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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*

**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.

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(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.