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STATUTORY INSTRUMENTS

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**2017 No. 1013**

**The Conservation of Offshore Marine  
Habitats and Species Regulations 2017**

**PART 3**

**PROTECTION OF SPECIES**

*Protection of birds*

**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.

(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<sup>(1)</sup>, the Wildlife (Northern Ireland) Order 1985<sup>(2)</sup>, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007<sup>(3)</sup> 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.

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<sup>(1)</sup> 1981 c. 69.

<sup>(2)</sup> S.I. 1985/171 (N.I. 2).

<sup>(3)</sup> S.I. 2007/1842, amended by S.I. 2009/7, 2010/491 and 2012/1928, and revoked by these Regulations.