

Accompanying Notes Issued by the SNH Licensing Officer for Survey and Monitoring Licences

General Principles and Access issues

General

A Licence issued by SNH to survey or monitor protected species permits actions that could otherwise constitute an offence under the Wildlife and Countryside Act 1981 (as amended) or Conservation (Natural Habitats &c.) Regulations 1994 (as amended), depending on the species being surveyed.

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 or harm and to avoid any actions that may affect survival or 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 must 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 study species 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 relevant piece of species protection legislation, a licence does not and cannot confer any other right or permission under any other piece of legislation; this includes access rights.

Licence holders are reminded that there is a requirement to make an annual return on the licence, with details of visits.

Minimising Disturbance to breeding 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 bird survey and monitoring work will depend on the species being monitored. Monitoring and surveys should be carried out in accordance with the advice given in published guides, such as *Handbook of Biodiversity Methods: survey, evaluation and monitoring* (2005, published by CUP), and more specialist guides such as *Raptors: a field guide to survey and monitoring* (2006, published by TSO; second ed. 2009), which gives 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 when monitoring any bird species are given below:

- Exercise extreme caution at all times, 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 (e.g. cold, wet or excessively hot); and
- 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

a) Background

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, 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 1 July 2004. It is based upon three main principles:

- Respect the interests of other people;
- Care for the environment; and
- 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 advice below on undertaking surveys, and responsible behaviour on the part of the surveyor and the land manager.

b) *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.

c) *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.