

《2018 年保護瀕危動植物物種 (修訂)
條例》

**Protection of Endangered Species of
Animals and Plants (Amendment)
Ordinance 2018**

Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 7 OF 2018



Carrie LAM
Chief Executive
8 February 2018

An Ordinance to amend the Protection of Endangered Species of Animals and Plants Ordinance and its subsidiary legislation to increase the penalties for offences relating to the regulation of scheduled species; to provide stricter regulation for elephant hunting trophies and elephant ivory; and to make minor amendments.

[]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018.
- (2) Subject to subsections (3) and (4), this Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

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- (3) The following provisions come into operation on the expiry of 3 months beginning on the day appointed under subsection (2)—
- (a) sections 16(2), 18, 29(2) and 32(2);
 - (b) section 27 (except subsections (9), (11) and (12)).
- (4) Section 27(9), (11) and (12) comes into operation on 31 December 2021.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Part 2

Amendments to Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)

3. Section 2 amended (interpretation)

(1) Section 2(1)—

Add in alphabetical order

“*elephant hunting trophy* (象狩獵品) has the meaning given by section 1(1) of Schedule 4;

elephant ivory (象牙) has the meaning given by section 1(1) of Schedule 4;”.

(2) After section 2(4)—

Add

“(5) A note located in the text of this Ordinance is provided for information only and has no legislative effect.”.

4. Section 5 amended (restriction on import of specimens of Appendix I species)

Section 5(3)—

Repeal

everything after “is liable”

Substitute

“—

(a) on summary conviction—to a fine of \$5,000,000 and to imprisonment for 2 years; or

(b) on conviction on indictment—to a fine of \$10,000,000 and to imprisonment for 10 years.”.

5. Section 6 amended (restriction on introduction from the sea of specimens of Appendix I species)

Section 6(3)—

Repeal

everything after “is liable”

Substitute

“—

- (a) on summary conviction—to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment—to a fine of \$10,000,000 and to imprisonment for 10 years.”.

6. Section 7 amended (restriction on export of specimens of Appendix I species)

Section 7(3)—

Repeal

everything after “is liable”

Substitute

“—

- (a) on summary conviction—to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment—to a fine of \$10,000,000 and to imprisonment for 10 years.”.

7. Section 8 amended (restriction on re-export of specimens of Appendix I species)

Section 8(3)—

Repeal

everything after “is liable”

Substitute

“—

- (a) on summary conviction—to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment—to a fine of \$10,000,000 and to imprisonment for 10 years.”.

8. Section 9 amended (restriction on possession or control of specimens of Appendix I species)

Section 9(2)—

Repeal

everything after “is liable”

Substitute

“—

- (a) on summary conviction—to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment—to a fine of \$10,000,000 and to imprisonment for 10 years.”.

9. Section 10 repealed (higher penalties for offences relating to specimens of Appendix I species committed for commercial purposes)

Section 10—

Repeal the section.

10. Section 11 amended (restriction on import of specimens of Appendix II species and Appendix III species)

Section 11(3)—

Repeal

everything after “is liable”

Substitute

“__

- (a) on summary conviction—to a fine of \$500,000 and to imprisonment for 1 year; or
- (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years.”.

11. Section 12 amended (restriction on introduction from the sea of specimens of Appendix II species)

Section 12(3)—

Repeal

everything after “is liable”

Substitute

“__

- (a) on summary conviction—to a fine of \$500,000 and to imprisonment for 1 year; or
- (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years.”.

12. Section 13 amended (restriction on export of specimens of Appendix II species and Appendix III species)

Section 13(3)—

Repeal

everything after “is liable”

Substitute

“__

- (a) on summary conviction—to a fine of \$500,000 and to imprisonment for 1 year; or
- (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years.”.

13. Section 14 amended (restriction on re-export of specimens of Appendix II species and Appendix III species)

Section 14(3)—

Repeal

everything after “is liable”

Substitute

“—

- (a) on summary conviction—to a fine of \$500,000 and to imprisonment for 1 year; or
- (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years.”.

14. Section 15 amended (restriction on possession or control of specimens of Appendix II species)

Section 15(2)—

Repeal

everything after “is liable”

Substitute

“—

- (a) on summary conviction—to a fine of \$500,000 and to imprisonment for 1 year; or
- (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years.”.

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15. Section 16 repealed (higher penalties for offences relating to specimens of Appendix II species and Appendix III species committed for commercial purposes)

Section 16—

Repeal the section.

16. Section 17 amended (import of pre-Convention specimens)

(1) At the end of section 17—

Add

“Note—

For a specimen that is an elephant hunting trophy, see section 2 of Schedule 4, which disappplies this section.”.

(2) Section 17, Note, after “elephant hunting trophy”—

Add

“or elephant ivory”.

17. Section 18 amended (import of specimens of Appendix II species)

At the end of section 18—

Add

“Note—

For a specimen that is an elephant hunting trophy or elephant ivory, see section 3 of Schedule 4, which disappplies this section.”.

18. Section 20 amended (possession or control of pre-Convention specimens)

At the end of section 20—

Add

“Note—

For a specimen that is elephant ivory, see section 9A of Schedule 4, which limits the application of this section to antique elephant ivory only.”.

19. Section 23 amended (issue of licences)

At the end of section 23—

Add

“Note—

For a licence in respect of a specimen that is an elephant hunting trophy or elephant ivory, see sections 4, 6 and 10 of Schedule 4, which restrict the Director’s power to approve an application under this section.”.

20. Section 24 amended (extension, renewal and variation of licences)

At the end of section 24—

Add

“Note—

For a licence in respect of a specimen that is an elephant hunting trophy or elephant ivory, see sections 4, 6 and 10 of Schedule 4, which restrict the Director’s power to approve an application under this section.”.

21. Part 5A added

After Part 5—

Add

“Part 5A

**Special Provisions for Elephant Hunting Trophies
and Elephant Ivory**

26A. Specified provisions subject to Schedule 4

- (1) A specified provision applies subject to Schedule 4 in relation to a specimen that is an elephant hunting trophy or elephant ivory.

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(2) For the purpose of providing information on any provision in Schedule 4 that relates to a specified provision, the Secretary may, by order published in the Gazette, amend the specified provision by adding or amending a note.

(3) In this section—

specified provision (指明條文) means any of the following provisions—

- (a) Part 4;
- (b) section 23;
- (c) section 24;
- (d) the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Cap. 586 sub. leg. A);
- (e) the Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Cap. 586 sub. leg. B).”.

22. Section 36 amended (power to require identification)

Section 36(2)(b), English text—

Repeal

“requirment”

Substitute

“requirement”.

23. Part 9 heading substituted

Part 9, heading—

Repeal the heading

Substitute

“Part 9

Transitional Provisions”.

24. Section 55A added

Part 9, after section 55—

Add

“55A. Transitional provisions relating to Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018

- (1) This section applies in place of section 101J of the Criminal Procedure Ordinance (Cap. 221).
- (2) If a person commits an offence under section 5, 6, 7, 8 or 9 before the amendment date and is convicted of the offence on or after that date, the person is liable to the penalties under Part 2 as in force immediately before that date.
- (3) If a person commits an offence under section 11, 12, 13, 14 or 15 before the amendment date and is convicted of the offence on or after that date, the person is liable to the penalties under Part 3 as in force immediately before that date.

(4) In this section—

amendment date (修訂日期) means the date on which Parts 2 and 3 are amended by the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 (7 of 2018).”.

25. Schedule 3 amended (Convention instruments)

Schedule 3, after “[ss. 2, 4, 19 & 48(1)]”—

Add

“& Sch. 4”.

26. Schedule 4 added

After Schedule 3—

Add

“Schedule 4

[ss. 2 & 26A]

**Stricter Regulation of Elephant Hunting Trophies
and Elephant Ivory**

Part 1

Interpretation

1. Interpretation

(1) In this Schedule—

Cap. 586A (《第586A章》) means the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Cap. 586 sub. leg. A);

Cap. 586B (《第586B章》) means the Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Cap. 586 sub. leg. B);

elephant (象) means an animal of the species *Elephas maximus* or *Loxodonta africana*;

elephant hunting trophy (象狩獵品) means a whole elephant, or a part or derivative of an elephant, (*item*) that—

- (a) is raw or processed;
- (b) was acquired by a person through hunting; and
- (c) is being imported, exported or re-exported by or on behalf of the person as part of the transfer of the item from its place of origin to the person's usual place of residence;

elephant ivory (象牙) means the ivory of an elephant;

pre-Convention (《公約》前標本)—see subsection (2).

- (2) For the purposes of this Schedule, a specimen is pre-Convention if it was acquired before the provisions of the Convention applied to it (as determined in accordance with paragraph 6 of Part 2 of Schedule 3).

Part 2

Import

2. Import of pre-Convention specimens

Section 17 does not apply to the import of a specimen that is an elephant hunting trophy.

3. Import of specimens of Appendix II species

Section 18 does not apply to the import of a specimen that is an elephant hunting trophy or elephant ivory.

4. Issue, extension, renewal and variation of licences for import

- (1) For a specimen that is an elephant hunting trophy, the Director may approve an import licence application only if the Director is satisfied that there are exceptional circumstances justifying the approval.
- (2) For a specimen that is elephant ivory, the Director may approve an import licence application only if the Director is satisfied that—
 - (a) the specimen is pre-Convention;
 - (b) the specimen is intended for use for scientific, educational or law enforcement purposes; or
 - (c) there are exceptional circumstances justifying the approval.
- (3) In this section—

import licence application (進口許可證申請), in relation to a specimen, means an application made under section 23 or 24 in respect of a licence for the import of the specimen.

5. Import of specimens of Appendix II species as personal or household effects

- (1) Section 5 of Cap. 586B does not apply to the import of a specimen that is an elephant hunting trophy.
- (2) Section 5(4) of Cap. 586B does not apply to the import of a specimen that is elephant ivory.

Part 3

Re-export

6. Issue, extension, renewal and variation of licences for re-export

- (1) For a specimen that is an elephant hunting trophy, the Director may approve a re-export licence application only if the Director is satisfied that there are exceptional circumstances justifying the approval.
- (2) For a specimen that is elephant ivory, the Director may approve a re-export licence application only if the Director is satisfied that—
 - (a) the specimen is pre-Convention;
 - (b) the specimen is intended for use for scientific, educational or law enforcement purposes; or
 - (c) there are exceptional circumstances justifying the approval.
- (3) In this section—

re-export licence application (再出口許可證申請), in relation to a specimen, means an application made under section 23 or 24 in respect of a licence for the re-export of the specimen.

7. Re-export of specimens of Appendix I species as personal or household effects acquired pre-Convention

Section 6 of Cap. 586A does not apply to the re-export of a specimen that is an elephant hunting trophy.

8. Re-export of specimens of Appendix II species as personal or household effects

(1) Section 5 of Cap. 586B does not apply to the re-export of a specimen that is an elephant hunting trophy.

(2) Section 5(4) of Cap. 586B does not apply to the re-export of a specimen that is elephant ivory.

9. Re-export of specimens of Appendix II species as personal or household effects acquired pre-Convention

Section 7 of Cap. 586B does not apply to the re-export of a specimen that is an elephant hunting trophy.

Part 4

Possession or Control

10. Issue, extension, renewal and variation of licences for possession or control

(1) For a specimen that is elephant ivory, the Director may approve a possession licence application only if the Director is satisfied that—

(a) the specimen is pre-Convention;

(b) the specimen is covered by a specified licence that is valid on the date of the application; or

(c) there are exceptional circumstances justifying the approval.

(2) In this section—

Amendment Ordinance (《修訂條例》) means the Protection of Endangered Species of Animals and Plants (Amendment) Ordinance 2018 (7 of 2018);

possession licence application (管有許可證申請), in relation to a specimen, means an application made under section 23 or 24 in respect of a licence for the possession or control of the specimen;

specified licence (指明許可證), in relation to a specimen, means a licence for the possession or control of the specimen that was issued under section 23 before the commencement date of section 26 of the Amendment Ordinance.”.

27. Schedule 4 amended (stricter regulation of elephant hunting trophies and elephant ivory)

(1) Schedule 4, section 1(1)—

Add in alphabetical order

“***antique elephant ivory*** (古董象牙)—

(a) means a piece of elephant ivory that was, before 1 July 1925—

(i) removed from the wild;

(ii) significantly altered from its natural state for jewellery, adornment, art, utility or musical instruments; and

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- (iii) acquired by a person after the alteration in such altered state that required no further carving, crafting or processing to effect its purpose; and
- (b) does not include an elephant hunting trophy;”.
- (2) Schedule 4, section 2, after “elephant hunting trophy”—
Add
“or elephant ivory”.
- (3) Schedule 4, section 4(2)(a)—
Repeal
“pre-Convention”
Substitute
“antique elephant ivory”.
- (4) Schedule 4, section 6(2)(a)—
Repeal
“pre-Convention”
Substitute
“antique elephant ivory”.
- (5) Schedule 4, section 7, after “elephant hunting trophy”—
Add
“or elephant ivory”.
- (6) Schedule 4, section 9, after “elephant hunting trophy”—
Add
“or elephant ivory”.

- (7) Schedule 4, Part 4, before section 10—

Add

“9A. Possession or control of pre-Convention specimens

Section 20 applies to a person’s possession or control of a specimen that is elephant ivory only if the person also proves to the satisfaction of the Director that the specimen is antique elephant ivory.”.

- (8) Schedule 4, section 10(1)—

Repeal paragraph (a).

- (9) Schedule 4, section 10(1)—

Repeal paragraph (b).

- (10) Schedule 4, section 10(2)—

Repeal the definition of *specified licence*

Substitute

“*specified licence* (指明許可證), in relation to a specimen, means a licence for the possession or control of the specimen that was issued under section 23—

- (a) if the specimen is pre-Convention—before the commencement date of section 27(10) of the Amendment Ordinance; or
- (b) if the specimen is not pre-Convention—before the commencement date of section 26 of the Amendment Ordinance.”.

- (11) Schedule 4, English text, section 10(2), definition of ***possession licence application***—

Repeal the semicolon

Substitute a full stop.

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- (12) Schedule 4, section 10(2)—
- (a) definition of *Amendment Ordinance*;
 - (b) definition of *specified licence*—
- Repeal the definitions.**
-

Part 3

Amendments to Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Cap. 586 sub. leg. A)

28. Section 4 amended (meaning of personal or household effects)

(1) Section 4—

Renumber the section as section 4(1).

(2) Section 4(1)—

Repeal

“shall be treated as part of the personal or household effects of a person”

Substitute

“is part of the personal or household effects of a person who is an individual”.

(3) After section 4(1)—

Add

“(2) Moreover, for the purposes of section 7, a specimen owned or possessed by a person other than an individual for non-commercial purposes only is taken to be part of the personal or household effects of the person.”.

29. Section 6 amended (exemption in respect of export or re-export of personal or household effects acquired pre-Convention)

(1) At the end of section 6—

Add

“**Note—**

For a specimen that is an elephant hunting trophy, see section 7 of Schedule 4 to the Ordinance, which disapplies this section.”.

(2) Section 6, Note, after “elephant hunting trophy”—

Add

“or elephant ivory”.

Part 4

Amendments to Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Cap. 586 sub. leg. B)

30. Section 4 amended (meaning of personal or household effects)

(1) Section 4—

Renumber the section as section 4(1).

(2) Section 4(1)—

Repeal

“shall be treated as part of the personal or household effects of a person”

Substitute

“is part of the personal or household effects of a person who is an individual”.

(3) After section 4(1)—

Add

“(2) Moreover, for the purposes of section 8, a specimen owned or possessed by a person other than an individual for non-commercial purposes only is taken to be part of the personal or household effects of the person.”.

31. Section 5 amended (exemption in respect of import, etc. of Appendix II species as personal or household effects)

At the end of section 5—

Add

“Note—

For a specimen that is an elephant hunting trophy or elephant ivory, see sections 5 and 8 of Schedule 4 to the Ordinance, which disapply—

- (a) for an elephant hunting trophy—this section; and
- (b) for elephant ivory—subsection (4).”.

32. Section 7 amended (exemption in respect of export or re-export of personal or household effects acquired pre-Convention)

(1) At the end of section 7—

Add

“Note—

For a specimen that is an elephant hunting trophy, see section 9 of Schedule 4 to the Ordinance, which disapplies this section.”.

(2) Section 7, Note, after “elephant hunting trophy”—

Add

“or elephant ivory”.