

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4970 GIBRALTAR Thursday 23rd June 2022

B. 10/22

FUR TRADE (PROHIBITION) BILL 2022

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Clause

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THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

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BILL

FOR

AN ACT to make provision for the prohibition of keeping animals solely or primarily for slaughter for the value of their fur, to prohibit the importation, exportation and trade of animal fur and items containing animal fur, and other connected matters.

ENACTED by the Legislature of Gibraltar.

PART I INTRODUCTORY

Title.

1. This Act may be cited as the Fur Trade (Prohibition) Act 2022.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation.

- 3.(1) In this Act, unless otherwise stated or the context otherwise requires —

“authorised person” means any person representing the Department of Environment, any police officer, any customs officer, and any other person who is authorised by the Minister by notice in the Gazette for the purposes of this Act.

“customs officer” means an officer of Her Majesty’s Customs Gibraltar as defined in section 2 of the Imports and Exports Act 1986.

“excluded item” means any fur which is used for any of the exceptions in section 9.

“fur” includes an item made of fur or containing fur in any part.

“Minister” means the Minister with responsibility for the Environment.

“police officer” means a member of the Royal Gibraltar Police as defined in section 2 of the Police Act 2006.

“premises” includes any place but not any private dwelling;

“private dwelling” means any premises for the time being used as a private dwelling excluding any garage, outhouse or other structure (whether or not forming part of the same building as the premises) which belongs to or is usually enjoyed with the premises;

“relevant evidence” means evidence relevant to whether an offence under section 8 or section 10 of this Act has been committed.

PART II FUR FARMING

Offences relating to fur farming.

4.(1) A person is guilty of an offence if he keeps an animal solely or primarily-

- (a) for slaughter (whether by the person or another) for the value of its fur, or
- (b) for breeding progeny for such slaughter.

(2) A person is guilty of an offence if he knowingly causes or permits another person to keep an animal as mentioned in subsection (1).

(3) The references in this section to keeping animals for slaughter or to breeding progeny for slaughter include keeping (or as the case may be) breeding them for sale or exportation for slaughter.

(4) A person who is guilty of an offence under subsection (1) or subsection (2) is liable-

- (a) on summary conviction to a fine at level 5 on the standard scale; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or to both.

Forfeiture orders.

5.(1) If a person is convicted of an offence under section 4(1) in respect of animals of a particular description, the court may make a forfeiture order in respect of any animals of that description which are kept by that person when the order is made or which come into his keeping during the relevant period.

(2) If a person is convicted of an offence under section 4(2) in respect of animals of a particular description kept by another person, the court may make a forfeiture order in respect of any animals of that description which are kept by that other person when the order is made or which come into his keeping during the relevant period.

(3) A forfeiture order made under subsection (1) or subsection (2) is an order for the forfeiture and destruction or other disposal of the animal or animals to which the order applies (including any subsequent progeny of those animals).

(4) The court may make a forfeiture order whether or not it also deals with the offender in respect of the offence in any other way.

(5) Where-

- (a) the court proposes to make a forfeiture order; and
- (b) a person claiming to have an interest in the animal or animals concerned applies to be heard by the court,

the court shall not make the order unless that person has been given an opportunity to show cause why the order should not be made.

(6) In this section “relevant period” means the period beginning with the making of a forfeiture order and ending with the destruction or other disposal of the animals in pursuance of the order.

Effect of forfeiture orders.

6.(1) A forfeiture order operates in relation to the forfeiture of animals so as to deprive any person of his rights in those animals.

(2) Any person claiming to have an interest in the animals concerned may appeal against a forfeiture order to the Supreme Court.

(3) Where the court makes a forfeiture order, it may in particular-

- (a) appoint a person to carry out the order;
- (b) impose requirements on any person in relation to the keeping of the animals concerned pending their destruction or other disposal;
- (c) order the offender to pay such sum as the court may determine in respect of the reasonable expenses of carrying out the order and, where he does not keep the animals himself, of keeping them pending their destruction or other disposal;
- (d) make such provision as the court considers appropriate in relation to the operation of the order pending the making or determination of any appeal or application relevant to the order.

(4) Any sum ordered to be paid under subsection (3)(c) shall be treated for the purposes of enforcement as if it were a fine imposed on conviction.

Powers of entry and enforcement.

7.(1) An authorised person may at any reasonable time enter any premises on which he has reasonable grounds for suspecting that an offence under section 4(1) has been or is being committed and may inspect the premises and any animals or things found there.

(2) A person appointed by the court under section 6(3)(a) to carry out a forfeiture order may at any reasonable time enter any premises on which he has reasonable grounds for suspecting that animals to which the order applies are being kept, and carry out the order.

(3) A person seeking to enter any premises in the exercise of his powers under subsection (1) or (2) shall, if required by or on behalf of the owner or occupier or person in charge of the premises, produce evidence of his identity, and of his authority or (as the case may be) appointment, before entering.

(4) A person who has entered any premises in the exercise of his powers under subsection (1) or (2) shall, if required as mentioned in subsection (3), state in writing his reasons for entering.

(5) A person is guilty of an offence if he intentionally obstructs or delays any person in the exercise of his powers under subsection (1) or (2).

(6) A person who is guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**PART III
DEALING IN FUR**

Offence of dealing in fur.

8.(1) Subject to the exceptions in section 9, any person who deals in fur shall be guilty of an offence.

(2) For the purpose of this section, “dealing” means-

- (a) buying, selling or hiring;
- (b) offering or arranging to buy, sell or hire;
- (c) keeping for sale or hire;
- (d) exporting from Gibraltar for sale or hire; or
- (e) importing into Gibraltar for sale or hire.

(3) For the purposes of this section-

- (a) buying means acquiring for consideration;
- (b) selling means disposing of for consideration; and
- (c) offering includes advertising and inviting to treat.

Exceptions.

9.(1) The offence in section 8 is not committed if the person dealing in fur shows that he does so for the purposes of-

- (a) scientific research conducted in accordance with a permit issued under subsection (2);
- (b) education conducted in accordance with a permit issued under subsection (2); or
- (c) religious belief or tradition.

(2) For the purposes of subsection (1)(a) or (b) the Minister may issue a permit authorising such scientific research or education as is provided for in the permit.

(3) A permit issued under this section may-

- (a) contain such conditions as the Minister deems fit;
- (b) be of such duration as is set out in the permit;
- (b) be renewed with the same, amended or new conditions.

**PART IV
ENFORCEMENT**

Offences.

10.(1) Any person commits an offence if he-

- (a) does an act which facilitates the commission of a breach of this Act by any person; and
- (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of this Act by any person.

(2) A person commits an offence under section 8, or under subsection (1) is liable on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) It is a defence for a person charged with an offence under section 8 or subsection (1) to provide that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Power to stop, search and enter.

11.(1) An authorised person who has reasonable grounds for suspecting that an offence under sections 8 or 10 has been or is being committed and may, at any reasonable time-

- (a) search any person for relevant evidence;
- (b) stop and detain any person for the purposes of the search;
- (c) enter any premises (not being a dwelling) and inspect it for the purposes of the search;
- (d) stop, detain and enter any vehicle (not being a dwelling) and inspect it for the purposes of the search;
- (e) require-
 - (i) any person travelling in a vehicle, or
 - (ii) the registered keeper of a vehicle,
to provide any help and facilities, with respect to matters under the person's control, that the authorised person considers would facilitate the exercise of a power conferred by this section;
- (f) board a vessel or aircraft and search it for any relevant evidence;
- (g) require a vessel or aircraft-
 - (i) to stop, or
 - (ii) to do anything else that would facilitate the boarding or disembarking of that or any other vessel or aircraft;
- (h) require any person on board a vessel or aircraft to provide any help and facilities, with respect to matters under that person's control, that an authorised person considers would facilitate the exercise of a power conferred by this section,

but the powers under paragraph (a) and (b) may only be exercised by a police or customs officer.

(2) A person seeking to enter any premises in the exercise of his powers under subsection (1) shall, if required by or on behalf of the owner or occupier or person in charge of the premises, vehicle, vessel or aircraft (as the case may be) produce evidence of his identity, and of his authority before entering.

(3) A person who has entered any premises in the exercise of his powers under subsection (1) shall, if required as mentioned in subsection (2), state in writing his reasons for entering.

(4) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access) but does not authorise the entry into premises used wholly or mainly as a dwelling.

(5) A person is guilty of an offence if-

- (a) the person intentionally obstructs or delays any person in the exercise of his powers under subsection (1)
- (b) the person fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by an officer or authorised person in the exercise of a power conferred by subsection (1), or
- (c) the person prevents another person from complying with any such requirement or direction.

(6) A person who is guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Warrants authorising entry and search of dwellings.

12.(1) Where a justice of the peace is satisfied that the requirements in subsection (4) are met in relation to any premises used wholly or mainly as a dwelling, the justice may issue a warrant (a “search warrant”) authorising a police or customs officer-

- (a) to enter the premises;
- (b) to search them for relevant evidence.

(2) A search warrant may be issued only on the application of a police or customs officer.

(3) A police or customs officer may apply for a search warrant only if the officer is a senior officer or is authorised by a senior officer to make the application. In this subsection “senior officer” means-

- (a) an officer of at least the rank of inspector; or
- (b) a customs officer of at least the grade of senior customs officer;

(4) The requirements of this subsection are met in relation to premises if there are reasonable grounds to suspect that-

- (a) there are items on the premises that are evidence of the commission of an offence under section 8 or 10 of this Act; and
- (b) in a case where the premises are specified in the application, any of the conditions in subsection (5) is met.

(5) The conditions referred to in subsection (4)(b) are-

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is not practicable to communicate with any person entitled to grant access to the items;
- (c) that entry to the premises is unlikely to be granted unless a warrant is produced;
- (d) that the purpose of entry may be frustrated or seriously prejudiced unless a police or customs officer arriving at the premises can secure immediate entry to them.

(6) In this section “premises” includes any place and, in particular, includes-

- (a) a vehicle, vessel or aircraft;
- (b) a tent or moveable structure.

Further provision about search warrants.

13.(1) An application for a search warrant must-

- (a) be supported by information on oath;
- (b) identify the premises in relation to which the warrant is sought;
- (c) be executed by any police or customs officer.

(2) A person applying for a search warrant must answer on oath any question that the justice hearing the application asks the person.

(3) A search warrant may authorise persons to accompany any police or customs officer who is executing it if the justice issuing the warrant is satisfied that their presence is likely to be helpful to the search.

(4) Unless giving notice would be likely to frustrate or seriously prejudice the purpose of a search-

(a) reasonable efforts must be made to give notice of an application for a search warrant to persons who might be affected by it;

(b) a search warrant does not authorise entry to premises unless 48 hours' notice of the intended entry is given to the occupier or some other appropriate person who is responsible for the premises.

(5) A search warrant is a warrant authorising a police or customs officer to enter and search the premises specified in the application for the warrant.

Powers of seizure.

14.(1) A police or customs officer who is exercising any power of search conferred by this Act may seize and detain anything found in the course of the search.

(2) The powers under this section may be exercised only-

(a) for the purposes of determining whether an offence under section 8 or section 10 has been committed, or

(b) in relation to an item that the officer concerned reasonably believes to be relevant evidence.

(3) Nothing in this section confers power on an officer to seize an item that is an excluded item.

(4) When an item is seized, the police or customs officer must make reasonable efforts to give a written notice to each of the following persons-

(a) in the case of an item seized from a person, the person from whom the item was seized;

(b) in the case of an item seized from premises, any person who appears to the authorised person to be the occupier of the premises or otherwise to be in charge of the premises;

(c) if the authorised person thinks that the item may belong to any person not falling within paragraph (a) or (b), that other person.

(5) The notice must-

(a) state what has been seized and the reason for its seizure;

(b) specify any offence that the police or customs officer suspects has been committed.

(6) The police or customs must make a record of what has been seized.

(7) An item seized under this section may be retained for as long as is necessary in all the circumstances and in particular-

- (a) for use as evidence at a trial for an offence under this Act, or
- (b) for forensic examination or for investigation in connection with an offence under this Act.

Forfeiture of fur.

15.(1) If a person is convicted of an offence under section 8 or section 10 , the court may make a forfeiture order in respect of any fur in respect of which the offence is committed.

(2) If a person is convicted of an offence under section 4(2) in respect of animals of a particular description kept by another person, the court may make a forfeiture order in respect of any animals of that description which are kept by that other person when the order is made or which come into his keeping during the relevant period.

(3) A forfeiture order made under subsection (1) or subsection (2) is an order for the forfeiture and destruction or other disposal of fur to which the order applies.

(4) The court may make a forfeiture order whether or not it also deals with the offender in respect of the offence in any other way, and may make any other provision that it considers necessary for giving effect to the forfeiture.

(5) Where-

- (a) the court proposes to make a forfeiture order; and
- (b) a person claiming to have an interest in the fur concerned applies to be heard by the court,

the court shall not make the order unless that person has been given an opportunity to show cause why the order should not be made.

(6) A forfeiture order may not be made so as to come into force before the time when there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.

**PART V
MISCELLANEOUS**

Regulations.

16.(1) The Minister may by regulations make any supplementary, incidental, consequential, transitory, transitional or saving provision which the Minister considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to any provision of this Act.

(2) Regulations under this section may, in particular, prescribe any forms, fees, duties or penalties to be paid in connection with this Act.

(3) Regulations under this section may amend, repeal or revoke any enactment other than one contained in an Act or instrument passed or made or made after this Act is passed.

Application of Imports and Exports Act, 1986.

17. For the purpose of this Act all the powers conferred upon customs officers under the Imports and Exports Act, 1986 shall continue to apply to customs officers in addition to the powers provided to customs officers by this Act.

Contracts of insurance.

18. A transaction under which a person acquires an item in pursuance of an existing contract of insurance is not a purchase or sale of the item for the purposes of this Act.

EXPLANATORY MEMORANDUM

This Bill provides for a ban on fur farming.

The Bill also provides for a ban on dealing in fur, which includes the sale, hire, importation and exportation of fur. This is subject to the exemptions on the grounds of scientific research, education, religion or tradition.

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