

ELIZABETH II



Territories of South Georgia
and the South Sandwich Islands

NIGEL ROBERT HAYWOOD C.V.O.,
Commissioner.

Wildlife and Protected Areas (Amendment) Ordinance 2013

(No: 4 of 2013)

ARRANGEMENT OF PROVISIONS

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WILDLIFE AND PROTECTED AREAS (AMENDMENT) ORDINANCE 2013

(No: 4 of 2013)

(enacted: 30 May 2013)
(published: 12 June 2013)
(commencement: on publication)

AN ORDINANCE

To amend the Wildlife and Protected Areas Ordinance (No 1 of 2011).

ENACTED by the Commissioner of South Georgia and the South Sandwich Islands as follows—

1. Title

This Ordinance is the Wildlife and Protected Areas (Amendment) Ordinance 2013.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

3. Amendment of the Wildlife and Protected Areas Ordinance

This Ordinance amends the Wildlife and Protected Areas Ordinance.

4. Section 5 amended – Interpretation and General (application to rats and mice)

Section 5(2) is repealed.

5. Section 6 amended – Protection of wild birds and mammals

Section 6 is amended by adding the following after subsection (2) —

“(3) Nothing in subsection (1) applies to the use of traps or poison bait to capture or kill mice or rats for biosecurity reasons.”

6. Section 11 amended – Introduction of non-native species

Section 11 is amended by adding the following after subsection (5) —

“(6) Nothing in subsection (2) applies to plants cultivated on a vessel for the use of the vessel; provided that the plants remain on the vessel whilst it is in the Territory.”

7. Section 14 amended - Control of imports, exports and movement of wildlife within the Territory

(1) This section amends section 14.

(2) Subsection (1) is repealed and replaced with the following subsection —

“(1) Subject to the provisions of this Part, and except as permitted under a permit granted under section 21(1) or, in relation to the import or export of fishery products (including bait) which is incidental to a licence granted under any legislation of the Territory relating to fishing, a person commits an offence who —

(a) imports into the Territory or exports from the Territory, living or dead, any animal, plant, or any part or thing which is a derivative of any such species;

(b) imports non-sterile soil into the Territory;

(c) intentionally or recklessly transports to or releases at a place within the Territory any thing of a kind mentioned in paragraph (a) or (b) which has been acquired at another place within the Territory;

(d) disposes of any poultry in the Territory; or

(e) disposes of any thing of a kind mentioned in paragraph (a) or (b) without due regard to preventing its establishment or spread in the Territory.”

(3) Subsection (3) is repealed and replaced with the following subsection —

“(3) For the purposes of subsection (1) and (2), “derivative” in relation to a species includes any part of the body living or dead (including any bone, skin, feathers, fur or scales), of a member of that species and any egg, spawn, embryo, gamete, zygote, larva, pupa, seed or spore of a member of that species but does not include anything which has undergone a manufacturing process and is intended for human consumption, or for use as clothing, furniture or building materials.”

(4) The following subsection is added after subsection (4) —

“(5) Nothing in subsection (1) applies to plants cultivated on a vessel for the use of the vessel; provided that the plants remain inside the vessel whilst it is in the Territory.”

Enacted 30 May 2013

N. R. Haywood C.V.O.,
Commissioner

EXPLANATORY NOTE
(not part of the Ordinance)

This Ordinance amends the Wildlife and Protected Areas Ordinance (No 1 of 2011).

Section 3 provides that all the measures in the Ordinance apply to rats and mice.

Section 4 amends section 6 in consequence of the section 3 amendment; exempting from the relevant prohibitions the use of traps or poison bait to capture or kill mice or rats for biosecurity reasons.

Section 5 amends section 11 to permit vessels in Territorial waters to cultivate (indoors) plants on board for their own use.

Section 6 amends subsection 14(1) to provide that, in addition to fish, fishery products, such as Antarctic krill and bait, may be excepted from export and import control provisions in the section by way of a fishing licence.

Section 6 also amends subsection 14(3) to allow the import of manufactured animal or plant derivatives that are intended for use as clothing, furniture or building materials.

The addition of subsection 14(5) is to allow plants be carried on board visiting vessels.

An explanatory note was not included with the Wildlife and Protected Areas Ordinance 2011 when that Ordinance was first published, but is published below. The note has been amended to reflect the amendments made by this amending Ordinance.

EXPLANATORY NOTE FOR THE WILDLIFE AND PROTECTED ORDINANCE 2011
(not part of the Ordinance)

This Ordinance provides for protection of all of the native flora and fauna in South Georgia and the South Sandwich Islands. It also provides for the designation of Specially Protected Areas (SPAs) and Marine Protected Areas (MPAs).

It replaces existing legislation:

- The Wildlife and Protected Birds Ordinance 1913 and the Falkland Islands Dependencies Conservation Ordinance 1975 are both repealed.
- The following UK legislation no longer apply in the South Georgia and the South Sandwich Islands:
 - the Wildlife and Countryside Act 1981;
 - the Wild Mammals (Protection) Act 1996;

- the Countryside and Rights of Way Act 2000; and
- Parts 2 and 3 of the Natural Environment and Rural Communities Act 2006

Part I of the Ordinance deals with preliminary matters.

Section 2 provides that the Ordinance comes into force as soon as it is published in the *Gazette*.

Section 3 provides that the Ordinance applies to the whole of South Georgia and the South Sandwich Islands, on land and on the water (all the way out to 200 mile limit).

Section 4 provides that the Ordinance binds the Crown but that the Crown cannot be prosecuted for a breach of the Ordinance. It provides for an alternative procedure instead. It also confirms that it applies to public servants in the same way as it does to anyone else.

Section 5(1) defines a number of terms used elsewhere in the Ordinance. *Sections 5(3) and 5(4)* deal with the exercise of powers under the Ordinance.

Part II of the Ordinance deals with the protection of wildlife.

Section 6 deals with the protection of wild birds and mammals. *Sections 6(1) and (2)* make it an offence to do various things including killing, harming or disturbing wild birds and mammals. The things listed in *section 6(1)* can be done without committing an offence if they are covered by a permit issued by (or on behalf of) the Commissioner. *Section 6(3)* provides an exception to the prohibition in connection with the capture or killing of mice or rats for preventative biosecurity purposes.

Section 7 deals with defences for the offences against *sections 6(1) and 6(2)*. *Section 7(1)* deals with killing, injuring or molesting a wild bird or mammal in order to relieve suffering. *Section 7(2)* deals with capturing or handling a wild bird or mammal in order to treat it and *section 7(3)* deals with administering a noxious substance to a wild bird or mammal for the same purpose.

Section 8 deals with the protection of native invertebrates. *Section 8(1)* makes it an offence to collect a native invertebrate or do anything likely to cause anything other than minor or transitory damage to its habitat. These things can be done without committing an offence if they are covered by a permit issued by (or on behalf of) the Commissioner. There are also exceptions for collecting a native invertebrate inside (or immediately around) an occupied building and for vessel operations.

Section 9 deals with the protection of native plants. *Section 9(1)* makes it an offence to do various things involving damage or disturbance to native plants. These things can be done without committing an offence if they are covered by a permit issued by (or on behalf of) the Commissioner.

Section 10 deals with the unlawful possession of live or dead wildlife. It makes it an offence to possess, transport or deal in live or dead wildlife (including eggs and wildlife parts). These things can be done without committing an offence if they are covered by a permit issued by (or on behalf of) the Commissioner.

Section 11 deals with the introduction of non-native species. *Sections 11(1) and 11(2)* make it an offence to do various things involving (or potentially leading to) the introduction of non-native species. *Section 11(4)* provides for a defence of due diligence and *section 11(5)* deals with a procedural issue in relation to that defence. *Section 11(6)* has effect to permit vessels in Territory waters to cultivate plants on board for their own use.

Section 12 deals with the prohibition of certain methods of capturing or killing wild birds or mammals. *Section 12(1)* makes it an offence to do various things involving inhumane methods of capture or killing (and the Commissioner has the power under *section 12(4)* to amend the list of things covered by *section 12(1)*). Under *section 12(3)*, these things can be done without committing an offence if they are covered by a permit issued by (or on behalf of) the Commissioner. *Section 12(3)* also allows for the use of traps or poison bait to control mice and rats. Under *section 12(5)*, the things made an offence by *section 12(1)* can also (subject to conditions) be done for public health, fisheries or nature conservation purposes.

Section 13 deals with special protection for species and habitats. It gives the Commissioner power (by Order) to afford additional protection to species and habitats and, under *section 13(4)*, power to create criminal offences in relation to this protection.

Section 14 deals with controls on imports, exports and movements. *Section 14(1)* makes it an offence to do various things involving importing or exporting wildlife, importing non-sterile soil, moving wildlife from one place to another or disposing of any wildlife derivatives or non-sterile soil. These things can be done without committing an offence if they are covered by a permit issued by (or on behalf of) the Commissioner. Imports and exports of fish and fishery products (including bait) that are incidental to a fisheries licence are also allowed.

Section 15 provides for general defences to offences against *Part II*. *Section 15(1)* provides for defences relating to emergencies. *Section 15(2)* provides for a defence covering acts that are incidental to another lawful activity and that cannot reasonably be avoided.

Part III deals with Specially Protected Areas (SPAs) and Marine Protected Areas (MPAs).

Sections 16 and 17 deal with SPAs.

Section 16 deals with the designation of SPAs. *Sections 16(1) and 16(2)* give the Commissioner power to designate SPAs. The combined effect of *sections 16(3) to 16(5)* is that the power to designate an SPA applies to land above low water mark but that, in certain circumstances, it can also apply to an area that is both partly above low water and partly below it. *Section 16(6)* deals with various matters that must be specified in an SPA's designation. *Section 16(6)* also provides that the Commissioner may prohibit entry without specially granted permission into an SPA and breach of that prohibition imposed is an offence under *section 16(8)*. As an exception to that, *section 16(7)* allows authorised persons (defined in *section 3(1)*) to enter SPAs in the course of their duties, even if that would otherwise be an offence.

Section 17 deals with management plans and regulations for SPAs. *Sections 17(1) and 17(2)* deal with the purpose of a management plan. *Sections 17(3) and 17(4)* provides for management plans to be implemented by means of regulations and sets out what can be covered in regulations for an SPA.

Sections 18 to 20 deal with MPAs.

Sections 18 and 19 deal with the designation of MPAs. *Sections 18(1) and 18(2)* give the Commissioner power to designate MPAs. The combined effect of *sections 18(6), and sections 19(4) to 19(6)* is that the power to designate an MPA cannot extend southwards of latitude 60 degrees south and that it applies to areas below high water mark but that it also applies to islands and, in certain circumstances, it can also apply to an area that is both partly below high water and partly above it. *Sections 19(1) to 19(3)* deal with various matters that must be specified in an MPA's designation.

Section 20 deals with conservation orders for MPAs. *Section 20(1)* gives the Commissioner the power to make conservation orders for an MPA. *Sections 20(3) to 20(6)* set out what can be covered in conservation orders. *Section 20(9)* makes it an offence to breach a conservation order. No offence is

committed if something that would otherwise be breach a conservation order is covered by a permit issued by (or on behalf of) the Commissioner. *Section 20(8)* also provides for exceptions in limited circumstances.

Part IV deals with permits.

Sections 21 and 22(1) deal with the Commissioner's power to issue permits allowing things to be done that would otherwise be an offence. *Section 21(1)* allows the Commissioner to issue permits and *section 21(6)* allows this to be done for a very wide range of purposes. In most cases, *section 21(1)(a)* requires that those covered by the permit must be identified by at least description. However, for the import, export and movement restrictions in *section 14*, *section 21(1)(b)* allows the Commissioner to issue general permits. General permits can be made subject to exceptions but otherwise apply to anyone. *Section 21(4)* allows the Commissioner to impose conditions on a permit and *section 21(5)* allows for fees to be charged (or, in particular cases, waived). *Sections 21(2), 21(3), 21(7) and 22(1)* impose restrictions on the Commissioner's power to grant permits.

Section 22(2) makes it an offence to breach a condition of a permit or to fail to produce proof of permission when required.

Section 23 makes it an offence to obtain a permit by using false information or documentation, either knowingly or recklessly.

Section 24 gives the Commissioner power to make regulations dealing with various matters relating to permits (including the application process, requirements to produce permits and the procedure for suspending or revoking a permit).

Part V deals with offences and other matters.

Section 25 deals with offences by bodies corporate and imposes responsibility on individuals in some cases.

Section 26 makes it a requirement that, if a prosecution for an offence against the Ordinance is not being brought by the Attorney General, the Attorney General must consent to it.

Sections 27 and 28 deals with the enforcement of the Ordinance. *Section 27* gives the Commissioner a wide ranging power to make regulations about enforcement matters. *Section 28* provides that offences against the Ordinance must be tried in the Magistrate's Court – this could be done locally or before the Magistrate's Court in the Falkland Islands.

Section 29 deals with penalties for offences against the Ordinance. *Section 29(1)* provides that the maximum penalty is imprisonment for up to 2 years and/or an unlimited fine. *Section 29(2)* deals with the criteria that the Magistrate's Court must take into account when imposing a fine.

Section 30 makes general provision for regulations made under powers elsewhere in the Ordinance.

Section 31 repeals existing legislation and disapplies UK legislation.