

Memorandum for Executive Council

SUBJECT

Protection of Animals (Amendment) Bill, 2021

Memorandum by Chairman of the Economic Development Committee

ADVICE SOUGHT

1. **Executive Council is asked to advise whether the attached Protection of Animals (Amendment) Bill, 2021 (Annex A) should be printed, published and presented as Government business at the formal meeting of the Legislative Council to be held at the end of July 2021.**

BACKGROUND & CONSIDERATIONS

2. The Bill seeks to amend the Protection of Animals Ordinance, 1969. The purpose of the Bill is to reform the law in respect of the protection of animals and the statutory authority which may be exercised in respect of the humane protection of animals.
3. Except for minor amendments made in 1972 and 2001, this Ordinance is considered by St Helena's Veterinary Authority to be out of date and in need of thorough revision as some practices allowed under the Ordinance are no longer considered humane, such as ages for castration without anaesthetic and other activities which affect animals' welfare are completely absent from the Ordinance, including animals fit to travel. Furthermore, it focuses mainly on acts of cruelty and omits certain acts of neglect which can cause significant suffering in their own right.
4. The following amendments address these major issues and modernise the language, but democratically also include the rights to appeal certain actions by the authorities. A brief summary of the principal amendments made are as follows:
 - i. Section 2 – *Definitions*: these are updated and enlarged. 'Animals' deliberately excludes fish which are covered by the Fisheries Ordinance. They are further defined as 'captive' and 'domestic'. Unless stated therefore reference to animals includes wild animals. Definitions go on to define members of animal welfare organisations (currently the SPCA and the Donkey Home), and the SHG Veterinary Service. The latter are referred to as 'public officers'. This is important for later references relating to legal powers to take action if an animal is seen to be suffering. 'Slaughter' and 'euthanasia' have been separately defined as the

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welfare of animals at slaughter for consumption is covered by the Food Safety Ordinance.

- ii. *Section 3 – Offences of Cruelty:* This section is essentially a modernisation of the legal language used in the existing section of the Ordinance (which is therefore deleted below), with some additions. It is a part of the existing Ordinance that is useful as it covers a wide range of causes of welfare issues: deliberate cruelty, neglect, ignorance, poisonings, overloading etc. Added in are certain outlawed procedures which in the past have been carried out by laypersons but which should only be carried out by qualified personnel, namely tail docking, declawing of cats, dew claw removal, pinioning fowl. The phrasing has left these procedures open for professional surgical intervention.

Paragraph 2 has a new section called ‘the five freedoms’, used extensively in welfare legislation and by welfare organisations since the 1970s. In summary: (i) freedom from hunger and thirst, (ii) freedom from discomfort, (iii) freedom from pain, injury and disease plus access to appropriate and timely treatment, (iv) freedom to express normal behaviour, (v) freedom from fear and anxiety. The five freedoms encapsulate the essential needs of all animals.

Paragraph 3 covers the humane handling for the transport of animals to slaughter and slaughter itself, by cross referring to the Food Safety Ordinance, 2016.

- iii. *Section 4 – Power of the Court to Make an Order in Respect of An Animal:* This whole section is an addition to correct an important omission in the existing Ordinance, that an animal could only be removed subsequent to a successful prosecution. The last welfare case took five months to come to court and gain a successful prosecution. To allow an animal to continue to suffer under the owner's care during this period is clearly unacceptable. Now it will be possible to apply to have the animal removed prior to prosecution. This action is open to police officers, members of the veterinary section, and to the animal welfare charities. It also covers costs and how the animal may be dealt with, plus guidance for the court. There is a right of appeal (later section).

Paragraphs (7) to (10) add an extra tool, often known as an ‘improvement order’. Rather than full scale prosecution and confiscation of an animal, a middle road is made available of instructing an animal owner to improve aspects of the animal's care. This is especially useful where ignorance rather than deliberate cruelty has been the cause, and avoids the need to be heavy handed if the problem can be otherwise resolved.

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- iv. Section 4A – *Removal of Animal*: Section 4A creates new 'emergency' powers to remove an animal that is considered at risk over a 72-hour period, prior to applying for a court order, by police acting alone or with a public officer (member of the veterinary services). There can be occasions when urgent and immediate action needs to be taken which will not endure the delay of a court order application. There is a right of appeal (later section).
- v. Section 5 - *Power of Court to upon Conviction to Make an Order in Respect of the Ownership of an Animal*: This is a more detailed list of powers for the court in relation to the removal of an animal subsequent to conviction. It also covers other animals that the person may have, a power that did not previously exist. In the existing Ordinance, unless there is a conviction relating to a dog, it is not easy to remove an animal that has been subject to cruelty unless there has been a previous conviction. Hence it is currently both difficult to remove an animal prior to the successful outcome of a prosecution, and even after. This and the preceding section address both these flaws.
- vi. Section 6 - *Power Upon Conviction to Make an Order for Disqualification*: 'Disqualification' relates to the future ownership of other animals specified by the court. This might be species specific or all animals, time limited or indefinite. Common examples would be mental impairment such as dementia resulting in an inability of an owner to look after themselves let alone other animals (done with compassion), or a case of outright brutal and inexcusable cruelty. This is a rewrite of current legislation, but also gives guidance to the court.
- vii. Section 6A – *Effect of Disqualification*: Updated to include cats as they are now licensed under the amended Dogs and Cats Ordinance.
- viii. Section 6B – *Appeal*: This upholds a right of appeal. Appeals process for section 4 (removal of animal by court order), 4A (emergency removal of animal by police officer +/- public officer), 5 (Confiscation of animal by the court, and 6 (disqualification of person from owning animal(s)).
- ix. Section 7 – *Use of Poison*: Poisons are used by necessity, whether herbicides or pesticides, and this includes rodenticides. The amendment is underlining and enforcing the safe use of poisons to avoid non target species of animals. Also covered is the deliberate use of poisons to harm a non-target species ('knowingly'), but providing some leniency for accidental poisoning.
- x. Section 8 - *Treatment of an Animal Severely Suffering*: This is a rewrite of the existing section but improving and reinforcing

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powers to euthanase animals found to be severely suffering. This avoids unnecessary severe suffering by delaying euthanasia when the person who owns or cares for the animal is either not to be found, or refuses to cooperate despite being so informed. It might include cases where livestock has been badly mauled by dogs, an animal has been struck down by a car, or even a beached whale (mammal) in distress that cannot be aided. It is also an important aspect should there be an outbreak of serious debilitating disease in livestock/poultry eg: anthrax eg: Newcastle Disease eg: rabies, when rapid and immediate action may have to be taken.

- x. Section 9 – *Operating on An Animal*: The existing Ordinance permits lay-persons to perform certain operations that should not now be allowed. This use of a notice allows the authorities to permit certain operations to be performed by farmers up to certain ages for certain species, as is the common practice elsewhere in the world, but the rest to be performed by a veterinary surgeon or here, the veterinary team. Such examples are the castration of lambs and piglets, and ear-marking.
- xii. Section 9A – *Traps and Snares*: A new section included to cover the use of traps and snares. Certain spring traps are permissible - examples being mouse and rat traps – but others such as hunters’ traps for the fur trade and old fashioned gin traps should be banned. The UK publishes a list of permitted spring traps which is regularly updated for new commercial rodent traps etc, and which can be guiding information. Under the amendment permissible traps can be published in a notice issued by the Director. Other spring traps then become illegal. In addition glue traps are considered cruel and are banned in many countries. Other non-harming traps such as those used to catch wild poultry, rabbits and feral cats would remain legal.
- xiii. Section 9B – *Hunting*: The addition of this new section will allow the Director to establish and issue guidelines by Notice published in the Gazette regarding the hunting of animals.
- xiv. *Penalties*: All penalties for offences against the provisions of the Ordinance have being revised and the Falkland Islands Animals Protection legislation has been used as a guide for the revision.

FINANCIAL IMPLICATIONS

- 5. No significant financial implications expected for SHG or animal owners as a result of the changes proposed.

ECONOMIC IMPLICATIONS

- 6. There are no significant economic implications. Although there is no private veterinary practice in St Helena at the present time, the Bill is flexible to allow qualified veterinary surgeons, licenced in St Helena, to be able to operate or euthanise if necessary. The provisions do affect the farming community, but not in a way

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which significantly reduces their income or increases their costs of operation.

CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

7. The Bill provides clear rules on the treatment of animals and therefore supports the principle:

‘Promote fair, consistent and transparent decision making’.

PUBLIC/SOCIAL IMPACT

8. The Bill is expected to have minimal public impact but some of the changes will require a change in the behaviour of some animal owners with respect to areas of their animal care and welfare activities currently practiced.

ENVIRONMENTAL IMPACT

9. N/A.

PREVIOUS CONSULTATION/ COMMITTEE INPUT

10. The Economic Development Committee (EDC) was consulted on the draft Bill at its 20 May 2021 meeting.

11. Consultation with the key stakeholders below revealed that the draft Bill was well received.

12. Comments were invited from the SPCA on the draft Bill during May 2021. The Chair responded to advise that they fully supported the revisions to the Ordinance and did not propose any changes.

13. The Chamber of Commerce (on 7 June 2021) and Saint Helena National Trust (between 3 and 16 June 2021) were consulted on the draft Bill, as advised by EDC at the above meeting, and suggested changes received were used in the revision of the draft Bill.

14. The EDC approved the Bill at their 12 July 2021 meeting with minor amendment agreed and the Bill revised as a result.

PUBLIC REACTION

15. The Bill modernises existing law for the protection of animals and as a result of the targeted consultation held for stakeholders, it is not expected that the amendments will be controversial.

PUBLICITY

16. If the Bill is approved to be taken to formal Legislative Council, publicity will follow via a press release or covered in the media briefing following the meeting.

17. The draft Bill will be printed and published before the Formal Legislative Council session which is scheduled to take place at the end of July 2021. This will include being uploaded to the SHG website and distributed via the normal channels

SUPPORT TO STRATEGIC OBJECTIVES

18. The Bill is not linked to a specific 10 Year Plan Goal or Strategic Objective.

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**LINK TO
SUSTAINABLE
ECONOMIC
DEVELOPMENT
PLAN GOALS**

19. The Bill is not linked to a specific Goal of the SEDP.

**IMPLEMENTATION
OF POLICY/
LEGISLATION**

20. Implementation of the Bill and new regulations to be developed under it, will be managed through policy and operational procedures by the Environment, Natural Resources and Planning Portfolio.

LAH

**OPEN/CLOSED
AGENDA ITEM**

21. This paper is recommended for the Open session.

Central Support
Service

13th July 2021

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