

TRISTAN DA CUNHA

CONTROL OF TRADE IN ENDANGERED SPECIES ORDINANCE, 2020

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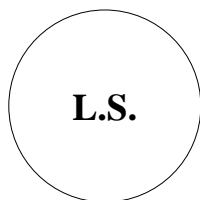
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Philip Rushbrook
Governor of Tristan da Cunha



**TRISTAN DA CUNHA
NO 2 OF 2020**

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AN ORDINANCE

to make new provision for the regulation of trade in endangered species, and for connected or incidental matters.

Enacted by the Governor of Tristan da Cunha after consultation with the Island Council of Tristan da Cunha.

**PART 1
PRELIMINARY**

Short title and commencement

1. This Ordinance may be cited as the Control of Trade in Endangered Species Ordinance, 2020 and comes into force on publication.

Interpretation

2. In this Ordinance—
“**Appendix I**” means, subject to section 5, Appendix I to CITES as amended from time to time, and “**Appendix I specimen**” means a specimen of a species listed in Appendix I;
“**Appendix II**” means, subject to section 5, Appendix II to CITES as amended from time to time, and “**Appendix II specimen**” means a specimen of a species listed in Appendix II;
“**Appendix III**” means, subject to section 5, Appendix III to CITES as amended from time to time, and “**Appendix III specimen**” means a specimen of a species listed in Appendix III;
“**artificially propagated**” has the meaning given that term by section 3(1);

“**bred in captivity**” has the meaning given that term in section 3(2);

“**certificate**” means a certificate granted under section 17 or an equivalent document granted by a recognised management authority and “**travelling exhibition certificate**”, “**pre-Convention certificate**”, “**certificate of captive breeding**” and “**certificate of artificial propagation**” respectively mean a certificate of that name granted under section 17 or an equivalent document granted by a recognised management authority;

“**certificate of origin**” means a certificate verifying the origin of a specimen granted by a recognised management authority;

“**CITES**” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed at Washington, D.C. on 3rd March 1973, as amended from time to time;

“**commercial purposes**” means purposes that are for obtaining economic benefit, including profit (whether in cash or in kind) and directed toward resale, exchange, the provision of a service or other form of economic use or benefit, and purposes that are partly commercial and partly non-commercial are deemed to be commercial;

“**export**” means the act of taking a specimen out of Tristan da Cunha, but does not include transit or transshipment or re-export;

“**import**”, in relation to a specimen, means the act of bringing a specimen into Tristan da Cunha, including introduction from the sea, but does not include transit or transshipment;

“**introduction from the sea**” means the introduction into Tristan da Cunha of any specimen that was captured in, and transported into Tristan da Cunha directly from, a marine environment (including the air-space above the sea, the sea-bed and the subsoil beneath the sea) that is not within the jurisdiction of any country or territory, including Tristan da Cunha;

“**Management Authority**” means the person or body designated under section 7 to be the Management Authority;

“**mark**”, in relation to a specimen, means any indelible imprint, lead seal or other suitable means of identifying a specimen and includes, (but is not limited to) any of the following:

- (a) a mark or label on a container in which the specimen is kept;
 - (b) a label or tag on a plant;
 - (c) a device on an animal that may be scanned electronically;
 - (d) a band on any part of an animal; and
 - (e) a tag or ring placed on any part of an animal (whether by piercing or otherwise),
- and expressions in this Part referring to a person marking a specimen are to be construed accordingly;

“**personal or household effect**” means a dead specimen, or a part or derivative of a dead specimen, that was legally-acquired and is—

- (a) personally owned or possessed for non-commercial purposes; and
- (b) at the time of import, export or re-export either—
 - (i) worn, carried or included in personal baggage; or
 - (ii) part of a household move;

“**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;

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

“**recognised management authority**” means a national administrative authority designated by a country or territory, other than Tristan da Cunha, in accordance with Article IX of CITES;

“readily recognisable part or derivative” includes any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of this Ordinance

“re-export” means the export from Tristan da Cunha of any specimen that was imported;

“registered scientific institution” and **“registered scientist”** means a person or body with a scientific registration certificate granted under section 17, or any person or body registered by a recognised management authority for the purposes of Article VII(6) of CITES;

“rescue centre” means an institution designated by the Management Authority to look after the welfare of living specimens, particularly those that have been confiscated;

“Scientific Authority” means a person or body designated to be the Scientific Authority under section 9;

“specimen” means—

- (a) any animal or plant, whether alive or dead of a species listed in Appendix I, II or III;
- (b) in the case of an animal—
 - (i) of a species listed in Appendix I or II - any readily recognisable part or derivative thereof, and
 - (ii) of a species listed in Appendix III - any readily recognisable part or derivative thereof specified in that Appendix in relation to that species; and
- (c) in the case of a plant—
 - (i) of a species listed in Appendix I - any readily recognisable part or derivative thereof, and
 - (ii) of a species listed in Appendix II or III - any readily recognisable part or derivative specified in that Appendix in relation to that species;

“trade” means to export, re-export, import or introduce from the sea whether or not for commercial purposes;

“transhipment” has the meaning in section 4;

“transit” has the meaning in section 4;

“travelling exhibition” includes a travelling zoo, circus, menagerie, or plant exhibition, that is used to display any of the specimens listed in Appendix I, II or III.

Definitions of “artificially propagated” and “bred in captivity”

3. (1) In this Ordinance, a plant is to be taken to have been artificially propagated only if—

- (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).

(2) In this Ordinance, an animal is to be taken to have been bred in captivity only if—

- (a) the animal (including eggs) was born, or otherwise produced, in a controlled environment, of parents that mated or otherwise transmitted their gametes in a controlled environment; or

- (b) the parents were in a controlled environment when development of the offspring began, if reproduction is asexual.
- (3) In this section—
 - (a) **“controlled conditions”** means a non-natural environment—
 - (i) that is intensively manipulated by human intervention for the purpose of producing selected species or hybrids of plants, and
 - (ii) which has general characteristics that may include (but are not limited to including) tillage, fertilization, weed control, irrigation or nursery operations such as potting, bedding or protection from weather;
 - (b) **“controlled environment”** means an environment—
 - (i) that is manipulated by human intervention for the purpose of producing animals of a particular species;
 - (ii) that has boundaries designed to prevent animals, eggs or gametes of the species from entering or leaving the environment, and
 - (iii) which has general characteristics that may include, but are not limited to including, artificial housing, waste removal, health care, protection from predators and artificially supplied food.

Definitions of “in transit” and “transhipped”

- 4. In this Ordinance, a specimen is in transit or being transhipped if—
 - (a) it is being transported between two countries or territories other than Tristan da Cunha;
 - (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 transfer or transshipment; and
 - (d) any transit and any movement within the jurisdiction of Tristan da Cunha is in accordance with the laws in relation to customs and excise.

PART 2 CITES APPENDICES

Amendment to Appendix I, Appendix II and Appendix III

5. For the purposes of this Ordinance, Appendix I and Appendix II do not include any species in relation to which a reservation under CITES applies to Tristan da Cunha.

Certain Appendix I specimens deemed to be Appendix II specimens

6. An Appendix I specimen that is artificially propagated for commercial purposes or bred in captivity for commercial purposes is deemed to be an Appendix II specimen for the purpose of this Ordinance.

PART 3
MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITIES

Management Authority

7. (1) Except as otherwise provided in this section, the Administrator is the Management Authority.

(2) The Governor may designate a body or person to exercise the function of the Management Authority in place of the Administrator.

(3) The Governor must not designate a body or person under subsection (2) unless satisfied that the body or person—

- (a)** has the appropriate governance, skills and resources to exercise the functions of the Management Authority; and
- (b)** in the case of a body, is not prevented from exercising that function under any enactment or by its constitution (whatever form that takes).

Powers and functions of the Management Authority

8. (1) The Management Authority has the following powers and functions in addition to those provided for elsewhere in this Ordinance:

- (a)** to function as the Management Authority referred to in Article IX paragraph 1(a) of CITES and be responsible for implementing CITES in Tristan da Cunha;
- (b)** to co-operate with recognised management authorities in the implementation and enforcement of legislation, in Tristan da Cunha and in other countries or territories, relating to species conservation; and
- (c)** to establish one or more rescue centres for seized and confiscated living specimens, in consultation with the Scientific Authority.

(2) The Management Authority must keep, in such form (including an electronic form) as it thinks fit, a register of—

- (a)** specimens registered for the purposes of section 14(1)(b)(iii)(bb);
- (b)** permits and certificates granted under section 17; and
- (c)** persons registered under section 17.

(3) In addition to any other powers specified by or under this or any other enactment, the Management Authority has the powers necessary to perform its functions.

Scientific Authorities

9. (1) Except as otherwise provided in this section, the Conservation Officer is the Scientific Authority.

(2) The Governor may designate a body or person to exercise the function of the Scientific Authority in place of the Conservation Officer.

(3) A person or body may be designated to be the Scientific Authority under subsection (2) whether or not the person or body is situated in Tristan da Cunha, provided the Governor is satisfied that such body or person is able to perform such of those functions described in section 10 as are appropriate in relation to Tristan da Cunha.

Powers and functions of Scientific Authorities

10. (1) The Scientific Authority has the following powers and functions in addition to those provided for elsewhere in this Ordinance:

- (a) to advise the Management Authority on the effects of international trade on the survival of a species;
- (b) to advise the Management Authority on whether the Scientific Authority is satisfied that the proposed recipient of a specimen is suitably equipped to house and care for the specimen;
- (c) to monitor export permits granted in respect of particular specimens and the export of such specimens;
- (d) to advise the Management Authority not to grant import permits, export permits, or re-export certificates, when the population status of a species so requires;
- (e) to advise the Management Authority on how specimens seized or forfeited under this Ordinance, or that otherwise come into the possession of the Management Authority, should be dealt with, including by destruction or other method of disposal;
- (f) to advise the Management Authority on suitable standards for granting a scientific registration certificate under section 17; and
- (g) to advise the Management Authority on any matter the Scientific Authority considers relevant to species protection.

(2) In addition to any other powers specified by or under this Ordinance, the Scientific Authority has the powers necessary to perform its functions.

PART 4 IMPORT, EXPORT AND RE-EXPORT OF SPECIMENS

Import of Appendix I or Appendix II specimens

11. (1) A person must not import (other than by way of introduction from the sea) an Appendix 1 specimen except in accordance with an import permit granted under section 17 in relation to the specimen.

(2) A person must not import (other than by way of introduction from the sea) an Appendix II specimen unless the Management Authority is satisfied that there is an export permit or re-export certificate granted by a recognised management authority authorising the export of that specimen to Tristan da Cunha.

(3) A person must not import by way of introduction from the sea an Appendix I or Appendix II specimen except in accordance with an introduction from the sea certificate granted under section 17 in relation to the specimen.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence.
Maximum penalty: An unlimited fine, or imprisonment for 5 years, or both.

Import of Appendix III specimens

12. (1) Subject to subsection (2), a person must not import an Appendix III specimen except in accordance with—

- (a) a certificate of origin granted by a recognised management authority relating to that specimen; and
- (b) if it is being imported from a country or territory which listed the species in Appendix III - an export permit granted by a recognised management authority relating to that specimen.

(2) The requirement in subsection (1) does not apply if the specimen is being re-exported and there is a re-export certificate granted by the recognised management authority in the country or territory from which the specimen is being re-exported or a certificate granted by that authority to the effect that the specimen was processed in that country or territory.

(3) A person who contravenes subsection (1) commits an offence.
Maximum penalty: A fine of £5,000

Export or re-export of Appendix I, II or III specimens

13. (1) A person must not export an Appendix I, II or III specimen, except in accordance with an export permit granted under section 17 in relation to the specimen.

(2) A person must not re-export an Appendix I, II or III specimen except in accordance with a re-export certificate granted under section 17 in relation to the specimen.

(3) A person who contravenes subsection (1) or (2) in relation to an Appendix I or Appendix II specimen commits an offence.
Maximum penalty: An unlimited fine, or imprisonment for 5 years, or both.

(4) A person who contravenes subsection (1) or (2) in relation to an Appendix III specimen commits an offence.
Maximum penalty: A fine of £5,000

Exemptions

- 14. (1)** Sections 11 to 13 do not apply to the import, export or re-export—
- (a) by a registered scientific institution or registered scientist of a specimen, such specimen being an herbarium specimen or other preserved, dried or embedded museum specimen, or live plant material, if—
 - (i) the specimen is marked in a manner approved by the Management Authority or a recognised management authority; and
 - (ii) the import, export or re-export is a non-commercial loan, donation or exchange to a registered scientific institution or a registered scientist;
 - (b) by a travelling exhibition of a live specimen, being a specimen in respect of which there is a travelling exhibition certificate and any of the following:

- (i) a pre-Convention certificate;
 - (ii) a certificate of captive breeding; or
 - (iii) a certificate of artificial propagation, but only if—
 - (aa) the Management Authority is satisfied that the specimen will be prepared and shipped in compliance with CITES guidelines for transport and preparation for shipment of live wild animals or in compliance with standards set by the International Air Transport Association; and
 - (bb) the exporter or importer has registered full details of such specimen with the Management Authority;
 - (c) by any person, other than a travelling exhibition falling within paragraph (b), of a specimen in respect of which there is—
 - (i) a pre-Convention certificate;
 - (ii) a certificate of captive breeding; or
 - (iii) a certificate of artificial propagation, unless the specimen is a live animal bred in captivity for commercial purposes and deemed to be an Appendix II specimen under section 6;
 - (d) by any person of a specimen which is a personal or household effect, unless the specimen satisfies any of the conditions specified in subsection (2).
- (2) The conditions specified for the purpose of subsection (1)(d) are that—
- (a) the specimen is an Appendix I specimen and the owner, being an owner whose usual place of residence is in Tristan da Cunha, acquired the specimen outside Tristan da Cunha and is importing it into Tristan da Cunha;
 - (b) the specimen is an Appendix II specimen—
 - (i) the owner of which has his or her usual place of residence in Tristan da Cunha and is importing it into Tristan da Cunha;
 - (ii) that was removed from the wild in a country or territory where the owner acquired it; and
 - (iii) in respect of which there is a pre-Convention certificate or an export permit is required by the country or territory from which the specimen was removed from the wild; or
 - (c) the specimen is in excess of the specified limit on the number or quantity of the specimen that may be imported, exported or re-exported.

(3) In subsection (2)(c), “**specified limit**” means, where applicable in respect of any particular species, the limit on the number of specimens or other quantity of that species that may be imported, exported or re-exported as specified under CITES for the purposes of the control of trade in personal and household effects.

Pre-Convention specimens

15. (1) A person must not export a pre-Convention specimen unless there is a pre-Convention certificate in relation to that specimen.

(2) A person who contravenes subsection (1) commits an offence.
Maximum penalty: A fine of £5,000.

PART 5
PERMITS, CERTIFICATES AND LICENCES

Requirement for a commercial licence

16. (1) A person must not, for commercial purposes—
(a) breed in captivity;
(b) artificially propagate; or
(c) export, import or re-export,
any specimen unless the person has a commercial licence under section 17.

(2) A person who contravenes subsection (1) commits an offence.
Maximum penalty: A fine of £50,000 or imprisonment for 12 months, or both.

Applications for, and grants of, any permit, certificate or licence

17. (1) Any person may apply to the Management Authority for the grant of any of the following in relation to a specimen specified in the application:

- (a) an export permit;
- (b) an import permit;
- (c) a re-export certificate;
- (d) an introduction from the sea certificate;
- (e) a certificate of origin;
- (f) a certificate of captive breeding;
- (g) a certificate of artificial propagation;
- (h) a pre-Convention certificate;
- (i) a travelling exhibition certificate.

(2) Any person may apply to the Management Authority for the grant of a commercial licence or a scientific registration certificate.

(3) An application under subsection (1) or (2) must be in a form and manner determined by the Management Authority and be accompanied by any applicable fee.

(4) The Management Authority—

- (a) may request a person who has made an application under subsection (1) or (2) to provide to the Management Authority any document or further information in relation to the application, including, where appropriate, any sample from a specimen referred to in the application; and
- (b) may refuse to grant the permit or certificate to which the application relates unless and until the document, information or sample is provided.

(5) The Management Authority may, after receiving an application under subsection (1) from a person—

- (a) grant to the person a permit or certificate in relation to a particular specimen, or, except in the case of a travelling exhibition certificate, a consignment of specimens, identified in the permit or certificate; or

(b) by notice in writing to the person, refuse to grant a permit or certificate to the person, giving reasons for doing so and informing the person of the person's right of appeal under section 30.

(6) The Management Authority may, after receiving an application under subsection (2) from a person—

(a) grant to the person a commercial licence or scientific registration certificate in relation to a particular specimen or class or description of specimens identified in the licence or certificate; or

(b) by notice in writing to the person, refuse to grant the licence or certificate, giving reasons for doing so and informing the person of the person's right of appeal under section 30.

(7) The Management Authority must specify such conditions as it thinks fit on a commercial licence or scientific registration certificate, requiring the holder of the licence to keep such records relating to the holder's business as the Management Authority specifies and for such length of time as it specifies and to make such records or returns relating to such records available to the Management Authority at the Management Authority's request.

(8) The Management Authority may specify such other conditions on a permit, certificate or licence as it thinks fit.

(9) A permit, certificate or licence must be in a form the Management Authority determines.

(10) A permit or certificate, other than a travelling exhibition certificate in respect of live animals, may only be granted under subsection (1) in relation to a single consignment of specimens if all the specimens are members of the same family (that is, a member of the taxonomic group above a genus and below an order).

(11) A permit, certificate or licence granted under this section to a person is not transferable to another person.

General conditions for the grant of permits and certificates relating to Appendix I and Appendix II specimens

18. (1) The Management Authority must not grant an export permit or introduction from the sea certificate to a person in relation to an Appendix I or Appendix II specimen unless—

(a) the Scientific Authority is satisfied that the grant of such a permit or certificate would not be detrimental to the survival of the species to which the specimen belongs;

(b) in the case of the proposed export of an Appendix II specimen in relation to which the Scientific Authority has determined that export of specimens of that species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I - the Management Authority has had regard to advice from the Scientific Authority; and

(c) the additional conditions set out in sections 19 or 20 that are applicable to the application for such a permit or certificate are met.

(2) The Management Authority must not grant an import permit in relation to an Appendix 1 specimen unless—

- (a) the Scientific Authority is satisfied that the grant of such a permit will be for purposes that are not detrimental to the survival of the species to which the specimen belongs;
- (b) the Management Authority is satisfied that there is an export permit or re-export certificate granted by a recognised management authority authorising the export of that specimen to Tristan da Cunha; and
- (c) the additional conditions in section 19 are met.

(3) The Management Authority must not grant a re-export certificate in relation to an Appendix I or Appendix II specimen unless the conditions set out in sections 19 and section 20 that are applicable to the application for such a certificate are met.

Additional conditions relating to Appendix I specimens

19. (1) The additional conditions for an import permit or introduction from the sea certificate relating to an Appendix 1 specimen are that—

- (a) in the case of an import permit, the Scientific Authority, or, in the case of an introduction from the sea certificate, the Management Authority, is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
- (b) the Management Authority is satisfied that the specimen is not to be used primarily for commercial purposes.

(2) The additional conditions for the export of an Appendix I specimen are that the Management Authority is satisfied that—

- (a) the specimen was obtained in accordance with any applicable laws in Tristan da Cunha;
- (b) any living specimen will be prepared and shipped in compliance with CITES guidelines for transport and preparation for shipment of live wild animals or in compliance with standards set by the International Air Transport Association; and
- (c) an import permit has been granted by a recognised management authority for the specimen by the importing country or territory.

(3) The additional conditions for the re-export of an Appendix I specimen are that the Management Authority is satisfied that—

- (a) the specimen was imported into Tristan da Cunha in accordance with this Ordinance or any other previous Ordinance which was in force on the date of such import;
- (b) any living specimen will be prepared and shipped in compliance with CITES guidelines for transport and preparation for shipment of live wild animals and plants or in compliance with standards set by the International Air Transport Association; and
- (c) in the case of a living specimen, an import permit has been granted by a recognised management authority for that specimen by the importing country or territory.

Additional conditions relating to Appendix II specimens

20. (1) The additional conditions for the grant of an export permit relating to an Appendix II specimen are that the Management Authority is satisfied that—

- (a) the specimen was obtained in accordance with any applicable laws in Tristan da Cunha;
- (b) any living specimen will be prepared and shipped in compliance with CITES guidelines for transport and preparation for shipment of live wild animals or in compliance with standards set by the International Air Transport Association.

(2) The additional conditions for the grant of a re-export certificate relating to an Appendix II specimen are that the Management Authority is satisfied that—

- (a) the specimen was imported into Tristan da Cunha in accordance with this Ordinance or any other previous Ordinance which was in force on the date of such import; and
- (b) any living specimen will be prepared and shipped in compliance with CITES guidelines for transport and preparation for shipment of live wild animals or in compliance with standards set by the International Air Transport Association.

(3) The additional condition for the grant of an introduction from the sea certificate relating to an Appendix II specimen is that the Management Authority is satisfied that any living specimen will be handled in compliance with CITES guidelines for transport and preparation for shipment of live wild animals and plants or in compliance with standards set by the International Air Transport Association.

Conditions relating to an Appendix III specimen

21. (1) The Management Authority must not grant an export permit following an application in relation to an Appendix III specimen unless the conditions applicable to that application set out in this section are met.

(2) The conditions for the grant of an export permit relating to an Appendix III specimen from a country or territory listed in Appendix III are that the Management Authority is satisfied that—

- (a) the specimen was obtained in accordance with any applicable laws in Tristan da Cunha; and
- (b) any living specimen will be prepared and shipped in compliance with CITES guidelines for transport and preparation for shipment of live wild animals or in compliance with standards set by the International Air Transport Association.

Invalid permits and certificates

22. (1) The Management Authority may refuse to accept, or may cancel and retain, any invalid permit or certificate or other document that—

- (a) is granted by a recognised management authority;
- (b) relates to a specimen that has been, or is intended to be, imported into Tristan da Cunha; and
- (c) was provided to the Management Authority because it was required under this Ordinance to accompany the import of the specimen.

(2) For the purposes of this Ordinance, a permit, certificate or other document is invalid if—

- (a) it was granted in contravention of the law of the country or territory in which it was granted;
- (b) a condition to which its grant was subject has not been complied with; or
- (c) it contains a material error.

(3) A person must not produce to the Management Authority or any other authority or officer an invalid document that purports to be a valid document, if the person knows, or ought reasonably to be expected to know, that the document is invalid.

(4) A person who contravenes subsection (3) commits an offence.
Maximum penalty: A fine of £1,000,000 or imprisonment for 2 years, or both.

Duration of permits, certificates and licences

23. (1) A permit, certificate or licence granted under this Ordinance comes into force on the day on which it is granted.

(2) An export permit or re-export certificate granted under section 17 remains in force, unless it is earlier revoked or surrendered, for 6 months from the date on which it is granted.

(3) An import permit, introduction from the sea certificate or certificate of origin granted under section 17 remains in force, unless it is earlier revoked under section 26 or surrendered, for 12 months from the date on which it is granted.

(4) A certificate of captive breeding, certificate of artificial propagation, pre-Convention certificate or travelling exhibition certificate remains in force, unless it is earlier revoked under section 26 or surrendered, for three years.

(5) A commercial licence remains in force, unless it is earlier revoked or surrendered, until the date specified in the licence.

Alteration etc. of permits, certificates or licences

24. (1) A person may apply to the Management Authority for the alteration of a permit, certificate or licence granted to the person, including the alteration or revocation of a condition specified on the permit, certificate or licence.

(2) An application under subsection (1) must be in a form determined by the Management Authority and be accompanied by any prescribed fee.

(3) The Management Authority may, after receiving an application under subsection (1)—

- (a) alter the permit, certificate or licence, including altering or revoking any condition; or
- (b) by notice in writing to the person, refuse to alter the permit, certificate or licence, giving reasons for doing so and informing the person of the person's right of appeal under section 30.

- (4) The Management Authority may, on its own initiative—
- (a) alter a permit, certificate or licence, including a condition specified on a permit or certificate;
 - (b) specify a condition on a permit, certificate or licence; or
 - (c) suspend a permit, certificate or licence for such period as it may determine.

(5) The Management Authority must notify in writing the holder of a permit, certificate or licence of any decision under subsection (4), giving reasons for its decision and informing the person of the person's right of appeal under section 30.

(6) The Management Authority must not alter or revoke a condition specified on a permit, certificate or licence if the Scientific Authority is of the opinion that the alteration or revocation will adversely affect the survival or welfare of the species, or the living specimen of the species, to which the permit, certificate or licence relates or will relate.

(7) If the Management Authority alters a permit, certificate or licence granted to a person, the Authority must grant a new permit, certificate or licence to the person and such permit, certificate or licence is deemed for purposes of this Ordinance to have been granted under section 17.

Breach of conditions

25. (1) A person must not breach a condition specified on a permit, certificate or licence.

(2) A person who contravenes subsection (1) commits an offence.
Maximum penalty: A fine of £50,000 or imprisonment for 12 months, or both.

Revocation of any permit, certificate or licence

26. (1) The Management Authority may revoke a permit, certificate or licence granted to a person if it—

- (a) is satisfied that a person provided false or misleading information in, or in relation to, the application for the permit, certificate or licence;
- (b) is satisfied that the permit, certificate or licence was granted in error or contains a material error;
- (c) is satisfied that a condition of the permit, certificate or licence has been breached;
- (d) is satisfied that the person, an employee of the person, or a person acting on behalf of, or under the general supervision of the person, has committed an offence under this Ordinance or under the law of Tristan da Cunha, or of another country or territory, relating to the conservation or welfare of animals or plants;
- (e) is satisfied that the person has not provided satisfactorily for the health and well-being of living specimens to which the permit, certificate or licence relates of which the person has had possession, or is not, or will not be, able to provide satisfactorily for the health and well-being of living specimens to which the permit, certificate or licence relates of which the person has or will have possession; or

- (f) has received advice from the Scientific Authority that it is advisable to do so to assist in the survival or welfare of the species to which the permit, certificate or licence relates or of a living specimen to which the permit, certificate or licence relates and of which the person has or will have possession.

(2) If the Management Authority revokes a permit, certificate or licence granted to a person the Authority must give notice in writing to the person, giving reasons for doing so and informing the person of the person's right of appeal under section 30.

Replacement certificates, permits and licences

27. (1) Any person may apply to the Management Authority for the grant of a permit, certificate or licence in replacement of a permit, certificate or licence granted under section 17 that has been lost, defaced or damaged.

(2) An application under subsection (1) must be in a form determined by the Management Authority and be accompanied by any prescribed fee.

(3) The Management Authority may grant a permit, certificate or licence in replacement of one that has been lost, defaced or damaged, and such permit, certificate or licence is deemed to have been granted under section 17 for the purpose of this Ordinance.

(4) If the Management Authority refuses to grant a permit, certificate or licence under this section, the Authority must notify the person who made the application under subsection (1) and give reasons for its decision and inform the person of the person's right of appeal under section 30.

Specimens only to enter or exit from approved places

28. (1) A person must not cause a specimen to enter or leave Tristan da Cunha, whether by way of import, export, re-export, transit or transshipment, except at an approved point of entry.

(2) A person who contravenes subsection (1) commits an offence.
Maximum penalty: A fine of £1,000,000 or imprisonment for 2 years, or both.

Possession, sale, purchase and transport of specimens

- 29. (1)** A person must not, without reasonable excuse—
- (a) have in the person's possession, or under the person's control;
 - (b) sell or offer for sale;
 - (c) purchase;
 - (d) export or re-export; or
 - (e) transport within Tristan da Cunha,

any specimen that the person knows, or could reasonably be expected to know, has been imported by a person in contravention of this Ordinance or unlawfully taken from the wild or exported from a country or territory in contravention of the law of that country or territory.

(2) A person who contravenes subsection (1) commits an offence.

Maximum penalty: A fine of £1,000,000 or imprisonment for 2 years, or both.

Appeal

30. (1) A person may appeal to the Governor—

- (a) in respect of an application under section 17 - against any decision by the Management Authority that was the subject of that application;
- (b) in respect of a permit, certificate or licence that has been granted - against any decision of the Management Authority to—
 - (i) alter, renew or replace that permit, certificate or licence on its own initiative under section 24 and section 27; or
 - (ii) revoke that permit, certificate or licence under section 26.

(2) An appeal under subsection (1) must be in writing submitted within 21 days after the person receives notice in writing of the decision being appealed or within any further time the Governor allows.

(3) Unless the Governor so orders, the submission of an appeal does not operate to stay the effect of a decision pending the determination of the appeal.

(4) The Governor may, after considering any submissions made under subsection (1), and acting in his or her discretion, either confirm or revoke the decision against which the appeal is brought, and may give such ancillary directions as the Governor considers appropriate.

PART 6 CONTROL AND ENFORCEMENT

CITES Enforcement Officer

31. (1) The Administrator may appoint such number of CITES enforcement officers as are necessary for carrying into effect the provisions of this Ordinance.

(2) Every police officer, sea fishery officer and conservation officer has, by virtue of his or her office, all the powers and functions of an authorised CITES enforcement officer.

Powers of entry, search and seizure

32. (1) A CITES enforcement officer may at any reasonable time enter any premises or enter or board any vehicle or vessel for the purposes of checking compliance with this Ordinance, or where necessary for carrying out his or her other functions under this Ordinance.

(2) A CITES enforcement officer exercising the power to enter premises under subsection (1) must, if so required by the owner or occupier of the premises, vehicle or vessel as the case may be, produce evidence of his or her authority before entering, and is not entitled to admission as of right to any premises which are occupied, unless 24 hours notice of intended entry is given to the occupier.

(3) If a CITES enforcement officer has reason to believe that a contravention of this Ordinance or any regulations made under it has occurred or is about to occur, and the circumstances are such that giving notice of the intended entry would defeat the purpose for which entry is sought, any CITES enforcement officer may enter any premises under a warrant issued by a Magistrate.

(4) In the course of any entry under this section, a CITES enforcement officer may carry out any inspection or survey, seize any equipment or article being used in the commission of an offence, review and copy any documents or other records (in whatever form they may be held), take photographs or other audio or visual recordings, and take samples of air, water, soil or other material found on or in the premises, vehicle or vessel.

(5) A CITES enforcement officer may, for the purpose of exercising any of his or her powers under subsection (4), open, or authorise any person to open on his or her behalf, any container or package, or require the owner or any person in charge of any container or package to open it, in a manner the officer specifies.

(6) A CITES enforcement officer may, so far as is necessary to enable him or her to exercise any of the powers conferred by subsection (4), prohibit entirely or to such extent as he or she specifies the movement, treatment or destruction of any object, container or package.

(7) If any such record or document as is mentioned in subsection (4) is kept by means of a computer, a CITES enforcement officer may—

- (a) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the record or document; and
- (b) require any person having charge of, or who is otherwise concerned with the operation of, the computer, apparatus or material to afford the officer such assistance as he or she reasonably requires.

Powers to search, inspect and seize objects

33. (1) A CITES enforcement officer may examine and search any object that he or she suspects on reasonable grounds might provide evidence that an offence under this Ordinance has been, is being, or is about to be committed.

(2) For the purposes of examining and searching any object under subsection (1), a CITES enforcement officer may, if the object is a container or receptacle (including luggage) open, or break open, the container or receptacle.

(3) A CITES enforcement officer may search for and record fingerprints found on any object to which subsection (1) relates and take a sample from an object.

(4) A CITES enforcement officer must exercise due care to ensure that there is as little damage as possible to an object from which he or she takes a sample.

(5) A CITES enforcement officer may seize and detain any object that he or she suspects on reasonable grounds might provide evidence that an offence under this Ordinance has been, is being, or is about to be committed.

(6) An object may only be seized under subsection (5) by a CITES enforcement officer if the officer gives to the person, if any, who appears to him or her to be the owner of, or to be entitled to possession of, the object, a receipt identifying the object and indicating the date on which, and the place at which, it was seized.

(7) In this section, “**object**” does not include an animal or plant specimen.

Powers to inspect and seize specimens

34. (1) A CITES enforcement officer who suspects on reasonable grounds that an offence is being, or is about to be, committed under this Ordinance in relation to any specimen, may inspect, seize and detain the specimen.

(2) A CITES enforcement officer may take a sample from, or require a person to take a sample from, a specimen.

(3) A CITES enforcement officer must—

- (a) only take a sample from living specimen in accordance with the advice of a veterinary surgeon; and
- (b) exercise due care to ensure that as little pain or injury as possible is caused to animal living specimen, and as little damage as possible is caused to a plant, from which he or she takes a sample.

(4) A CITES enforcement officer may search for, and record, fingerprints found on any specimen.

(5) If a specimen is seized under this section by a CITES enforcement officer, he or she must give to the person, if any, who appears to be the owner of, or to be entitled to possession of, the specimen a receipt identifying the specimen and indicating the date on which, and the place at which, it was seized.

(6) A living specimen that is seized under this section may be held at a rescue centre until—

- (a) a prosecution for an offence under this Ordinance in relation to the specimen is abandoned or the defendant is acquitted of such an offence;
- (b) the Management Authority gives permission to the person whom it believes to be entitled to the possession of it to take the specimen from that place; or
- (c) a court determines that a person other than the Management Authority should have possession of the animal or plant,

whichever occurs first.

Power to stop and search persons

35. (1) A CITES enforcement officer may stop and search a person if the officer suspects on reasonable grounds that the person may have on his or her person or in his or her possession evidence that an offence under this Ordinance has been, is being, or is about to be, committed.

(2) A CITES enforcement officer searching a person under this section is not entitled to require a person to remove any of his or her clothing other than an outer coat, jacket, headgear, gloves and footwear.

(3) A search of a person under this section must be carried out by an enforcement officer of the same sex as the person being searched.

(4) A CITES enforcement officer may seize and retain anything which the officer discovers in the course of a search under this section if he or she suspects on reasonable grounds that the thing may constitute evidence that an offence under this Ordinance has been, is being, or is about to be committed.

Power to stop, detain, board and search vehicles or vessels

36. (1) If a CITES enforcement officer suspects on reasonable grounds that there may be on or in a vehicle or vessel evidence that an offence under this Ordinance has been, is being, or is about to be, committed, the officer may, at any reasonable time, take any or all of the following actions—

- (a)* stop and detain the vehicle or vessel;
- (b)* with such assistance as he or she thinks necessary, board the vehicle or vessel;
- (c)* search the vehicle or vessel for evidence that an offence under this Ordinance has been, is being, or is about to be, committed;
- (d)* request a person on the vehicle or vessel to provide to any CITES enforcement officer the assistance that the officer reasonably requires in the exercise of any of the powers of a CITES enforcement officer under this Ordinance;
- (e)* exercise on or in the vehicle or vessel any of the powers of a CITES enforcement officer under this Ordinance.

(2) If a CITES enforcement officer has reasonable grounds to suspect that an object is to be taken on, or has been taken off, a vessel that is intended to leave Tristan da Cunha or that has entered Tristan da Cunha with the object on board, the officer may—

- (a)* search the object; and
- (b)* if the object is luggage or a container, open and search the luggage or container,

for evidence that an offence under this Ordinance has been, is being or is about to be committed.

(3) It is an offence for a person to fail to—

- (a)* comply with a request by a CITES enforcement officer to stop a vehicle or vessel; or
- (b)* permit a CITES enforcement officer to board the vehicle or vessel after such a request is made.

Maximum penalty: A fine of £50,000 or imprisonment for 12 months, or both.

Forfeiture to Government

37. (1) The court by which any person is convicted of an offence under this Ordinance—

- (a) must order the forfeiture of any specimen or other thing in respect of which the offence was committed; and
- (b) may order the forfeiture of any vehicle, equipment or any other thing which was used to commit the offence.

(2) In subsection (1)(b) “**vehicle**” includes a vessel.

(3) If a CITES enforcement officer seizes a specimen, the owner of which cannot be identified, the specimen is forfeited to the Government.

(4) If a specimen is forfeited to the Government under subsection (3), the Management Authority must ensure that a notice is published in a newspaper circulating in Tristan da Cunha specifying the specimen seized and requesting the owner, within 14 days after the publication of the notice, to contact a person identified in the notice.

Dealing with forfeited specimens

38. (1) If a specimen is forfeited to the Government under this Ordinance, whether or not the owner of a specimen is identified, the Management Authority may—

- (a) retain the animal or plant;
- (b) if the animal or plant is not alive, dispose of it;
- (c) if an animal - destroy the animal on the advice of a veterinary surgeon if the Management Authority thinks it is necessary or desirable to do so to cease the animal’s suffering or to remove the risk of the animal spreading disease or invading the native ecosystem;
- (d) if a plant - destroy the plant if the Management Authority thinks it is necessary or desirable to do so to remove the risk of the plant spreading disease or invading the native ecosystem;
- (e) destroy the animal on the advice of a veterinary surgeon, or destroy the plant, if the Management Authority thinks it necessary or desirable to do so to ensure the health of the species to which the animal or plant belongs; or
- (f) transport, or ensure the transportation of, the animal or plant back to a country or territory from which the Management Authority believes it was taken from the wild or exported to Tristan da Cunha.

(2) Any expenses reasonably incurred by the Management Authority in exercise of its powers under this section, including the cost of any veterinary treatment reasonably required in respect of any animal, are recoverable as a civil debt from the owner of the specimen or any person having, or appearing to have, care or custody of it.

Sampling and testing

39. (1) When a sample is taken by a CITES enforcement officer exercising powers under this Ordinance, the officer taking the sample must—

- (a) notify the person in charge of the premises, vehicle or vessel from which the sample was obtained of the intention to submit the sample for analysis or examination;
- (b) divide the quantity into 3 parts, causing each part to be marked and sealed in such manner as the nature of the sample permits;
- (c) deliver one of the parts to the person in charge of the premises, vehicle or vessel from which the sample was obtained;
- (d) retain one of the parts for future comparison or verification; and
- (e) submit the third part for analysis or examination as soon as practicable.

(2) Every sample taken in accordance with subsection (1) must be submitted to a designated scientific laboratory for analysis or examination in accordance with accepted forensic procedures.

False statements, documents, etc.

40. (1) A person must not make a statement that is false or misleading in any material particular in any application or in other information given to a CITES enforcement officer under this Ordinance.

(2) A person must not falsify or alter any document that is granted, served or issue by an authority or officer under this Ordinance or provide to an authority or officer a document that has been falsified or altered by the person or that the person knows to have been falsified or altered.

(3) A person who contravenes subsection (1) or (2) commits an offence.
Maximum penalty: A fine of £25,000 or imprisonment for 6 months, or both.

Person shall not hinder, etc. officer

41. (1) A person must not wilfully delay, wilfully hinder or wilfully obstruct a CITES enforcement officer in the exercise of his or her powers under this Ordinance.

(2) A person who contravenes subsection (1) commits an offence.
Maximum penalty: A fine of £25,000 or imprisonment for 6 months, or both.

Offence to tamper, etc. with marking

42. (1) A person other than a CITES enforcement officer must not alter, obscure, add to, or remove, a marking in relation to an animal or plant that has been made for the purposes of this Ordinance.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.
Maximum penalty: A fine of £25,000 or imprisonment for 6 months, or both.

Liability for loss, damage and costs

43. (1) Without affecting any civil remedies the Government or any other person might have, a person who commits an offence under this Ordinance or any regulations made under it may, upon conviction, and in addition to any fine or penalty imposed on that person under this Ordinance, be held liable to the Government for—

- (a) any costs incurred in detecting, apprehending, investigating or prosecuting the offence;
- (b) any costs incurred in detaining or seizing any property, including the costs of dealing with forfeited specimens;
- (c) any costs incurred in remedying, mitigating or repairing any environmental damage attributable to the commission of the offence; and
- (d) loss or damage to biodiversity, habitats or ecosystems.

(2) The amount of any compensation for loss, damage or costs awarded by a court under subsection (1) may be awarded as restitution in addition to, and recovered in the same manner as, a fine.

Liability of company officers

44. (1) When an act or omission that is offence under this Ordinance or any regulations made under it has been committed by a company, any individual who was at the material time a director, partner, owner or officer of that company may be found personally liable for that offence, in addition to or in substitution for any liability to which the company is subject, if that act or omission was done with the individual's knowledge, consent or acquiescence, or if he or she did not exercise reasonable diligence to prevent the commission of that offence.

(2) In any proceedings against a director, partner, owner or officer of a company pursuant to subsection (1), it is for that person to prove that the offence was committed without his or her knowledge, consent or acquiescence or despite the exercise of reasonable diligence on his or her part.

Reservation of civil remedies

45. Nothing in this Ordinance takes away or interferes with the right of the Crown or any other person to sue for and recover, at common law or otherwise, compensation for or in respect of damage or injury caused by an offence under this Ordinance.

Penalties under the Ordinance not substituted for others

46. Nothing in this Ordinance prevents anyone being prosecuted under any other law for an act or omission that constitutes an offence under this Ordinance or regulations made under it, or from being liable under that other law to a higher punishment or penalty than is provided by this Ordinance; but no one must be punished twice for the same offence.

Acts done in good faith

47. No person authorised by or under this Ordinance to carry out any function or exercise any power or perform any duty may be held personally liable in any court for or in respect of any act or matter done, or omitted to be done, in good faith in the exercise or discharge of that function or power or duty.

Application to Crown

48. This Ordinance binds the Crown.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

The purpose of this Ordinance is to introduce new provisions to regulate trade in endangered species.

Section 1 of the Ordinance provides the Short Title of the Ordinance.

Sections 2, 3 and 4 make provision for the interpretation of certain words and terms used in the Ordinance.

Sections 5 and 6 make specific provision with respect to the application of the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora to certain species and specimen.

Section 7 provides for the Administrator to be the Management Authority and allows the Governor to designate a body or person to exercise the function of the Management Authority in place of the Administrator.

Section 8 deals with the powers and functions of the Management Authority.

Section 9 provides for the Conservation Officer to be the Scientific Authority and allows the Governor to designate a body or person to exercise the function of the Scientific Authority in place of the Conservation Officer.

Section 10 deals with the powers and functions of the Scientific Authority.

Sections 11 and 12 regulate the import of certain specimens.

Section 13 regulates the export or re-export of certain specimens.

Section 14 provides for certain exemptions where the restrictions on import, export or re-export under sections 11 to 13 do not apply.

Section 15 prohibits the export of a pre-Convention specimen without a pre-Convention certificate.

Section 16 prohibits certain activities with respect to specimens for commercial purposes unless a person obtains a commercial licence.

Section 17 sets out the procedure for applications and granting of permits, certificates and licences.

Sections 18 to 21 deal with conditions for the granting of permits and certificates with respect to certain specimens.

Section 22 deals with invalid permits and certificates and creates an offence where a person produces to the Management Authority or any other authority or officer an invalid document that purports to be a valid document.

Section 23 prescribes the period that permits, certificates and licences remain in force.

Section 24 makes provision for persons to apply to have permits, certificates and licences altered.

Section 25 creates an offence if a person breaches a condition specified on a permit, certificate or licence.

Section 26 allows the Management Authority to revoke a permit, certificate or licence in certain circumstances.

Section 27 makes provision for replacement certificates, permits and licences that have been lost, defaced or damaged.

Section 28 creates an offence if a person causes a specimen to enter or leave Tristan da Cunha otherwise than at an approved point of entry.

Section 29 creates an offence for possession, sale, purchase and transport of specimens in contravention of the Ordinance.

Section 30 makes provision for an appeal process against decisions of the Management Authority.

Section 31 makes provision for the appointment of CITES enforcement officers.

Sections 32 to 36 deal with the powers of enforcement officers.

Sections 37 and 38 make provision for forfeiture of specimen or other thing in respect of which an offence was committed, including any vehicle, equipment or any other thing which was used to commit the offence.

Section 39 prescribes the procedure for sampling and testing.

Section 40 creates an offence for making a false statement or falsifying or altering any document.

Section 41 creates an offence for wilfully delaying, hindering or obstructing an enforcement officer.

Section 42 creates an offence for altering, obscuring, adding to, or removing, a marking in relation to an animal or plant.

Section 43 provides that a person who commits an offence under this Ordinance may be liable to the Government for costs, loss or damages in addition to any fine or penalty imposed for that offence.

Section 44 deals with offences committed by companies and provides that the director, partner, owner or officer of the company may be found personally liable for the offence.

Section 45 preserves the right to recover compensation by way of civil remedies in respect of damage or injury caused by an offence under the Ordinance.

Section 46 provides that prosecution for an offence under the Ordinance does not prevent the person from being prosecuted under any other law which carries a higher penalty, provided that the person is not punished twice for the same offence.

Section 47 provides that a person exercising a power or carrying out a function or duty may not be held personally liable for anything done in good faith in discharging that power, function or duty.

Section 48 provides that the Ordinance binds the Crown.