

L.N. 253 of 2014**ENVIRONMENT AND DEVELOPMENT PLANNING ACT
(CAP. 504)****Conservation of Wild Birds (Framework for Allowing a
Derogation Opening an Autumn Live-Capturing Season
for Finches) Regulations, 2014**

BY VIRTUE of the powers conferred by articles 61, 66, and 93 of the Environment and Development Planning Act, the Minister for Sustainable Development, the Environment and Climate Change 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 Finches) Regulations, 2014.

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(2) The purpose of these regulations is to establish a framework for allowing a derogation for opening an Autumn live-capturing season for Finches 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 finch live-capturing licence" means a licence issued in accordance with regulation 5 and shall, for the purposes of the Wild Bird Regulations, have the same meaning as the term "licence";

"Autumn finch live-capturing season" means a period in which the live-capturing of finches is permitted during an autumn season which may be established in terms of regulation 4;

"finch" or "finches" means birds belonging to the species listed in Schedule I;

"hybrid" or "hybrids" means any crossing between two finches from the Fringillidae family or between a Fringillidae species and the domestic canary (*Serinus canaria domestica*);

"licensee" means a natural person aged 18 years or over who is in possession of a valid Autumn live-capturing licence issued under these regulations;

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

"live-capturing site" or "site" shall mean the area clearly outlined on a site plan which is approved for that purpose by the Wild Birds Regulation Unit in terms of regulation 5(4) and registered with the Commissioner of Police, and which contains not more than two (2) live-capturing stations per licensee;

"live-capturing station" means the footprint area within the live-capturing site containing not more than two pairs of horizontal clap-nets per live-capturing station, with each net having an area not larger than 38 square metres, which live-capturing station may be registered on one or more licensee and each pair of clap-nets clearly outlined on the approved site plan;

"live-decoy" or "live-decoys" means any finch specimen listed in Schedule I and, or hybrids used by the live-capturer as call birds (*ghajjat*) including those held by cotton string and swivel (*tahrik*);

"protected area" or "protected areas" means areas where live-capturing is prohibited under the Conservation of Wild Birds Regulations; the areas within Natura 2000 sites containing natural habitat types bearing codes 1150, 1210, 1240, 1310, 1410, 1420, 1510, 2110, 2210, 2220, 3140, 3170, 5230, 5330, 5410, 5420, 5430, 6220, 8210, 92A0, 92D0, 9320, 9340, 9540 and 9570 as listed in Schedule I of the Flora, Fauna and Natural Habitats Protection Regulations; and, areas outside Natura 2000 sites that support natural habitats, including Scheduled Level 1 and Level 2 Areas of Ecological Importance and Sites of Scientific Importance, provided that such prohibition shall not apply to cultivated agricultural land located within the boundaries of the above protected areas and officially registered with the Department of Agriculture prior to end of July 2014; provided further that no live-capturing can take place on any site that has either not been registered with the Commissioner of Police prior to the end of December 2012, or that is not identifiable as a live-capturing site on aerial photographs published prior to end of December 2012; provided further that the exemption of registered cultivated agricultural land would not apply to areas where live-capturing is prohibited under the Conservation of Wild Birds Regulations. S.L. 504.73

3. (1) Finches may only be captured by traditional nets Means of capture.

known as clap-nets exclusively for the purpose of keeping them in captivity, including for use in fairs and exhibitions, for breeding, and, or use as live-decoys in accordance with the provisions of these regulations:

Provided that the clap-nets referred to in this sub-regulation shall consist of two parallel nets spread flat on the ground which capture birds by clapping over each other on the ground, and which are armed and operated solely by human intervention without the use of any external power means including electrical, electronic, or mechanical means, and the largest size of each such net shall not in any case exceed 38 square metres.

(2) Immediately upon the capture of a finch, the licensee shall place a single-use ring on the specimen as approved by the Wild Birds Regulation Unit for that purpose.

(3) Where the licensee is in possession of an Autumn finch-live capturing license issued in terms of these regulations, such licensee may use nets with a mesh size of not less than 18mm:

Provided that if such licensee is in possession of both the license issued under these regulations and the license issued in terms of the Framework for Allowing a Derogation Opening an Autumn live-capturing season for Song Thrush and Golden Plover, such licensee may use nets with a mesh size of not less than 18mm for the capture of all species allowed under the terms of both licenses, in which case the largest net size should still not exceed 38 square metres.

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Declaration of an Autumn finch live-capturing season.

4. 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 an Autumn finch live-capturing season for finches shall be a maximum of seventy-three (73) days from October to December of the same year for which the Minister may decide to open an Autumn finch live-capturing season by means of a notice in the Gazette:

Provided that when opening an Autumn finch 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 maintenance of the population of the species concerned at a satisfactory level, as well as consider the maximum thresholds established in Schedule II:

Provided further that, when establishing the duration of

any Autumn finch live-capturing season, the Minister shall establish the overall seasonal bag limit for each of the finch species and the individual seasonal bag limit for each licence, and shall also decide on whether to establish the individual daily bag limit for each licence, to be allowed for that particular Autumn finch live-capturing derogation.

5. (1) The capturing of finches during an Autumn finch live-capturing season shall be prohibited except by virtue of an Autumn finch live-capturing licence issued by the Wild Birds Regulation Unit in accordance with these regulations.

Autumn finch
live-capturing
licence.

(2) Autumn finch live-capturing licences issued under these regulations shall be against the payment of a fee as established by the Wild Birds Regulation Unit.

(3) No Autumn finch 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(s) showing the individually-marked live-capturing station(s) from where the live-capturing will be exercised by the licensee has been approved by the Wild Birds Regulation Unit and registered with the Commissioner of Police.

(4) The Wild Birds Regulation Unit shall only approve a site from where the live-capturing will be exercised if the following criteria are met:

Approval of
live-capturing
sites.

(a) the live-capturing station(s) shall not be located in a protected area;

(b) no more than two live-capturing stations may be registered by a live-capturer and each station shall not contain more than two (2) pairs of clap-nets up to a total footprint of 38 square metres per each net.

(5) An application for an Autumn finch live-capturing licence shall be submitted within the period specified for this purpose by the Wild Birds Regulation Unit.

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

Validity of the
Autumn finch
live-capturing
licence.

(2) Without prejudice to the provisions of sub-regulation (1), an Autumn finch 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 declares that the overall seasonal bag limits for an Autumn finch live-capturing season have been reached. All licensees shall be informed immediately of such lapse and revocation of the Autumn finch live-capturing licence by means of a text message service (SMS) to the number indicated by that person in the application for an Autumn finch live-capturing licence:

Provided that where the overall bag limit for one or more finch species has been reached, the Autumn finch live-capturing licence shall lapse and be considered revoked only in respect of the capturing of such species as soon as the Minister declares that the overall seasonal bag limit for the Autumn finch 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 finch live-capturing licence:

Provided further that the licensee shall, immediately upon receipt of the text message service (SMS) declaring the partial lapse, remove from the live-capturing station all decoys pertaining to that particular species and shall not utilise any decoys of that species for the rest of the season.

Licence contents.

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

Autumn live-capturing season.

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

Prohibited hours.

(b) specify that no capturing may take place between two hours after sunset and two hours before sunrise of the following day;

Protected areas.

(c) provide that no capturing shall be allowed within protected areas;

Live-capturing sites.

(d) specify that the live-capturing of finches shall be exercised only on the sites which are approved for that purpose

by the Wild Birds Regulation Unit;

(e) specify that each live-capturer is only authorised to use not more than two live-capturing stations registered with the Wild Birds Regulation Unit and that each live-capturing station shall not contain more than two pairs of clap-nets with a mesh size of not less than 18mm up to a total footprint of 38 square metres per each net even if the licensee is also in possession of a licence issued in terms of the Framework for Allowing a Derogation Opening an Autumn live-capturing season for Song Thrush and Golden Plover;

Live-capturing stations, size of clap-nets and mesh size.

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(f) provide that only one live-capturing station may be operated by the licensee at any one time;

One live-capturing station.

(g) provide that the licensee shall only use traditional manually-operated selective clap-nets which consist of two parallel nets spread flat on the ground which capture birds by clapping over each other on the ground, and which are armed and operated solely by human intervention without the use of any external power means including electrical, electronic, or mechanical means;

Clap-nets.

(h) specify that the clap-nets shall be disarmed and laid completely flat on the ground at all times during prohibited hours, and dismantled upon closure of the Autumn live-capturing season and removed from the site:

Clap-nets to be disarmed.

Provided that when the nets are disarmed and laid completely flat on the ground, the licensee shall take requisite measures to ensure that no accidental entanglement of any species occurs when the nets are not active;

(i) specify the overall seasonal bag limits for an Autumn live-capturing season for finches as the total number of finches which may be captured under the authority of all issued licences taken together;

National bag limit.

Provided that the total number of each specimen of finches which may be live-captured during an Autumn finch live-capturing season shall be set by the Minister by notice in the Gazette, using as a basis the figures contained in Schedule II and taking into consideration the conservation status of the particular species concerned and the maintenance of the population of the species at a satisfactory level;

(j) specify the total Autumn finch live-capturing seasonal bag limits for each licence, and any daily bag limits for

Individual seasonal bag limit.

each license, provided such daily bag limit is established by the Minister in accordance with regulation 4;

Live-decoys.

(k) provide that the number of live-decoys within each live-capturing station at any one time shall not exceed twenty-one (21) finches and, or hybrids irrespective of the number of licensees registered on the same live-capturing station, and also provide that a live-capturing station shall not contain more than a total of seven (7) live-decoys from the same finch species and, or their hybrids;

Seamless closed-ring.

(l) provide that, without prejudice to paragraph (k), a finch and, or its hybrid may only be used as a live-decoy if it is fitted with a seamless closed-ring or a single-use ring approved by the Wild Birds Regulation Unit for that purpose;

Single-use ring and reporting obligation.

(m) require the licensee, as soon as a finch is live-captured, to place a single-use ring approved by the Wild Birds Regulation Unit upon the capture of such finch and to immediately report such catch on the number indicated by the Wild Birds Regulation Unit for that purpose, and to also fill in the *Carnet de Chasse* accordingly before leaving the live-capturing site;

Ring recoveries.

(n) provide that any ring recoveries, including those from the seven finch species, shall be reported by the licensee concerned to the Wild Birds Regulation Unit as soon as possible after the said bird is immediately released into the wild upon capture;

Protected species.

(o) provide that the live-capturing of birds other than finches shall be strictly prohibited unless the licensee is also in possession of an Autumn live-capturing licence in terms of the Framework for Allowing a Derogation Opening an Autumn live-capturing season for Song Thrush and Golden Plover and has still not exhausted the bag limits under that licence;

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Release of birds into the wild.

(p) require that any birds not from the species listed in Schedule I that may be accidentally captured by the licensee shall be immediately released by the licensee into the wild unless such birds pertain to one of the two species listed in the Schedule of the Framework for Allowing a Derogation Opening an Autumn live-capturing season for Song Thrush and Golden Plover, provided the licensee is also in possession of an Autumn live-capturing licence issued in terms of those regulations and has still not exhausted the bag limits under that licence;

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(q) require that the *Carnet de Chasse*, the site plans approved by the Wild Birds Regulation Unit and registered with the Commissioner of Police, and the means of identification shall be kept by the licensee together with the licence issued under these regulations at all times whilst the licensee is at the live-capturing site or travelling to and from the live-capturing site;

Carnet de Chasse, site plans and means of identification.

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

Prohibitions.

(s) 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;

Compliance with any legal restriction or obligation.

(t) reproduce the provisions of regulation 6;

Provisions of regulation 6.

(u) provide that during the open season any finches/hybrids used as live-decoys and finches caught from the wild shall not be kept in cages smaller than 190mm in length, 130mm in width and 120mm in height.

Size of cages.

8. (1) For the time when an Autumn finch 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.

Enforcement.

(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 used for live-capturing, the *Carnet de Chasse*, the Autumn finch live-capturing licence, any other live-capturing 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 7(j) and the obligations provided for in regulation 7(m), only the number of birds established by regulation 7(k) 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 fitted with a single-use ring in terms of regulation 7(1).

(3) In pursuance of their duties under these regulations the Police may be assisted by marshals appointed for this purpose by the Wild Birds Regulation Unit. 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 on duty during all hours for which an Autumn finch live-capturing season is open. If applicable, outside these hours, at least two (2) police officers 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 finch 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 shall be on duty during the hours of daylight.

Offences.

9. 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 finch 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 Birds Regulations:

Provided that where the offence falls under the scope of regulation 27A of the Wild Birds Regulations, such an offence shall be subject to the procedure stipulated therein and the penalties stipulated in Schedule VIII of the Wild Birds Regulations.

Saving.

10. 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.

SCHEDULE I

Finches

	SCIENTIFIC NAME	MALTESE NAME	ENGLISH NAME
1.	<i>Carduelis cannabina</i>	Ġojjin	Linnet
2.	<i>Carduelis carduelis</i>	Gardell	Goldfinch
3.	<i>Carduelis chloris</i>	Verdun	Greenfinch
4.	<i>Carduelis spinus</i>	Ekra	Siskin
5.	<i>Coccothraustes coccothraustes</i>	Taż-Zebbuġ	Hawfinch
6.	<i>Fringilla coelebs</i>	Sponsun	Chaffinch
7.	<i>Serinus serinus</i>	Apparell	Serin

SCHEDULE II

Bag limits

When establishing the total number of finches which may be live-captured during an Autumn live-capturing season, the Minister shall set the total bag limit at less than 1% of the total annual mortality of the reference population of each species within the territory of the European Union on the basis of latest available scientific data pertaining to ring recoveries.

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

SPECIES	NATIONAL BAG LIMIT
Linnet	12,000
Goldfinch	800
Greenfinch	4,500
Siskin	2,350
Hawfinch	500
Chaffinch	5,000
Serin	2,350

The above maximum numbers shall be revised and updated by the Minister, by notice in the Gazette, by taking into consideration the conservation status of the seven species concerned and the maintenance of the population of the species at a satisfactory level.

