

Ordinance 11 of 2018

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**FIXED PENALTY (AMENDMENT) ORDINANCE
2018**

An Ordinance to amend the Fixed Penalty Ordinance 2010

J. Illingworth
ADMINISTRATOR

12 November 2018

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title and commencement

1. This Ordinance may be cited as the Fixed Penalty (Amendment) Ordinance 2018 and comes into force on 14 November 2018.

Amendments to the Fixed Penalty Ordinance

2. The Fixed Penalty Ordinance 2010(a) is amended in accordance with sections 3 to 8.

Insertion of Part heading

3. Before section 1 (short title) insert—

(a) Ordinance 25/2010 as amended by Ordinances 34/2014, 8/2015, 10/2015 and 09/2016, and P.I.s 8/2013 and 23/2013.

“PART 1

General”.

Amendments to section 2

- 4.**—(1) Section 2 (interpretation) is amended in accordance with this section.
- (2) In the definition of “fixed penalty”—
- (a) after “section 3(1) or (2)” insert “or section 12(1) or (2)”; and
 - (b) after “section 4(b) insert “or section 13(b)”.
- (3) In the definition of “notice” after “section 3” insert “or section 12”.
- (4) After the definition of “notice” insert—
- ““officer in charge of a police station” has the same meaning as the Criminal Procedure Ordinance 2016(a).”.

Amendment to section 3

- 5.** In subsection (4) of section 3(b) (serving of notice on offenders) omit “127,”.

Insertion of Part 2

- 6.** After section 10 (repeals and revocations) insert—

“PART 2

Offences under the Game and Wild Birds Ordinance 2008

Application and interpretation

- 11.**—(1) This Part applies to offences committed under the 2008 Ordinance.
- (2) In this Part, and Schedule 3,—
- “2008 Ordinance” means the Game and Wild Birds Ordinance 2008(c);
 - “game warden” has the meaning assigned to it by section 2 of the 2008 Ordinance;
 - “RoC Schedule 1” means Schedule I of the corresponding Republican Law;
 - “RoC Schedule 9” means Schedule IX of the corresponding Republican Law;
 - “section 28A(2) fine” means the maximum fine referred to in section 28A(2) of the 2008 Ordinance(d); and
 - “section 55 fine” means the maximum fine referred to in section 55 of the 2008 Ordinance(e).

Serving of notice on offenders: offences under the 2008 Ordinance

- 12.**—(1) The following persons may issue and serve a notice in writing on a person they suspect is committing or has committed any offence under the 2008 Ordinance within 45 days of the commission of the offence giving that person the opportunity of avoiding prosecution in relation to such offence by paying a fixed penalty—

(a) Ordinance 9/2016. “Officer in charge of a police station” is defined in section 3 of that Ordinance.
(b) Section 3(4) was amended by Ordinances 34/2014 and 10/2015.
(c) Ordinance 21/2008.
(d) Section 28A(2) was inserted by Ordinance 8/2013.
(e) Section 55 was amended by Ordinance 10/2018.

- (a) a police officer; or
- (b) a game warden authorised in writing by the Chief Officer to issue a fixed penalty in respect of that offence.

(2) In relation to the offences referred to in Part 1 of Schedule 3, a notice may also be issued and served as provided for in subsection (1) by—

- (a) an Area Officer; or
- (b) an investigating officer if the offence is one that the investigating officer is authorised to investigate.

(3) The power conferred by subsection (2) is a modified general delegated function under the Delegation of Functions to the Republic Ordinance 2007 in respect of the offences set out in serial number 14 of Part 1 of Schedule 3.

(4) The modification referred to in subsection (3) is that section 18(c) (prohibition on compounding any offence) of the Delegation of Functions to the Republic Ordinance 2007(a) does not apply.

Criminal proceedings and increase of fixed penalty after serving of notice: offences under the 2008 Ordinance

13. If a notice is served in relation to an offence under the 2008 Ordinance—

- (a) proceedings must not be instituted for that offence within 45 days of the service of the notice;
- (b) the amount payable by way of fixed penalty is increased by 50% if it is not paid within 30 days of the service of the notice;
- (c) the person served with the notice must not be prosecuted for that offence if the fixed penalty, including any increase in the penalty under paragraph (b), is paid within 45 days of the service of the notice.

Content of notice: offences under the 2008 Ordinance

14. A notice must provide sufficient particulars of the circumstances alleged to constitute an offence under the 2008 Ordinance and must state—

- (a) the period during which, by virtue of section 13, proceedings must not be brought for the offence;
- (b) the amount of the fixed penalty including any increase which would arise as a result of non-payment within 30 days;
- (c) the person to whom and the address at which the fixed penalty may be paid;
- (d) that the fixed penalty may be paid—
 - (i) in cash;
 - (ii) by cheque; or
 - (iii) by any other method determined by the Chief Officer by notice published in the Gazette.

Evidence of payment: offences under the 2008 Ordinance

15.—(1) The person to whom a fixed penalty is paid under section 14 must issue a receipt for the payment and in any court proceedings such receipt is admissible as evidence of that payment.

(a) Ordinance 17/2007.

(2) Payment of a fixed penalty is not a conviction for the offence to which the fixed penalty relates, but a court may take it into account when considering sentencing in relation to the commission of similar offences.

Fixed penalties: offences under the 2008 Ordinance

16.—(1) Subject to subsection (6) the amount of a fixed penalty which is imposed for any offence under the 2008 Ordinance not referred to in Schedule 3 is 10% of the section 55 fine.

(2) The amount of a fixed penalty which is imposed for an offence under section 55B of the 2008 Ordinance (attempts to commit offences) is the same as if the person had actually committed the offence they attempted to commit.

(3) Subject to subsections (5) and (6) the amount of a fixed penalty which is imposed for any offence listed in Schedule 3 is the amount shown in the column headed “Fixed Penalty” in relation to that offence.

(4) Subsection (5) applies where—

- (a) a person (P) has been issued with a notice in respect of an offence referred to in Part 2 Table 1 of Schedule 3, and
- (b) as a result of the investigation of that offence P is suspected of having committed a related offence under the 2008 Ordinance, set out in serial numbers 23 and 24 of Part 1 of Schedule 3 (O).

(5) Subject to subsection (6), the amount of the fixed penalty imposed for O is 5% of the section 55 fine.

(6) The maximum amount of a fixed penalty that may be imposed in respect of an offence under the 2008 Ordinance is the maximum fine that could be imposed by a court for that offence.

Procedure for issuing notices: offences in Part 2 Table 1 of Schedule 3

17.—(1) This section applies to notices issued in respect of the offences referred to in Part 2 Table 1 of Schedule 3.

(2) Before issuing a notice the police officer or game warden must seize the evidence relating to the offence, take it to a police station and prepare a statement setting out the details of the offence.

(3) Any evidence seized by a game warden in accordance with subsection (2) must be handed over to the officer in charge of the police station who must take possession of it.

(4) The evidence referred to in subsection (2) must be brought before a Judge.

(5) Section 46 of the Criminal Procedure Ordinance 2016 applies to an item brought before a Judge under subsection (4) as it applies to an item brought before a Judge in accordance with section 36 of that Ordinance.”.

Amendments to Schedule 2

7. In Schedule 2 (offences falling within the jurisdiction of the SBA Police, Area Officers and investigating officers) omit the entries with serial numbers 119 to 127I(a) and 131 to 135.

Insertion of Schedule 3

8. After Schedule 2 insert—

(a) The entries with serial numbers 119 to 127 were substituted, and the entries with serial numbers 127A to 127I were inserted, by P.I. 08/2013.

“SCHEDULE 3

Section 12 & 16

Offences under the Game and Wild Birds Ordinance 2008

PART 1

Serial No.	Description of offence	Fixed penalty	Provision of the 2008 Ordinance
1.	Exceeding the maximum number of game which may be hunted or possessed in regulations made under section 17(1)(a).	€170 for each item of game that exceeds the prescribed number.	Section 17(1)(a) and (3)
2.	Failure to kill game immediately.	€150	Section 26(2A) and (3)
3.	Exceeding the number of hunting dogs that may be trained, exercised or allowed to roam in regulations made under section 17(1)(f).	€100	Section 17(1)(f) and (3)
4.	Training or exercising hunting dogs without a game licence to hunt with a dog, or not in accordance with such a licence.	€200	Section 19(1B)(i), (2) and (3)
5.	Hunting accompanied by dogs without a game licence to hunt with a dog, or not in accordance with such a licence.	€150	Section 19(1A), (2) and (3)
6.	Exceeding the number of hunting dogs that may accompany a hunter in regulations made under section 17(1)(fa).	€100 for every dog that exceeds the prescribed number.	Section 17(1)(fa) and (3)
7.	Hunting accompanied by hunting dogs in any area otherwise than in accordance with regulations made under section 17(1)(e) or where permitted under section 48B.	€300	Section 17B(1) and (5)

8.	Training or exercising hunting dogs, or allowing them to roam, unless accompanied and controlled by way of a leash or otherwise than in accordance with regulations made under section 17(1)(g), pursuant to the terms of a licence under section 15 of the Dogs Ordinance 2006, or where permitted under section 48B.	€300	Section 17B(2) and (5)
9.	Training or exercising racing dogs, or allowing racing dogs to roam, unless accompanied and controlled by way of a leash or otherwise than in accordance with regulations made under section 17(1)(h).	€500	Section 17B(3) and (5)
10.	Training or exercising any dog, or allowing any dog to roam, between sunset and sunrise unless accompanied and controlled by way of a leash or otherwise in accordance with regulations made under section 17(1)(i) or where permitted under section 48B.	€500	Section 17B(4) and (5)
11.	Exceeding the number of dogs which may accompany a shepherd or animal breeder in regulations made under section 17(1)(k).	€50 for every dog that exceeds the prescribed number.	Section 17(1)(k) and (3)
12.	Transporting a hunting dog in a vehicle otherwise than in an appropriate cage.	€100	Section 17A(1) and (3)
13.	Transporting dogs that are not hunting dogs in a vehicle on an unpaved road otherwise than in an appropriate cage.	€100	Section 17A(2) and (3)

14.	Training or exercising hunting dogs in accordance with a game licence to hunt with a dog but without a game licence, or not in accordance with a game licence.	€50	Section 19(1B)(ii), (2) and (3)
15.	Failure to carry or produce a game licence.	€25	Section 20
16.	Failure to wear hunting orange.	€50	Section 22
17.	Display of live game which has been captured.	€85	Section 23(1)(a) and (2)
18.	Display of dead game from motorised transport.	€85	Section 23(1)(c) and (2)
19.	Disposing of spent cartridges or other waste while hunting.	€50 in addition to €1 for every cartridge disposed of unlawfully	Section 24(1) and (3)(a)
20.	Failure to possess at least as many spent cartridges as items of game.	€50 in addition to €1 for any item of game that a spent cartridge is not possessed in relation to	Section 24(2) and (3)
21.	Failure to retain part of caught game's plumage until reaching the final destination at the end of the hunt.	€85	Section 25
22.	Using the items specified in section 26(1)(b) (searchlights, mirrors or any other means of dazzling) otherwise than in accordance with a licence.	€200	Sections 14(3) and 26(1)(b) and (3)
23.	Using the items specified in section 26(1)(d) (models and appliances which emit imitative sounds) otherwise than in accordance with regulations made under section 17(1)(l) or a licence.	€500	Sections 14(3) and 26(1)(d) and (3)

(a) Section 24 as amended by Ordinance 8/2013.

24.	Possessing the items specified in section 26(1)(d) (models and appliances which emit imitative sounds etc.) otherwise than in accordance with regulations made under section 17(1)(l) or a licence.	€500	Sections 14(3) and 27(1) and (3)
25.	Failure to display licence to deal in game in a conspicuous place.	€40	Section 36(1) and (4)
26.	Carrying an assembled shotgun during the hours that hunting is prohibited without a permit.	€150	Section 38(1)(c) and (5)
27.	Carrying a shot gun in a manner described in section 38(1)(a) – (c) while failing to hold a necessary licence or failing to dismantle and store the shot gun in a container.	€150	Section 38(1)(ii) and (5)
28.	Failure to display taxidermist's licence in a prominent place.	€40	Section 42(4)(a) and (9)

PART 2

TABLE 1

Serial No.	Description of offence	Fixed penalty	Provision of the 2008 Ordinance
1.	Using the items specified in section 13(2)(a) (mist-nets, limesticks, nooses etc.) otherwise than in accordance with a licence.	10% of the section 55 fine in addition to the fixed penalty specified in Part 2 Table 2 for the prohibited method of hunting.	Sections 13(2)(a) and (5) and 14(3)
2.	Using the items specified in section 13(2)(d) (nets, traps, poisoned or anaesthetising bait) otherwise than in accordance with a licence.	10% of the section 55 fine in addition to the fixed penalty specified in Part 2 Table 2 for the prohibited method of hunting.	Sections 13(2)(d) and (5) and 14(3)
3.	Using the items specified in section 26(1)(a) (mist-nets, limesticks, hooks etc.) otherwise than in accordance with a licence.	10% of the section 55 fine in addition to the fixed penalty specified in Part 2 Table 2 for the prohibited method of hunting.	Sections 14(3) and 26(1)(a) and (3)
4.	Possessing the items specified in section 26(1)(a) (mist-nets, limesticks, hooks etc.) otherwise than in accordance with a licence.	10% of the section 55 fine in addition to the fixed penalty specified in Part 2 Table 2 for the prohibited method of possessing.	Sections 14(3) and 27(1) and (3)
5.	Hunting game without a game licence, or not in accordance with such a licence.	10% of the section 55 fine.	Section 19(1), (2) and (3)

6.	Hunting between sunset and sunrise.	<p>Where the offence relates to hares: 50% of the section 28A(2) fine in addition to the penalty specified in Part 2 Table 2 for hares.</p> <p>Where the offence does not relate to a hare: 40% of the section 28A(2) fine in addition to the penalty specified in Part 2 Table 2 for any birds of a species listed in RoC Schedule 9 to which the offence relates.</p>	Section 28A
7.	Hunting during a close season without a licence.	<p>Where the offence relates to hares: 50% of the section 55 fine in addition to the penalty specified in Part 2 Table 2 for hares.</p> <p>Where the offence does not relate to a hare: 40% of the section 55 fine in addition to the penalty specified in Part 2 Table 2 for any birds of a species listed in RoC Schedule 9 to which the offence relates.</p>	Section 29(1) and (3)
8.	Possessing game during a close season.	<p>Where the offence relates to hares: 50% of the section 55 fine in addition to the fixed penalty specified in Part 2 Table 2 for hares.</p> <p>Where the offence does not relate to a hare: 40% of the section 55 fine in addition to the penalty specified</p>	Section 30(1) and (3)

		in Part 2 Table 2 for any birds of a species listed in RoC Schedule 9 to which the offence relates.	
9.	Any offence not mentioned elsewhere in this Schedule that relates to a species of bird listed in RoC Schedule 1.	10% of the section 55 fine in addition to the penalty specified in Part 2 Table 2 for any birds of a species listed in RoC Schedule 1 to which the offence relates.	Any relevant section
10.	Any offence not mentioned elsewhere in this Schedule that relates to a species of bird listed in RoC Schedule 9.	80% of the section 55 fine in addition to the penalty specified in Part 2 Table 2 for any birds of a species listed in RoC Schedule 9 to which the offence relates.	Any relevant section
11.	Any offence not mentioned elsewhere in this Schedule that relates to a species of bird not listed in RoC Schedule 1 or RoC Schedule 9.	10% of the section 55 fine in addition to the penalty specified in Part 2 Table 2 for any birds of a species not listed in RoC Schedule 1 or RoC Schedule 9 to which the offence relates.	Any relevant section
12.	Any offence not mentioned elsewhere in this Schedule that relates to hares.	10% of the section 55 fine in addition to the penalty specified in Part 2 Table 2 for any hares to which the offence relates.	Any relevant section

TABLE 2

Fixed penalties for prohibited methods of hunting or possessing			
Serial No.	Prohibited method of hunting or possessing	Provision of the 2008 Ordinance	Fixed penalty

1.	Mist-nets or nets	Section 13(2)(a) and (d), and (5). Section 26(1)(a) and (3). Section 27(1) and (3).	€500 for each mist-net or net exceeding one.
2.	Limesticks or hooks	Section 13(2)(a) and (5). Section 26(1)(a) and (3). Section 27(1) and (3).	€10 for each limestick or hook exceeding one.
3.	Nooses, knots or wire-knots	Section 13(2)(a) and (5). Section 26(1)(a) and (3). Section 27(1) and (3).	€500 for every noose, knot or wire knot exceeding one.
4.	Iron-traps or leghold traps	Section 13(2)(a) and (5). Section 26(1)(a) and (3). Section 27(1) and (3).	€500 for every iron-trap or leghold trap exceeding one.
5.	Electrocuting devices or any other electronic devices capable of killing or stunning.	Section 13(2)(a) and (5). Section 26(1)(a) and (3). Section 27(1) and (3).	€1,000 for every device exceeding one.
Fixed penalties for different species			
Serial No.	Species	Fixed penalty	
6.	Bird species listed in RoC Schedule 1	€100 for every bird exceeding one.	
7.	Bird species listed in RoC Schedule 9	€4,000 for every bird exceeding one.	
8.	Bird species not listed in RoC Schedule 1 or RoC Schedule 9	€10 for every bird exceeding fifty.	
9.	Hares	€1,000 for every hare exceeding one.”.	

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Fixed Penalty (Amendment) Ordinance 2018 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The Ordinance amends the Fixed Penalty Ordinance 2010 (the “2010 Ordinance”). It reflects amendments made by the Republic to fixed penalties issued in respect of offences under the Protection and Management of Game and Wild Birds Law by Law 99(I)/2017.
3. Section 6 of the Ordinance inserts new Part 2 into the 2010 Ordinance relating to fixed penalties issued under the Game and Wild Birds Ordinance 2008 (the “2008 Ordinance”).
4. New section 12 sets out who can issue fixed penalties and in what amounts. Fixed penalties can be issued by police officers or game wardens authorised by the Chief Officer in respect of any offences under the 2008 Ordinance. Area Officers and investigating officers can also issue fixed penalties for offences listed in Part 1 of Schedule 3. The power to issue a fixed penalty for failing to carry or produce a game licence is a modified general delegated function, as it was previously in the 2010 Ordinance.
5. New section 13 sets out the time at which criminal proceedings may commence, the circumstances under which a fixed penalty may be increased, and the circumstances in which a person served with a fixed penalty notice may not be prosecuted.
6. New section 14 sets out the necessary contents of a notice served under the 2008 Ordinance.
7. New section 15 provides that a receipt issued for the payment of a fixed penalty notice is evidence, admissible in court, of that payment. It also provides that payment of a fixed penalty is not a conviction for the offence to which the fixed penalty relates.
8. New section 16 sets out the level of fixed penalties for offences under the 2008 Ordinance. The fixed penalties for various offences are specified in Schedule 3. Where a fixed penalty is issued for an offence listed in Part 2 Table 1 of Schedule 3 the fixed penalty for any related offences, other than most of those listed in Part 1 of Schedule 3, is 5% of the fine specified in section 55 of the 2008 Ordinance.
9. Where the amount of the fixed penalty is not specified for an offence the penalty is 10% of the fine specified in section 55 of the 2008 Ordinance. The fixed penalty for an attempt to commit an offence under the 2008 Ordinance is the same as if the offence had actually been committed. The amount of the fixed penalty cannot exceed the maximum financial penalty that could be imposed for the offence on conviction.
10. New section 17 of the 2010 Ordinance sets out the procedure for issuing fixed penalties for the offences listed in Part 2 Table 1 of Schedule 3 of the 2008 Ordinance. The evidence of the offence must be seized, and where the evidence is seized by a game warden it must be handed over to the police. The evidence must be handled by the police in accordance with the Criminal Procedure Ordinance.
11. Section 8 of the Ordinance inserts new Schedule 3 into the 2010 Ordinance, which specifies fixed penalties for various offences.

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