

ORDINANCE

OF THE STATES OF DELIBERATION

ENTITLED

The Control of Birds Ordinance, 1985 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Recueil d'Ordonnances Tome XXIII, p. 258; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the States Agricultural and Milk Marketing Board (Transfer of Functions) Ordinance, 2001 (No. XX of 2001); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005 (No. VII of 2006).

ORDINANCE OF THE STATES OF DELIBERATION

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ARRANGEMENT OF SECTIONS

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2. Directions for controlling numbers of birds.
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(Made on the 29th May, 1985.)

The Control of Birds Ordinance, 1985

THE STATES, in pursuance of their Resolution of the 15th day of March, 1985, hereby order: –

Application of Ordinance.

1. This Ordinance applies to any case in which, in the opinion of [the Department], it is necessary or expedient –

- (a) in the interests of public health, public hygiene or public safety, or
- (b) to protect or preserve the amenity of the locality, [...]
- (c) to prevent damage to or contamination of any building or property, [or,
- (d) to prevent the spread of any disease to which birds are susceptible,]

[to achieve the control set out in section 1A].

NOTES

In section 1,

the words in the first pair of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 2, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003

Ordinance;

the word omitted in the second pair of square brackets was repealed by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(2)(a), with effect from 17th October, 2005;

the words in the third and fourth pairs of square brackets were substituted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, respectively section 2(2)(b) and section 2(2)(c), with effect from 17th October, 2005.

[Controlling numbers of birds.

1A. The control referred to in section 1 is to control the numbers congregating in –

- (a) any place of any birds which reasonably appear to be wild birds or of any species or class of such birds, or
- (b) any public place of any birds or of any species or class of birds.]

NOTE

Section 1A was inserted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(3), with effect from 17th October, 2005.

Directions for controlling numbers of birds.

2. (1) In any case to which this Ordinance applies [the Department] may, subject to the provisions of this section and of section 3, direct the taking of measures by humane methods to control, by destruction or otherwise, the numbers of birds in a specified [place].

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- (2) A direction under this section may –
- (a) be given in respect of all birds found to be present at the [place] in relation to which it is given or in respect of any species or any class of birds so present,
 - (b) direct the destruction of birds, eggs of birds and nests of birds at the place in relation to which it is given, or their removal from that place and subsequent destruction or other disposal elsewhere,
 - (c) provide for the disposal of carcasses, eggs and nests destroyed pursuant to the direction,
 - (d) make such ancillary provision as [the Department] considers necessary or expedient.
- (3) A direction given under this section shall specify –
- (a) the [place] in relation to which the direction is given,
 - (b) the first date and time at which the direction is to be executed and the last date and time until which the direction may continue to be executed,
 - (c) either numerically or by reference to a proportion of the birds found to be present, the maximum number of birds to be destroyed pursuant to the direction,
 - (d) the person, whether by name or by reference to any

office held by him, authorised to execute the direction,

- (e) the method or methods which may be used for the destruction of birds pursuant to the direction,
- (f) whether, and if so to what extent, the eggs and the nests of birds are to be destroyed pursuant to the direction.

NOTES

In section 2,

the words in the first pair of square brackets in subsection (1) and the second pair of square brackets in subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 2, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance;

the words in, first, the second pair of square brackets in subsection (1) and, second, the square brackets in paragraph (a) of subsection (2) and paragraph (a) of subsection (3) were substituted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(4), with effect from 17th October, 2005.

Publication of notice of direction.

3. [Subject to section 3A,] if [the Department] gives a direction under section 2, a notice shall be published in La Gazette Officielle, on at least two occasions between the fourteenth day and the seventh day immediately preceding the first date on which the direction is to be executed, –

- (a) setting out the matters specified in the direction pursuant to section 2(3)(a), (b) and (c), and

- (b) warning that the owner of a bird who desires to avoid its destruction pursuant to the direction should remove it from the place specified therein before the first date and time when the direction is to be executed, and
- (c) if the place specified in the direction is not a place to which the public normally have access, stating the arrangements by which owners of birds may be afforded access to that place for the purpose of removing birds owned by them.

NOTES

In section 3,

the words in the first and third pairs of square brackets were inserted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(5), with effect from 17th October, 2005;

the words in the second pair of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 2, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

[Special provisions in the event of a serious threat to public or bird health or to public hygiene or safety.]

3A. (1) Where a direction is issued under section 2 in the circumstances set out in section 1(d) and the Department considers that there is a serious threat to public or bird health or a direction is issued in any other circumstances where the Department considers there is such a threat or a serious threat to public hygiene or safety then –

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- (a) the Department must as soon as reasonably possible after the issue of that direction put a notice in La Gazette Officielle which must –
 - (i) specify the direction and the disease or other circumstances in question and the reasons why it considers there to be a relevant serious threat, and
 - (ii) set out the special provisions applicable under this section,
- (b) the Department may, instead of complying with the provisions of section 3, place a notice in La Gazette Officielle, which may form part of the same notice as that referred to in paragraph (a), as soon as possible after the first date on which the direction was executed setting out –
 - (i) the matters in section 3(a), and
 - (ii) requiring the owner of any bird which has been or is to be destroyed to apply to the Department in writing for compensation, with written proof of such ownership, within 21 days of the date of that notice, and
- (c) where the Department decides to publish a notice in accordance with paragraph (b) –

Consolidated text

- (i) the owner of a bird who complies with the requirements of this section is entitled to compensation from the Department of £25 per bird or its market value immediately before destruction, whichever is less, from which shall be deducted the amount, if any, received or credited to the account of the owner in respect of the value of its carcase, and

- (ii) the provisions of sections 8(3) to (6) of the Animal Health Ordinance, 1996 shall apply for the purposes of assessing compensation under this section as they apply to compensation to be assessed under that Ordinance except that they shall apply as if the valuation were required to be carried out as soon as reasonably possible after the destruction of the bird.

(2) The Department may from time to time by order increase the maximum amount of compensation set out in subsection (1)(c)(i).]

NOTE

Section 3A was inserted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(6), with effect from 17th October, 2005.

Effect of direction.

4. [Subject to section 4A,] a direction given under section 2 shall, if the [relevant requirements of sections 2(3) to 3A are complied with], be sufficient

authority for the person specified pursuant to section 2(3)(d), together with any other person authorised by [the Department] in that behalf, to carry out the direction in accordance with its terms; and a person shall not in any way be liable for anything done or omitted to be done in the execution or purported execution of any such direction unless the thing is done or omitted to be done in bad faith.

NOTES

In section 4,

the words in the first and second pairs of square brackets were, respectively, inserted and substituted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(7)(a) and section 2(7)(b), with effect from 17th October, 2005;

the words in the third pair of square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 2, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Right of entry.

4A. (1) An officer or servant of the Department authorised in writing by it may, subject to the provisions of this section, enter any land at any reasonable time for the purpose of considering whether and in what manner to exercise the Department's direction making powers under section 2 or in connection with the execution of any such direction.

(2) A person authorised under subsection (1) –

- (a) must, if so required, produce his written authorisation before entering any land,
- (b) is not entitled to demand admission as of right to any

land which is occupied unless, other than in the case of an emergency, 24 hours written notice has been given to the occupier,

- (c) may, if necessary, be accompanied by a police officer, who may use reasonable force to restrain any person obstructing or threatening to obstruct the officer or servant of the Department, and
- (d) may take with him such other persons as may be necessary for carrying out the purposes for which he has entered.]

NOTE

Section 4A was inserted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(8), with effect from 17th October, 2005.

Obstruction.

5. A person who wilfully obstructs or attempts to obstruct a person acting in execution of a direction given under section 2 shall be guilty of an offence and liable, [on conviction, to a fine not exceeding level 4 on the uniform scale].

NOTE

In section 5, the words and figure in square brackets were substituted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 2(9), with effect from 17th October, 2005.¹

Interpretation.

6. (1) In this Ordinance, unless the context otherwise requires –

"[the Department]" means the States [Commerce and Employment Department],

"place" shall be construed in sections 2 and 3, in relation to a bird which reasonably appears to be a wild bird, to refer to "any place" and, in relation to any other bird, to refer to "any public place",]

"public place" means any place to which the public have access and any place to which the public do not normally have access but which is for the time being owned or administered by the States[,

"wild bird" means any bird in a wild or feral state and includes any bird which reasonably appears to have been abandoned].

(2) A reference in this Ordinance to a numbered provision is, unless the context otherwise requires, a reference to the provision which is so numbered in this Ordinance.

NOTES

In section 6,

the words in square brackets in the definition of the expression "the Department" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 2, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance;²

the definitions of the expressions "place" and "wild bird" in subsection (1) were inserted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, respectively section 2(10)(a)

and section 2(10)(b), with effect from 17th October, 2005.

*The functions, rights and liabilities of the Agriculture and Countryside Board and of its President arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Commerce and Employment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 2, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*³

Amendment to Ordinance of 1949.

7. In the Protection of Wild Birds Ordinance, 1949^a, the following additional section is inserted immediately after section 4 –

"Actions pursuant to directions under Ordinance of 1985.

4A. Nothing in the preceding provisions of this Ordinance shall be construed as rendering unlawful anything done in good faith in the execution or purported execution of a direction given under section 2 of the Control of Birds Ordinance, 1985." ⁴

Citation.

8. This Ordinance may be cited as the Control of Birds Ordinance, 1985.

NOTE

The Ordinance was made and came into operation on 29th May, 1985.

Extent.

9. This Ordinance applies in the Islands of Guernsey, Herm and Jethou,

^a Recueil d'Ordonnances Tome IX, p. 306; Tome XIII, p. 251; Tome XIX, p. 338; No. XXXV of 1981.

including the territorial waters adjacent thereto.

¹ These words were previously substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

² These words were previously substituted by the States Agricultural and Milk Marketing Board (Transfer of Functions) Ordinance, 2001, section 3, Schedule 2, Part II, paragraph 17, with effect from 21st January, 2002.

³ The functions, rights and liabilities of the States Agriculture and Countryside Board and its President were previously transferred to it and its President from, respectively, the States Agricultural and Milk Marketing Board and its President by the States Agricultural and Milk Marketing Board (Transfer of Functions) Ordinance, 2001, section 1, Schedule 1, paragraph 17, with effect from 21st January, 2002.

⁴ For subsequent amendments, see the consolidated text of the Protection of Wild Birds Ordinance, 1949.