



THE FALKLAND ISLANDS GAZETTE Supplement

PUBLISHED BY AUTHORITY

Vol. 10

25th June 1999

No. 13

The Conservation of Wildlife and Nature Bill was passed at the Falkland Islands Government Legislative Council on 21st August 1999. Some changes to the bill were made. Farmers must now obtain a licence if they wish to shoot or capture the Striated Caracara, if they feel it is endangering their livestock. Licences can be granted for up to two years. The Bill also makes it illegal to collect Rockhopper penguin eggs.

Explanatory Memorandum

to the Conservation of Wildlife and Nature Bill 1999

Introductory

It has been recognised for a number of years that the existing legislation of the Falkland Islands dealing with the subject of conservation of wildlife and nature (principally the Wild Animals and Birds Protection Ordinance 1964 and the Nature Reserves Ordinance 1964) is inadequate to enable proper protection to be given to wildlife in the Falkland Islands and to meet obligations under relevant international conventions (eg the Bonn Convention in relation to highly migratory species, the Ramsar Convention in relation to wetlands of international importance and the Biodiversity Convention). The Conservation of Wildlife and Nature Bill 1999 has been drafted with the intention of replacing the two 1964 Ordinances and making additional provision.

The scheme of protection under the Bill

Under the Bill wildlife is divided into three classes: birds, animals and plants. "Animal" is defined in clause 2(1) of the Bill as meaning "any kind of animate creature except human beings, birds, microbes and bacteria and includes any egg or spawn of an animal and every stage of development of an animal". "Animal" therefore includes reptiles, insects, all many legged invertebrate creatures, snails and fish of every kind. "Plant" as defined in clause 2(1) in similarly wide terms so as to include any inanimate living organism so that algae, fungi, lichens, mosses, bushes, shrubs and trees and the seeds and spores and every other stage in the growth cycle of a plant is included in the definition.

Under the Bill birds are protected by "reverse-listing": that is to say, all wild birds are protected under clause 3(1) with the exception that under clause 3(4) the birds specified in Part I of Schedule 1 to the Bill may be killed by authorised persons at any time and the birds listed in Part II of Schedule 1 may be killed by authorised persons outside the closed season (which is stated to be 1st July to 31st March). "Authorised person" is defined in clause 2(1)

and, importantly, includes in relation to any act not prohibited by or under the Bill (if enacted) or any other written law done on any land in private ownership, the owner or occupier of that land and any person authorised by the owner or occupier of the land to do the act in question. Thus the Bill does not, for example, authorise anybody to hunt on privately owned land without the permission of the owner or occupier of the land in question.

Some farmers have particular concerns in relation to the actions of certain birds of prey, including in particular the Striated Caracara (Johnny Rook). As is the case under the existing law, these birds would be protected so that, as a result, it would be unlawful to shoot them or otherwise kill them. Special provision would however be made by clause 5(2) and (3) of the Bill to the effect that a farmer and any person in his employment would not be committing an offence if upon the farm in question he killed, injured or captured a protected wild bird which, at the time he kills, injures or captures it was engaged in attacking or feeding upon any livestock on that farm and the farmer or his employee killing, injuring or capturing the bird within three months of doing so notifies the Government Secretary in writing of the species of the bird, the date on which and location at which and circumstances in which he killed, captured or injured the bird. If he failed to make such a report, he would remain guilty of the offence of unlawfully killing, injuring or capturing a protected bird. It should also be noted that under clause 9 of the Bill provision would be made for the grant of licences which would enable the licensee, subject to the conditions of the licence, to do anything which would otherwise be prohibited by the provisions of the Bill. Clause 9 does not, of course, relate only to protected wild birds.

The protection of wild birds under clause 3(1) is not limited to protection from them being killed, injured or captured but extends so as to prohibit the disturbing of a wild bird while it is building a nest or is in or near a nest containing eggs or young, disturbing dependent young of a wild bird, taking, damaging or destroying the nest of a wild bird while that nest is in use or being built and taking or destroying the eggs of a wild bird. By reason of the provisions of clause 3(7) "wild bird" would not include any bird which is shown to have been bred in captivity. However in proceedings for an offence under clause 3(1) or (2) a bird is to be presumed to be a wild bird unless the contrary is shown and an egg or anything derived from a bird is to be presumed to be an egg of, or as the case may be, derived from a wild bird unless the contrary is shown.

In contrast to wild birds, which has been explained above are all protected except to the extent that the Bill specifies to the contrary, wild animals are protected only if they are specified under clause 4(4) (a) and Schedule 2 to the Bill or are marine mammals. It will be recalled that marine mammals are protected under the provisions of the Marine Mammals Ordinance. The only "animals" specified in Schedule 2 to the Bill are butterflies, the Brown Trout and the Falkland Islands Trout. Provision is, however, made by clause 4(9) of the Bill for Schedule 2 to be amended by Order and at a future date, and when more is known about the insect-life of the Falkland Islands, some of which may be unique, there may be additions to that Schedule.

There are no native species of mammals or reptiles and since mice, rats, hares and rabbits, which live in the wild, are not specified in Schedule 2 to the Bill none of the provisions of the Bill restrict their being killed or captured.

Plants, the protection of which clause 7 of the Bill relates, are only protected if they are of a species mentioned in or fall within a description contained in Schedule 3 to the Bill. It should be noted that species of plants are listed in Schedule 3 if they are rare or relatively rare and are endemic to the Falkland Islands and not simply if they are endemic. Under clause 7(1) it would be an offence deliberately to pick, collect, cut, uproot or destroy a protected wild plant, but subject to the subsequent provisions of clause 7 there is a defence for the owner or occupier of the land in question or a person authorised by him who shows that the act which would otherwise have been unlawful under clause 7(1) was an incidental result of a lawful operation carried out by him which could not reasonably have been avoided. Thus a farmer who in the course of farming practice burns off grass will not commit an offence under clause 7(1) if as an incidental effect of the burning off a protected wild plant is destroyed. Equally, under clause 7(6) a plant which would otherwise be a protected wild plant and which is growing or is shown to have been growing "within the enclosed cartilage of a building" (this expression would include a walled or fenced garden or yard) is not a protected wild plant.

Further protective provisions

Clause 6 of the Bill would prohibit certain methods of capturing or killing wild birds and protected wild animals.

The introduction of new species is dealt with by clause 8 to the Bill. Under clause 8, subject "to the provisions of this Part" (ie the licensing provisions of clause 9) it would be an offence for a person to release or allow to escape into the wild any animal or bird which is of a kind not ordinarily resident in or a visitor to the Falkland Islands. Under clause 8(2) it would be an offence for a person to plant or otherwise cause to grow in the wild any plant of a

kind not ordinarily found growing in the wilds of the Falkland Islands (note however that the planting of trees for a shelter belt could be allowed by a licence under clause 9 (2) (h)).

Licences

Clause 9 of the Bill contains provisions in relation to the grant of licences. A licence could either be granted to a specific person or to all persons. The purposes for which a licence could be granted are stated in clause 9(2). Limitations on the grant of licences are specified in clause 9(5) under which there are special provisions in relation to the collection of bird eggs. It should be noted that under clause 9(5)(c) only eggs of the birds of the species mentioned in that provision can be permitted to be collected for human consumption. The provision does not alter the present law in that respect.

Clause 10 would contain supplementary provision in relation to the grant of licences. Clause 11 deals with false statements made for the purpose of obtaining licences and constitutes an offence of making a false statement for that purpose.

Part III of the Bill

Part III of the Bill (clauses 12 to 16) makes provision in relation to conservation areas. Clause 12 is an interpretation clause.

Under clause 13, the Governor would have power on the advice of the Executive Council to create national nature reserves. Clause 13(2) would provide that all areas in respect of which Sanctuary Orders and Nature Reserve Orders were in force under the present legislation immediately before the Bill, if enacted, comes into force would be national nature reserves. Different provisions might be made in respect of different national nature reserves by regulations under clause 16. Land which is privately owned, and which is not at present a sanctuary or nature reserve could not be declared to be a national nature reserve without the agreement of every owner, lessee and occupier (clause 13(1)(b)). Clause 14 provides for management agreements to be entered into with the owners, lessees and occupiers of land which is or is to be a national nature reserve. Such an agreement may provide for the matters mentioned in clause 14(2) and would be registered in the Land Charges Register under clause 14(3). The purpose of that registration would be so that every proposed purchaser of the land in question would have the provisions of the management agreement brought to his notice. Clause 15 provides for the action which could be taken if a management agreement were broken. Under clause 15(1) the Governor could serve a notice on the person or persons in breach requiring the remedy at his or their cost of the breach and under clause 15(2) if he or they fail to do so, the Governor could have the necessary work done and the cost of it could be recovered from the person or persons in breach of the agreement.

Reference has been made above to clause 16 which makes provision for the making of regulations in respect of national nature reserves and what may be contained in such regulations. A breach of the regulations might be constituted a criminal offence (clause 16(4)).

Part IV of the Bill provides in clause 17 in relation to offences by corporations and in clause 18 for the repeal of the Fisheries Ordinance (that is to say the old Fisheries Ordinance not the Fisheries (Conservation and Management) Ordinance 1986), the Wildlife and Birds Protection Ordinance 1964 and the Nature Reserves Ordinance 1964). The Schedules to the Bill have been dealt with above in relation to the provisions under which they would exist.

This new legislation will lead to the repeal of current conservation legislation, namely the Wild Animals and Bird Protection Ordinance 1964, the Nature Reserves Ordinance 1964 and the Fisheries Ordinance.

Conservation of Wildlife and Nature Bill 1999

(No: 10 of 1999)

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CONSERVATION OF WILDLIFE AND NATURE BILL 1999

(No:10 of 1999)

(assented to: 30 August 1999)

(commencement: in accordance with section 1)

(published: 21 September 1999)

AN ORDINANCE

To repeal the Wild Animals and Birds Protection Ordinance 1964, the Nature Reserves Ordinance 1964 and the Fisheries Ordinance; to make new provision in relation to the conservation of nature and the protection of wildlife in the Falkland Islands.

ENACTED by the Legislature of the Falkland Islands as follows-

PART I **Introductory**

Short title, commencement and interpretation

1. Short title and commencement

This Ordinance may be cited as the Conservation of Wildlife and Nature Ordinance 1999 and shall come into force on the first day of the second month beginning after its publication in the *Gazette*.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"aircraft" includes a hovercraft;

"animal" means any kind of animate creature except human beings, birds, microbes and bacteria and includes any egg or spawn of an animal and every stage of development of an animal;

"authorised person" means-

(a) in relation to any action, wherever done, any person authorised in writing-

(i) by a provision of a written law, or

(ii) by some licence or permit granted under a provision of any written law,

to do the thing in question;

(b) in relation to any act not prohibited by or under this Ordinance or any other written law done on any land in private ownership, the owner or occupier of that land and any person authorised by the owner or occupier of that land to do the act in question, but the authorisation of a person by a licence or permit granted as aforesaid does not itself confer any right of entry upon any land;

"close season", in relation to a species of wild bird mentioned in the first column of Part II of Schedule 1 to this Ordinance, means the period or periods of the year mentioned in relation to that species in the second column of that Part;

"destroy"-

(a) in relation to an egg, includes doing anything to the egg which is likely to prevent it from hatching, and "destruction", in relation to an egg, shall be construed accordingly, and

(b) in relation to a plant, includes doing anything to a plant which is calculated to kill it, prevent it from germinating, prevent it from flowering, bearing mature seeds, asexually reproducing or spreading or which is calculated to inhibit its germination or growth, and "destruction", in relation to a plant shall be construed accordingly;

"fish" includes shellfish and molluscs;

"land" includes land covered by water;

"lichen" means a plant of the division *Lichenes* (that is to say a plant formed by the symbiotic association of a fungus and an alga);

"marine mammal" has the same meaning as it has under section 2 of the Marine Mammals Ordinance 1992;

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

"plant" means any inanimate living organism, and without prejudice to the generality of the foregoing, includes algae, fungi, lichens, mosses, bushes, shrubs and trees and seeds and spores and every other stage in the growth cycle of a plant;

"poultry" means, except when it is living wild or (before it was killed or captured) was living wild, any domestic fowl, goose, duck guinea-fowl, pigeon, quail or turkey;

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

"wild animal" means any animal, except wild cattle and any bird, which is or (before it was killed or captured) was living wild;

"wild bird" means any bird, except poultry, which is resident in or a visitor to the Falkland Islands in a wild state;

"wild plant" means any plant which is or (before it was picked, uprooted or destroyed) was growing wild and is of a kind which ordinarily grows in the Falkland Islands in a wild state.

(2) A reference in this Ordinance to "any written law" includes a reference to this Ordinance.

(3) This Ordinance-

(a) extends to the territorial sea of the Falkland Islands; and

(b) binds the Crown.

PART II
Wildlife

Protection of wild birds and of wild animals

3. Protection of wild birds

- (1) Subject to the provisions of this Part, it is an offence for any person deliberately-
- (a) to kill, injure or capture a wild bird;
 - (b) to disturb a wild bird while it is building a nest or is in, on or near a nest containing eggs or young;
 - (c) to disturb dependant young of a wild bird;
 - (d) to take, damage or destroy the nest of a wild bird while that nest is in use or being built; or
 - (e) to take or destroy an egg of a wild bird.
- (2) Subject to this Part, it is an offence for any person knowingly to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild bird, or any part of, or anything derived from, such a wild bird.
- (3) Subsections (1) and (2) apply to all stages of the life of the wild birds to which they apply.
- (4) An authorised person does not commit an offence under subsection (1) or subsection (2) by doing in relation to a bird included in Part I of Schedule 1 or its nest or any of its eggs any of the things which would otherwise constitute an offence by him under one or other of those subsections.
- (5) An authorised person does not commit an offence under subsection (1) or (2) by killing or capturing outside the close season a bird included in Part II of Schedule 1 to this Ordinance or by injuring such a bird outside that season in the course of an attempt to kill it.
- (6) A person shall not be convicted of an offence under subsection (2) if he shows-
- (a) that the bird had not been captured or killed, or had been lawfully captured or killed,
 - (b) that the bird or other thing in question had been lawfully sold or given (whether to him or to another person), or
 - (c) that the bird or other thing was lawfully acquired (by him or another person) before the coming into force of this Ordinance.
- (7) In this section "wild bird" does not include any bird which is shown to have been bred in captivity, but in proceedings for an offence under subsection (1) or subsection (2) a bird shall be presumed to be a wild bird unless the contrary is shown, and an egg or anything derived from a bird shall be presumed to be an egg of, or as the case may be, derived from a wild bird unless the contrary is shown.
- (8) Paragraph (a) of subsection (6) shall apply to eggs with the substitution of the word "taken" for the word "captured" in both places where "captured" appears in that paragraph.
- (9) Schedule 1 to this Ordinance may from time to time be amended by the Governor by Order under this subsection.
- (10) A person convicted of an offence under subsection (1) or (2) is liable to a fine not exceeding the maximum of level 5 on the standard scale.

4. Protection of wild animals

- (1) Subject to the provisions of this Part, it is an offence deliberately-
- (a) to capture or kill a protected wild animal;

(b) to take or destroy the eggs or spawn of such an animal;

(c) to damage or destroy a breeding site or resting place of a protected wild animal.

(2) Subject to this Part, it is an offence knowingly to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead protected wild animal, or any part of, or anything derived from, such an animal.

(3) Subsections (1) and (2) apply to all stages of the life of the animals to which they apply.

(4) For the purposes of this section, a wild animal is a protected wild animal if-

(a) it is an animal mentioned in, or falling within a description of animals contained in Schedule 2 to this Ordinance; or

(b) it is a marine mammal.

(5) Subject to subsection (6) a person shall not be convicted of an offence under subsection (2) if he shows-

(a) that the animal had not been captured or killed, or had been lawfully captured or killed,

(b) in respect of an animal mentioned in Part 2 of Schedule 2 to this Ordinance, if he shows that he captured it by rod and line outside the close season, and does not capture more than six on any one day.

(6) Nothing in subsection (5)(a) authorises the sale of any protected wild animal or its eggs.

(7) In this section -

(a) "wild animal" does not include any wild animal which is shown to have been bred in captivity, but in proceedings for an offence under subsection (1) or subsection (2) an animal shall be presumed to be a wild animal unless the contrary is shown, and an egg or anything derived from an animal shall be presumed to be an egg of, or as the case may be, derived from a wild animal unless the contrary is shown;

(b) "close season" in relation to any animal mentioned in Part II of Schedule 2, means the months of May to August.

(8) Paragraph (a) of subsection (8) shall apply to eggs with the substitution:

(a) of the word "taken" for the word "captured" in both places where "captured" appears in that paragraph.

(b) of the word "destroyed" for the word "killed".

(9) Schedule 2 to this Ordinance may from time to time be amended by the Governor by Order under this subsection.

(10) A person convicted of an offence under subsection (1) or (2) is liable to a fine not exceeding the maximum of level 5 on the standard scale.

5. Further defences in relation to offences under sections 3 and 4

(1) Nothing in section 3(1) or (2) or 4(1) or (2) renders it unlawful or an offence for any person-

(a) to do anything done under, or in pursuance of, an Order made under the Animal Health Ordinance 1998;

(b) to disturb any wild bird or protected wild animal within a dwellinghouse;

(c) to damage or destroying the nest, breeding site or resting place of a wild bird or protected wild animal within a dwellinghouse;

(d) to capture or take any wild bird or wild animal if that person shows that the wild bird or protected wild animal had previously been disabled otherwise than by his unlawful act and that he captured or took it solely for the purpose of tending to it and releasing it when no longer disabled;

(e) a person killing such a wild bird or protected wild animal if that person shows that the wild bird or wild animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or

(f) any other act rendered unlawful by any of those provisions if the person who did that act shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.

(2) In this section, "protected wild bird" means a bird of a species other than a species mentioned in either Part of Schedule 1

6. Prohibition of certain methods of capturing or killing wild birds and protected wild animals

(1) It is an offence to use for the purpose of capturing or killing any wild bird or protected wild animal-

(a) any of the means listed in subsection (2) of this section, or

(b) any form of capturing or killing from the modes of transport mentioned in subsection (3) of this section.

(2) The prohibited means of capturing or killing protected wild birds and protected wild animals are-

(a) using any bird or animal (whether or not it is a protected wild bird or protected wild animal), as a decoy;

(b) any form of equipment capable of replaying a recording of sounds or pictures or both;

(c) electrical and electronic devices capable of killing or stunning;

(d) artificial light sources;

(e) mirrors and other dazzling devices;

(f) devices for illuminating targets;

(g) sighting devices for night shooting comprising an electronic image intensifier or image converter;

(h) explosives;

(i) except in relation to fish under the authority of a licence granted under the Fisheries (Conservation and Management) Ordinance 1986, any net or trap which is non-selective according to its principle or its conditions of use;

(j) crossbows;

(k) gassing or smoking out;

(l) poisons and poisoned or anaesthetic bait;

(m) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition;

(n) chemical wetting agents; and

(o) any of the following which is calculated to cause injury, that is to say any gin, snare, noose, any form of bird lime and, except in relation to fish, any trap, net or hook and line, but nothing in this subsection renders unlawful the use of any of the foregoing methods by a person acting in pursuance of any written law to which paragraph (a) of section 5 relates.

(3) The prohibited means of transport are-

(a) aircraft; and

(b) moving motor vehicles.

(4) A person convicted of an offence under subsection (1) is liable to a fine not exceeding the maximum of level 5 on the standard scale.

Protection of wild plants

7. Protection of wild plants

(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a protected wild plant or for any person other than an authorised person deliberately to uproot any protected wild plant.

(2) For the purposes of this section, a plant is a protected plant if it is a plant mentioned in, or falls within a description of plants contained in, Schedule 3 to this Ordinance.

(3) It is an offence to keep, transport, sell or exchange or offer for sale or exchange, any live or dead protected wild plant or any part of, or anything derived from, such a plant.

(4) Subsections (1) and (3) apply to all stages of the growth cycle of the plants to which they apply.

(5) A person does not commit an offence under subsection (1) -

(a) if he is the owner or occupier of the land in question or an authorised person and shows that the act which would otherwise have been unlawful by virtue of subsection (1) was an incidental result of a lawful operation carried out by him and could not reasonably have been avoided;

(b) under subsection (3) of this section if he shows that the plant or other thing in question had been sold or given (whether to him or any other person) without any contravention of any provision of this Part of this Ordinance.

(6) For the purposes of this section-

(a) a plant which is growing, or is shown to have been growing, within the enclosed curtilage of a building is for the purposes of this section not a wild plant even if it is shown that it was not cultivated; but otherwise

(b) a plant which if it is a wild plant would be a protected wild plant, is to be presumed to be a wild plant unless the contrary is shown,

and for the purposes of paragraph (a) of this subsection "enclosed curtilage" means land within a hedge, fence or wall and constituting the garden or other land for the amenity of the building which it surrounds or abuts.

(7) Schedule 3 to this Ordinance may be amended by Order made by the Governor under this subsection.

(8) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 5 on the standard scale.

Miscellaneous

8. Introduction of new species etc

(1) Subject to the provisions of this Part, it is an offence for a person to release or allow to escape into the wild any animal or bird which is of a kind not ordinarily resident in or a visitor to the Falkland Islands.

(2) Subject to the provisions of this Part, it is an offence for a person to plant or otherwise cause to grow in the wild any plant of a kind not ordinarily found growing in the wild in the Falkland Islands.

(3) Subject to subsection (4), a person shall not be convicted of an offence under subsection (1) or (2) if he proves that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where the defence provided by subsection (3) involves an allegation that the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on the defence unless, within a period of seven clear days before the hearing, he had served on the prosecutor a notice giving such

information identifying or assisting in the identification of the other person as was then in his possession.

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

Supplemental

9. Grant of licences for certain purposes

(1) Sections 3 to 8 do not apply to anything done-

- (a) under and in accordance with the terms and conditions of a licence granted under any written law; or
- (b) for any of the purposes mentioned in subsection (2) under and in accordance with the terms and conditions of a licence granted by the Governor.

(2) The purposes referred to in subsection (1) are-

- (a) scientific or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, and wild animal or wild bird;
- (c) conserving wild animals, wild birds or wild plants or introducing them to particular areas;
- (d) preserving public health or public safety;
- (e) preventing the spread of disease;
- (f) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or for any other form of property or to fisheries;
- (g) the improvement of agriculture or forestry;
- (h) authorising a person resident in the Falkland Islands to collect the eggs of any bird specified in the licence for human consumption in the Falkland Islands or for the purposes of a scientific institution outside the Falkland Islands; or

(3) The Governor may by instrument under his hand delegate the exercise of all or any of his powers under this section, except this power of delegation, to such public officer or officers or other person or persons, and subject to such conditions, limitations and to compliance with such directions, which may include a requirement that such fee shall be paid for a licence as is therein mentioned, as are specified in any such instrument.

(4) The grant of a licence under this section shall not be construed as authorising any person to enter upon the land of another without that other's permission or consent.

(5) A licence of a kind to which subsection (2)(h) refers shall -

- (a) specify the quantity and species of bird eggs it authorises the licensee to collect;
- (b) prohibit the sale to any person of those eggs; and
- (c) not authorise the collection for human consumption of the eggs of any species of bird except Gentoo penguin (*Pygoscelis papua*), Magellanic penguin (*Spheniscus magellanicus*), Black-browed Albatross (*Diomedea melanophris*), Logger duck (*Tachyeres brachydactyla*), Patagonian crested duck (*Anas specularioides*), Yellow-billed teal (*Anas flavirostris*) and Kelp gull (*Larus dominicanus*) (otherwise known as Dominican gull).

10. Licences: supplementary provisions

(1) A licence under section 9-

(a) may be, to any degree, general or specific;

(b) may be granted either to persons of a class or to a particular person; and

(c) without prejudice to section 9(5) may be subject to compliance with any specified conditions.

(2) A licence granted under section 9 may be granted subject to conditions, which shall be complied with and such a licence may be revoked at any time by the Governor, but otherwise shall be valid for the period stated in the licence.

(3) A licence under section 9 which authorises any person to kill any wild bird or protected wild animal shall specify the area within which and the methods by which wild birds or protected wild animals may be killed and shall not be granted so as to be valid for a period exceeding two years.

(4) It is a defence for a person charged with an offence under section 8(b) of the Protection of Animals Act 1911 (which restricts the placing on land of poison and poisonous substances) in its application to the Falkland Islands to show that-

(a) the act alleged to constitute the offence was done under and in accordance with the terms of a licence under section 9 of this Ordinance; and

(b) any conditions specified in or by the licence were complied with.

(5) A person who contravenes any condition of a licence granted under section 9 commits an offence and is liable on conviction to a fine not exceeding the maximum of level 5 on the standard scale and to imprisonment for a term not exceeding three months.

11. False statements made for obtaining licence

(1) A person commits an offence who, for the purposes of obtaining whether for himself or another, the grant of a licence under section 9-

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

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

(2) A person convicted of an offence under this section is liable to a fine not exceeding the maximum of level 4 on the standard scale.

PART III
Conservation Areas
Introductory

12. Interpretation of Part III

In this Part, unless the context otherwise requires-

- (a) "national nature reserve" means an area of land or water (or both) to which an Order under section 15(1) relates; and
- (b) "marine area" means an area consisting of land covered (continuously or intermittently) by tidal waters or parts of the sea which are landward of the baselines from which the breadth of the territorial sea adjacent to the Falkland Islands is measured or are seaward of those baselines up to a distance of three nautical miles; and
- (c) references to the natural beauty of an area shall be construed as including references to its flora, fauna and geological or physiographical features.

National nature reserves

13. Designation of national nature reserves

(1) The Governor may by Order declare-

- (a) any area of Crown Land or any marine area; or
- (b) with the agreement of every owner, lessee and occupier, any privately owned land,

to be a national nature reserve.

(2) All Sanctuary Orders and Nature Reserve Orders in force immediately prior to the commencement of this Ordinance shall, until they are revoked by an Order under this section, on commencement of this Ordinance continue in force as if-

- (a) they had been made as national nature reserve Orders immediately on such commencement; and
- (b) the provisions of any such Order regulating the control, administration or protection of the area to which the Order relates had been made immediately on commencement of this Ordinance as regulations under section 16 of this Ordinance,

but nothing in this subsection shall affect the application of any such Order in relation to any act or omission of any person occurring before the commencement of this Ordinance and any contravention of any such Order occurring before the commencement of this Ordinance may be prosecuted, and the offender be dealt with, in the same way as if this Ordinance had not been enacted.

(3) In this section, "Sanctuary Order" means an Order made under section 4 of the Wildlife and Birds Protection Ordinance 1964 and "Nature Reserve Order" means an Order made under section 3 of the Nature Reserves Ordinance 1964.

14. Management agreements

(1) If the Governor considers that it would be in the public interest that any area of private land should be managed as a national nature reserve, he may enter into an agreement with every owner, lessee and occupier of that land that it shall be so managed.

(2) Any such agreement may-

- (a) provide for the management of the land in such manner and the carrying out on it of such work and the doing thereon of such other things as may be expedient for the purposes of the agreement;
- (b) provide for any of the things mentioned in paragraph (a) being carried out, or the cost of them defrayed in whole or in part by the owner or any other person or by the Crown;
- (c) contain such other provisions as may be agreed between the Crown and the owner, lessee or occupier; and
- (d) be made irrevocably or subject to such provisions for revocation or variation as may be specified in the agreement.

(3) Any agreement under this section shall be registered under sections 3 and 4 of the Land Charges Ordinance 1996 against the name of every owner, lessee and occupier who is party to it as a Class II land charge and, subject to such registration before he acquired his interest, every provision of the agreement shall be enforceable against every successor in title of any such owner, lessee or occupier as if he had been a party to the agreement in the first place.

15. Breach of management agreements

(1) The Governor may, if it appears to him that a breach of an agreement under section 14(1) of this Ordinance has occurred and that that breach adversely affects the satisfactory management as a national nature reserve of land to which the agreement relates by notice to the person or persons in breach of the agreement require that person or those persons to remedy that breach at his or their cost within such time, not being less than 42 days, as shall be specified in that notice;

(2) If a breach of such an agreement is not remedied within the period specified in the notice served under subsection (1) or any greater period the Governor may have allowed for the purpose, the Governor may enter upon the land with or without workmen and others and take such steps as appear to him to be necessary to remedy the breach, and recover as a civil debt the cost of so doing, as certified by the Financial Secretary, from the person or persons in breach, whose liability shall, if more than one, be joint and several.

16. Regulations in relation to national nature reserves

(1) The Governor may make regulations for the protection of any national nature reserve. Such regulations may be expressed to apply to one or more national nature reserves specified therein or as to all national nature reserves and may make different provision in relation to different parts of the year and different provision in relation to different national nature reserves or different parts of the same national nature reserve.

(2) Without prejudice to the generality of subsection (1) of this section, regulations may-

(a) provide for prohibiting or restricting, either absolutely or subject to any exceptions-

(i) in relation to any marine national nature reserve and any part of any other national nature reserve consisting of land covered by water, the entry into, or movement within, the reserve of persons and vessels;

(ii) in relation to any national nature reserve or part thereof consisting of land not covered by water, the entry into, or movement within, the reserve of persons and vehicles of any kind;

(b) prohibit the killing, taking, destruction, molestation or disturbance of animals, birds or plants of any description in the reserve, the taking or destruction of the egg of any animal or bird, the picking, plucking, uprooting of any plant, the damaging or destroying of the breeding site, resting place or nest of any animal or bird or the doing of anything within the reserve which interferes with the seabed or the bed of any water or disturbs or damages any object within the reserve;

(c) prohibit the depositing of rubbish in the reserve and the discharge of any noxious or polluting substance;

(d) prohibit the bringing into the reserve of any weapon or other device or thing designed or adapted for the purpose of killing any animal or bird;

(e) prohibit the smoking of any cigarette, cigar or pipe within the reserve, the lighting of any fire or the doing of anything likely to cause a fire within the reserve; and

(f) prohibit the bringing into the reserve of any animal, bird or plant.

(3) Nothing in regulations under this section shall-

(a) prohibit or restrict, except with respect to particular parts of the reserve at particular times of year in relation to a pleasure boat, the exercise of any right of passage by a vessel;

(b) render unlawful anything done for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or saving life;

(c) render unlawful anything done more than 30 metres below the sea bed;

(d) render unlawful anything done under authority of a licence granted under any written law or pursuant to an order under any written law of the Falkland Islands in relation to animal health;

(e) interfere with the exercise by any person of—

(i) a right vested in him as owner, lessee or occupier of land in the reserve or otherwise permitted under the terms of an agreement relating to that land; or

(ii) any public right of way over land.

(4) Regulations made under this section may provide that a contravention of any provision of such regulations specified for that purpose constitutes an offence and that a person convicted of that offence shall be liable to a fine of such amount, not exceeding the maximum of level 5 on the standard scale, as is specified by the regulations in relation to contravention of the provision in question.

PART IV
Miscellaneous

Offences

17. Offences by corporations

(1) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Repeals

18. Repeals

The Fisheries Ordinance, the Wildlife and Birds Protection Ordinance 1964 and the Nature Reserves Ordinance 1964 are repealed.

Schedules

SCHEDULE 1

Part I

Birds which may be killed or captured by authorised persons at any time

Upland Goose

Domestic Goose of any species which have become feral

Mallard Duck

Part II

Birds which may be killed or captured by authorised persons at any time outside the close season

Species	Close season
Yellow-billed Teal	1st July to 31st March
Crested Duck (otherwise known as Patagonian Crested Duck)	

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SCHEDULE 2

Part I

Protected animals

All species of butterflies (*Rhopalocera*)

Trout (*Salmo trutta*)

Falkland Islands Trout (*Aplochiton zebra*)

Part II

Protected animals which may be killed or captured by authorised persons at any time outside the close season (1st May to 31st August)

Trout (*Salmo trutta*)

SCHEDULE 3
Protected plants

Adders Tongue	<i>Ophioglossum crotalophorides</i>
Dusen's Moonwort	<i>Botrychium duseni</i>
Chilean Maidenhair Fern	<i>Adiantum chilense</i>
Feltons Flower	<i>Calandrinia feltonii</i>
Shrubby Seablite	<i>Suaeda argentinensis</i>
Falklands Rock Cress	<i>Phlebotobium maclovianum</i>
Fuegian Saxifrage	<i>Saxifraga magellanica</i>
Native Yellow Violet	<i>Viola maculata</i>
Yellow Lady's Slipper	<i>Calceolaria dichotoma</i>
Falklands False Plantain	<i>Nastanthus falklandicus</i>
Hairy Daisy	<i>Erigeron Incertus</i>
Falkland Pondweed	<i>Potamogeton linguatus</i>
Yellow Pale Maiden	<i>Sisyrinchium chilense</i>
Pale Yellow Orchid	<i>Gavilea australis</i>
Yellow Orchid	<i>Gavilea littoralis</i>
Gaudichaud's Orchid	<i>Chlorae gaudichaudii</i>
Fir Clubmoss	<i>Huperzia selago</i>
Comb Fern	<i>Schizaea fistulosa</i>
Leathery Shield Fern	<i>Rumohra adiantiformis</i>

Passed by the legislature of the Falkland Islands this 21st day of August 1999

C. ANDERSON,
Clerk of Councils.