

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Protection of Wild Birds Ordinance, 1949** \*

[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 IX, p. 306; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the States Committee for Agriculture and Fisheries (Transfer of Functions) Ordinance, 1962 (Recueil d'Ordonnances Tome XIII, p. 251); the Protection of Wild Birds (Amendment) Ordinance, 1965 (Recueil d'Ordonnances Tome XIV, p. 102); the Protection of Wild Birds (Amendment) Ordinance, 1974 (Recueil d'Ordonnances Tome XIX, p. 338); the Protection of Wild Birds (Amendment) Ordinance, 1981 (Recueil d'Ordonnances Tome XXII, p. 136); the Control of Birds Ordinance, 1985 (Recueil d'Ordonnances Tome XXIII, p. 258); the States Committee for Agriculture (Transfer of Functions) Ordinance, 1987 (Recueil d'Ordonnances Tome XXIV, p. 17); the States Agricultural and Milk Marketing Board (Transfer of Functions) Ordinance, 2001 (No. XX of 2001, Recueil d'Ordonnances Tome XXVIII, p. 433); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005 (No. VII of 2006, Recueil d'Ordonnances Tome XXXI, p. 525); the Avian Influenza (Precautionary Measures) and Miscellaneous Provisions (Amendment) Ordinance, 2006 (No. XXXIV of 2006, Recueil d'Ordonnances Tome XXXI, p. 567). See also the Reform (Guernsey) Law, 1948 (Ordres en Conseil Vol. XIII, p. 288). This Ordinance has been repealed by the Animal Welfare (Guernsey) Ordinance, 2012 (No. III of 2012).

# ORDINANCE OF THE STATES OF DELIBERATION

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## **The Protection of Wild Birds Ordinance, 1949**

### ARRANGEMENT OF SECTIONS

1. Cruelty to wild birds generally.
2. General protection of birds, nests and eggs.
- 2A. Special provisions regarding certain birds at certain times.
3. Special provisions regarding gulls in the vicinity of the States Airport and States Refuse Tips.
4. Certificates authorising the taking of wild birds for certain purposes.
- 4A. Actions pursuant to other Ordinances.
5. Prosecutions.
6. Penalties.
7. Interpretation.
8. Extent, commencement, and repeals.

FIRST SCHEDULE

SECOND SCHEDULE

*(Made on 13th January, 1949.)*

## **The Protection of Wild Birds Ordinance, 1949**

**THE COURT**, on the representations of the States Committee for Agriculture and Fisheries and having heard His Majesty's Comptroller thereon, hereby orders: –

### **Cruelty to wild birds generally.**

1. (1) Where any person –
  - (a) affixes, places or sets any spring, spring-trap, gun, gin, snare, net or other similar instrument calculated to cause bodily injury to any wild bird coming into contact therewith, or
  - (b) knowingly permits or suffers or causes any such instrument to be affixed, placed or set, or
  - (c) takes or attempts to take any wild bird by means of a hook or other similar instrument, or
  - (d) uses bird lime or any substance of a like nature for the purpose of taking or attempting to take any wild bird, or
  - (e) uses any bird, whether wild or domestic, as a decoy for the purpose of taking or attempting to take any wild bird,

he shall be guilty of an offence under this Ordinance.

- (2) Where any person keeps or confines any wild bird in any cage

or other receptacle which –

- (a) measures less than eighteen inches in length, twelve inches in height and eight inches in width respectively, or
- (b) does not measure sufficient in height, length and breadth, respectively, to permit the bird freely to stretch its wings,

he shall be guilty of an offence under this Ordinance.

This sub-section shall not apply to any wild bird kept or confined in a cage or other receptacle which does not comply with the requirements specified herein whilst being conveyed by land, water or air, or whilst being exhibited during not more than seventy-two consecutive hours at a show.

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**NOTE**

*In accordance with the provisions of the Reform (Guernsey) Law, 1948, Article 70(3), with effect from 1st January, 1950, this formerly Provisional Ordinance of the Royal Court became a Permanent Ordinance of the States.*

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**General protection of birds, nests and eggs.**

2. It shall not be lawful at any time hereafter for any person to kill, injure or take, or attempt to kill, injure or take, any wild bird, or to take or destroy or to attempt to take or destroy, or (except in the ordinary course of farming or forestry operations) knowingly and wilfully to disturb eggs or nests of any wild birds, with the following exceptions –

- (a) birds and the eggs and nests of birds specified in the First Schedule to this Ordinance,

- (b) birds captured or killed or eggs or nests taken or destroyed in terms of an authority contained in a certificate granted in terms of section 4 of this Ordinance.

**[Special provisions regarding certain birds at certain times.**

2A. Notwithstanding anything in this Ordinance, a person who is the holder of a current licence issued in accordance with the provisions of the Law entitled "Loi relative aux Permis de Port d'Armes de Chasse" registered on the thirtieth day of August, nineteen hundred and twenty-two, may, by firing with a firearm to which the said licence relates, kill or attempt to kill, during the period beginning on the first day of October in any year and ending on the thirty-first day January next following any Collared Dove, Partridge, Pheasant, Snipe and Woodcock.]

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**NOTES**

*Section 2A was inserted by the Protection of Wild Birds (Amendment) Ordinance, 1981, section 1(a), with effect from 9th December, 1981.*

*The Loi relative aux Permis de Port d'Armes de Chasse, 1922 has since repealed by the Firearms (Guernsey) Law, 1983, section 55(1), Schedule 3, with effect from 1st October, 1987, subject to the savings in section 55 of 1983 Law.*

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**[Special provisions regarding gulls in the vicinity of the States Airport and States Refuse Tips.**

3. Notwithstanding anything in this Ordinance, it shall be lawful for any person, thereunto specifically authorised in writing by the States [Environment Department], to kill or attempt to kill by shooting at any time any sea gull which alights on any place within the boundaries of the States Airport or within the boundaries of any Refuse Tip under the control of the States [Environment

Department] or is in flight over any such place.]

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**NOTES**

*Section 3 was substituted by the Protection of Wild Birds (Amendment) Ordinance, 1981, section 1(b), with effect from 9th December, 1981.*

*In section 3, the words in square brackets were substituted by the of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, 2, Schedule 1, paragraph 3(c), Schedule 2, paragraph 2(c), with effect from 6th May, 2004.*

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

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**Certificates authorising the taking of wild birds for certain purposes.**

4. [(1) Notwithstanding any of the provisions of this Ordinance the [Minister] of the States [Commerce and Employment Department] (hereinafter referred to as "**the [Minister]**") may grant a certificate available for such period as may be specified therein, (save that such period shall not exceed one year in respect of any such grant), authorising –

- (a) any person to kill or take within any area specified in the said certificate wild birds, their eggs or nests would otherwise be protected under this Ordinance but only for any of the following purposes –
  - (i) for supplying an order received from any zoological garden to which the public is admitted or from any public museum, or

- (ii) for any scientific purpose approved by the [Minister],
- (b) any person who in the opinion of the [Minister] is trained in the use of stupefying baits to kill or take in any building specified in the said certificate sparrows and starlings subject to such conditions as may be specified in the said certificate but only for the of controlling the infestation of such building by such birds and only where the [Minister] is satisfied that in the interest of health and hygiene and to prevent the contamination of or damage to such building or its contents it is expedient to grant such certificate.]
- (2) Any such certificate shall be renewable from time to time by the [Minister] on its expiry and revocable at any time by him in his absolute discretion.
- (3) Such certificate shall be carried by the holder when acting under the powers herein contained and shall be exhibited by the holder on demand to any member of the Island Police Force requesting the exhibition thereof.
- [(4) Any person who fails to comply with any condition of a certificate granted under this section shall be guilty of an offence under this Ordinance.]

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**NOTES**

*In section 4,*

*subsection (1) was substituted, and subsection (4) was inserted, by the Protection of Wild Birds (Amendment) Ordinance, 1974, respectively section 1(a) and section 1(b), with effect from 30th October, 1974;*

*the words "Minister" and "Commerce and Employment in square brackets, wherever occurring, were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, 2, Schedule 1, paragraph 2, with effect from 6th May, 2004.<sup>1</sup>*

*The functions, rights and liabilities of the Agriculture and Countryside 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 with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.<sup>2</sup>*

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**[[Actions pursuant to other Ordinances.]**

**4A.** Nothing in the preceding provisions of this Ordinance shall be construed as rendering unlawful anything done in good faith –

- (a) pursuant to the Animal Health Ordinance, 1996 or the Avian Influenza (Precautionary Measures) and Miscellaneous Provisions (Amendment) Ordinance, 2006 or any Order or direction made under them or licence issued under such an Order, or]
- (b) in the execution or purported execution of a direction given under section 2 of the Control of Birds Ordinance, 1985\* .]

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**NOTES**

*Section 4A (which was originally inserted by the Control of Birds 1985, section 7, with effect from 29th May, 1985) was substituted by the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005, section 1, with effect from 17th October, 2005.*

*In section 4A, paragraph (a) thereof, and the heading thereto, were*

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\* Recueil d'Ordonnances Tome XXIII, p. 258.

*substituted by the Avian Influenza (Precautionary Measures) and Miscellaneous Provisions (Amendment) Ordinance, 2006, section 34, Schedule 4, respectively paragraph 1(2)(b) and paragraph 1(2)(a), with effect from 27th September, 2006.*

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**Prosecutions.**

5. (1) Where any person has in his possession or control, or purchases, sells, or knowingly transports, or attempts to purchase, sell or transport any wild bird or the plumage or skin or part of any wild bird, or the egg or nest of any wild bird, at a time when such bird, egg or nest is protected under this Ordinance, it shall be deemed in any proceedings taken in connection therewith to have been killed, taken or knowingly transported, as the case may be, by such person in contravention of this Ordinance and the said killing, taking, or transporting shall be deemed to be an offence under this Ordinance unless he satisfies the Court that it was not or that he had reasonable grounds for believing that it was not, illegally killed or taken.

(2) Where any person shall be found apparently offending against this Ordinance, he shall, upon being requested so to do, by any member of the Island Police Force, give his Christian name, surname, and place of abode, and in case the person so apparently offending shall, after being so requested fail or refuse to give his real name or place of abode or give an untrue name or place of abode, it shall be an offence under this Ordinance.

**Penalties.**

6. (1) A person guilty of any offence against this Ordinance shall be liable on first conviction to a fine not exceeding [level 2 on the uniform scale] and in case of a second or subsequent conviction to a fine not exceeding [level 4 on the uniform scale] or to imprisonment for a period not exceeding one month.

(2) In addition to any other penalty which the Court has power to inflict for offences against this Ordinance, the Court may order that any bird, skin, egg or nest, in respect of which the offence was committed, shall be forfeited and

disposed of in its discretion, and may order any gun, trap, net, snare, decoy or instrument in respect of or by means of which the offence was committed to be forfeited or otherwise dealt with as the Court may direct, and shall also order that certificate or licence given under this Ordinance and held by the person convicted shall be cancelled.

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**NOTE**

*In section 6, the words and figures in square brackets were substituted by Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), effect from 1st July, 1989.<sup>3</sup>*

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**Interpretation.**

7. [(1)] In this Ordinance, unless the context otherwise requires, the expression "**Island**" includes the Islands of Guernsey, Herm and Jethou.

[(2)] Any reference in this Ordinance to any other enactment shall, except where the context otherwise requires, be construed as including a reference that enactment as amended, repealed or replaced, extended or applied by or under other enactment including this Ordinance.]

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**NOTE**

*In section 7, subsection (1) was renumbered, and subsection (2) was inserted, by the Protection of Wild Birds (Amendment) Ordinance, 1981, section 1(d), with effect from 9th December, 1981.*

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**Extent, commencement, and repeals.**

8. (1) This Ordinance shall apply to the Islands of Guernsey, Herm and Jethou and to the territorial waters thereof.

(2) The Ordinances set out in the Second Schedule to this

Ordinance are hereby repealed.

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**NOTE**

*The Ordinance was made and came into operation on 13th January, 1949.*

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REPEALED

Carrion Crow

Magpie

Wood-pigeon]

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**NOTE**

*The First Schedule was substituted by the Protection of Wild Birds (Amendment) Ordinance, 1981, section 1(e), with effect from 9th 1981.*

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SECOND SCHEDULE

Section 8(2)

Wild Birds Protection Ordinance, 1933. (No. X of 1933, passed on the 25<sup>th</sup> day of March, 1933).

Wild Birds Protection Ordinance, 1934. (No. XII of 1934, passed on the 12<sup>th</sup> day of May, 1934).

Seagulls eggs Ordinance, 1941. (No. VIII of 1941 passed on the 3<sup>rd</sup> day of May, 1941).

Ordonnance provisoire permettant la Destruction des Mouettes sur l'Aérodrome des États (1939). (No. LIV of 1939 passed on the 11<sup>th</sup> day of November, 1939).

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<sup>1</sup> The words in the second pair of square brackets in subsection (1) were previously substituted by the States Agricultural and Milk Marketing Board of Functions) Ordinance, 2001, section 3, Schedule 2, paragraph 6, with effect

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21st January, 2002.

<sup>2</sup> The functions rights and liabilities of the States Agriculture and Countryside Board were previously transferred to it from the States Agricultural and Milk Marketing Board by the States Agricultural and Milk Marketing Board (Transfer of Functions) Ordinance, 2001, section 1, Schedule 1, paragraph 6, with effect from 21st January, 2002, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance; the functions, rights and liabilities of the States Agricultural and Milk Marketing Board were previously transferred to it from the States Committee for Agriculture by the States Committee for Agriculture (Transfer of Functions) Ordinance, 1987, section 1, Schedule, with effect from 1st March, 1987, subject to the savings in section 3 of the 1987 Ordinance; the functions, rights and liabilities of the States Committee for Agriculture were previously transferred to it from the States Committee for Agriculture and Fisheries by the States Committee for Agriculture and Fisheries (Transfer of Functions) Ordinance, 1962, section 1, with effect from 12th December, 1962, subject to the savings in section 2 of the 1962 Ordinance.

<sup>3</sup> These words and figures were previously substituted by the Protection of Wild Birds (Amendment) Ordinance, 1965, section 1, with effect from 1st March, 1965; the Protection of Wild Birds (Amendment) Ordinance, 1981, section 1(c), with effect from 9th December, 1981.