

Accompanying notes for Schedule 1 Bird Survey, Ringing and Monitoring Licences – General Principles

General

All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). However, due to their rarity, vulnerability or sensitivity to disturbance, birds listed on Schedule 1 of the Act are afforded even greater protection. This includes an offence of intentionally or recklessly disturbing Schedule 1 species whilst they are building a nest or are in, on or near a nest containing eggs or young. It is also an offence to intentionally or recklessly disturb the dependent young of such a bird. A Licence issued by SNH to monitor Schedule 1 birds permits actions that could otherwise constitute an offence under the Act.

Licences are issued to named individuals, permitting specific actions, in defined geographical areas and for a set time period. Terms and conditions are attached to the Licence to ensure that work is undertaken in such a way so as to avoid undue disturbance to wild birds and to avoid any actions that may endanger breeding success. The licence holder can have accredited agents or assistants named on their licence, or can have a condition stating that they may be accompanied by a specified number of assistants. An agent can undertake the actions permitted by the licence independently of the licence holder. Assistants may undertake the named actions but can only do so in the presence of the licence holder. The licence holder is responsible for the actions of any agents or assistants. Licence holders should only take persons with them on site visits if they are covered to do so by their licence.

It is a condition of each licence that the licensee must carry a copy of the Licence while engaged in work covered by it, and should produce it to any police officer, authorised person, or official of SNH on demand. Failure to comply with the terms of a licence could constitute an offence.

Licence holders and any accredited agents or assistants are expected at all times to exercise the utmost care while engaged in the activities authorised by the licence and the welfare of the birds, their eggs and young should be of the highest priority.

Furthermore, the licence holder should be aware that whilst the licence permits actions that could otherwise constitute an offence under the Wildlife and Countryside Act, a licence does not and can not confer any other right or permission under any other piece of legislation. This includes access rights.

This document gives an overview of the general principles to minimise disturbance to species surveyed and on how to exercise access rights responsibly. It is not intended as a comprehensive reference document because circumstances and considerations will vary with the type of work being carried out and the species being monitored. References are provided for further information.

Minimising Disturbance

Licences can be issued by SNH to permit disturbance of Schedule 1 birds for a number of purposes, including science, research and education and for ringing birds. SNH aims to balance the legitimate requirements of scientific study or research with the need to keep disturbance to an acceptable level so that there is no impact on breeding success or survival of the birds in question.

The precise methodology used for undertaking monitoring work will depend on the species being monitored. For raptor monitoring, the appropriate species account in '*Raptors: A field guide to survey and monitoring*' (Hardey *et al.*, 2006) should be consulted for guidance on technique, timing and frequency of visits to nests and territories for each species, and, if ringing, '*The Ringers Manual*' (BTO, 2001). However, general principles that should be adhered to in all Schedule 1 surveys and monitoring are given below:

- Exercise extreme caution at all times and particularly just prior to and during laying and during early incubation.
- Only approach as closely as is necessary to obtain the required information.
- Minimise disturbance of vegetation around nest sites
- Be discrete
- Try to avoid startling birds and replace any eggs or young that may have been dislodged if an adult has left the nest.
- If carrying out watches from a distance, retreat if birds show alarm behaviour or if they leave a nest site or suspected nest site. Watches should be made from a safe distance that does not illicit alarm behaviour.
- Do not disturb birds in adverse weather (cold, wet or excessively hot)
- Ensure that duration, number and frequency of visits to a nest are kept to the minimum required to gather the required information.

Ensuring compliance with the Scottish Outdoor Access Code

Part 1 of the Land Reform (Scotland) Act 2003 gives everyone statutory access rights to most land and inland water. People only have these rights if they exercise them responsibly by respecting people's privacy, safety and livelihoods, and Scotland's environment. Equally, land managers have to manage their land and water responsibly in relation to access rights. As such, it is the responsibility of the licence holder to ensure that, whilst carrying out work permitted under licence, they exercise their access rights responsibly.

The Scottish Outdoor Access Code was approved by the Scottish Parliament on 1st July 2004. It is based upon 3 main principles:

- *Respect the interests of other people*
- *Care for the environment*
- *Take responsibility for your own actions*

The code states that you are exercising access rights responsibly if you:

- *do not interfere unreasonably with the rights of other people; and*
- *act lawfully and reasonably, and take proper account of the interests of others and of the features of the land.*

Access rights extend to individuals undertaking surveys of the natural heritage where these surveys have a recreational or educational purpose within the meaning of the legislation. The code offers the following advice on undertaking surveys, and responsible behaviour on the part of the surveyor and the land manager:

RESPONSIBLE BEHAVIOUR BY THE PUBLIC

Watching and recording wildlife is a popular activity and falls within access rights. If you wish to intensively survey an area, make frequent repeat visits or use any survey equipment, consult the relevant land manager(s) to let them know of your intentions. Take extra care not to disturb the wildlife you are watching.

RESPONSIBLE BEHAVIOUR BY LAND MANAGERS

Wherever possible, co-operate with people who wish to carry out a survey and allow the taking of small samples where this would not cause any damage.

The Access Code is not an authoritative statement of the law; it provides guidance on responsible behaviour for recreational users, and on responsible land management in relation to the new rights. The detailed guidance in the Code should help to ensure that few problems arise. However, if there is a problem, the Code is expected to be a reference point for determining whether a person has acted responsibly. For example, where a dispute cannot be resolved and is referred to the Sheriff for determination, the Sheriff will consider whether the guidance in the Code has been disregarded by any of the parties. In this sense, the Code may be said to have evidential status. Failure to comply with the Code, however, is not, in itself, an offence. The full code can be found on www.outdooraccess-scotland.com

SNH recommends that, as good practice, and wherever possible, licence holders should observe the courtesy of informing landowners of their intentions with regard to carrying out surveys on their land and, if practicable, to liaise with land managers about the timing and location of visits, and the outcomes of their work.