



ANNEX A

ST HELENA

A BILL

FOR

AN ORDINANCE

to amend the Protection of Animals Ordinance, 1969, to revise the legislation in respect of the protection of animals and the statutory authority which may be exercised in respect of the humane protection of animals; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

Short title, commencement and interpretation

1. (1) This Ordinance may be cited as the Protection of Animals (Amendment) Ordinance, 2021[, and comes into force on a date or dates fixed by the Governor by Order.

(2) An Order under subsection (1) may—

- (a) appoint different dates for different provisions or for different purposes of the same provision; and
- (b) contain such transitional or consequential provisions as appear to the Governor to be necessary or convenient].

(3) In this Ordinance “the principal Ordinance” means the Protection of Animals Ordinance, 1969.

Amendment of section 2 - interpretation

2. Section 2 of the principal Ordinance is amended as follows—

(a) by repealing the definition of the word “animal” and substituting the following definition—

““**animal**” includes any vertebrate or invertebrate except a human being or a fish;”;

(b) in the definition of the word “fowl” by repealing the word “swan”; and

(c) by inserting, in the appropriate alphabetical sequence, the following definitions—

““**Director**” means the Director of the department of government charged with responsibility for veterinary services;”;

““**euthanasia**” means the compassionate killing—

- (a) of an animal that is suffering; or

- (b) of an animal to prevent the further suffering of the animal, and the meaning of the word “**euthanase**” is to be construed accordingly;”;
- “**person concerned with the welfare of an animal**” means a person who is a member of a charity or organisation in St Helena concerned with the care, protection or welfare of an animal;”
- “**public officer**” means a public officer employed by department of government charged with responsibility for veterinary services to perform veterinary services;”;
- “**slaughter**” means the killing of an animal for consumption;”; and
- “**veterinary services**” include clinical, preventative or pharmaceutical services in respect of an animal;”.

Amendment of section 3 - offences of cruelty

3. Section 3 of the principal Ordinance is repealed and substituted with the following section—

“Offences of cruelty

3. (1) A person commits an offence if the person—
- (a) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal;
 - (b) causes or procures, or permits any animal to be cruelly used, beaten, kicked, ill-treated, over-ridden, over-driven, over-loaded, tortured, infuriates or terrified;
 - (c) wantonly or unreasonably does or omits to do any act, or causes or procures the commission or omission of any act, causes any unnecessary suffering, or permits any unnecessary suffering to be caused to any animal;
 - (d) conveys or carries, or causes or procures, or permits to be conveyed or carried, any animal in such manner or position as to cause the animal unnecessary suffering;
 - (e) wilfully, without any reasonable excuse or cause, administers, or causes or procures, or to permits, such administration of, any poisonous or injurious drug or substance to any animal;
 - (f) wilfully, without any reasonable excuse or cause, causes a poisonous or injurious drug or substance to be taken by any animal;
 - (g) subjects, or causes or procures, or permits, to be subjected, any animal to any operation which is performed without due care and humanity including—
 - (i) the partial or entire docking of the tail of a dog;
 - (ii) the removal of the dew claw of a dog;
 - (iii) the declawing of a cat; and
 - (iv) the pinioning of the wing of a bird;
 - (h) having, possession, charge or control of any animal, without reasonable cause or excuse, abandons an animal, whether permanently or not, in circumstances likely to cause the animal unnecessary suffering;
 - (i) causes or procures or permits any animal to be abandoned.

Penalty (subject to subsection (2(b))): A fine of £200 or imprisonment for 6 months, or both.

Falklands offence of causing unnecessary suffering to an animal - Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both. Standard scale of fines Level 7 = £17,500

- (2) For the purpose of subsection (1)—
- (a) a person is considered to have permitted the commission of an offence if the person fails to exercise reasonable care and supervision in respect of the protection of an animal;
- (b) if a person commits an offence by reason only of having failed to exercise care and supervision in respect of an animal, the person is not liable to imprisonment without the option of a fine;
- (c) an omission pursuant to this section includes the failure by a person who is directly or indirectly responsible for the care and welfare of an animal to ensure that an animal is—
- (i) free from hunger or thirst by ready access to fresh water and diet to maintain the full health and vigour of the animal;
 - (ii) free from discomfort and provided with an environment appropriate for the animal which includes shelter and a comfortable resting area;
 - (iii) free from pain, injury or disease and is afforded access to—
 - (aa) a rapid or timely diagnosis should the circumstances or the condition of the animal require; and
 - (bb) treatment, medical or otherwise, where required by the animal;
 - (iv) free to express the behaviour considered normal in respect of the particular animal and provided with sufficient space, suitable facilities and where required company of the same kind of the animal; and
 - (v) free from fear and distress and protected from any condition or treatment which would result in the mental or physical suffering of the animal; and
- (d) it is the duty of care of the person responsible for the care and welfare of an animal to ensure that the care and welfare of the animal for which the person is responsible is respected.

(3) A person must not slaughter an animal or transport an animal for slaughter except in accordance with the manner and specifications provided in the Food and Safety Ordinance, 2016 and a person who contravenes this subsection commits an offence.

Penalty: A fine of £200 or imprisonment for 6 months, or both.

No equivalent penalty in law.

(4) The Director may by Notice publish guidelines regarding the deliberate breeding or deliberate inbreeding of juvenile animals and a person who knowingly contravenes the guidelines published in accordance with this subsection commits an offence.

Penalty: A fine of £200 or imprisonment for 6 months, or both.”.

No equivalent penalty in law.

Amendment of section 4 - power of court to order destruction of animals

4. Section 4 of the principal Ordinance is repealed and substituted with the following section—

“Power of court to make an order in respect of an animal

4. (1) Where the life of an animal is in danger, the animal is being neglected or is being caused unnecessary suffering, the court, on application, may order that the animal be removed from—

- (a) the custody of the owner;

- (b) the possession of the person with responsibility of the animal; or
- (c) the place where the animal is located.

(2) An application pursuant to subsection (1) may be heard in the absence of the person who owns, is in possession of or has responsibility for the care or control of the animal in respect of which the application is being made and may be made by a police officer, a public officer or a person concerned with the welfare of an animal.

(3) An order pursuant to subsection (1) may only be made if the court is satisfied that there is reasonable cause to believe that the animal is suffering, is likely to be made to continue to suffer, or that the condition or the life of the animal is likely to be caused significant harm if—

- (a) the animal is not removed from the custody of the owner or person in possession of the animal;
- (b) the animal remains at the place where the animal is located; or
- (c) access to the animal is not permitted as a matter of urgency.

(4) The owner or person in possession of an animal must comply with an order made pursuant to subsection (1) and if specified in the order, must produce the animal to which the order relates to the department charged with the responsibility for veterinary services or to a location specified pursuant to the order.

(5) An order made pursuant to subsection (1) may include a direction—

- (a) regarding the treatment of an animal;
- (b) regarding the manner in which the costs incurred for the treatment of an animal are to be recovered;
- (c) for the animal in respect of which an application is made to be sold;
- (d) for any animal in the possession or control of the person who is the owner of or the person who has responsibility for the animal in respect of which the application is made to be sold;
- (e) in respect of the proceeds of a sale in accordance with paragraph (c) or (d);
- (f) to transfer the ownership of the animal in respect of which the application is made to a person who the court considers is capable of providing suitable care for such animal;
- (g) to transfer the ownership of any animal in the possession or control of the person who has responsibility for the animal in respect of which the application is made to a person who the court considers is capable of providing suitable care for such animal;
- (h) to transfer possession of an animal in respect of which the application relates or any animal in the possession or control of the person who has responsibility for the animal in respect of which the application is made to an appropriate public officer for the appropriate or necessary treatment of the animal;
- (i) to, for a period the court considers fit, disqualify a person from owning or having possession—
 - (i) of any animal whatsoever; or
 - (ii) of an animal specified in the order;
- (j) if satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed and that the animal be assigned to a suitable person for that purpose; or
- (k) regarding the manner in which the costs incurred for the destruction of an animal are to be recovered.

- (6) An order made pursuant to subsection (1) may specify—
- (a) a period of time in which compliance with the order is required;
 - (b) the manner in which compliance with the order is required;
 - (c) the place at which compliance with the order is required;
 - (d) in the case of paragraph (5)(a), (b) or (h), that compliance is required to take effect in the presence of the owner of the animal;
 - (e) the manner in which the cost for compliance is to be recovered and the person responsible for the cost of compliance; or
 - (f) any other measure that the court is satisfied would ensure the unnecessary suffering of the animal.

- (7) A public officer may—
- (a) make or may cause an application to be made to a court for an order to require a person with responsibility for the wellbeing and care of an animal to make changes or improvements to the care of or facilities in respect of an animal to prevent the suffering or to prevent the further suffering of an animal; or
 - (b) either orally or in writing make a recommendation to the court in respect of an application made pursuant to paragraph (a).

(8) An application made pursuant to subsection (7) must be supported by evidence as to the urgency of the matter and the court may in the discretion of the court require further evidence before hearing the application.

- (9) A court—
- (a) hearing an application made pursuant to subsection (7) may hear the application made pursuant to this section in the absence of the person who owns, is in possession of or has responsibility for the care or control of any animal in respect of which the application relates; and
 - (b) before making an order pursuant to an application made under subsection (7) must be satisfied that the wellbeing of the animal to which the application relates requires that action be taken to prevent the suffering or to prevent the further suffering of an animal.

- (10) An order made in accordance with subsection (9)—
- (a) may include a period of time within which the order or specify a date on which the order, must be served upon the person who is the subject of the order; or
 - (b) must as soon as is practicable after the order is made be served upon the person who is the subject of the order unless specified otherwise by the court.

(11) A person who does not comply with an order made pursuant to this section commits an offence.

Penalty: A fine of £200 or imprisonment for 3 months, or both.”.

Falklands offence related to the contravention of an order regarding the removal of an animal to safety - Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale, or both. Standard scale of fines Level 4 = £2,000

Insertion of section 4A - removal of animal

5. The principal Ordinance is amended by inserting after section 4 the following sections—

“Removal of animal

4A. (1) A police officer acting alone or accompanied by a public officer, may without the consent of the owner of an animal, the person in possession of an animal or the person who owns or is in possession of the premises at which the animal is located, remove the animal from wherever the animal is located and transfer the animal to a location—

- (a) which in the opinion of the police officer is suitable for the animal to receive relevant or necessary treatment; or
- (b) specified by the public officer.

(2) A police officer must only remove an animal in accordance with subsection (1) if after consultation with a public officer, the police officer is satisfied that the animal is suffering, would otherwise continue to suffer, is likely to suffer or further suffer significantly or significant harm.

(3) Within 72 hours of the removal of the animal pursuant to subsection (1) the police officer must or must cause an application to be made to the court for an order in accordance with section 4(1).

(4) An animal removed in accordance with this section may be provided with any medical or other treatment which in the opinion of a public officer is necessary in the circumstances for the preservation of the life of the animal or the animal may be euthanased in accordance with section 8.”.

Amendment of section 5 - power of court to deprive person convicted of cruelty of ownership of animal

- 6.** Section 5 of the principal Ordinance is amended as follows—
- (a) in the title by repealing the words “deprive person convicted of cruelty of ownership of animal” and substituting the words “upon conviction to make an order in respect of the ownership of an animal”;
 - (b) in subsection (1) by repealing subsection (1) and substituting the following subsection—

“(1) In respect of an offence committed under this Ordinance a court may, on the conviction of a person in respect of the offence, in addition to imposing any other penalty and subject to subsection (2)—

- (a) confiscate the animal to which the conviction relates;
- (b) confiscate any other or all animals owned by or in the possession of the person to whom the conviction relates;
- (c) transfer ownership of the animal from the person to whom the conviction relates to any other person that the court considers suitable in the circumstances;
- (d) transfer ownership of any animal owned by or in the possession of the person to whom the conviction relates to any other person that the court considers suitable in the circumstances;
- (e) make an order for the person to whom the conviction relates to be compensated for any animal for which ownership has been transferred away from the person in the amount or in the manner that the court considers fit;
- (f) make an order for an animal to which the conviction relates be treated or placed in veterinary care;

- (g) make an order in respect of the payment or the manner of payment as the court considers fit, for the cost for treatment or veterinary care ordered in accordance with paragraph (f); or
- (h) make any other order as to the disposal of the animal that the court considers fit in the circumstances.”;
- (c) in subsection (2) by repealing the words “a previous conviction, or as to”; and
- (d) by inserting after subsection (2) the following subsection—

“(3) A person who contravenes an order made in accordance with this section commits an offence.

Penalty: A fine of £200 or imprisonment for 3 months, or both.”.

Falklands offence related to the contravention of an order regarding the deprivation of custody of an animal - Penalty: Imprisonment for 6 months or a fine at level 4 on the standard scale, or both. Standard scale of fines Level 4 = £2,000

Amendment of section 6 - power to disqualify persons convicted of cruelty to animals

7. Section 6 of the principal Ordinance is repealed and substituted with the following section—

“Power upon conviction to make an order for disqualification

6. (1) A person may, if it can be shown that a person has a history or proclivity for being cruel to or causing unnecessary suffering or harm to an animal, be disqualified from owning or being in possession of an animal.

(2) An application may be made to a court for an order that a person be disqualified from owning or being in possession of an animal by a police officer, a public officer or a person concerned with the welfare of an animal.

(3) In addition to imposing any other penalty on the conviction of a person in respect of an offence committed under this Ordinance and pursuant to subsection (2) a court may order that a person be disqualified, for a period the court considers fit, from owning or having possession—

- (a) of any animal whatsoever; or
- (b) of an animal specified in the order.

(4) An order made pursuant to subsection (3) may—

- (a) be suspended for a period the court considers fit and for such purpose that the court considers fit;
- (b) include a specified period for disqualification; or
- (c) take effect immediately.

(5) An order made in accordance with this section must, in respect of the animal to which the order relates, make provision for the conditions applicable to the care, placement and maintenance of the animal to which the order relates for the duration of the period of disqualification.

(6) A person who contravenes an order made in accordance with this section commits an offence.

Penalty: A fine of £200 or imprisonment for 3 months, or both.”.

Falklands offence of breaching disqualification order - Penalty: Imprisonment for 12 months or a fine at level 5 on the standard scale, or both. Standard scale of fines Level 5 = £4,000

Insertion of section 6A - effect of disqualification and section 6B - appeal

8. The principal Ordinance is amended by inserting after section 6 the following sections—

“Effect of disqualification

6A. (1) A person who is disqualified from owning or having possession of a dog or a cat under this Ordinance is disqualified from obtaining a licence under the Dogs and Cats Ordinance, 2011.

(2) Where a person is issued with a current licence under the Dogs and Cats Ordinance, 2011 and the person is disqualified under this Ordinance, the licence under the Dogs and Cats Ordinance, 2011 is deemed to be revoked unless the court, in the order for disqualification, orders that the licence under the Dogs and Cats Ordinance, 2011 issued to the person to whom the order for disqualification relates be suspended for the duration of the period of disqualification.

Appeal

6B. (1) Unless ordered by a court an application for appeal in respect of any order made in accordance with this Ordinance does not postpone, suspend or nullify the effect of the order.

(2) A person affected by an order made pursuant to section 4, 4A, 5 or 6 may, to a court of summary jurisdiction, appeal against the order.

(3) An appeal made pursuant to subsection (2) must be made within 14 days of the date of the order.”.

Amendment of section 7 - placing of poison, etc.

9. Section 7 of the principal Ordinance is repealed and substituted as follows—

“Use of poison

7. (1) The Director may by Notice in the Gazette publish instructions for the safe use of poison which are relevant to the care and welfare of animals.

(2) A person commits an offence if the person knowingly uses, knowingly causes a person to use, or knowingly is a party to the use of, any poison, including a pesticide or a herbicide, contrary to—

(a) any instructions for the safe use of the poison provided by the manufacturer or the distributor of the poison; and

(b) any instructions for the safe use of poison which may be published pursuant to subsection (1).

Penalty: A fine of £200.

Falklands offence of poisoning a domestic animal or using poison unlawfully - Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both. Standard scale of fines Level 7 = £17,500

(3) It is a defence in proceedings against a person for an offence under subsection (2) if the person can prove that the person took reasonable precautions to prevent the poison from being accessed by an animal for which the poison was not intended.”.

Amendment of section 8 - injured animals

10. Section 8 of the principal Ordinance is repealed and substituted as follows—

“Treatment of an animal severely suffering

8. (1) A person may procure the euthanasia of the animal only if the person is—

- (a) a veterinary surgeon, qualified and licensed to practice veterinary medicine in St Helena;
- (b) a public officer authorised by the Director;
- (c) trained by a veterinary surgeon;
- (d) trained by the department of government charged with responsibility for veterinary services; or
- (e) trained as provided in any other Ordinance.

(2) A person who contravenes subsection (1) commits an offence.
Penalty: A fine of £200.

Falklands offence of mutilating an animal - Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both. Standard scale of fines Level 7 = £17,500

(3) A person specified in subsection (1) may, if an animal is so severely suffering that in the opinion of the veterinary surgeon or the public officer authorised pursuant to subsection (1), the animal should not be allowed to continue to endure such suffering, in the manner that is most humane in the circumstances, procure the euthanasia of the animal.

(4) The euthanasia of an animal pursuant to subsection (3) may be performed without notification to or consent from the person who owns or who is responsible for the care or wellbeing of the animal, if the owner or person responsible for the care or wellbeing of the animal is not available to give such consent and obtaining such consent would unnecessarily prolong the suffering of the animal.

(5) Where an animal is euthanased pursuant to subsection (4) the person who owns or who is responsible for the care or wellbeing of the animal must as soon as is practicable be given notice that the animal was euthanased.

(6) Notice under subsection (5) must be given by a public officer and may be given orally or in writing.

(7) A person who owns, is in possession or who is responsible for the care or wellbeing of an animal which is euthanased pursuant to subsection (3) is not entitled to compensation for such animal.”.

Amendment of section 9 - operations on animals

11. Section 9 of the principal Ordinance is repealed and substituted as follows—

“Operating on an animal

9. (1) Subject to subsection (3) a person who is not a qualified veterinary surgeon, who is not licenced to provide medical treatment in respect of an animal, or who is not under the supervision of a veterinary surgeon who performs any medical procedure in respect of an animal commits an offence.

Penalty: A fine of £500 or imprisonment for 12 months, or both.

Falklands offence of mutilating an animal - Penalty: Imprisonment for 12 months or a fine at level 7 on the standard scale, or both. Standard scale of fines Level 7 = £17,500

(2) For the purpose of subsection (1) “medical procedure” includes a procedure with or without an instrument involving the interference or manipulation of the sensitive tissue or skeletal structure of an animal.

(3) The Director, after consultation with a veterinary surgeon, may by Notice published in the Gazette specify which medical procedures may be performed on an animal by a person who is not licenced to provide medical treatment in respect of an animal or by a person who is not a veterinary surgeon.”.

Insertion of section 9A - traps and snares

12. The principal Ordinance is amended by inserting after section 9 the following section—

“Traps and snares

9A. (1) The Director may, after consultation with a veterinary surgeon, by Notice published in the Gazette, publish instructions and directions regarding the use of traps and snares, the types or traps and snares which may be used, the manner in which traps and snares may be used and specify the traps and snares which are prohibited from use.

(2) A person who contravenes a direction or instruction published in accordance with subsection (1) commits an offence.

Penalty: A fine of £500 or imprisonment for 12 months, or both.”.

Falklands offence of unlawful use of traps - Penalty: fine at level 3 on the standard scale. Standard scale of fines Level 3 = £1,000

Revocation of Schedule

13. The Schedule to the principal Ordinance is revoked.

EXPLANATORY NOTE

(This note is not part of the Ordinance)