

---

STATUTORY INSTRUMENTS

---

**1985 No. 171**

**The Wildlife (Northern Ireland) Order 1985**

**PART II**

**Wildlife**

*Protection of birds*

***Exceptions to Article 4***

5.—(1) Subject to the provisions of this Article, a person shall not be guilty of an offence under Article 4 by reason of the killing or taking of a bird included in Part I of Schedule 2 outside the close season for that bird, or the injuring of such a bird outside that season in the course of an attempt to kill it.

*Para. (2) rep. by 1995 NI 6*

(3) [<sup>F1</sup>Paragraph (1)] shall not apply on Sundays or during the period commencing one hour after sunset on any day and ending one hour before sunrise on the next day.

(4) Nothing in Article 4 shall make unlawful anything done—

- (a) in pursuance of a requirement by the Department of Agriculture under any scheme made under section 6 of the Agriculture Act (Northern Ireland) 1949 or under section 2 of the Agriculture (Miscellaneous Provisions) Act (Northern Ireland) 1959; or
- (b) under the Drainage (Northern Ireland) Order 1973.

(5) Notwithstanding anything in Article 4, a person shall not be guilty of an offence by reason of—

- (a) the taking of any wild bird if he shows that the bird had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled;
- (b) the killing of any wild bird if he shows that the bird had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
- (c) any act made unlawful by those provisions if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.

(6) Notwithstanding anything in the provisions of Article 4, an authorised person shall not be guilty of an offence by reason of the killing or injuring of any wild bird, other than a bird included in Schedule 1—

- (a) if he shows that his action was necessary for the purpose of—
  - (i) preserving public health or public or air safety,
  - (ii) preventing the spread of disease, or
  - (iii) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, pasture [<sup>F2</sup>, fisheries or inland waters]; and

(b) he notifies the Department immediately after taking such action.

[<sup>F3</sup>(7) An authorised person shall not be regarded as showing that any action of his was necessary for a purpose mentioned in paragraph (6) unless he shows that, as regards that purpose, there was no other satisfactory solution.

(8) An authorised person shall not be entitled to rely on the defence provided by paragraph (6) as respects any action taken at any time if it had become apparent, before that time, that that action would prove necessary for the purpose mentioned in that paragraph and either—

- (a) a licence under Article 18 authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
- (b) an application by him for such a licence had been determined.]

- |   |
|---|
| <p><b>F1</b> 1995 NI 6</p> <p><b>F2</b> Words in art. 5(6)(a)(iii) substituted (17.8.2011) by <a href="#">Wildlife and Natural Environment Act (Northern Ireland) 2011 (c. 15), ss. 39(1), 40(1), Sch. 2 para. 6; S.R. 2011/285, art. 2, Sch.</a></p> <p><b>F3</b> Art. 5(7)(8) added (17.8.2011) by <a href="#">Wildlife and Natural Environment Act (Northern Ireland) 2011 (c. 15), ss. 7(2), 40(1); S.R. 2011/285, art. 2, Sch.</a></p> |
|---|

**Changes to legislation:**

There are currently no known outstanding effects for the The Wildlife (Northern Ireland) Order 1985, Section 5.