

S.I. No. 481/2010 — European Communities (Birds and Natural Habitats)(Restrictions on use of Poisoned Bait) Regulations 2010.

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S.I. No. 481 of 2010

EUROPEAN COMMUNITIES (BIRDS AND NATURAL HABITATS) (RESTRICTIONS ON USE OF POISON BAIT) REGULATIONS 2010

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 8th October, 2010.

I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2009/147/EC of the

European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version), and Council Directive 92/43/EEC of 21 May 1992 (as amended by Council Directive 97/62/EC of 27 October 1997, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003, Council Directive 2006/105/EC of 20 November 2006, hereby make the following Regulations.

Citation

1. These Regulations may be cited as the European Communities (Birds and Natural Habitats)(Restrictions on use of Poisoned Bait) Regulations 2010.

Interpretation

2. (1) In these Regulations, save where the context otherwise requires:

“authorised officer” means a person appointed as an authorised officer under Regulation 7;

“the Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009¹ (which codifies Council Directive 79/409/EEC of 2 April 1979² (as amended));

“foreshore” has the meaning assigned to it by the Foreshore Acts 1933 to 2009;

“functions” include powers and duties;

“the Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992³ (as amended by Council Directive 97/62/EC of 27 October 1997⁴, Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003⁵, Council Directive 2006/105/EC of 20 November 2006⁶ and as amended by Act of Accession of Austria, Sweden and Finland⁷ (adapted by Council Decision 95/1/EC, Euratom, ECSC⁸), Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded⁹ and as amended by the Corrigendum to that Directive¹⁰)

“inland waters” means any waters comprised in the internal or inland waters of the State;

“land” where the context admits, includes

(a) any land,

(b) land covered by water including inland waters,

(c) inland waters,

(d) the foreshore,

(e) the territorial seas of the State, and the seabed and subsoil beneath those seas,

(f) the exclusive economic zone of the State, including the waters above its seabed and the seabed and ocean floor and subsoil beneath those waters,

(g) the seabed and ocean floor and subsoil situated in any area designated under section 2 of the Continental Shelf Act 1968 ,

and in relation to the acquisition of land also includes any easement, profit prendre or other right in, to or over land or water including any easement, profit prendre or other right granted to or held by the Minister;

“poisoned or anaesthetic bait” includes any substance that is, or is treated with, any poison, stupefying or anaesthetic substance or other substance which has, or is likely to have, the effect of poisoning, stupefying, anaesthetising, harming or injuring any individual of any species referred to in Regulation 4(1);

“premises” includes lands and structures;

"the Minister" means the Minister for the Environment, Heritage and Local Government;

(2) A word or expression that is used in these Regulations and is also used in the Birds or Habitats Directive shall, unless the contrary intention is expressed, have in these Regulations the meaning that it has in both of these Directives.

Service of Notices

3.—(1) A notice, or other document or thing, required to be served or given under, these Regulations shall be addressed to the person concerned and served or given

(a) by addressing it to the person by name and delivering it to him or her,

(b) by leaving it at the address at which the person ordinarily resides or carries on business,

(c) by sending it by post in a prepaid registered letter addressed to him or her at the address at which he or she ordinarily resides or carries on business,

(d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by prepaid registered post addressed to him or her to, that address, or

(e) where there is a facility for receiving a copy of the notice by electronic mail or a facsimile of the notice by electronic means at the address at which the person ordinarily resides or carries on business, by transmitting a copy of the notice by electronic mail or a facsimile of the notice by such means to that address, provided that the notice is also served or given in any of the other ways referred to in this paragraph other than this subparagraph.

(2) If the name of a person concerned cannot be ascertained after reasonable inquiry a notice under these Regulations may be addressed to “the occupier”, “the owner” or “the person in charge”.

(3) For the purpose of this Regulation a company registered under the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

Prohibition of use of certain poisoned bait

4. (1) A person shall not place, cause to be placed or permit to be placed or have with him or her any poisoned or anaesthetic bait that is animal or contains animal substance or other animal derivative in any place to capture, kill, poison, stupefy, anaesthetise, harm or injure or where it is likely to capture, kill, poison, stupefy, anaesthetise, harm or injure:

(i) any species referred to in Article 1 of the Birds Directive, or

(ii) any species of wild fauna listed in Annexes IV(a) and V(a) to the Habitats Directive,

except in accordance with a licence.

(2) A person who contravenes paragraph (1) commits an offence.

(3) For the purposes of this Regulation, a licence means a licence, permit or authorisation granted under these Regulations or the Wildlife Acts, 1976 — 2010 or a declaration made under Regulation 3 of the European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986 (S.I. No. 254 of 1986) as amended by the European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1997 (S.I. No. 152 of 1997).

(4) For the avoidance of doubt, in the event of conflict between these Regulations and sections 22(5) and 23(7) of the Wildlife Act 1976 these Regulations prevail.

Derogations

5. (1) If, in his or her opinion, there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species to which the Birds and Habitats Directives relate, at a favourable conservation status in their natural range, the Minister may, in respect of one or more of those species, grant a licence to a person permitting a derogation from complying with the requirements of the provisions of section 20, 21 and 22 of the Wildlife Act 1976 , as amended, and Regulation (4)(1) where it is—

(a) in the interests of protecting wild fauna and flora and conserving natural habitats,

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants,

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens, or

(f) to permit, under strictly supervised conditions and on a selective basis, the capture,

keeping or other judicious use of certain birds in small numbers.

(2) A licence granted under paragraph (1) shall be subject to such conditions, as the Minister considers appropriate and such conditions shall be specified in the licence.

(3) Without prejudice to a condition, specified in the licence, a licence granted under this Regulation is subject to section 14 (2) to (5) of section 14 of the Protection of Animals (Amendment) Act, 1965 (No. 10 of 1965).

(5) The licence permitting a derogation under paragraph (1) must specify:

(a) the species which are subject to the licence,

(b) the means, devices or methods authorised for the capture or killing and the reasons for their use, including equipment or substances to be used, if any,

(c) the conditions of risk and the circumstances of time and place under which the licence is granted,

(d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task,

(e) the controls which will be carried out and

(f) a requirement for reporting to the Minister on the results of activities carried out under the licence.

(6) The Minister shall forward to the Commission each year, in accordance with the Birds Directive and every 2 years, in accordance with the Habitats Directive, a report, in accordance with a format established by the Commission, on the derogations to which paragraph (1) relates.

(7) The reports referred to in paragraph (6) shall specify—

(a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk with, if appropriate, a reference to alternatives rejected and scientific data used,

(b) the means, devices or methods authorised for the capture or killing and the reasons for their use, including equipment or substances to be used, if any,

(c) the circumstances of when and where such derogations are granted,

(d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task,

(e) the supervisory measures used and the results obtained.

Miscellaneous Amendments

6. (1) Subsection (1) of Section 14 of the Protection of Animals (Amendment) Act, 1965 is amended by the insertion after “the provisions of this section” of the following:

“and Regulations 4 and 5 of the European Communities (Birds and Natural Habitats) (Restrictions on use of Poison Bait) Regulations 2010”.

(2) The European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986(S.I. No. 254 of 1986), as amended by the European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1997 (S.I. No. 152 of 1997), is amended by the insertion after paragraph (3),

“(3A) Before the Minister makes a declaration pursuant to Regulation 5(1), the Minister shall be satisfied that the making of the declaration will not authorise any action that is inconsistent with the requirements of the Directive (as amended) or Council Directive 92/43/EEC of 21 May 1992 (O.J. No. L 206, 22.7.1992, p.7) (as amended).”

Appointment of Authorised Officers

7. (1) Any person who for the time being stands appointed as an authorised officer pursuant to Regulation 7 of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) shall be an authorised officer for the purposes of these Regulations.

(2) Whenever a person is exercising any function conferred on him or her as an authorised officer such person shall, if requested by a person affected, produce his or her certificate of appointment or other evidence of his or her appointment as an authorised officer to the person so requesting.

(3) For the avoidance of doubt, these Regulations shall not affect the validity of the appointment of an authorised officer pursuant to Regulation 7 of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) who was appointed prior to the commencement of these Regulations.

Functions of Authorised Officers

8. (1) An authorised officer may for any purpose connected with these Regulations—

(a) enter and inspect any lands or premises for the purposes of performing any of his or her functions under these Regulations or of obtaining any information which he or she may require for such purposes,

(b) at all reasonable times, or at any time if he or she has reasonable grounds for believing that there is or may be a risk to any species referred to in Article 1 of the Birds Directive,

or that an offence under these Regulations has been, is being or is about to be committed at any land or premises, or that evidence of any such offence is to be found at any land or premises, enter any such land or premises and bring onto those premises such other persons (including a member of the Garda Síochána) or equipment or materials as he or she may consider necessary, or

(c) at any time if he or she has reasonable grounds for suspecting there may be a risk to any species referred to in Article 1 of the Birds Directive,

or that an offence under these Regulations has been, is being or is about to be committed, involving the use of any vehicle,

(I) halt that vehicle (or the vehicle by which that vehicle is transported)

(II) board that vehicle (or the vehicle by which that vehicle is transported)

and require the driver of the vehicle (or the vehicle by which that vehicle is transported) to take the vehicle or vehicles to a place designated by the authorised officer, and such vehicle or vehicles may be detained at that place by the authorised officer for such period as he or she may consider necessary.

(2) For the purposes of this Regulation an authorised officer may, subject to paragraph (3) enter any premises.

(3) An authorised officer shall not enter into a private dwelling under this Regulation unless one of the following conditions applies—

(a) the entry is effected with the consent of the occupier, or

(b) the entry is authorised by a warrant issued under Regulation 9.

(4) Whenever an authorised officer enters any premises or boards any vehicle, under this Regulation, he or she may do all things reasonably necessary for the purpose for which the entry is made and, in particular—

(a) carry out an inspection,

(b) carry out surveillance and examinations of the relevant natural habitats and species,

(c) take photographs and carry out inspections, record information on data loggers, make tape, electrical, digital, video or other recordings,

(d) carry out tests and make copies of documents (including records kept in electronic form) found therein and take samples,

(e) require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for a specified period,

(f) require information from an occupier of the premises, of any occupant of the vehicle or any person employed on the premises or any other person on the premises,

(g) require the production of, or inspect, documents or records (including documents or records held in electronic form), or take copies of or extracts from any documents or records, and

(h) remove and retain documents and records (including documents and records held in electronic form) for such period as may be reasonable for further examination, which the authorised officer, having regard to all the circumstances, considers necessary for the

purposes of exercising any of his or her functions under these Regulations,

(i) remove and retain any specimen or any item for such period as may be reasonable for further examination or for use in proceedings, or both, which the authorised officer, having regard to all the circumstances, considers necessary for the purposes of exercising any of his or her functions under these Regulations,

(5) A person shall not—

(a) refuse to allow an authorised officer to enter any premises or board any vehicle or to bring any person or equipment with him or her in the exercise of his or her functions,

(b) obstruct or impede an authorised officer in the exercise of any of his or her functions,

(c) give to an authorised officer information which is to his or her knowledge false or misleading in a material respect,

(d) without reasonable excuse, fail or refuse to comply with any direction or requirement of an authorised officer, or

(e) refuse to identify the book which he/she is required to sign in accordance with Regulation 7(2) of the Poisons Regulations 2008 if found in possession of a poison as prescribed in Schedule 2 of such regulations.

(6) A person who fails to comply with paragraph (5) commits an offence.

(7) An authorised officer may, in the exercise of any function conferred on him or her by these Regulations involving the bringing of any vehicle to any place, or where he or she anticipates any obstruction in the exercise of any other function conferred on him or her by these Regulations, request a member of the Garda Síochána to assist him or her in the exercise of such a function and any member of the Garda Síochána to whom he or she makes such a request shall comply with this request.

(8) Where an authorised officer or member of the Garda Síochána has reasonable cause to suspect that a person has committed an offence under these Regulations he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(9) A person who, without reasonable excuse, does not comply with a requirement under subsection (8) commits an offence.

(10) Where a member of the Garda Síochána has reasonable cause to suspect that a person has committed an offence under these Regulations the member may without warrant arrest the person.

(11) A statement or admission made by a person pursuant to a request or requirement or in answer to a question under this Regulation shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under paragraph (6)).

(12) In this Regulation—

“ship” includes every description of vessel used in navigation whether on or under the surface of the water, howsoever propelled, and also includes a seaplane while it is in contact with the water;

“vehicle” means any conveyance in or by which any person or thing, or both, is transported which is designed for use on land, or in water or in the air, or in more than one of those ways, and includes—

- (a) part of a vehicle,
- (b) an article designed as a vehicle but not capable of functioning as a vehicle,
- (c) a skip or other container designed for use or used for carriage on a vehicle, or
- (d) a trailer designed for use or used with a vehicle.

Search Warrant

9. (1)(a) Where an authorised officer in the exercise of his or her functions under Regulations 4 and 8 is prevented from entering any premises, or if the authorised officer has reason to believe that evidence related to a suspected offence under these Regulations may be present in any premises and that the evidence may be removed therefrom or destroyed, or if the authorised officer has reason to believe that there is a significant immediate risk to

(i) the conservation status of the natural habitats and species referred to in Article 2 of the Habitats Directive, or

(ii) the conservation status of the natural habitats and species referred to in Article 1 of the Birds Directive,

the authorised officer or the person by whom he or she was appointed may apply to the District Court for a warrant under this Regulation authorising the entry by the authorised officer onto or into the premises.

(b) If, on application being made to the District Court under this Regulation, the District Court is satisfied on the sworn information of the authorised officer, that he or she has been prevented from entering a premises, the Court may issue a warrant authorising that person, accompanied, if the Court deems it appropriate by another authorised officer or a member of the Garda Síochána as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the premises concerned and exercise the functions referred to in Regulation 8.

Offences and penalties

10. (1) A person who commits an offence under Regulations 4 and 8 is liable on summary conviction to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months, or both.

Prosecution of offences

11. Summary proceedings for an offence under this Act may be brought by the Minister or by a member of An Garda Síochána, or by a person who is neither the Minister nor a member of An Garda Síochána with the consent of the Minister or an officer of the Minister nominated by the Minister for that purpose.

Cost of prosecutions

12. (1) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to—

- (a) the Minister, or
- (b) another person,

the costs and expenses, measured by the court, incurred by the Minister or other person in relation to the investigation, detection or prosecution of the offence.

(2) Costs and expenses referred to in paragraph (1) may include costs and expenses incurred in relation to any one or more of the following:

- (a) the taking of samples;
- (b) the carrying out of tests;
- (c) examinations and analyses;
- (d) the remuneration and other expenses of authorised officers, consultants and advisers; and
- (e) the rehabilitation or replacement of injured or killed fauna.

Payment of fines to prosecuting authorities

13. (1) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under these Regulations, it shall, on the application of the Minister or other person who brought the prosecution, provide by order for the payment of the amount of the fine to the Minister or other person.

(2) Payment to be paid under paragraph (1) may be enforced by the Minister or other person referred to in paragraph (1) as if it were due on foot of a decree or order made by the court in civil proceedings.



GIVEN under my Official Seal,

4 October 2010.

JOHN GORMLEY,

Minister for the Environment, Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These regulations make it an offence for a person to poison any species referred to in Article 1 of the Birds Directive and Annexes IV(a) and V(a) to the Habitats Directive using bait that is animal or contains animal substance or other animal derivative except, in accordance with a licence issued by the Minister. These regulations do not have the purpose of controlling the use of rodenticides within buildings.

1 O.J. No. L 20, 26.1.2010, p. 7

2 O.J. No. L 103, 25.4.1979, p.1

3 O.J. No. L 206, 22.7.1992, p.7

4 O.J. No. L 305, 8.11.1997, p.42

5 O.J. No. L 284, 31.10.2003, p.1

6 O.J. No. L 363, 20.12.2006, p.368

7 O.J. No. C 241, 29.8.1994, p.21

8 O.J. No. L 1, 1.1.1995, p.1

9 O.J. No. L 236, 23.9.2003, p.33

10 O.J. No. L 176, 20.7.1993, p.29