**ANIMALS AND BIRDS PROTECTION ACT AMENDMENT BILL 1938**

House of Assembly**, 13 July 1938, pages 440-2**

Second reading

**The Hon. T. PLAYFORD (Gumeracha— Commissioner of Crown Lands)—**This Bill makes a number of amendments to the Animals and Birds Protection Act, 1919 to 1934. The amendments are of a disconnected nature and the clauses must therefore be considered seriatim. Clause 2 inserts in section 3 of the principal Act a definition of "Crown lands.” An existing definition provides that Crown lands is to mean Crown lands as defined by the Crown Lands Act. This is not convenient, as it necessitates a reference to another Act to ascertain the law on the particular matter, and therefore paragraph (a) of clause 3 enacts a definition of "Crown lands” which is identical with that contained in the Crown Lands Act. Paragraph (b) of clause 2 provides for a defini­tion of the term "day.” This term is used in the principal Act with reference to the power to fix a bag limit per day for partly protected animals and birds. It is provided by the definition that "day” is to mean a period of 24 hours commencing from midnight. This definition will conform with what is generally accepted as the meaning of the term now used in the Act. Paragraph (c) of clause 2 amends the definition of "Minister” by striking out a reference to the "Minister of Industry” in that definition. For many years the Act has been administered by the Minister of Agriculture, and consequently this reference to the Minister of Industry is not in conformity with existing practice.

Clause 3 proposes an important change with regard to the classification of animals and birds. Under the present Act there are three schedules of animals and birds. One schedule sets out the animals and birds which are wholly protected, another those which are partly protected, and another those which are unprotected. It follows, therefore, that these lists, properly to cover the subject matter, should include in one or other of them the name of every animal and bird found in the State. In other States the practice is to have two lists only, one of partly protected animals and birds, and another of unprotected animals and birds, and it is provided that animals and birds not mentioned in these two lists are to be wholly protected. It is submitted that this is the most convenient scheme in practice, as, unless the lists as now comprised in the Act are completely exhaustive there is a gap in the law as regards the animals and birds not mentioned in the lists. The effect probably is that animals and birds not mentioned in any of the lists do not come under any of the provisions of the Act at all. It is, therefore, provided by clause 3 that animals and birds not mentioned in the partly protected or unprotected lists are to be wholly protected. Other amendments are made in the Bill which are consequential upon this provision.

The first of these consequential provisions is contained in paragraph (a) of clause 4, which repeals paragraph (a) of subsection (1) of sec­tion 8 of the Act and enacts new provisions in its stead. The present paragraph gives the Governor power to transfer any animal or bird from any one of the present lists to any other of them. This provision is repealed, and in its place power is given to the Governor to declare any animal or bird partly protected or unprotected, to transfer any animal or bird from the partly protected list to the unprotected list, or vice versa, or to remove any animal or bird from either of those lists. The effect of removing any animal or bird from these lists would, of course, be to make it wholly protected. Paragraph (b) of clause 4 inserts a new provision in section 8. It is proposed that the Governor should have power to declare that, for a limited period and within any specified portion of the State, any particular animal or bird shall, subject to any conditions specified in the proclamation, cease to be pro­tected within the area specified in the proclamation. It sometimes happens that protected animals or birds in a particular locality become a nuisance and it is desirable to thin them out. Under the present law the animal or bird must be removed from the pro­tected list generally and subsequently restored to that list. The suggested proposal is one which will be more convenient in practice and will enable a protected animal or bird to be declared unprotected in a particular locality and for a particular time. When that time has elapsed the proclamation will cease to have effect and the ordinary law will prevail. Paragraph (c) of clause 4 makes an amendment consequential on the amendment proposed by paragraph (b) of that clause. Paragraph (d) of clause 4 repeals the existing proviso to paragraph (e) of section 8. Paragraph (c) of section 8 provides that the Governor may fix the maximum number of partly protected animals and birds which may be taken during the open season by any one person on any one day. This is what is commonly known as fixing the bag limit for any particular animal or bird. There is a proviso to this paragraph which enacts that this power is not to apply as regards persons holding game licences. These licences authorise the holders to take animals and birds for the purpose of sale. It is proposed to repeal this proviso as it is considered that, for the protection of the animals and birds in question, there should be powder to place some limit upon the number which can be taken by holders of game licences. This provision as to bag limits only applies to partly protected animals and birds, and at the present time the only proclamations which are in force under the provision relate to ducks and quail. In place of the existing proviso it is proposed to insert a proviso which will enable different bag limits to be fixed for holders of game licences and gun licences, the intention being, if a bag limit is fixed for holders of game licences, that the bag limit will not be restricted to the number fixed for holders of gun licences.

Clause 5 provides that the Minister, on the application of any person holding a licence under the Act, may revoke that . licence and may, in his discretion, refund a proportionate amount of the licence fee. It sometimes happens that persons take out licences which subsequently they do not wish to use, and this provision will enable the Minister, if he thinks fit, to give a refund of the appropriate proportion of the licence fee. Section 12 of the principal Act gives an inspector powers of search for the purpose of ascertaining whether any animal or bird or carcass or skin, eggs or feathers have been unlawfully taken. It is proposed by clause 6 to extend this power to search to cover the right to search for articles made out of these things. Obviously, it is reasonable to give an inspector this power, as it is just as necessary to seize an article made from any skin unlawfully taken as to seize the skins themselves. Sections 13a and 13b of the principal Act provide for the payment of royalty to the Government on certain animals and birds, and provide that on receipt of the prescribed royalty, an inspector is to brand the skins in question, indicating that the royalty has been paid. Clause 7 enables this branding to be done where an undertaking’ to pay the royalty is given, although the actual royalty has not been paid. The collector is given a discretion as to whether he shall accept any undertaking or not. Clause 8 makes a drafting amendment to section 13d of the principal Act.

Clause 9 makes a number of amendments to section 14 of the principal Act. This is the section which creates most of the offences under the Act. Paragraph (a) makes amendments consequential upon clause 4 (a). Paragraph (b) amends paragraph (e) of section 14. This paragraph makes it an offence for any person to export any protected animal or bird. It is provided by the clause that the words “without the consent of the chief inspector" are to be inserted in this paragraph. The export on protected animals and birds, with consent is contemplated by the Act, but, in the form of the present paragraph of section 14, it would be an offence to do so. Paragraph (e) of clause 9 repeals an obsolete provison in paragraph (g) of section 14. Paragraph (d) of clause 9 deals with matters of defence in proceedings under the principal Act. Section 14 of the principal Act makes it an offence to take any protected animal or bird or to have in one’s possession the skin or carcass of any such bird, and creates various other offences. No exceptions are made to the offences created by this section. Throughout the Act, however, it is provided that in certain circumstances protected animals and birds may be taken, and in some cases it is provided that a royalty is payable to the Government on such animals and birds. It is therefore provided by clause 9 that proof that the defendant acted under any of these exemptions shall be a defence to proceedings under section 14. Speaking generally, it is provided by the clause that if the defendant can show that the protected animal or bird was taken lawfully or that, in the case of a skin or article made from the skin of a protected animal or bird, the proper royalty was paid upon the skin or article, it will be ,a defence to the proceedings.

Clause 10 deals with the question of destruction of protected animals and birds for the prevention of injury to property. Paragraph (b) of section 20 now contains some provisions on this matter, but it is loosely drafted. It is therefore provided by clause 10 that if the Chief Inspector is satisfied that any person’s property is being damaged or injured by any protected animals or birds, he may authorise the owner or his employees to destroy those animals or birds, subject to such conditions as are laid down in the authority. It will not be lawful for the animals and birds so taken to be sold unless the Minister consents in writing to the sale. This provision will give statutory effect to what is now the practice of the department. Clause 11 re-drafts paragraph (a) of section 22. This provides that it is not unlawful to do anything pursuant to a permit given by the Minister for certain purposes. However, the provision is not wide enough in its terms to cover all the exceptions granted by the Act, and clause 11 redrafts the paragraph in wider terms. The clause also adds a proviso to paragraph (d) of the section. This paragraph provides that nothing in the Aet is to apply to animals and birds taken for the Zoological Society or the Board of Governors of the Public Library and Museum, etc. It is provided in this case that the animals and birds must be taken with the written authority of the body concerned. Clause 12 makes a drafting amendment to the heading to section 23. Section 25 provides that no person, other than a holder of a game licence, is to take any partly protected animal or bird for the purposes of sale. While the existing section prohibits any person other than a game licence holder from taking those animals and birds for sale no provision is made as to the actual sale thereof. Clause 13, therefore, extends the existing prohibition and imposes penalties on persons who sell these animals and birds unless they are holders of game licences or have permits under section 20, or are the holders of skin licences under the Hide, Skin, and Wool Dealers Act.

Section 26 of the principal Act deals with the issue of gun licences and game licences. These are annual licences issued on payment of the prescribed fee. At present the fee for a gun licence is 5s. and for a game licence £1. These licences expire on December 31 next after their issue, so that if a person takes out a licence late in the calendar year his licence expires at the end of that year, but he must, nevertheless, pay the full licence fee. It is considered that in such circumstances it should be sufficient to require payment of only half the prescribed fee. Paragraph (a) of clause 14, therefore, provides that if any licence is issued after June 30 in any year only one half of the fee will be payable. If a licence is issued before that date it will be subject to the present law requiring payment of the full licence fee. Paragraph (b) of clause 14 deals with another matter dealing with the issue of licences. As before mentioned, gun and game licences expire on the last day of December next after they are issued, so that, if strict compliance with the Act is enforced, a person cannot renew his gun or game licence until after January 1 in any year. It is obviously convenient that these licences should be capable of being renewed before the date when the licence has actually expired, and paragraph (b) of clause 14 enables a current licence to be renewed within 14 days of its expiry. Clause 15 increases the penalties for offences under the principal Act. For a first offence, the maximum penalty is increased from £5 to £10. For a second offence, the minimum penalty is increased from £2 to £5 and the maximum penalty from £20 to £30. It is considered by the department that the existing penalties are inadequate to ensure compliance with the law. The existing provision that in the case of certain offences the value of a skin or carcass of the animal or bird improperly taken shall be deemed to be £5 is extended to cover paragraphs of section 14 which have been enacted since the passing of the principal Act. Clauses 16, 17, 18, and 19 make amendments consequential upon the changes proposed by clause 3.

Clause 16 repeals various proclamations which have, been made under section 8 (1) (a) of the present Act. These are proclamations transferring animals from one schedule to another. The substance of all these proclama­tions has been incorporated in clauses 18 and 19 and they will, therefore, be of no further effect. Clause 17 repeals the second schedule which is the existing list of protected animals and birds. Clauses 18 and 19 enact new third and fourth schedules containing the lists of partly-protected animals and birds and unprotected animals and birds. These lists are the existing law made up from the present schedules to the Act and the proclamations amending those schedules which have been made from time to time. I move the second reading.

Bill read a second time.