

L.N. 254 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
Song Thrush and Golden Plover) (Amendment)
Regulations, 2014**

BY VIRTUE of the powers conferred by article 61 of the Environment and Development Planning Act, and in terms of the provisions of regulation 10(6)(t) of the Conservation of Wild Birds Regulations, the Minister for Sustainable Development, the Environment and Climate Change has made the following regulations:-

Citation.

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) (Amendment) Regulations, 2014 and these regulations shall be read and construed as one with the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-Capturing Season for Song Thrush and Golden Plover), hereinafter referred to as "the principal regulations".

S.L. 504.113

Amends
regulation 2 of
the principal
regulations.

2. Sub-regulation (2) of regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "Autumn live-capturing season", for the words "in terms of regulation 3" there shall be substituted the words "in terms of regulation 4";

(b) in the definition "Autumn live-capturing license", for the words "in accordance with regulation 4" there shall be substituted the words "in accordance with regulation 5";

(c) for the definition "licensee" there shall be substituted the following:

"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;"

(d) immediately after the definition "live-capturing", there shall be added the following new definitions:

" "live-capturing site" or "site" means 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, 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 60 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 specimen from the relevant species used by the live-capturer as call birds (*għajjat*) and those held by cotton string and swivel (*tahrík*);"

(e) for the definition "*xagħri*" there shall be substituted the following:

" "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;"

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Re-numbers regulations 3 to 9 of the principal regulations.

3. Regulations 3 to 9, both inclusive, of the principal regulations shall be renumbered as regulations 4 to 10 respectively.

Adds new regulation to the principal regulations.

4. Immediately after regulation 2 of the principal regulations there shall be added the following new regulation:

"Capture of the relevant species.

3. (1) The relevant species may only be captured by traditional nets known as clap-nets exclusively for the purpose of keeping them in captivity and 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 60 square metres.

(2) Where a licensee is in possession solely of an Autumn live-capturing license in terms of these regulations, such licensee shall not use any nets with a mesh size that is less than 30mm:

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 Finches, 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, provided that the largest size of each such net shall not in any case exceed 38 square metres."

Amends regulation 4 of the principal regulations.

5. For the words from "For the purposes of the second proviso" to the words "and January of the following year:" in regulation 4, as re-numbered, of the principal regulations, there shall be substituted the following:

"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 live-capturing season for the relevant species 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 live-capturing season by means of a notice in the Gazette:"

6. Regulation 5, as re-numbered, of the principal regulations shall be amended as follows:

Amends
regulation 5 of
the principal
regulations.

(a) sub-regulations (2) to (4) thereof shall be substituted by the following:

"(2) Autumn 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 live-capturing licence for the relevant species 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:

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

(b) no more than two live-capturing stations per site may be registered by a live-capturer and each station shall not contain more than two (2) pairs of clap-nets with the size of each net subject to the provisions of regulation 3(2)."; and

(b) immediately after sub-regulation (4) thereof, there shall be added the following new sub-regulation:

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

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Amends regulation 6 of the principal regulations.

7. Regulation 6, as re-numbered, of the principal regulations shall be amended as follows:

(a) paragraph (c) of sub-regulations (2) thereof shall be substituted by the following:

"(c) lapse and be considered revoked as soon as the Minister declares that the overall seasonal bag limits for an Autumn live-capturing season for the relevant species 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."; and

(b) the provisos thereof shall be substituted by the following:

"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 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 for the relevant species:

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."

Substitutes regulation 7 of the principal regulations.

8. Regulation 7, as re-numbered, of the principal regulations shall be substituted by the following:

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

Autumn live-capturing season.

(a) indicate the dates of the Autumn 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 the relevant species shall be exercised only on the sites which are approved for that purpose by the Wild Birds Regulation Unit;

Prohibition of use of more than two live-capturing stations.

(e) specify that each live-capturer is only authorised to use not more than two (2) live-capturing stations registered with the Wild Birds Regulation Unit and that each live-capturing station shall not contain more than two (2) pairs of clap-nets up to a total footprint of 60 square metres per each net:

Provided that if the live-capturer 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 Finches, 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, provided that the largest size of each such net shall not in any case exceed 38 square metres;

One live-capturing station.

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

Clap-nets.

(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 to be disarmed.

(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 live-capturing season and removed from the site:

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;

National bag limit.

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

Provided that the total number of each specimen of the relevant species which may be live-captured during an autumn live-capturing season 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 particular species concerned and the maintenance of the population of the species at a satisfactory level;

Individual seasonal bag limit.

(j) specify the total Autumn live-capturing seasonal bag limits for each licence, and any daily bag limits for 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 ten (10) birds from the relevant species (any combination from the two species up to a maximum of ten), irrespective of the number of licensees registered on the same live-capturing station;

Single-use ring.

(l) provide that, without prejudice to paragraph (k), a bird from the relevant species may only be used as a live-decoy if it is fitted with a single-use ring approved by the Wild Birds Regulation Unit for that purpose;

Reporting obligation.

(m) require the licensee, as soon as a bird from the relevant species is live-captured, to 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 relevant 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 the relevant species shall be strictly prohibited unless the licensee is also in possession of an Autumn Finch live-capturing licence in terms of the Framework for Allowing a Derogation Opening an Autumn live-capturing season for Finches Regulations, 2014 and has still not exhausted the bag limits under that licence;

Release of birds into the wild.

(p) require that any birds not of the relevant species 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 seven finch species listed in Schedule I of the Framework for Allowing a Derogation Opening an Autumn live-capturing season for Finches Regulations 2014, provided the licensee is also in possession of an Autumn Finch live-capturing licence issued in terms of those regulations and has still not exhausted the bag limits under that licence;

Carnet de Chasse, site plans and means of identification.

(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 license 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;

Prohibitions.

(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;

Compliance with any legal restriction or obligation.

(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;

Provisions of regulation 6.

(t) reproduce the provisions of regulation 6;

Size of cages.

(u) provide that during the open season Golden Plovers used as live-decoys and those caught from the wild shall not be kept in cages smaller than 280mm in length, 240mm in width and 240mm in height and also provided that during the open season Song Thrushes used as live-decoys and those caught from the wild shall not be kept in cages smaller than 210mm in length, 160mm in width and 200mm in height."

9. Regulation 8, as re-numbered, of the principal regulations shall be amended as follows:

Amends regulation 8 of the principal regulations.

(a) the proviso to sub-regulation (2) thereof shall be substituted by the following:

"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 ringed in terms of regulation 7(l)."; and

(b) sub-regulation (4) thereof shall be substituted by the following:

"(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

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licences issued that year, a minimum of three (3) police officers shall be on duty during the hours of daylight."

Substitutes regulation 9 of the principal regulations.

10 . Regulation 9, as re-numbered, of the principal regulations shall be substituted by the following:

"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 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."

Amends the Schedule to the principal regulations.

11. In the Schedule to the principal regulations, for the words "1,150 Golden Plover." there shall be substituted the words "700 Golden Plover."

