

L.N. 303 of 2012**ENVIRONMENT AND DEVELOPMENT PLANNING ACT
(CAP. 504)****Conservation of Wild Birds (Framework for Allowing a
Derogation Opening an Autumn Live-Capturing Season
for Song Thrush and Golden Plover) Regulations, 2012**

BY VIRTUE of the powers conferred by articles 61 and 62(2) of the Environment and Development Planning Act, the Minister for Tourism, Culture and the Environment has made the following regulations:-

Citation and
scope.

1. (1) The title of these regulations is the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-Capturing Season for Song Thrush and Golden Plover) Regulations, 2012.

S.L.504.71

(2) The purpose of these regulations is to establish a framework for allowing a derogation for opening an Autumn live-capturing season for Song Thrush and Golden Plover in terms of regulation 9(1)(f) of the Conservation of Wild Birds Regulations, hereinafter referred to as "the Wild Birds Regulations".

Interpretation.

2. (1) Terms and expressions used in these regulations, unless the context otherwise requires, shall have the same meaning as given to them in the Wild Birds Regulations.

(2) Without prejudice to the provisions of sub-regulation (1), in these regulations, unless the context otherwise requires:

"Autumn live-capturing season" means the period in which the live-capturing of birds of the relevant species is permitted during an autumn season which may be established in terms of regulation 3;

"Autumn live-capturing license" means a licence issued in accordance with regulation 4 and shall, for the purposes of the Wild Bird Regulations, have the same meaning as the term "licence";

"live-capturing" has the same meaning as the terms "to take" and "taking" in terms of the Wild Birds Regulations;

"licensee" means a person who is in possession of a valid Autumn live-capturing licence;

"relevant species" means birds belonging to the species Song Thrush and Golden Plover;

"*xagħri*" means the natural habitat types bearing codes 1240, 3140, 3170, 5330, 5410, 5420, 5430, 6220 and 8210 as listed in Schedule I of the Flora, Fauna and Natural Habitats Protection Regulations, and includes those areas, within Natura 2000 sites, declared by the Director from time to time and which are delineated in the site plans issued for this purpose by the Director;

S.L. 504.73

3. For the purposes of the second proviso of regulation 10(6) of the Wild Birds Regulations and for the purposes of these regulations, the period for the Autumn live-capturing season for the relevant species shall be a maximum of eighty-three (83) days between the month of October of the year for which the Minister may decide to open the Autumn live-capturing season by means of a notice in the Gazette and January of the following year:

Declaration of Autumn live-capturing season.

Provided that when opening an Autumn live-capturing season, the Minister shall determine that there is no satisfactory solution in terms of Article 9(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and take into consideration the thresholds established in the Schedule:

Provided further that, when establishing the duration of any Autumn live-capturing season, the Minister shall establish the overall seasonal bag limit for each of the relevant species, the individual daily bag limit for each licence and the individual seasonal bag limit for each licence to be allowed for that particular Autumn live-capturing derogation.

4. (1) The capturing of the relevant species during an Autumn live-capturing season shall be prohibited except by virtue of an Autumn live-capturing licence issued by the Director in accordance with these regulations.

Autumn live-capturing licence.

(2) Autumn live-capturing licences which may be issued under these regulations shall be against the payment of a fee not exceeding fifty euro (€50) for each licence.

(3) No Autumn live-capturing licence shall be issued in favour of any person under these regulations, unless such person is in possession of a valid *carnet de chasse* in terms of the Wild Birds Regulations, and the site from where the live-capturing will be exercised has been registered with the Commissioner of Police.

(4) An application for an Autumn live-capturing licence shall

be submitted during a period of four days specified for this purpose by the Director.

Validity of the
Autumn live-
capturing
licence.

5. (1) An Autumn live-capturing licence shall be valid only for the period in which the capturing of the relevant species is permitted during an Autumn live-capturing season.

(2) Without prejudice to the provisions of sub-regulation (1), an Autumn live-capturing licence shall:

(a) be suspended forthwith where the licensee is accused of an offence under regulation 27 of the Wild Birds Regulations;

(b) be revoked where the licensee is found guilty of an offence against regulation 27 of the Wild Birds Regulations; and

(c) lapse and be considered revoked as soon as the Minister, by means of a press release, declares that the overall seasonal bag limits for an Autumn live-capturing season have been reached. All licensees shall be informed immediately of such lapse and revocation of the Autumn live-capturing licence by means of a text message service (SMS) to the number indicated by that person in the application for an Autumn live-capturing licence:

Provided that where the overall bag limit for one species of either of the relevant species has been reached, the Autumn live-capturing licence shall lapse and be considered revoked only in respect of the capturing of such species as soon as the Minister, by means of a press release, declares that the overall seasonal bag limit for the Autumn live-capturing season for such species has been reached and shall remain unaffected with regard to the other species. All licensees shall also be informed immediately of such partial lapse and revocation of the licence by means of a text message service (SMS) to the number indicated by that person in the application for an Autumn live-capturing licence.

Licence
contents.

6. Every Autumn live-capturing licence issued in terms of these regulations shall:

(a) specify the overall seasonal bag limits for the Autumn live-capturing season for the relevant species as the total number of birds which may be taken under the authority of all issued licences taken together. The total number of Song Thrush and Golden Plover which may be live-captured during the autumn live-capturing season of a particular year shall be set

by the Minister by notice in the Gazette, using as a basis the figures contained in the Schedule and taking into consideration the conservation status of the two species concerned and the maintenance of the population of the two species at a satisfactory level;

(b) specify the daily bag limit of birds and the total Autumn live-capturing seasonal bag limit for each licence;

(c) require that any birds not of the relevant species covered by the derogation captured by the licensee shall be immediately released by such person;

(d) require the licensee, as soon as a bird of either of the relevant species is live-captured, to inform by means of a text messaging service (SMS) to a number indicated by the Director for that purpose and to fill in the *carnet de chasse* accordingly before leaving the capturing site;

(e) indicate the dates of the Autumn live-capturing season;

(f) provide that the live-capturing of birds, other than the relevant species, shall be strictly prohibited;

(g) provide that the licensee shall not, at any time, hold or have in his possession more than a total of ten (10) birds from the relevant species used as live-decoys, whilst at the capturing site or when travelling to or from the capturing site. In order for a bird to be considered as a live-decoy, it shall bear a single-use ring which is approved and provided for that purpose by the Director;

(h) reproduce the prohibitions provided for in regulations 4, 18 and 20 of the Wild Birds Regulations, without prejudice to any other prohibition laid down in the same regulations;

(i) without prejudice to the time restrictions set by regulation 19 of the Wild Bird Regulations, provide for any further time restrictions that may be applicable during the Autumn live-capturing season;

(j) provide that any ring recoveries shall be reported by the licensee concerned to the Director as soon as possible after the said bird is captured and released;

(k) provide that no capturing shall be allowed on

xaghri in Natura 2000 sites;

(l) specify the authorised site/s from where the licensee is permitted to exercise live-capturing by virtue of the Autumn live-capturing licence;

(m) provide that the licensee shall only use traditional manually operated selective clap-nets with the mesh-size of the net of not less than 30mm square which are operated solely by human intervention without the use of electrical, electronic, or mechanical means;

(n) require that the *carnet de chasse* is kept in accordance with all the relevant regulations by the licensee;

(o) require that any legal restriction or obligation, including with regard to place, dates, days, times and bag limits, as well as the conditions set out in the licence, are strictly complied with by the licensee;

(p) reproduce the provisions of regulation 5.

Enforcement.

7. (1) For the time when an Autumn live-capturing season is open, the Police shall carry out on-the-spot checks to ensure that the conditions and contents of the licence, the provisions of these regulations and the provisions of the Wild Birds Regulations are being observed.

(2) Should any police officer, in the course of a spot check carried out in terms of sub-regulation (1), find sufficient cause for proceedings to be taken against any person under these regulations, or other relevant regulations, that officer shall forthwith seize from the possession of that person any equipment, weapon or ammunition used for hunting or live-capture, the *carnet de chasse*, the Autumn live-capturing licence and any other taking or hunting licence or permit, and any bird found in the possession of that person in violation of these regulations or other applicable regulations or in violation of the conditions of any licence or permit:

Provided that, for the purposes of enforcement of the limits referred to in regulation 6(b) and the obligations provided for in regulation 6(d), only the number of birds established by regulation 6(g) shall be deemed to be live-decoys. Where, during the course of a spot-check, the number of birds found in the possession of a licensee exceeds such number, any bird which is found to be in excess of such number shall be deemed to have been captured by the licensee that same day, notwithstanding that such bird may be ringed in terms of regulation 6(g).

(3) In pursuance of their duties under these regulations the Police may be assisted by marshals appointed for this purpose by the Director. The marshals so appointed shall have the same duties and powers vested in the Police by sub-regulations (1) and (2):

Provided that for every one thousand (1,000) licences issued in accordance with these regulations, there shall be a minimum of seven (7) officers and, or marshals, on duty during all hours for which an Autumn live-capturing season is open. If applicable, outside these hours, at least two (2) police officers and, or marshals, shall be on duty during the hours of daylight.

(4) The Police, assisted by marshals as may be necessary, shall continue to carry out on-the-spot checks until at least two weeks following the end of an Autumn live-capturing season, in order to prevent illegal capture. Following the closure of an Autumn live-capturing season, for every one thousand (1,000) Autumn live-capturing licences issued that year, a minimum of three (3) police officers and, or, marshals shall be on duty during the hours of daylight.

8. Any person who fails to comply with any provision of these regulations, with the contents of the licence or with any order lawfully given in terms of any provision of these regulations or any of the conditions of the Autumn live-capturing licence shall be guilty of an offence and shall, upon conviction, be liable to the penalties established by regulation 27 of the Wild Bird Regulations. Offences.

9. The provisions and conditions laid down in these regulations shall be without prejudice to the Wild Birds Regulations to the extent that the latter are not inconsistent with these regulations in which case, and to the extent of the inconsistency, these regulations shall prevail. Saving.

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SCHEDULE

When setting the total number of Song Thrush and Golden Plover which may be live-captured during the Autumn live-capturing season of a particular year, the Minister shall set the total bag limit at not more than 1% of the total annual mortality rate of each of the species respectively:

Provided that the maximum bag limit for an Autumn live-capturing derogation shall, in any case, not exceed the following numbers:

5,000 Song Thrush; and

1,150 Golden Plover.

The above two maximum numbers shall be amended by the Minister, by notice in the Gazette, in order to revise and update them by taking into consideration the conservation status of the two species concerned and the maintenance of the population of the species at a satisfactory level.

