



Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdair air fad airson Alba air fad

Protected Species Licensing: Legislation, Appropriate Authorities and Licensing Purposes

Background

In terms of species conservation, Scottish wildlife is protected under three main pieces of legislation;

- **The Wildlife and Countryside Act 1981 (as amended)**
- **The Conservation (Natural Habitats &c.) Regulations 1994 (as amended), and;**
- **The Protection of Badgers Act 1992 (as amended)**

Protection is also given to seals under the Conservation of Seals Act 1970 and to deer under the Deer (Scotland) Act 1996.

These pieces of legislation set out specific offences in relation to protected species of animal, birds and plants. There are a number of exceptions, or defences, against these offences, including licensing.

Licences permit actions to be undertaken that would otherwise be illegal. Each piece of legislation gives specific purposes for which licences can be granted and identifies an 'appropriate authority' to be responsible for consideration of licences for each purpose. For these pieces of legislation, the appropriate authorities are either the Scottish Government (SG) or Scottish Natural Heritage (SNH).

The following pages summarise the actions that are listed as offences by the respective pieces of legislation together with the purposes and actions for which licences may be granted and the appropriate licensing authority.

Contact details for the appropriate authorities and links to relevant information are provided at the end of the document.

The Wildlife and Countryside Act 1981 (as amended) [The 1981 Act]

Overview

The 1981 Act gives protection to specific birds, animals and plants. Offences, licensing purposes, and the appropriate licensing authority for each purpose are given below for birds and for protected species of animal.

Birds

All wild birds are given protection under the Act. A wild bird is defined as any bird of a species which is ordinarily resident in or is a visitor to any member state of Europe in a wild state, but does not include poultry or any game bird. Specially protected birds are listed on Schedule 1, A1 and 1A of the 1981 Act.

Offences in relation to wild birds

It is an offence to intentionally or recklessly:

- kill, injure or take a wild bird
- take, damage destroy or interfere with a nest of any wild bird whilst it is in use or being built (or at any time for a nest habitually used by any bird listed in Schedule A1)
- Obstruct or prevent any wild bird from using its nest
- Take or destroy an egg of any wild bird,
- Disturb any wild bird listed on Schedule 1 whilst it is building a nest or is in, on, or near a nest containing eggs or young, or whilst lekking.
- Disturb the dependent young of any wild bird listed on Schedule 1
- Harass any wild bird listed on Schedule 1A

or to;

- Possess or control a live or dead wild bird or an egg of a wild bird or any such derivatives.
- Knowingly cause or permit any of the above acts to be carried out.

There are additional offences in relation to use of prohibited methods of killing or taking wild birds, for the sale of live and dead wild birds and for registration and keeping of captive wild birds.

There are a number of exceptions to these offences (this is considered outwith the scope of this paper). Exceptions include shooting outside of the closed season for certain species.

Licences in relation to wild birds

Licences can be issued under Section 16(1) of the Act to permit, for specific purposes, certain actions that would otherwise be against the law. The appropriate licensing authority (either SNH or SG) depends on the purpose for which a licence is sought (see table 1).

For the purpose of obtaining a licence under the 1981 Act, it is an offence to make a statement or representation or to furnish a document or information which he knows to be false in a material particular. It is also an offence to recklessly do so.

Purpose	Appropriate Authority
(a) Science, research, education	SNH or SG
(b) Ringing, marking or examining rings or marks	SNH or SG
(c) Conserving wild birds	SNH or SG
(ca) re-population or re-introduction	SNH or SG
(cb) conserving flora or fauna	SNH or SG
(d) protecting any collection of wild birds	SG
(e) falconry or aviculture	SG
(f) public examination or competition	SG
(g) taxidermy	SG
(h) photography	SNH
(i) preserving public health or public or air safety	SG
(j) preventing the spread of disease	SG
(k) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland water	SG

Table 1. Licensable purposes and appropriate authority for actions in relation to birds under the 1981 Act.

Where SG are the licensing authority for purposes (a) to (cb), there is a requirement that the relevant advisory body is consulted before a licence is granted (i.e. the body that the Secretary of State considers best able to advise him on that particular licence). Where SG are the appropriate authority for licensing purposes (i) to (k) there is a legal requirement that a licence can not be issued unless SNH has advised as to the circumstances in which, in their opinion, licences of that description should be granted.

The 1981 Act requires that the appropriate licensing authority:

- Should not grant a licence for any of these purposes unless it is satisfied that, as regards that purpose, there is no other satisfactory solution.
- Should not grant a licence for purposes (e) to (h) above otherwise than on a selective basis and in respect of a small number of birds.

The 1981 Act originally incorporated provision to allow ‘authorised persons’ to kill or take certain ‘pest’ birds listed on Schedule 2 part II at any time of the year. In subsequent amendments to the 1981 Act this schedule was removed. ‘General’ licences are now available from SG to allow ‘authorised persons’ to carry out activities that would otherwise be against the law. A link to general licence information is given at the end of this document.

Protected animals

Protected animals are listed on Schedule 5 of the 1981 Act.

Offences in relation to protected animals

It is an offence to intentionally or recklessly:

- Kill, injure or take any wild animal listed on Schedule 5
- Damage, destroy or obstruct access to any structure or place which such an animal uses for shelter or protection or to disturb such an animal when it is occupying a structure or place for that purpose.

or to,

- Possess or control, sell, offer for sale or possess or transport for the purpose of sale any live or dead wild animal on Schedule 5 or any derivative of such an animal.
- Knowingly cause or permit any of the above acts to be carried out.

There are a number of exceptions to these offences, but their explanation is outwith the scope of this paper.

Licences in relation to protected animals

In relation to protected species of animal, licences can be issued under Section 16(3) of the 1981 Act to permit, for specific purposes, certain actions that would otherwise be against the law. The appropriate licensing authority (either SNH or SG) depends on the purpose for which a licence is sought (see table 2).

It is also an offence for a person, for the purpose of obtaining a licence, to make a statement or representation or to furnish a document or information which he knows to be false in a material particular. It is also an offence to recklessly do so.

Purpose	Appropriate Authority
(a) Science, research or education	SNH
(b) ringing, marking or examining rings or marks	SNH
(c) conserving wild birds, wild animals or wild plants or introducing them to particular areas	SNH
(ca) conserving any area of natural habitat	SNH
(d) protecting zoological or botanical collections	SNH
(e) photography	SNH
(f) preserving public health or public safety	SG
(g) preventing the spread of disease	SG
(h) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, property or fisheries	SG

Table 2. Licensable purposes and appropriate authority for actions in relation to animals on Schedule 5 of the 1981 Act.

Where SG are the appropriate licensing authority, there is a legislative requirement that a licence can not be issued unless SNH has advised as to the circumstances in which, in their opinion, licences of that description should be granted.

1981 Act licences can be issued under the following provisions:

- That a licence can be, to any degree, general or specific
- That a licence can be granted to persons of a class or to a particular person
- That a licence can be subject to compliance with any specified conditions
- That a licence can be modified or revoked at any time by the appropriate authority
- That licences are valid for a specified period.

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) [The Habitats Regulations]

Overview

Animals and plants listed on Schedules 2 and 4 of the Regulations respectively are protected as European Protected Species (EPS). Animals listed on Schedule 3 of the Regulations are protected against certain methods of capture or killing.

Offences

It is an offence to deliberately or recklessly:

- capture, injure or kill a wild animal EPS
- harass a wild animal or group of wild animals of EPS
- to disturb such an animal while it is occupying a structure or place it uses for shelter or protection
- to disturb such an animal while it is rearing or otherwise caring for its young
- to obstruct access to a breeding site or resting place of such an animal or to otherwise deny the animal use of the breeding site or resting place
- to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs
- to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young
- to take or destroy the eggs of such an animal
- to disturb and dolphin, porpoise or whale (cetacean)
- to disturb such an animal whilst it is migrating
- to disturb such an animal whilst it is hibernating
- to pick, collect, cut, uproot or destroy a wild plant of EPS

It is also an offence to:

- damage or destroy a breeding site or resting place of such an animal
- keep transport, sell or exchange or offer for sale or exchange any wild animal or plant EPS or any part or derivative of one (from 1st May 2007).

It is also an offence to use listed prohibited means for taking animals listed on Schedule 3 of the regulations.

Licences

In relation to protected species of animal, licences can be issued under Regulation 44 to permit, for specific purposes, certain actions that would otherwise be against the law. The appropriate licensing authority (either SNH or SG) depends on the purpose for which a licence is sought (see table 3).

As with the 1981 Act, it is also an offence for a person, for the purpose of obtaining a licence, to make a statement or representation or to furnish a document or information which he knows to be false in a material particular. It is also an offence to recklessly do so. It is also an offence to breach the condition of a licence.

Purpose	Appropriate Authority
(a) Science, research or education	SNH
(b) ringing, marking or examining rings or marks	SNH
(c) conserving wild birds, wild animals or wild plants or introducing them to particular areas	SNH
(ca) conserving any area of natural habitat	SNH
(d) protecting zoological or botanical collections	SNH
(e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.	SG
(f) preventing the spread of disease	SG
(h) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, property or fisheries	SG

Table 3. Licensable purposes and appropriate authority for actions in relation to animals protected under the Habitats Regulations.

It is also possible for SG to grant licences to permit the taking or possession or control of certain specimens of any Species in Annex IV of the Habitats Directive for other purposes as long as they are compatible with the restrictions in Article 16(1)(e) of the Directive

Regulation 44(3) requires that the appropriate authority should not grant a licence for any of these purposes unless they are satisfied that both of the following conditions are satisfied:

1. That there is no satisfactory alternative, and;
2. That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Where SG are the licensing authority, there is a legislative requirement that a licence can not be issued unless SNH has advised as to the circumstances in which, in their opinion, licences of that description should be granted.

Habitats Regulations Licences can be issued under the following provisions:

- That a licence can be, to any degree, general or specific
- That a licence can be granted to persons of a class or to a particular person
- That a licence can be subject to compliance with any specified conditions
- That a licence can be modified or revoked at any time by the appropriate authority
- That licences are valid for a specified period.

Protection of Badgers Act 1992 (as amended) [The 1992 Act]

Overview

The 1992 Act protects badgers and their setts. It has been amended by the Nature Conservation (Scotland) Act 2004.

Offences:

- Wilfully taking, injuring or killing badgers
- Cruelty
- Intentionally or recklessly interfering with a badger sett*
- Selling and possession
- Marking and ringing

* Interfering with a badger sett includes damaging or destroying a badger sett or any part of it, obstructing access to a sett, disturbing a badger whilst it is in a sett, or causing or allowing a dog to enter a badger sett.

Licences:

Licences can be issued under Section 10 of the 1992 Act to permit, for specific purposes, certain actions that would otherwise be against the law. The appropriate licensing authority (either SNH or SG) depends on the purpose for which a licence is sought (see table 4).

Purpose	Permitted action(s)	Appropriate Authority
Scientific, educational or conservation	Kill, take, sell, possess, interfere with sett	SNH
For zoological gardens or collections	To take, sell and possess	SNH
For ringing and marking	To ring or mark	SNH
For development**	To interfere with a sett	SNH
For preservation or investigation of a Scheduled Ancient Monument	To interfere with a sett	SNH
To investigate offences or gather evidence	To interfere with a sett	SNH
To control foxes to protect livestock, game or wildlife	To interfere with a sett	SNH or SG
To prevent the spread of disease	To kill, take or interfere with a sett	SG
To prevent serious damage to land, crops, poultry or any other form of property	To kill, take or interfere with a sett	SG
For any agricultural or forestry operation	To interfere with a sett	SG
To maintain and improve watercourses and for drainage	To interfere with a sett	SG

**as defined in s.26 of the Town and Country Planning (Scotland) Act 1997

Table 3. Licensable purposes and appropriate authority for actions in relation to badgers.

Licences issued under the 1992 Act are subject to compliance with any conditions specified in the licence.

The Conservation of Seals Act 1970 [The 1970 Act]

Species: Common seal and grey seal

Offences include:

- To wilfully kill, take or injure a seal during the close season for that species
- To kill, take or injure a seal using prohibited means (poisons or specific types of weapon)

Licences:

In relation to common and grey seals, licences can be issued under Section 10 of the 1970 Act to permit, for specific purposes, certain actions that would otherwise be against the law. The licensing authority is SG for all purposes as follows:

- a, For scientific or educational purposes to kill or take seals
- b, For the purposes of any zoological gardens or collection to take seals
- c, For the prevention of damage to fisheries to kill seals
- d, for the reduction of a population surplus of seals for management purposes to kill seals
- e, for the use of a population surplus of seals as a resource to kill seals

There is no provision within the 1970 Act for SG to consult with SNH or any other advisory body in relation to these licences.

Applying for a licence, information and links

Where SNH are the appropriate licensing authority

Licence application forms and guidance can be obtained from the following link:

<http://www.snh.org.uk/licences/Lic-intro.asp>

Alternatively, you can contact SNH's licensing officer:

Ben Ross
Scottish Natural Heritage
Great Glen House
Leachkin Road
Inverness
IV3 8NW

Telephone: 01463 725000
E-mail: **licensing@snh.gov.uk**
Ben.Ross@snh.gov.uk

Where SG are the appropriate licensing authority

Contact

Scottish Government
Species Management Team
Landscape and Habitats Division
1-A North
Victoria Quay
Edinburgh
EH66QQ

E-mail Specieslicensing@scotland.gsi.gov.uk

Tel: 0131 244 6549

Fax: 0131 244 4071

Scottish Executive general licences

A list of general licences can be found on the following link:

<http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16330/general-licences>

Schedules of protected species

The Schedules (lists) of protected species in the 1981 Act and in the Habitats Regulations, and referred to above, can be found on SNH's website.