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L.N. 399 of 2020

**ENVIRONMENT PROTECTION ACT
(CAP. 549)**

Conservation of Wild Birds (Framework for Allowing a Research Derogation to determine Malta's Reference Population of Seven Finch Species) Regulations, 2020

IN EXERCISE of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister responsible for the Environment, in conjunction with the Minister for Gozo, and after consultation with the Environment and Resources Authority, 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 Research Derogation To Determine Malta's Reference Population of Seven Finch Species) Regulations, 2020.

(2) The purpose of these regulations is to establish a framework allowing a research derogation to determine Malta's reference population of the seven finch species enumerated in regulation 2 (defined as the "relevant species" for the purpose of these regulations) on the basis of Article 9(1)(b) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the Conservation of Wild Birds (Birds Directive) in particular read in conjunction with Article 10 and Annex V(c) of the Birds Directive, and in terms of sub-regulation 9(1)(e) of the Conservation of Wild Birds Regulations, hereinafter referred to as "the Wild Birds Regulations". These regulations specifically aim to gather sufficient scientific information in order for Malta to introduce a derogatory regime in terms of Article 9(1)(c) of the Birds Directive that complies with the "small numbers"-criterion as interpreted by the Court of Justice in its judgment reference C-557/15 .

Interpretation.

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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 2(1), unless the context otherwise requires:

"control" means the capturing and handling of birds from the relevant species to determine which specimens are fitted with a scientific ring, to record the scientific ring identification

number, details of the specimens and the site location from where it was captured, as specified on the ring recovery form issued by the Wild Birds Regulation Unit, followed by the immediate release back into the wild of all specimens from the same research site, and the submission of data as specified in the special licence;

"licensee" means a natural person aged 18 years or over who is in possession of a special licence issued under these regulations;

"live-decoy" means any specimen from the relevant species fitted with a single-use ring, their mules and, or hybrids used by the licensee as call birds ('*ghajat*'), including those held by cotton string and swivel ('*tahrik*'), in accordance with regulation 7(1)(h) of the Wild Birds Regulations:

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Provided that colour mutations (colour-variants) from the relevant species may only be used by the licensee (i) as call birds ('*ghajat*'), not as fluttering decoys ('*tahrik*') and (ii) to the extent these colour mutations are fitted with a closed ring;

"protected area" has the same meaning as defined in the Wild Birds Regulations;

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"relevant species" means European Goldfinch (*Carduelis carduelis*), European Greenfinch (*Chloris chloris*), Hawfinch (*Coccothraustes coccothraustes*), Common Chaffinch (*Fringilla coelebs*), Common Linnet (*Linaria cannabina*), European Serin (*Serinus serinus*) and Eurasian Siskin (*Spinus spinus*);

"research period" means the period, as may be established in terms of regulation 4, during which birds from the relevant species are controlled and/or fitted with scientific rings and/or satellite-tags from research sites to obtain data including through ring recoveries, for the purpose of establishing Malta's reference population of the relevant species;

"research site" or "site" means the location 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 one (1) research station;

"research station" means the footprint area within the research site containing not more than one (1) pair of horizontal clap-nets from a hide, which may be used by one or more licensees, with each net having an area not larger than thirty-

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eight (38) square metres, and the clap-net pair clearly outlined in red ink on the approved site plan;

"satellite-tag" means, for the purpose of these regulations, a small electronic lightweight device that is fitted on specimens from the relevant species to track and map their migration routes;

"scientific bird ringing" means a research method based on the individual marking of wild birds with a view to providing data on species' survival rates, migration, movement and dispersal patterns, population dynamics and ecological processes for conservation purposes, which involves:

(a) the capture and handling of wild birds using nets and, or pre-recorded bird calls;

(b) the attachment of an individually marked scientific ring on a wild bird to enable individual identification and, or the attachment of a satellite-tag to record its precise movements;

(c) the taking of various biometric and morphometric measurements such as size, weight, conditions of feather moult and indications of age and sex of the specimen;

(d) the recording of the scientific ring identification number and biometric information through a special scientific database accessible to scientific bird-ringers and researchers in other regions or countries; and

(e) the immediate release of the birds caught back into the wild after performing the necessary measurements and attachment of scientific rings and, or satellite-tags, or after recording the necessary information from bird specimens already fitted with a scientific ring and, or satellite-tag;

"scientific bird-ringer" means a person who is licensed by the Wild Birds Regulation Unit to perform scientific bird ringing activities in accordance with regulation 23 of the Wild Birds Regulations;

"scientific ring" means an open leg-ring or leg-band supplied by a scheme that represents licensed scientific bird-ringers, of a size that is species-specific bearing a unique identification number to keep track of the movements of the bird and its life history when re-captured;

"single-use ring" means, for the purpose of these regulations, rings that were issued by the Wild Birds Regulation Unit in 2016 and 2017, bearing code R16U **;

"special licence" means a licence issued in accordance with regulation 5;

3. (1) For the purpose of these regulations and without prejudice to the activities permitted by virtue of regulation 23 of the Wild Birds Regulations, birds from the relevant species may only be captured by nets known as clap-nets for the purpose of control and, or affixing of scientific rings and/or satellite-tags, in accordance with these regulations.

Capturing and handling of birds from the relevant species. S.L. 549. 42.

(2) All specimens shall be immediately released back into the wild, including those that are not fitted with a scientific ring or satellite-tag:

Provided that prior to the immediate release of all birds from the relevant species fitted with a scientific ring, the licensee shall record the details of each specimen and its scientific ring identification number on the ring recovery form issued by the Wild Birds Regulation Unit:

Provided further that before the immediate release of all birds from the relevant species not fitted with a scientific ring, such birds may be fitted with a satellite-tag by the licensee or with a scientific ring and, or satellite-tag by a licensee who is also a licensed bird-ringer:

Provided further that only licensees who attend a training session on satellite-tagging may be issued with a separate special licence to carry out satellite-tagging and shall be subject to all conditions set out therein in accordance with regulations 5, 6 and 7:

Provided further that all ring recovery forms shall be returned to the Wild Birds Regulation Unit within the period as specified by the Unit following closure of the research period:

Provided further that in the event that the licence holder fails to comply with any written instruction that he may receive from the Wild Birds Regulation Unit for such purpose, such licensee will be rendered ineligible to apply for a special licence issued under these regulations for the following year.

** No new or replacement single-use rings will be supplied to licensees. These rings have been audited by an independent Notary Public and are stored for the purpose of future audits as and when required.

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(3) Where a person is in possession of a special licence in terms of these regulations, such licensee shall not use nets with a mesh size that is less than 18mm x 18mm:

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 thirty-eight (38) square metres:

S.L. 549.74. Provided further that if such licensee is in possession of both the special licence issued under these regulations and the special licence issued in terms of the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-capturing Season for Song Thrush and Golden Plover) Regulations, such licensee may only use one clap-net pair (*mansab*) with nets having a mesh size of not less than 18mm x 18mm for the capture of all species allowed under the terms of both special licences, in which case the net size should still not exceed thirty-eight (38) square metres:

S.L. 549.74 Provided further that if such licensee is in possession of both the special licence issued under these regulations and the special licence issued in terms of the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-capturing Season for Song Thrush and Golden Plover) Regulations, and provided that the second clap-net pair is used by such licensee exclusively for the purpose of live-capturing Golden Plover and, or Song Thrush, the mesh size and net size of the second clap-net pair shall be in accordance with the provisions stipulated in that framework regulations.

Declaration of a research period. **4.** For the purpose of the fourth proviso of regulation 10(6) of the Wild Birds Regulations and for the purpose of these regulations, the research period for the relevant species shall be not more than sixty-four (64) days in autumn for which the Minister may decide to declare a research period for the relevant species by means of a legal notice:

Provided that when declaring a research period for the relevant species, the Minister shall determine that there is no other satisfactory solution in terms of Article 9(1) of the Birds Directive and proportionate to the envisaged purpose set out under sub-regulation 1(2) in particular in light of Article 9(2) of the Birds Directive, and after taking into consideration the recommendations of the Malta Ornithological Committee.

5. (1) For the purpose of these regulations and without prejudice to the activities permitted by virtue of regulation 23 of the Wild Birds Regulations, the capturing and handling of birds from the relevant species for research purposes shall be prohibited except by virtue of a special licence issued by the Wild Birds Regulation Unit in accordance with these regulations and such research shall only be carried out during the validity period of the special licence.

Special licence.

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(2) Special licences issued under these regulations shall be against the payment of a fee as established by the Wild Birds Regulation Unit and by the Conservation of Wild Birds (Declaration on a Derogation Allowing a Research Period To Determine Malta's Reference Population of Seven Finch Species) Regulations issued for that specific year.

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(3) A special licence for the relevant species shall only be issued if the person:

(a) is in possession of a valid general live-capturing licence or a valid bird ringing licence issued in terms of the Wild Birds Regulations;

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(b) satisfies the condition listed in Schedule IV(1)(c) of the Wild Birds Regulations, as applicable;

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(c) submits a site plan showing the clap-net pair clearly outlined in red ink on a site plan approved by the Wild Birds Regulation Unit; and

(d) attends a mandatory course on the research objectives of these regulations, applicable legal provisions and other criteria of relevance and passes an examination prepared for this purpose by the Wild Birds Regulation Unit;

(e) signs the declaration contained in the application form for a special licence confirming that he shall read, understand and abide with all the provisions of these regulations and with all the conditions of the special licence.

(4) For the purpose of sub-regulation 3(c), the Wild Birds Regulation Unit shall only consider a clap-net pair as approved if the following criteria are met:

(a) the clap-net pair shall not be located in a protected area as defined in regulation 2 of the Wild Birds Regulations; and

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(b) a research station shall not contain more than one (1)

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pair of clap-nets for the relevant species and the licensee shall not use more than one (1) pair of clap-nets for the relevant species at any one time.

(5) A registered clap-net pair may be used by one or more special licence holders during the research period for the relevant species.

(6) An application for a special licence for the relevant species shall only be submitted during the period specified for this purpose by the Wild Birds Regulation Unit.

Validity of the special licence.

6. (1) A special licence shall only be valid for the duration of the research period as declared in the notice of derogation published by means of a legal notice.

(2) Without prejudice to the provisions of sub-regulation (1), a special licence shall:

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

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(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 if the Minister orders, by notice in the Gazette or any other notice, that the research period is to terminate immediately or at a date as specified by the Minister. All licensees shall be informed immediately of such lapse and revocation of the special licence by means of a text message service (SMS) to the number indicated by that person in the application for a special licence.

Special licence contents.

7. Every special licence issued in terms of these regulations shall:

Research period.

(a) indicate the dates of the research period for the relevant species;

Prohibited hours.

(b) specify that no capturing may take place between two (2) hours after sunset and two (2) hours before sunrise of the following day;

Protected areas. S.L. 549. 42.

(c) provide that no capturing shall be allowed within protected areas as defined in regulation 2 of the Wild Birds Regulations;

Approved sites.

(d) specify that the research activity shall only be carried out within the sites approved for that purpose by the Wild Birds

Regulation Unit, except those that may have been revoked;

(e) specify that the licensee is only authorised to use one (1) research station for the relevant species at any one time and that such research station shall not contain more than one (1) pair of clap-nets from one (1) hide with each net having an area of not more than thirty-eight (38) square metres and a mesh size of not less than 18mm x 18mm;

Prohibition of use of more than one research station for the relevant species at the same time.

(f) provide that the layering of two or more nets on top of each other or any other modification, including creation of 'pockets', is strictly prohibited;

Prohibition of layering of nets and creation of 'pockets'.

(g) provide that the licensee shall only use a manually-operated selective clap-net pair which consists of two parallel nets spread flat on the ground and which is armed and operated solely by human intervention without the use of any external power means including electrical, electronic, or mechanical means;

Selectivity: clap-nets.

(h) specify that before the licensee leaves the research station and during prohibited hours, the nets shall either be removed or completely covered and that during all permitted hours whilst the licensee is at the research station, the clap-net pair shall be supervised at all time;

Selectivity: nets to be removed or covered.

Provided that the clap-net pair, including nets, poles and springs, shall be completely dismantled immediately upon closure of the research period and removed from the site;

(i) provide that, without prejudice to the second and third provisos to sub-regulation 3(3), the capturing or the attempt to capture birds or other fauna not from the relevant species and the use of any means to attract birds not from the relevant species to the clap-net pair is strictly prohibited, and also provides that in the unlikely event of an accidental by-catch, such specimen shall be immediately released by the licensee;

Selectivity: non-target species.

(j) limit possession and, or use of pre-recorded bird calls to finches only;

Pre-recorded bird calls.

(k) limit the use of live-decoys to birds from the relevant species that were fitted with a single-use ring issued by the Wild Birds Regulation Unit bearing code R16U, to their colour mutations (colour-variants) fitted with a closed ring and to mules and, or hybrids:

Live-decoys.

Provided that colour mutations (colour-variants) from the relevant species may only be used by the licensee as call birds

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(‘ghajjat’) and not as fluttering decoys (‘taħrik’);

Recording of data and immediate release of all captured specimens.

(l) require the licensee to record the scientific ring identification numbers, details of the specimens and the site location from where it was captured, as specified on the ring recovery form issued by the Wild Birds Regulation Unit, after the specimens from the relevant species have been ringed or controlled, followed by the immediate release of all specimens from the same research station, and also require that such form is returned to the Unit within the deadline as specified in a separate letter issued to the licensee following closure of the research period;

General live-capturing licence, bird ringing licence and site plan.

(m) require that the general live-capturing licence or the bird ringing licence, as applicable, which also serve as a means of identification, and the site plan approved by the Wild Birds Regulation Unit and registered with the Commissioner of Police, shall be kept by the licensee together with the special licence issued under these regulations at all times whilst the licensee is at the research station or travelling to and from the research station;

Compliance with any legal restriction or obligation.

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

Size of cages during the research period.

(o) provide that during the research period, live-decoys for the purpose of these regulations shall not be kept in cages smaller than 190mm in length, 130mm in width and 120mm in height;

Other conditions of relevance.

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(p) provide for other conditions of relevance to ensure that the derogation is properly implemented and strictly supervised in line with the Wild Birds Regulations and the Birds Directive (2009/147/EC); and

Provisions of regulations 3 and 6.

(q) reproduce the provisions of regulations 3 and 6 of these regulations.

Enforcement.

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8. (1) For the time when a research period is open, the Police shall carry out spot-checks in accordance with sub-regulation (7) to ensure that the conditions and contents of the special 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 the special licence issued under these regulations and any equipment used for the research activity in violation of these regulations:

Provided that the said person shall be prohibited from applying for a new special licence issued under these regulations or under the Wild Birds Regulations, upon conviction by the Court.

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(3) During the course of a spot-check carried out in terms of sub-regulation (1), should a police officer find a bird from the relevant species fitted with a closed ring, or find a bird not fitted with a single-use ring, or find a bird fitted with a single-use ring bearing code WBRU 14 or 15RU, or bearing code R16U that was not supplied by the Wild Birds Regulation Unit in 2016 and 2017, the licence holder shall be subject to the penalties established in regulation 27 of the Wild Birds Regulations. The police officer shall immediately release all birds from the relevant species not fitted with a ring from the same research station and seize from the licence holder all birds from the relevant species fitted with a closed ring or with an unauthorised single-use ring:

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Provided that this sub-regulation shall not apply to colour-variants (mutations), mules and hybrids.

(4) 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).

(5) During all hours for which a research period for the relevant species is open, the total number of police officers and, or marshals assigned to carry out spot-checks shall be in the region of fifty (50). Outside these hours, at least four (4) police officers and, or marshals shall be on duty.

(6) The police, assisted by marshals as may be necessary, shall continue to carry out spot-checks until at least four (4) weeks following the closure of the research period. Following the closure of the research period for the relevant species, for every one thousand (1,000) special licences issued that year, a minimum of four (4) police officers shall be on duty.

(7) In pursuance of their duties under these regulations, the Police, assisted by marshals as may be necessary, shall carry out daily systematic spot-checks throughout the research period, in all the

Standard
operating
procedure.

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regions shown in the First Schedule. In Gozo, spot-checks in regions 1 and 3 shall be carried out simultaneously with spot-checks in regions 2 and 4 by separate police officers. In Malta, spot-checks in regions 5, 6 and 8 shall be carried out simultaneously with spot-checks in regions 7, 9 and 10 by separate police officers. Spot-checks within each region shall be carried out daily. The Police shall forward to the Wild Birds Regulation Unit the outcome of each spot-check, per region, the following day, in a format that is agreed in advance with the Wild Birds Regulation Unit.

NGOs to
cooperate with
police.

(8) Whenever the police request such assistance, representatives of non-governmental organisations may assist the Executive Police and marshals appointed in terms of sub-regulation (4) during spot-checks relevant to these regulations.

Publication of
approved clap-
net pairs.

(9) The coordinates of the approved clap-net pairs shall be made public on the internet by the Wild Birds Regulation Unit at least three (3) days before the start of the research period and shall be available on-line at all times during the research period.

Offences.

9. Any person who fails to comply with any provision of these regulations, with the contents of the special licence, or with any order lawfully given in terms of any provision of these regulations or any of the conditions of the special licence for the relevant species shall be guilty of an offence and shall, upon conviction, be liable to the penalties established by regulation 27 of the Wild Birds Regulations:

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Provided that, unless specified otherwise in these regulations, 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.

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Reservation.
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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

Subdivision of Malta and Gozo into regions for systematic spot-checks
at research stations



