

ENDANGERED SPECIES BILL 2009

Explanatory Memorandum

1. This Bill, which is promoted by the Department of Agriculture, Fisheries and Forestry, is to replace the Endangered Species (Import and Export) Act 1981, so as to bring the law of the Island into conformity with the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).
2. Part 1 is introductory. *Clause 1* provides that the Department is to be the “management authority” and the Wildlife Committee (reconstituted by Schedule 1) the “scientific authority” for the purpose of the Convention, and *clauses 2 and 3* set out their respective functions. *Clause 4* requires the Department to prescribe the endangered species of animals and plants to which the Bill will apply and to assign each species to a class (A, B or C).
3. Part 2 regulates the import, export and re-export of animals and plants of prescribed species. *Clauses 5 and 6* restrict the import of specimens, and *clause 7* their export or re-export. *Clause 8* enables such import, export or re-export to be restricted to designated ports. *Clause 9* requires advance notice to be given. *Clause 10* enables regulations to confer exemptions from the requirements of clauses 5 to 9. *Clause 11* enables regulations to require documents to be provided when a specimen is imported, exported or re-exported, and *clause 12* enables regulations to be made as to the transport etc. of live specimens.
4. Part 3 regulates commerce in animals and plants of prescribed species. *Clause 13* makes it an offence to buy, sell etc. a specimen, subject to exceptions to be specified in regulations. *Clause 14* makes it an offence knowingly to possess a specimen which has been unlawfully imported etc.
5. Part 4 deals with the issue of import permits, export permits and various certificates. *Clauses 15 and 16* provide for the issue by the Department of import and export permits and various certificates in accordance with Schedule 2. *Clause 17* makes breach of the conditions of a permit or certificate an offence. *Clause 18* provides for an appeal to the High Bailiff against decisions of the Department relating to permits and certificates.

Clause 19 enables a court which convicts a person of an offence under the Bill to cancel a permit or certificate or disqualify the person for holding a permit or certificate.

6. Part 5 contains miscellaneous and supplemental provisions. *Clauses 20 to 22* provide for the registration by the Department of recognised scientific institutions and certain traders and breeders. *Clause 23* enables regulations to provide for the marking of specimens, and *clause 24* requires commercial breeders to have specimens marked. *Clause 25* makes unauthorised tampering with such a mark an offence. *Clauses 26 and 27* give authorised officers powers of inspection, search and seizure for the purpose of enforcing the Bill, and *clause 28* confers powers to enter premises and to detain, board and enter vehicles, vessels and aircraft.

7. *Clause 29* enables specimens etc. whose owner cannot be found to be forfeited. *Clause 30* enables a court to order forfeiture of a specimen on convicting a person of an offence under the Bill. *Clause 31* enables the Department to dispose of forfeited items. *Clause 32* enables specimens to be seized and forfeited at the point of import or export. *Clause 33* enables a court, on convicting a person of an offence under the Bill, to order that person to pay the Department's expenses of transporting, keeping or disposing of a specimen. *Clause 34* makes it an offence to obstruct or fail to assist an authorised officer in enforcing the Bill. *Clause 35* makes it an offence to make false statements, falsify documents etc. *Clauses 36 and 37* make further provision with respect to offences.

8. *Clause 38* enables the Bill to be amended by order in order to conform with future changes in the Convention or Community legislation. *Clause 39* deals with interpretation. *Clause 40* makes provision for regulations and orders under the Bill. *Clause 41* and Schedules 3, 4 and 5 make transitional provisions and consequential amendments and repeals. *Clause 42* provides for the short title and commencement of the Bill.

9. The Bill will not increase expenditure nor will it reduce the income of Government.

10. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

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A BILL

to give effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1

GENERAL

5 **1.** (1) In this Act “the Convention” means the Convention on International Trade in Endangered Species of Wild Flora and Fauna signed at Washington on 3rd March 1973. The Convention
[Cmnd.6647]

(2) The Department of Agriculture, Fisheries and Forestry shall establish a body by the name of the Wildlife Committee.

(3) For the purposes of the Convention —

(a) the Department shall be the Management Authority; and

10 (b) the Committee shall be the Scientific Authority.

(4) Schedule 1 shall have effect with respect to the Committee.

15 (5) This Act applies in relation to trade in any thing whether or not the country from which it originated, or from or to which it is traded or is to be traded, is a signatory to the Convention.

Functions of
Department

- 2.** (1) The Department shall —
- (a) co-operate with other relevant authorities in the implementation and enforcement of legislation, in the Island and elsewhere, relating to species conservation;
 - (b) grant permits and certificates under this Act, and register scientific institutions under this Act, in accordance with the provisions of the Convention; **5**
 - (c) maintain records of the import into the Island of specimens and the export or re-export from the Island of specimens; **10**
 - (d) establish or designate places for the holding of live specimens; and
 - (e) communicate with relevant authorities in other countries or territories in relation to scientific, administrative and enforcement matters. **15**
- (2) The Department shall provide to the appropriate authority in the United Kingdom, before 31st October in each year (or such other date in substitution for that date as that authority may require), a report in relation to the previous calendar year specifying —
- (a) the number and type of permits and certificates which were issued under this Act; **20**
 - (b) the countries or territories to or from which trade in specimens from or to the Island took place;
 - (c) the numbers or quantities, species and type of Class A specimens, Class B specimens and Class C specimens; and **25**
 - (d) any other information which the Secretariat has notified the Department is required to be provided in the report.
- (3) If so required by that authority, the Department shall provide to that authority a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention. **30**
- (4) The Department shall keep at its principal office, in such form (including an electronic form) as it thinks fit, a register of permits and certificates issued under this Act. **35**
- (5) The register referred to in subsection (4) shall not include details identifying the person to whom a permit or certificate is issued.

(6) Any person may during normal business hours inspect the register referred to in subsection (4).

3. The Committee shall advise the Department on —

Functions of Committee

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(a) the effects of international trade on the survival of endangered species;

(b) any other matter which the Committee considers relevant to the survival of species;

(c) any other matter in respect of which the Department is required by this Act to consult the Committee.

10 4. (1) The Department shall by order prescribe species of animals and plants for the purposes of this Act.

Prescribed species of animals and plants etc.

(2) An order under subsection (1) —

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(a) shall designate every prescribed species of animal or plant as falling within one of 3 prescribed classes (described as “Class A”, “Class B” and “Class C”); and

(b) may designate a prescribed species of animal or plant as falling within a prescribed sub-class of a class prescribed under paragraph (a).

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(3) An order under subsection (1) may prescribe species, or designate species under subsection (2)(a) or (b), by reference to any of the following documents —

(a) the Convention;

(b) a document of a legislative or administrative character made by —

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(i) an international organisation;

(ii) an authority of a country or territory outside the Island; or

(iii) a person or body incorporated or established in such a country or territory; or

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(c) a Community instrument.

(4) An order under subsection (1) may make provision, or give effect to a provision of a document referred to in subsection (3), for treating an animal or plant which is a hybrid of 2 species, at least one of which is a prescribed species, —

- (a) as an animal or plant of a prescribed species, and
 - (b) as an animal or plant falling within a class or sub-class prescribed under subsection (2)(a) or (b).
- (5) An order under subsection (1) may include provision, or give effect to a provision of a document referred to in subsection (3), for treating — **5**
- (a) an animal of a prescribed class or sub-class which was born and bred in captivity, or
 - (b) a plant of a prescribed class or sub-class which was artificially propagated, **10**
- as falling within a different prescribed class or sub-class.
- (6) An order under subsection (1) may make provision, or give effect to a provision of a document referred to in subsection (3), for exempting from any provision of this Act —
- (a) a prescribed animal or prescribed plant of a description specified in the order, or **15**
 - (b) a part or derivative of a prescribed animal or prescribed plant of a description so specified.
- (7) An order under subsection (1) may make provision under subsection (3), (4), (5) or (6) by reference to a document referred to in subsection (3) — **20**
- (a) as in force at such time (whether before, at or after the making of the order) as may be specified in, or determined in accordance with, the order, or
 - (b) as that document has effect from time to time. **25**

PART 2

CONTROL OF MOVEMENT OF SPECIMENS

Import, export and re-export

Import etc. of
Class A or B
specimens

5. (1) A person shall not import (other than by way of introduction from the sea) a Class A specimen or a Class B specimen, except under and in accordance with an import permit issued in relation to the specimen. **30**

(2) A person shall not introduce from the sea a Class A specimen or a Class B specimen except under and in accordance

with an introduction from the sea certificate issued under section 16 in relation to the specimen.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable —

5 (a) on conviction on information, to custody for a term not exceeding 5 years or to a fine, or to both;

(b) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

10 **6.** (1) A person who imports a Class C specimen (otherwise than by way of introduction from the sea) shall, at such time as is prescribed, produce to an authorised officer such documents in relation to the specimen as are prescribed. Import etc. of Class C specimens

15 (2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

7. (1) A person shall not export a specimen except under and in accordance with an export permit issued in relation to the specimen. Export or re-export of specimens

20 (2) A person shall not re-export a specimen except under and in accordance with a re-export certificate issued under section 16 in relation to the specimen.

25 (3) A person who contravenes subsection (1) or (2) in relation to a Class A specimen or a Class B specimen is guilty of an offence and liable —

(a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;

30 (b) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(4) A person who contravenes subsection (1) or (2) in relation to a Class C specimen is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

35 **8.** (1) The Department may by order designate a place, being — Places where animals and plants may be imported etc.

- [c.34] (a) an aerodrome for the time being designated as a customs and excise airport under section 14(7) of the Customs and Excise Management Act 1986; or
- (b) an area for the time being appointed and named under section 12(1) of that Act as a port for the purposes of customs and excise, **5**
- as a place at which specimens of a description specified in the order may be imported, exported or re-exported by air or sea, as the case may be.
- (2) A person who imports, exports or re-exports a specimen of a description specified in an order under subsection (1) at a place other than one designated by the order in relation to specimens of that description is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500. **10**
- Notice of import etc. to be given **9.** A person who imports, exports or re-exports a specimen without first giving at least 48 hours' notice to such person and in such manner as may be prescribed is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500. **15**
- Exemptions and defences **10.** (1) Regulations may provide for —
- (a) exemptions from sections 5 to 9, and **20**
- (b) defences in proceedings for offences under those sections,
- in such circumstances as are prescribed.
- (2) Regulations may in particular provide for exemptions or defences — **25**
- (a) for recognised scientific institutions,
- (b) for the Department and recognised management authorities; and
- (c) in respect of specimens in respect of which there is in force — **30**
- (i) a certificate of captive breeding;
- (ii) a certificate of artificial propagation;
- (iii) a pre-Convention certificate;

(iv) a travelling exhibition certificate; or

(v) a personal ownership certificate;

or a document issued by a recognised management authority and equivalent to any such certificate.

5 11. (1) Regulations may —

(a) prescribe the documents which must be provided on request to an authorised officer when a specimen is imported, exported or re-exported; and

10 (b) require any such document which is not taken by an authorised officer to be kept for a prescribed period after the import, export or re-export.

(2) A person who —

(a) imports, exports or re-exports a specimen, and

15 (b) fails on request by an authorised officer to provide the prescribed documents,

is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

(3) A person who —

(a) imports, exports or re-exports a specimen, and

20 (b) fails to keep for the prescribed period such of the prescribed documents as are not taken by an authorised officer,

is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

Transit, transshipment and transport

25 12. (1) Regulations may impose requirements with respect to —

(a) the transit or transshipment, or

(b) the transport within the Island,

of live specimens.

30 (2) Requirements under subsection (1) may include requirements as to the issue, possession and production of

Documents to be presented at request of officer

Requirements in relation to transit, transshipment and transport

documents in relation to the transit, transshipment or transport of live specimens.

(3) Any person having charge of a live specimen shall take all reasonable steps to ensure that the animal or plant is only in transit, transhipped or transported in the Island in accordance with the requirements imposed under subsection (1) relating to such transit, transshipment or transport. **5**

(4) A person who contravenes subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500. **10**

PART 3

CONTROL OF COMMERCE ETC

Purchase,
sale etc. of
Class A or B
specimens

13. (1) This section applies to —
(a) any Class A specimen, and
(b) any Class B specimen which has been — **15**

(i) imported into the Island in contravention of section 5, or

(ii) acquired in contravention of this section.

(2) Subject to subsections (3) to (5) and to regulations under subsection (8), a person who — **20**

(a) buys,

(b) offers to buy,

(c) acquires for commercial purposes,

(d) displays to the public for commercial purposes,

(e) uses for commercial gain, **25**

(f) sells,

(g) keeps for sale,

(h) offers for sale, or

(i) transports for sale,

a specimen to which this section applies is guilty of an offence. **30**

(3) Subsection (2) does not apply to anything authorised by, and done in accordance with the terms of, a permit or certificate.

5 (4) In proceedings for an offence under subsection (2) it is a defence for the accused to show that at the time the alleged offence was committed he or she had no reason to believe that the specimen was a Class A specimen or a Class B specimen, as the case may be.

10 (5) In proceedings for an offence under subsection (2) relating to a Class B specimen it is a defence for the accused to show that —

15 (a) at the time when the specimen first came into his possession he or she made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired as mentioned in subsection (1)(b); and

(b) at the time the alleged offence was committed, he or she had no reason to believe that the specimen was imported or acquired as mentioned in subsection (1)(b).

20 (6) A person guilty of an offence under subsection (2) in relation to a Class A specimen is liable —

(a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;

25 (b) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(7) A person guilty of an offence under subsection (2) in relation to a Class B specimen is liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

30 (8) Regulations may provide for —

(a) further exemptions from subsection (2), and

(b) further defences in proceedings for offences under that subsection.

35 **14.** (1) A person who without reasonable excuse has in his or her possession, or under his or her control, any specimen that he or she knows, or ought reasonably to be expected to know, has been —

Possession
of specimens

- (a) imported by a person in contravention of Part 2; or
- (b) unlawfully taken from the wild in, or exported from, a country or territory in contravention of the law of that country or territory;

is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine, or to both. **5**

(2) Subsection (1) does not apply to a specimen in the possession or under the control of —

- (a) an authorised officer,
- (b) the Department, **10**
- (c) a person authorised by the Department to be in possession or control of the specimen,
- (d) a recognised management authority, or
- (e) a person authorised by a recognised management authority. **15**

PART 4

PERMITS AND CERTIFICATES

Permits and certificates

Permits
relating
to trade

15. (1) The Department may issue a permit for the import or export of — **20**

- (a) a specimen, or
- (b) a consignment of specimens.

(2) A permit shall —

- (a) state whether it is for import or export;
- (b) specify the specimen or consignment of specimens to which it relates; **25**
- (c) specify the person to whom it is issued; and
- (d) contain such further particulars as are prescribed.

(3) Regulations may prescribe the conditions which must be complied with if a permit is to be issued. **30**

(4) Parts 1 and 3 of Schedule 2 shall have effect with respect to permits under this section.

(5) Where the Department is satisfied that the issue of a permit authorising the import or export of —

- 5 (a) an animal or plant, whether alive or dead; or
- (b) any part or derivative of an animal or plant, whether or not contained in other goods,

which is not a specimen would facilitate its import or export, it may, if it considers it expedient to do so, issue such a permit.

10 16. (1) The Department may issue in respect of any specimen — Certificates

- (a) a certificate authorising the re-export of the specimen (a “re-export certificate”);
- (b) a certificate as to the country of origin of the specimen (a “certificate of origin”);
- 15** (c) a certificate that the specimen was, or is part of or was derived from a specimen which was, born and bred in captivity (a “certificate of captive breeding”);
- (d) a certificate that the specimen was, or is part of or was derived from a specimen which was, artificially propagated (a “certificate of artificial propagation”);
- 20** (e) a certificate that the specimen is a pre-Convention specimen (a “pre-Convention certificate”);
- (f) a certificate that the specimen is part of a travelling exhibition (a “travelling exhibition certificate”);
- 25** (g) in the case of a live animal, a certificate that the holder legally acquired the specimen and holds it for personal non-commercial purposes (a “personal ownership certificate”); or
- 30** (h) a certificate that prescribed conditions are satisfied by or in relation to the specimen.

(2) The Department may issue in respect of any specimen or any description of specimens a certificate authorising the introduction from the sea of the specimen or specimens of that description, as the case may be (an “introduction from the sea certificate”).

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- (3) A certificate shall —
- (a) unless regulations provide otherwise, specify —
- (i) the specimen to which it relates, in the case of a certificate under subsection (1); or
 - (ii) the specimen or description of specimens to which it relates, in the case of an introduction from the sea certificate; **5**
- (b) specify the person to whom it is issued; and
- (c) contain such further particulars as are prescribed.

(4) Regulations may prescribe the conditions which must be complied with if a certificate is to be issued. **10**

(5) Parts 2 and 3 of Schedule 2 shall have effect with respect to certificates under this section.

(6) Where the Department is satisfied that the issue of a certificate authorising the re-export of — **15**

- (a) an animal or plant, whether alive or dead; or
- (b) any part or derivative of an animal or plant, whether or not contained in other goods,

which is not a specimen would facilitate its re-export, it may, if it considers it expedient to do so, issue such a certificate. **20**

Breach of conditions of permit or certificate

17. A person who fails to comply with a condition subject to which a permit or certificate is issued is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

Appeals against decisions

18. (1) A person who has applied for a permit or certificate may appeal to the High Bailiff against a decision by the Department — **25**

- (a) to grant the application in respect of some (but not all) of the specimens or consignments or descriptions of specimens specified in the application;
- (b) to specify a condition in the permit or certificate; or
- (c) to refuse to issue the permit or certificate. **30**

(2) The holder of a permit or certificate may appeal to the High Bailiff against a decision by the Department —

- 5** (a) to refuse an application under paragraph 6(1) or 13(1) of Schedule 2 for amendment of the permit or certificate in respect of some (but not all) of the specimens or consignments or descriptions of specimens specified in the application;
- (b) to amend a permit or certificate under paragraph 6(7) or 13(7) of that Schedule; or
- (c) to revoke a permit or certificate under paragraph 7(2) or 14(2) of that Schedule.
- 10** (3) An appeal under this section shall be brought within 21 days after the appellant is notified in writing of the decision appealed against or within such further time as the High Bailiff may allow.
- 15** (4) Unless the High Bailiff so orders, the lodging of an appeal shall not operate to stay the effect of a decision pending the determination of the appeal.
- (5) On an appeal under this section the High Bailiff may reverse or vary the decision appealed against if the High Bailiff considers that the relevant authority —
- 20** (a) erred in law;
- (b) based its decision on any incorrect material fact;
- (c) exercised its discretion in an unreasonable manner; or
- (d) otherwise acted beyond its powers.
- (6) In subsection (5) “the relevant authority” means —
- 25** (a) in any case, the Department; and
- (b) where the Department in making its decision acted on the advice of the Committee, the Committee.
- 30** **19.** (1) Where a person is convicted of an offence against this Act, the court by which he or she was convicted may order that —
- (a) a permit or certificate held by the person be revoked; or
- 35** (b) the person be disqualified for holding any permit or certificate or a permit or certificate of a specified description,

Power of court to revoke permit or certificate etc.

for such period as it thinks fit.

(2) Where a court has made an order under subsection (1), it may, if it thinks fit, suspend the operation of the order —

(a) for such period as it thinks necessary for enabling arrangements to be made for the disposal of any specimen; or **5**

(b) pending an appeal.

(3) A person who is disqualified by virtue of an order under subsection (1) may, at any time after the expiration of —

(a) one year from the date of the order; or **10**

(b) two-thirds of the period of the disqualification,

whichever is the later, and from time to time, apply to the court by which the order was made to remove the disqualification.

(4) On an application under subsection (3), the court may, as it thinks fit, either — **15**

(a) direct that, as from such date as may be specified in the direction, the disqualification be removed or that the order be so varied so as to apply only to a permit or certificate of a kind specified in the direction; or

(b) refuse the application. **20**

(5) When considering an application under subsection (3) the court shall have regard to —

(a) the character of the applicant and his or her conduct since the making of the order;

(b) the nature of the offence of which he or she was convicted; and **25**

(c) any other circumstances of the case,

PART 5

MISCELLANEOUS AND SUPPLEMENTAL

Registration

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Registration
of scientific
institutions

20. (1) The Department shall keep at its principal office, in such form (including an electronic form) as it thinks fit, a register of recognised scientific institutions.

- (2) An entry of an institution in the register —
- (a) shall specify —
- 5 (i) the activities in respect of which,
- (ii) the descriptions of specimens in respect of which,
and
- (iii) the conditions subject to which,
the institution is registered; and
- (b) shall contain such further particulars as are prescribed.
- (3) The entry of an institution in the register shall authorise —
- 10 (a) the institution;
- (b) any officer or employee of the institution; and
- (c) any other person who is acting under the institution's
general supervision,
- 15 to carry on, in accordance with this Act, regulations under section 22 and the conditions subject to which the institution is registered, the activities specified under subsection (2) in that entry, in relation to specimens of the description so specified.
- 21.** (1) Regulations may provide for the keeping by the Department of registers of persons —
- 20 (a) importing, exporting or re-exporting biological samples of prescribed types;
- (b) exporting or re-exporting Class B specimens or Class C specimens (other than live animals or plants);
- 25 (c) breeding in captivity in the Island animals of a prescribed species; or
- (d) artificially propagating in the Island plants of a prescribed species.
- (2) An entry of a person in such a register —
- 30 (a) shall specify the descriptions of biological samples, the prescribed species, or the descriptions of animals or plants of prescribed species, as the case may be, in respect of which the person is registered; and

Registration
of certain
traders etc.

(b) shall contain such further particulars as are prescribed.

(3) Regulations may provide for simplified procedures for the issue of import permits, export permits or re-export certificates in relation to the import, export or re-export, by persons registered under regulations under subsection (1), of specimens of any description in respect of which they are so registered. **5**

Registration:
supplemental

22. (1) Regulations may —

(a) prescribe the conditions which must be complied with for an institution or person to be entered in a register; **10**

(b) make provision for the making and determination of applications for registration;

(c) enable an entry in a register to be amended or cancelled in prescribed circumstances;

(d) enable conditions to be imposed on registration of an institution or person; **15**

(e) make provision corresponding to section 18 with respect to appeals against decisions relating to registration; and

(f) provide for the issue, display, surrender, amendment and cancellation of certificates of registration. **20**

(2) Regulations may require a registered institution or person —

(a) to keep such records as are prescribed relating to the matters in respect of which it is or has been registered; and **25**

(b) to produce such records for inspection when requested to do so by an authorised officer.

(3) Regulations may require a registered institution or person, either generally or when requested to do so, to provide annual returns to the Department relating to such of the matters in respect of which it is registered as are prescribed or specified in the request, as the case may be. **30**

(4) A registered institution or person who without reasonable excuse fails to comply with —

(a) a condition imposed under subsection (1)(d), or **35**

- (b) a requirement imposed on it by regulations under subsection (1)(f), (2) or (3),

is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

- 5 (5) Any person may during normal business hours inspect a register.

- (6) In subsections (1) to (5) —

“register” means a register kept under section 20 or under regulations made under section 21; and

- 10 “registered”, in relation to an institution or person, means entered in such a register, and “registration” has a corresponding meaning.

Marking of specimens

- 15 23. Regulations may require specimens of a prescribed description, in prescribed circumstances, to be permanently marked in accordance with a prescribed method. Marking of specimens

- 24. (1) A person who —

- 20 (a) has for commercial purposes bred a specimen in captivity, or artificially propagated a specimen, in the Island, and Marking of specimens by commercial producers

- (b) has that specimen in his or her possession,

shall ensure that the specimen is marked in accordance with the requirements of regulations under section 23 relating to the marking of such specimens.

- 25 (2) Subsection (1) does not apply in relation to a pre-Convention specimen.

(3) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

- 30 25. Any person other than an authorised officer who alters, obscures, adds to, or removes a marking in relation to an animal or plant which has been made for the purposes of this Act or the Convention is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both. Tampering etc. with marking

Search, seizure and forfeiture

Powers to
inspect, take
samples and
seize goods
and records

- 26.** (1) For the purpose of ascertaining whether an offence against this Act has been or is being committed, an authorised officer, on production, if required, of his or her credentials, may — **5**
- (a) inspect any object which he or she suspects on reasonable grounds may provide evidence that a contravention of this Act has been, is being, or is about to be committed; **10**
 - (b) take a sample of that object; **10**
 - (c) require any person carrying on, or employed in connection with, a business, to produce any records relating to the business which are in his or her possession or under his or her control; **15**
 - (d) take copies of, or of any entry in, any record so produced; **15**
 - (e) at any reasonable time have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with any such records; **20**
 - (f) require the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, apparatus or material, to afford him or her such assistance as he or she may reasonably require; **25**
and
 - (g) seize and detain any object or document which he or she has reasonable cause to believe may be required as evidence in proceedings under this Act.
- (2) For the purpose of exercising a power under subsection (1), an authorised officer may, so far as is reasonably necessary, require any person having authority to do so to open or break open any container, or to permit the authorised officer to do so. **30**
- (3) Where an authorised officer seizes any object or document in the exercise of the power under subsection (1)(g), he or she shall give to the person from whom it is seized a receipt — **35**
- (a) identifying the object or document, and
 - (b) indicating the date on which, and the place at which, it was seized.

(4) In this section “object” does not include an animal or plant.

27. (1) This section applies where an authorised officer suspects on reasonable grounds that —

Powers to inspect and seize animals and plants

(a) an animal or plant is of a prescribed species, and

5 (b) an offence against this Act has been, is being, or is about to be committed in relation to the animal or plant.

(2) The authorised officer, on production, if required, of his or her credentials, may —

(a) inspect the animal or plant;

10 (b) seize and detain the animal or plant;

(c) take a sample from, or require a person to take a sample from, the animal or plant.

(3) An authorised officer —

15 (a) may take a sample from an animal only in accordance with the advice of a veterinary surgeon; and

(b) shall exercise due care to ensure that —

(i) as little pain or injury as possible is caused to an animal, and

(ii) as little injury as possible is caused to a plant,

20 from which he or she takes a sample.

(4) Where an animal or plant is seized under this section, the officer shall give to the person, if any, who appears to be the owner of, or to be entitled to possession of, the animal or plant a receipt —

(a) identifying the animal or plant, and

25 (b) indicating the date on which, and the place at which, it was seized.

(5) An animal or plant which is seized under this section may be held by the Department or by a person authorised, and at a place nominated, by the Department until —

30 (a) a prosecution for an offence against this Act in relation to the animal or plant is abandoned or the defendant is acquitted of such an offence;

- (b) the Department permits the person who it believes to be entitled to the possession of it to take the animal or plant from that place; or
- (c) a court determines that a person other than the Department should have possession of the animal or plant, **5**

whichever happens first.

Rights of entry etc.

28. (1) Subject to the following provisions of this section, an authorised officer, on production, if required, of his or her credentials, may at any reasonable time enter any premises or other place for the purpose of — **10**

- (a) ascertaining whether an offence against this Act is being or has been committed, on or in connection with those premises or that place;
- (b) seeking evidence of any such offence; **15**
- (c) ascertaining whether there is or has been any specimen on the premises or in the place;
- (d) inspecting any specimen which the authorised officer reasonably believes to be on the premises or in the place;
- (e) inspecting any place where a specimen is kept; or **20**
- (f) the performance by the Department of its functions under this Act.

(2) An authorised officer, on production, if required, of his or her credentials, may at any reasonable time detain and board or enter any vehicle, vessel or aircraft for any purpose for which under subsection (1) the authorised officer would have a right to enter any premises. **25**

(3) Admission to any premises, vehicle, vessel or place used only as a private dwelling shall not be demanded as of right by virtue of subsection (1) or (2) unless 24 hours' notice of the intended entry has been given to the occupier. **30**

(4) If a justice of the peace, on sworn complaint in writing, —

- (a) is satisfied that there are reasonable grounds for entering any premises or other place for any purpose for which an authorised officer may enter them in accordance with subsection (1), and **35**

(b) is also satisfied —

- 5 (i) that admission to the premises or place has been refused, or that a refusal is apprehended, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier; or
- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry; or
- (iii) that the case is one of urgency; or
- 10 (iv) that the premises are or the place is unoccupied or the occupier is temporarily absent,

the justice may by warrant under his or her hand authorise the Department, or any person duly authorised by it, to enter the premises or place, if need be by force.

15 (5) Subsection (4) has effect in relation to detaining, boarding or entering any vehicle, vessel or aircraft which may be detained, boarded or entered under subsection (2) as it has effect in relation to entering any premises with the substitution for the occupier of a reference to the master, commander or other person
20 in charge of the vessel, vehicle or aircraft.

(6) Any warrant granted under this section shall continue in force for a period of one month.

(7) Any person entering or boarding any property by virtue of this section (whether in pursuance of a warrant or not) —

- 25 (a) may take with him or her such other persons and such equipment as may appear to him or her to be necessary for the purpose for which the property is entered or boarded;
- 30 (b) may carry out such searches of the property and anything on it as appear to him or her to be necessary for that purpose;
- (c) may require a person on the property to provide to him or her such assistance as he or she may reasonably require for that purpose; and
- 35 (d) on leaving the property shall, if the property is unoccupied or the occupier, master, commander or other person in charge of it is temporarily absent, leave it as effectively secured against trespass as he or she found it.

(8) In subsection (7) “property” means any premises, place, vehicle, vessel or aircraft.

Forfeiture if
owner cannot
be found

- 29.** (1) Where —
- (a) an authorised officer seizes an object, including a specimen, the owner of which cannot be identified; **5**
 - (b) a notice is published in a newspaper published and circulating in the Island specifying the object seized and requesting the owner to contact, within 14 days after the publication of the notice, a person identified in the notice; and **10**
 - (c) no person establishes his or her ownership of the object within 14 days after the publication of the notice;

the object shall be forfeited to the Department.

Power of
court to order
forfeiture of
specimen

- 30.** Where a person is convicted of an offence against this Act in relation to a specimen, the court may order that the specimen be — **15**
- (a) forfeited to the Department, or
 - (b) returned to a person (other than the person found guilty of the offence) whom the court believes to be its owner.

Disposal of
forfeits

- 31.** If a specimen is forfeited to the Department under this Act, the Department may — **20**
- (a) sell the specimen;
 - (b) give the specimen to any person;
 - (c) retain the specimen at a suitable place;
 - (d) if the specimen is dead, dispose of it; **25**
 - (e) in the case of an animal, destroy the specimen if it thinks it is necessary or desirable to do so to prevent it suffering;
 - (f) in the case of an animal or plant, destroy the specimen if it thinks it is necessary or desirable to do so — **30**
 - (i) to remove the risk of the specimen spreading disease; or

- (ii) to ensure the health of the species to which it belongs; or
- 5 (g) in the case of an animal or plant, transport the specimen, or cause it to be transported, back to a country or territory from which the Department believes it was taken from the wild or exported to the Island.
- 32. (1) This section applies where any specimen —

 - (a) is being imported or exported,
 - (b) has been imported, or
 - 10 (c) has been brought to any place for the purpose of being exported.
- (2) An authorised officer may require any person possessing or having control of the specimen to furnish proof that its importation or exportation is or was not unlawful by virtue of Part 2.

15
- (3) Unless such proof is furnished to the satisfaction of the Department, the specimen may be seized and detained by an authorised officer, and shall be liable to forfeiture under the Customs and Excise Management Act 1986.

[c.34]
- 20 (4) For the purposes of that Act, in its application to a specimen by virtue of this section —

 - (a) “importation” includes removal from the United Kingdom to the Island, and
 - 25 (b) “exportation” includes removal from the Island to the United Kingdom.
- 33. Where a person is convicted of an offence against this Act in relation to a specimen which has been seized by, or surrendered to, an authorised officer, the court, on the application of the Department, may order the person to pay to the Department —

Power of court to order payment of certain expenses
- 30 (a) the expenses incurred by it in transporting, disposing of or maintaining the specimen after its seizure or surrender and before the date of the conviction; and
- (b) such amount as the court may direct, being the amount of the reasonable expenses which, in the opinion of the court, the Department may incur in transporting,

disposing of or maintaining the specimen, including transporting the specimen back to a country or territory —

- (i) from which it was taken from the wild or exported in contravention of the law of the country or territory; or 5
- (ii) from which it was imported into the Island in contravention of this Act.

Offences: general

Obstruction
etc

- 34.** (1) Any person who —
- (a) intentionally obstructs an authorised officer acting in pursuance of this Act; 10
 - (b) intentionally fails to comply with any requirement properly made of him or her by an authorised officer under section 26(1)(c) or (f) or (2), 27(2)(c) or 28(7)(c); 15
 - (c) fails without reasonable excuse —
 - (i) to comply with a request by a constable in uniform to stop a vehicle, vessel or aircraft; or
 - (ii) to permit the constable to board the vehicle, vessel or aircraft after such a request is made, or 20
 - (d) without reasonable cause, fails to give to an authorised officer any other assistance or information which the officer may reasonably require of him or her for the purpose of the performance of the officer's functions under this Act; 25

is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

- (2) If any person, in giving any such information as is mentioned in subsection (1)(d), makes any statement which he or she knows to be false, that person is guilty of an offence and liable — 30
- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both. 35

(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

- 5** **35.** (1) Any person who knowingly or recklessly — Offences in relation to documents
- (a) makes a statement which is false or misleading in any material particular in an application, return or record submitted to the Department under this Act; or
- 10** style="padding-left: 40px;">(b) falsifies or alters any document which is issued by the Department;
- is guilty of an offence.
- (2) Any person who —
- 15** style="padding-left: 40px;">(a) provides to the Department or an authorised officer a document which he or she has falsified or altered or which he or she knows, or ought reasonably to be expected to know, to have been falsified or altered; or
- 20** style="padding-left: 40px;">(b) produces to the Department or an authorised officer a document which purports to be a valid document but which he or she knows, or ought reasonably to be expected to know, is invalid;
- is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable —
- 25** style="padding-left: 40px;">(a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction to a fine not exceeding £5,000.

- 30** **36.** (1) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate that person, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Offences: supplemental
- 35** style="padding-left: 40px;">(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

(3) Where, in any proceedings for an offence under this Act relating to an animal or plant, it is shown that it is of a species falling within either Class A or Class B, but not which of those classes —

(a) it is not necessary for the prosecutor to show that the animal or plant is of a species falling within one only of those classes; and **5**

(b) it shall be presumed that it is of a Class B species.

(4) Subsection (3) applies with any necessary modifications to a part or derivative, or goods appearing to be or contain a part or derivative, of an animal or plant as it applies to an animal or plant. **10**

Time limit
for summary
prosecutions

37. (1) Summary proceedings for an offence under this Act may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his or her knowledge; but no such proceedings shall be brought by virtue of this section more than 2 years after the commission of the offence. **15**

(2) For the purpose of this section a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as is mentioned in subsection (1) came to his or her knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved. **20**

Amendment of Act **25**

Amendment
of Act

38. (1) If it appears to the Department necessary or expedient to do so in order to give effect to —

(a) an amendment of the Convention (being an amendment which extends to the Island), or

(b) a resolution or decision of an organ of the Convention; **30**

(c) a Community instrument,

the Department may by order amend any provision of Part 2, 3 or 4 or this Part (other than this section or section 40).

(2) No order shall be made under this section unless a draft of the order has been approved by Tynwald. **35**

(3) An order under this section may not —

- (a) increase the maximum penalty for any offence; or
- (b) provide for a public document to have effect otherwise than in accordance with section 40(9).

Supplemental

- 5** **39.** (1) In this Act — Interpretation
- “animal” means any member (apart from a human being) of the animal kingdom, whether dead or alive, and includes any egg, sperm, tissue culture or embryo of an animal;
- 10** “artificially propagated” has the meaning given by subsection (2);
- “authorised officer” means —
- (a) an officer of customs and excise;
 - (b) a constable; or
 - 15** (c) any person duly authorised in writing by the Department to perform any of the functions conferred on an authorised officer by any provision of this Act;
- “born and bred in captivity” has the meaning given by subsection (3);
- 20** “certificate” means a certificate issued under section 16 which is for the time being in force;
- “Class A”, “Class B” and “Class C” mean the prescribed classes of species so described pursuant to section 4(2)(a) in an order under section 4(1), and “Class A species”, “Class B species” and “Class C species” have
- 25** corresponding meanings;
- “Class A specimen”, “Class B specimen” and “Class C specimen” mean —
- (a) an animal or plant of Class A, Class B or Class C, as the case may be, or
 - 30** (b) a part or derivative of an animal or plant of Class A, Class B or Class C, as the case may be, whether or not contained in other goods, or
 - (c) any other goods which appear from an accompanying document, the packaging or a mark

or label, or from any other circumstances, to be or to contain parts or derivatives of an animal or plant of Class A, Class B or Class C, as the case may be;

- “commercial purposes” means purposes where the non-commercial purposes do not predominate; **5**
- “the Committee” means the Wildlife Committee established under section 1(2);
- [c.14] “Community instrument” has the same meaning as in the European Communities (Isle of Man) Act 1973;
- “the Convention” has the meaning given by section 1(1); **10**
- “the Department” means the Department of Agriculture, Fisheries and Forestry;
- “export” means the act of taking a specimen out of the Island, but does not include transshipment or re-export;
- “export permit” means an export permit issued under section 15 which is for the time being in force; **15**
- “import”, in relation to a specimen, means —
- (a) to land the specimen in the Island;
 - (b) to attempt to land the specimen in the Island;
 - (c) to bring the specimen into the Island; or **20**
 - (d) to introduce the specimen from the sea into the Island,
- but does not include transit or transshipment of the specimen;
- “import notification” means a notice in a prescribed form and completed in accordance with prescribed requirements; **25**
- “import permit” means an import permit issued under section 15 which is for the time being in force;
- “introduction from the sea” means the transport into the Island of any specimen which was taken in, and is transported into the Island directly from, the marine environment not under the jurisdiction of any State (including the air-space above the sea, the sea-bed and the subsoil beneath the sea); **30**

- “live specimen” means a live animal or plant of a prescribed species;
- “mark”, in relation to a specimen, has the meaning given by subsection (4);
- 5** “permit” means a permit issued under section 15 which is for the time being in force;
- “plant” means a member, whether dead or alive, of the plant kingdom or the fungus kingdom, and includes —
- (a) algae and lichen;
 - 10** (b) procaryotes; and
 - (c) any seed, spore, pollen or tissue culture of a plant;
- “population”, in relation to a species or sub-species, means a biologically or geographically distinct total number of individuals of that species or sub-species;
- 15** “pre-Convention specimen” means a specimen acquired before the species concerned was first included in the Appendices to the Convention;
- “prescribed” (except in relation to a matter prescribed by order under section 4) means prescribed by regulations;
- 20** “prescribed species”, “prescribed class” and “prescribed sub-class” mean a species, class of species or sub-class of species prescribed under section 4(1), 4(2)(a) or 4(2)(b) respectively;
- 25** “recognised management authority” means a person who has been designated by a country or territory outside the Island to be a management authority for the country or territory for the purposes of the Convention;
- “recognised scientific institution” means a person who —
- 30** (a) is registered under section 20 as a recognised scientific institution; or
 - (b) has been designated by a country or territory outside the Island as a scientific institution for the purposes of the Convention;
- 35** “re-export” means the taking out of the Island of a specimen which was imported into the Island;

“regulations” means regulations made by the Department;

“sale” includes hire, barter and exchange and offer for sale (including advertising or causing to be advertised for sale and inviting to treat);

“Secretariat” means the Secretariat established by the Convention; **5**

“species” means a species, sub-species or a population of a species or sub-species, and “the species”, in relation to a specimen, means the species to which the specimen belongs; **10**

“specimen” means —

(a) any animal or plant, whether alive or dead, of a prescribed species;

(b) any part or derivative of such an animal or plant, whether or not contained in other goods, and **15**

(c) any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of an animal or plant of a prescribed species; **20**

but does not include a part or derivative exempted under section 4(6);

“trade” means export, re-export or import;

“transhipment” and “transit” have the meanings given by subsection (5); **25**

“travelling exhibition” means a travelling circus, zoo, menagerie, or plant exhibition, which is used for display to the public for commercial purposes;

“vehicle” includes a hover vehicle.

(2) For the purposes of this Act a plant shall be taken to have been artificially propagated if, and only if, — **30**

(a) the plant has been grown by a person from seeds, cuttings, callus tissues, spores, or other propagules, under controlled conditions; or

(b) where the plant is a grafted plant, both the root stock and the graft have been grown in accordance with paragraph (a); **35**

and for this purpose “controlled conditions” means a non-natural environment —

5 (i) which is intensively manipulated by human intervention for the purpose of producing selected species or hybrids of plants; and

10 (ii) the general characteristics of which may include (but are not limited to including) tillage, fertilisation, weed control, irrigation or nursery operations such as potting, bedding or protection from weather.

15 (3) For the purposes of this Act an animal shall be taken to have been born and bred in captivity if, and only if, the animal (including eggs) was offspring born, or otherwise produced, in a controlled environment, of parents that mated or otherwise transmitted their gametes in a controlled environment; and for this purpose “controlled environment” means an environment —

20 (a) which is manipulated by human intervention for the purpose of producing animals of a particular species;

(b) which has boundaries designed to prevent animals, eggs or gametes of the species from entering or leaving the environment; and

25 (c) the general characteristics of which may include, but are not limited to including, artificial housing, waste removal, health care, protection from predators and artificially supplied food.

(4) For the purposes of this Act, to “mark” a specimen includes —

30 (a) in the case of a live animal —

(i) to implant a device in the animal which may be scanned electronically;

(ii) to place a band on any part of the animal;

(iii) to place (whether by piercing or otherwise) a tag or ring on any part of the animal; and

35 (iv) to mark or label a container within which the animal is kept;

(b) in the case of a live plant —

- (i) to mark or label a container in which the plant is kept or in which the plant is growing; and
- (ii) to place a label or tag on the plant.

(5) For the purposes of this Act, a specimen is in “transit” or being “transhipped” if — **5**

- (a) it is being transported between 2 countries or territories;
- (b) it is being transported to a named consignee;
- (c) any interruption of the specimen’s movement between those countries or territories arises only from the arrangements necessitated by transshipment; **10**
- (d) any transit is in accordance with the customs and excise Acts (as defined in section 184(1) of the Customs and Excise Management Act 1986); and
- (e) while the specimen is on land, or is in a port, in the Island it is effectively under the control of an officer of customs and excise. **15**

[c.34]

(6) Regulations may provide that, where a prescribed species is not included in the Appendices to the Convention, —

- (a) an animal or plant of that species; or
- (b) a part or derivative of such an animal or plant, **20**

which fulfils prescribed conditions shall nevertheless be treated as a pre-Convention specimen.

(7) Regulations may provide that, where a provision of the Convention is to be construed in accordance with a resolution of the parties to the Convention, a corresponding provision of this Act shall be construed in accordance with that resolution. **25**

Subordinate
legislation

40. (1) The Department may by regulations prescribe anything which under this Act may be prescribed.

(2) Subject to any express provision of this Act with respect to the penalty for contravention of regulations, regulations may provide that a contravention of any provision of them shall be an offence on the part of any person of a description specified in the regulations, punishable on summary conviction by a penalty not exceeding that so specified (which shall not exceed a fine of £2,500). **30**

(3) Regulations may refer to, or give effect to a provision of, any of the following documents —

- (a) the Convention;
- 5 (b) a document of a legislative or administrative character made by —
 - (i) an international organisation;
 - (ii) an authority of a country or territory outside the Island; or
 - 10 (iii) a person or body incorporated or established in such a country or territory; or
- (c) a Community instrument.

(4) A provision of regulations made under subsection (3) may refer to, or give effect to a provision of, a document referred to in that subsection —

- 15 (a) as in force at such time (whether before, at or after the making of the regulations) as may be specified in, or determined in accordance with, the regulations, or
- (b) as it has effect from time to time.

20 Act — (5) Regulations may provide that, for any purposes of this

- (a) a copy of a document referred to in subsection (3)(a) or (b) certified by a person of a prescribed description to be a true copy shall, in any proceedings, be sufficient evidence of the document unless the contrary is proved;
- 25 (b) a document purporting to be a copy of such a document and to be so signed shall be deemed to be such a copy and so signed unless the contrary is proved;
- (c) a certificate signed by a person of a prescribed description —
 - 30 (i) that a prescribed provision of a document referred to in subsection (3)(a) or (b) applied, or first applied, to a species of animal or plant,
 - (ii) that a species of animal or plant was included, or first included, in a list of species contained in such
 - 35 a provision, or

(iii) that a State was or was not party to the Convention,
or

(iv) a country or territory was or was not a country or
territory of a State party to the Convention,

on a date specified in the certificate shall, in any
proceedings, be sufficient evidence of that fact unless
the contrary is proved; and **5**

(d) a certificate purporting to be so signed shall be deemed
to be so signed unless the contrary is proved.

(6) Regulations may prescribe the form of any document **10**
to be used for any purposes of this Act.

(7) Before making any order or regulations under this Act
(except an order under section 42(2)) the Department shall consult
the Committee.

(8) Regulations under section 15(3), 16(4) or 22(1) may **15**
make registration, or the issue of a permit or certificate, conditional
on the approval or advice of the Committee.

(9) Orders and regulations made by the Department under
this Act (except an order under section 38 or 42(2)) shall be laid
before Tynwald as soon as may be after they are made; and if **20**
Tynwald, at the sitting at which they are laid or the next following
sitting, resolves that they be annulled, they shall cease to have
effect.

Transitional
provisions,
amendments
and repeals

41. (1) The transitional provisions in Schedule 3 shall have effect.

(2) An order under section 42(2) may make such further **25**
transitional provisions as the Department thinks expedient,
including provisions consequential on the partial operation of this
Act.

(3) The enactments specified in Schedule 4 are amended **30**
in accordance with that Schedule.

(4) The enactments specified in Schedule 5 are repealed to
the extent specified in column 3 of that Schedule.

Short title and
commencement

42. (1) This Act may be cited as the Endangered Species Act 2009.

(2) Except for the purpose of making any order or **35**
regulations, this Act shall come into operation on such day or
days as the Department may by order appoint.

Section 1(4).

SCHEDULE 1

THE WILDLIFE COMMITTEE

1. The Committee shall consist of such number of members as the Department may determine.
2. The members of the Committee —
 - (a) shall be appointed by the Department;
 - (b) may include one or more officers of the Department; and
 - (c) shall hold office in accordance with the terms of their appointment.
3. The Committee shall advise the Department on any question which the Department may refer to it, and on any question on which it considers it should offer its advice —
 - (a) in connection with the implementation of the Convention, and
 - (b) generally in connection with trade in —
 - (i) animals and plants of species which appear to the Department or the Committee, as the case may be, to be or to be likely to become endangered as a result of international trade or otherwise, and
 - (ii) parts or derivatives of such animals and plants.
4. The Department, with the consent of the Treasury, may defray or contribute towards the expenses of the Committee.

Sections 15(4) and 16(5). SCHEDULE 2

PERMITS AND CERTIFICATES

PART 1

PERMITS

Applications for permits

1. (1) An application for a permit shall be made in writing to the Department in such form as the Department may reasonably require.
- (2) The application shall —
 - (a) state whether the application is for an import permit or an export permit,
 - (b) specify —
 - (i) the specimen, or
 - (ii) the consignment of specimens,to which the application relates.
- (3) The application shall be accompanied by such information as the Department may reasonably require.
- (4) The Department may request the applicant to provide to the Department further information in relation to the application, and may decline to determine the application unless and until the information is provided.

Determination of application

2. The Department may —
 - (a) grant an application under paragraph 1 and issue the permit to the applicant —
 - (i) in respect of all the specimens or consignments specified under paragraph 1(2)(b); or
 - (ii) in respect of some (but not all) of those specimens or consignments; and
 - (iii) in any case, subject to such conditions as the Department thinks fit; or
 - (b) refuse the application.

Grounds for determination

3. The Department shall not grant an application for a permit if —

- (a) the Department is of the opinion that the conditions for the issue of the permit prescribed under section 15(3) are not, or are not likely to be, satisfied; or
- (b) the applicant is for the time being disqualified under section 19 for holding the permit.

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Notification of determination

4. (1) The Department shall notify the applicant in writing of the determination of an application for a permit.
- (2) A notification under sub-paragraph (1) shall —
- (a) where the application is granted —
 - (i) be accompanied by the permit;
 - (ii) specify the specimen or consignment of specimens in respect of which the application is granted,
 - (iii) specify the conditions subject to which it is granted, and
 - (iv) state the reasons for those conditions;
 - (b) where the application is granted in respect of some (but not all) of the specimens or consignments of specimens specified under paragraph 1(2)(b), state the reasons for refusing the application in respect of the remainder;
 - (c) where the application is refused, state the reasons for the refusal; and
 - (d) in any case, state the right of appeal under section 18 and the time within which an appeal may be brought.

Form, duration etc. of permits

5. (1) A permit shall be in such form as the Department may determine.
- (2) A permit issued to a person is not transferable to another person.
- (3) A permit comes into force on the day on which it is issued.
- (4) An export permit remains in force, unless it is earlier revoked or surrendered, for 6 months from the date on which it is issued.
- (5) An import permit remains in force, unless it is earlier revoked or surrendered, for 12 months from the date on which it is issued.

Amendment of permit

6. (1) The holder of a permit may apply for the amendment of the permit, including —

SCH. 2

(a) the addition or deletion of a specimen or consignment of specimens;
or

(b) the amendment or revocation of a condition subject to which the permit is issued.

(2) An application under sub-paragraph (1) shall be made in writing to the Department in such form as the Department may reasonably require.

(3) The application shall be accompanied by such information as the Department may reasonably require.

(4) The Department may request the applicant to provide to the Department further information in relation to the application, and may decline to determine the application unless and until the information is provided.

(5) The Department may —

(a) grant an application under sub-paragraph (1), or

(b) refuse the application.

(6) The Department shall not grant an application under sub-paragraph (1) if it would not issue a permit in the terms of the existing permit as amended in accordance with the application.

(7) If the Department is advised by the Committee that an import or export authorised by a permit is detrimental to —

(a) the survival of a prescribed species, or

(b) the survival, health or welfare of live specimens,

the Department may on its own initiative amend the permit, including —

(i) deleting a specimen or consignment of specimens in the permit;

(ii) amending a condition subject to which the permit was granted,
or

(iii) imposing an additional condition.

(8) Where the Department amends a permit, it shall require the holder of the permit to return the permit to it for amendment or replacement.

(9) If a person fails to comply with a requirement under sub-paragraph (8), he or she is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

Revocation of permit

7. (1) The holder of a permit may apply for the revocation of the permit.

(2) The Department may revoke a permit on its own initiative if it is satisfied that —

- (a) the holder of the permit provided false or misleading information in the application for the permit; SCH. 2
- (b) the permit was issued in error;
- (c) the holder has failed to comply with a condition subject to which the permit was granted;
- (d) the holder, an employee of the holder, or a person acting on behalf of or under the general supervision of the holder, has committed an offence against this Act or against any other enactment, or the law of another country or territory, relating to the conservation or welfare of animals or plants;
- (e) the holder has not provided, or is not or will not be able to provide, satisfactorily for the health and well-being of living specimens forming a consignment or part of a consignment specified in the permit of which the holder has had, has or will have possession, as the case may be;
- (f) it is advised by the Committee that it is desirable to do so to assist in —
- (i) the survival of a prescribed species, or
 - (ii) the survival, health or welfare of live specimens.
- (3) Where the Department revokes a permit, it shall require the holder of the permit to return the permit to it for cancellation.
- (4) If a person fails to comply with a requirement under sub-paragraph (3), he or she is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

PART 2

CERTIFICATES

Applications for certificates

- 8.** (1) An application for a certificate shall be made in writing to the Department in such form as the Department may reasonably require.
- (2) The application shall specify —
- (a) the class of certificate to which the application relates, and
 - (b) either —
 - (i) the specimen to which it relates, in the case of an application for a certificate under section 16(1); or
 - (ii) the specimen or description of specimens to which it relates, in the case of an introduction from the sea certificate.
- (3) The application shall be accompanied by such information as the Department may reasonably require.

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(4) The Department may request the applicant to provide to the Department further information in relation to the application, and may decline to determine the application unless and until the information is provided.

Determination of application

9. The Department may —

- (a) grant an application under paragraph 8 and issue the certificate to the applicant —
 - (i) in respect of all the specimens or descriptions of specimens specified under paragraph 8(2)(b); or
 - (ii) in respect of some (but not all) of those specimens or descriptions of specimens; and
 - (iii) in any case, subject to such conditions as the Department thinks fit; or
- (b) refuse the application.

Grounds for determination

10. The Department shall not grant an application for a certificate in relation to a specimen if —

- (a) the Department is of the opinion that the conditions, if any, for the issue of the certificate prescribed under section 16(3) are not, or are not likely to be, satisfied; or
- (b) the applicant is for the time being disqualified under section 19 for holding the certificate.

Notification of determination

11. (1) The Department shall notify the applicant in writing of the determination of an application for a certificate.

- (2) A notification under sub-paragraph (1) shall —
 - (a) where the application is granted —
 - (i) be accompanied by the certificate,
 - (ii) specify the specimen in respect of which the application is granted,
 - (iii) specify the conditions subject to which it is granted, and
 - (iv) state the reasons for those conditions;
 - (b) where the application is granted in respect of some (but not all) of the specimens specified under paragraph 8(2)(b), state the reasons for refusing the application in respect of the remainder;

- (c) where the application is refused, state the reasons for the refusal; and SCH. 2
- (d) in any case, state the right of appeal under section 18 and the time within which an appeal may be brought.

Form, duration etc. of certificates

- 12.** (1) A certificate shall be in such form as the Department may determine.
- (2) A certificate issued to a person is not transferable to another person.
- (3) A certificate comes into force on the day on which it is issued.
- (4) A re-export certificate remains in force, unless it is earlier revoked, for 6 months from the date on which it is issued.
- (5) A personal ownership certificate or a travelling exhibition certificate remains in force until —
- (a) the certificate is revoked;
- (b) where the specimen to which it relates is sold, dies or is destroyed in the course of being imported or exported, after it is imported or exported;
- (c) except in a case to which sub-paragraph (b) applies, the specimen to which it relates dies or is sold or otherwise disposed of, lost, destroyed or stolen; or
- (d) the expiration of the period, if any, prescribed as the maximum duration of certificates of that class, or such shorter period, if any, as is specified in the certificate.
- (6) Subject to sub-paragraphs (4) and (5), a certificate remains in force until —
- (a) the certificate is revoked; or
- (b) the expiration of the period, if any, prescribed as the maximum duration of certificates of that class, or such shorter period, if any, as is specified in the certificate.

Amendment of certificate

- 13.** (1) The holder of a certificate may apply for the amendment of the certificate, including —
- (a) the addition or deletion of a specimen or description of specimens; or
- (b) the amendment or revocation of a condition subject to which the certificate is issued.
- (2) An application under sub-paragraph (1) shall be made in writing to the Department in such form as the Department may reasonably require.

SCH. 2

(3) The application shall be accompanied by such information as the Department may reasonably require.

(4) The Department may request the applicant to provide to the Department further information in relation to the application, and may decline to determine the application unless and until the information is provided.

(5) The Department may —

(a) grant an application under sub-paragraph (1), or

(b) refuse the application.

(6) The Department shall not grant an application under sub-paragraph (1) if it would not issue a certificate in the terms of the existing certificate as amended in accordance with the application.

(7) If the Department is advised by the Committee that an activity authorised by a certificate is detrimental to —

(a) the survival of a prescribed species, or

(b) the survival, health or welfare of live specimens,

the Department may on its own initiative amend the certificate, including —

(i) deleting a specimen or description of specimens in the certificate,

(ii) amending a condition subject to which the certificate was granted, or

(iii) imposing an additional condition.

(8) Where the Department amends a certificate, it shall require the holder of the certificate to return the certificate to it for amendment or replacement.

(9) If a person fails to comply with a requirement under sub-paragraph (8), he or she is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

Revocation of certificate

14. (1) The holder of a certificate may apply for the revocation of the certificate.

(2) The Department may revoke a certificate on its own initiative if it is satisfied that —

(a) the holder of the certificate provided false or misleading information in the application for the certificate;

(b) the certificate was issued in error;

(c) the holder has failed to comply with a condition subject to which the certificate was issued;

- (d) the holder, an employee of the holder, or a person acting on behalf of or under the general supervision of the holder, has committed an offence against this Act or against any other enactment, or the law of another country or territory, relating to the conservation or welfare of animals or plants; SCH. 2
- (e) the holder has not provided, or is not or will not be able to provide, satisfactorily for the health and well-being of living specimens specified in the certificate of which the holder has had, has or will have possession, as the case may be;
- (f) it is advised by the Committee that it is desirable to do so to assist in —
- (i) the survival of a prescribed species, or
 - (ii) the survival, health or welfare of live specimens.
- (3) Where the Department revokes a certificate, it shall require the holder of the certificate to return the certificate to it for cancellation.
- (4) If a person fails to comply with a requirement under sub-paragraph (3), he or she is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

PART 3

SUPPLEMENTAL

Replacement documents

- 15.** (1) The holder of a permit or certificate may apply to the Department for the issue of a permit or certificate to replace a permit or certificate which has been lost, defaced or damaged.
- (2) An application under paragraph (1) shall be made in writing to the Department in such form as the Department may reasonably require.
- (3) The Department may issue a permit or certificate to replace the lost, defaced or damaged permit or certificate.

Cancellation of used and invalid permits and certificates etc

- 16.** The Department may cancel and retain any permit or certificate which —
- (a) is issued by a recognised management authority;
 - (b) relates to a specimen which has been imported into the Island; and
 - (c) was provided to the Department because it was required under this Act to accompany the import of the specimen.

Invalidity of permits, certificates etc. issued by another country or territory

- 17.** A permit, certificate or other document issued by a recognised management authority of another country or territory, is invalid for the purposes of this Act if —

- SCH. 2
- (a) it was issued in contravention of the law of that country or territory, or
 - (b) a condition to which was subject has not been complied with.

Surrender and notification

18. (1) If an import permit has not been used to accompany the import of a specimen to which it relates within the period of 12 months after it was issued, the holder of the permit shall surrender the permit to the Department within 28 days after the end of the period.

(2) If an export permit has not been used to accompany the export of a specimen to which it relates within the period of 6 months after it was issued, the holder of the permit shall surrender the permit to the Department within 28 days after the end of the period.

(3) If a re-export certificate has not been used to accompany the re-export of a specimen to which it relates within the period of 6 months after it was issued, the holder of the certificate shall surrender the certificate to the Department within 28 days after the end of the period.

(4) If the specimen to which a personal ownership certificate or travelling exhibition certificate relates —

- (a) is sold or otherwise disposed of, or
- (b) dies, or is stolen, destroyed or lost,

the holder of the certificate shall surrender the certificate to the Department within 28 days after the disposal, or after he or she becomes aware of the death, theft, destruction or loss, as the case may be.

(5) A person who fails to comply with sub-paragraph (1), (2), (3) or (4) is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

Section 41(1).

SCHEDULE 3

TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule “the 1981 Act” means the Endangered Species (Import and Export) Act 1981. [c.3]

Wildlife Committee

2. (1) The members of the Scientific Advisory Committee appointed under section 3 of the 1981 Act who hold office immediately before the coming into operation of section 1 shall be members of the Wildlife Committee, and shall hold office in accordance with the terms of their appointment to the Scientific Advisory Committee.

(2) Anything done by the Scientific Advisory Committee under or for the purpose of any provision of the 1981 Act shall have effect as if done by the Wildlife Committee under or for the purposes of the corresponding provision of this Act.

Licences

3. (1) A licence granted by the Department under section 1(2) of the 1981 Act to any person for the importation or exportation of a specimen shall have effect as an import permit, export permit or re-export certificate, as appropriate, issued to that person subject to the like conditions as those (if any) contained in the licence and expiring on the date on which it would have expired under section 2(2) of the 1981 Act.

(2) In proceedings for an offence under section 13 of selling, offering or exposing for sale, or having in his or her possession or transporting for the purpose of sale any specimen, it is a defence for the accused to show that —

- (a) a licence had been granted by the Department under section 5(1B) of the 1981 Act permitting him or her to sell that specimen, to offer or expose it for sale, or to have it in his or her possession or transport it for the purpose of sale, as the case may be;
- (b) the terms of the licence were complied with, and
- (c) at the date of the alleged offence, the period of 12 months commencing with the date the licence was issued, or such shorter period as is stated in the licence, had not expired.

Places for import or export

4. An order made under section 6 of the 1981 Act with respect to animals of any kind shall have effect as if it had been made under section 8(1) with respect to animals of that description.

Possession of unlawfully imported specimens

5. The reference in section 14(1) to a specimen imported in contravention of Part 2 includes a reference to a specimen imported in contravention of section 1 of the 1981 Act.

6. Any reference in sections 26 to 28 to an offence against this Act includes a reference to an offence against the 1981 Act.

Section 41(3). SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

Wild Animals (Restriction on Importation, Etc.) Act 1980 (c.4)

1. (1) In section 3(1), for “Scientific Advisory Committee” substitute “Wildlife Committee”.

(2) In section 7(1), for the definition of “the Scientific Advisory Committee” substitute —

“ “the Wildlife Committee” means the Wildlife Committee established under section 1(2) of the Endangered Species Act 2009;”.

Wildlife Act 1990 (c.2)

2. In section 38, at the end insert —

“ “the Wildlife Committee” means the Wildlife Committee established under section 1(2) of the Endangered Species Act 2009.”.

Cruelty to Animals Act 1997 (c.5)

3. In section 20(4), for the definition of “endangered species” substitute —

“ “endangered species” means a Class A species within the meaning of the Endangered Species Act 2009; and”.

Heath Burning Act 2003 (c.15)

4. In section 8(6)(b), for “the Scientific Advisory Committee established by section 3 of the Endangered Species (Import and Export) Act 1981” substitute “the Wildlife Committee established under section 1(2) of the Endangered Species Act 2009”.

Section 41(4).

SCHEDULE 5

ENACTMENTS REPEALED

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal or revocation</i>
1981 c.3	Endangered Species (Import and Export) Act 1981.	The whole Act.
1990 c.2	Wildlife Act 1990.	Section 15. Section 24(1). Schedule 9.
1994 c.11	Wildlife Etc. (Amendment) Act 1994.	Section 1.

IN THE KEYS

Endangered Species

A BILL

*to give effect to the Convention
on International Trade in
Endangered Species of Wild
Fauna and Flora; and for
connected purposes.*

Approved by the Council of Ministers for
introduction in the House of Keys.

MR. GAWNE

MAY 2009
