

Legal

A guide to the Wildlife & Countryside Act 1981

by Joshua Quinn of Knights Solicitors

CHARTERED SURVEYORS AND SOLICITORS WITH an agricultural element in their practices will have come across cases relating to game shooting from time to time. The key statute that covers this legal area is the Wildlife & Countryside Act 1981 (the Act), which is a sensible starting point for all wildlife issues.

WILDLIFE LEGISLATION AND PEST CONTROL

Before considering any pest control it is important to know the laws that protect wild birds and animals. If you have broken a particular law (deliberately or not) that is covered by the Act, there is little that can be put forward as a defence. Ignorance of the law is never a defence.

Sometimes there might be a specific defence available within the Act but, if prosecuted, the burden will be on you to convince the court that the defence applies to your case.

For some offences, generally the more serious ones, you will be guilty only if you intended to do the offence. Although it is for the prosecution to prove that you had intent, this does not necessarily require clear evidence: a court can draw inferences from the circumstances, and in practice, magistrates and judges are often quick to do so.

PROTECTION OF WILD BIRDS

The protection of wild birds is contained in the Wildlife & Countryside Act 1981. All wild birds are protected, not just rare or endangered species. If rare or endangered, however, they are subject to even tighter controls and the penalties are severe.

The 1981 Act defines a “wild bird” as being any bird of a species which is ordinarily resident in or a visitor to Europe, but not including poultry or, for most purposes, gamebirds. A “gamebird” is “any pheasant, partridge, grouse (or moor game), black (or heath game) or ptarmigan”.

The main offences are set out in

Sections 1, 5 and 8. Section 1 states that it is an offence intentionally:

- to kill, injure or take any wild bird;
- to take, damage or destroy the nest of a golden eagle/white tailed eagle/osprey, or of any wild bird whilst it is in use/being built;
- to obstruct or prevent any wild bird from using its nest;
- to take or destroy an egg of any wild bird.

It is also an offence to have possession or control of:

- any wild bird, live or dead, or any part of, or anything derived from, such a bird, or;
- a wild bird's egg or any part of such an egg.

It is a defence to show that the bird or egg had not been killed or taken, had been lawfully killed or taken, or had been bought lawfully.

Section 5 states that it is an offence:

- to set in position any springe, trap, gin, snare, hook and line, any electrical device for killing, stunning or frightening, or any poisonous, poisoned or stupefying substance, being of such a nature and so placed as to be calculated to cause injury to any wild bird;
- to use for the purpose of killing or taking any wild bird:
 - any such article, whether or not of such a nature and so placed, or any net, baited board, bird-lime or substance of a like nature;
 - any bow or crossbow;
 - any explosive other than ammunition for a firearm;
 - any automatic or semi-automatic weapon;
 - any shotgun with a barrel greater than 1¾ inches in diameter;
 - any device for illuminating a target or any sighting device for night shooting;
 - any form of artificial lighting or any mirror or other dazzling device;
 - any gas or smoke;
 - any chemical wetting agent;



The dormouse is listed both on Schedule 5 and Schedule 6.

- any sound recording as a decoy or any live bird or other animal whatever which is tethered or secured by braces or similar, or which is blind, maimed or injured;
- any mechanically-propelled vehicle in immediate pursuit of a wild bird.

It is also an offence knowingly to cause or permit use of any of the above.

Under Section 8, it is an offence to keep or confine any bird in a cage or other receptacle which is not sufficient in height, length or breadth to permit the bird to stretch its wings freely.

PROTECTION OF WILD ANIMALS

The position of wild animals under the law is a little more complicated. Under the Act, in contrast to wild birds, by and large only certain wild animals are protected. Other legislation provides protection against cruelty generally and additional protection for badgers and deer.

Some offences under the Act, such as those relating to self-locking snares, apply to all wild animals. Most, however, only apply to “protected wild animals” or “specially protected wild animals”.

PROHIBITED ARTICLES

There is a general prohibition on the use of self-locking snares, bows, crossbows, explosives and live decoys. Section 11 (1) states that it is an offence:

- to set in position any self-locking snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact with it;



- to use for the purpose of killing or taking any wild animal any self-locking snare, whether or not of such a nature or so placed as aforesaid, any bow or cross-bow or any explosive other than ammunition for a firearm;
- to use as a decoy, for the purpose of killing or taking any wild animal, any live mammal or bird whatever. It is also an offence knowingly to cause or permit any of the above. (General Licences issued under the Act permit the use in cage traps of decoys of certain species.)

PROTECTED WILD ANIMALS

“Protected wild animals” are those specified in Schedule 5. This is an extensive list which includes adders, grass snakes, bats, dormice (pictured left), newts, red squirrels and otters, as well as many species of butterfly and moth.

Under Section 9, it is an offence intentionally to kill, injure or take any protected wild animal. Exceptions apply to allow for the humane despatch of injured animals and for the incidental and unavoidable results of lawful operations.

It is an offence to have possession or control of any live or dead wild animal included in Schedule 5, or any part of, or anything derived from such an animal. It is a defence to show that the animal had not been killed or taken, or had been killed or taken lawfully, or had been lawfully sold.

It is also an offence intentionally or recklessly to damage or destroy, or obstruct access to any structure or place which any Schedule 5 animal uses for shelter or protection, or to disturb any such animal while it is occupying such a structure or place.

SPECIALLY PROTECTED WILD ANIMALS

“Specially protected wild animals” are a small number of species set out in Schedule 6, namely: badger, bats, wild cat, dolphin, dormice, hedgehog, pine marten, otter, polecat, porpoise, shrews and red squirrel. For these animals, various other means of killing or taking them are banned. Under Section 11 (2), it is an offence:

- to set in position any of the following articles, being an article which is of such a nature and so placed as to be calculated to cause bodily injury to any specially protected wild animal included in sch.6 which comes into contact with it, namely any trap or snare, any electrical device for killing or stunning or any poisonous,

- poisoned or stupefying substance;
- to use for the purpose of killing or taking any such wild animal:
 - any such article as aforesaid, whether or not of such a nature and so placed, or any net;
 - any automatic or semi-automatic weapon;
 - any device for illuminating a target or sighting device for night shooting;
 - any form of artificial light or any mirror or other dazzling device; or
 - any gas or smoke;
 - any sound recording as a decoy;
 - any mechanically-propelled vehicle in immediate pursuit of any such wild animal. It is also an offence knowingly to cause or permit any of the above.

ENFORCEMENT POWERS

Enforcement is generally a matter for the police, but under the Act powers are also exercisable by Wildlife Inspectors.

A Wildlife Inspector must be authorised in writing by Defra or the National Assembly for Wales. He may, at any reasonable time, enter and inspect any premises (but not including a dwelling), for the purposes of investigating an offence under the Act. He must, if required to do so, produce evidence of his authority. He may take with him a veterinary surgeon if that is needed, for the purpose of examining specimens and taking samples.

It is an offence intentionally to obstruct a Wildlife Inspector acting in the exercise of his powers. It is also an offence to

fail without reasonable excuse to give assistance reasonably required in connection with examining specimens and taking samples.

Where a police constable suspects with reasonable cause, that a person is committing or has committed an offence he may without warrant:

- stop and search that person;
- search or examine anything that person may have with him or be using;
- seize and detain evidence;
- arrest that person.

A constable may, for the purpose of assisting him in exercising his powers, take with him any other person, equipment or materials that he requires.

PROSECUTION

Generally there is a six-month time limit on bringing a prosecution for these offences, but this does not necessarily run from the date of the alleged offence. Under the Act and the Protection of Badgers Act 1992, proceedings may be brought within six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to his knowledge, subject to an overall time limit of two years.

Most of the above offences carry up to six months’ imprisonment. A fine of up to £5,000 can be imposed for each offence (or for each bird, egg, nest or animal to which the offence relates), and the court may, and certainly will, order a convicted defendant to pay all or a substantial part of the prosecution costs.

NOTE IT!

KNIGHTS SOLICITORS
 Joshua Quinn is a Partner with Knights Solicitors, Tunbridge Wells. Knights Solicitors have dealt with numerous investigations and prosecutions under the Animal Welfare Act 2006 and Wildlife & Countryside Act 1981. Knights Solicitors specialise in countryside and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales. Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Joshua Quinn.

NGO FREE LEGAL HELPLINE
 NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Joshua Quinn, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:
 Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.

SOPHIA GALINA

