



Legal



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Blue on blue

Birds that have additional protection are listed in Schedule 1 of the 1981 Act, and include some owls such as this barn owl.

by Jonathan Manser, Graduate Legal Executive at Knights Solicitors, looks at protected species and what you should do if you unintentionally capture or kill one.

IN AN ATTEMPT TO KEEP PEST POPULATIONS under control, every farm or estate will no doubt be engaged in a pest control regime that will likely include legal poisons, legal traps and legal shooting. Further, many estates and some larger farms operate a commercial shoot, which will help fund the significant cost of maintaining the estate or farm. Provided the traps and poisons are used and as long as any shooting takes place within the law, there ought to be no problem.

Well-designed pest control regimes ensure that only targeted species are caught or killed. However, it is still possible for a protected or non-target species unintentionally to become the subject. Even if everything has been done legally, a gamekeeper or estate owner can still find themselves at the mercy of criminal proceedings in this situation, and it is therefore important that the inadvertent capture or killing of a protected or non-target species is identified and dealt with as soon as possible.

PROTECTED STATUS

To identify if a protected species has been inadvertently captured or killed, it is first important to be able to know which species have protected status.

There are two important pieces of UK legislation which give protected status – The Wildlife & Countryside Act 1981 ('the 1981 Act') and The Conservation of Habitats & Species Regulations 2017 ('the 2017 Regulations'). Protected species are separated into two categories: mammals and reptiles (described as animals) and birds. Protected animals are listed in Schedule 5 of the 1981 Act and Schedule 2 of the 2017 Regulations, and include various species including bats, dormice and otters. Only the mammals and reptiles described as animals listed in these Schedules are protected from killing or capture. All others have no protection.

In contrast, all wild birds are protected – not just rare or endangered species. However, the rare and endangered species are given additional protection

and the penalties for deliberately killing them are more severe. The birds that have additional protection are listed in Schedule 1 of the 1981 Act and include hen harriers, swans and some owls.

These lists are updated frequently and so it is important that anyone engaged in pest control or shooting checks them often or at any rate annually, and is able to show that they have done so.

The Secretary of State has been granted wide powers in respect of birds under Section 3 of the 1981 Act. If so ordered, an entire area can be prohibited from capturing or killing any wild bird, in effect giving all wild birds within that area protected status. It would therefore be an offence to kill or capture any wild animal in the area while such an Order is in place.

OFFENCES

If it is identified that a protected species has been captured or killed then, provided it has been done *unintentionally*, in England and Wales

there will be no offence committed for the action because under both the 1981 Act and the 2017 Regulations it is only an offence to capture or kill a protected species if it is done deliberately (in Scotland an offence of killing or capturing a protected animal or bird can be committed even without intent if it was done recklessly).

However, it is also an offence to have in your possession or control a live or dead protected wild bird, a wild bird's egg or a protected animal. Intent is not necessary for this offence and the offence is committed as soon as it is in your possession.

It is therefore important to ensure that any unintentionally killed or captured protected species is identified and dealt with as soon as possible. If the wild bird or protected animal is viable then it should be released as soon as possible. If the wild bird or protected animal is already dead then its carcass should be disposed of in a legal manner (see article *Bring Out Your Dead*, *KtB* Spring 2014, page 46, for advice on this). If the protected animal or wild bird is alive but disabled then you can take it into your care to tend to it and release it, or if the injury was so serious that there was no reasonable chance of recovery then it can be killed (such killing should be done humanely and in accordance with best practice).

It is a separate offence to sell or have in your possession with intent to sell a protected animal or wild bird or part thereof and so, needless to say this should never be done. Detailed records should be kept – you never know who is watching and you may need to show that the killing or capture was not intended at some time in the future.

NOTE IT!

KNIGHTS SOLICITORS
Jonathan Manser is Graduate Legal Executive with Knights Solicitors. He started work with Knights in 2013 and is working towards Fellow Membership of the Chartered Institute of Legal Executives. Knights Solicitors is a specialist litigation practice well-known for representing clients with animal and countryside interests on a national level. The company provides the NGO with a legal helpline service (see below). Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins, Peter Burfoot or Jonathan Manser.

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, Peter Burfoot and Jonathan Manser, 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 GALLIA

If a wild bird or protected animal is caught then it would be wise to report this to the police and to keep a note of that report.

It is also advisable to conduct a thorough review of the estate for relevant nests and burrows: under both the 1981 Act and the 2017 Regulations, it is an offence to damage or destroy a breeding site or resting place of a protected species. Unlike for killing or capturing a protected species, there is no need for this to be done intentionally for it to be a criminal offence and it need only be shown to be reckless. If you have captured or killed a protected animal or wild bird then it is possible that that animal or bird has a nest, lair or roost nearby. The

best practice is, or might be, to identify where this is and make efforts to avoid it in the future.

ENFORCEMENT

Enforcement is usually carried out by police officers; however, the Act gives 'wildlife inspectors' enforcement powers. A wildlife inspector is someone authorised in writing by the Secretary of State. A wildlife inspector may enter and inspect any premises at any reasonable time to ascertain whether an offence is being or has been committed. He can require any specimen to be made available for inspection and it is an offence to obstruct a wildlife inspector or to fail to give assistance to a wildlife inspector without reasonable excuse.

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