

**WILDLIFE AND PROTECTED AREAS BILL**

(No. of )

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**WILDLIFE AND PROTECTED AREAS BILL**

(No. of )

A BILL

for

AN ORDINANCE

To repeal the Falkland Islands Dependencies Conservation Ordinance 1975; to exclude a number of provisions of English law which would otherwise apply in the Territories; to make new provision in relation to the protection of wild birds, protected wild mammals, native invertebrates and native plants, to prohibit certain methods of killing wild birds and wild mammals; to restrict the introduction of non-native species; to make provision for specially protected areas (SPAs) and marine protected areas (MPAs); and for purposes connected with the foregoing purposes

ENACTED by the Commissioner as follows:

PART I  
PRELIMINARY

**1. Title**

This is the Wildlife and Protected Areas Ordinance [ ]

**2. Commencement**

This Ordinance will come into force on such date as the Commissioner may appoint by notice published in the *Gazette* provided that the Commissioner may by one or more notices so published appoint different dates for the coming into force of different provisions of this Ordinance.

**3. Application**

This Ordinance applies throughout the Territories (including the internal waters), the territorial sea and the Maritime Zone.

**4. Ordinance to bind the Crown**

(1) Subject to subsection (2), this Ordinance and regulations made under it bind the Crown.

(2) No contravention by the Crown of any provision of this Ordinance or of any regulations made under it makes the Crown criminally liable; but the Supreme Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission by the Crown which constitutes such a contravention.

(3) Despite subsection (2), this Ordinance applies to persons in the public service of the Crown as it applies to other persons.

### **Interpretation**

**5.—(1)** In this Ordinance, unless the context otherwise requires—

“authorised person” means a person in the public service of the Crown, a commissioned officer in Her Majesty’s armed forces and any other person appointed in writing by or under the authority of the Commissioner to be an authorised person for the purposes of this Ordinance;

“Commissioner”, in relation to the exercise of any power conferred by this Ordinance upon the Commissioner, includes a public officer to whom the Commissioner has under subsection (2) delegated in writing the exercise of that power;

“contravene” includes fail to comply with (and “contravention” has a corresponding meaning);

“injury” includes any disability, disease or infestation and “injure” has a corresponding meaning;

“internal waters” means those parts of the sea which lie to the landward of the baselines of the territorial sea of the Territories established by article 3 of the South Georgia and South Sandwich Islands (Territorial Sea) Order 1989;

“living organism” includes a virus;

“marine mammal” means any mammal of the Orders *Cetacea* (whales, dolphins and porpoises) or *Pinnipedia* (seals);

“MPA” means a marine protected area designated by an Order under section [19\(1\)](#);

“Maritime Zone” means the maritime zone for the Territories established by Proclamation No.1 of 1993, that is to say a zone having as its inner boundaries the outer limits of the territorial sea of the Territories and its seaward boundary a line drawn so that each point on the line is 200 nautical miles from the nearest point on the baselines defined, in the case of South Georgia, in Article 3(3) and (4) of the Schedule to the South Georgia and South Sandwich Islands (Territorial Sea) Order 1989 and, in the case of the South Sandwich Islands, in Article 3(1) and (2) of that Order;

“native invertebrate” means a terrestrial, freshwater or marine invertebrate (at any stage of its life cycle) which is indigenous to the Territories;

“native plant” means any terrestrial, freshwater or marine vegetation, including flowering plants, ferns, clubmosses, bryophytes, lichens, fungi and

algae indigenous to the Territories and includes such vegetation at any stage of its life cycle and seeds and other propagules of such vegetation;

“non-native” —

(a) in relation to a bird, means any bird which is not a wild bird and includes an egg of such a bird;

(b) in relation to a mammal, means any mammal which is not a protected wild mammal;

(c) in relation to a plant, means any terrestrial, freshwater or marine vegetation (including flowering plants, ferns, clubmosses, bryophytes, lichens, fungi and algae and seeds and other propagules of such vegetation) at any stage of its life cycle if such vegetation is not a native plant;

(d) in relation to any freshwater fish means any such fish and includes any egg or spawn of such a fish;

(e) in relation to an invertebrate, means any terrestrial, freshwater or marine invertebrate which is not a native invertebrate;

(f) in relation to micro-organisms, means viruses, bacteria and yeasts which are not ordinarily present in the Territories;

“non-sterile soil” means soil, sand or aggregate which is not free of every living organism;

“offence under this Ordinance” includes any offence under any provision of regulations made under this Ordinance, incitement to commit an offence under this Ordinance, conspiracy to commit an offence under this Ordinance and any attempt to commit an offence under this Ordinance;

“pick” in relation to a plant means gather or pluck any part of the plant without uprooting the plant;

“protected feature”, in relation to an MPA or SPA, means any flora, fauna, habitat or other feature which is sought to be conserved by the order designating the area;

“protected wild mammal” means a mammal of any species included in Schedule 1;

“recreational vessel” means any vessel designed or used for any recreational or sporting purpose (whether or not as part of a commercial enterprise) and includes a yacht;

“seashore” means—

(a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and

(b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity

“SPA” means an area which is a specially protected area designated by an Order under section 17(1);

“uproot”, in relation to a plant, means dig up or otherwise remove the plant from the land on which it is growing;

“vessel” includes a hovercraft, an aircraft capable of landing on water, and any other craft of any kind whatsoever capable of travelling on, in or under water, whether or not self propelled and whether or not capable of carrying any person;

“wild bird” means a bird of a species indigenous to the Territories or occurring there naturally by reason of seasonal migration or as a vagrant species.

(2) The Commissioner may by instrument in writing delegate to any named public officer or public officers, subject to such conditions and limitations, if any, as he may specify in that instrument, the exercise of any power he has under this Ordinance specified in that delegation except that the Commissioner shall not delegate his power under section 31 to make regulations.

## PART II PROTECTION OF WILDLIFE

### *Protection of wild birds and protected wild mammals*

#### **6. Protection of wild birds and protected wild mammals**

(1) Subject to this Part, and except as permitted under a permit granted under section 22 (1), a person commits an offence who intentionally or recklessly—

(a) kills, injures, captures, handles or molests a wild bird or a protected wild mammal;

(b) administers any noxious substance to a wild bird or to a protected wild mammal;

(c) damages or destroys the breeding site or the nesting place or nest of a wild bird while that nesting place or nest is in use or is being built;

(d) takes, destroys or damages an egg of a wild bird; or

(e) while on foot disturbs a breeding or moulting wild bird, the dependent young of any wild bird or protected wild mammal or a concentration of wild birds or protected wild mammals.

(2) Subject to this Part a person commits an offence who—

(a) uses a vehicle, vessel or aircraft in a manner that disturbs a concentration of wild birds, or which disturbs any protected wild mammal,

(b) uses firearms or explosives in such a manner; or

(c) does anything that is likely to cause significant damage to the habitat of any wild bird or protected wild mammal.

### **7. Supplementary to section 6**

(1) Where a person is charged with an offence in respect of a contravention of section 6(1) (a) (killing, injuring, capturing, handling or molesting a wild bird or a protected wild mammal), it is a defence for him to show that the act in question was done for the relief of the suffering of the bird or mammal in question.

(2) It is a defence for a person charged with an offence under section 6(1) (a) of capturing or handling a wild bird or a protected wild mammal if he shows that the wild bird or protected wild mammal—

(a) was injured otherwise than by an unlawful act on his part; and

(b) was, with the intention of releasing the protected wild bird or protected wild mammal to the wild as soon as reasonably possible, captured or handled by him for the purpose of attending to its injury or injuries.

(3) It is a defence for a person charged with an offence under section 6(1) (b) of administering a noxious substance to a wild bird or a protected wild mammal to show that the noxious substance was reasonably used by him in providing treatment in relation to any injury or disease suffered by the wild bird or protected wild mammal.

### *Protection of other native fauna*

### **8. Protection of native invertebrates**

(1) Subject to this Part, and except as permitted under a permit granted under section 22 (1), it is an offence for a person intentionally or recklessly—

(a) to do anything that is likely to cause significant damage to the habitat of any native invertebrate; or

(b) to collect any native invertebrate other than from within a building or its immediate surroundings,

but nothing in paragraph (a) shall apply to any damage arising to the habitat of a native invertebrate from the lawful operation of a vessel.

(2) In any proceedings for an offence under subsection (1), the invertebrate shall be presumed to be a native invertebrate unless the contrary is shown.

*Protection of native plants*

**9. Protection of native plants**

(1) Subject to this Part and except as permitted under a permit granted under section 22 (1), a person commits an offence who intentionally or recklessly—

(a) picks, collects, uproots or applies any noxious substance to any native plant; or

(b) damages or destroys a concentration of native plants in such a manner or to such an extent that their local distribution or abundance will be significantly affected

but nothing in this subsection shall apply to anything done in the course of lawful operation of a vessel.

(2) In any proceedings for an offence under subsection (1), the plant shall be presumed to be a native plant unless the contrary is shown.

*Other offences in relation to wildlife*

**10. Unlawful possession of live or dead wildlife.**

(1) Subject to this Part and except as permitted under a permit granted under section 22 (1), a person commits an offence if he knowingly has in his possession, transports, sells, exchanges or offers for sale or exchange—

(a) any live or dead wild bird, protected wild mammal, native invertebrate or native plant;

(b) any egg of a wild bird; or

(c) any part of, or anything derived from, such a wild bird, protected wild mammal, native invertebrate; egg of a wild bird or native plant.

(2) It is a defence for a person charged with an offence under subsection (1) to show that—

(a) the wild bird, protected wild mammal, or native invertebrate had not been killed or captured, or had been killed or captured otherwise than in contravention of a provision of this Part; or

(b) that—

- (i) the wild bird, or protected wild mammal or native invertebrate;
- (ii) the egg of a wild bird;
- (iii) the part of or thing derived from a wild bird protected wild mammal or native invertebrate, or
- (iv) the native plant or thing derived from it,

had previously been sold or exchanged (whether to him or any other person) otherwise than in contravention of subsection (1).

### **11. Introduction of non-native species**

(1) Subject to the provisions of this Part and except as permitted under a permit granted under section 22 (1), a person commits an offence who releases or allows to escape into the wild in the Territories any animal or plant of a non-native species, but the keeping of it on board a vessel shall not amount to a contravention of this subsection.

(2) Subject to the provisions of this Part and except as permitted under a permit granted under section 22 (1), a person commits an offence who—

- (a) lands or permits to alight on land or escape onto land or into the sea any animal of a non-native species;
- (b) plants or distributes in the wild in the Territories seeds or propagules of a non-native plant; or
- (c) cultivates in the Territories, except in a building and with the written permission of the Commissioner, any non-native plant.

(3) Subject to the provisions of this Part, and except as permitted under a permit granted under section 22 (1), a person commits an offence who releases or allows to escape in the Territories any non-native micro-organism other than one inhabiting a human body.

(4) In any proceedings for an offence under any of the preceding subsections, the organism concerned shall be presumed to be non-native unless the contrary is shown.

(5) Subject to subsection (6), it shall be a defence to a charge of committing an offence under subsection (1), (2) or (3) for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(6) Where the defence provided by subsection (5) involves an allegation that the commission of the offence was due to the default of another person, the person charged shall not, without leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his possession.

**12. Prohibition of certain methods of capturing or killing wild birds or wild mammals**

(1) Except as permitted under a permit granted under section 22 (1), a person commits an offence who—

(a) sets in position or knowingly causes or permits to be set in position any trap or snare, any springe, gin, hook and line, any electrical device for killing stunning or frightening any wild bird or protected wild mammal which comes into contact with it or any poisonous, poisoned or stupefying substance, being an article which is of such a nature and is so placed as to be calculated to cause bodily injury to any wild bird or protected wild mammal coming into contact with it,

(b) whilst such a trap or snare remains in position, fails without reasonable excuse to inspect it, or cause it to be inspected at least once every day;

(c) uses for the purpose of killing or capturing any wild bird or protected wild mammal any article mentioned in paragraph (a), whether or not the article is of the nature and is or was placed as mentioned in that paragraph;

(d) sets in position any self-locking snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild mammal coming into contact with it;

(e) uses for the purpose of killing or capturing any wild mammal any self-locking snare of such a nature or so placed as mentioned in paragraph (d);

(f) uses for the purpose of killing or capturing any wild bird or wild mammal—

(i) any automatic or semi-automatic weapon;

(ii) any bow or crossbow or any explosive other than ammunition for a firearm;

(iii) any device for illuminating a target or sighting device for night shooting;

(iv) any form of artificial light or any mirror or other dazzling device;

(v) any gas or smoke not falling within paragraph (a) or (b); or

(g) uses for the purpose of killing or capturing any wild bird—

(i) any net, baited board, birdlime or substance of a like nature to birdlime;

(ii) any shotgun of which the barrel has an internal diameter at the muzzle of more than one and three quarter inches; or

(iii) any chemical wetting agent;

(h) uses any live bird or live mammal whatsoever, any sound recording or any live bird or live mammal as a decoy for the purpose of killing or capturing any wild bird or protected wild mammal;

(i) uses any mechanically propelled vehicle or vessel in immediate pursuit of a wild bird or protected wild mammal for the purpose of driving, killing or capturing that wild bird or wild mammal; or

(k) knowingly causes or permits to be done an act which is mentioned in the foregoing provisions of this subsection

(2) The Commissioner may, by Order, either generally or in relation to any kind of wild bird, wild mammal or protected wild mammal, amend subsection (1) by adding any method of killing or capturing or omitting any such method as is mentioned in that subsection.

(3) In any proceedings in relation to a bird alleged to be a wild bird for an offence under any provision of subsection (1) that bird shall be presumed to have been a wild bird unless the contrary is shown.

(4) In any proceedings in relation to a mammal alleged to be a protected wild mammal for an offence under subsection (1) that mammal shall be presumed to have been a protected wild mammal unless the contrary is shown.

(5) In any proceedings for an offence under subsection (1) (a) or (d) it shall be a defence for the accused to show that the article was set in position or used for the purpose of killing or taking, in the interests of public health, fisheries or nature conservation any bird or mammal which could lawfully be taken or killed by those means and that he took all reasonable precautions to prevent injury to any wild bird or protected wild mammal.

### **13. Schedules 1 to 4**

(1) Schedule 1 has effect to list protected wild mammals.

(2) Schedule 2 has effect to list species of native invertebrate.

(3) Schedule 3 has effect to list species of native plant.

(4) Schedule 4 has effect to designate as specially protected species the species of wild birds, protected wild mammals, native invertebrates and native plants mentioned in the list appearing in that Schedule.

(5) The Commissioner may by Order—

(a) amend any of Schedules 1, 2, 3 and 4 by amending the name of any species listed in it, removing the name of any species from it or by adding the name of any other species to it; or

(b) amend Schedule 1, by transferring a species from one paragraph of it to the other.

(6) The common name or names of any species given in the second column of any Schedule is to be regarded as being included for guidance only and in the event of any dispute or proceedings shall not be taken into account.

**14. Special protection to be accorded to specially protected species**

(1) Specially protected species shall be accorded special protection, including, where necessary, action plans designed to stabilise or restore their populations.

(2) Any action plan prepared for the purposes of this section and any amendment of such a plan shall be approved by the Commissioner and shall not come into effect until it has been so approved.

(3) The Commissioner may make such regulations as he considers necessary or expedient in connection with the implementation of any action plan.

*Control of imports, exports and movement of wildlife within the Territories*

**15. Control of imports, exports and movement of wildlife within the Territories**

(1) Except as permitted under a permit granted under section 22 (1), a person commits an offence who—

(a) imports into the Territories or exports from the Territories, living or dead, any wild bird, protected wild mammal, freshwater fish, native invertebrate or any native plant, or any part or derivative of any such species.

(b) imports non-sterile soil into the Territories or

(c) intentionally transports to and releases at a place within the Territories any thing of a kind mentioned in paragraph (a) or (b) which he knows or has reasonable cause to believe has been acquired at another place within the Territories with a view to such transport and release.

(2) Any wild bird or protected wild mammal or part of a wild bird or protected wild mammal taken from the sea within the internal waters, territorial sea or Maritime Zone shall be deemed not to have been imported into the Territories if it is landed in the Territories and whether it is landed directly or after having been taken to the Falkland Islands.

*General defences*

**16. General defences for the purposes of this Part**

(1) Where a person is charged with an offence under section 6, 8, 9, 11 or 15 it shall be a defence to prove that the contravention in question occurred in the course of dealing with an emergency relating to—

- (a) the safety of human life;
- (b) the safety of any vessel or aircraft of significant value or cargo, equipment or facilities of significant value or importance, or
- (c) the protection of the environment.

(2) It is a defence for a person charged with an offence under any provision of section 6, 8, 9, 11 or 15 to show that the act rendered unlawful under that provision was the incidental result of an otherwise lawful operation and could not reasonably have been avoided.

PART III  
SPECIALLY PROTECTED AREAS (SPAs) AND MARINE PROTECTED  
AREAS (MPAs)

*Specially protected areas*

**17. Specially protected areas**

(1) If the Commissioner believes that any area of land is in need of a high level of protection to preserve its special values he may by Order under this subsection designate that area as a specially protected area (“SPA”).

(2) The Commissioner may only designate an area as an SPA if he believes that any of the following applies in respect of that area —

- (a) the flora or fauna to be found in the area render it of significant conservation or ecological importance;
- (b) it is of significant geological, geomorphological or landscape importance;
- (c) it is of high scientific research interest; or
- (d) it is free of rats.

(3) The reference in subsection (1) to land includes any land lying above mean low water mark.

(4) If an area of land to which an Order relates includes land falling within subsection (3) (area A), it may also include land lying below mean low water mark (area B) if—

- (a) area B adjoins area A, and
- (b) any of the conditions set out in subsection (5) is satisfied

(5) The conditions are—

- (a) that the flora, fauna or other features leading to the designation of area A is or are also present in area B;

(b) that the designation of area A is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B;

(c) that, without the addition of area B, the identification of the boundary of the land to which the Order relates (either in the Order or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

(6) An Order under subsection (1) must specify—

(a) the boundaries of the area designated;

(b) the flora, fauna, geological, physiographical or other features giving rise to the making of the Order (the protected features);

(c) the conservation objectives for the area,

and may prohibit entry into the area without permission and provide that permission to enter it can only be granted in special circumstances.

(7) Nothing in an Order prohibiting entry into an SPA applies to an authorised person acting in the course of his duties.

(8) A person commits an offence who, except as provided by subsection (7), contravenes a provision of an Order which prohibits entry into an SPA without being authorised to enter the SPA by a permit granted under section 22 (1)

### **18. Management plans and regulations in relation to specially protected areas**

(1) The protection and management of an SPA shall be achieved by the implementation of a management plan devised in relation to that SPA or a number of SPAs including that SPA.

(2) A management plan is a scheme for—

(a) conserving, protecting, preserving or protecting against, as the case may be, such of the features mentioned in paragraphs (a) to (d) of section 17(2) as have justified the area being designated as an SPA; or

(b) as the case may be, restoring them; or

(c) both.

(3) Provision for implementation of a management plan shall be made by regulations under this subsection, which shall contain a synopsis of the management plan and may—

(a) provide for any of the matters mentioned or referred to in subsection (2),

(b) prohibit or restrict (either absolutely or subject to exceptions specified in the regulations) entry into or movement within the SPA of vehicles or craft of any kind;

- (c) prohibit or restrict all or specified activities within the SPA;
- (d) impose or provide for the imposition of conditions subject to which restricted activities may be undertaken in the SPA;
- (e) prohibit within the SPA the depositing of rubbish or other wastes and the discharge of noxious or polluting substances;
- (f) prohibit the bringing into the SPA of any weapon or other device or thing designed or adapted for the purpose of killing, or capturing any wild bird or protected wild mammal;
- (g) prohibit the lighting of any fire, or the smoking of any cigar, cigarette or pipe within the SPA;
- (h) prohibit the intentional or reckless bringing into the SPA of any animal, bird, invertebrate, plant or micro-organism.

*Marine protected areas*

**19. Marine protected areas**

(1) Subject to subsection (2), if the Commissioner believes that any area of sea falling within subsection (6) is in need of protection he may by Order under this subsection designate that area as a marine protected area (“MPA”).

(2) The Commissioner may only designate an area as an MPA by Order under subsection (1) if he believes it is desirable to do so for the purpose of conserving one or more of—

- (a) marine flora or fauna;
- (b) any species dependent on the marine environment;
- (c) marine habitats or types of marine habitat;
- (d) features of geological or geomorphological interest;
- (e) features of heritage interest.

(3) The reference in subsection (2) (a) to conserving marine flora or fauna and the reference in subsection 2 (b) to conserving any species dependent on the marine environment includes, in particular, references to conserving any species that is rare or threatened because of—

- (a) the limited number of individuals of that species;
- (b) the limited number of locations within the Territories, regionally or globally, in which that species is present.

(4) The references in subsection (2) (a) and (b) to conserving marine fauna or flora, species dependent on the marine environment or habitats include references to conserving the diversity of such flora, fauna or habitats, whether or not any or all of them are rare or threatened.

(5) Any reference to conserving a thing includes references to—

- (a) assisting in its conservation;
- (b) enabling or facilitating its recovery or increase.

(6) An area falls within this subsection if—

- (a) it falls entirely within one or more of—
  - (i) the seaward limits of the territorial sea;
  - (ii) the Maritime Zone north of 60 degrees South of latitude; and
- (b) except so far as is permitted by section 20(5) read with section 20(6), it does not include any area lying above mean high water spring tide.

## **20. Further provisions as to orders designating MPAs**

(1) An Order under section 19 (1) must—

- (a) identify the boundaries of the area designated;
- (b) state the protected feature or features;
- (c) state the conservation objectives for the MPA.

(2) The boundary of an MPA may be defined by, or by reference to, mean high water spring tide.

(3) An Order under section 19(1) designating an area falling within 19(6) (a) (i) or (ii) must designate—

- (a) an area of land (whether or not covered by water) only;
- (b) an area of land together with all or some of the water covering it.

(4) Section 19 (6) (a) (i) and (ii) include any island, whether or not any part of it lies above mean high water spring tide.

(5) If an MPA includes an area falling within section 19(6) (a) (i) (area A), it may also include an area of the seashore lying above mean high water spring tide (area B) if—

- (a) area B adjoins area A, and
- (b) any of the conditions in subsection (6) are satisfied.

(6) The conditions are—

- (a) that the protected feature or features leading to the designation of area A is or are also present in area B;
- (b) that area A is designated for the purpose of protecting marine flora or fauna, or species dependent on the marine environment, which are dependent (wholly or in part) on anything which takes place in, or is present in, area B;
- (c) that, without the inclusion of area B, the identification of the boundary of the MPA (either in the Order designating the area or on the ground for the purpose of exercising functions in relation to it) would be impossible or impracticable.

(7) An Order under section 19 (1) may be amended or revoked by a further Order.

## **21. Conservation orders for the protection of MPAs**

(1) The Commissioner may make one or more Orders for the purposes of furthering the objectives of an MPA.

(2) In this Part “conservation order” means an Order under subsection (1).

(3) The provision that may be made by a conservation order includes, in particular, provision—

- (a) prohibiting or restricting entry into, or any movement or activity within, the MPA by persons;
- (b) prohibiting or restricting entry into, or any movement or other activity within the MPA by vessels, including recreational vessels; or where appropriate, vehicles;
- (c) restricting the speed at which any vessel may move in the MPA or in a specified area outside the MPA where that movement might hinder the conservation objectives of the MPA;
- (d) prohibiting or restricting the anchoring of any vessel within the MPA;
- (e) prohibiting or restricting the doing of anything in the MPA which will interfere with the seabed or damage or disturb any object in the MPA,

provided that no provision in a conservation order shall have effect so as to prevent a vessel having an innocent right of passage or transit through the MPA doing anything it is entitled to do in the exercise of that right.

(4) The provision that may be made by a conservation order also includes provision prohibiting or restricting entry into or any movement or other activity on, any part of the seashore that adjoins the MPA by persons or vehicles.

- (5) A conservation order may be made subject to specified exceptions.
- (6) A conservation order may be made so as to apply to internal waters.
- (7) A conservation order may make different provision for different cases including (in particular)—
- (a) different parts of the MPA;
  - (b) different times of the year;
  - (c) different means or methods of carrying out any activity.
- (8) In this section “specified” means specified in the Order.
- (9) Nothing in a conservation order applies to anything done—
- (a) in the interests of the prevention or detection of crime
  - (b) for securing public health; or
  - (c) for the purpose of saving human life, securing the safety of any vessel of significant value or of preventing damage to any vessel or cargo (in either case of significant value) from any danger which could not have been foreseen or avoided.
- (10) Subject to subsection (9) and to any permit granted to him under section 22(1), a person who contravenes a conservation order made under subsection (1) of this section commits an offence.

#### PART IV PERMITS

### **22. Permits to do things otherwise prohibited**

(1) The Commissioner, may, of his own motion or on the application of any person, grant for a purpose specified in subsection (5) a permit authorising any person who is specified or of a description specified in the permit to do anything specified or of a description specified in the permit that would otherwise constitute a contravention of section 6, 8, 9, 10, 11, 12, 15, or 17, or of any prohibition or restriction contained in an Order made under section 18(1) or section 21 (1).

(2) Unless the Commissioner is satisfied that the permit is granted for a compelling scientific purpose or that the grant of the permit will not jeopardise the survival of the species concerned or the survival of the local population of that species, he shall not grant a permit under subsection (1)—

- (a) to kill, capture or handle a wild bird, protected wild mammal or native invertebrate;
- (b) to take an egg of a wild bird; or

(c) to pick, collect or uproot a native plant.

(3) The Commissioner shall not grant a permit under subsection (1) to enter an SPA in relation to which the Order designating it indicates that a permit to enter it will only exceptionally be granted unless the Commissioner is satisfied that the applicant has demonstrated that in the exceptional circumstances disclosed in his application the permit ought to be granted

(4) The Commissioner may grant a permit under subsection (1) subject to such conditions as he thinks fit including—

(a) conditions to be complied with by persons doing anything authorised by the permit; and

(b) conditions requiring the person to whom the permit is granted to provide information to the Commissioner.

(5) The Commissioner may require such fee as he may from time to time think fit to charge to be paid on the grant of any permit under subsection (1) and may waive payment of a fee in any particular case.

(6) Subject to subsection (7), the purposes for which a permit may be granted under subsection (1) are—

(a) scientific, research and educational purposes;

(b) ringing, tagging, or marking, or examining any ring, tag or mark on, any protected wild mammal or any wild bird;

(c) conserving, wild birds, protected wild mammals, native invertebrates or native plants or for re-introducing them to the Territories or re-establishing them in particular areas within the Territories;

(d) conserving or restoring habitats;

(e) preserving public health or public safety;

(f) preventing the spread of disease, and

(g) any other purpose for which the Commissioner believes that a permit may properly, in all the circumstances, be granted.

(7) Subject to subsection (8), permits issued for any of the purposes set out in subsection (6) shall be limited so as to ensure, as far as possible, that—

(a) the diversity of native species and the balance of the natural ecological systems of the Territories are maintained;

(b) no more protected wild mammals, wild birds, native invertebrates or native plants are taken than are necessary for the purpose or purposes for which the permit was granted;

(c) no more protected wild mammals or wild birds are killed or captured from local populations than can reasonably be expected to be replaced in the following breeding season by natural reproduction.

(8) Nothing in subsections (2), (6) or (7) shall apply in relation to reindeer (*Rangifer tarandus*) so as—

(a) to limit the purposes for which a permit under subsection (1) in respect of that species may be granted; or

(b) to require any limitation of a kind mentioned in subsection (7) to be imposed in a permit granted under subsection (1) in respect of that species.

### **23. Supplementary to section 22**

(1) A permit under section 22 (1) which authorises any person to kill or capture any wild bird or protected wild mammal shall specify the area within which and the methods by which such a wild bird or protected wild mammal may be killed or captured and shall be granted for a period not exceeding one year specified in the permit.

(2) A person commits an offence who—

(a) contravenes any condition of a permit granted under section 22 (1); or

(b) fails without reasonable excuse to produce to an authorised person a permit, or a copy of a permit issued under section 22 (1).

### **24. False statement made to obtain a permit**

A person commits an offence who for the purpose of obtaining for himself or another person the grant of a permit under section 22 (1)—

(a) makes a statement or representation, or furnishes any document or information, which he knows to be false in a material particular; or

(b) recklessly makes a statement or representation, or furnishes a document or information which is false in a material particular.

### **25. Permits: applications, production, revocation and suspension**

(1) Regulations may make provision—

(a) as to the procedure for making applications for permits under section 22 (1),

(b) as to the circumstances in which permits may be required to be produced,

- (c) as to the circumstances in which permits are liable to be revoked or suspended by the Commissioner,
- (d) as to the notice to be given before permits are revoked or suspended, and as to the other procedure to be followed in relation to the revocation or suspension of permits, and
- (e) for appeals against the revocation or suspension of permits, and as to the procedure to be followed in relation to such appeals (including provision in accordance with which such procedure is to be determined).

PART V  
PROVISIONS AS TO OFFENCES  
AND CONCLUDING PROVISIONS

*Provisions in relation to offences*

**26. Offences by bodies corporate**

(1) Where an offence under this Part has been committed by a body corporate and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

**27. Institution of proceedings**

Proceedings for an offence under this Ordinance shall not be instituted except by or with the consent of the Attorney General for the Territories:

Provided that this section shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, notwithstanding that the necessary consent for institution of proceedings has not been obtained.

**28. Power of arrest etc.**

(1) Regulations may make provision for—

- (a) the arrest anywhere in the Territories of any person suspected of committing an offence under this Ordinance;
- (b) stopping and searching any person suspected of committing any such offence;

(c) the search without a warrant of any premises, land, vessel, vehicle or aircraft which it is believed may contain any evidence of any such offence;

(d) the authorisation of persons to exercise the powers referred to in this and the following subsection.

(2) Regulations may make provision for—

(a) the conveyance in custody of any person arrested under regulations made by virtue of subsection (1) to any place, whether in the Territories or elsewhere, where he can be tried for the offence in question;

(b) the seizure and detention of any article which may be evidence of an offence under this Ordinance and its conveyance to any place, whether in the Territories or elsewhere, where a person charged with that offence can be tried, and

(c) securing the attendance, before any court, whether in the Territories or elsewhere, before which a person can be tried for an offence under this Ordinance, of any person required to give evidence or produce documents in proceedings relating to that offence.

### **29. Trial of offences under this Ordinance**

All offences under this Ordinance shall be tried summarily by the Magistrate's Court which, on convicting an offender, shall have power, notwithstanding any other law of the Territories, to impose any penalty provided for by section 30.

### **30. Penalty for offences under this Ordinance**

(1) A person convicted of an offence under this Ordinance is liable to a fine or to imprisonment for a term not exceeding two years or both a fine and such imprisonment.

(2) In subsection (1) "a fine" means a fine of such amount as the Magistrate's Court sees fit to impose having regard to the gravity and consequences of the offence, the need to discourage others from committing like offences and the means and circumstances of the offender

### *Concluding provisions*

### **31. Regulations**

Regulations under this Ordinance may make—

(a) different provision for different cases or circumstances, and

(b) incidental and supplementary provisions.

### **32. Repeals**

The Wildlife and Protected Birds Ordinance 1913 and the Falkland Islands Dependencies Conservation Ordinance 1975 are hereby repealed

### **33. Exclusion of provisions of English law**

The following provisions of English law shall not apply as part of the law of the Territories except by virtue of a provision of the law of the Territories applying them by name—

- (a) the Wildlife and Countryside Act 1981;
- (b) the Countryside and Rights of Way Act 2000; and
- (c) Parts 2 and 3 of the Natural Environment and Rural Communities Act 2006

**Schedule 1**  
**Protected wild mammals**

(section3)

1. Marine mammals of the Orders *Cetacea* (whales, dolphins and porpoises) or *Pinnipedia* (seals);
2. Reindeer (*Rangifer tarandus*]

**Schedule 2**  
**Species of native invertebrate**

**Schedule 3**  
**Species of native plant**

**Schedule 4**  
**Specially protected species**