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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**

**Application of offences in Part 3**

**39.**—(1) Subject to paragraphs (2) and (3), regulations 40, 42, 43, 45, 47 and 49 (in so far as they are capable of so applying) apply to any person—

- (a) in any part of the waters comprised in the offshore marine area;
- (b) on a ship in any part of the waters comprised in the offshore marine area;
- (c) on a British aircraft over the waters comprised in the offshore marine area;
- (d) on or under an offshore marine installation; or
- (e) on any aircraft above an offshore marine installation, in so far as the presence of the aircraft above that installation is for purposes connected with the use of the installation.

(2) Regulations 40, 42, 43 and 49 do not apply to any person on a third country ship.

(3) Regulation 45(3) only applies in relation to a person on a third country ship where—

- (a) the animal in question is a relevant animal; or
- (b) the part in question is from, or the thing in question is derived from, a relevant animal.

(4) In paragraph (3) “a relevant animal” is an animal of a European protected species which was taken or killed in any part of the waters within British fishery limits.

*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<sup>(1)</sup> 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<sup>(2)</sup> 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—

(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.

- (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(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

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(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.

- (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;
  - (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<sup>(6)</sup> or these Regulations; or

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

- (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.

## **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.

### *Protection of wild animals*

#### **Protection of wild animals listed in Annex IV(a) to the Habitats Directive**

- 45.**—(1) Subject to regulations 46 and 55, a person who—
- (a) deliberately captures, injures, or kills any wild animal of a European protected species,
  - (b) deliberately disturbs wild animals of any such species,
  - (c) deliberately takes or destroys the eggs of such an animal, or
  - (d) damages or destroys, or does anything to cause the deterioration of, a breeding site or resting place of such an animal,
- is guilty of an offence.
- (2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—
- (a) to impair their ability—
    - (i) to survive, to breed or reproduce, or to rear or nurture their young; or
    - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;or
  - (b) to affect significantly the local distribution or abundance of the species to which they belong.
- (3) Subject to regulations 39(3), 46 and 55, it is an offence for a person—
- (a) to keep or transport,
  - (b) to sell or exchange, or
  - (c) to offer for sale or exchange,
- anything to which this paragraph applies.

- (4) Paragraph (3) applies to—
- (a) any live or dead animal or part of an animal—
    - (i) which has been taken from the wild; and
    - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
  - (b) any part of, or anything derived from, such an animal or any such part of an animal.
- (5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.
- (6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is to be presumed to have been a wild animal.
- (7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is to be presumed, unless the contrary is shown, that the animal in question or part of it was taken from the wild.
- (8) The Secretary of State, or the Joint Committee with the approval of the Secretary of State, may publish guidance as to the application of the offence in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities.
- (9) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (8).
- (10) 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 mentioned in sub-paragraph (a), (b) or (c) of 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.
- (11) Paragraph (10) 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.
- (12) In paragraph (11), “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 (10) 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; or
    - (ii) Council Regulation (EU) No. 1380/2013 on the Common Fisheries Policy, as amended from time to time<sup>(7)</sup> or any instrument adopted thereunder.
- (13) In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage or destruction of the breeding site or resting place concerned.
- (14) In this regulation “destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching.

(7) OJ No. L 354, 28.12.2013, p. 22, as amended by Council Regulation (EU) 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).

(15) Regulation 38 does not apply in relation to anything done by a person which is an offence under this regulation.

#### **Defences to the offences in regulation 45**

**46.**—(1) A person (“P”) is not guilty of the offence under regulation 45(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 45(3)(a), if P shows that the act in question—

- (a) was in relation to an animal 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 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 45(1)(a) or (3)(a) if P shows that the act in question—

- (a) was in relation to an animal 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 animal’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 45(1)(a) of deliberately injuring a wild animal of a European protected species 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 45(3) if that person shows that the animal or part of the animal in question, or the animal or part of the animal from which the part or thing in question is derived, was lawfully taken from the wild.

(5) A person is not guilty of an offence under regulation 45(3) if that person shows that the animal, or the animal from which the part or thing in question is derived—

- (a) is of a species listed in the second column of Schedule 2 and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
- (b) is of the species *Capra aegagrus* (wild goat) and was not from a population occurring naturally in any member State;
- (c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a population occurring naturally in Corsica or Sardinia; or
- (d) is of the species *Coregonus oxyrhynchus* (houting) and was either from Finland or was not from an anadromous population.

(6) A person is not guilty of an offence under regulation 45(3)(a) 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 45, 47 or 57;
- (b) an offence of attempting to commit an offence under regulation 45 or 47; or
- (c) an offence under regulation 71 which relates to an offence under regulation 45 or 47.

(7) The defences in paragraphs (1) to (3) and (6) do not apply where it is shown by the prosecution that the defendant’s action did not satisfy the conditions in paragraph (8).

(8) Those conditions are that—

- (a) there was no satisfactory alternative; and
  - (b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- (9) For the purposes of any proceedings for an offence under regulation 45(3), the common names given in parenthesis in paragraph (5) are to be disregarded.
- (10) For the purposes of paragraph (4), an animal, or part of an animal, is to be treated as having been lawfully taken from the wild if—
- (a) it was taken from the wild in the European territory of a member State, being territory to which the Treaty on the Functioning of the European Union applies, without contravention of the law of that member State and before the implementation date; or
  - (b) it was taken from the wild elsewhere.
- (11) In this regulation—
- “the implementation date” means—
- (a) where the relevant State became a member State before 10th June 1994, 10th June 1994, and
  - (b) in any other case, the date on which the relevant State became a member State; and
- “relevant State” means the State in whose territory the animal, or part of it, was taken from the wild.

### **Prohibition of certain methods of capturing or killing wild animals**

- 47.**—(1) This regulation applies in relation to the capturing or killing of a wild animal—
- (a) of any of the species listed in Schedule 3; or
  - (b) of a European protected species, where the capture or killing is otherwise permitted in accordance with these Regulations.
- (2) Subject to regulation 55, a person is guilty of an offence if that person uses for the purpose of capturing or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4) below;
  - (b) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any of the species of animal to which this regulation applies;
  - (c) any form of capturing or killing from a ship whilst it is being propelled by a motor; or
  - (d) any form of capturing or killing from an aircraft.
- (3) The prohibited means of capturing or killing of mammals are—
- (a) using blind or mutilated animals as live decoys;
  - (b) sound recordings;
  - (c) electrical or electronic devices capable of killing or stunning;
  - (d) artificial light sources;
  - (e) mirrors or other dazzling devices;
  - (f) devices for illuminating targets;
  - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
  - (h) explosives;
  - (i) nets which are non-selective according to their principle or their conditions of use;

- (j) traps which are non-selective according to their principle or their conditions of use;
  - (k) bows or crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out; and
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of capturing or killing fish are—
- (a) poison; and
  - (b) explosives.

### **Penalties**

**48.** A person guilty of an offence under regulation 45 or 47 is liable, either on summary conviction or on conviction on indictment, to a fine.

### *Protection of plants*

#### **Offences relating to wild plants listed in Annex IV(b) to the Habitats Directive**

- 49.**—(1) Subject to paragraphs (4) and (5) and regulation 55, it is an offence for a person—
- (a) to keep or transport,
  - (b) to sell or exchange, or
  - (c) to offer for sale or exchange,
- anything to which this paragraph applies.
- (2) Paragraph (1) applies to—
- (a) any live or dead plant, or part of a plant—
    - (i) which has been taken in the wild; and
    - (ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte), or listed in Annex IV(b), to the Habitats Directive; and
  - (b) any part of, or anything derived from, such a plant or such a part of a plant.
- (3) Paragraph (1) applies regardless of the stage of the biological cycle of the plant in question.
- (4) A person is not guilty of an offence under paragraph (1) if that person shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild.
- (5) A person is not guilty of an offence under paragraph (1)(a) 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 is being or has been committed—
- (a) an offence under this regulation or regulation 57;
  - (b) an offence of attempting to commit an offence under this regulation; or
  - (c) an offence under regulation 71 which relates to an offence under this regulation.
- (6) For the purposes of paragraph (4), a plant, or part of a plant, is to be treated as having been lawfully taken in the wild if—
- (a) it was taken in the wild in the European territory of a member State, being territory to which the Treaty on the Functioning of the European Union applies, without contravention of the law of that member State and before the implementation date; or

(b) it was taken in the wild elsewhere.

(7) In any proceedings for an offence under this regulation, where it is alleged that a plant or part of a plant was taken in the wild, it is to be presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.

(8) A person guilty of an offence under this regulation is liable, either on summary conviction or on conviction on indictment, to a fine.

(9) In this regulation—

“the implementation date” means—

(a) where the relevant State became a member State before 10th June 1994, 10th June 1994; and

(b) in any other case, the date on which the relevant State became a member State; and

“relevant State” means the State in whose territory the plant, or part of it, was taken in the wild.