

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4504 of 20 September, 2018

B. 19/18

BILL

FOR

AN ACT to amend the Animals and Birds Act.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Animals and Birds (Amendment) Act 2018.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of the Animals and Birds Act.

3.(1) The Animals and Birds Act is amended in accordance with this section.

(2) Delete “and birds”, “or bird” and “or birds” in every instance that those words appear.

(3) For “Minister for the Environment” and “Minister with responsibility for the Environment” substitute “Minister” in every instance that those words appear, with the exception of section 2.

(4) In section 2—

(a) for the definition of “animal” substitute—

““animal” means any domestic or captive member of the animal kingdom;”;

- (b) delete the definition of “bird”;
- (c) after the definition of “cattle” insert–
 - ““cetacea” means the order of marine mammals comprising whales, dolphins and porpoises and “cetacean” shall refer to an animal in that order;
 - “child” means a person aged 16 or under;”;
- (d) in the definition of “domestic animal” for “to serve some purpose for the use of man” substitute “and shall include such feral populations of species that are ordinarily domesticated as may be specified by the Minister after consultation with the Nature Conservancy Council”;
- (e) for the definition of “the EC Regulation” substitute–
 - ““the EC Regulation” means Regulation (EC) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) 998/2003 as amended from time to time;”;
- (f) in the definition of “fowl” insert “domestic” before “goose”, “duck” and “pigeon”;
- (g) in the definition of “Government Veterinary Practitioner” after “appointed” insert “for the purposes of this Act”;
- (h) after the definition of “Nature Conservancy Council” insert–
 - ““owner” means a person responsible for or in charge of such an animal whether on a permanent or temporary basis, and who provides the animal with, inter alia, a suitable diet, suitable accommodation and protection. For the purposes of this Act, a person who owns an animal shall always be regarded as being a person who is responsible for it. Where a child is responsible for an animal, the parent or guardian of the child shall be treated as the owner of that animal;”;

- (i) after the definition of “vaccinated” insert–

““wild animal” means any wild or feral member of the animal kingdom, not being a domestic or captive animal;”.

- (5) For section 3 substitute–

“Importing or keeping diseased animals.

3. A person who imports any animal which he knows is likely to be suffering from any contagious or infectious disease that is a serious threat to animal or public health itself or if it spreads is guilty of an offence against this Act”.

- (6) For section 4 substitute–

“Failure to notify diseases.

4. A person who, having the custody of any animal which to his knowledge is likely to be suffering from any contagious or infectious disease and fails to notify the fact forthwith to the Government Veterinary Practitioner or to the Environmental Agency is guilty of an offence against this Act.”

- (7) In section 5–

- (a) the section is renumbered as section 5(1);
- (b) for “shall be deemed to have committed cruelty in respect of such animal or bird and is guilty of an offence against this Act” substitute “shall be guilty of an offence of cruelty within the meaning of this Act”.
- (c) after subsection (1) insert–

“(2) A person who commits an offence under subsection (1) is liable–

- (a) on summary conviction to imprisonment for a term not exceeding twelve months or the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for five years.

(3) For the purposes of this section, an owner shall be deemed to have permitted cruelty within the meaning of this Act if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom:

Provided that, where an owner is convicted of permitting cruelty within the meaning of this Act by reason only of his having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(4) The provisions of this section shall also apply to wild animals.”.

(8) In section 6 delete “in circumstances likely to cause the animal any unnecessary suffering”.

(9) In section 7 for “Government veterinary surgeon” substitute “Government Veterinary Practitioner”.

(10) In section 10–

(a) in subsection (6)(d) after “blood” insert “or saliva sample”;

(b) in subsection (6C) delete “by the 1st day of September”;

(c) in subsection (7B) after “blood sample” insert ““or, exceptionally, at the discretion of the competent person taking the sample, from the saliva sample”;

(d) in subsection (7C) after “blood” insert “or saliva”.

(e) after subsection (9) insert–

“(10) The Minister may by regulations provide for the provisions of this section to extend to cats.”.

(11) After section 12 insert—

“Protection of cetacea.

12A.(1). It is an offence—

- (a) deliberately to capture injure or kill any cetacean;
- (b) deliberately to disturb any cetacean—
 - (i) if the disturbance is such as is likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young, or migrate; or
 - (ii) if the disturbance significantly affects the local distribution or abundance of the species to which it belongs.

(2) It is an offence for any person—

- (a) to have in his possession or control;
- (b) to transport;
- (c) to sell or exchange; or
- (d) to offer for sale or exchange,

any live or dead cetacean, or part thereof, or anything derived from a cetacean or part thereof.

(3) The offences in subsections (1) and (2) apply to all stages of the life of the animals to which they apply.

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

Exceptions from section 12A.

12B(1) A person shall not be guilty of an offence under section 12A(1) or under 12A(2)(a) or (b) if he shows that the contravention in question—

- (a) was in relation to an animal that had been disabled otherwise than by his unlawful act; and
- (b) was done solely for one or more of the purposes of—
 - (i) tending and releasing it when no longer disabled; or
 - (ii) releasing it after it had been tended.

(2) A person shall not be guilty of an offence under section 12A(1) or under section 12A(2)(a) or (b) if he shows that the contravention in question—

- (a) was in relation to an animal that had been disabled otherwise than by his unlawful act and that there was no reasonable chance of it recovering; and
- (b) was done solely for one or more of the purposes of—
 - (i) ending the animal's life; or
 - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person shall not be guilty of an offence under section 12A(1) by reason of the injuring of the cetacean if he shows that this was done solely for the purpose—

- (a) of taking a sample by virtue of any provision of the Nature Protection Act; or
- (b) of taking a sample for the purposes of giving evidence in any criminal proceedings in respect of an

offence under this Act, the Nature Protection Act or the Crimes Act 2011.

(4) A person shall not be guilty of an offence under section 12A(2)(a) or (b) if he shows that the contravention in question was done for the purposes of—

- (a) investigating whether an offence is being or has been committed;
- (b) bringing, conducting or giving evidence in, any criminal proceedings in respect of any such offence; or
- (c) giving effect to an order of the Supreme Court.

(5) The defences in subsections (1) to (4) apply unless it is shown by the prosecution that the defendant's action did not satisfy the following conditions—

- (a) that there was no satisfactory alternative; and
- (b) that the action was not detrimental to the maintenance of the populations of the species concerned at a favourable status in their natural range.”.

(12) In section 13 for “all” substitute “Save for any legal proceedings brought under section 5, all”.

(13) In section 16—

- (a) for “that purpose” substitute “those purposes”;
- (b) delete “unless the owner assents”.

(14) In section 20, for “two” substitute “four”.

(15) After section 21, insert—

**“PART VA
ANIMALS IN DISTRESS**

Powers in relation to animals in distress.

21A.(1) If an authorised officer reasonably believes that an animal is suffering, he may take, or arrange for the taking of, such steps as appear to him to be immediately necessary to alleviate the animal's suffering.

(2) Subsection (1) does not authorise destruction of an animal.

(3) If the Government Veterinary Practitioner certifies that the condition of an animal is such that it should in its own interests be destroyed, an authorised officer may—

- (a) destroy the animal where it is or take it to another place and destroy it there; or
- (b) arrange for the doing of any of the things mentioned in paragraph (a).

(4) An authorised officer may act under subsection (3) without the certificate of the Government Veterinary Practitioner if it appears to him—

- (a) that the condition of the animal is such that there is no reasonable alternative to destroying it; and
- (b) that the need for action is such that it is not reasonably practicable to wait for the Government Veterinary Practitioner.

(5) An authorised officer may take an animal into possession if the Government Veterinary Practitioner certifies—

- (a) that it is suffering; or
- (b) that it is likely to suffer if its circumstances do not change.

(6) An authorised officer may act under subsection (5) without the certificate of the Government Veterinary Practitioner if it appears to him—

- (a) that the animal is suffering or that it is likely to do so if its circumstances do not change; and
- (b) that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon.

(7) The power conferred by subsection (5) includes power to take into possession dependent offspring of an animal taken into possession under that subsection.

(8) Where an animal is taken into possession under subsection (5), an authorised officer may—

- (a) remove it, or arrange for it to be removed, to a place of safety;
- (b) care for it, or arrange for it to be cared for—
 - (i) on the premises where it was being kept when it was taken into possession, or
 - (ii) at such other place as he thinks fit;
- (c) mark it, or arrange for it to be marked, for identification purposes.

(9) A person acting under subsection (8)(b)(i), or under an arrangement under that provision, may make use of any equipment on the premises.

(10) The Government Veterinary Practitioner may examine and take samples from an animal for the purpose of determining whether to issue a certificate under subsection (3) or (5) with respect to the animal.

(11) If a person exercises a power under this section otherwise than with the knowledge of a person who is responsible for the animal concerned, he must, as soon as reasonably practicable after

exercising the power, take such steps as are reasonable in the circumstances to bring the exercise of the power to the notice of such a person.

(12) A person commits an offence if he intentionally obstructs a person in the exercise of a power conferred by this section.

(13) A magistrates' court may, on application by a person who incurs expenses in acting under this section, order that he be reimbursed by such person as it thinks fit.

(14) A person affected by a decision under subsection (13) may appeal against the decision to the Supreme Court.

Power of entry for section 21A purposes.

21B.(1) An inspector or police officer may enter premises for the purpose of searching for an animal and of exercising any power under section 21A in relation to it if he reasonably believes—

- (a) that there is an animal on the premises; and
- (b) that the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer.

(2) Subsection (1) does not authorise entry to any part of premises which is used as a private dwelling.

(3) An inspector or a police officer may (if necessary) use reasonable force in exercising the power conferred by subsection (1), but only if it appears to him that entry is required before a warrant under subsection (4) can be obtained and executed.

(4) Subject to subsection (5), a justice of the peace may, on the application of an inspector or police officer issue a warrant authorising an inspector or a police officer to enter premises for the purpose mentioned in subsection (1), if necessary using reasonable force.

(5) The power to issue a warrant under subsection (4) is exercisable only if the justice of the peace is satisfied—

- (a) that there are reasonable grounds for believing that there is an animal on the premises and that the animal is suffering or is likely to suffer if its circumstances do not change; and
- (b) that subsection (6) is satisfied in relation to the premises.

(6) This section is satisfied in relation to premises if any of the following four conditions are met—

- (a) that the whole of the premises is used as a private dwelling and the occupier has been informed of the decision to apply for a warrant;
- (b) that any part of the premises is not used as a private dwelling and that each of the following applies to the occupier of the premises—
 - (i) he has been informed of the decision to seek entry to the premises and of the reasons for that decision;
 - (ii) he has failed to allow entry to the premises on being requested to do so by an inspector or a police officer;
 - (iii) he has been informed of the decision to apply for a warrant.
- (c) that—
 - (i) the premises are unoccupied or the occupier is absent; and
 - (ii) notice of intention to apply for a warrant has been left in a conspicuous place on the premises;
- (d) that it is inappropriate to inform the occupier of the decision to apply for a warrant because—
 - (i) it would defeat the object of entering the premises; or

- (ii) entry is required as a matter of urgency.

Orders in relation to animals taken under section 21A(5).

21C.(1) The magistrates' court may order any of the following in relation to an animal taken into possession under section 21A(5)–

- (a) that specified treatment be administered to the animal;
- (b) that possession of the animal be given up to a specified person;
- (c) that the animal be re-homed;
- (d) that the animal be disposed of otherwise than by way of re-homing;
- (e) that the animal be destroyed.

(2) If an animal is taken into possession under section 21A(5) when it is pregnant, the power conferred by subsection (1) shall also be exercisable in relation to any offspring that results from the pregnancy.

(3) The power conferred by subsection (1) shall be exercisable on application by–

- (a) the owner of the animal; or
- (b) any other person appearing to the court to have a sufficient interest in the animal.

(4) A court may not make an order under subsection (1) unless–

- (a) it has given the owner of the animal an opportunity to be heard; or
- (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(5) Where a court makes an order under subsection (1), it may–

- (a) appoint a person to carry out, or arrange for the carrying out, of the order;
- (b) give directions with respect to the carrying out of the order;
- (c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (d) order a person to reimburse the expenses of carrying out the order.

(6) In determining how to exercise its powers under this section, the court shall have regard, amongst other things, to the desirability of protecting the animal's value and avoiding increasing any expenses which a person may be ordered to reimburse.

(7) A person commits an offence if he intentionally obstructs a person in the exercise of any power conferred by virtue of this section.

(8) Where a Court makes an order under section 21C(1), the owner of the animal to which the order relates may appeal against the order to the Supreme Court.”.

(16) In section 22–

- (a) in subsection (1) delete “and who is not ordinarily resident in Gibraltar”;
- (b) for “Government veterinary practitioner” and “Government veterinary surgeon” substitute “Government Veterinary Practitioner” in each instance that these words appear.

(17) In section 24–

- (a) in subsection (2) for “sold” substitute “re-homed”;
- (b) in subsection (4)–

- (i) after “impounded,” insert “or it appears that the animal has no owner,”;
 - (ii) for “sold” substitute “re-homed”.
- (18) In section 24(6) for “shall” substitute “may”.
- (19) In the schedule–
- (a) in paragraph (d) after “Environment” insert “, Heritage”.
 - (b) after paragraph (d) insert–
 - “(e) The Government Veterinary Practitioner;
 - (f) a Customs Officer of Her Majesty’s Customs.”.

EXPLANATORY MEMORANDUM

This Act amends the Animals and Birds Act. The amendments rename the Animals and Birds Act, to “Animals Act”, and remove all references to birds therein (as birds are animals), as well as clarifying certain definitions for the interpretation of the provisions of the Animals and Birds Act. In particular, the definition of “EC Regulation” has been amended as a consequence of the repeal of Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and to introduce into Gibraltar law Regulation (EC) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) 998/2003.

The amendments expand on the offence of cruelty to animals, and set the maximum conviction at 12 months or the maximum statutory fine, or both, on summary conviction, or five years on indictment. They also provide for dog’s DNA profiles to be taken from the dog’s saliva, rather than blood, in exceptional circumstances.

The amendments include provisions preventing the capture, disturbance or trade of cetacea, other than in certain circumstances. They also introduce provisions relating to animals in distress, granting powers to authorised officers to take such steps as may be necessary to alleviate the suffering of the distressed animal. Such powers include the right to enter premises, to obtain a warrant in respect of entry into dwellings, and to take an animal into the possession of the authorised officer.

The Government Veterinary Practitioner and HM Customs Officers have been included as authorised officers for the purposes of the Act.

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