialist collectors deliberately and actively seek out rare, new, exotic and naturally uncommon species from the wild to add to their collections. These plants are generally the least capable of sustaining heavy harvests, and species such as the giant pitcher plant (*Nepenthes rajah*) have been driven to near extinction by rapacious collectors (Jenkins and Oldfield, 1992). In some cases, whole regions of rare and interesting specimens have been depleted by plant hunters, often with no other motivation than financial gain (Van Vliet, 1994). There are even cases of collectors apparently destroying wild plants in excess to what they need to prevent rivals from obtaining them (Jenkins and Oldfield, 1992; Royal Botanic Gardens Kew, *pers. comm.*, 1998).

In Europe, wild plants traded in significant numbers include orchids, bulbs, cycads, cacti and other succulent plants, carnivorous plants and airplants (Jenkins and Oldfield, 1992; Le Duc, 1996). Declines due to over-exploitation from the wild have led to many of these plant species being placed on the CITES appendices, and blanket bans on the exports of wild specimens from countries such as Mexico. Nevertheless enforcement of these laws has proved difficult, and surveys conducted by TRAFFIC have revealed widespread availability

of wild CITES Appendix I listed plants in nurseries across Europe (Jenkins and Oldfield, 1992).

### **The UK**

In the UK, in 1995 alone over 12,000 plant specimens were seized by HMCE entering without correct permits, or without any permits at all. The majority of these were orchids, however significant numbers of tree ferns, cacti and carnivorous plants such as venus flytraps (*Dionaea muscipula*) were also seized (DETR, 1997). Unfortunately wild plants continue to illegally enter the UK directly by a number of means including postal packages, personal luggage and disguised in commercial shipments (Sandison, 1996). As with live animals, paperwork fraud is a particular problem. Identification of plant specimens requires specialist expertise, and many seizures relate to naming different species on the import and export permits, and falsely claiming plants have been artificially propagated rather than wild collected (Sandison, 1996; UK CITES Scientific Authority for Plants, *pers. comm.*, 1998). For example, in April 1995 a large consignment of wild orchids and bulbs from India was seized at Heathrow Airport containing 3100 plants in excess of what was allowed by the export permit. Another 599 orchids in the consignment (*Pleione coronaria*) were found to have taken from the wild, although the export permit stated they had been artificially propagated (CITES Enforcement Team Heathrow, *in litt.*, 1998).

However the primary means by which illegally collected wild plants now enter the UK is through other countries in the EU. Europe is the largest market for wild plants in the world, and UK buyers can pick up almost any plant they want from Europe, without having to go through Customs controls into the UK. Wild plants such as orchids are typically smuggled in large volumes from China to Taiwan, and then sent on Europe for distribution (UK CITES Scientific Authority for Plants *pers. comm.*, 1998). Some Europeans have apparently become renown for open collection trips to countries in South America, where rare and beautiful plants such as the spectacular airplants *Tillandsia sucrei*, and *T. xerographica* are collected from the wild and illegally taken back to Europe. It is difficult to estimate the impact this collection is having on the wild populations, however information on collection sites is rumoured to be regularly disseminated at plant talks throughout the continent, resulting in the same sites being raided repeatedly (UK CITES Scientific Authority for Plants, *pers. comm.*, 1998). Cycads and aloes are typically smuggled from South Africa often by ships to countries in Eastern Europe where they can be distributed to the rest of Europe (UK CITES Scientific Authority for Plants, *pers. comm.*, 1998). Rarer, and slow growing cacti can be worth hundreds of pounds each (UK CITES Scientific Authority for Plants, *pers. comm.*, 1998), and at one stage were apparently being used as a means of smuggling financial resources out of South Africa when it was under the apartheid system (UK CITES Scientific Authority for Plants, *pers. comm.*, 1998) (Jenkins and Oldfield, 1992). For a case example involving plant smuggling into the UK see case study 7.5(1) (HA).

### Picture Slipper Orchids

Dramatic declines in some species due to over exploitation has lead to the whole genus of tropical orchids such as *Paphiopedilum* – slipper orchids from South East Asia, and *Phragmipedium* from South America to be placed on CITES Appendix I (Jenkins and Oldfield, 1992). Of the *Paphiopedilum* genus, 14 species have been classified as endangered and another 7 species classified rare, while 2 *Phragmipedium* species are classified endangered and another one is classified rare (Walter and Gillett, 1998). Nevertheless illegal trade in these specimens continues around the world, and plants have been offered for up to \$US5000 (UK£3035) each on the international black market (Jenkins and Oldfield, 1992; Le Duc, 1996).

### Picture cacti

All species of the cactus family, and a number of other succulents are listed on CITES, with the most vulnerable species being listed on Appendix I. However wild plants of these species continue to be sold, often openly, throughout Europe, with some species capable of fetching hundreds of pounds each (Jenkins and Oldfield, 1992; Le Duc, 1996; Royal Botanic Gardens Kew *pers. comm.*, 1998). The collection of these plants from the wild for commercial trade has become a significant threat to the survival of the wild

#### **Box 4: Captive breeding and artificial propagation versus wild-caught and wild-collected**

A large number of plants and animals commonly found in trade have been bred in captivity or artificially propagated. This includes cactus plants sold on mass in supermarkets and garden shops, and common cage birds such as zebra finches. Improvements in techniques in recent years has meant many more species, including endangered and vulnerable species, are capable of being bred in captivity or artificially propagated. Commercial trade in these plants and animals is usually perfectly legal, however if the species are listed on CITES, the EU Wildlife Trade Regulations or the WCA, proof of captive breeding may be required, and the specimens may need to be marked. DNA fingerprinting is becoming widely used to test claims of captive breeding (see section 6.3).

However, unfortunately even for species capable of being bred in captivity or artificially propagated, there is still a market for specimens taken from the wild. For some specialist collectors, there is considerable desire and prestige attached to owning wild, as opposed to captive bred animals or artificially propagated plants. Occasionally, the rarer the species, the greater the incentive to own one whatever the means, resulting in endangered species being illegally trapped and sold on the international market. Wild specimens also add “new blood” to a captive collection, which can improve the breeding potential of the stock. Sometimes the issue is purely financial, with it being cheaper to take animals and plants from the wild rather than invest resources attempting to breed the species in captivity.

populations, particularly for naturally rare and slow growing species such as living rock cactus (*Ariocarpus* spp.) from Mexico.

### **4.7 Traditional and herbal medicines**

#### **1) Traditional East Asian medicine**

##### ***Internationally***

Many traditional medicines use wild plants and animals as ingredients, with traditional East Asian medicine (TEAM), using more than 1000 plant and animal species. TEAM, practiced for over 5000 years, is used throughout Asia and by Asian communities worldwide, as well as increasingly by non-Asian consumers. However some of the plant and animal species utilized in TEAM are now threatened with extinction, including the tiger, rhinoceroses, musk deer, as well as certain species of bear and some species of orchids (e.g. *Bletilla* spp., *Dendrobium* spp. and *Gastrodia* spp.). For these species, poaching for TEAM has been identified as the most immediate threat to the survival of the populations in the wild (TRAFFIC International *in litt.*, undated; TRAFFIC USA *in litt.*, undated; WWF, 1998).

### **Box 5. Some endangered species used in TEAM**

#### **Tigers**

The tiger (*Panthera tigris*) is globally endangered, with as little as 5000 remaining in the wild reduced from 100,000 at the turn of the century. Three of the eight subspecies of tiger have become extinct since 1940, and the South China tiger with only 20 to 30 left in the wild, is likely to be the next to disappear. The tiger has traditionally been highly valued in TEAM, and nearly every part has a medicinal use with the tiger bone most often prescribed to treat rheumatism. Unfortunately poaching to supply the demand for tiger parts for use in TEAM is the most immediate risk to the long term survival of the tiger. International trade in tiger parts and derivatives has been banned under CITES, and is illegal throughout most of East Asia. However a stubborn residual demand continues around the world, and illicit trade in tiger and tiger parts continues to meet this (TRAFFIC USA *in litt.* undated; TRAFFIC International *in litt.*, undated; WWF, 1998).

#### **Rhinoceroses**

Since 1970, 90 percent of the world's rhinoceros population has been lost, and today less than 12,000 animals remain in the wild, including only approximately 75 Javan rhinos and 275 Sumatran rhinoceros in Asia. In Africa, the black rhinoceros (*Diceros bicornis*) has declined faster than any other large terrestrial mammal in recent history, from 65,000 in 1970 to about 2500 today. Only the white rhinoceros (*Ceratotherium simum*) has recovered to more than 7000 due to intensive conservation effort. The most immediate threat to rhinoceros populations is poaching for rhinoceros horn. Rhinoceros horn has been used in TEAM for thousands of years to treat delirium, convulsions and serious illnesses due to "heat excess". It is also in demand for use in traditional daggars seen as a symbol of male status in Yemen and Oman. Rhinoceros horns attract high prices on the black market, and have been valued at up to \$US16,000 each in Hong Kong (Milliken *et. al.*, 1991). Despite being listed on CITES Appendix I since 1977, the illegal trade in rhino horn continues to undermine the survival of the species in the wild (Millikin, 1996; Mainka, 1997).

#### **Bears**

Of the world's eight bear species, only the giant panda is not specifically hunted for its gall bladder. Bear bile is used in TEAM primarily to treat inflammation and bacterial diseases. Poaching for the gall bladder has affected bear populations in Russia, Canada and North America, however East Asia's bears have been the hardest hit, and the trade in bear parts remains the greatest threat to their survival in the wild. Accurate population figures are unavailable for most species, however four of the five Asian bear species; the sun bear (*Helarctos malayanus*), the sloth bear (*Melursus ursinus*), the Asiatic bear (*Ursus thibetanus*) and the giant panda (*Ailuropoda melanoleuca*) are classified vulnerable or endangered, and listed on Appendix I of CITES, along with the brown bear (*Ursus arctos*) populations of China, Bhutan and Mongolia, and the Himalayan brown bear. The other populations of brown bear are listed on CITES Appendix II. However, despite the trade bans in some species, and trade limitations in others, there continues to be an international black market for illegally obtained gall bladders and bile. Gall bladders have been known to fetch up to \$US7000 on the black market, and gram for gram can exceed the cost of narcotics (Mills, 1995; Servheen, 1995, 1997).

### **The UK**

The practice of traditional East Asian medicine and related trade in its ingredients in the UK is widespread and rapidly increasing. It is driven by both the considerable East Asian population in the UK, as well as the growing general interest in alternative medicines. At least 50% of consumers of TEAM in the UK now come from a non East Asian background, and TEAM practitioners and pharmacies are opening regularly in many towns (C. Allan *pers. comm.*, 1998).

Although the majority of this trade is now legal, open trade in traditional East Asian medicinal products and raw ingredients illegally containing endangered species was a major problem for the UK. A TRAFFIC investigation into the traditional medicinal trade in the UK in 1994 found that manufactured medicines claiming to contain tiger bone, rhinoceros horn and bear bile were readily available in 50% of retail premises visited in four major trading cities (London, Birmingham, Manchester and Liverpool) (C. Allan *in litt.*, 1994). This led to the launch of Operation Charm (see case study 7.4) during which over 20,000 medicinal products claiming to contain endangered species were seized, as well as raw products including tiger bones, Asiatic black bear bones, rhinoceros horn and bear bile (DETR, 1997).

In both 1995 and 1996, over 1700 items of traditional medicinal products claiming to contain endangered species including bear bile and tiger bone plasters were seized by HMCE illegally entering the UK (DETR, 1997). However large numbers of these medicinal products continue to enter the UK avoiding detection, and can occasionally be found on open sale in retail shops. The majority of raw materials are carried by passengers in their luggage or sent through the post, whilst commercial shipments of packaged patented medicines are often concealed in larger shipments of Chinese goods and herbs (C. Allan *pers. comm.*, 1998; CITES Enforcement team Heathrow *pers. comm.*, 1998). Additionally it is suspected that illegally imported traditional East Asian medicines are entering the UK from other EU Member States, in particular the Netherlands, following similar routes to drug trafficking (Inspector J. Francis, Metropolitan Police *pers. comm.*, 1998).

The result of Operation Charm and other enforcement activities, as well as numerous public awareness campaigns has led to a steady decline in the open sales of medicinal products containing endangered species. Both practitioners and the communities involved are keen to be seen to be conforming with the law, and co-operating with authorities. Nevertheless, a persistent underground market continues to exist for these medicinal products containing endangered species, by traders now well versed as to the illegality of their actions (C. Allan *pers. comm.*, 1998).

## **2) Western herbal medicines**

### ***Internationally***

Plants and their derivatives have been used in Europe for medicinal and aromatic purposes for thousands of years. Today the trade in medicinal plants for western herbal medicine is considered huge and largely unmonitored, with wild harvesting predominating. Within Europe as a whole there has been a recent increase in the use of herbal medicine, with for example Germany reporting a 13% rise (Lange, 1998). 47 European medicinal plants are currently listed on CITES Appendix II, with an additional 10 species listed on the EU Wildlife Trade Regulations Annex B. Legislation on the protection of medicinal plants exists now in almost all European countries, however in many cases this legislation is considered inadequate, and compliance low. There is insufficient information available to assess the illegal trade, or the overall impact of the harvest on the wild plant populations. However it is considered highly likely that in many cases it is unsustainable, particularly as demand increases throughout Europe (Lange, 1998).

### ***The UK***

In the UK, 25% of people surveyed said they used herbal remedies regularly, and between 1992 and 1996 the UK imported an average 6740 tonnes of medicinal plants each year, valued at approximately \$US 24,250,000. This placed the UK in the top 12 importing countries of medicinal plants around the world (Lange, 1998). The plants used are primarily wild harvested, and are supplied in bulk to traders, usually from Germany. The herbal

medicine trade in the UK tends to be largely separate from the TEAM trade, with of the 690 herbal species used in the UK, only 23 are used by both Western herbal medicine and TEAM (Lange, 1998). There is no information available on the UK illegal trade in western herbal medicine containing protected medicinal plant species.

#### **4.8 Reptile skins, mammal furs and wool and bird feathers**

##### **1) Reptile skins**

###### ***Internationally***

At least 10 million reptiles each year are killed, processed and manufactured into products for the international reptile skin trade. The vast majority of these are taken from the wild in tropical countries, and includes crocodiles (e.g. the spectacled caiman *Caiman crocodilus*), lizards (e.g. water and Nile monitors *Varanus* spp.) and snakes (e.g. the reticulated python *Python reticulatus*). Most species commonly used in the international skin trade are listed on CITES Appendix I or II, and so are subject to various controls.

There is however wide spread evidence of extensive illegal trade in reptile skins around the world including the UK. This is motivated by the desire to avoid both fiscal controls, and conservation related controls. (Jenkins and Broad, 1994; Risk and Policy Analysts, 1995). This illegal trade provides the larger skins difficult to obtain from legally farmed animals, and also the skins from taxa protected in their country of origin. Uncovering this trade in the importing country is very difficult, unless the skins show consistent variation according to their geographical origin (Jenkins and Broad, 1994; Risk Policy Analysts, 1995).

###### ***The UK***

Reptile skins usually illegally enter the UK via commercial shipments; through the misdeclaration of the species involved, the misdeclaration of the number of skins, false declarations of legitimate origin, and the use of false certificates (CITES Enforcement Team Heathrow, *pers. comm.*, 1998). These skins are destined for the few commercial tanneries in the UK, which process the skins and then send them on to markets in Europe (CITES Enforcement Team Heathrow, *pers. comm.*, 1998). In 1995, a UK based leather tanning company was found guilty of importing over 110,000 reptile skins using false documentation. The skins of CITES Appendix II listed snakes from Singapore were confiscated, and the company was fined £500 (TRAFFIC International, 1995b). The skins had been valued at a minimum of £25,000 (C. Allan *pers. comm.*, 1998).

##### **2) Bird feathers**

Bird feathers are also occasionally found in international trade. These are traded for ornamental purposes and are also used to produce flies for the fishing industry. Feathers from the head and neck of jungle fowls, know as “jungle fowl capes” are commonly used for the fly trade (G. Elliot, *pers. comm.*, 1998). There have been some large illegal imports of these capes from India for subsequent sales to anglers (C. Allan *pers. comm.*, 1998).

##### **3) Mammal fur and wool**

The world trade in cat skins has shown a steady decline since it peaked in the 1980's, and is now largely legal (Nowell and Jackson, 1996). International trade in the skins and furs of other mammals however has increased, particularly in species such as the Tibetan antelope or chiru (*Pantholops hodgsoni*) and the South American antelope or vicuna (*Vicugna vicugna*).

**Box 6: Shahtoosh wool**

Shahtoosh wool comes from the Tibetan antelope or chiru, endemic to the high plains of the Tibetan Plateau. It is listed on CITES Appendix I, and Schedule 1 of the Indian *Wildlife Protection Act* which effectively prohibits all hunting and trade in this species. Nevertheless, it is estimated that between 2000 to 4000 Tibetan antelopes are illegally killed annually by organized gangs for its highly prized wool. This wool is traditionally spun into shawls, so fine they can be slipped through a wedding ring, and can fetch up to \$US35,000 each (UK £21,250). It is believed the wool is bartered for tiger bones across the Indian border, from where it is shipped to countries around the world, including the UK (Kumar 1993, Wright and Kumar, 1997). On the 19<sup>th</sup> of February 1997 the Metropolitan Police in London seized 138 shahtoosh shawls from an exclusive shop in West London. At the time this was the largest ever seizure in the world of Shahtoosh wool. The shawls, illegally exported from India to the UK, were priced between £5000 to £12,000 each. One man has been charged under COTES in connection with the offence, and the case is still currently pending (TRAFFIC Bulletin Vol. 16 No 3 1997; C. Allan pers. comm. 1998).

## 4.9 The ornamental and taxidermy trade

### *Internationally*

A very wide range of animal products are found in the ornamental trade, some legal, but much illegally. Typical examples of traded ornamental animal products include ivory figurines, coral souvenirs, sea turtle shell and seashells, as well as mounted insects such as butterflies and spiders. Stuffed mammals, birds and reptiles are also frequently traded on the international taxidermy market.

### *The UK*

Cases and investigations have shown there is a market in the UK for taxidermy specimens of endangered exotic species. It would appear these are primarily smuggled into other countries in the EU, and then bought across into the UK bypassing customs checks (e.g. see case study 7.1 *Operation Indiana*). These specimens can attract very high prices on the black market in the UK, for instance a stuffed orangutan was offered for £16,000 in the UK in 1993.

Tourist souvenirs made from animal products are frequently illegally imported into the UK by travelers, often unintentionally, and have been the subject of numerous seizures by HMCE. To illustrate, currently there are large numbers of seizures of crocodile and alligator heads from tourists returning from the US. These are derived from CITES Appendix II listed species, and thus require export permits from the US (import permits are not required for EU Wildlife Trade Regulation Annex B personal effects). However these permits are not being obtained by the tourists, so the items are being seized (CITES Enforcement Team Heathrow, *in litt.*, 1998).

Picture – The African elephant (*Loxodonta africana*). The demand for ivory fueled an unacceptable decline in the African elephant in the 1970's and 80's. This eventually led to the listing of the African elephant on Appendix I of CITES, and a complete ban in all commercial trade in ivory. The recovery of some African elephant populations following this ban has led to some strictly controlled trade to recommence (TRAFFIC International *in litt.*, 1997). In May 1997, 366kg of ivory, valued at £100,000 was seized at Heathrow airport transiting from Zambia to Malaysia.

#### 4.10 The food trade

Marine fish are the largest group of wild animals exploited for food. Although most of this trade is legal, grave concerns have been raised over the sustainability of some fisheries including Southern blue fin tuna (*Thunnus maccoyi*) (Hayes, 1997), and shark (Rose, 1997). Illegal trade occurs in food products such as monkey meat (West African tonic food),

##### **Box 7. Sturgeon caviar**

Sturgeons (*Acipenseriformes* spp.) are fished primarily for caviar; the unfertilized eggs of the female widely recognized as a culinary delicacy. Experts believe the world populations of sturgeons may have declined 50 -70%, with almost all populations threatened to some degree, and some species and populations critically endangered. Practically all sturgeon caviar today comes from three species in the Caspian Sea. This has become the center of lawless sturgeon catch and caviar trade, characterized by poaching, illegal production and smuggling on a massive scale. International concern over this trade lead to all sturgeon species being placed on CITES Appendix II in 1997 (De Meuleneur, 1996). Over 200 kg of caviar was seized at Heathrow airport alone in the first three months following the Appendix II listing (C. Allan *pers. comm.*, 1998)

sturgeon caviar, whale meat, frog legs and marine turtle meat.

#### 4.11. The timber trade

##### ***Internationally***

Timber trade has become regarded as one of the most important causes of forest degradation around the world (Dudley *et al*, 1995). In Eastern Europe many natural forests have already been destroyed by logging. In Africa overlogging has virtually destroyed the tropical rainforests of the Ivory Coast and Nigeria, with Zaire, Congo and Cameroon rapidly following suit. Asian forests have also been devastated by overlogging, and logging practices (Dudley *et al*, 1995). Logging is regulated to varying degrees in countries of origin around the world. In addition a few timber species are listed on CITES, including Alerce (*Fitzroya cupressoides*) (Appendix I), the Monkey puzzle tree (*Araucaria araucana*) (CITES Appendix I in Chile, Appendix II elsewhere) and Cuban or Spanish Mahogany (*Swietenia mahagoni*) (CITES Appendix II). However illegal trade in these and other species remains problematic, although the extent is impossible to estimate (Dudley *et al*, 1995).

##### ***UK***

The UK has been one of the most significant global consumers of timber, in particular mahogany. For many years it was second only to the US in imports of mahogany, although in recent years this trend has declined (C. Allan *pers. comm.*, 1998). The UK however continues to play an important role in global timber trade dynamics. There is no information available on the illegal timber trade into the UK, with trade in timber remaining largely unchecked, and identification very difficult (C. Allan *pers. comm.*, 1998). In 1992, 28 tonnes of Chilean Alerce, listed on CITES Appendix I, were seized from the storage facilities of a UK timber importer in the Midlands. The timber, valued at £30,000 was donated to Kew Gardens (Lewis and Brown, 1992).

## 5. Catching the Crooks - Enforcing Wildlife Trade Laws in the UK

*“It is clear from recent successful prosecutions, the imposition of custodial sentences and the high levels of seizures of illegal imports of wildlife products that our efforts to crack down on wildlife crime are beginning to bear fruit. But they are only the first skirmishes in what I am sure will be a long and difficult battle, so we cannot afford to relax our efforts”.*

James Clappison MP, Parliamentary Under Secretary of the State for the Environment, launching the Partnership for Action against Wildlife Crime, 16/11/95 (Taylor, 1996)

The aim of this section is to provide an overview of government and non-government organizations actively involved in enforcing wildlife laws in the UK. Wildlife offences differ from many other criminal offences in that there is no direct victim other than the animals or plants concerned. However the impact of illegal wildlife trade on conservation of species in the wild arguably makes these offences equally important as the traditional criminal offences of damage to a person or property.

### 5.1. Organizational context

#### 1) Government commitment

In recent years the Government has begun to invest more resources into combating wildlife crime in the UK. A significant development was establishment of the Partnership for Action against Wildlife crime (PAW) in November 1995 (see Box 8). The UK has also continued to support CITES and the CITES Secretariat, has funded a CITES deputy enforcement officer at the CITES Secretariat, and hosted the 1995 European seminar on CITES implementation, and a workshop on European Union Wildlife Law Enforcement in 1998.

##### **Box 8. PAW**

The Partnership for Action against Wildlife crime (PAW) consists of representatives from a number of bodies including the Police, Customs, DETR, conservation NGO's involved in law enforcement assistance, and organizations representing landowning and sporting interests. Its role is to provide a strategic overview of wildlife law enforcement activity, improve co-ordination between all bodies involved, and provide a source of expertise and advice (Clappison, 1995; Brewer, 1996). One of the first activities of PAW was to commission a practical guide for wildlife law enforcers “Wildlife Law: A Guide to Wildlife Law Enforcement in the United Kingdom”, published in 1996, followed by a second edition to be published in 1998.

#### 2) The Department Of Environment, Transport and the Regions (DETR)

The DETR administers the WCA and COTES. It is the Management Authority required under CITES and the EU Wildlife Trade Regulations, with the Royal Botanic Gardens Kew and the Joint Nature Conservation Committee jointly fulfilling the roles as the CITES Scientific Authorities for plants and animals respectively.

The Global Wildlife Division of the DETR is responsible for the Department's obligations under CITES. It provides policy advice to the Minister on CITES, the EU Wildlife Trade Regulations and wildlife enforcement issues, deals with import, export and sale licences for plants and animals listed on CITES and the EU Wildlife Trade Regulations, and the registration of the WCA Schedule 4 birds kept in captivity. The Global Wildlife Division also manages the Wildlife Inspectorate which checks that the provisions of the WCA, COTES

and the EU Wildlife Trade Regulations relating to bird registration, wildlife licences, and import, export and trade in endangered species are being followed. This is achieved by making announced and unannounced checks on keepers of registered birds, and importers, exporters and vendors of EU Wildlife Trade Regulation listed species. The Inspectorate is also the liaison point for the police, HMCE and NGOs. The European Wildlife Division is responsible for the implementation of the EU Birds Directive and the EU Habitats Directive.

### **3) The Police**

The police have primary responsibility for enforcing the provisions of the WCA and COTES, as well as other relevant legislation including the Theft Act and the Dangerous Animals Act. The growth in organized wildlife crime led to the establishment in the 1980's of the Police Wildlife Liaison Officers Network (PWLOs). All 52 forces in England, Scotland and Wales and the Royal Ulster Constabulary now have at least one nominated PWLO and most have appointed several. These officers take special responsibility for offences relating to wildlife, and usually have a particular interest in wildlife matters. An annual conference for PWLOs has been held each year since 1989.

The PWLO Network has been widely acknowledged as an effective means of dealing with wildlife crime. Unfortunately commitment to supporting the PWLO has varied considerably from force to force. Although some forces have appointed PWLOs on a full time basis, most of them are volunteers, and combine their wildlife responsibilities with other operational matters. The Enforcement Working Group considered the PWLO network should be the corner of wildlife law enforcement in the UK, and recommended it be retained, properly resourced, strengthened and formalized wherever appropriate (WLESG, 1995; Rands and Jones, 1995).

### **4) HM Customs and Excise**

HM Customs and Excise (HMCE) have primary responsibility for enforcing CEMA, in particular the offences relating to imports of wildlife contrary to the provisions of CEMA and the EU Wildlife Trade Regulations.

HMCE headquarters is responsible for the formulation and dissemination of policy. There are 14 outfield zones known as Collections, or Executive Units, each of which has an appointed CITES Liaison and Intelligence Officer (CLIO). CLIOs advise on CITES enforcement matters, including detentions and seizures of CITES specimens, receive, analyze and disseminate intelligence information, identify areas of smuggling risks, and liaise with DETR and PWLOs (WLESG, 1995).

In December 1992, in recognition of the growing trade in illegally imported wild and exotic species, the HMCE CITES Enforcement team was established. This team, based at Heathrow, has become a centre of expertise in CITES enforcement, and has received international recognition. Its roles include monitoring the commercial trade in animals and plants imported and exported to and from Heathrow Airport, liaising with and assisting CLIOs, liaising with other enforcement bodies, and public awareness activities (Mackay, 1995).

### **5) The Crown Prosecution Service**

The Crown Prosecution Service (CPS) was set up in 1986, and is responsible for prosecuting all criminal cases resulting from police investigations in England and Wales with

only a few minor exceptions. The head of the CPS is the Director of Public Prosecutions, who is accountable to the Attorney General. The CPS makes the final decision on whether to bring a case to court (see Section 6.1). The police can also ask advice from the CPS on prosecutions during the course of their investigations.

#### **6) The Ministry of Agriculture, Fisheries and Food**

In relation to wildlife trade, the Ministry of Agriculture, Fisheries and Food (MAFF) is primarily concerned with health and transport issues relating to the import and export of live plants and animals. Most live animals and plants being imported into the UK require a licence from MAFF and a health certificate issued by the country of export, and most commercial shipments must pass through MAFF quarantine facilities at Heathrow. MAFF has an investigations unit which can investigate breaches of the Animal Health Act, although does not conduct any independent prosecutions.

#### **7) The role of Non-Government Organizations**

Non-Government Organizations (NGOs) are also involved in wildlife law enforcement activities, in particular the Royal Society for the Protection of Birds (RSPB), the World Wide Fund for Nature (WWF) and TRAFFIC, as well as the Royal Society for the Prevention of Cruelty to Animals (RSPCA). All major wildlife trade cases in the UK have involved support from one or more of these groups.

The RSPB, the Birdlife International UK partner, has particular expertise in bird crime issues, and conducts investigations, and assists in prosecutions, as well publishing a quarterly newsletter *Legal Eagle*, and annual figures on bird related crime. TRAFFIC with 20 offices around the world is the joint wildlife trade monitoring programme of WWF and IUCN – The World Conservation Union. TRAFFIC International, based in Cambridge conducts investigations into illegal wildlife trade in exotic species in the UK as well as co-ordinating international investigations, and provides a source of expertise to wildlife law enforcers. In 1996 WWF UK launched the “Eyes and Ears” campaign which provided a hot line for the public to impart information on wildlife offences, which is passed on to the relevant authorities. WWF also run “Buyer Beware” campaigns, educating consumers not to buy souvenirs made from endangered wildlife whilst abroad. The RSPCA is active in investigating and prosecuting wildlife offences, primarily welfare issues although they have been involved in investigations relating to CITES in recent years.

As well as assisting in enforcement activities, all these organizations continue to support the work of PAW (see above), and carry out campaigns educating the public about wildlife crime.

## 6. Illegal Wildlife Trade in Court

*“In this day and age there are areas of national life which are regarded as being of such importance that there must be an absolute prohibition against the doing of certain acts which undermine the welfare of society. The Wildlife and Countryside Act is designed to protect the environment. That is an objective of outstanding social importance”.*

(Lord Justice Steven Brown, *Kirkland v Robinson* 1986).

*“Those who conspire together to flout international law do so at their own peril. Those who use couriers cannot complain when they receive prison sentences. These offences were committed for greed”.*

(Judge Lewis Bowen in sentencing Operation Dorian (see case study 7.3))

The aim of the following section is to present available information on successful illegal wildlife trade prosecutions in the UK, in the context of the English criminal justice system. The criminal justice systems in Northern Ireland and Wales are very similar to the English version, however the Scottish criminal justice system differs considerably, and these differences will be noted in the text where relevant.

The majority of cases of illegal wildlife trade never reach court. Most crimes remain undetected and those which are, often are not pursued by the police. Even cases where there is sufficient evidence frequently result in cautions instead of official proceedings. In a study on police prosecutions for bird crime under the WCA by RSPB in 1994, it was found that of the 85 cases reported to the RSPB, 30 led to cautions rather than court action, a number considered to be a bare minimum because it was suspected that many cautions would not be reported to the RSPB (Nurse, 1994). In another example, of the wildlife cases investigated by the Metropolitan Police under Operation Charm between 1995 and 1997, out of the 14 recorded cases 7 resulted in cautions (A. Fisher, Metropolitan Police *in litt.*, 1998).

### 6.1. The UK Criminal Justice System

#### 1) Bringing a case to court

Cases involving offences under the WCA, sales offences under COTES, other wildlife legislation and the Theft Act are generally investigated by the police. The case is then passed on to the Crown Prosecution Service (CPS), who are responsible for the decision to bring a case to court and the conduct of the prosecution case. In deciding whether to prosecute, the CPS must apply the following test: Is there enough evidence to provide a “realistic prospect of conviction” (i.e. magistrates or a jury are more likely than not to convict the defendant), and if yes, then is the prosecution in the public interest? (Crown Prosecution Service, 1994).

In cases of any seriousness, a prosecution will usually take place unless public interest factors against prosecution outweigh those in favour. Public interest factors operating in favour of prosecution include that; the defendant was a ringleader, the offence was pre-meditated, carried out by a group, or likely to be repeated. Possible small penalties tends against prosecution, creating unfortunate ramifications for often small penalties handed down in wildlife crime cases (Crown Prosecution Service, 1994). Other factors tending against prosecution include that the loss or harm was minor, and potential serious effects on the defendant’s health.

Offences under CEMA differ in that they are usually investigated and prosecuted by HMCE.

\* In Scotland the main prosecuting body is the procurator fiscal, however the Crown Counsel conducts all cases in the High Court (Young, 1996).

## **2) Summary or indictable trial?**

All wildlife offences under the WCA are summary offences, while offences under COTES, CEMA and the Theft Act are summary, or “triable either way”. Offences which are triable either way can be tried either on indictment (at the Crown Court) or summarily (in Magistrates Courts). The mode of trial is determined at the Magistrates Court, usually before two magistrates. Under new rules introduced by the Criminal Procedure and Investigations Act 1996, if the accused pleads guilty, the trial proceeds as if it were a summary trial. The magistrates however may commit the accused to the Crown Court to be sentenced if they believe, after hearing the case, that their powers of sentencing will not be adequate ( s17A *Magistrates Courts Act 1980*). If the accused pleads not guilty, magistrates must decide which mode of trial is more suitable taking into account the nature of the case, serious circumstances, the adequacy of the penalties available at the summary level and representations made by the prosecution and the accused. The accused also has the right to elect trial by indictment. If the accused is convicted of a triable either way offence at a summary trial, the magistrates may commit him or her to a Crown Court to be sentenced if they believe, after hearing the trial, that their powers of sentencing will not be adequate (s38 *Magistrates Courts Act 1980*) (Inns of Court, 1997).

\* In Scotland the two types of trial are referred to as trial by summary procedure, and trial by solemn procedure (equivalent to trial on indictment). The procurator fiscal makes the initial decision, and petitions the Sheriff’s Court at the First Examination to commit the accused for trial. Once the accused is committed to trial, the procurator fiscal send special witness statements “precognitions” to the Crown Counsel who decides how the case will be dealt, including in which court (Young, 1996).

## **3) Summary trials**

All offences under the WCA (with the exception of s14, the release of exotic animals into the wild), most offences under COTES and about half the wildlife offences under CEMA are tried summarily. These trials takes place in a Magistrates Court, where magistrates are the judges of law and fact. The large majority of magistrates are lay men and women, most of whom serve for many years and sit in court twice a month. There are also a few stipendiary magistrates who are paid full time, and appointed from barristers and solicitors of seven years standing. Stipendiary magistrates can try a case alone, whereas at least two lay magistrates are needed to conduct a trial. All magistrates can seek advice from the Clerk of Courts, who is a fully trained lawyer. The maximum custodial sentence that can be imposed by a Magistrates Court is a total 6 months (note prison sentences are not available under the WCA). The maximum fine usually specified in the legislation involved (Sprack, 1995; *Magistrates Courts Act 1980 s31*).

\* In Scotland, the equivalent of Magistrates Courts are the District Courts, which are staffed by lay men and women justices. District Courts can only deal with summary matters, and can impose a maximum of 60 days imprisonment and fine of £2500. Unlike England, summary trials can also be heard at the next court level up, the Sheriffs Court. The judge (sheriff) is a professional lawyer of 10 years standing, and while sitting in a summary trial can impose prison sentences of up to 3 months (special cases up to 12 months) and fines as specified in the relevant laws (Young, 1996).

## **4) Trial on indictment**

Trial on indictment is the method used for trying more serious offences, and may be used for offences under COTES, CEMA and the Theft Act although not the WCA (with the exception of s14, the release of exotic animals into the wild). The trial takes place in the Crown Court,

and is presided over by a paid professional judge who is, or was, a practicing barrister or solicitor. The judge decides on all matters of law, admissibility of evidence, and the appropriate penalty, while a jury determines issues of fact. The maximum prison sentence which can be imposed by the Crown Court is specified in the legislation (Sprack, 1995).

\* In Scotland, trial by solemn procedure takes place in front of a judge and jury, usually in the Sheriff's Court, but in serious cases in the High Court. The sheriff can impose a prison sentence of up to three years, but can also send a case to the High Court for sentencing if it is considered a longer sentence is required (Young, 1996).

## **5) Sentencing**

### **Box 9. Sentencing options**

1. Discharge (absolute or conditional)
2. Fine / Compensation
3. Community Orders (supervision order, attendance centre order, curfew order, probation order, community service order)
4. Custodial Sentence (suspended or immediate)

The primary aim of sentencing is to give the offender a punishment that is proportional to the offence (*The Criminal Justice Act 1991*). Sentencing is very dependent on the facts of the individual case with no two offenders or offences exactly the same. The judge or magistrates must decide:

- i. if the offence serious enough to warrant a particular sentence, and
- ii. if yes, then is that sentence deserved in the circumstances of the particular case?

In deciding this considerations taken into account include:

- i. pre-sentence reports,
- ii. aggravating factors (e.g. high value of items illegally taken and previous convictions),
- iii. mitigating factors (e.g. good character, guilty pleas and co-operation with police), and
- iv. financial circumstances of the offender (for fines).

(Sprack, 1995)

A custodial sentence should not be passed unless the court considers that the offence committed was so serious that only a custodial sentence is justified, taking into account factors such as:

- i. whether members of the public would feel justice was not done if a non-custodial sentence was passed,
- ii. how prevalent the offence is, and
- iii. deterring the individual and others from committing the same offence.

(*Criminal Justice Act 1991* (s6(1); s1(2), Sprack, 1995).

A number of judges recently have considered wildlife crimes sufficiently serious to warrant a custodial sentence (for examples, see the section on case studies 7.1 (*DC*), 7.2 (*Operation Dorian*), 7.3 (*Operation Indiana*), 7.5(2) (*Operation Monty*), 7.5(3) (*Operation Morello*), 7.5(4) (*the Eleanora's falcon case*), and 7.5(5) (*Operation Dutch Lady*)). A number of judges have also recently complained about the lack of sentencing options available under the WCA (anon. (f), 1998).

Fines are the most frequent penalty given for summary offences and offences triable either way. In setting a fine, the financial circumstances of the offender are taken into account,

either to increase or decrease the fine (Sprack, 1995). Under the WCA, there is provision for separate fines to be awarded for each item in the offence, i.e. for each bird or egg. Under CEMA, judges and magistrates are required to take into account the value of the goods smuggled.

Many people involved in wildlife crime enforcement in the UK have expressed the view that the fines imposed are often light compared to the seriousness of the offences, and the value of the goods involved. Exotic wildlife can be worth thousands of pounds on the black market in the UK, and domestic species such as peregrine falcons can attract up to £700 per bird. For some examples of fines imposed in wildlife cases see Tables 2 and 3 on pages 35 and 37.

\* In Scotland the sentencing framework is very similar, however it is also possible for an *admonishment* to be given, which is a judicial warning, and it is not possible to give a suspended sentence (Young, 1996).

## **6) Appeals**

It is possible to appeal both decisions made in Magistrates Courts and in the Crown Court, however the right of the prosecution to appeal is much more limited than the right of the accused. The process of a case through the criminal justice system is set out in Figure 1.

### ***a) Appeals from Magistrates Courts***

The convicted person, but not the prosecution, can appeal to the Crown Court on matters involving either fact or law, in relation to either conviction or sentence. No leave to appeal is required, and a complete rehearing of the trial takes place.

Both the prosecution and the convicted person may appeal a Magistrate Court decision “by case stated” to the High Court (Divisional Court of the Queens Bench) on the basis the decision was wrong in law, or in excess of jurisdiction. This can relate to the sentence but usually relates to the conviction or acquittal. The appeal takes the form solely of legal argument, and the court has wide-ranging powers to substitute convictions, acquittals and sentences.

In rarer cases both the prosecution and the convicted person may apply to the High Court for judicial review of a Magistrate Court decision on the grounds the court acted beyond its power, or failed to exercise its power. The High Court can quash the decision, prevent the Magistrates Court from acting beyond its power, or order it to properly carry out its duties (Sprack, 1995).

### ***b) Appeals from the Crown Court***

A convicted person, but not the prosecution, may appeal to the Court of Appeal (Criminal Division) against conviction on indictment, sentence following the conviction, or sentence following committal to the Crown Court for sentencing. Leave to appeal must first be granted by the court (usually decided by a single judge) and is given generally in about a third of applications. The appeal against conviction is successful if the court considers the conviction was unsafe, and the conviction is either overturned, or sent back to the lower courts for a rehearing. On appeals against sentences the court can quash any sentence and replace it with one of its own.

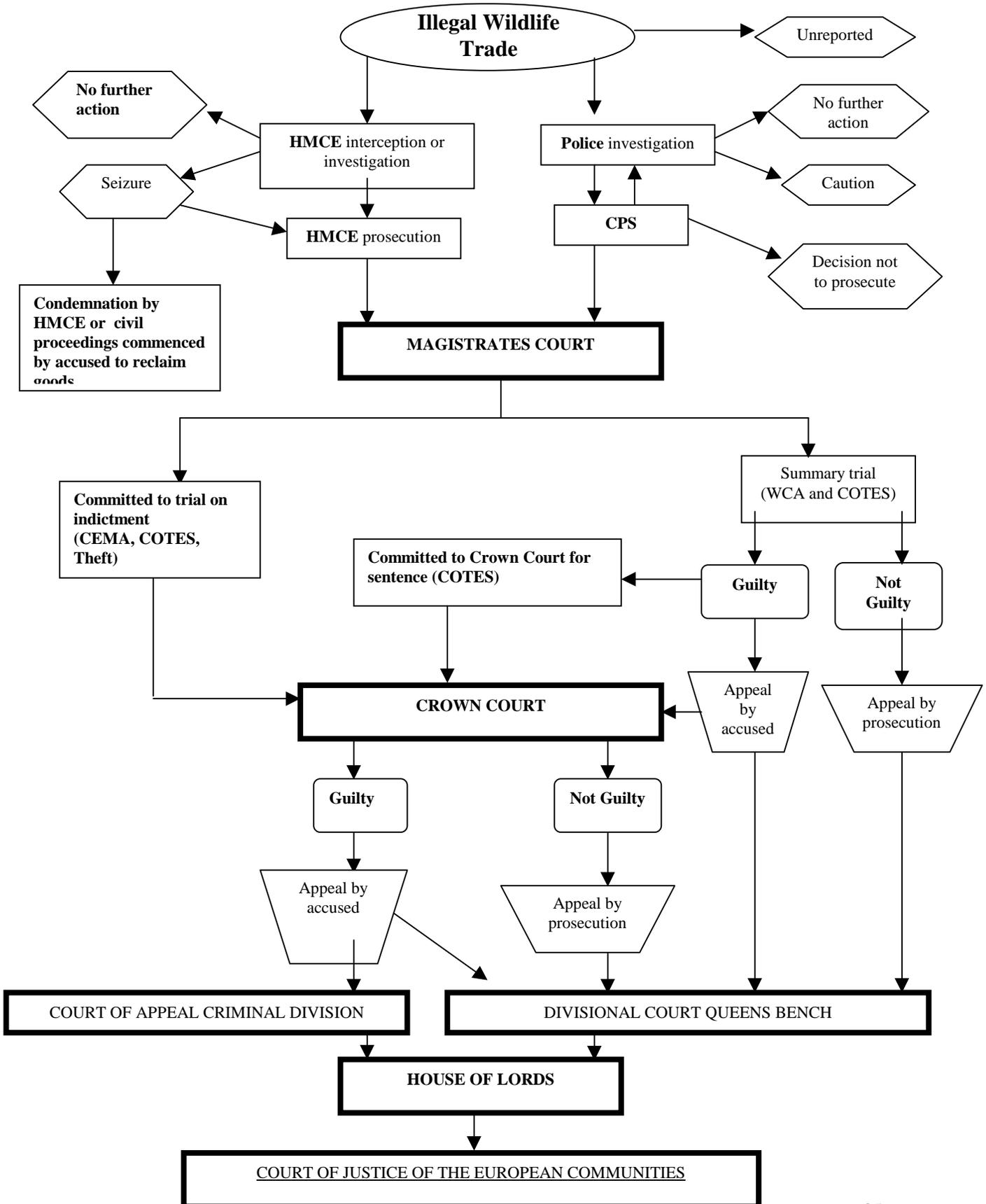
Appeals may also be made by both the prosecution and the accused to the High Court (Divisional Court of the Queens Bench, or applications for judicial review to the High Court in the same way as from Magistrates Courts (see above) (Sprack, 1995).

***c) Appeals to the European Court of Justice***

Any English court may request a preliminary ruling from the European Court of Justice on a point of European community law (such as the EU Wildlife Trade Regulations) (Sprack, 1995).

\* In Scotland the High Court also sits as the Scottish Court of Criminal Appeal and hears appeals from the District Court, the Sheriffs Court and the High Court against conviction or sentence or both on the ground there has been a miscarriage of justice. Leave to appeal must be granted by the court and is decided by a single judge (Young, 1996).

Figure 1: The process of wildlife trading offences through the criminal justice system



## 6.2 Illegal wildlife trade prosecution outcomes

The overwhelming impression of those involved in enforcing wildlife trading laws in the UK is that the penalties given seem light compared to the seriousness of the crime, and the commercial value involved. For example, the RSPCA calculated that of the 442 convictions the Society obtained under the WCA in 1994, the average fine was £16.25 (WLESG, 1995). Although some courts have recently recognized the seriousness of wildlife crime cases and imposed stiffer penalties (for example see case studies in section 7) there still appears to be a large disparity between these sentences and the average penalty given. Concerns have often been raised that sentences are not acting as a deterrent to wildlife criminals (WLESG, 1995).

### 1) COTES and the WCA

There have been no central records kept on wildlife crimes and resulting prosecutions under COTES and the WCA in the UK, and so no systematic information is currently available on the numbers of cases taken to court, and the outcomes of these cases. This is due in part to the fact that wildlife crimes have not been *notifiable offences*, so there has been no requirement for the police or the DETR to keep central records of wildlife crime cases. This situation has now changed with respect to COTES only, when in April 1998 that all triable either way offences became notifiable (L. Garvey *pers. comm.*, 1998).

The RSPB is one body that does publish records of offences involving bird crime, and those relating to trade in wild birds between 1995 and 1997 are summarized in Table 1. Possession offences have also been included in this summary on the basis that many cases involving possession also involve an element of trade, although this is more difficult to prove. A study of this information shows that the vast majority of fines imposed for illegal possession and trade in wild birds are low, with nearly all less than £500. There are also a large number of conditional and absolute discharges given.

**Table 2: Successful prosecutions under the WCA and COTES for illegal possession and trade in live wild birds 1995 -1997 (not including eggs or the taxidermy trade)**

1995	
OFFENCE	PENALTY
1) s1(2) Possession of wild buzzard 2) s1(1) Taking wild buzzard	1) £150
s1(2) Possession of wild tawny owl	Conditional discharge
s1(2) Possession of wild kestrel (x3)	Conditional discharge
s17 Making false declaration to obtain registration	£100
s1(1) Taking wild goldfinches	Conditional discharge
COTES (s3) Sale of Annex A wild peregrine falcons (x8)	18 months imprisonment
s7(2) Possession of schedule 4 bird while banned	£200
s7(1) Control of unringed and unregistered kestrel (x2)	Absolute discharge
s7(1) Control of unringed and unregistered buzzard	
s7(1) Control of unringed and unregistered peregrine (x2)	Admonishment
s6(1) Sale of wild barn owl	Conditional discharge
s1(1) Taking wild pigeon	£100
s1(2) Possessing wild peregrine falcon	£100
1) s1(2) Possessing wild bullfinch 2) s1(2) Possessing wild redpoll	1) £300 2) £300
s1(2) Possessing wild sparrowhawk	Conditional discharge
s1(2) Possessing wild peregrine (x4)	£1000
s1(2) Possessing wild goldfinch and wild siskin	£300

<b>s1(2)</b> Possessing wild golden eagle (x2)	Conditional discharge
<b>s1(2)</b> Possessing wild peregrine (x2)	Absolute discharge

#### 1996

OFFENCE	PENALTY
1) <b>s1(2)</b> Possessing wild bird	1) £250
2) <b>s18</b> Attempt to commit s1 offence (take wild bird)	2) £250
<b>s6(1)</b> Sale of wild bird	Conditional discharge
<b>s1(2)</b> Possessing wild bird (x 11)	£50 x 11
<b>s1(2)</b> Possessing wild bird (x 2)	£50
<b>s1(1)</b> Taking wild bird	£150
<b>s1(1)</b> Taking wild bird (x 5)	£50 x 5
1) <b>s1(1)</b> Taking wild bird	£100
2) <b>s6(1)</b> Sale of wild bird (x2)	£75 x 2
<b>s7(2)</b> Possession of schedule 4 bird while banned (x2)	£100
1) <b>s1(1)</b> Taking wild bird (x3)	Conditional discharge
2) <b>s1(2)</b> Controlling wild birds (x17)	
<b>s6(1)</b> Sale of wild bird (x2)	£150 x 2
1) <b>s6(1)</b> Sale of wild bird (x2)	1) £50
2) <b>s6(1)</b> advertising wild bird for sale	2) £75
3) <b>s1(2)</b> Possessing wild bird	3) £75

#### 1997

<b>s1(2a)</b> Sale of a barn owl	£50
<b>s 1(2a)</b> Sale, display, keep, offer for sale merlins	Conditional discharge
<b>s 1(2a)</b> Sale, display, keep, offer for sale merlins	Conditional discharge
<b>s1(2a)</b> Possession of 2 goldfinches	£300
<b>s1(2a)</b> Possession of goldfinches	£150
<b>s6(1a)</b> Possession for sale wild finches	£1500
<b>s1(2a)</b> Possession of wild goldfinches	£255
<b>s7(1)</b> Possession of unregistered goshawk	£800
<b>s7(3)</b> Possession of goshawk while banned	£400
<b>s1(2a)</b> Possession of finches and robins	£340
<b>s1(1)</b> Taking finches and robins	£40
<b>COTES s3(2)</b> Sell, display, offer to keep Eleanora's Falcons	total 8 months imprisonment
<b>s1(2)</b> Possession of goshawks	£700
<b>s1(2)</b> Possession of siskin, bullfinch, goldfinch	£40
<b>s1(1)</b> Taking finches	£90
<b>s1(2)</b> Possession of a sparrowhawk	£250
<b>s1(2)</b> Possession of an owl	£250
<b>COTES s3(1)</b> Sell, display, offer to keep - merlin	Conditional discharge
<b>s18(1)</b> Attempting to take finches	£300
<b>s1(2)</b> Possession of finches	£75

Source: (Nurse, 1994, 1995; RSPB Investigations section, 1997, 1998).

## **2) CEMA**

HMCE keep some records of prosecutions for wildlife trading offences under CEMA, and Table 3 shows their records of successful prosecutions under CEMA between 1989 and 1996. These prosecutions have primarily involved s170 (being knowingly concerned with or dealing in illegally imported wildlife), and of the 24 cases, just under half have been heard in the Crown Court. It is impossible to make generalizations about the penalties without full details of the case history, however it is apparent there is a large variation in penalties given, ranging from £30 up to 2 years imprisonment. The majority of penalties are financial, with

most being less than £500 (for comparison with penalties in drug smuggling cases see section 8.1 below).

**Table 3: Successful prosecutions under CEMA, 1989 - 1996**

<b>Date and Court</b>	<b>Wildlife Involved</b>	<b>Offence</b>	<b>Penalty</b>
6/1/89 Uxbridge Magistrates Court	2 Indian pythons	<b>s68</b> Illegal export	£200
13/4/89 Croydon Crown Court	118 goldfinches	<b>s170(2)</b> Knowingly concerned with illegally imported wildlife	£100
6/8/89	1 jaguar skin	<b>s167(1)</b> False declaration	£200
16/6/89 Southampton Crown Court	various reptiles	<b>s170</b> Knowingly concerned with illegally imported wildlife (8 counts)	£1000 (£125 per count)
10/8/1990 Maidstone Crown Court	12 peregrine falcon eggs	<b>s68</b> Illegal export	a) 30 months imprisonment b) 15 months imprisonment
10/8/1990 Maidstone Crown Court	4 Gyr falcon chicks	<b>s170</b> Knowingly concerned with illegally imported wildlife	18 months imprisonment
4/9/90 Dover Magistrates Court	9 ruffs, 1 greenshank	<b>s78</b> Failure to declare <b>s170</b> Knowingly concerned with illegally imported wildlife	a) £250 b) £350
22/4/1991 Uxbridge Magistrates Court	2 boa constrictors 1 tortoise	<b>s170</b> Knowingly concerned with illegally imported wildlife	£700
12-16/8/91	11 blue cheeeked amazons	<b>a) s170</b> Knowingly concerned with illegally imported wildlife <b>b) Forgery Act</b> (MAFF licence)	a) £150 b) £100
30/9/91 Solihull Magistrates Court	18 parrot eggs	<b>s170</b> Knowingly concerned with illegally imported wildlife	£1200
21/11/91 Torbay Magistrates	9 marsh warbler eggs, 4 marsh harrier eggs	<b>s170</b> Knowingly concerned with illegally imported wildlife	£1800
9/4/92 Dover Magistrates Court	4 sugar gliders	<b>s78</b> Failure to declare <b>s170</b> Knowingly concerned with illegally imported wildlife	£30
18/2/92 Plymouth Magistrates Court	various reptiles and amphibians	<b>s170</b> Knowingly concerned with illegally imported wildlife	2 months suspended
15/5/92 Solihull Magistrates Court	50 red kneed tarantulas	<b>s170</b> Knowingly concerned with illegally imported wildlife	£750
7/5 and 4/6/92 Cannock Magistrates Court	2 African grey parrots, 11 Australian cockatoos	1) <b>s68(2)</b> Knowingly concerned in illegal export 2) <b>s170</b> Knowingly concerned with illegally imported wildlife	£200
15/5/92 and 10/6/92	100 bullfinches and goldfinches	<b>s170</b> Knowingly concerned with illegally imported wildlife	a) £400 b) 4 months suspended
7/7/92	9 pieces of ivory	<b>s170</b> Knowingly concerned with illegally imported wildlife	£50
4/1/93 Boston Magistrates Court	3493 dead game birds	1) <b>s68(1), s68(2)</b> Illegal export 2) <b>s167(1)</b> False declaration	a) £3000 b) £5000
27/4/93	2 tortoises	<b>s16(1)</b> Obstructing officers	£200 or 5 days imprisonment
6/6/1994 Kingston Crown Court	orange bellied parrots	<b>s170</b> Knowingly concerned with illegally imported wildlife	£250
31/10/94 Bristol Crown Court	37 chameleons	<b>s170</b> Knowingly concerned with illegally imported wildlife	80 hours community service

30/6/95 Cardiff Crown Court	parrot eggs from Australia	Conspiracy to contravene s170	a) 8 months + confiscation order £29,500 b) 6 weeks c) 2 months d) 500 hours community service
13/3/1996 Chester Crown Court	stuffed animal specimens	s170 Knowingly concerned with illegally imported wildlife (8 counts)	2 years imprisonment

Source: C. Miller, HMCE Criminal Enforcement Policy Group, *in litt.*, 1998.

### 6.3 Special Tools for the Prosecution - Use of forensic techniques in wildlife crime

Forensic science has become increasingly more valuable in the investigation and prosecution of wildlife related offences. The many tools available can provide admissible and valuable evidence in court on matters such as identification of the species involved, paternity analysis and forged documents. Some of the most useful forensic tools are outlined below.

#### 1) DNA analysis

DNA profiling has been hailed as the single greatest breakthrough in forensic science this century (PAW, 1997). Traditionally, DNA profiling was used in crimes of violence and sexual assault to positively identify offenders from samples left at the scene. It is now also being used to provide important evidence in a variety of wildlife crimes including:

- Disproving claims of captive breeding by performing DNA paternity analyses on the animal, and one or both of its claimed parents (see case studies 7.1 (DC), 7.5(3) (*The Eleanora's falcon case*) and 7.5(5), (*Operation Dutch Lady*)).
- Linking suspects to the scene of a crime (for example feathers or eggs found at a keeper's home with feathers found at a nest which had been robbed).
- Identification of species or products derived from species. This is most useful in situations where illegal trade in an endangered species is being disguised as lawful trade in a closely related species.

In order to assist in obtaining samples for DNA testing, a sampling kit with full instructions has been developed by the DETR. In addition research is currently underway on the feasibility of DNA testing using feathers instead of blood samples (N. Williams, DETR *in litt.*, 1998).

DNA evidence has been used successfully in a growing number of court cases in recent years, and has allowed prosecutions in cases where it previously would have been difficult. It is particularly useful in proving birds of prey have not been bred in captivity, by showing they are not related to the alleged parent birds. Although initially there was some cost attached, this is coming down as techniques are developed and improved. To date there has not been a successful challenge to the admissibility of DNA evidence in a wildlife crime case in the UK.

#### **Box 10. DNA inspections help protect wild bird populations**

In 1993 the first routine DNA tests were carried out on birds of prey in captivity. It was found that of the 514 peregrines and goshawks declared as captive bred in 1993, at least 10% were not related to their parents, suggesting these birds were being laundered from the wild. In 1994 the claims of captive breeding of peregrines and goshawks fell by 20% (WLESG, 1995). In 1996 routine DNA tests on about 70 registered goshawks and peregrines confirmed that all the offspring were bred from the claimed parent birds (DoE News release 30/6/96).

### How it works

DNA (deoxyribonucleic acid) is the basic genetic material contained in all living cells of the body except red blood cells. Its chemical structure in every individual is different with the exception of genetically identical twins. In 1985 a class of DNA was discovered in humans, consisting of sequences which were very repetitive, and varied greatly between unrelated individuals. The length of each sequence, number of repeats and exact location produced a pattern in the laboratory resembling a supermarket bar code, which was found to be as unique to individuals as a conventional fingerprint, hence the nickname "DNA fingerprinting". As all cells in the body have the same genetic information, it doesn't matter from where within the body the cells are taken, the DNA fingerprint will be the same. This technique allowed individuals to be identified from samples of their body, and has since been shown to be equally applicable to birds and other animals and plants (Cellmark Diagnostics, 1997; WLESG, 1995; PAW, 1997).

DNA analysis can also be used to test parentage of individuals. This is because half the DNA bands of an individual are inherited from the father, and half from the mother. DNA bands in an individual that correspond to those in the alleged parent can provide strong proof that the animal was bred from that parent. On the other hand, if a suspect bird shares no bands with either of the parent bird, this will provide conclusive proof the bird is not the offspring of those parent birds (PAW, 1997; Cellmark Diagnostics, 1997).

## **2) Other forensic techniques**

### ***a) Investigation of forged documents***

Document analyses can provide information such as the identification of authors of disputed handwriting, identification of make and models typewriters, printers and whether the documents came from those machines, identification of alterations and erasures to documents, and reassembly of torn or damaged documents. These techniques are particularly useful in cases of forged or altered CITES documents, MAFF import documents, and registration and taxidermy documentation (Shorrock, 1997).

### ***b) Specimen identification***

Visual and microscopic examination can be used to provide identification of wildlife and wildlife parts and derivatives such as fur, leather, hides, claws, skeletons, teeth and tusks. The Natural History Museum in Tring for example has in excess of 2 million specimens of birds, eggs, skeletons and feathers which can be used by experts to assist in investigations (Shorrock, 1997).

Other biochemical techniques can also be used for specimen identification, including spectroscopic analysis, protein analysis and chromatographic techniques (WLESG, 1995).

### ***c) Scenes of crime examination***

A variety of techniques are available to try and link a suspect with a crime scene with the strength of the link varying according to the technique and quality of evidence gathered. These techniques include for example, fibre analysis from upholstery, clothing, ropes; matching of hair samples and animal fur; footwear, tyre and instrument marks, soil and plant materials and glass samples (Shorrock, 1997).

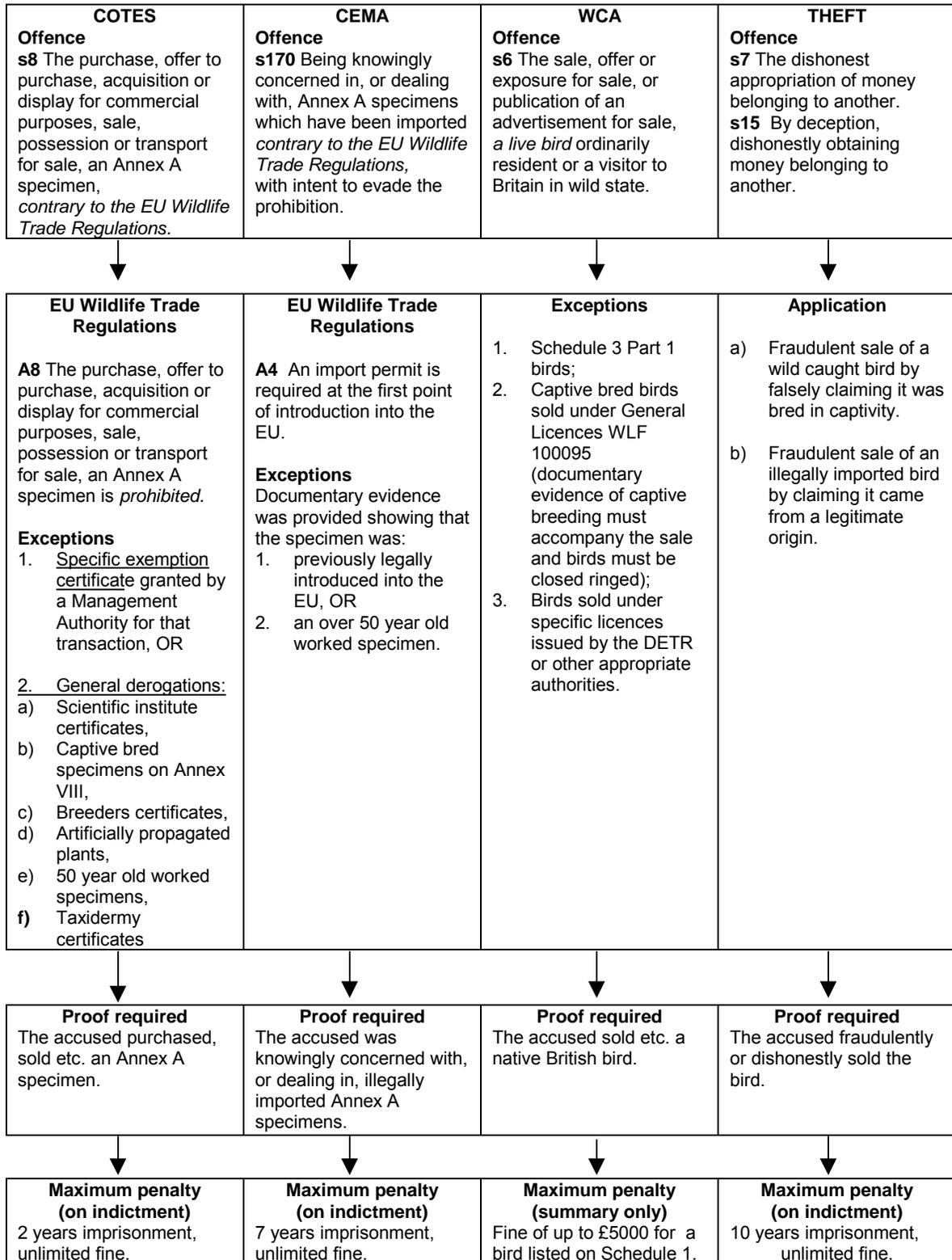
### **3) Further information**

PAW, in conjunction with the DETR has produced the following two information tools:

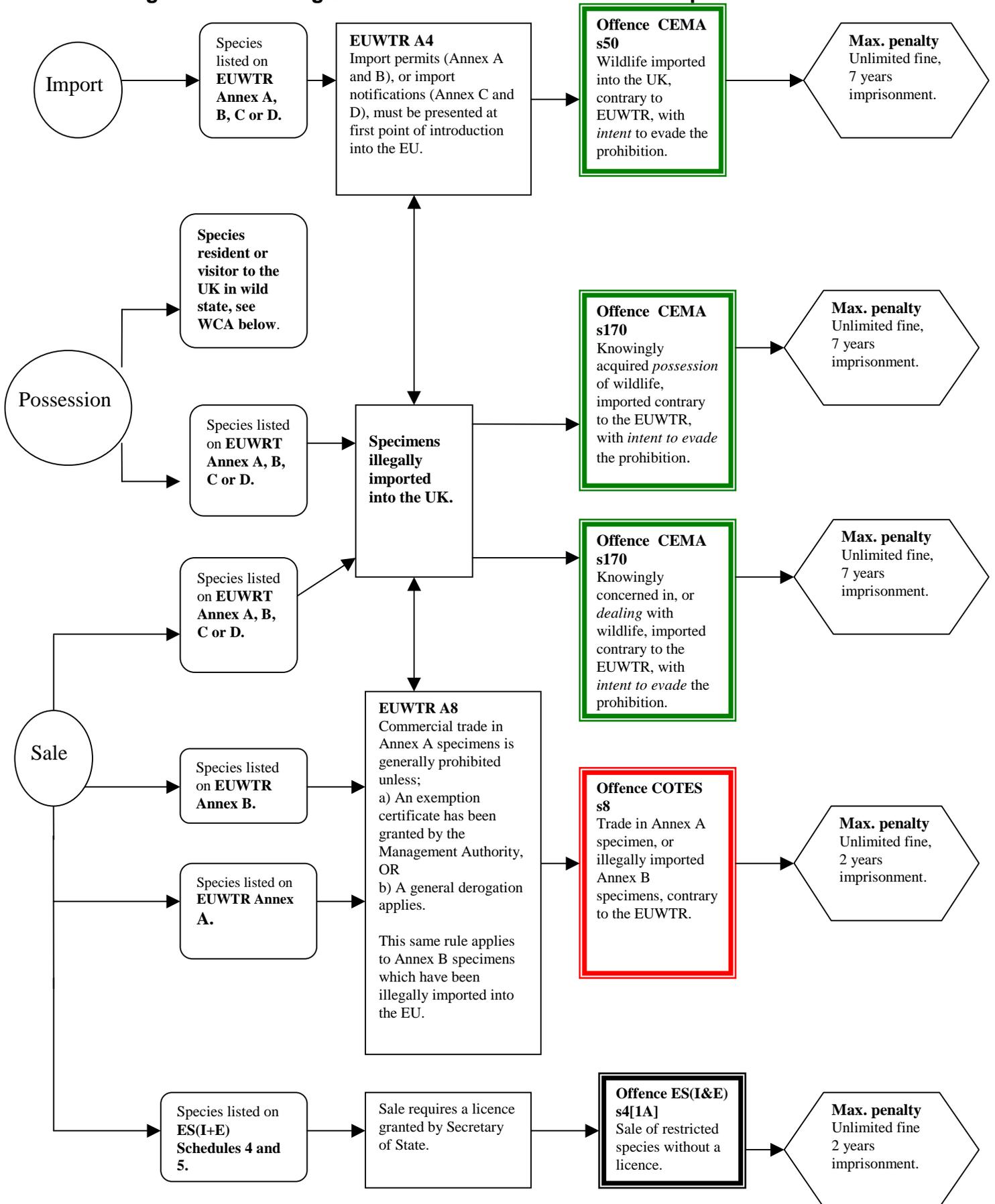
- i. Wildlife Crime: A directory of forensic expertise,
- ii. Wildlife Crime: Using DNA forensic evidence.

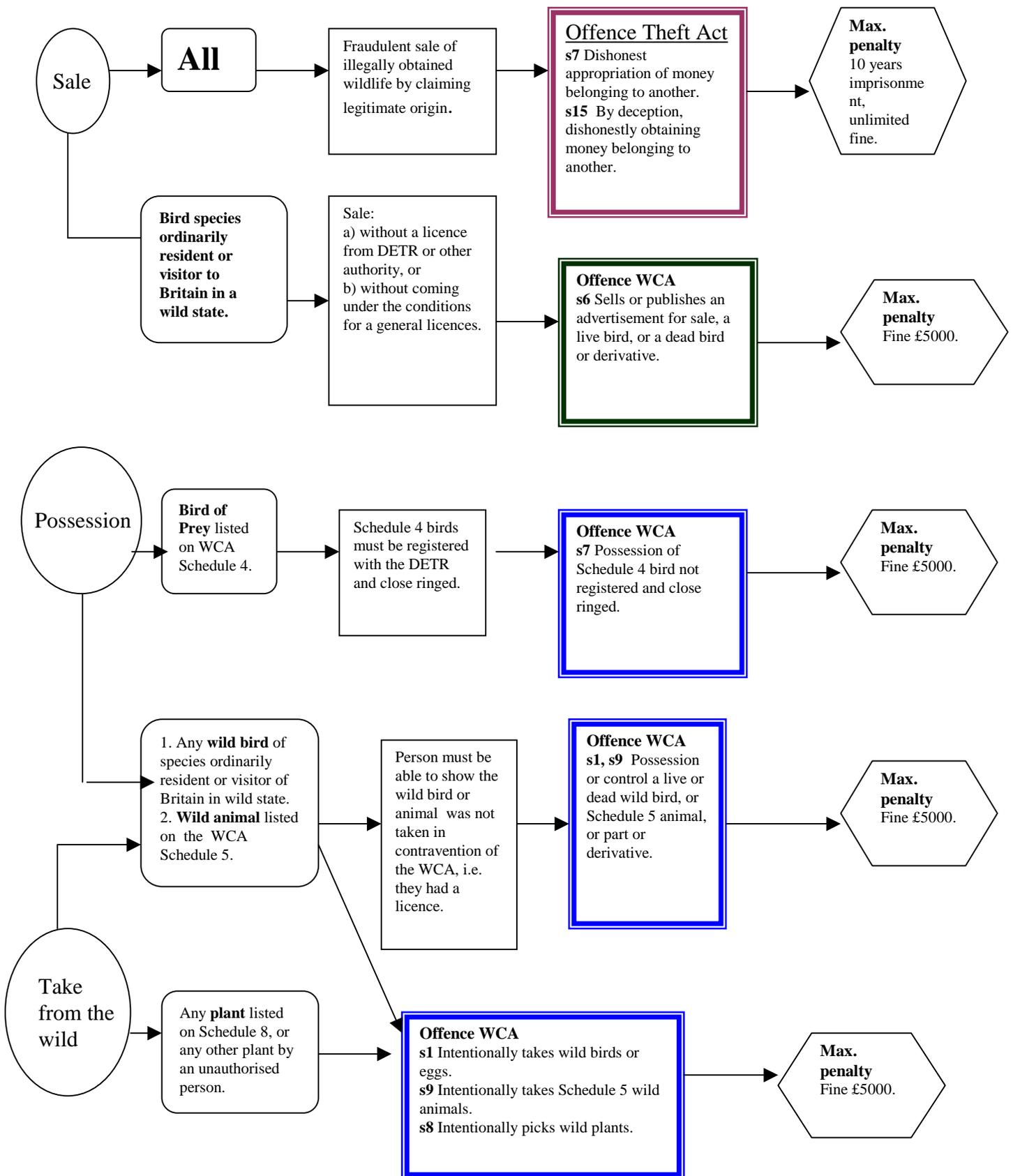
The references for these can be found in the references section (under PAW), and they can be obtained from the DETR (see contact list Appendix 7).

**Figure 2: Possible offences for the sale of endangered (CITES Appendix I) birds**



**Figure 3: Which legislation? Flowchart of offences and penalties**





## 7. Case Studies

The aim of the following case studies is to present some examples of illegal trade in wildlife in the UK which illustrate the level of the crime, the species and the commercial value involved, and the use of the various types of wildlife legislation. Although these cases are representative of the types of illegal wildlife trade occurring in the UK, they are unusual in that they resulted in successful court prosecutions, and some punishment for the offender. It should be remembered that most illegal wildlife trade in the UK probably remains undetected, and even where it is detected many wildlife criminals are not prosecuted in court. Importantly it appears that the majority of wildlife criminals that are taken to court receive light sentences that may not reflect the seriousness of the crime, or the commercial value of the species involved.

In order to depict the interaction between different pieces of legislation, flow charts have been prepared as well as more detailed guides in Appendices 1 to 5. The flow chart in Figure 2 demonstrates the different legislative offences available for the illegal sale of an endangered bird species, and the flow chart in Figure 3 represents interaction of the different legislation for wildlife trade offences.

### 7.1 Laundering wild birds of prey into the captive bred market *COTES reg. 8 and DNA testing (“DC”)*

**Species:** Peregrine falcons (CITES Appendix I, EU Wildlife Trade Regulations Annex A)  
**Quantity:** At least 20  
**Commercial Value:** Up to £700 each  
**Penalty:** 18 months imprisonment

In May 1994, “C” from Northumberland was sent to prison for 18 months, following a complex investigation into illegal dealing in peregrine falcons. He thus became the first person to receive a custodial sentence under COTES.

#### **Background and prior criminal activity**

C was a well-known dealer in birds of prey, was suspected to be illegally taking birds of prey from the wild, and laundering them for profit onto the captive bred market where peregrine falcons attract up to £700 each. In 1989 C was acquitted of intentional disturbance of an eyrie. In 1991 he was convicted under the WCA for possession of two wild peregrine falcons, failing to register a buzzard, and publishing advertisements to sell wild birds of prey. Despite the seriousness of these offences he was given only a two year conditional discharge. In 1992 an off-duty policeman guarding a heavily persecuted eyrie in Kielder saw two chicks being stolen from the nest. The following day C’s car was stopped in Kielder forest and searched, and two unringed and unregistered peregrine falcon chicks were found hidden underneath a coat. Although possession of unringed and unregistered peregrines is illegal under the WCA s1 and s7, the CPS elected not to proceed with the case, and the chicks were returned to C.

#### **Facts of this case**

Following the investigation by the police and the RSPB into illegal dealing, in July 1993 14 young peregrine falcons were seized by the police from C’s property. No parents birds were present. A further six juvenile peregrines C had sold were located and also seized. Some of these had been registered and ringed with the DoE, however parental information had not

been given for most. C claimed he had bred all the birds in captivity, and the parent birds had been lost or stolen by one of the witnesses "W".

DNA tests were carried out on all 20 young peregrine falcons. These were complicated because there were no parents available for testing, however they showed the relationships claimed by C were highly improbable. The birds had probably originated from at least five, possibly six different sets of parents, while C had only had four birds available for breeding. The similarity of the DNA profiles could be explained by the birds all being taken from a similar area in the wild.

C attempted to frustrate the prosecution case by trapping two of the real female parents from the wild, and claiming they had been stolen from him, and he had bought them back. This ploy failed when one of the birds was found to have a cable tie identifying it as a wild disabled bird, apparently handed to C by an anonymous man two months *after* the seizure of all the birds in July 1993. C was also found apparently attempting to send a decapitated peregrine falcon to the PWLO on the case from a post box near where "W" lived, possibly to back up his case that "W" had stolen the parent birds from him.

### **In court**

C was charged under COTES 1985 Reg. 3(1) for the sale, and offers to sell, a species listed on the EU Wildlife Trade Regulations 3626/82 Article 3(1), without an exemption certificate. Reg. 3(1) of the COTES 1985, replaced by reg. 8(1) in COTES 1997, made it an offence to sell or offer for sale any specimen referred to in Article 3(1) of the 1982 EU Wildlife Trade Regulations (now Annex A). This was subject to Article 6 of the old EU Regulations, which allowed Member States to grant General Exemptions, permitting trade in endangered species to take place. Accordingly, the DETR had issued a General Exemption which allowed the sale of all captive bred birds of prey provided they complied with certain conditions. These conditions included that the birds must be *bred in captivity*, a claim supported by documentary evidence, and must be closed ringed and properly registered (note there are no longer General Exemptions under the EU Wildlife Trade Regulations 1996 and COTES 1997).

Charges were also initially laid under the Theft Act (s7 and s15) for criminal deception on the basis C deceived the six purchasers into buying the birds by claiming they had been bred in captivity. These charges were however dropped for evidential reasons. C could have also been charged under WCA s1 and s7 for possession and sale of wild caught birds, however these offences are outside the jurisdiction of the Crown Court, and the CPS elected not to proceed.

The case was heard on indictment in the Crown Court and C pleaded not guilty and contested the case. There were 17 prosecution witnesses including two forensic scientists, with C the only defence witness. He was found guilty on all 7 counts, and was sentenced to 18 months imprisonment for each count to be served concurrently (at the same time). All 22 peregrine falcons were confiscated. In sentencing C the Judge stated "*Your suggested breeding program was a sham and throughout the case you have taken enormous trouble to disguise your offences. In a sense you were stealing from the public what was their heritage*".

### **The appeal**

C's appeal was heard in the Court of Criminal Appeal on the 15th January 1996. The Court rejected the main argument put, and held that the onus of proof was on the defence to show on the balance of probabilities that exemptions to COTES 1995 reg. 3 applied, not for the

prosecution to prove beyond reasonable doubt that the exemption did not. This meant it was up to the defence to show on the balance of probabilities that the birds were bred in captivity, something that they had not done.

The Court also rejected challenges to the DNA evidence, ruling that this should have been challenged at the initial hearing. Finally the sentence was upheld on the basis it was not unreasonable for this sort of crime.

### **Conclusion**

C's case illustrates the application of COTES, and the usefulness of DNA analyses in prosecuting illegal wildlife trade. The custodial sentence given appeared justified being upheld by the Court of Appeal in this case, although still short of the maximum (two years) under COTES.

Sources:

DETR, (1996).

*R v C* No 95/3768/75E Court of Criminal Appeal, 15 January 1996, Official Transcript.

Nurse, 1995.

Anon. (e) (1998).

RSPB *in litt.*, 1996.

## **7.2. An international bird smuggling ring in the UK CEMA s170 (Operation Dorian)**

**Species:** Australian cockatoo species (CITES Appendix II, EU Wildlife Trade Regulations Annex B)

**Quantity:** Hundreds

**Commercial Value:** Estimated at least £403,000

**Outcome:** Prison sentences of: 8 months, 2 months, 6 weeks, 200 community service hours

Operation Dorian exposed an international bird smuggling ring involving conspirators in Australia, New Zealand, South Africa, France, Switzerland and West Wales. This ring, centered in the UK, had been illegally taking the eggs of native Australian parrots from the wild, and smuggling them to Europe where the hatched birds fetched very high prices on the black market. Nearly all Australian native parrots are listed on CITES Appendix II, and there is a complete ban on their export for commercial purposes from Australia. The total value of the birds smuggled this way was estimated at approximately £403,000, but may have been as much as £1,000,000.

### **Background**

In October 1994, after a tip-off to the Australian Customs Service (ACS) from TRAFFIC International, a British national "CO" was arrested at Perth Airport, Western Australia, attempting to smuggle 29 native Australian bird eggs to the UK. The eggs were identified as Major Mitchell cockatoos (*Cacatua leadbeateri*), galahs (*Eolophus roseicapillus*), and white-tailed black cockatoos (*Calyptorhynchus baudinni*), and were hidden in a specially adapted vest worn by CO. ACS then raided "BG's" house, where CO had been staying and found "MG" wearing an identical vest to CO about to depart to New Zealand. 62 eggs were found on MG, and in incubators around the house, with the total value of all eggs estimated at approximately £750,000. CO, BG and MG were subsequently sentenced in Australia, receiving prison sentences of respectively 6 months, 9 months and 18 months. An investigation was also undertaken in New Zealand, resulting in the conviction and prosecution of three people, with the trial currently underway.

A number of documents were found in Australia linking to CO's family back in Wales. Investigations made by HMCE and TRAFFIC International, culminated in a raid on a number of addresses and the arrests of "AG", "DF", CO's father "TO" and his sisters "NR" and "DO". At AG's home, investigators found 8 red-tailed black cockatoos (*Calyptorhynchus banksii*), 7 white-tailed black cockatoos, and 1 yellow-tailed black cockatoo (*C. funereus*) (believed to be the only one in the UK) with a total collective black market value of £160,000. Another six red-tailed black cockatoos had been sold to a buyer in Switzerland, and were not retrievable.

### **The conspiracy**

The investigations revealed that AG, a 68 year old retired vet and renowned expert on exotic birds, had masterminded the racket and had arranged the imports with BG of Australia. TO had undertaken the importations, and arranged couriers, including his son CO, and daughters, NR and DO, (using specially constructed brassieres) to smuggle the eggs into the UK. The eggs were incubated and hatched at DF's home. AG took the chicks and arranged for their sales in Europe and the UK for a substantial profit. Documents revealed the illegal trade had been going on for some time, and the transactions often involved the exchange of Australian bird eggs for other exotic bird eggs such as South American macaws, which were then illegally flown to Australia, New Zealand and South Africa.

### **In court**

AG, DF, TO, NR, and DO were all initially charged under s170 of **CEMA** for knowingly dealing in goods imported contrary the EU Wildlife Trade Regulations, with the intent to evade the restriction. To include CO and the other Australians, this charge was amended to a conspiracy charge under s1(1) of the Criminal Law Act 1977. The final charge was conspiracy to contravene s170 of **CEMA**, contrary to s1(1) of the Criminal Law Act 1977.

The case was taken on indictment, and the trial of AG, DF, TO, NR, and DO commenced at the Crown Court in Swansea on the 20<sup>th</sup> of November 1994, with all five eventually pleading guilty.

In imposing the following sentences on 8<sup>th</sup> of January 1996, Judge Lewis Bowen said "*Those who conspire together to flout international law do so at their own peril. Those who use couriers cannot complain when they receive prison sentences. These offences were committed for greed*". The following sentences were imposed:

- 1) AG- 8 months imprisonment and a confiscation order for £29,500, plus £2500 costs.  
"*You were directly responsible for the prison sentence of CO, and the criminal record of DO and NR*".
- 2) DF - 6 weeks imprisonment.  
"*You played an important part in this conspiracy, although you didn't make the same financial gain. As a result of your help AG was in a position to breed*".
- 3) TO - 2 months imprisonment.  
"*You had a major role as a courier. Far worse you engaged your own children in this conspiracy*".
- 4) NR and DO - 200 hours community service.  
"*You were tools of greedy men*".

(P. Harding (HMCE Cardiff investigation unit) *in litt.*, 1996).

### **Conclusion**

This case illustrates the operation of international smuggling rings in the UK, and the application of CEMA, and the EU Wildlife Trade Regulations to wildlife smuggling. Although

custodial sentences were imposed and in spite of the strong words used by the sentencing judge, the sentences could be considered relatively short in the context of the maximum 7 years available under CEMA.

Sources:

Anon. (d), (1996).

C. Allan. *in litt.*, 1995.

L. Garvey. (Enforcement Co-ordinator DETR) *in litt.*, 1996.

P. Harding. (HMCE Cardiff investigation unit) *in litt.*, 1996.

HMCE (1996). Customs Cock-A-Hoop, News Release. HMCE Cardiff, 25/11/96.

HMCE (1996). Operation Dorian, News Release. HMCE Cardiff, 9/1/96.

Holden, 1997.

Victor, P. and Schoon, N. (1996).

### 7.3. Illegal trade in taxidermy specimens of endangered species CEMA s170 (*Operation Indiana*)

**Species:** Various endangered and vulnerable species (CITES Appendix I and II, EU Wildlife Trade Regulation Annexes A and B)

**Quantity:** At least 700

**Commercial value:** Approximately £500,000

**Outcome:** 24 months imprisonment

Operation Indiana led to the conviction and sentencing of “P”, a trader in taxidermy specimens, for illegally importing and exporting some of the world’s most endangered wildlife to and from the UK, including the skulls of a great Philippine eagle (*Pithecophaga jefferyi*) and a Siberian tiger (*Panthera tigris*). “*The serious charges and rarity of so many of the specimens involved make this one of the most significant cases ever in the United Kingdom*” (Crawford Allan, TRAFFIC Enforcement Officer).

#### Background and prior criminal activity

P, a concrete specialist by trade, owned a legitimate business selling glass eyes and other items for the taxidermy trade. He also dealt in dead animals, parts and derivatives, and 18 years prior to this case had begun trading world wide from Belgium and the Netherlands. Much of this trade was legitimate and P sold to museums, taxidermists, educational centres and wildlife institutes. He was however under investigation by a number of groups, including TRAFFIC (who unsuccessfully called for action from the Dutch and Belgium authorities) for being involved in a suspected large scale illegal trade. In 1985 P was fined in Germany for moving protected wildlife without permits. In 1990 he was fined in England for illegal possession of protected wildlife, and in the same year in France for smuggling wildlife. In 1995 he was fined in Australia for attempting to smuggle out dead bird and insect specimens. P moved to Wales in 1989.

#### Facts of this case

This case was sparked in August 1995 when P visited a local Welsh taxidermist with a Philippine eagle skull to be mounted. P apparently told the taxidermist to keep the skull hidden saying “I can’t explain this one away”, and “Don’t be surprised if you find a poison arrow tip in the skull”. The taxidermist contacted the RSPB and TRAFFIC who seized the skull, and passed it on to HMCE in Cardiff. HMCE searched P’s house with TRAFFIC and the RSPB, where they found over 700 dead bird, mammal and reptile specimens packed into rooms and freezers. The majority of these were rare, with over 500 listed on CITES Appendix I or II. The specimens included 300 birds from the Philippines (over 42 CITES species), skulls of a Siberian tiger (Endangered), and a babirusa (*Babyrousa*

*babyrussa*)(Vulnerable), as well as a stuffed palawan pheasant (*Ployplectorn emphanum*) (Endangered), a blue-naped parrot (*Tanygnanthus lucionenthis*) (Endangered), a ring-tailed lemur (Vulnerable) (*Lemur cattar*), a golden lion tamarin (*Leontopithecus caissara*) (Endangered) and a variety of other stuffed monkeys.

#### **Mode of operation; “killed to order”**

The search uncovered correspondence between *P* and other wildlife dealers documenting their illegal smuggling activities. This included correspondence between *P* and a contact in the Philippines detailing how and where specimens should be killed, how they could be smuggled out of the Philippines, and which official should be bribed.

In addition it was clear *P* had exported a large number of CITES specimens to the US, either without a licence, or under recycled licences initially obtained for legal shipments from the Belgian CITES Management Authority. As a result of this information Belgian officials raided a second set of premises used by *P* in Dessel Belgium, and uncovered a horde of even larger size to that of his home in Wales. It became obvious *P* had used Belgium as his major port of entry into the EU because he considered there was less risk of detection smuggling into Belgium than by directly smuggling into the UK. Once the wildlife specimens had illegally entered the EU, he was able to transport them throughout the EU virtually unhindered.

#### **Box 11. Some wildlife specimens seized from *P*'s home**

Skull of a Siberian tiger - The Siberian tiger is one of the rarest species of tigers in the world, and may number as few as 250 in the wild today. It is listed on CITES Appendix I. Skins from this tiger have been valued at £3000 – £5000, and the skulls can fetch from £500 to £1000.

Skull of a babirusa – The babirusa is one of the most endangered animals in Indonesia, and is found only in wildlife reserves and national parks in Sulawesi. Listed on CITES Appendix I, its exact population, difficult to determine because of its timid nature, was estimated to number only 500 to 1,000 in 1978. The commercial value of the skull was estimated at £1000.

Skull of a Philippine eagle - The critically endangered Philippine eagle is one of the most endangered birds in the world today. Its population was reduced through habitat loss, hunting and trapping to an estimated 200 birds in 1980, and may be as few as 50 pairs today. It is listed on CITES Appendix I, and the removal of even one bird is considered a tragedy. The commercial value of the skull was estimated at £2000.

Source: Anon (c), 1996; C. Allan pers. comm., 1998.

#### **In court**

*P* was charged for 10 offences under s170(2) of **CEMA**, for being knowingly concerned in the fraudulent evasion of prohibitions in the EU Wildlife Trade Regulations. HMCE indicated that hundreds of other charges could have been brought against *P*, however they selected eight cases to avoid possible complications and confusion.

The charges were as follows:

1. Illegal export of Siberian tiger skull (CITES Appendix I) to the US,
2. Illegal export of slow lorris, Allen's monkey and stump-tailed macaque (CITES Appendix II) to the US,
3. Illegal export of a babirusa skull (CITES Appendix I) to the US,
4. Illegal export 2 crab eating macaque (CITES Appendix II) to the US,
5. Illegal export of the skull of a ring-tailed lemur (CITES Appendix I) to the US,

6. Illegal export of the skulls of 5 squirrel monkeys, 5 rhesus monkeys, a Senegal bush baby, 5 common marmosets, 3 lesser flamingos (CITES Appendix II) and 1 Humboldt penguin (CITES Appendix I) to the US,
7. Illegal import of a Philippine eagle skull (CITES Appendix I), and
8. Illegal import of 42 Philippine bird specimens (CITES Appendix II).
9. 2 further offences were dropped in view of the guilty plea on the other eight.

*P* pleaded guilty to eight offences, and the case was heard on indictment at Chester Crown Court on the 9th of May 1996. He received concurrent (served at the same time) custodial sentences for each offence, with the greatest being 36 months for the illegal import of the Philippine eagle skull, and 36 months for the illegal import of the 43 other birds from the Philippines. These two sentences were reduced to 24 months because *P* pleaded guilty.

In sentencing *P*, Judge Robin stated *“this was a very significant and serious breach of the regulations... his sentence therefore must reflect the gravity and that CITES regulations must be observed”*. The Judge told *P* *“ You have persistently and deliberately flouted the regulations for profit. It was clear you contemplated in some instances birds would be hunted and killed in order to provide these specimens”*.

#### **Post trial proceedings: forfeiture regulations under CEMA**

Following the prosecution of *P* in 1996, HMCE still had a large number of CITES-listed specimens they had seized in the raid in 1995, but which had not been subject to prosecution. These wildlife specimens were seized under CEMA s109 on the basis they were liable to forfeiture under CEMA s49 (imported and dealt with contrary to a restriction in the EU Wildlife Trade Regulations), and included two Siberian tiger skulls, various primate skulls, mounted golden lion tamarins and a macaw skeleton. After negotiation HMCE returned about 40% of the items they had seized. *P* challenged the forfeiture of the remaining specimens, valuing these in court to be worth over £110,000.

Under CEMA schedule 3, if HMCE seizes goods as liable to forfeiture, the goods remain seized and become condemned unless the owner of the goods challenges this in court. This is a civil proceedings and the owner must show *on the balance of probabilities* that the goods were not liable to seizure under CEMA.

Therefore *P* was required to show on the balance of probabilities that the specimens had not been imported into the UK contrary to a restriction in the EU Wildlife Trade Regulations. *P* claimed most of the specimens came from zoos around Europe, and were then imported into the UK from Belgium after 1993 when the EU internal trade barriers were lifted. *P* however was unable to physically produce a single supplier from any of his sources to appear in court on his behalf.

Much to the surprise of HMCE, the magistrates held that all specimens, except for the 300 Philippine birds, should be returned to *P*. HMCE appealed, and the case was heard at Chester Crown Court finishing on the 22<sup>nd</sup> of November 1997. The court upheld the decision of the magistrates with Judge Elgan Edwards accepting all of *P*'s statements as to where he derived the specimens. Only a small number of specimens marked by *P* as of unknown origin were condemned. After the ruling a senior Customs officer stated they were extremely disappointed with the outcome because they believed they had a very strong case, particularly as the onus of proof was on *P* to prove the wildlife had been legally acquired. HMCE were also ordered by the court to pay £4000 of *P*'s costs.

## Conclusion

Operation Indiana illustrated a large scale illegal trade in highly endangered species to and from the UK. It also highlighted the way in which traders are using the EU single market to freely move illegally obtained wildlife around the EU. The result was one of the largest sentences imposed to date for illegal wildlife trade in the UK, showing that courts are on occasion willing to impose harsher sentences. This makes an interesting comparison with the case of *PJ* (see case study 7.5(6) below), a taxidermist who received a conditional discharge for dealing in rare native specimens, and was not prosecuted for dealing in rare exotic specimens. This case also illustrates the operation of the forfeiture provisions under CEMA, with the perhaps unfortunate result of *P* successfully reclaiming £110,000 of seized specimens.

### Sources:

C. Allan *in litt.*, 1997.

Anon. (c) (1996).

Caldwell and Hill, 1996.

DETR *in litt.*, 1996.

DETR (b) (1996).

RSPB *in litt.*, 1996.

RSPB *in litt.*, 1997.

Nicholaas Peters v. HMCE, Court hearing 22/10/97

Transcript of representations made at the hearing of Nicholaas Peter Peters 9<sup>th</sup> of May 1996, Chester Crown Court

## 7.4 The illegal sale of traditional East Asian medicines containing derivatives of endangered species COTES reg. 8 (*Operation Charm*)

*“The responsibility of those involved in Operation Charm is to publicise, and where necessary enforce the legislation which is aimed at ensuring the long term survival of the tiger and other endangered species for the benefit of future generations”.*

Nick Williams, Chief Wildlife Inspector, UK CITES Management Authority (1996)

**Species:** Primarily tigers, rhinoceroses and bears (CITES Appendices I and II, EU Wildlife Trade Regulation Annexes A and B)

**Quantity:** Over 20,000 derivatives in the form of medicinal products

**Commercial value:** Considerable

**Penalty:** Ranged from conditional discharges to £3000 fine

Operation Charm involved a series of raids across the UK on premises selling traditional East Asian medicine (TEAM) claiming to contain derivatives of endangered species. To date over 20,000 such products have been seized.

### Background

During the early 1990's there were increasing numbers of reports that TEAM containing endangered CITES Appendix I listed species were being openly sold throughout the UK. In 1994 TRAFFIC launched an investigation in four major trading centres; London, Manchester, Birmingham and Liverpool. This found that manufactured products claiming to contain tiger bone, rhinoceros horn and bear bile, generally in the form of wines, tonics, pills and plasters, were readily available in 50% of the retail outlets visited.

In response to the TRAFFIC investigation, on the 7th of February 1995 simultaneous raids were carried out on a total of 14 premises in London, Birmingham and Manchester. In each

of the three cities, thousands of medicinal products were seized, the majority of which appeared to have come from China. In addition to the medicinal products seized, significant amounts of raw material was also recovered in all three cities, including unprocessed tiger bones, unprocessed rhinoceros horn, and 17 gall bladders being stored in a refrigerator.

#### **In court**

As a result of the raids, nine people were charged under reg. 3(1) of COTES 1995 for the sale of species listed on the previous EU Wildlife Trade Regulations (3626/82) Article 2(a) and 3(1). This is the equivalent of being charged under reg. 8(1) of COTES 1997 for the sale of specimens listed on the new EU Wildlife Trade Regulations Annexes A and B. Under both the old and the new EU Wildlife Trade Regulations (as well as under CITES), items labeled as containing species listed on the Annexes are to be treated as if they did, so it was not necessary for the prosecution to prove the medicines actually contained the animal products they claimed.

Tigers and all rhinoceros species are listed on EU Wildlife Trade Regulations Annex A, and so the sale in their products is completely prohibited, unless an exemption permit has been granted. Some bear species however are listed on EU Wildlife Regulations Annex B, and sale in these species is only prohibited if they have been illegally imported into the UK. Therefore the prosecution would have had to prove either the bear gall bladders were illegally imported into the UK, or they came from an Annex A listed bear. This task may not have been as difficult as it sounds because it is generally accepted that TEAM primarily utilizes the Asiatic black bear, which is listed on Annex A. This issue did not however eventuate because all traders pleaded guilty.

The cases were all heard summarily in Magistrates Courts in the London, Birmingham and Manchester, and all nine traders pleaded guilty. There was a large degree of variation in the penalties handed down in the different courts. The case was taken most seriously in London, where two traders from Chinatown were fined £3000 and £2000 respectively and ordered to pay costs. In sentencing, the magistrate stated he considered the case was serious, but because these were the first prosecutions in the UK for illegally selling TEAM containing endangered species he was treating the offenders lightly. The magistrate also made it clear that ignorance of the law was not a defence. In comparison, the six traders prosecuted in Manchester for the sale of medicinal products of similar quantity and nature to those in London, were all given conditional discharges. Of the two traders prosecuted in Birmingham, one was fined £1000, while the other failed to appear in court after leaving the country for Hong Kong.

#### **Subsequent actions**

Operation Charm is an on-going initiative and there has been a number of follow up actions. In London alone since 1995 there have been a further five raids on premises trading in TEAM containing endangered species, with cautions given in four out of five of these cases. The 5th case involved a large importer of TEAM with premises in Hong Kong and the US. The raid took place after bags of bones labeled as tiger in Chinese were found in bins at the UK premises. This case is still pending prosecution.

Large raids have also been executed in Hampshire under Operation Oasis, with premises in Portsmouth and Southampton searched. This led to the largest ever seizure of tiger bone plasters in the UK, over 400 packets were recovered. One trader, who admitted to smuggling the bones in suitcases from Hong Kong, was prosecuted and fined £1800.

### Public awareness activities

There have been considerable efforts made by authorities to educate the community on the laws on trade in TEAM containing endangered species. During 1995 and 1996, both the DETR and the Metropolitan Police published leaflets on TEAM and the law, written in English and Chinese, which were widely distributed. In August 1996 a seminar was held at New Scotland Yard aimed specifically at retailers and traders in TEAM. At this seminar an accreditation scheme was launched, whereby traders could sign an undertaking that they would not sell endangered species, and be given a window sticker stating this to be displayed at their premises. An amnesty was also offered to all traders, so they could find out if they were stocking endangered species.

### Conclusion

Operation CHARM shows the application of COTES to the large scale illegal trade in TEAM containing endangered species. It also highlights both the disparity in treatment of wildlife cases in the Magistrates Courts, and the efforts being made by some police forces and other bodies to combat wildlife crime and address the social implications. The long term outcome of Operation Charm is that the open trade in TEAM illegally containing endangered species appears to have diminished. However the underground market for these products in the UK continues to exist to a limited extent, amongst traders now fully aware of the laws and their implications.

#### Sources:

Allan and Francis, 1995.  
Allan, 1994.  
C. Allan *pers. comm.*, 1998.  
A. Fisher *in litt.*, 1998.  
J. Francis *pers. comm.*, 1998.  
L. Garvey *in litt.*, 1997.  
L. Garvey *pers. comm.*, 1998.  
Williams, 1996.

## 7.5. Other case studies

### 1) Plant smuggling, CEMA s170, Endangered Species (Import and Export) Act s4[1A], (“HA”)

<p><b>Species:</b> Rare orchids (CITES Appendix. I, EU Wildlife Trade Regulations Annex A) <b>Quantity:</b> Hundreds <b>Commercial value:</b> Approximately £250,000 <b>Penalty:</b> 1 month imprisonment, 5 months suspended, and £2500 fine</p>
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On the 6<sup>th</sup> of June 1989, “A” pleaded guilty and was convicted under s170 of CEMA for dealing in illegally imported rare orchids from South America. Investigations revealed that for over three years A had been travelling world in search of rare wild orchids, which he then illegally imported into the UK to sell to specialist collectors. In doing so, the damage he caused to the wild orchid populations was described by Royal Botanic Gardens, Kew at the time as “incalculable”, and “a significant blow for conservation” (quoted in *Daily Mail* 7/6/89). During this period A had made more than £250,000 from his illegal dealings. When his house was raided by HMCE, over 365 endangered wild orchids were found, valued at more than £42,000. It became apparent that A had befriended authorities at Kew Gardens, and had been systematically using these contacts to gain information for his criminal activities. In fact it was these contacts who alerted HMCE about A’s activities after they became suspicious.

A was initially sentenced in the Central Criminal Court to 12 months imprisonment with 8 months suspended, as well as being given a £10,000 fine and ordered to pay £10,000 in costs. In sentencing him, Judge Clarkson stated “*It was your deliberate and cynical aim to exploit your contacts so that rare orchids could be sought, acquired and offered for sale after being uprooted*”. An appeal on the sentence was heard in the Court of Criminal Appeal on the 13<sup>th</sup> of July 1989. The court accepted the facts above, however agreed with the argument raised by A’s counsel that smuggling live plants was somehow a less serious offence than smuggling parts of dead animals such as ivory, and so should be treated accordingly. It is questionable whether this reasoning would still be valid today. A’s fine was reduced to only £2500 and his sentence was reduced to six months imprisonment, of which he only had to serve one month with five months suspended.

Sources:

*R v Henry Azadehdel*, Court of Criminal Appeal 13/7/89. Unreported Judgement. Hamshire, J. (1989).

## 2) Smuggling live reptiles, CEMA, s50 (Operation Monty)

**Species:** Sand boas and spiny-tailed lizards (CITES Appendix II, EU Wildlife Trade Regulations Annex B)  
**Quantity:** Approximately 50  
**Commercial value:** £5000 (additional £10,000 worth seized)  
**Penalty:** 4 months imprisonment

On the 20<sup>th</sup> of July 1994, two people were intercepted in the green channel at Heathrow Airport arriving from Karachi, Pakistan. One of them, “T” was carrying a rucksack and a polystyrene box, found to contain over 100 reptiles. T claimed the reptiles were all snakes and legless lizards which were not CITES-listed, and that he had a licence for them. 49 of the reptiles were subsequently identified as being from three CITES Appendix II listed species; rough sand boas (*Eryx conicus*), brown sand boas (*E. johnii*) and Indian spiny-tailed lizards (*Uromastyx hardwicki*). They were valued at over £5000. T’s premises were later searched by HMCE and another 15 reptiles believed to be illegally imported from Pakistan were seized. These were valued at over £3000.

T was prosecuted in Cardiff Crown Court under CEMA s50 for illegally importing the 17 sand boas and 32 spiny-tailed lizards, contrary to the (old) EU Wildlife Trade Regulations 3626/82. T pleaded not guilty, and claimed all the reptiles were bred in captivity in an attempt to reduce the severity of the sentence. Expert evidence however showed that the reptiles could not have been bred in captivity, and T was found guilty and sentenced to 4 months imprisonment. In sentencing T, Judge Lewis stated that *international authorities were investing a great deal of effort into combating illegal wildlife crime, and a custodial sentence fitted the severity of the crime.*

Sources:

C. Allan *in litt.*, 1995.

Anon. (d) (1995).

DETR, 1996.

Jones, M., Walker, A., and Baillie, A. (1995).

Maguire, A. (1995).

WWF *in litt.*, 1995.

### 3) Seizure of endangered animal products, COTES reg. 8, CEMA s170 (*The Portobello Road Case*)

**Species:** Various, including tigers and elephants (CITES Appendix I and II, EU Wildlife Trade Regulations Annex A and B)  
**Quantity:** Several products including tiger skins and elephant ivory  
**Commercial value:** Considerable  
**Penalty:** Pending

This case resulted from a tip off received by the WWF Eyes and Ears Campaign, that an antiques shop owned by "TS" on Portobello Road London was offering tiger skins and elephant ivory for sale. Tigers and elephants are both listed on CITES Appendix I, so COTES sales certificates were required to sell these products, with the exception of items over 50 years old which have been worked. The shop was raided by the police and a number of CITES Appendix I and Appendix II animal products were seized. These included a 1 metre long carved elephant ivory tusk, an ivory bracelet and two other ivory pieces, a fully mantled head and tiger skin, a polar bear skin, a puma skin, python and monitor skins, as well as a mask made from a rare Javanese cow.

The CITES Appendix II listed python and monitor skins were subsequently returned because illegal import would have been too difficult to prove. Under COTES, the sale of CITES Appendix II/ EU Wildlife Trade Regulations Annex B items without a sales certificate is only illegal if it can be proven the wildlife products were illegally imported into the EU. On the other hand, sales of CITES Appendix I / EU Wildlife Trade Regulation Annex A listed species without a sales certificate is generally illegal, and the prosecution does not need to prove the wildlife was illegally imported into the EU. The puma skin and the polar bear skin were seized from the police by HMCE to bring a prosecution under CEMA, s170 for dealing in wildlife products imported into the EU contrary to the EU Wildlife Trade Regulations. Both cases are currently still pending.

Sources:  
C. Allan *pers. comm.*, 1998.

### 3) Conspiracy to sell rhinoceros horn, COTES reg. 8(1) (*Operation Morello*)

**Species:** Rhinoceroses (CITES Appendix I, EU Wildlife Trade Regulations Annex A).  
**Quantity:** 127 rhinoceros horns  
**Commercial value:** £2.8 million  
**Penalties:** 15 months imprisonment, 9 months imprisonment, 120 hours community service, community service (length unspecified at the time of writing).

On the 11<sup>th</sup> of March 1998, four people were sentenced in Norwich Crown Court for conspiracy to sell 127 rhinoceros horns. The horns were seized from an antiques storage facility in London, and were valued at £2.8 million.

In court, it was revealed that "WB" a convicted murderer sentenced to life imprisonment but expecting to be released soon on parole, owned the horns. WB arranged for the horns to be sold through his long term girlfriend "CSH", and two accomplices "DE" and "EA", with the horns being offered at £12,000 per kilo. The group was caught when EA approached the Stock Exchange using a false name looking for a buyer, and the Stock Exchange tipped off the RSPCA. A joint undercover operation by the RSPCA and the South East Regional

Crime Squad followed, and lead to all four being charged under COTES 1995, reg. 3 (equivalent of COTES 1997 reg. 8) for conspiracy to sell restricted species.

Rhinoceroses were listed on the previous EU Wildlife Trade Regulations Article 2(a), and under COTES 1995 reg. 3, it was an offence to sell anything listed on Article 2(a) unless an exemption had been given by the DOE, or a general derogation applied. In 1993, the UK implemented a stricter policy, completely prohibiting all sales in rhinoceros horn even when they fell within the derogations to the EU Wildlife Trade Regulations (note this policy no longer applies under COTES 1997).

Three out of four of the defendants initially pleaded not guilty, claiming they had no knowledge or intention to commit the crime. After hearing legal arguments the Judge ruled the offence was one of strict liability, thus the state of mind of the defendants was irrelevant. All defendants then changed their plea to guilty.

In sentencing both *WB* and *DE*, the Judge stated “*the offence is so serious it can only be dealt with by a custodial sentence*”. Taking into consideration the guilty plea, *WB* was sentenced to 15 months imprisonment on the basis of the quantity involved, his guilty state of mind and the fact he instigated the transaction. *DE* was sentenced to 9 months imprisonment, taking into account both his guilty plea and good character, as well as the quantity of horn involved, and the fact he had intentionally “buried his head in the sand” to the laws. *CSH* and *EA* were both given community service orders on the basis of their previous good character, guilty pleas, and that the judge was not convinced of their awareness of the illegality of the transaction. All the rhinoceros horn was forfeited.

Sources:

Court Hearing, 11<sup>th</sup> of March 1998, Norwich Crown Court.

#### **4) Sale of illegally imported rare birds of prey, COTES reg. 8(1), the Theft Act (s15) (“*The Eleanora’s falcon case*”)**

<p><b>Species:</b> Rare Eleanora’s falcons (CITES Appendix II, EU Wildlife Trade Regulation Annex A) <b>Quantity:</b> At least 12 <b>Commercial value:</b> £4000 (birds sold) plus approximately £4000 (birds unsold) <b>Penalty:</b> 8 months imprisonment</p>
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On the 4<sup>th</sup> of April 1997 “*N*” was convicted in Luton Crown Court for the illegal sale of Eleanora’s falcons (*Falco eleonorea*). The Eleanora’s falcon is a rare birds of prey, with an estimated breeding population of only 3800 to 4500 pairs, mainly confined to small islands in the Mediterranean. It is listed on CITES Appendix II, but EU Wildlife Trade Regulations Annex A. It was found in court that *N* had stolen the falcons as eggs from the cliffs on the Spanish island of Majorca, and then bought them back to the UK (with MAFF import certificates). Six birds were subsequently sold in the UK for a total of £4000 under the pretence the birds had been bred in captivity, and a further six birds were seized in a raid on *N*’s house by the police and the RSPB.

*N* was charged under both COTES and the Theft Act. He was convicted for three counts under COTES 1985 reg. 3(1) for the sale, and offers to sell a species listed on the EU Wildlife Trade Regulations 3626/82 Article 3(1) without an exemption certificate. This is the equivalent of a conviction under COTES 1997 reg. 8(1), for the sale of an EU Wildlife Trade Regulation Annex A specimen without a specific sales certificate. *N* tried to argue a defence

based on reg. 3(1) (the equivalent of COTES 1997 Reg. 8(4)) that he did not know Eleanora's falcon was listed on Article 3(1) (equivalent Annex A) of the EU Wildlife Trade Regulations. Judge Moss rejected this argument and held this defence could only be used when the accused did not know the nature of the specimen itself. Therefore provided that *N* knew he had Eleanora's falcons, it was irrelevant whether or not he knew Eleanora's falcon was listed on the EU Wildlife Regulations Annex A.

*N* was also convicted under four counts of the Theft Act s15 for dishonestly obtaining money by deception, on the basis that he had sold the birds to people by deceiving them into believing the birds had been bred in captivity.

He was sentenced to a total of 8 months imprisonment and the six seized Eleanora's falcons were forfeited to the RSPB, and subsequently repatriated to Majorca. In sentencing, Judge Moss stated it had been a carefully planned exercise by *N* to avoid the consequences of his actions, there had been a clear profit element, and he considered a custodial sentence was necessary because of the gravity of the offence, and the need for it to act as a deterrent. "*Anyone involved in the trade would expect to pay the price if caught*".

Sources:

Anon. (e) (1997).

RSPB *in litt.*, 1997.

Transcript *R. v Noble*, Luton Crown Court 2/4/97. Unreported judgement.

#### **5) Laundering wild caught birds of prey into the legal market through false captive breeding claims, COTES s8, the WCA s1(2a), DNA testing** *(Operation Dutch Lady)*

<p><b>Species:</b> Peregrine falcons (CITES Appendix I, EU Wildlife Trade Regulations Annex A) <b>Quantity:</b> At least 23 <b>Commercial value involved:</b> At least £3000 <b>Penalty:</b> 4 months imprisonment</p>
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Operation Dutch Lady was commenced after the RSPB and the Metropolitan Police became aware that a well-known falcon breeder "G" had recorded a spectacular breeding success with his peregrine falcons in 1993. He claimed to have captive-bred 31 peregrine falcon chicks from 41 eggs, a success rate of 75% compared to the national average of 25%. The young birds were then sold throughout the UK on the basis they were bred in captivity, for up to £550 each. On the 27<sup>th</sup> of February 1994, ten police forces throughout England accompanied by the RSPB and veterinary surgeons, raided a number of homes and took blood samples from the 36 peregrines sold by G. Samples were also taken from another 13 birds voluntarily bought in by other birdkeepers who had also been sold birds by G. DNA tests were then carried out on the samples, making this the largest investigation to date to use DNA analysis. The results showed that a large number of the birds were clearly unrelated to G's captive parent birds.

Further investigations revealed that G had bought wild peregrine falcon eggs from gamekeepers in the Scottish borders for £150 each, and had then incubated and reared the birds, and passed them off as captive bred. It was suspected he had sold at least 23 birds to buyers in Italy and Spain, but blood samples could not be obtained from these birds to carry out DNA tests.

G was charged with a number of offences under COTES, the Theft Act, and the WCA. A considerable amount of plea bargaining took place at the Crown Court which resulted in G

pleading guilty to six offences under COTES 1985 s3(1) (equivalent of COTES 1997 s8(1) sale of CITES Appendix I specimens without a sales certificate). The charges under the Theft Act were dropped. G also pleaded guilty to four charges under the WCA s1(2a) (possession of a wild bird), which were heard in separate proceedings in the Magistrates Court, (offences under the WCA are summary offences only). The conviction under the WCA banned G from keeping Schedule 4 birds of prey for five years. G was sentenced for the COTES offences in Snaresbrook Crown Court on 29<sup>th</sup> of September 1995, and given 4 months imprisonment and a £1000 fine. In sentencing G, Judge Pitman noted that G had abused his position as a game keeper, had lied to the DETR, had in effect swindled six people for around £400 each, and that the police investigation to catch him had cost around £9000. The Judge did not consider the fact the eggs may have been destroyed by the gamekeepers was mitigating factor, and took the view that only an immediate custodial sentence was appropriate.

Sources:

RSPB *in litt.*, 1995.

Met. Police *in litt.*, 1995.

MacKinnon, I. (1995).

Tendler, S. (1995).

## 6) Sale of stuffed, endangered exotic and native animals, WCA s6 ("PJ")

**Species:** Rare native specimens (WCA Schedule 5) (and exotic species not subject to proceedings)

**Quantity:** 167 native animals (plus 140 exotic animals)

**Commercial value:** Considerable

**Penalty:** Conditional discharge

"PJ" was convicted in June 1993 for the sale of 167 stuffed native birds and mammals listed on WCA Schedule 5. He was given a conditional discharge, and ordered to pay £1000 costs.

This case was bought by the RSPCA after they discovered PJ was displaying and selling a large number of endangered stuffed animals from his private museum. Over 300 animal specimens were seized from his premises, including endangered or vulnerable exotic species such as snow leopards, tigers and fruitbats. Among the rare native species found were an osprey, a tawny owl and red squirrels. Investigations revealed PJ had connections with other taxidermists under investigation, and had previous criminal convictions. The RSPCA had tried to encourage the police to bring the case, however the police in the area were unfamiliar with the wildlife legislation. RSPCA also unsuccessfully attempted to involve HMCE. The end result was that charges were laid under the WCA alone, and with respect to native species only, as the WCA does not cover exotic species.

The trial took six days, at the end of which PJ was found guilty of all charges. In sentencing him the Stipendiary Magistrate stated "*Why is this man not being sentenced to prison? That is because there is no prison sentence available under this legislation*".

Sources:

RSPCA *in litt.*, 1998

The Times 22/6/1993

**Mass illegal sale of wild finches imported from Hungary, WCA s6  
("The Golden Feather Case")**

<p><b>Species:</b> Various finches (non-CITES, WCA Schedule 3 pt 1) <b>Quantity:</b> Thousands <b>Commercial value involved:</b> Tens of thousands of pounds <b>Penalty:</b> £1500</p>
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On the 10<sup>th</sup> of February 1997, "J" pleaded guilty to seven charges of illegal possession for sale of a large quantity of finches, under s6(1) of the WCA.

The circumstances were that J, through his company, had over a number of years imported several commercial consignments of hundreds of wild finches from Hungary. The species involved included goldfinches, linnets, bullfinches, yellowhammers, greenfinches, redpolls, siskins and hawfinches, most of which were listed on the WCA, Part 1 Schedule 3. The birds were imported and properly quarantined through MAFF, who did not question the legality of the imports even though none of the birds were fitted with approved closed rings. The birds were then fitted with oversize rings and advertised openly in bird magazines and at bird shows throughout the UK. The prices of the birds ranged from £80 to £180 a pair, and the commercial shipments were worth tens of thousands of pounds.

Under the WCA s6(1) and s6(5), a licence is not required to sell Part 1 Schedule 3 birds, but only if the birds have been bred in captivity and are close ringed according to the regulations, conditions with which J's birds did not comply. An experienced aviculturist finally complained to the police about the situation and Cambridgeshire police charged J. The case was heard in March Magistrates Court in Cambridgeshire, and J was fined a total of £1500 plus £172 costs.

Sources:  
RSPB *in litt.*, 1997.

## 8. Comparative Analyses

### 8.1. Treatment of drug smuggling in court

One way of placing the court treatment of wildlife trafficking offences in perspective is to compare this with the treatment of drug trafficking offences. Although they are different crimes, the basis for the comparison is that they both involve smuggling illicit goods into the UK, and they both involve organized crime networks and occasionally vast sums of money. Although the scale of wildlife smuggling is not yet at the size of drug smuggling, international trafficking of endangered species has been considered by some governments to rank second to drug trafficking in terms of value and lucrativeness.

The legislation relevant to the illegal import, supply and possession of drugs in the UK is *The Misuse of Drugs Act 1973* (plus amendments) and CEMA. The maximum penalties under these pieces of legislation are set out in Table 4, along with the maximum penalty available for wildlife smuggling.

**Table 4: Maximum penalties for illegally importing drugs and for illegally importing wildlife**

Misuse of Drugs Act	Class A (e.g. Heroin) - Life Imprisonment Class B (e.g. Cannabis) - 14 years
CEMA (Drugs)	Class A (e.g. Heroin) - Life Imprisonment Class B (e.g. Cannabis) - 14 years
CEMA (Wildlife)	7 years

Table 4 illustrates that the potential range of penalties relating to drug offences are much higher than for wildlife offences, even when the same action of illegal trafficking into the UK is involved.

The actual penalties imposed in the courts for drug related offences are also comparatively high. Although, as with all criminal offences, the sentence is determined by the facts of the case, the Court of Appeal has set down a number of guideline cases on sentencing in drug cases that are widely used. These are set out in Table 5. There are no comparable guideline cases for wildlife smuggling.

**Table 5: Guideline case court sentences for drug smuggling**

Drug	Appropriate sentence	Guideline case
Heroin	"Seldom less than 5 years"	<i>Aramah</i> (1983) 76 Cr.App.R 190
Ecstasy	a) More than 5000 pills – 10 years b) More than 50,000 pills - 14 years	<i>Warren and Beeley</i> [1996]1 Cr.App.R.233
Cannabis	a) Less than 20kg - 18 months to 3 years b) Over 20kg - 3 to 6 years c) Massive importation – 10 years	<i>Aramah</i> (1983) 76 Cr.App.R 190
Wildlife		No guideline cases

The quantity of drugs is not the only consideration to take into account. In *Kouadio* (*The Times* February 1991), a drug smuggling prosecution under s170 CEMA, it was held that regard should also be given the method of importation, the degree of organisation, and the difficulty of detection (Fortson, 1996). These factors would also be relevant to prosecutions for wildlife smuggling.

Recent cases following these guidelines highlight the imposition of large penalties for drug smuggling. A study in 1996 found that in the 10 most recent cases for illegal importation of heroin prosecuted under s170 of CEMA, the sentences ranged from 3 years imprisonment (136g) to 20 years imprisonment (20kg) (Fortson 1996). Of the 10 most recent sentences for smuggling cannabis under s170 of CEMA, the penalties ranged from 180 hours community service (200g resin for personal use) to 9 years imprisonment (320 kg) (Fortson, 1996). This can be compared with the penalties given in successful prosecutions under CEMA for wildlife smuggling summarised in Table 3 on page 35, which shows that nearly all penalties imposed were financial, with most fines less than £1000. The largest custodial sentence ever imposed for wildlife smuggling in the UK is two years (see case study 7.3 (*Operation Indiana*)).

The purpose of this analysis was not to claim wildlife smuggling should be treated the same as drug smuggling, in the context of prosecutions and sentencing. It does however illustrate the vastly different treatment given to drug smuggling in the courts of the UK, in comparison to wildlife smuggling. The two crimes are different, yet they do both involve elements of organised crime, large profits, and consequent harm to society.

## **8.2. Treatment of the illegal wildlife trade in other countries: Greece and the United States of America**

The aim of the following section is to examine and compare the treatment of wildlife crime in two other countries, namely the United States and Greece. The United States was chosen as an example of a country where wildlife crime is taken relatively seriously, and where large sentences are occasionally handed down for wildlife smuggling. Greece on the other hand has a history of relatively weak treatment of wildlife crime, and poor implementation of CITES and the EU Wildlife Trade Regulations.

### **1) Illegal wildlife trade in court in the US**

#### ***(a) Crime and enforcement***

The wildlife trade in and out of the United States is huge, with legal imports and exports valued at US\$1 billion, and the illegal trade estimated to be massive (Hoover, 1997). The United States, unlike the UK and most other CITES parties, has a specialised wildlife enforcement agency - the US Fish and Wildlife Service (USFWS) to investigate violations of CITES and other wildlife crime. The USFWS acts as both the CITES Management and Scientific Authorities, and its Law Enforcement Division with a staff of approximately 400 people, is responsible for enforcement activities. Branches under the Law Enforcement Division include Investigations, Special Operations, Technical Support and Training, and it also runs a wildlife forensic laboratory. In 1996 the USFWS budget was approximately US\$507 million (Hoover, 1997).

#### ***(b) Legislation***

The maximum penalties for illegal wildlife trade in the US are outlined below. Although penalties vary among different US wildlife laws, the highest maximum penalty available for an individual is 5 years imprisonment, and up to US\$250,000 fine (UK£147,5000). This is actually less than the maximum penalties available under CEMA (7 years imprisonment and unlimited fine) for smuggling wildlife into the UK. These penalties are however substantially heavier than those available for illegal sale of wildlife in the UK under COTES (maximum 2 years imprisonment and unlimited fine).

- i. *The Endangered Species Act* is the legislation implementing CITES in the US, and includes offences for importing and exporting wildlife and possessing illegally imported wildlife contrary to CITES. It also contains a list of endangered and threatened species, which includes many CITES-listed species as well as some additional species. It is illegal to import, export, receive, carry, transport take from the wild, or sell between states these species unless authorised by permit. (Endangered Species Act of 1973 16 U.S.C. §1531)

**Penalty** - Imprisonment for up to 1 year, maximum fine of US\$100,000, and US\$250,000 for an organisation.

*The Lacey Act* prohibits trade, including the purchase and sale of wildlife taken, possessed or sold in violation of any wildlife law or treaty, including CITES, the Endangered Species Act and the Wild Bird Conservation Act. It also prohibits trade in wildlife taken, possessed or sold in violation of the laws of the country or origin. (Lacey Act 16 U.S.C. §3371)

**Penalty** - Imprisonment of up to 5 years and fines of up to US\$250,000, and US\$500,000 for organizations.

### (c) Prosecution outcomes

In the United States, as in the UK, there is a range of penalties handed down in wildlife crime cases, with the sentences dependent on the facts of the case. Nevertheless, it is notable that the upper level of penalties handed down in the US are high when compared to the UK. Recent cases illustrating this are set out in Table 6, and show sentences of over 6 years imprisonment, and fines of over US\$300,000 (UK £177,000). The maximum penalty handed down in the UK is two years imprisonment (Operation Indiana) and £5000 fine (see Table 3).

**Table 6: Recent successful prosecutions in the US**

Date	Offence	Details	Penalty
25/4/95	<i>JM</i> was convicted under the Lacey Act for smuggling birds into the US from Mexico. Investigations revealed a 10 year conspiracy organized by <i>JM</i> to smuggle hundreds of baby Amazon parrots from Mexico to the US.	<b>Species:</b> Yellow naped Amazons (CITES Appendix I) <b>Quantity:</b> Hundreds <b>Commercial value:</b> Over US\$1000 each	60 months imprisonment, 3 years supervised release, US\$10,000 fine.
12/12/95	<i>WW</i> and <i>BB</i> convicted for smuggling parrot eggs into the US. A USFWS undercover operation uncovered a 9 year old enterprise lead by <i>WW</i> in which over 700 wild cockatoo eggs were smuggled from Australia to the US.	<b>Species:</b> Australian cockatoos (CITES Appendix II) <b>Quantity:</b> Over 700 <b>Commercial value:</b> US\$1000 to \$13,000 each, more than US\$1 million total	<i>WW</i> , 5 years imprisonment, \$10,000 fine, 3 years probation. <i>BB</i> , 41 months imprisonment, 3 years probation.
30/6/96	<i>TE</i> was convicted for conspiring to smuggle reptiles into the US. Evidence revealed <i>TE</i> had conspired to smuggle over 110 boas and 3 anacondas to the US from Peru for sale on the pet market.	<b>Species:</b> Boa constrictors and anacondas (CITES Appendix II) <b>Quantity:</b> 113 <b>Commercial value:</b> Total value estimated at US\$33,000	2 years imprisonment, \$25,000 fine.
18/9/96	<i>TS</i> was convicted and sentenced for smuggling birds into the US. <i>TS</i> had smuggled more than 300 rare parrots including hyacinth macaws from South America to the US, concealed in	<b>Species:</b> Rare South American parrots (CITES Appendix I and II) <b>Quantity:</b> over 300 <b>Commercial Value:</b>	Over 6 years imprisonment, 200 hours community service, 3 years probation.

	plastic tubes.	Estimated at a total of US\$1,356,900	
23/1/97	<i>WK</i> was convicted for smuggling reptiles into the US. Investigations showed <i>WK</i> was heavily involved in an international ring which had been smuggling hundreds of reptiles to the US from Madagascar.	<b>Species:</b> Reptiles from Madagascar including boas and tortoises (CITES Appendix I and II) <b>Quantity:</b> Hundreds <b>Commercial value:</b> At least US\$250,000	46 months imprisonment, plus a US\$10,000 fine.
29/7/97	<i>AP</i> was convicted for smuggling parrots into the US. <i>AP</i> was arrested after an undercover operation by the USFWS showed he had smuggled over 4000 African grey parrots into the US.	<b>Species:</b> African grey parrots (CITES App. II) <b>Quantity:</b> Over 4000 <b>Commercial value:</b> \$600 to \$1000 each	US\$300,000 fine.
2/2/98	<i>MvN</i> was convicted for smuggling reptiles into the US. Between 1993 and 1995 he had had been involved in smuggling more than 1500 rare reptiles to the US from Indonesia and Argentina.	<b>Species:</b> Various reptile species (CITES App. II) <b>Quantity:</b> Over 1500 <b>Commercial value:</b> Considerable	8 months imprisonment, 8 months home detention, US\$250,000 to be paid to WWF Indonesia.

Sources: TRAFFIC USA Bulletins, USFWS Press releases.

## 2) Implementation of CITES and the EU Wildlife Trade Regulations in Greece

### (a) *Wildlife trade in Greece*

In 1992, a study into the wildlife trade in Greece by TRAFFIC Europe found a wide range of CITES-listed specimens openly on sale in retail shops. Furs from CITES Appendix I and Appendix II listed spotted cats including leopards *Panthera pardus* and jaguars *P. onca* were found on sale in over 115 shops. Elephant ivory products were also commonly sold, as were items made from the Hawksbill turtle (*Eretmochelys imbricata*), both of which are CITES Appendix I listed species. The sale of stuffed animals, trophies and other parts of protected animals was found to be widespread throughout much of Greece, including both species endemic to Greece and exotic species listed on the CITES appendices.

The study also reported an increase in the live trade in endangered species in Greece. This trade may have been facilitated by travelling circuses which appeared to move through Greece with endangered species virtually unhindered. The report found there were indications that Greece may be used as an entry point into the EU for smuggled live animals (Fleming and De Meulenaer, 1992).

Since the publication of this report, it appears little has changed in relation to wildlife trade in Greece (Fleming *pers. comm.*, 1998). Presumably while the conditions remain in Greece fostering illicit trade through the failure to properly implement wildlife laws (see below), this situation will remain unchanged.

### (b) *Implementation of CITES and the EU Wildlife Trade Regulations*

Greece did not become a party to CITES until 1993, however being a member of the EU it was bound to implement CITES through by EU Wildlife Trade Regulations since 1984. Concern over the role of Greece in the international wildlife trade prompted TRAFFIC Europe in 1992 to carry out a the above-mentioned study on the effectiveness of Greece's wildlife controls. This showed that the extensive domestic sales in CITES-listed species in Greece were virtually unmonitored and unregulated, and enforcement of the EU Wildlife

Trade Regulations was rare. A number of important infractions were not penalized under Greek legislation including the sale of CITES Appendix I, II and III specimens in contravention of the Regulations. A general lack of awareness or indifference to wildlife controls amongst both officials and the public was noted, and both internal and border controls for wildlife trade were found to be poor (De Meulenaer and Fleming, 1992).

Although Greece joined CITES in 1993, this apparently did little to change the situation. A TRAFFIC Europe report in 1994 on CITES implementation in the EU, noted that Greece still lacked specific legislation to implement CITES and the EU Wildlife Trade Regulations, and this had resulted in an *ad hoc* and unnecessarily complicated process for confiscating illegally imported CITES specimens. The CITES Secretariat through the Standing Committee requested Greece to remedy the situation on a number of occasions, and in the 1997 noted the following:

1. the legislation to enforce CITES was inadequate, with no provisions for important violations,
2. the border controls were insufficient,
3. there was insufficient knowledge of CITES procedures by the Management Authority and Customs,
4. there was insufficient training of Management Authority staff and personnel, and
5. there was a lack of personnel and resources in the Management Authority (CITES Secretariat, 1997).

The CITES Standing Committee continued to convey its serious concern to Greece, suggesting that further action by the CITES Secretariat may be necessary if improvements did not occur in the near future. In response, Greece finally drafted some amendments to the existing legislation, however the status of these amendments, and the response of the CITES Secretariat is at the time of writing, unknown.

## 9. Conclusion

Trade in wildlife and wildlife products in the UK continues to be popular. Illegal wildlife trade around the world, outlined in Chapter 2, is flourishing and has become significantly more organized. Within the UK, native bird species, specifically birds of prey and finches, are commonly found in illegal trade, with the illegal and legal trade in taxidermy specimens also prevalent. There has been a long history of smuggling live plants and animals into the UK, particularly parrots and finches, snakes, lizards and tortoises, frogs, and cacti and orchids. Wildlife products commonly smuggled into the UK include traditional East Asian medicines containing endangered plant and animal derivatives, tourist souvenirs, ivory products, reptile skins and mammal furs. Illegal imports of exotic species appear to have been facilitated by the introduction of the EU single market, which led to the removal of customs boundaries for wildlife products being traded throughout the EU. A number of case studies were presented in this manual, selected to highlight the operation of the various laws, the level of criminality and the types of illegal wildlife trade occurring in the UK.

The legislative regime dealing with wildlife trade in the UK is complex, and these laws were summarized. There are a number of different bodies involved in implementing and enforcing wildlife laws including the DETR, the police, HMCE, MAFF as well as a number of NGO's. Growing appreciation of the seriousness of wildlife crime has led to the development of initiatives designed to combat this crime including the Partnership for Action against Wildlife crime, the Police Wildlife Liaison Officer Network and the HMCE CITES Liaison Intelligence Officers and Enforcement Teams. However, once the cases reach court the penalties handed down may be considered light compared to the seriousness of the crime and the commercial value involved. Although comprehensive figures on the outcome of illegal wildlife trade cases in court are not currently available, summary information on prosecutions under CEMA, and bird related cases under the WCA and COTES were presented. These showed that the majority of penalties were fines, with most less than £500 pounds. To place this in some perspective, brief comparisons showed the more serious treatment given to drug smuggling in the UK, and to the treatment of illegal wildlife trade in the US.

Given the extent and range of illegal wildlife trade presently occurring in the UK, it would appear that the current level of prosecution and penalties are not acting as a sufficient deterrent.

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## **Appendix 1; Guide to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

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The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was signed in Washington on the 3rd of March 1973, and has now been joined by over 140 countries. It was established to prevent excessive and unrestricted international trade in wildlife threatening the survival of species in the wild.

### **1. Key concepts**

#### 1.1. International trade

CITES regulates international trade only, in certain species of wild flora and fauna. This encompasses the imports, exports and re-exports of wild plants and animals, as well as parts and products derived from them such as skins and medicines.

#### 1.2. Method of control

Control over wildlife trade is achieved through the use of permits and certificates. Each signatory country is required to have a Management Authority which issues and approves of import and export permits and a Scientific Authority who provides scientific advice to the Management Authority.

#### 1.3. Levels of control

Plants and animal species are subject to different levels of control, depending on how endangered they are in the wild. This is achieved by dividing classifying species into three Appendices set out below.

#### *Appendix I*

Appendix I lists species which are threatened with extinction by trade. This includes most of the large cat family, giant pandas, whales, apes, various parrots, and a number of cacti and orchids. International commercial trade in wild specimens of these species is prohibited. Imports and exports can be authorized only in exceptional circumstances such as scientific research, captive breeding programmes, and education and training. Export permits are required from the country of origin and import permits are required from the country of destination before the transaction can proceed (AIII). Special exceptions exist for:

- specimens acquired before the CITES came into force (AVII),
- specimens which have been bred in captivity, or artificially propagated (AVII), and
- specimens which form part of household or personal effects (AVII).

#### *Appendix II*

Appendix II lists those species which might become threatened with extinction if their trade is not strictly regulated. It also includes species which are similar to those species listed on Appendix I to prevent fraud. International commercial trade in species listed on Appendix II is allowed, but requires an export permit from the country of origin. An export permit should only be granted when the Management Authority is satisfied of certain conditions including:

- the export will not be detrimental to the survival of the species in the wild,
- the specimen was legally obtained, and
- a live specimen will be carefully shipped to avoid damage or injury (AIV).

Some exceptions exist, such as for specimens acquired before the CITES came into force (AVII). There are also special restrictions on trade in some species, including annual quotas and marking requirements.

#### *Appendix III*

Appendix III lists species which are threatened by trade in certain countries only, and for which the co-operation of other countries is required to control the trade. Specimens exported from these countries require an export permit, while specimens exported from other countries requires a certificate of origin (A5). Appendix III includes species such as walruses from Canada, and Myna birds from Thailand.

#### 1.4. Enforcement

The parties are required to take appropriate measures to enforce the provisions of CITES, and prohibit trade in specimens in violation of these provisions.

### **2. Organization**

A Conference of Parties of CITES is held every 2 years to examine the application of CITES and to revise the Appendices. The Secretariat to the Convention is based in Geneva, and provides organizational support and various services to the contracting parties. Parties are required to submit annual trade records to the Secretariat.

### **3. Where to next?**

CITES is a complex convention which has evolved considerably over the last 20 years. The most definitive guide is:

Wijnstekers, W. (1995). *The Evolution of CITES; A reference to the Convention on International Trade in Endangered Species of Wild Flora and Fauna* (4th Ed). CITES Secretariat, Geneva, Switzerland.

## **Appendix 2, Guide to the European Union Wildlife Trade Regulations**

**Council Regulation (EC) no. 338/97** of 9th December 1996 on the protection of species of wild fauna and flora by regulating trade therein

**Commission regulation (EC) No 939/97** of 26 May 1997 laying down detailed rules concerning the implementation of Council Regulation (EC) no. 338/97 on the protection of species of wild fauna and flora by regulating trade therein

(Collectively referred to as “the EU Wildlife Trade regulations”)

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The European Union (EU) is not a Party to CITES in its own right, however it has been implementing CITES since 1984 with *Council Regulation (EEC) no. 3626/82*, and *Commission Regulation (EEC) no. 3418/83*. These previous EU regulations attached the CITES as an Annex, and contained provisions that were stricter to those in CITES. The actual implementation was left to individual Member States which resulted in confusion.

On the 1st of January 1993, the EU became a single market, and internal trade controls for products including wildlife were abolished. This made revision of the 1982 regulations necessary, and lead to the enactment of the 1996 regulations, which came into force on the 1st of June 1997.

The new EU Wildlife Trade Regulations fully incorporate the provisions of CITES instead of just attaching them, as well as containing some additional stricter measures. The Regulations deal with all trade in wildlife and wildlife products to and from the EU, as well as trade in wildlife and wildlife products within the EU; both between and within individual Member States. Each Member State is required to take appropriate measures to ensure sanctions will be imposed for infringements of the EU Wildlife Trade Regulations, and may adopt other stricter measures.

Note the Article numbers below refer to Council Regulation (EC) no. 338/97, unless otherwise specified.

### **1. Species covered - Article 3**

As with CITES, plants and animal species are subject to different levels of control, depending on how endangered they are in the wild. Species are divided into four Annexes, which are similar to the CITES Appendices but not identical.

<p><b><u>A3(1) Annex A</u></b> Includes:</p> <ol style="list-style-type: none"> <li>1) All <i>CITES Appendix I</i> spp. (except where the EU has a reservation) (A3(1a)),</li> <li>2) Any species which is or may be in demand in the EU or for international trade, and which is either threatened with extinction, or so rare that any level of trade would imperil the survival of the species (A3(1b)), and</li> <li>3) Look-a-like species, where most other species in the genus are otherwise listed on Annex A (A3(1b ii)).</li> </ol> <p>Commercial trade in Annex A specimens from, to and within the EU is generally prohibited.</p>	<p><b><u>A3(2) Annex B</u></b> Includes:</p> <ol style="list-style-type: none"> <li>1) The <i>remaining CITES Appendix II species</i> (except where the EU has a reservation) (A3(2a)),</li> <li>2) CITES Appendix I species with an EU reservation (currently none) (A3(2b)),</li> <li>3) Any other species which is subject to levels of international trade which might not be compatible with its survival or the survival of populations in certain countries, or with the maintenance of the total population at a level which is consistent with its role in the ecosystem (A3(2c(i))),</li> <li>4) Look-a-like species where the listing is essential for the control of other species listed on Annex A or B (A3(2c(ii))), and</li> <li>5) Species known to pose an ecological threat to the EU (A3(2d)).</li> </ol> <p><b>Commercial trade in Annex B species is generally permitted but controlled. Import and export permits are required to import to and export from the EU.</b></p>
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<p><u>Interpretations</u></p> <ol style="list-style-type: none"> <li>1) <b>“Specimen”</b> means any animal or plant, alive or dead, of a species listed in Annexes A to D, and any part or derivative thereof. It also includes any other goods which appear by the packaging, marking or labeling, to contain parts or derivatives of Annex A to D listed species (A2).</li> <li>2) <b>“Worked specimens” are specimens which were significantly altered from their natural raw state for art, jewelry, musical instruments at least 50 years prior to these regulations.</b></li> <li>3) <b>“Captive bred”</b>; whether an animal was bred in captivity is determined by the Scientific Authority. The conditions include the animal must be least second generation captive bred, and that the parent stock was legally obtained, managed in a manner to maintain it indefinitely, and without major augmentation from the wild (<b>Reg. 938/97</b> A24). Blood and tissue samples must be made available if requested to allow DNA testing of captive breeding claims (<b>Reg. 938/97</b> A25). Captive bred specimens must be marked according to <b>Reg. 938/97</b> A36.</li> <li>4) <b>“Artificial propagation”</b>; whether a plant is artificially propagated is determined by the Scientific Authority. Conditions include that the plants were derived from plants grown from seeds, cuttings etc. in controlled conditions, and that that the parental stock was legally obtained and managed in a manner to maintain it indefinitely (<b>Reg. 938/97</b> A26).</li> <li>5) <b>“Personal and household effects”</b> are defined as <i>dead</i> specimens, parts and derivatives that are the belongings of a private individual, and intended to form part of his or her normal goods and chattels (A2).</li> </ol>
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<p><b><u>A3(3)Annex C</u></b>  <b>Includes:</b></p> <ol style="list-style-type: none"> <li>1) The remaining <i>CITES Appendix III</i> species (A3(3a)), and</li> <li>2) <i>CITES Appendix II</i> species with an EU reservation (A3(3b)) (currently none).</li> </ol> <p><b>Commercial trade in Annex C species is generally permitted. <i>Import notifications</i> and export permits are required to import to and export from the EU.</b></p>	<p><b><u>A3(4) Annex D:</u></b>  <b>Includes:</b></p> <ol style="list-style-type: none"> <li>1) Species which are <i>not listed on CITES</i>, but are imported into the EU in such numbers as to warrant monitoring (for example seahorses) (A3(4a)), and</li> <li>2) <i>CITES Appendix III</i> species with an EU reservation (A3(4b)) (currently none).</li> </ol> <p><b>Commercial trade in Annex D species is generally permitted. <i>Import notifications</i> are required to import to the EU.</b></p>
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## 2. Importing wildlife and wildlife products into the EU

### 2.1. General rules for import

The importation of wildlife and wildlife products listed on the Annexes to the EU Wildlife Trade Regulations requires the presentation of an import permit or import notification at the point of introduction into the EU only. After this point however, sale, movement or proof of legal acquisition documents may be needed for further trade within the EU.

### 2.2 Additional restrictions on certain species or countries

In addition to the rules set out below, the Commission may make general import prohibitions on species, or populations of species from particular countries, on the advice of the Scientific Review Group, where this is warranted by conservation concern. Wild specimens of these species or populations may not be imported into the EU until the prohibition is lifted. This section has been used for example, to ban all imports from the Solomon Islands (A4(6)).

### 2.3 Article 4

<p><b><u>A4(1) Importing Annex A specimens</u></b></p> <ul style="list-style-type: none"> <li>• An import permit must be presented at the Customs border at the point of introduction into the EU.</li> <li>• An import permit can only be issued by the Scientific and Management Authorities of the destination state, when they are satisfied the following strict conditions have been met: <ol style="list-style-type: none"> <li>1) There will be <i>no harmful effect</i> on the conservation status of the species or population (A4(1ai)), and</li> <li>2) The import is for a <i>non-detrimental purpose</i> (e.g. science, captive breeding or conservation) (A4(1aii)), and</li> <li>3) An <i>export permit</i> from the exporting country for <i>CITES</i> species, or documentary evidence specimen was legally obtained for non-<i>CITES</i> species (A4(1b)), and</li> <li>4) The <i>intended accommodation is suitable</i></li> </ol> </li> </ul>	<p><b>Exceptions</b></p> <ol style="list-style-type: none"> <li>1) <b><u>a) Reintroduction after previous legal introduction</u></b> to the EU (documentary evidence required, A4(5a)). <p><b><u>b) Worked specimens</u></b> acquired more than 50 years ago (documentary evidence required, (A4(5b)).</p> <ul style="list-style-type: none"> <li>➤ Import permits are still required in the above two cases, but the applicant does not need to show 4(1a) (no harmful effect on conservation status and non-detrimental purpose), or 4(1d) (use for non-commercial purposes).</li> </ul> </li> <li>2) <b><u>Captive bred animals</u></b>  <i>Annex A specimens</i> are treated as if they were Annex B specimens (A7(1a)).</li> <li>3) <b><u>Artificially propagated plants</u></b>  No special exceptions (A7(1b)).</li> <li>4) <b><u>Transit</u></b>  Specimens transiting through the EU do not</li> </ol>
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<p>(A4(1c)), and</p> <p>5) The specimen will <i>not be used for primarily commercial purposes</i> (A4(1d)), and</p> <p>6) There are <i>no other conservation related factors</i> militating against the issue of the import permit (A4(1e)).</p> <p><b>Commercial imports of Annex A species are generally prohibited.</b></p>	<p>need to comply with checks and presentation at the border customs, however CITES species require a valid export permit (A7(2)).</p> <p>5) <b><u>Personal and household effects</u></b> The re-introduction of an Annex A personal effect does not require an import permit if the previous import or export permit is presented (A7(3)) (Reg. 938/97, A27).</p> <p>6) <b><u>Scientific institutions</u></b> The rules for importing Annex A specimens do not apply to non-commercial loans, exchanges and donations between registered scientist and scientific institutions, or for correctly labelled herbarium samples, and other preserved, dried or embedded museum specimens, or for live plant material for scientific study (A7(4)).</p>
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<p><b>A4(2) Importing Annex B specimens</b></p> <ul style="list-style-type: none"> <li>• An import permit must be presented at the Customs border at the point of introduction into the EU.</li> <li>• An import permit can only be issued by the Scientific and Management Authorities of the destination state, when they are satisfied the following conditions have been met including: <ol style="list-style-type: none"> <li>1. There will <i>be no harmful effect on the conservation status</i> of the species or population. Once this conclusion is reached, it remains valid for subsequent imports, unless circumstances change (A4(2a)), and</li> <li>2. The <i>intended accommodation is suitable</i> (A4(2b)), and</li> <li>3. <i>An export permit</i> from the exporting country for CITES species, or documentary evidence was provided that the specimen was legally obtained for non-CITES species (A4(2ci)), and</li> <li>4. There are <i>no other conservation related factors</i> militating against the issue of the import permits (A4(2cii)).</li> </ol> </li> </ul> <p><b>Commercial imports of Annex B species are generally permitted, however an import permit is required from the Management Authority in the country of destination, as well as an export permit or proof of legal origin from the exporting country.</b></p> <p>➤ The requirement of an import permit as well as an export permit is stricter than required by CITES.</p>	<p><b>Exceptions</b></p> <p>1) <b><u>a) Reintroduction's</u></b> after previous legal introduction to the EU (documentary evidence required) (A4(5a)).</p> <p><b><u>b) Worked specimens</u></b> acquired more than 50 years ago (documentary evidence required (A4(5b)).</p> <p>➤ Import permits are still required in the above two cases, but the applicant does not need to satisfy the conditions of import in A4(2).</p> <p>2) <b><u>Captive bred animals</u></b> No special exceptions.</p> <p>3) <b><u>Artificially propagated plants</u></b> No special exceptions.</p> <p>4) <b><u>Transit</u></b> Specimens transiting through the EU do not need to comply with checks and presentation at the border customs, however CITES species require a valid export permit (A7(2)).</p> <p>5) <b><u>Personal and household effects</u></b> The first introduction of an Annex B personal effect does not require an import permit, but an export permit must be presented. The re-introduction of an Annex B personal effect does not require an import permit if the previous import or export permit is presented (A7(3)) (Reg. 938/97, A27).</p> <p>6) <b><u>Scientific institutions</u></b> The rules for importing Annex B specimens do not apply to non-commercial loans, exchanges and donations between registered scientist and scientific institutions, or for correctly labelled herbarium samples, and other preserved, dried or embedded museum specimens, or for live plant</p>
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<p><b>4(3) Importing Annex C and Annex D species</b></p> <ul style="list-style-type: none"> <li>• An <i>import notification</i> must be presented at the Customs border at the point of introduction into the EU, and</li> <li>• An export permit or certificate of origin must be presented for CITES-listed species. <ul style="list-style-type: none"> <li>➤ An <i>import notification</i>, is a notification given by the importer at the point of introduction into the EU (A2). It allows the Commission to keep track on the numbers of Annex C and D species entering the EU.</li> </ul> </li> </ul>	<p>material for scientific study (A7(4)).</p> <p><b>Exceptions</b></p> <p>1) <b><u>Transit</u></b> Specimens transiting through the EU do not need to comply with checks and presentation at the border customs, however this only applies to CITES specimens if a valid export or re-export permit accompanies them (A7(2)).</p> <p>2) <b><u>Personal and household effects</u></b> The requirements for import in A4(3) do not apply to dead specimens, parts and derivatives, listed on Annex C and Annex D which are <i>personal or household effects</i> (A7(3)).</p> <p>3) <b><u>Scientific institutions</u></b> The requirements for importing Annex C and D specimens in A4(3) do not apply to non-commercial loans, exchanges and donations between registered scientist and scientific institutions, or for correctly labelled herbarium samples, and other preserved, dried or embedded museum specimens, or for live plant material for scientific study (A7(4)).</p>
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### 3. Exporting and re-exporting wildlife and wildlife products from the EU

#### 3.1 General rules for export and re-export

An export or re-export permit is required to export all species listed on Annexes A, B and C from the EU.

#### 3.2 Article 5

<p><u>A5 Exporting Annex A specimens</u></p> <ul style="list-style-type: none"> <li>• <b>Export permits are granted by the Member State where the specimens are located and presented at the Customs office where the export formalities are completed (A5(1)).</b></li> <li>• <b>An export permit can only be granted when the Management and Scientific Authorities are satisfied that the following conditions have been met (A5(2)):</b> <ol style="list-style-type: none"> <li>1) The capture and collection for export will <i>have no harmful effect</i> on the wild population (A5(2a)), and</li> <li>2) Documentary evidence has been provided that the specimens were <i>legally obtained</i> (A5(2b)), and</li> <li>3) Live specimens will be <i>safely shipped</i> (A5(2ci)), and</li> <li>4) <i>An import permit</i> has been granted for</li> </ol> </li> </ul>	<p><u>Exceptions</u></p> <p>1) <b><u>a) Worked specimens</u></b> <u>acquired</u> more than 50 years ago (A5(6i)), or</p> <p><b><u>b) Dead specimens</u></b>, parts or derivatives legally acquired before these Regulations, or the previous EU regulations, or CITES became applicable to them (A5(6ii)).</p> <p>➤ In the above two cases export permits are still required, but the applicant does not need to show A5(2a) (no harmful effect on the conservation of the wild population), or A5(2c(ii)) (an import permit has been issued for CITES species, or evidence of use for noncommercial purpose for non-CITES species).</p> <p>2) <b><u>Captive bred animals</u></b> <i>Annex A captive bred animals</i> are treated as if they were Annex B specimens (A7(1a)).</p> <p>3) <b><u>Artificially propagated plants</u></b> a) Plant health certificates may be issued by a Member State instead of export permits for artificially propagated hybrids produced from</p>
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<p>CITES species, or non-CITES species will not be used for primarily commercial purposes (A5(2cii)), and</p> <p>5) There are <i>no other conservation factors</i> militating against the issue (A5(2d)).</p> <p><u>5 (3) Re-exporting Annex A specimens</u></p> <ul style="list-style-type: none"> <li>• A re-export certificate can only be granted if       <ol style="list-style-type: none"> <li>1) the applicant provides documentary evidence that the specimens were legally introduced into the EU, according to regulations were in place at the time of introduction, and</li> <li>2) an import permit has been issued from the importing country for CITES species, or for non-CITES species, specimen will not be used for primarily commercial purposes.</li> </ol> </li> </ul>	<p>unannotated Annex A species (A7(1b)) (<b>Reg. 938/97</b> A18(1)).</p> <p>b) Pre-issued export permits may be made available to registered nurseries for artificially propagated Annex A specimens (<b>Reg. 938/97</b> A18(3)).</p> <p>4) <b><u>Transit</u></b> Specimens transiting through the EU do not need to comply with checks and presentation at the border customs, however this only applies to CITES specimens if a valid export or re-export permit accompanies them (A7(2)).</p> <p>5) <b><u>Personal and household effects</u></b> The re-export of personal effects of Annex A species do not require a re-export permit if original export permit is presented (A 7(3)) (<b>Reg. 938/97</b>, Article 28).</p> <p>6) <b><u>Scientific institutions</u></b> The rules for exporting Annex A specimens do not apply to non-commercial loans, exchanges and donations between registered scientist and scientific institutions, or for correctly labelled herbarium samples, and other preserved, dried or embedded museum specimens, or for live plant material for scientific study.</p>
<p><u>A(5) Exporting Annex B and C specimens</u></p> <ul style="list-style-type: none"> <li>• <b>An export permit must be granted by the Member State where the specimens are located and presented at the Customs office where the export formalities are completed (A5(4)).</b></li> <li>• An export permit can only be granted when the Management and Scientific Authorities are satisfied that the following conditions have been met:       <ol style="list-style-type: none"> <li>1) The capture and collection for export will have <i>no harmful effect on the conservation</i> of the wild population, and</li> <li>2) <b>Documentary evidence has been provided that the specimens were legally obtained, and</b></li> <li>3) Live specimens will be <i>safely shipped</i>, and</li> <li>4) There are <i>no other conservation factors</i> militating against the issue (A5(4)).</li> </ol> </li> </ul> <p><u>A5(4) Re-exporting Annex B and C specimens</u></p> <ul style="list-style-type: none"> <li>• <b>A re-export certificate can only be granted if the applicant provides documentary evidence that the specimens were legally introduced into the EU, according to regulations in place at the time of introduction.</b></li> </ul>	<p><u>Exceptions</u></p> <p>1) a) <b><u>Worked specimens</u></b> acquired more than 50 years ago (A5(6i)), or</p> <p>b) <b><u>Dead specimens</u></b>, parts or derivatives legally acquired before these Regulations, or the previous EU regulations, or CITES became applicable to them (A5(6ii)).</p> <p>➤ In the above two cases export permits are still required, but the applicant does not need to show A5(2a) (no harmful effect on the conservation of the wild population).</p> <p>2) <b><u>Captive bred animals</u></b> No special exceptions.</p> <p>3) <b><u>Artificially propagated plants</u></b> Plant health certificates may be issued instead of export permits for artificially propagated Annex B and Annex C species (A7(1b)).</p> <p>4) <b><u>Transit</u></b> Specimens transiting through the EU do not need to comply with checks and presentation at the border customs, however this only applies to CITES specimens if a valid export or re-export permit accompanies them (A7(2)).</p> <p>5) <b><u>Personal and household effects</u></b> The re-export of Annex B species which are personal or household effects does not require a re-export permit if original export permit is</p>

	<p>presented (A7(3)) (<b>Reg. 938/97</b>, A28).</p> <p>The export rules do not apply to dead specimens, parts and derivatives, listed on Annex C which are personal or household effects (<b>Reg. 938/97</b>, Article 28).</p> <p>6) <b><u>Scientific institutions</u></b>  The rules for exporting Annex A specimens do not apply to non-commercial loans, exchanges and donations between registered scientist and scientific institutions, or for correctly labeled herbarium samples, and other preserved, dried or embedded museum specimens, or for live plant material for scientific study (A7(4)).</p>
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#### 4. Internal wildlife trade and sales within the EU

##### 4.1 General rule

As a consequence of the EU Single Market, there are in general no controls on trade in wildlife between Member States. The EU Wildlife Trade Regulations however have prohibits all commercial trade in Annex A and illegally imported Annex B species. These restrictions apply to trade both between and within Member States.

##### 4.2 Prohibition on trade in Annex A and Annex B specimens - Article 8

<p><b><u>Prohibition</u></b></p> <p><b>A8(1)</b> The purchase, offer to purchase, acquisition for commercial purposes, display for commercial purposes, use for commercial gain, sale, keeping for sale, offering for sale and transport for sale of <i>Annex A specimens is prohibited.</i></p> <ul style="list-style-type: none"> <li>➤ Member States can also prohibit the holding of Annex A specimens (A8(2)).</li> <li>➤ <b>The prohibition on trade also applies to <i>Annex B</i> specimens, unless it can be proved to the satisfaction of the Management Authority in the Member State the specimens were legally acquired or legally imported into the EU (A8(5)).</b></li> </ul>	
<p><u>Specific exceptions (A8(3))</u></p> <p>A8(3) Member States <i>may</i> issue certificates allowing trade in Annex A specimens to occur on a <i>case by case basis</i> where;</p> <ol style="list-style-type: none"> <li>a) The specimens were acquired or imported into the EU before the provisions of CITES, or EU Wildlife Trade regulations applied to them, or</li> <li>b) they are <i>worked specimens</i>, acquired more than 50 years ago, or</li> <li>c) they were <i>legally imported</i> into the EU, and are not going to be used for purposes detrimental to the survival of the species, or</li> <li>d) they are <i>captive bred</i> animal specimens, or <i>artificially propagated</i> plants, or derivatives thereof, or</li> </ol>	<p><u>General derogations (A8(4))</u></p> <ol style="list-style-type: none"> <li>1) <b><u>Scientific institutions</u></b>  A single certificate can be granted to scientific institutions allowing trade in all Annex A specimens for scientific purposes (<b>Reg. 938/97</b> A 30).</li> <li>2) <b><u>Captive bred specimens listed on Annex VIII</u></b>  Commonly bred captive bred specimens listed on Annex VIII do not require an exemption certificate for trade providing they are marked according to <b>Reg. 938/97</b> A36 (<b>Reg. 938/97</b> 32(a)).</li> <li>3) <b><u>Breeders certificates</u></b>  A certificate may be issued to a breeder for specimens of Annex A species capable of being bred in captivity. This authorizes trade in that specimen for its life, for particular purposes (research, captive breeding, biomedical)</li> </ol>

<p>e) they are required under exceptional circumstances for the advancement of science, or <i>essential biomedical purposes</i>, and the species in question is the only one suitable, and there are no captive bred specimens available, or</p> <p>f) they are intended for <i>breeding or conservation purposes</i> which will accrue conservation benefits to the species, or</p> <p>g) they are intended for <i>research or education</i> aimed at conservation of the species, or</p> <p>h) they originate in a member state, and were legally taken from the wild.</p> <p><b>Where a specific exemption certificate already exists for a specimen allowing a commercial transaction, it is not necessary for the other party to also acquire a certificate to purchase (Reg. 938/97 Article 31).</b></p>	<p>without the need to apply for an exemption certificate on a case by case basis. These certificates may be pre-issued by Management Authorities. Captive bred specimens must be marked in the manner specified by <b>Reg. 938/97 A36(1)</b>.</p> <p><b>4) <u>Artificially propagated plants</u></b> Artificially propagated plants do not require a certificate for internal trade (<b>Reg. 938/97 A32(c)</b>).</p> <p><b>5) <u>Worked specimens acquired more than 50 years ago</u></b> Do not need certificates for internal trade (<b>Reg. 938/97 Article 32(d)</b>).</p> <p><b>6) <u>Taxidermy certificates</u></b> Certificates may be pre-issued to approved taxidermists allowing sale of dead captive bred or legally acquired specimens. Further transactions in these specimens require the issue of new certificates (<b>Reg. 938/97 Article 33(2)</b>).</p>
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## 5. Transport and movement of live specimens within the EU - Article 9

The *movement* of live *Annex A* specimens requires *prior authorization* from the Management Authority where the Member State is located, but only if the import certificate indicates a location where the specimen must be kept. In other cases the person responsible for the movement must be able to prove the legitimate origin of the specimen. No authorization is required for urgent veterinary treatment.

The movement of *Annex B* specimens does not require prior authorization, however the holder of a live Annex B specimen may only relinquish it after ensuring the intended recipient is adequately informed of the required accommodation, equipment and practices to ensure the specimens will be properly cared for.

The *transport* of live animals from, to and within the EU must be in a manner so as to minimize risk of injury, damage to health or cruel treatment. It must also comply with the IATA live animal regulations for air transport, and the CITES guidelines for the transport of live animals (except distances of less than 50km, or personal pets) (EU Council Directive No 95/29/EEC).

## 6. Enforcement - Article 16

Each Member State must take appropriate measures to ensure the imposition of sanctions for infringements. In the UK, this is achieved through COTES for sales offences, and CEMA for import and export offences.

## 7. Where to Next?

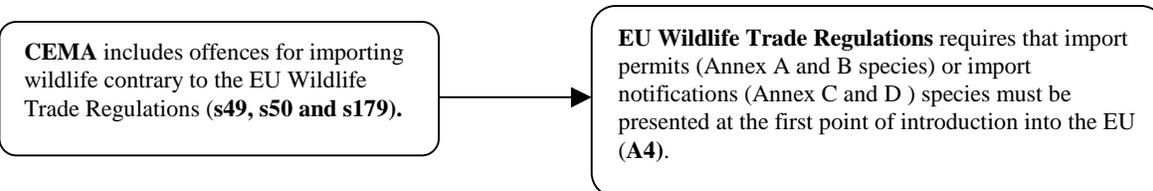
TRAFFIC Europe (1998). A Reference Guide to the European Community Wildlife Trade Regulations. *In Press*.

## Appendix 3, Guide to the Customs and Excise Management Act 1979 (CEMA)

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The Customs and Excise Management Act 1979 (CEMA) contains offences for where goods are imported and exported contrary to a restriction in an enactment. It applies therefore when wildlife or wildlife products are imported into the UK, or exported from the UK, contrary to the EU Wildlife Trade Regulations. CEMA applies throughout the UK, including England, Wales, Northern Ireland and Scotland. The key provisions relating to wildlife related offences are set out below.

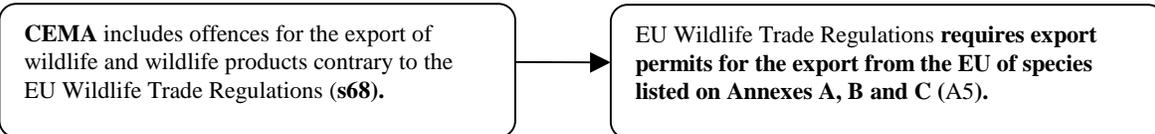
### 1. *Illegal import*



<p><b>1.1 Forfeiture - Section 49</b></p> <p><b>s49(1)</b> Where any goods (including wildlife and wildlife products) are imported into the UK contrary to a prohibition or restriction in force under any enactment (including the EU Wildlife Trade Regulations), those goods become liable to forfeiture.</p>	<ul style="list-style-type: none"> <li>➤ The goods may be seized by any police or customs officer (s139).</li> <li>➤ Goods forfeited under CEMA remain forfeited and become condemned unless the seizure is challenged within one month (see s139 and Schedule 3 below). This differs from seizures by the police under other legislation including COTES and the WCA, where seized goods must be returned if proceedings are not commenced.</li> <li>➤ For an example of a forfeiture under CEMA, see <i>Operation Monty</i> (case study 7.5(4)).</li> </ul>
<p><b>1.2 Penalty for illegal importation; Section 50</b></p> <p><b>s50(3)</b> A person who imports, or is concerned in importing goods (wildlife/products) contrary to a prohibition or restriction in force under any enactment (the EU Wildlife Trade Regulations), and does so <i>with the intent to evade</i> the prohibition or restriction, is guilty of an offence.</p>	<p><b>s50(4) Penalty</b></p> <ol style="list-style-type: none"> <li>i. Summary - The prescribed sum (currently £1000 in England and Wales, and £2000 in Northern Ireland), or three times the value of the goods, whichever is greater, and /or a maximum 6 months imprisonment.</li> <li>ii. Indictment - Any sum and / or maximum 7 years imprisonment.</li> </ol> <p>see <i>Operation Monty</i> (case study 7.5(4)).</p>

<p><b>1.3 Possession and trade in illegally imported goods - Section 170</b></p> <p><b>s170(1)</b> A person who <i>knowingly acquires</i> possession, or is <i>knowingly concerned</i> in carrying, removing, depositing, harboring, keeping, concealing, or dealing with in any way, goods (wildlife / products) which have been imported contrary to a prohibition or restriction in force under any enactment (the EU Wildlife Trade Regulations), and does so with the <i>intent to evade</i> the prohibition /restriction is guilty of an offence.</p> <p><b>s170(2)</b> Any person who is <i>knowingly concerned in the fraudulent evasion</i> or attempted evasion of the EU Wildlife Trade Regulations shall be guilty of an offence.</p>	<p><b>s170 (3) Penalty</b></p> <p>i. Summary - The prescribed sum (currently £1000 in England and Wales, and £2000 in Northern Ireland), or three times the value of the goods, whichever is greater, and /or a maximum 6 months imprisonment.</p> <p>ii. Indictment - Any sum and / or maximum 7 years imprisonment.</p> <p><b>s170(6) Forfeiture</b> Where a person is guilty of an offence under this section, the goods are liable to <i>forfeiture</i>.</p> <ul style="list-style-type: none"> <li>➤ Most wildlife illegal import cases are bought under s170.</li> <li>➤ For examples see case studies 7.2 (<i>Operation Dorian</i>) and 7.3 (<i>Operation Indiana</i>).</li> <li>➤ To prove a person was “knowingly concerned in a fraudulent evasion”, the prosecution must prove the accused actually knew a fraudulent evasion was taking place. It does not matter if the accused does not know the exact nature of the goods being imported, or if the evasion was not successful, and the accused can be prosecuted if the goods were seized prior to his or her involvement (Davies, 1996).</li> </ul>		
<p><b>Burden of proof</b> The prosecution must prove beyond reasonable doubt the accused:</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>i. <i>knowingly</i> acquired possession of, or</p> <p>ii. <i>was knowingly concerned</i> in carrying, removing, depositing, harboring or otherwise dealing with,</p> <p>iii. wildlife / products imported contrary to the EU Wildlife Trade Regulations</p> <p>iv. with <i>intent to evade</i> the restriction / prohibition.</p> </td> <td style="width: 50%; vertical-align: top;"> <p>i. <i>was knowingly concerned</i> in;</p> <p>ii. the fraudulent evasion or attempted evasion of a restriction or prohibition in the EU Wildlife Trade Regulations.</p> </td> </tr> </table>		<p>i. <i>knowingly</i> acquired possession of, or</p> <p>ii. <i>was knowingly concerned</i> in carrying, removing, depositing, harboring or otherwise dealing with,</p> <p>iii. wildlife / products imported contrary to the EU Wildlife Trade Regulations</p> <p>iv. with <i>intent to evade</i> the restriction / prohibition.</p>	<p>i. <i>was knowingly concerned</i> in;</p> <p>ii. the fraudulent evasion or attempted evasion of a restriction or prohibition in the EU Wildlife Trade Regulations.</p>
<p>i. <i>knowingly</i> acquired possession of, or</p> <p>ii. <i>was knowingly concerned</i> in carrying, removing, depositing, harboring or otherwise dealing with,</p> <p>iii. wildlife / products imported contrary to the EU Wildlife Trade Regulations</p> <p>iv. with <i>intent to evade</i> the restriction / prohibition.</p>	<p>i. <i>was knowingly concerned</i> in;</p> <p>ii. the fraudulent evasion or attempted evasion of a restriction or prohibition in the EU Wildlife Trade Regulations.</p>		

## 2. Illegal export



<p><b>2.1 Penalties for illegally exporting goods - Section 68</b></p> <p><b>s68(1)</b> If goods (wildlife / products) are exported, or brought to a place in the UK to be exported, and the export would be contrary to a restriction in an enactment (EU Wildlife Trade Regulations), the goods are liable to forfeiture, and the exporter, intending exporter and any agent concerned, is liable to a penalty.</p>	<p><b>Penalty</b> - Summary conviction - the greater of three times the value of the goods (see above), or a level 3 standard fine (currently £1000).</p>
<p><b>s68(2)</b> A person who is <i>knowingly concerned</i> in the export or attempted export of goods (wildlife / products) contrary to the EU Wildlife Trade Regulations with the</p>	<p><b>s68(3) Penalty</b></p> <p>i. Summary - The prescribed sum (currently £1000 in England and Wales, and £2000 in Northern Ireland), or three times the value of the goods,</p>

<p><i>intent to evade</i> restriction shall be guilty of an offence.</p>	<p>whichever is greater, and /or a maximum 6 months imprisonment.</p> <p>ii. Indictment - Any sum and / or maximum 7 years imprisonment.</p> <p>➤ The question of whether a person “was knowingly concerned in the exportation of goods with the intent to evade a restriction” is treated in court as one question. The prosecution must prove both subjective knowledge and intent of the accused (Davies, 1996).</p>
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<p><b>Burden of proof</b> The prosecution must prove beyond reasonable doubt:</p> <p>i. the wildlife / products were exported or attempted to be exported from the UK contrary the EU Wildlife Trade Regulations, and</p> <p>ii. the accused was knowingly concerned in the exportation with the intent to evade the regulation.</p>	
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<p><b><u>2.2 Goods exported without proper documentation - Section 53</u></b></p> <p><b>s53(1)</b> Before any goods (wildlife / products) are exported from the UK, the exporter must deliver documents (“an outward entry” ) in the form specified by the Commissioners.</p>	<p>➤ This does not apply to Community transit goods, which are goods imported into the UK, and transited through the UK for final exportation as part of an internal or external community transit procedure.</p>
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<p><b>s53(8)</b> If any goods (wildlife), subject to a restriction under an enactment (EU Wildlife Trade Regulations), are shipped for export <i>before an entry ( proper documents) are delivered to Customs</i>, they are liable to forfeiture. Where the shipping is done with <i>fraudulent intent</i>, any person concerned, and with <i>knowledge of that intent</i>, is guilty of an offence.</p>	<p><b><u>s53(9) Penalty</u></b></p> <p>i. Summary – The prescribed sum (currently £1000 in England and Wales, and £2000 in Northern Ireland) and / or 6 months imprisonment.</p> <p>ii. Indictment – Penalty of any amount, and / or 2 years imprisonment.</p> <p><b><u>s53(12) Forfeiture</u></b> If any goods (wildlife / products) subject to a restriction in an enactment (EU Wildlife Trade Regulations) are found not to correspond to any entry (forms) delivered in respect of them, they shall be liable to forfeiture.</p> <p>➤ Fraudulent intent is to induce a course of action by deceit. It includes for example, producing a false document to deceive a Customs officer into allowing a shipment to be exported (Davies, 1996).</p> <p>➤ Knowledge of the fraudulent intent must be proved by the prosecution, and includes a person who shuts their eyes to the obvious, or deliberately fails from making inquiries (Davies, 1996).</p>
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### 3. Declarations to HMCE

<p><b><u>3.1 Customs controls of persons entering or leaving the UK - Section 78</u></b></p> <p><b>s78(1)</b> Any person entering the UK must declare anything they have obtained from outside the UK which is not exempt from tax and duty (this includes wildlife and wildlife products). This does not apply for a person entering the UK from another Member State, unless the journey was begun outside the EU.</p> <p><b>s78(2)</b> A person entering the UK must answer questions about their luggage by HMCE, and allow</p>	<p><b><u>s78(3) Penalty</u></b> <i>Summary</i> - the prescribed sum (currently £1000 in England and Wales, and £2000 in Northern Ireland), or three times the value of the goods, whichever is greater, and /or a maximum 6 months imprisonment.</p> <p><b><u>s78(4) Forfeiture</u></b> Any undeclared good being imported to or exported from the UK is liable to forfeiture.</p>
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searches if requested.

#### 4. Untrue statements and forged documents

<p><b><u>4.1 Untrue declarations and false statements, certificates and documents - Section 167</u></b></p> <p><b>s167(1)</b> Any person who <i>knowingly or recklessly</i>:</p> <p>a) makes, or signs, or causes to be made or signed, or delivers or causes to be delivered to HMCE any declaration, notice, certificate, or document, which is <i>untrue in any material particular</i>, or</p> <p>b) makes any statement to an officer required under an enactment, which is <i>untrue in any material particular</i> is guilty of an offence.</p> <p><b>s167(2)</b> If the offence of (1) is committed without knowledge or recklessness, the person is liable on summary conviction only, to maximum penalty of £1000.</p> <p><b><u>4.2 Counterfeiting documents - Section 168</u></b></p> <p><b>s168 (1)</b> A person who <i>counterfeits or falsifies any documents</i> required under an enactment, or <i>knowingly accepts, receives or uses such a document</i>, or alters any document after it has been officially issued, or counterfeits a seal, signature or other mark used for verification of a document, shall be guilty of an offence.</p>	<p><b>Penalty</b></p> <p>i. Summary – The prescribed sum (currently £1000 in England and Wales, and £2000 in Northern Ireland) and / or 6 months imprisonment.</p> <p>ii. Indictment – Penalty of any amount, and / or 2 years imprisonment.</p> <p><b>Forfeiture:</b> Any goods in relation to the document or statement are liable to forfeiture.</p> <p>➤ <b>This section can be used for example, where breeder on an application for an export documents, incorrectly states a wild caught bird or animal has been bred in captivity.</b></p> <p><b>s168(2) Penalty</b></p> <p>iii. Summary – The prescribed sum (currently £1000 in England and Wales, and £2000 in Northern Ireland) and / or 6 months imprisonment</p> <p>iv. Indictment – Penalty of any amount, and / or 2 years imprisonment.</p> <p>➤ This section can be used for example where an exporter or importer presents forged CITES documents or certificates.</p>
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#### 5. Forfeiture

5.1 Provisions relating to detention, seizure and condemnation of goods - Section 139

**This section allows any thing liable to forfeiture under CEMA to be seized by any customs office or police constable, and stipulates that Schedule 3 shall apply to all forfeitures under this Act.**

5.2 Provisions relating to forfeiture - Schedule 3

This Schedule provides that a person has 1 month to challenge any seizure (for something liable to forfeiture) under CEMA, or the item will be condemned. If a person does so challenge, the matter is taken to court and dealt with as civil proceedings; the person must show on *the balance of probabilities*, the items were not liable to forfeiture under CEMA. This would require showing, for example, that the goods were not imported contrary to the EU Wildlife Trade Regulations.

➤ See case study 7.2 (*Operation Indiana*)

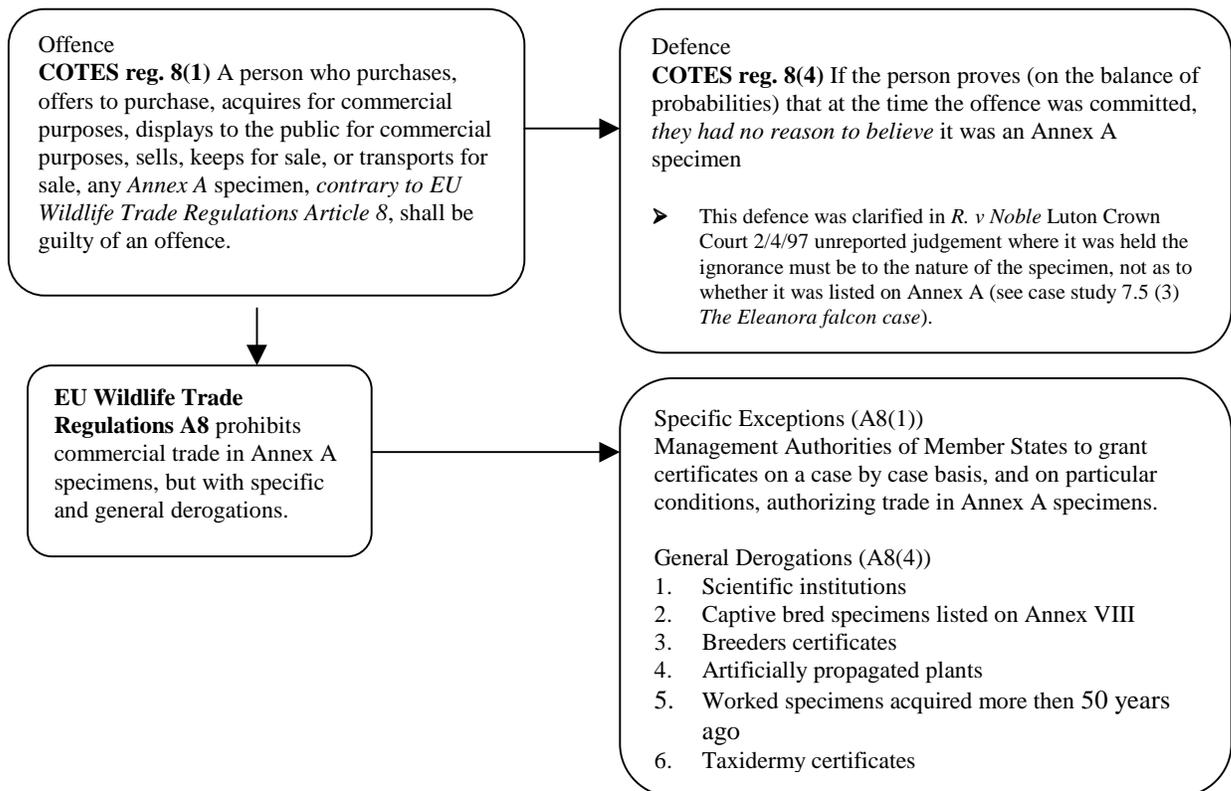
## Appendix 4, Guide to The Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES)

1. Unauthorized commercial trade in Annex A and B specimens	84
1.1. Prohibition on trade in Annex A specimens (reg. 8(1))	84
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COTES established a series of offences and penalties for infringements of the EU Wildlife Trade Regulations. It primarily covers commercial trade in wildlife and wildlife products of species listed on the Annexes A and B, as well as the misuse and forgery of permits. It is complimented by CEMA which covers illegal import and export offences, and applies throughout England, Northern Ireland, Scotland and Wales. The key provisions in COTES are set out below.

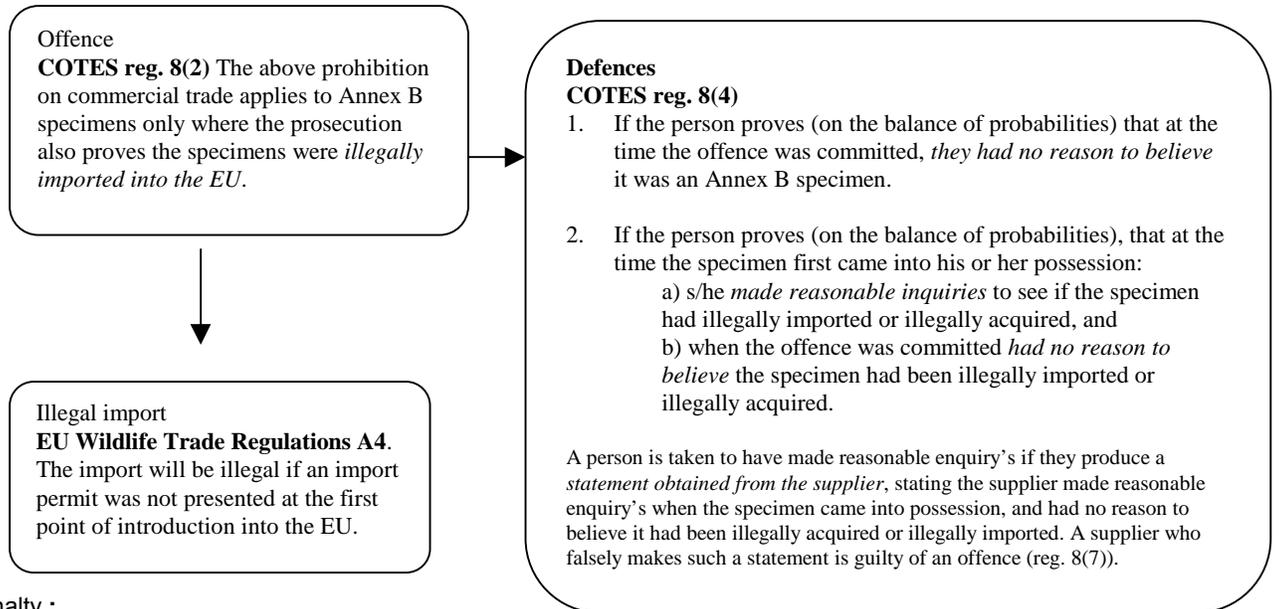
### 1. Unauthorized commercial trade in Annex A and Annex B specimens - Regulation 8.

#### 1.1 Prohibition on trade in Annex A specimens; Reg. 8(1)



- For examples of the application of this section see case studies 7.1 (DC), 7.5(3) (*The Eleanora's falcon case*) and 7.5(5) (*Dutch Lady*).

## 1.2 Prohibition on trade in Annex B species - reg. 8(2)



### Penalty :

- i. Summary - Maximum Level 5 fine (£5000) and/or 3 months imprisonment.
- ii. Indictment - Maximum 2 years imprisonment and/or fine of any amount.

<b>Burden of Proof</b>	
<p>The Prosecution must prove <i>beyond reasonable doubt</i> the accused:</p> <ol style="list-style-type: none"> <li>i. purchased, sold etc;</li> <li>ii. an Annex A specimen; or</li> <li>ii. an illegally imported Annex B specimen;</li> <li>iii. without an exemption certificate.</li> </ol>	<p>The Defence must show <i>on the balance of probabilities</i> the accused:</p> <ol style="list-style-type: none"> <li>i. had no reason to believe it was an Annex A or B species, OR</li> <li>ii. for Annex B specimens, had made reasonable inquiries and had no reason to believe it was illegally imported, OR</li> <li>iii. The specimens falls within one of the general exceptions to A8 of the EU Wildlife Trade Regulations.</li> </ol>

## 2. Unauthorized movement of Annex A specimens - Regulation 7

**Reg. 7(1)** If a permit or certificate, issued for a live Annex A specimen, specifies an address where the specimen must be kept, and a person *without reasonable excuse*, moves the specimen from that address, or keeps the specimen at a different address, without prior written authorization from the Secretary of State, they shall be guilty of an offence.

### reg. 7(2) Penalty :

- i. Summary - Maximum Level 5 fine (£5000) and/or 3 months imprisonment.
- ii. Indictment - Maximum 2 years imprisonment and/or fine of any amount.

### **3. Providing false information, using false permits, breaching permit conditions**

#### 3.1. Providing false information to get a permit - reg. 3

**reg. 3(1)** A person who, in order to obtain a permit under the EU Wildlife Trade Regulations *knowingly or recklessly*:

- (a) makes a *false statement* or representation, or
- (b) provides a *false document*, or information, or
- (c) uses or furnishes a false, invalid or *illegally altered permit* or certificate, or
- (d) makes a *false import notification*

is guilty of an offence.

Penalty :

- i. Summary - Maximum level 5 fine (£5000) and/or 3 months imprisonment.
- ii. Indictment - Maximum 2 years imprisonment and/or fine of any amount.

- The document, statement, certificate, notification or information must be false in a material particular.
- This applies when, for example, a person makes a false statement such as the birds were bred in captivity, in order to obtain import, export or sales permits.

#### 3.2. Misusing permits, certificates or import notifications - reg. 4

**reg. 4(1)** A person who *knowingly falsifies* or alters a permit or certificate is guilty of an offence.

**reg. 4(2)** A person who *knowingly uses* a permit, certificate or import notification for a *different specimen* to the one it was issued for is guilty of an offence.

**reg. 4(3)** A person who *knowingly uses* an Annex A specimen other than for what was authorized by the import permit or subsequently shall be guilty of an offence.

Penalty:

- i. Summary - Maximum level 5 fine (£5000) and/or 3 months imprisonment.
- ii. Indictment - Maximum 2 years imprisonment and/or fine of any amount.

#### 3.3. Non-compliance with conditions of permits - reg. 6.

**reg. 6(1)** A person who *knowingly* contravenes any condition or requirement of a permit/certificate is guilty of an offence.

Penalty :

- i. Summary - Maximum level 5 fine (£5000) and/or 3 months imprisonment.
- ii. Indictment - Maximum 2 years imprisonment and/or fine of any amount.

### **4. Forfeiture**

#### 4.1. Forfeiture of specimens on conviction of an offence - reg. 11

When a person is convicted of an offence under COTES, the court **must** order the forfeiture of the specimen or thing with which the offence was committed, and **may** order the forfeiture of any vehicle, equipment or other thing used to commit the offence.

## Appendix 5, Guide to the Wildlife and Countryside Act 1981 (the WCA)

1. Trading in wild birds (s6)	87
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The Wildlife and Countryside Act 1981 (the WCA) is the principal legislation in Britain for the protection and conservation of wildlife and its habitat. The WCA contains a regime of offences and penalties designed to protect wild birds and other wild animals and plants native to the UK, with the level of protection depending on how endangered the species are (specified in the Schedules to the WCA). The WCA applies in England, Wales and Scotland. The equivalent legislation in Northern Ireland is the *Wildlife (Northern Ireland) Order 1985 (WO)*, with the relevant sections noted below.

### 1. Trading in birds – Section 6

Offences:	Exceptions:
<p><b>s6(1) Sale of live birds</b> A person is guilty of an offence if they:</p> <ol style="list-style-type: none"> <li><b>sell</b>, offer or expose for sale, have in their possession, or transport for the purpose of sale, any live wild bird or egg, or</li> <li><b>publish</b> or cause to be published an advertisement likely to be understood as intending to buy or sell wild birds or eggs.</li> </ol> <p><b>s6(3) Showing live birds</b> A person is guilty of an offence if they show, or permit to be shown for competition, or in a premises where a competition is being held:</p> <ol style="list-style-type: none"> <li>A live wild bird, or</li> <li>A live bird whose parent was a live wild bird.</li> </ol> <ul style="list-style-type: none"> <li>➤ “<u>Wild bird</u>” is a bird of a kind ordinarily resident or is a visitor to Britain in a wild state (section 27(1)).</li> <li>➤ In relation to sales and showing offences this <i>includes birds which have been bred in captivity</i>.</li> <li>➤ <u>Penalty (s21)</u> Summary conviction: Level 3 Fine (up to £1000), Schedule 1 birds, Level 5 Fine (up to £5000).</li> <li>➤ Fines are imposed with respect to each bird or egg. If more than one bird or egg is involved, the total fine is determined if a person had committed a separate offence with respect to each (s21(3)).</li> <li>➤ A person convicted under this section is banned from possessing a Schedule 4 bird for 5 years after the conviction of an offence relating to a Schedule 1 bird, or for 3 years for other birds.</li> <li>➤ s21(6) requires that the court <b>must</b> order the forfeiture of any bird, nest or egg involved.</li> </ul>	<ol style="list-style-type: none"> <li><b>Schedule 3 pt I birds.</b> <ul style="list-style-type: none"> <li>➤ <u>Schedule 3 Pt I birds</u> may be sold or competitively shown at all times (without a licence) if bred in captivity and closed ringed, including for example bullfinches, chaffinches and goldfinches (s6(5)).</li> </ul> </li> <li>Anything done under <b>general licence</b> issued by DETR or other appropriate authority (s16).           <ul style="list-style-type: none"> <li>➤ <b>WLF 100093</b> allows the sale of 34 waterfowl species provided the birds have been bred in captivity, documentary evidence of which accompanies the sale.</li> <li>➤ <b>WLF 100095</b> allows the sale of <i>all</i> other wild birds, other than Schedule 3 Part I Birds, those covered by the EU Wildlife Trade Regulations, or the ten species mentioned above. There must be documentary evidence the birds have been bred in captivity, and they must be individually closed ringed.</li> </ul> </li> <li>Anything done under a <b>specific licence</b> issued by DETR, or other appropriate authority (s16).           <ul style="list-style-type: none"> <li>➤ 10 species of birds require individual licences for sale including the Mute Swan and the Ruddy Duck.</li> <li>➤ Individual licences to sell all birds listed on CITES Appendix I / EU Wildlife Trade Regulations Annex A including all birds of prey, are required under COTES.</li> </ul> </li> </ol>

<p><b>s6(2) Sale of dead birds</b></p> <p>A person who is not registered, is guilty of an offence if they:</p> <p>a) <b>sell</b>, offer or expose for sale, or have in his or her possession, or transports for the purpose of sale, any dead wild bird, or any part or derivative, or</p> <p>b) <b>publish</b> or cause to be published any advertisement likely to be understood as an offer for sale.</p> <p>➤ <b>Wild bird</b> is a bird of a kind ordinarily resident or is a visitor to Britain in a wild state (section 27(1)).</p> <p>➤ In relation to sales offences this <i>includes birds which have been bred in captivity</i>.</p> <p>➤ <b>Penalty (s21)</b> Summary Conviction: Level 3 Fine (up to £1000). Schedule 1 Birds, Level 5 Fine (up to £5000).</p> <p>➤ Fines are imposed with respect to each bird or egg. If more than one bird or egg is involved, the total fine is determined if a person had committed a separate offence with respect to each (s21(3)).</p>	<p><b>Exceptions:</b></p> <p><b>1. Schedule 3 pt II or III birds</b></p> <p>➤ <b>Schedule 3 pt II birds</b> are birds which may be sold dead at all times (without a licence) currently only the wood pigeon.</p> <p>➤ <b>Schedule 3 pt III birds</b> are birds which can be sold dead without a licence between 1 September and the 28 February, including the golden plover, the teal and the woodcock.</p> <p><b>2. Anything done under <i>general licence</i> issued by DETR or other appropriate authority (s16).</b></p> <p>➤ <b>WLF 100092</b> permits the sale of feathers and parts of Schedule 3 Pt III birds.</p> <p>➤ <b>WLF 100096</b> permits the sale of any dead bird other than <b>Part 1 Schedule 2</b>, or <b>Parts II and III Schedule 3</b>, or Barnacle Geese, or Greenland White fronted geese. This allows any person (whether or not registered) to sell any dead wild bird or derivative, other than those listed on the Schedules above, provided they comply with the conditions of the licence. These conditions include that only a small number of birds are sold, and that the birds were bred in captivity or legally removed from the wild. Basic records must also be kept of any sales.</p> <p><b>3. Anything done under a <i>specific licence</i> issued by DETR, or other appropriate authority (s16).</b></p> <p>➤ Individual licences to sell all birds listed on CITES Appendix I / EU Wildlife Trade Regulations Annex A including all birds of prey are required under COTES.</p>
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\* Northern Ireland: Equivalent section, WO s7 (sale) and s8 (competitions).

## 2. Killing, taking from the wild, and possessing wild birds – Section 1

<p><b>Offences:</b></p> <p><b>s1(1) Intentionally taking wild birds</b></p> <p>It is an offence for any person to intentionally:</p> <p>a) kill, injure or take a wild birds, or</p> <p>b) take damage or destroy the nest of a wild bird while it is in use, or</p> <p>c) take or destroy an egg of a wild bird.</p> <p><b>s1(5) Disturbing Schedule 1 birds</b></p> <p>It is an offence for any person to <b>intentionally</b> disturb a Schedule 1 wild bird while building a nest, or is in or near a nest containing eggs or young, or to disturb the dependent young.</p> <p><b>s1(2) Possession of a wild bird</b></p> <p>It is an offence if any person has in his <b>possession or control</b> a live or dead wild bird, or any derivative or part of a wild bird, or an egg of a wild bird.</p>	<p><b>Exceptions:</b></p> <p><b>1. Anything done under a <i>specific licence</i> issued by DETR, or other appropriate authority (s16).</b></p> <p><b>2. Anything done under <i>general licence</i> issued by DETR or other appropriate authority (s16).</b></p> <p><b>3. Killing of a <i>Schedule 2 pt. 1</i> bird outside the closed season (s2(1)).</b></p> <p>➤ <b>Schedule 2 pt. 1 Birds</b> are sporting birds which can be taken outside of the closed season, including moorhens, and various species of geese.</p> <p><b>4. Anything done <i>under order</i> from MAFF or the Secretary of State (s4(1)).</b></p> <p><b>5. Taking a <i>disabled wild bird</i>, which has not been disabled by the act of the person taking (s4(2)).</b></p> <p><b>6. An act which was an <i>incidental result</i> of a lawful action, which could not be reasonably avoided</b></p>
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<ul style="list-style-type: none"> <li>➤ <u>Wild Bird</u> is defined as any bird of a kind which is ordinarily a resident, or is a visitor to Britain in its wild state (s27(1)).</li> <li>➤ This does not include any bird shown to have been bred in captivity (s1(6)).</li> <li>➤ A bird shall not be treated as bred in captivity unless its parents were lawfully in captivity when the egg was laid ((s27(2)).</li> <li>➤ DNA evidence can be used to prove or disprove whether a bird has been bred in captivity</li> <li>➤ <u>Schedule 1 birds</u> are rare, declining or vulnerable bird species which are specially protected throughout the year. This list includes golden eagles, goshawks and peregrine falcons.</li> <li>➤ <u>Penalty (s21)</u> Summary Conviction: Level 3 Fine (up to £1000) Schedule 1 Birds, Level 5 Fine (up to £5000)</li> <li>➤ Fines are imposed with respect to each bird or egg. If more than one bird or egg is involved, the total fine is determined if a person had committed a separate offence with respect to each (s21(3)).</li> <li>➤ A person convicted under this section is banned from possessing a Schedule 4 Bird for 5 years after the conviction of an offence relating to a Schedule 1 Bird, or for 3 years for other birds.</li> <li>➤ s21(6) requires that the court <b>must</b> order the forfeiture of any bird, nest or egg involved.</li> </ul> <p><u>Section 5</u> Creates prohibitions on certain methods of killing wild birds, such as snares.</p>	<p>(s4(3)).</p> <p><b>7. Authorized person</b> killing a wild bird in order to preserve public health, to prevent the spread of disease, or serious damage to crops or livestock (s4(3)).</p> <ul style="list-style-type: none"> <li>➤ An “authorized person” is the owner or occupier of land, or a person authorized by the owner or occupier, or by a local authority (s27(1)).</li> <li>➤ A person cannot rely on this defence if it became apparent before the time that the action would be necessary, and the person did not apply for a licence, or their application had not been determined s5(5).</li> </ul> <p><b>Defence</b> <b>(For s1(2) Possession of wild birds only)</b></p> <p>A person is not guilty of the possession of wild birds or eggs (s1(2)) if they show (on the balance of probabilities) the bird or egg had not been taken or killed, or sold in contravention of the WCA (s1(3)).</p> <ul style="list-style-type: none"> <li>➤ This section makes this section (s1(2)) a <b>Strict liability offence</b>. If a person chooses to possess a wild bird it is for them to show on the balance of probabilities that their possession is legitimate, a point confirmed in the High Court decision of <i>Kirkland v Robinson</i> [The Times 4 December 1986].</li> <li>➤ See <i>Operation Dutch Lady</i> (case studies 7.5(5)).</li> </ul>			
<p>Burden of proof for section 1 The Prosecution has to prove beyond reasonable doubt, the accused:</p> <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; vertical-align: top;"> <ul style="list-style-type: none"> <li>i. intentionally;</li> <li>ii. killed, injured, damaged or took;</li> <li>iii. a <i>wild</i> bird, egg or nest.</li> </ul> </td> <td style="width: 33%; vertical-align: top;"> <ul style="list-style-type: none"> <li>i. had in their possession or control;</li> <li>ii. a dead or live <i>wild</i> bird or derivative.</li> </ul> </td> <td style="width: 33%; vertical-align: top;"> <ul style="list-style-type: none"> <li>i. intentionally;</li> <li>ii. disturbed a <i>Schedule 1 bird</i>;</li> <li>iii. while nesting, or with dependent young.</li> </ul> </td> </tr> </table>		<ul style="list-style-type: none"> <li>i. intentionally;</li> <li>ii. killed, injured, damaged or took;</li> <li>iii. a <i>wild</i> bird, egg or nest.</li> </ul>	<ul style="list-style-type: none"> <li>i. had in their possession or control;</li> <li>ii. a dead or live <i>wild</i> bird or derivative.</li> </ul>	<ul style="list-style-type: none"> <li>i. intentionally;</li> <li>ii. disturbed a <i>Schedule 1 bird</i>;</li> <li>iii. while nesting, or with dependent young.</li> </ul>
<ul style="list-style-type: none"> <li>i. intentionally;</li> <li>ii. killed, injured, damaged or took;</li> <li>iii. a <i>wild</i> bird, egg or nest.</li> </ul>	<ul style="list-style-type: none"> <li>i. had in their possession or control;</li> <li>ii. a dead or live <i>wild</i> bird or derivative.</li> </ul>	<ul style="list-style-type: none"> <li>i. intentionally;</li> <li>ii. disturbed a <i>Schedule 1 bird</i>;</li> <li>iii. while nesting, or with dependent young.</li> </ul>		

\* **Northern Ireland:** Equivalent sections, WO s4 (kills, takes or possesses wild birds) and s5 (exceptions).

### 3. Registration and Ringing of Birds of Prey – Section 7

s7(1) A person is guilty of an offence if they have a **Schedule 4 bird** in his or her possession which is not closed ringed according to the regulations.

**s7(4) A person is guilty of an offence if they have in their possession or control a Schedule 4 bird, 5 years after the conviction of an offence relating to a Schedule 1 Bird, or for 3 years for other birds.**

- Schedule 4 birds include many birds of prey. They must be registered and close ringed if they are kept in captivity (Wildlife and Countryside (Registration and Ringing of Certain Captive Birds) Regulation 1982, and Amendment regulations 1991 and 1994).
- The rings referred to in the regulations are “closed rings” which is fitted to the leg of a bird by passing the foot through the ring before the foot is fully grown This is supposed to establish that the bird was ringed as a nestling, not as an adult (and so bred in captivity, not taken from the wild).
- Section 17 created an offence for knowingly making false statements or furnishing false information for the purpose of registration.

Penalty (s21)

Level 5 fine (up to £5000).

\* Northern Ireland: No equivalent section, keeping of Schedule 4 birds controlled by the regulations.

#### 4. Taking from the wild, killing and trading in other wild animals - Section 9

<p><b>s9(5) Sale of live or dead wild animals</b></p> <p>It is an offence for a person to:</p> <ol style="list-style-type: none"> <li>a) <b>sell</b>, offer or expose for sale, or transport for the purpose of sale any live or dead wild animal, or part or derivative included in Schedule 5, or</li> <li>b) <b>publishes</b> or causes to publish an advertisement, understood as an offer for sale.</li> </ol> <ul style="list-style-type: none"> <li>➤ <b>Penalty (s21)</b> Summary Conviction : Level 3 Fine (up to £1000)</li> <li>➤ Fines are imposed with respect to each animal. If more than one animal is involved, the total fine is determined if a person had committed a separate offence with respect to each (s21(3)).</li> </ul>	<p><b>Exceptions:</b></p> <ol style="list-style-type: none"> <li>1. An act done under a <b>specific licence</b> issued by DETR, or other appropriate authority (s16).</li> <li>2. An act done under <b>general licence</b> issued by DETR or other appropriate authority (s16).</li> </ol>
<p><b>s9(1) Taking / killing wild animals</b></p> <p>A person is guilty of an offence if they <b>intentionally</b> kill, injure or take any wild animal listed on Schedule 5.</p> <p><b>s9(4) Disturbing an animal shelter</b></p> <p>Creates an offence for damage to a Schedule 5 animal shelter, or disturbing an animal while occupying that shelter.</p> <p><b>s9(2) Possession of wild animals</b></p> <p>It is an offence if any person has <i>in his possession or control</i> a live or dead wild animal or derivative included on Schedule 5.</p> <ul style="list-style-type: none"> <li>➤ "<b>Wild Animal</b>" means any animal other than a bird which is, or was before taken, living in the wild (s27(1)).</li> <li>➤ In any proceedings under this section the animal in question is presumed to be a <i>wild</i> animal unless the contrary is shown s6(2).</li> <li>➤ <b>Schedule 5</b> lists animals which are protected, and so cannot be killed, taken from the wild, or sold, without a licence, including many butterfly species, adders and natterjack toads.</li> <li>➤ <b>Penalty (s21)</b> Summary Conviction: Level 3 Fine (up to £1000)</li> <li>➤ Fines are imposed with respect to each animal. If more than one animal involved, the total fine is determined if a person had committed a separate offence with respect to each (s21(3)).</li> </ul> <p><b>Section 11</b> Places a prohibition on certain methods of</p>	<p><b>Exceptions:</b></p> <ol style="list-style-type: none"> <li>1. Anything done <b>under order</b> from MAFF or the Secretary of State (s10(1)).</li> <li>2. The taking or killing of a <b>disabled wild animal</b> which has been disabled other than by the act of the person taking, and which is taken for the purpose of tending and returning it to the wild (s10(3) (a) (b)).</li> <li>3. An <b>incidental result</b> of a lawful operation, and could not have reasonably been avoided (s10(3c)).</li> <li>4. An <b>authorized persons</b> killing or injuring a wild animal for the purpose of preventing serious damage to livestock, crops etc (s10(4)). <ul style="list-style-type: none"> <li>➤ An "authorized person" is the owner or occupier of land, or a person authorized by the owner or occupier, or by a local authority (s27(1)).</li> <li>➤ A person cannot rely on this defence if it became apparent before the time that the action would be necessary, and the person did not apply for a licence, or their application had not been determined (s10(5)).</li> </ul> </li> <li>5. An act done under a <b>specific licence</b> issued by DETR, or other appropriate authority (s16).</li> <li>6. An act done under <b>general licence</b> issued by DETR or other appropriate authority (s16).</li> </ol> <p><b>Defence</b> <b>(For s9(2) Possession of wild animals only)</b></p> <p>A person is not of the possession of wild animals (s9(2)) if they show (on the balance of probabilities)</p>

<p>killing or taking wild animals, such as self-locking snare traps (s11).</p>	<p>the animal had not been taken or killed, or sold in contravention of the WCA (s9(3)).</p> <ul style="list-style-type: none"> <li>➤ This section makes this section (s9(2)) a <b>Strict liability offence</b>. If a person chooses to possess a wild animal it is for them to show on the balance of probabilities that their possession is legitimate, a point confirmed in the High Court decision of <i>Kirkland v Robinson</i> [The Times 4 December].</li> </ul>
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\* **Northern Ireland:** Equivalent sections; WO s10 (taking from the wild), s11 (exceptions), s13(sale).

## 5. Taking from the wild, killing and trading in wild plants – Section 13

<p><b>s13(2) Sale of wild plants</b></p> <p>A person is guilty of an offence if they:</p> <ol style="list-style-type: none"> <li>a) <b>sell</b>, offer or expose for sale, or transports for sale any live or dead wild plants or derivative, or</li> <li>b) <b>publishes</b> or causes to be published any advertisement to buy or sell a dead wild plant or derivative.</li> </ol> <ul style="list-style-type: none"> <li>➤ <b>Penalty (s21)</b> Summary Conviction - Level 4 Fine (up to £2500).</li> <li>➤ Fines are imposed with respect to each plant. If more than one plant is involved, the total fine is determined if a person had committed a separate offence with respect to each (s21(3)).</li> </ul>	<p><b>Exceptions</b></p> <ol style="list-style-type: none"> <li>1. An act done under a <b>specific licence</b> issued by DETR, or other appropriate authority (s16).</li> <li>2. An act done under <b>general licence</b> issued by DETR or other appropriate authority (s16).</li> </ol>
<p><b>s13(1) Intentionally picking wild plants</b></p> <p>It is an offence for any person to:</p> <ol style="list-style-type: none"> <li>a) <b>intentionally pick</b>, uproot or destroy any wild plant listed on Schedule 8, or</li> <li>b) for anyone who is not an authorized person, to intentionally uproot any other wild plant.</li> </ol> <ul style="list-style-type: none"> <li>➤ "Wild plant" is any plant which is, or was before it was picked, growing in the wild, and is of a kind which ordinarily grows in Great Britain in a wild state.</li> <li>➤ In proceedings, the plant is presumed to have been a wild plant unless the contrary is shown (s13(4)).</li> <li>➤ <b>Schedule 8</b> lists protected plants which cannot be picked or sold by anybody, including landowners, without a licence, for example many species of orchid, killarney ferns and violet fens.</li> <li>➤ <b>Penalty (s21)</b> Summary Conviction - Level 4 Fine (up to £2500).</li> <li>➤ Fines are imposed with respect to each plant. If more than one plant is involved, the total fine is determined if a person had committed a separate offence with respect to each (s21(3)).</li> </ul>	<p><b>Exceptions</b></p> <ol style="list-style-type: none"> <li>1. An <b>incidental result</b> of a lawful operation which could not reasonably be avoided (s13(3)).</li> <li>2. An act done under a <b>specific licence</b> issued by DETR, or other appropriate authority (s16).</li> <li>3. An act done under <b>general licence</b> issued by DETR or other appropriate authority (s16).</li> </ol>

**Northern Ireland:** Equivalent sections: WO s13(1) (picking) and s13(2) sale.

## 6. Licences – Section 16

This section allows authorities such as DETR to grant licences for the taking, killing, possessing and selling live or dead wild birds, animals and or plants otherwise prohibited under the WCA. *General licences*

authorize any person complying with the conditions of the licence to carry out the otherwise prohibited act. There is no requirement for the person concerned to physically apply for, or hold the licence. *Specific individual licences* must be applied for to carry out other acts prohibited by the WCA.

\* **Northern Ireland:** Equivalent section, WO s18.

## **7. False statements – Section 17**

**A person is guilty of an offence if, for the purpose of obtaining registration or a licence, they make a statement, or provide information recklessly, or which they know is false in a material particular.**

\* **Northern Ireland:** Equivalent section, WO s24.

## **8. Attempts to commit offences – Section 18**

Any person who attempts to commit an offence or has in their possession anything capable of being used to commit an offence shall be guilty of an offence, and punishable in the same way as for the offence.

\* **Northern Ireland:** No equivalent section

## **9. Where to Next?**

Taylor, M.B. (1996). *Wildlife Crime, A Guide to Wildlife Law Enforcement in the United Kingdom*. Department of Environment, London.

RSPB (1997). *Wild Birds and the Law; a plain guide to bird protection today*. RSPB, Bedford.

## Appendix 6, List of Contacts

### **A. Government Departments**

- |  |   |
|--|---|
| <b>1. Department of Environment, Transport and the Regions</b><br>(Global Wildlife Division) | Tollgate House<br>Houlton St<br>Bristol, BS2 9DJ<br>Tel: 0117 987 8000<br>Fax: 0117 987 8393            |
| <b>2. Home Office</b><br>(Constitutional and Community Policy Directorate)                   | Queen Anne's Gate<br>London, SW1H 9AT<br>Tel: 0171 273 2316<br>Fax: 0171 273 2029                       |
| <b>3. Ministry of Agriculture, Food and Fisheries</b>  | Hook Rise South<br>Tolworth, Surbiton<br>Surrey, KT6 7NF<br>Tel: 0181 330 8169<br>Fax: 0181 330 6678    |
| <b>4. Royal Botanic Gardens Kew</b>  | Kew<br>Richmond<br>Surrey, TW9 3AE<br>Tel: 0181 332 5722<br>Fax: 0181 332 5757                          |
| <b>5. Joint Nature Conservation Committee</b>  | Monkstone House<br>City Rd<br>Peterborough, PE1 1JY<br>Tel: 01733 866 871<br>Fax: 01733 555 948         |
| <b>6. English Nature</b>   | Northminster House<br>Peterborough, PE1 1UA<br>Tel: 01733 455 251<br>Fax: 01733 568 834                 |
| <b>7. Scottish Office, Agriculture, Environment and Fisheries Department</b>                 | Pentland House<br>47 Robbs Loan<br>Edinburgh, EH14 1TY<br>Tel: 0131 556 8400                            |
| <b>8. Welsh Office Agriculture Department</b>  | Cathays Park<br>Cardiff, CF1 3QN<br>Tel: 01222 825 111<br>Tel: 01222 825 553<br>Tel: 01222 825 203      |
| <b>9. Scottish Natural Heritage</b>  | Bonnington Bond<br>2/5 Anderson Place<br>Edinburgh, EH6 5NP<br>Tel: 0131 446 2460<br>Fax: 0131 446 2405 |
| <b>10. Department of Agriculture, Northern Ireland</b>                                       | Dundonald House   |

(Animal Health Division)

Upper Newtownards Rd  
Belfast, BT4 3SB  
Tel: 01232 650 111

● UK Enforcement Groups and Specialist Police Contacts

**1. Interpol London**

PO Box 8000  
Spring Gardens  
Tinworth St  
London, SE11 5EN  
Tel: 0171 238 8000/8079  
Fax: 0171 238 8112

**2. HMCE Headquarters**  
(Social and Environment Policy)

First Floor West  
New Kings Beam House  
22 Upper Ground  
London, SE1 9PJ  
Tel: 0171 865 5267  
Fax: 0171 865 4808

**3. HMCE CITES Enforcement Team**

Building 553  
Shoreham Road East  
Heathrow Airport, Hounslow  
Middlesex, TW6 3RJ  
Tel: 0181 910 3830  
Fax: 0181 910 3833

**4. Metropolitan Police**

New Scotland Yard  
Broadway  
London SW1H 0BG  
Tel: 0171 230 3641  
Fax: 0171 230 2152

**5. Warwickshire Police Headquarters**  
Wildlife Advisor to the Association of Chief Police  
Officers

PO Box 4  
Leek, Wootton  
Warwick, CV35 7QB  
Tel: 01926 415 003  
Fax: 01926 415 022

**B. Non-Government Organisations**

**1. RSPB UK Headquarters**

The Lodge  
Sandy, Bedfordshire  
SG19 2DL  
Tel: 01767 680 551  
fax: 0176 692 365

**2. TRAFFIC International**

219c Huntingdon Rd  
Cambridge CB3 0DL  
Tel: 01223 277 427  
Fax: 01223 277 237

**3. WWF UK**

Panda House  
Weyside Park  
Godalming

4. RSPCA Headquarters	Surrey, GU7 1XR Tel: 01483 426 444 Fax: 01483 426 409
5. The Natural History Museum	Causeway Horsham West Sussex, RH12 1HG Tel: 01403 264 181 Fax: 01403 241 048  Cromwell Rd London, SW7 Tel: 0171 938 9123
<b><u>C. Other Organisations</u></b>	
1. CITES Secretariat	15 Chemin des Anemones Case Postale 456 CH 1219 Chatelaine – Geneve Switzerland Tel: 022 979 9129/9140 Fax: 022 797 3417
2. The European Commission	174 Bd. du Triomphe Brussels, B-1160 Belgium Tel: 032 2 296 8741 Fax: 032 2 296 9556

## **Appendix 7, Acronyms**

ACS - Australian Customs Service  
CEMA - The Customs and Excise Management Act 1979  
CITES - The Convention on International Trade in Endangered Species of Wild Fauna and Flora  
CLIO - CITES Liaison and Intelligence Officer  
COTES - The Control of Trade in Endangered Species (Enforcement) Regulations 1997  
CPS - The Crown Prosecution Service  
DETR - The Department of the Environment, Transport and the Regions  
DOE - The Department of Environment (now known as DETR)  
DNA - Deoxyribonucleic acid  
ES (I&E) - Endangered Species (Import and Export) Act 1976  
EU - European Union  
EUWTR - European Union Wildlife Trade Regulations  
GWD - Global Wildlife Division  
HMCE - Her Majesty's Customs and Excise  
MAFF - Ministry for Agriculture, Fisheries and Food  
MCA - Magistrates Courts Act 1980  
MLP - Multilocus Probe  
PAW - Partnership for Action against Wildlife Crime  
PWLO - Police Wildlife Liaison Officers  
RBG - Royal Botanic Gardens  
RSPB - The Royal Society for the Protection of Birds  
RSPCA - The Royal Society for the Prevention of Cruelty to Animals  
SLP - Single Locus Probe  
SOAEFD - Scottish Office of Agriculture, Environment and Fisheries  
STR - Short Tandem Repeat Analysis  
TCM - Traditional Chinese Medicine  
TRAFFIC - Trade Records Analysis of Flora and Fauna In Commerce  
UK - United Kingdom  
US - United States of America  
WCA - The Wildlife and Countryside Act 1981  
WCMC - World Conservation and Monitoring Centre  
WOAD – Welsh Office Agriculture Department  
WWF - The World Wide Fund for Nature