



GOVERNMENT OF MALTA

**Government response to the Consultation on the
Conservation of Wild Birds (Amendment) Regulations,
2021**

08/10/2021

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Executive Summary

Introduction and overview

This was the second public consultation exercise following discussions at [Ornis Committee](#) on 17 March, 29 March and 12 May 2021. No comments were submitted during the [first public consultation exercise](#), which ended on 16 February 2021.

The first draft proposed the following legal amendments and provisions:

1. The removal of bird-callers from Schedule VIII of the Conservation of Wild Birds Regulations (SL 549.42) and thus proposed to render their use and possession subject to Court referral and the penalties set out in regulation 27.

2. Provisions to enable a person who is not licensed as a bird-ringer, in accordance with regulation 23(2), to capture certain birds for the purpose of geo-tagging, followed by their immediate release back into the wild, subject to:

- the submission of an application to the Wild Birds Regulation Unit by not later than two (2) months prior to the geo-tagging commencement date, including details of the species and quantity, the proposed methodology, including proposed dates, and the sites where geo-tagging will be carried out, in accordance with regulation 23(3)(c);
- the recommendations of the Ornis Committee, in accordance with regulation 10(6);
- the conditions specified in the licence issued for the purpose of geo-tagging by the Wild Birds Regulation Unit; and
- prior training on geo-tagging.

3. An amendment to paragraph (b) of the third proviso to sub-regulation (2) of regulation 27 to include “Part XV of the Code of Police Laws”.

4. An amendment to the English version of the third proviso to sub-regulation (3) of regulation 27 to remove reference to ‘hunting’ in the sentence: “ordered the disqualification from obtaining a hunting licence for life”.

Ornis recommendations and proposed legislative draft

During its meeting held on [17 March](#), the Ornis Committee did not agree that bird-callers should be rendered immediately subject to Court referral. The Committee proposed a two-step approach, retaining bird-callers for first-time offenders subject to an administrative fine just below the minimum penalty set out in regulation 27 (that is, just under €500), followed by Court referral for repeat offenders and thus subject to the penalties set out in regulation 27.

The Committee agreed to limit suspension and permanent revocation of the relevant licence, rather than all licences. This means that if a person is in possession of both a hunting and trapping licence and commits a hunting offence, his trapping licence is not suspended (or revoked) and vice-versa.

The Committee also agreed that the proposal on geo-tagging should be revisited to include additional elements such as in relation to the training course.

Proposed legislative draft

The current legislative draft reflects the recommendations of the Ornis Committee during its meeting held on 29 March and 05 May, 2021. These can be summarised as follows:

1. Suspension/revocation limited to the relevant licence only.
2. All geo-tagging projects to include a bird-ringing component in line with regulation 23(2), whilst rendering the bird-ringing requirement as optional in relation to huntable species (included in Schedule II of SL 549.42). The legal amendment also includes the procedures required for applicants to submit a geo-tagging proposal as specified by the Ornis Committee.
3. The introduction of a 12-point penalty system to regulation 27A and Schedule VIII of SL 549.42. Each offence category in Schedule VIII is assigned a number of points, ranging from two to four. Once an individual accumulates an aggregate of twelve points or more during a two-year period, his general licence (the one associated with the offences committed in case he has multiple licence categories) will be suspended by the Wild Birds Regulation Unit for a period of one (1) year, in line with the proposed amendment to regulation 11. All points will be reset to zero if the licensee does not commit other offences as found in Schedule VIII within two years from the date of last offence.

Three new administrative fines have been included in Schedule VIII, currently subject to immediate Court referral:

- Live-decoys in excess of the limit permitted by virtue of a live-capturing special licence.
 - Failure to comply with the minimum cage dimensions as specified in the special licence for the relevant species.
 - Failure to report specimens subject to Article 9(1)(c) derogations that are fitted with a scientific ring to the Wild Birds Regulation Unit and/or failure to immediately release them back into the wild after the details of the scientific ring have been recorded. Article 9(1)(c) derogations are those that permit the keeping of birds caught, currently limited to Golden Plovers and Song Thrushes by virtue of S.L.549.74.
4. The fines pegged to each offence category are proposed to remain as those listed in the current Schedule VIII of S.L.549.42. No increase in fines are proposed.

The draft Legal Notice amendment was issued for public consultation between 8 September and 7 October 2021, inclusive of both dates. The objective of the consultation was to invite the public to submit representations on the draft amendment.

This consultation sought views on the legal amendment as outlined in this section.

Responses to the consultation and process used to seek stakeholder views

This document is the Government Response to this consultation and sets out the Government's decisions on these matters.

The consultation closed on 7 October 2021. The consultation document (i.e. the draft Legal Notice) was available online and responses were accepted electronically. In total, there were 2 submissions, one from an independent individual and one from a hunting organisation. Respondent's comments submitted *ad verbatim* are included as Annex A to this report.

Summary of responses and decisions

The following is a summary of the consultation responses received. We would like to thank all those who took the time to review this legal amendment.

Statistics.

- Total feedback received: 2
- Total feedback received by individuals: 1
- Total feedback received by organisations: 1
- Total feedback received through email: 2
- Total feedback received through online form: X
- Total feedback received by post: X

The respondents' comments requested clarification on the new provisions of the Legal Notice and put forward their views on the new proposed penalty points system.

Contact Details

If you have any questions regarding this response, please contact us on wildbirds@gov.mt

Annex A: List of respondents

Ref No.	Date Received	Name and Surname / Name of Entity ¹	Comments Received	Response by WBRU
1	13/09/2021	Stefano Miceli	<p>I am making this submission to the currently ongoing public consultation in my personal capacity.</p> <p>The penalty point system as currently proposed will not be an effective deterrent, in view that it is too generous and a person will have to be caught breaking the law at least 3 times during a 2 year period to face repercussions. This will not result in any change to the status quo with respect to illegal bird callers. In this regard, I would like to suggest that the administrative fine for the use or possession of electronic bird callers is increased to at least 350 euro. It is amply clear that the 250 euro fine was not a deterrent over the past years, especially as regards golden plover. Alternatively, as a less effective second preference, the penalty points for this purpose should be increased from 4 to 6.</p>	The proposed penalty points system will introduce a much higher deterrent given that the current administrative fines system does not set any limits for repeat offenders.
2	07/10/2021	Saint Hubert Hunters (KSU)	<p>1.1 Following amendments approved by ORNIS in May The Wild Birds Regulation Unit (WBRU) has invited stakeholders and interested parties to participate in the public consultation on the proposed changes entitled Conservation of Wild Birds (Amendment) Regulations, 2021.</p> <p>1.2 Following an in-depth analysis of the proposed amendments, Kaccaturi San Ubertu (KSU) has drafted an impact report through which, on behalf of its members and the hunting community at large, it is providing an input in the public consultation.</p>	

¹ Included unless a request for confidentiality has been made.

			<p>1.3 Through the Public Consultation process, KSU will be addressing the negative impact that will place an unproportionally high burden on the hunting community should certain amendments remain unaltered.</p> <p>1.4 It should be noted that KSU, despite representing over a third of the hunting community, was not participant to any discussions or informed of such amendments prior to the public consultation phase.</p> <p>Conservation of Wild Birds Regulations 2 - Regulation 11: <i>“(9) The Wild Birds Regulation Unit, assisted by the Executive Police, shall immediately suspend the relevant general licence for a period of one (1) year whenever a licensee accumulates in aggregate twelve (12) penalty points or more during a two-year period, in accordance with regulation 27A”.</i></p> <p>Considering amendments to regulation 27(2) we understand this amendment rightfully distinguishes between those penalized in relation to a hunting offense not having their live-capturing license suspended or vice-versa. However, considering the hunting of wild rabbit falls under specific regulations as a license category and will remain unsuspended for a bird hunting infringement or vice versa, we ask the following in respect of the Hunting of Birds which fall under two other different categories of the General License where no distinction is being made on the respective suspension in the proposed amendments:</p> <p>A) Considering the General License suspension will reflect the relevant license or permit, will a person in possession of both General License categories to hunt birds on land and at sea land, have both these categories suspended or only that related to the offences committed when accumulating 12 points in the specified period? As an example, we cite a person holding both a hunting birds on land and at sea General License categories that was penalized on points</p>	<p>1.1</p> <p>A) The proposed legal amendment specifically mentions “the respective general licence”. Since hunting of birds on land and hunting at sea are two separate general licences and cannot be carried out concurrently, only that licence for which the corresponding penalty points have been accumulated will be suspended. Thus, there is a clear distinction between the associated accumulation of penalty points per general licence category.</p> <p>B) No. Whenever a specific licence is suspended for a period of one year, an interim general licence card listing the other (valid) licence categories will be provided to the licensee, free of charge.</p> <p>C) When police officers carry out spot-checks on individuals, they</p>
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			<p>related to bird hunting on land. Will his hunting birds at sea category also be suspended or vice versa?</p> <p>B) Considering that stated in Clause (11) whereby the WBRU will return the General License “following termination of the suspended period”. The validity of General Licenses is that of 5 years for all categories. Will the person whose relevant license category was suspended for a year be denied possession of a General License reflecting the categories not effected by the suspension?</p> <p>C) The General License is not requested during police field checks. Will this be made mandatory in order to reflect the proposed amendment related to suspensions is enforced?</p> <p>D) Will the individual’s police weapons license for any suspended General License category also be suspended for that particular year or will its renewal during the period of suspension be possible? We ask this since the General License is not linked or requested when paying police hunting licenses. The renewal of licenses, in some instances acceptable on presentation of a rubber stamp on Hunting booklets, is conditioned by proof of insurance and membership in a recognized hunting organization which makes no distinction on the category of General Licenses or its validity.</p> <p>E) Will the hunting organizations be informed of any suspended or permanent revocation of license or permit in order to suspend or revoke membership accordingly?</p> <p>2.1 The carry forward and resetting of penalty points The proposal states that: <i>“If at any time during a two-year period a person accumulates an aggregate twelve (12) penalty points or more as specified in Schedule VIII, the offence or offences committed shall be punishable in terms of sub-regulation 11(9) and the immediate confiscation of the corpus</i></p>	<p>verify whether that individual is in possession of a valid general licence for which he is practicing the associated activity. This is standard procedure adopted by all enforcement personnel.</p> <p>D) No. The police weapons licence will not be suspended. Only the general licence category for which twelve penalty points have been accumulated will be suspended. Without a valid general licence the individual cannot practice that specific activity pegged to the general licence category (see regulation 12(1) of S.L.549.42).</p> <p>E) Permanent revocation of licences infers that the individual cannot apply for renewal or initiate the licence procedure afresh with the Executive Police or WBRU for that particular licence category, even if he is still a member of a hunting organisation.</p> <p>2.1 The objective behind the proviso that states “...the licensee shall remain subject to accumulation of penalty</p>
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			<p><i>delicti as specified in the Schedule: Provided that the accumulated points shall revert back to zero and the two-year period shall be reset if the licensee does not commit other offences listed in Schedule VIII within two years from the date of last offence: Provided further that, in all cases, following reversion to zero points and resetting of the two-year period and, the licensee shall remain subject to accumulation of penalty points for offences listed in Schedule VIII.”</i></p> <p>This proposed system is very discriminatory when compared to that applicable to another licenced activity. That of motor vehicle drivers. The system in place for motorists resets points after 12 calendar months from the offence and withdraws the licence for a period of 3 months; offers the possibility of resetting the points by 50 per cent following a theory test; and does not accumulate points over 2 years from the last offence.</p> <p>Hence, a motorist who infringed the traffic code and tallied 8 points has the possibility to reduce them to 4; has the possibility of deducting the points tallied for an infringement 12 months from the infringement date; and does not have to wait the expiration of 2 years from the last infringement.</p> <p>If the case of a motorist and a hunter, both infringing their respective licence conditions one every two years, is taken in parallel, the following case results occur.</p>	<p>points for offences listed in Schedule VIII” is to ensure that any administrative offences carried out following resetting to zero points after the two-year period will continue to be subject to the twelve-point penalty system. Thus, this will ensure that resetting to zero does not infer that the penalty points system will no longer apply for any administrative offences committed thereafter.</p>
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	Motorist					
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Infringement	Yes	No	Yes	No	Yes	No
Points	4	0	4	0	4	0
Accumulated points	4	0	4	0	4	0

	Hunter					
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Infringement	Yes	No	Yes	No	Yes	Not licenced
Points	4	0	4	0	4	
Accumulated points	4	4	8	8	12	

Clearly, unless resetting points as per driving offences is taken into consideration, the conditions related to resetting after two years from the date of the last offence needs revising in order to reflect a fair and balanced penalty system. The example listed in the above tables shows the unfairness of the system being proposed.

Kaccaturi San Ubertu contend that persons who within a two year period accumulate 12 points or more will have their General License suspended for one calendar year with any points in excess of 12 carried forward to the next 2 year period following suspension.

Kaccaturi San Ubertu therefore propose that the following amendment:

If at any time during a two-year period a person accumulates an aggregate twelve (12) penalty points or more as specified in Schedule VIII, the offence or offences committed shall be punishable in terms of sub-regulation 11(9) and the immediate confiscation of the corpus delicti as specified in the Schedule: Provided that the accumulated points shall revert back to zero and the two-year period shall be reset if the licensee does not commit other offences exceeding 12 points listed in Schedule VIII within this two year period:

			<p><i>Provided further that, in all cases, following reversion to zero points and resetting of the two-year period and, the licensee shall remain subject to accumulation of penalty points in excess of 12 during any 2 year period for offences listed in Schedule VIII. which are carried forward to the next two year period following the suspension of the General License.</i></p> <p>2.2 Appeal Apart from proposing a set time frame for any appeal within the set 2 year period, with regards to the paragraph below we disagree with penalty points remaining applicable should a licensee appeal. We contend that a person’s right to appeal should be respected in line with the basics of justice.</p> <p><i>“Provided further that, should the licensee appeal to the Administrative Review Tribunal and until the Tribunal decides whether or not to revoke or modify the administrative penalty, the two-year period shall continue to apply and the penalty points related to the offence in question shall remain valid and shall be added to any penalty points that the accused may have subsequently accumulated, and shall only be deducted from his total if he is acquitted of the charges brought against him.”</i></p> <p>Kaccaturi San Ubertu therefore propose the following amendment:</p> <p><i>“Provided further that, should the licensee appeal to the Administrative Review Tribunal and until the Tribunal decides whether or not to revoke or modify the administrative penalty, the two-year period shall continue to apply and the penalty points related to the offence in question shall remain on hold and shall not be added to any penalty points that the accused may have subsequently accumulated, and shall only be added to his total if he is not acquitted of the charges brought against him.”</i></p> <p>3 - Regulation 8(2) Decoy Birds in excess of that permissible by regulation</p>	<p>2.2</p> <p>The deadline for submission of an appeal to the Administrative Review Tribunal shall be in accordance with the Administrative Justice Act (CAP.490).</p> <p>Any additional administrative offences carried out by the licensee following submission of an appeal shall be without prejudice to the appeals period and such penalty points shall be immediately added to the tally. Offences carried out after submission of an appeal are separate to (independent from) the actual appeal process since the appeal cannot be submitted for any offences that may be committed thereafter. Hence, the penalty points should be deducted immediately and not linked to the outcome of the appeal.</p> <p>3</p> <p>This administrative fine is directly linked to proportionality, considering that it has a bearing on the proper implementation of Article 9(1)(c) live-capturing derogations, which can only be properly implemented if, <i>inter alia</i>, they are limited in scope. The penalty</p>
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		<p>The current fine and the proposed penalty fail to fully address the varying severity of the infringement. While it is agreed that the permissible amount of decoys birds should not be exceeded, the proposal does not distinguish between marginal and significant infringement and neither for first time and repeat offenders.</p> <p>KSU proposes that:</p> <ul style="list-style-type: none"> (a) the penalty (fine), per decoy birds in excess of that stipulated in the regulations, is reduced from €50 to €25 for the first 5 birds; (b) the penalty (fine), per decoy birds in excess of that stipulated in the regulations, is retained at €50 for that in excess of 5 birds; (c) the penalty (fine), per decoy birds in excess of that stipulated in the regulations, is retained at €50, irrespective of the number of decoy birds, for repeat offenders; (d) the proposed penalty points are reduced from 3 to 2 for excesses between 1 and 5 decoy birds and retained at 3 for excesses above 5 decoy birds. (e) the proposed penalty points are retained as proposed for repeat offenders. <p>Size of retention cage of decoy birds</p> <p>The current fine and the proposed penalty fail to fully address the varying severity of the infringement. While it is agreed that decoy birds are not kept in cages that are smaller than the minimum permissible size, the proposal does not distinguish between marginal and significant infringement and neither for first time and repeat offenders.</p> <p>KSU proposes that:</p> <ul style="list-style-type: none"> (a) the penalty (fine), per cage, smaller than that stipulated in the regulations, is reduced from €50 to €25 for the first 5 birds; (b) the penalty (fine), per cage, smaller than that stipulated in the regulations, is retained at €50, for that in excess of 5 birds; 	<p>pegged to each additional live-decoy (€50 per additional live-decoy) fully addresses the varying severity of the infringement since the more additional live-decoys used over and above the statutory limit, the higher the penalty.</p> <p>This administrative penalty fully addresses the varying severity of the infringement since it is directly linked to the amount of cages smaller than the minimum standard set out in the law. Thus, the higher the number of cages within the minimum standard, the lower the fine.</p>
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			<p>(c) the penalty (fine), per cage, smaller than that stipulated in the regulations, is retained at €50, irrespective of the number of cages, for repeat offenders;</p> <p>(d) the proposed penalty points are reduced from 2 to 1 for up to 5 cages smaller than stipulated in the regulations;</p> <p>(e) the proposed penalty points are retained as proposed, at 2, for over 5 cages smaller than stipulated in the regulations;</p> <p>(f) the proposed penalty points are retained as proposed, at 2, for repeat offenders.</p> <p>Conclusion</p> <p>The proposals placed for consideration by Kaccaturi San Ubertu follow the European Union (EU) Charter of Fundamental (Human) Rights, that is binding for all EU Member States.</p> <p>Specifically, Article 49, Principles of legality and proportionality of criminal offences and penalties, sub-article 3, which states that: “The severity of penalties must not be disproportionate to the criminal offence.”</p> <p>Therefore we note that the proportionality principle is not being respected:</p> <p>(a) By failing to distinguish between the level of infringement between first time and repeat offenders;</p> <p>(b) applying the same fine for all levels of infringement and for first and repeat offenders;</p> <p>(c) applying the same penalty points for all levels of infringement for first and repeat offenders;</p> <p>(d) applying harsher deterrents for hunting related offences than those for far more serious and life-threatening offences</p> <p>(e) Denying the presumption of innocence when a penalty has been appealed by a licensee.</p> <p>We ask for your in-depth evaluation of our proposals and clarifications on the points raised above and thank you for your attention.</p>	<p>The proposed penalty points system <i>is</i> fully proportional to the severity of each respective administrative offence.</p> <p>The proposed legal amendment seeks to achieve an adequate and proportional deterrent against administrative offences and is specifically designed to curb repeat offences through fines and accumulation of penalty points.</p> <p>See reply under section 2.2 regarding presumption of innocence and the appeals process.</p>
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