



# **ENDANGERED SPECIES BILL 2009**

## **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr P A Gawne, MHK*

### **General Note**

This Bill is promoted by the Department for Agriculture, Fisheries and Forestry and is intended to implement into Isle of Man law the prohibitions and restrictions on the movement, sale and possession of endangered species of plants and animals that are set out in the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed at Washington D.C. on 3 March 1973 (CITES).

### **CLAUSE 1**

Defines the Convention and provides that there shall be a Wildlife Committee established and that the Department is the Management Authority for the purposes of the Bill. *Schedule 1* to the Bill sets out the provisions for the appointment of the Wildlife Committee.

### **CLAUSE 2**

Sets out the functions of the Department in relation to the implementation and enforcement of species conservation under the Bill.

### **CLAUSE 3**

Sets out the functions of the Committee in its advisory role to the Department.

### **CLAUSE 4**

Requires the Department, by Order, to prescribe the endangered species of animals and plants which fall under the provisions of the Bill and to assign each of those species to a particular Class.

## **CLAUSES 5 to 12**

Establish certain controls over the movement of specimens.

*Clause 5* prohibits a person from importing a specimen that is a member of a Class A or Class B species, unless there is an import permit issued by the Department in relation to the specimen in question. (Class A relates to the most endangered species, and currently includes primates. Class B relates to specimens that are not currently threatened with extinction but may be if measures are not taken). This clause also prohibits the introduction from the sea of a specimen unless there is an Introduction from the Sea Certificate issued by the Department in relation to the specimen. A person who contravenes either provision is liable to imprisonment for 6 months or to a fine of up to £5,000.

*Clause 6* requires a person who imports (otherwise than by introduction from the sea) a specimen that is a member of a Class C species to provide an authorised officer with an import notification within 14 days after the import. This clause also prohibits the introduction from the sea of such a specimen unless there is an Introduction from the Sea Certificate issued by the Department. A person who contravenes the provision is liable to imprisonment for 6 months and to a fine.

*Clause 7* prohibits a person from exporting a specimen that is a member of a Class A, B or C specimen, unless there is an export permit issued by the Department in relation to the specimen. It also prohibits a person from re-exporting a Class A, B or C specimen, unless there is a re-export certificate issued by the Department in relation to the specimen.

*Clause 8* prevents the import, export or re-export, of a specimen, except to or from a place designated in an Order. A person who contravenes the provision is liable to a fine.

*Clause 9* requires a person who imports, exports or re-exports a specimen to give the Department at least 48 hours notice of that import, export or re-export. A person who contravenes this provision is liable to a fine not exceeding £2,500.

*Clause 10* enables various exemptions and defences to charges of committing offences specified in Part 3 to be set out in Regulations.

*Clause 11* requires a person who imports, exports or re-exports, a specimen to provide to the Department, and to retain, documents prescribed under Regulations. a person who contravenes the provision is liable for a fine of up to £2,500.

*Clause 12* requires the owner of a live protected animal or plant to take all reasonable steps to ensure that when it is in transit, transhipped or transported in the Isle of Man it is treated in accordance with requirements prescribed in an Order.

## **CLAUSES 13 to 15**

*Clause 13* makes it an offence for a person to sell or buy, use for commercial purposes (including breeding or propagation), or display to the public for commercial purposes, any Class A or Class B specimen, unless authorised by permit or certificate.

*Clause 14* makes it an offence for a person to have in his or her possession a specimen that the person knows, or ought to reasonably be expected to know, has been imported in contravention of Part 2 or has been unlawfully taken from the wild in another country.

## **CLAUSES 15 to 21**

*Clause 15 and 16 and Schedule 2* enables applications to be made to the Department for the issue of a certificate and specifies the period for which various certificates are valid.

*Clause 17* makes it an offence to breach a condition of a permit or certificate. A person who contravenes the provision is liable to a fine not exceeding £2,500.

*Clause 18* provides for the right of appeal to the High Bailiff to a person in relation to–

- a refusal by the Management Authority to register the person or to issue a permit or a certificate;
- the imposition of a condition on the registration, permit or certificate;
- the revocation of his or her registration or a permit or certificate granted to the person, a refusal to alter the registration of the person or a permit or certificate issued to the person, or a refusal to alter a condition of such registration, permit or certificate.

*Clause 19* permits a court to disqualify a person convicted of an offence under the Act from being eligible to apply for registration or a permit or certificate for a stipulated period, or permanently.

## **CLAUSES 20 to 27**

*Clauses 20 and 21* provide for the Department to register recognised scientific institutions and certain traders and breeders.

*Clause 22* sets out what may be contained in regulations pertaining to registration of such bodies or persons. Any regulations made under this clause are to contain information as to what constitutes a breach and the penalties applied for any breach.

*Clause 23* requires that specimens of a prescribed description must be permanently marked in accordance with a prescribed method.

*Clause 24* requires that persons who, for commercial purposes, breeds a specimen in captivity or artificially propagates a specimen, shall ensure the specimen is marked in accordance with the requirements of Regulations. This does not apply to a pre-Convention specimen. A person who contravenes the provision is liable to a fine not exceeding £2,500.

*Clause 25* makes it an offence for a person to alter, obscure, add to or remove a mark placed on an animal or plant for the purposes of the Bill or the CITES Convention. A person who contravenes the provision is liable to imprisonment for up to 6 months or a fine not exceeding £5,000, or both.

*Clause 26* gives to an authorised officer the power to examine and search any object that the officer suspects on reasonable grounds may provide evidence that an offence has been committed against the provisions of the Bill, and to open, or break open, a container and receptacle in doing so. An authorised officer may also search, take samples, and seize and detain any object that the authorised officer suspects on reasonable grounds may provide evidence that an offence under provisions of the Bill has been, is being, or is about to be, committed. An authorised officer shall ensure as little damage as possible is caused to an object from which the authorised officer takes a sample. An authorised officer who seizes an object shall give a receipt to the person from whose possession it was taken.

*Clause 27* provides an authorised officer with the same powers in relation to an animal or plant that the authorised officer has in relation to an object under clause 26. In the taking of a sample, however, an authorised officer must, in relation to an animal, act in accordance with the directions of a veterinary surgeon and taken due care to cause as little pain or injury to the animal, and, in relation to a plant, cause as little injury to the plant as possible. An animal or plant that is seized may be kept by the Management Authority at a nominated place until the person from whom it is taken is acquitted, the rightful owner is located, or a court determines that another person is entitled to possession of it.

## **CLAUSE 28**

Extends ‘rights of entry’ to an authorised officer, on production of his or her credentials, in order to ascertain if an offence has been committed. The authorised officer may apply to a justice of the peace for the issue of a search warrant in relation to premises where access has been refused. The justice of the peace may grant such a warrant if satisfied, by evidence given on oath by the authorised officer, that evidence in relation to the commission of an offence may be found on the premises to which the warrant relates. Under a warrant an authorised officer may enter the premises, search the premises, request a person on the premises to provide the officer with assistance, and exercise any of the other powers of an authorised officer under the Bill.

This clause also enables an authorised officer who suspects on reasonable grounds that there may be evidence that an offence has been, is being, or is about to be committed, on a vehicle, vessel, aircraft or hovercraft, to stop and detain it, board it (with assistance if necessary), search it, request a person on it to provide the officer with assistance, and exercise any of the other powers of an officer under the Bill.

## **CLAUSE 29**

Enables the forfeiture to the Management Authority of an object (including a specimen) seized by an officer, if it publishes in a local newspaper a notice about the object requesting the owner to contact a specified person, and no owner establishes his or her ownership within 14 days after the notice is published.

## **CLAUSE 30**

Requires a court that finds a person guilty of an offence to order the specimen to which the offence relates to be forfeited to the Management Authority or returned to a person to whom the court believes to be its owner.

## **CLAUSE 31**

Specifies how the Management Authority shall deal with an animal or plant forfeited to the Authority.

## **CLAUSE 32**

Provides that a specimen may be seized, detained or forfeited under the powers contained in the Customs and Excise Management Act 1986.

## **CLAUSE 33**

Enables a court to order a person found guilty of an offence in relation to a specimen seized or surrendered to an officer to pay to the Management Authority the costs of the Authority incurred in transporting, disposing of or maintaining the specimen after the seizure or surrender and before the offender is found guilty. A court is also permitted to order a person found guilty of an offence in relation to a specimen seized by or surrendered to an authorised officer to pay to the Authority the anticipated future reasonable costs of the Management Authority in transporting, disposing of or maintaining the specimen, after the person is found guilty of the offence. Those costs include the costs involved in transporting the specimen back to the country or territory from which it was taken from the wild or exported in contravention of the laws of the country or territory from which it was imported into the Island.

## **CLAUSE 34**

Makes it an offence to fail to comply with a request of an officer under the law or to delay, wilfully hinder or wilfully obstruct an officer in the exercise of that officer's powers. A person who contravenes the provision is liable to imprisonment for up to 2 years or to a fine not exceeding £5,000.

## **CLAUSE 35**

Makes it an offence to make a false statement or a statement that is false in a material particular in an application, return or record submitted to the Management Authority, to falsify or alter a document issued by the Authority, or to produce to the Authority a document –

- (a) that has been falsified or altered by the person;
- (b) that the person knows to be falsified or altered; or
- (c) that is invalid, when the person knows or ought reasonably be expected to know is invalid.

A person who contravenes the provision is liable to imprisonment for up to 2 years and to a fine of up to £5,000.

## **CLAUSE 36**

Is a standard provision relating to the commission of offences by officers of bodies corporate.

## **CLAUSE 37**

Stipulates that summary proceedings in respect of offences under the Bill may be brought within a period of 6 months but not beyond a period of 2 years from the date on which evidence sufficient in the opinion of the prosecutor to warrant such proceedings came to light.

## **CLAUSE 38**

Enables the Department to amend the Bill, once enacted, by Order. This provision would only be used in cases where an amendment of the Convention or an EC Regulation relating to endangered species cannot be given effect in any other way. Any Order made under this clause must be approved by Tynwald and cannot increase penalties provided for in the Bill.

## **CLAUSE 39**

Contains interpretive provisions.

This clause contains several significant definitions, including definitions of –

*“exempted worked specimen”*, which is defined to mean, generally speaking, a dead plant or animal that has been worked upon to create a finished object of jewellery, art, musical instrument or an object made for use;

*“personal household effect”* which is defined to mean, generally speaking, a dead plant or animal that belongs to, and forms part of, an individual’s normal goods and chattels;

“*pre-Convention*” which is defined to mean a specimen that was taken from the wild, bred in captivity, or artificially propagated, before the species of which the specimen is a member was specified in an Appendix to the Convention;

“*introduction from the sea*” means, generally speaking, to bring into the Isle of Man a specimen taken from the sea outside the Isle of Man’s jurisdiction;

“*re-export*” means to export from the Isle of Man a specimen that was imported in the Isle of Man.

#### **CLAUSE 40**

Contains regulation making powers.

#### **CLAUSE 41**

Provides for transitional provisions set down in *Schedule 4* to the Bill, and relates to amendments (*Schedule 5*) and repeals (*Schedule 6*).

#### **CLAUSE 42**

Gives the Bill its short title and provides for the Act to come into force following an appointed day order.