
STATUTORY INSTRUMENTS

2017 No. 1013

The Conservation of Offshore Marine
Habitats and Species Regulations 2017

PART 3

PROTECTION OF SPECIES

Protection of birds

Protection of wild birds, their eggs and nests

- 40.**—(1) Subject to regulations 41 and 55, a person who deliberately—
- (a) captures, injures, or kills any wild bird,
 - (b) takes, damages or destroys the nest of any wild bird while that nest is in use or being built, or
 - (c) takes or destroys an egg of any wild bird,
- is guilty of an offence.
- (2) Subject to regulations 41 and 55, a person who keeps—
- (a) any live or dead wild bird or any part of, or anything derived from, such a bird, or
 - (b) an egg of a wild bird or any part of such an egg,
- is guilty of an offence.
- (3) In any proceedings for an offence under paragraph (1)—
- (a) in relation to an offence under sub-paragraph (a), the bird in question is to be presumed to have been wild unless the contrary is shown; and
 - (b) in relation to an offence under sub-paragraph (b) or (c), if the prosecution proves that the nest or egg in question is of a bird which is a member of a species referred to in Article 1 of the Wild Birds Directive, it is to be presumed that the bird was a wild bird unless the contrary is shown.
- (4) In any proceedings for an offence under paragraph (1), where this paragraph applies the defendant (“D”) is not to be taken deliberately to have done anything prohibited by that paragraph merely because—
- (a) D’s actions had the result that D did the thing in question; and
 - (b) D intended those actions and knew that they might have that result.
- (5) Paragraph (4) applies where the defendant (“D”) shows that—
- (a) the actions in question were for the purpose, and in the course, of sea fishing;
 - (b) D did not intend those actions to have the result in question; and

- (c) D had taken any steps that could reasonably be taken to ensure compliance with the requirements or conditions of any relevant EU instrument.
- (6) In paragraph (5), “any relevant EU instrument” means any instrument relating to sea fishing which—
- (a) regulates such fishing for the purpose (whether or not the sole purpose) of minimising the extent to which it has a result of the kind referred to in paragraph (4) or the risk that it may have a result of that kind; and
 - (b) is adopted by any EU instrument under—
 - (i) Article 43 of the Treaty on the Functioning of the European Union;
 - (ii) Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy, as amended from time to time⁽¹⁾ or any instrument adopted thereunder; or
 - (iii) Regulation (EC) No. 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy⁽²⁾ or any instrument adopted thereunder.
- (7) In this regulation “destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching.

Defences to the offences in regulation 40

- 41.**—(1) A person (“P”) is not guilty of the offence under regulation 40(1)(a) of deliberately capturing a wild bird or an offence under regulation 40(2)(a), if P shows that the act in question—
- (a) was in relation to a bird that had been disabled otherwise than by P’s unlawful act; and
 - (b) was done solely for one or both of the purposes of—
 - (i) tending it and releasing it when no longer disabled, or
 - (ii) releasing it after it had been tended.
- (2) A person (“P”) is not guilty of an offence under regulation 40(1)(a) or (2)(a) if P shows that the act in question—
- (a) was in relation to a bird that had been seriously disabled otherwise than by P’s unlawful act and that there was no reasonable chance of its recovering; and
 - (b) was done solely for one or both of the purposes of—
 - (i) ending the bird’s life, or
 - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.
- (3) A person is not guilty of the offence under regulation 40(1) of deliberately injuring a wild bird if that person shows that this was done solely for the purpose of taking a sample by virtue of regulation 63(2).
- (4) A person is not guilty of an offence under regulation 40(2) if that person shows that the act in question was done solely for the purpose of investigating whether one or more of the following offences was being or had been committed—
- (a) an offence under regulation 40, 42, 43 or 57;
 - (b) an offence of attempting to commit an offence under regulation 40, 42 or 43; or
 - (c) an offence under regulation 69 which relates to an offence under regulation 40, 42 or 43.

(1) OJ No. L 354, 28.12.2013, p. 22, as amended by Council Regulation (EU) No 1385/2013 (OJ No. L 354, 28.12.2013, p. 86) and Regulation (EU) 2015/812 (OJ No. L 133, 29.5.2015, p. 1).

(2) O.J. No. L358, 31.12.02, p. 59.

- (5) A person is not guilty of an offence under regulation 40(2) if that person shows—
- (a) in the case of a wild bird, or any part of, or anything derived, from any such bird—
 - (i) where the bird is a dead bird, that the bird had not been killed, or that it had been lawfully killed, by any person; and
 - (ii) whether the bird is live or dead, that the bird had not been captured or had been lawfully captured;
 - (b) in the case of an egg of a wild bird, that the egg had not been taken from the wild; and
 - (c) in the case of part of any such egg, that the egg had not been taken from the wild or destroyed in the wild by any person.
- (6) A person (“P”) is not guilty of an offence under regulation 40(2) if P shows that the wild bird, egg, or part of an egg had been lawfully sold (whether to P or to any other person) or had otherwise been lawfully acquired by P.
- (7) In paragraphs (5) and (6), “lawfully” means—
- (a) without contravention of Part 1 of the Wildlife and Countryside Act 1981⁽³⁾, the Wildlife (Northern Ireland) Order 1985⁽⁴⁾, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007⁽⁵⁾ or these Regulations; or
 - (b) in the case of a bird, egg or other thing killed, taken or sold in Gibraltar or a member State (other than the United Kingdom), without contravention (as the case may be) of the law of Gibraltar or the law of that State implementing the Wild Birds Directive.

Prohibition of certain methods of capturing or killing wild birds

- 42.**—(1) Subject to regulation 55, a person is guilty of an offence if that person uses for the purpose of capturing or killing any wild bird—
- (a) any of the means listed in paragraph (2);
 - (b) any other means of capturing or killing which is indiscriminate or capable of causing the local disappearance of any species of wild bird; or
 - (c) any means of capturing or killing from a mechanically propelled vehicle, including a ship or an aircraft, while in immediate pursuit of a wild bird with a view to capturing or killing that bird.
- (2) The prohibited means of capturing or killing wild birds are—
- (a) snares, limes or hooks;
 - (b) using blind or mutilated birds as live decoys;
 - (c) sound recordings;
 - (d) electrical or electronic devices capable of killing or stunning;
 - (e) artificial light sources;
 - (f) mirrors or other dazzling devices;
 - (g) devices for illuminating targets;
 - (h) sighting devices for night shooting comprising an electronic image magnifier or image converter;
 - (i) explosives;
 - (j) nets or traps;

⁽³⁾ 1981 c. 69.

⁽⁴⁾ S.I. 1985/171 (N.I. 2).

⁽⁵⁾ S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928, and revoked by these Regulations.

- (k) poisoned or anaesthetic bait; and
- (l) automatic or semi-automatic weapons with a magazine capable of holding more than two rounds of ammunition.

Sale etc. of live or dead wild birds, eggs etc.

43.—(1) Subject to paragraph (3) and regulation 55, it is an offence for a person—

- (a) to be in possession of,
- (b) to transport for the purpose of sale,
- (c) to sell, or
- (d) to offer or expose for sale,

anything to which this paragraph applies.

(2) Paragraph (1) applies to—

- (a) any live or dead wild bird, or any part of, or anything derived from, such a bird; or
- (b) an egg of a wild bird.

(3) A person (“P”) is not guilty of an offence under paragraph (1) in respect of any bird belonging to a species referred to in Part A of Annex III to the Wild Birds Directive, or any egg of such a bird, or anything derived from such a bird, if P shows that—

- (a) the bird, egg or other thing had been lawfully killed or taken; or
- (b) the bird, egg or other thing had been lawfully sold (whether to P or any other person) or otherwise lawfully acquired by P.

(4) In paragraph (3) “lawfully” means—

- (a) without contravention of Part 1 of the Wildlife and Countryside Act 1981, the Wildlife (Northern Ireland) Order 1985, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007⁽⁶⁾ or these Regulations; or
- (b) in the case of a bird, egg or other thing killed, taken or sold in Gibraltar or a member State (other than the United Kingdom), without contravention (as the case may be) of the law of Gibraltar or the law of that State implementing the Wild Birds Directive.

(5) In any proceedings for an offence under this regulation—

- (a) the bird in question is to be presumed to have been wild unless the contrary is shown; and
- (b) if the prosecution proves—
 - (i) that the part of a bird in question, or the egg in question, is of a bird which is a member of a species referred to in Article 1 of the Wild Birds Directive, or
 - (ii) that the thing in question is derived from such a bird,
 it is to be presumed that the bird was a wild bird unless the contrary is shown.

(6) In this regulation—

- (a) “egg” includes part of an egg; and
- (b) “sale” includes hire, barter and exchange, and cognate expressions are to be construed accordingly.

⁽⁶⁾ S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928, and revoked by these Regulations.

Penalties

44. A person guilty of an offence under regulation 40, 42 or 43 is liable, either on summary conviction or on conviction on indictment, to a fine.