

Catching and releasing wild game birds: a legal summary

This note summarises the key legal considerations that are relevant to the practice of catching and releasing game birds as part of game bird management in England¹. The key considerations are set out in tables 2 and 3 on pages 7 and 8, with background detail and advice on topical issues below. Foot notes are on page 6.

What the law means when it refers to ‘game birds’

The term ‘game bird’ has a legal meaning as well as a more widely used common meaning. The key statutes controlling the killing, taking and release of game birds have variously defined ‘game birds’ as follows:

- The **Game Act 1831** defines game birds as pheasants, partridges, grouse, heath or moor game, and black game².
- The **Wildlife and Countryside Act 1981** (as amended) (“WCA 1981”) defines game birds as any pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan.

In practice (but not exclusively) these legal definitions refer to the following species, which are ordinarily found in the wild in Great Britain:

- all pheasants (including the common or ring-necked pheasant, *Phasianus colchicus*);
- all partridges (including the grey partridge, *Perdix perdix* and red-legged partridge, *Alectoris rufa*);
- red grouse *Lagopus lagopus*;
- black grouse *Tetrao tetrix*; and
- ptarmigan *Lagopus mutus*.

The following species are included within the definition of game under other legislation³, but are not considered to be game birds under either the Game Act 1831 or the WCA 1981:



Red-legged partridge

- capercaille *Tetrao urogallus*;
- woodcock *Scolopax rusticola*;
- common snipe *Gallinago gallinago*; and
- great bustard *Otis tarda*⁴.

For the purposes of this advice note, all references to ‘game birds’ refer solely to the species defined as such in the 1831 and 1981 Acts.

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Key legal provisions

Game Act 1831

The Game Act makes it an offence to kill or take game birds on Sundays, Christmas Day and during the relevant close season.

Table 1 Close seasons

| Game bird | Close seasons (dates inclusive) |
|------------------------------------|--------------------------------------|
| Partridge | 2 February – 31 August |
| Pheasant | 2 February – 30 September |
| Black grouse (black or heath game) | 11 December – 19 August ⁵ |
| Red grouse (grouse or moor game) | 11 December – 11 August |

While the Game Act 1831 makes provision for a close season for ‘bustards’, they are in fact protected from killing and taking throughout the year by the WCA 1981 (see section on *Taking and killing of great bustard* below).

The taking of game birds in the close season can be authorised by the Minister under the Agriculture Act 1947 (section 98) for the purpose of preventing serious damage to crops, livestock and other agricultural interests. There are no other exceptions and no licensing provisions within the 1831 Act or other legislation that would permit the taking of game birds during the close season for other purposes, including breeding or translocation.

Wildlife and Countryside Act 1981

The WCA 1981 only applies to a limited extent to game birds (as defined by the Act), but applies in full to capercaillie, common snipe, woodcock and great bustard.

The definition of ‘wild bird’ used in the WCA 1981 excludes game birds, except in relation to the use of *Prohibited Methods* (section 5 of the Act) and *Licensing* (section 16). This means that game birds, their eggs and their nests are protected under this legislation from the use of certain methods of killing and taking, but they do

not enjoy the comprehensive protection given to all wild birds in section 1 of the Act.

This section includes protection from killing, injuring and taking, and the protection of nests and eggs. The list of prohibited methods includes (but is not limited to)⁶:

- traps;
- nets;
- any form of artificial lighting;
- sound recordings; and
- use of mechanically propelled vehicles.

Certain exceptions apply to the prohibitions on methods in section 5. Of particular relevance to game bird management is the exception permitting ‘*the use of a cage-trap or net for the purpose of taking any game bird if it is shown that the taking of the bird is solely for the purpose of breeding.*’ (see section 5(5)(c) of the WCA 1981 for full details).

The WCA 1981 also provides protection to game birds while in captivity (section 8). Cages or receptacles used to confine a bird must be of sufficient size to allow it to stretch its wings freely, but the law makes exceptions for the transportation of birds and for birds receiving veterinary treatment. It is also an offence to release captive birds for the purpose of shooting them immediately afterwards.

Controls on the release of certain, mainly non-native, species under section 14 of the WCA 1981 apply to all relevant wild animals, including game birds. These provisions prohibit the release of species that are not ordinarily resident or a regular visitor to Great Britain in a wild state, or belongs to a species included in Part I of Schedule 9 of the WCA 1981. The Schedule includes a number of introduced game birds:

- chukar partridge;
- rock partridge;
- golden pheasant;
- Lady Amherst’s pheasant;
- Reeves’ pheasant; and
- silver pheasant.

Also the capercaillie, which is a native species.

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The bobwhite quail *Colinus virginianus* is no longer listed on Schedule 9 (since 6 April 2010) but its release into the wild remains illegal.

Licences can be issued to permit activities prohibited by the WCA 1981 for certain purposes, including (but not exclusively⁷):

- for the purpose of conserving wild birds;
- for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds, including any breeding necessary for those purposes; and
- for the purpose of preventing the spread of disease, if the licensing authority considers the activity justified and there is no other satisfactory alternative⁸.

WCA 1981 licences cannot permit anything prohibited by the Game Act 1831 or by any other legislation. The licensing provisions apply in full to capercaillie, common snipe, woodcock and great bustard.

Activities on designated sites

To safeguard the interest features of protected areas, if game birds are to be taken from, or released at, a site which is designated as a Site of Special Scientific Interest then the prior consent of Natural England may be required. If the site is also designated as either a Special Protection Area or a Special Area of Conservation, then this requirement extends beyond the boundary of the protected area to any plan or project that could potentially impact on the interest features for which the site is designated. For further advice, contact your local Natural England office.

Topical issues

Moving or translocating game birds for the purposes of reintroduction or population enhancement

Summary: Game birds can only be lawfully taken from the wild during the open season and the use of cage-traps, nets, sound recordings, spotlights and mechanically propelled vehicles to catch birds should be licensed.

Game birds may only be taken during the open season. There is currently no legal provision available to authorise taking during the close season that would be applicable to a reintroduction project.

Restrictions also apply to the methods that may be used for taking birds in the open season.

Game birds may be taken using a cage-trap or net without a licence, but solely for the purpose of breeding. Natural England advises against relying on this exception to use cage-traps and nets to take birds for reintroduction projects, and recommends that a licence is obtained.

The use of spot-lights, for example to aid capture of birds at night would only be legal under a licence. The use of any mechanically propelled vehicle in immediate pursuit of a wild bird for the purpose of killing or taking that bird also requires a licence.

Whilst not a legal requirement, Natural England recommends that all reintroduction or translocation projects adhere to the guidance provided in the International Union for the Conservation of Nature and Natural Resources *Guidelines for Re-introductions* and the Joint Nature Conservation Committee *Policy for Conservation Translocation of Species in Britain* (see *Further information*). Compliance with relevant criteria is expected for any licence application linked to such a project.

Taking wild game birds for breeding purposes

Summary: Game birds may be caught as breeding stock only during the open season.

The practice of 'catching up' wild game birds (typically pheasants or partridges) at the end of the shooting season as captive breeding stock is permitted, but only if the birds are taken before the close season commences. There is no legal provision available to authorise taking during the close season.

Restrictions also apply to the methods that may be used for taking birds in the open season. Game birds may be taken for the purpose of breeding using a cage-trap or net (projected or

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propelled by hand), without a licence, but the use of spot-lights, for example to aid capture of birds at night, would only be lawful under the authority of a licence.

Collecting eggs from wild game birds

Summary: The eggs of game birds (including pheasants, partridges and grouse) may be lawfully collected from the wild if you have the right of killing game on the land in question, or permission from someone with such rights.

The eggs of game birds have limited legal protection. The taking, destroying and possession of eggs are all offences unless you have the right of killing game on the land in question, or permission from the person who has that right. Nests are not protected.

The situation is different for other wild birds, including woodcock, snipe and all waterfowl, where the eggs are fully protected at all times and it is unlawful to remove eggs, even if you are the landowner or have shooting rights, unless authorised under a licence. The nests of wild birds are protected while the nest is in use and being built.

Catching wild game birds to administer veterinary medicines

Summary: Catching game birds for the purposes of administering veterinary medicines is only permitted in the open season. Taking birds during the close season or, at any time using a net, cage-trap or spot-lights at night will require authorisation from Natural England.

Louping-ill is a tick-borne viral disease that can severely affect the health of red grouse, as well as domestic livestock and people. In areas with severe infestations sheep are commonly treated with acaricides to kill the ticks, and this can benefit grouse. The option of treating grouse directly has also been raised as a disease control strategy.

Grouse, like other game birds, may be caught for the purposes of veterinary treatment outside of the close season, but only using permitted methods, which excludes cage traps, nets or the use of spotlights at night. Since louping-ill can have a significant impact on the reproductive

success and survival of grouse, where the primary purpose of veterinary treatment is to benefit the grouse, a licence to use nets, cage-traps or spotlights to catch birds may be justified for the 'purpose of conserving wild birds'.

If the primary purpose is to benefit sheep or other livestock, then an application could still be considered for the 'purposes of preventing serious damage to livestock'.

The only circumstance in which it is legal to catch grouse during the close season is where a Notice under section 98 of the Agriculture Act 1947 applies. Notices may be issued to prevent serious damage to livestock, and in appropriate circumstances such a notice could, in theory, be issued to permit grouse to be caught for treatment against louping-ill to prevent the spread of the disease to farmed livestock.

Taking or killing great bustard

Summary: The great bustard, including nests and eggs, is fully protected from killing or taking at all times.

To understand the legal situation for the bustard it is necessary to consider both The Game Act 1831 and the WCA 1981 together. The Game Act 1831 stipulates a close season during which the bustard is protected from killing or taking (see above) while the WCA 1981 makes it an offence to kill or take bustard at any time. The effect of these two legal statutes acting in tandem can be summarised as follows:

- the taking or killing of bustards will be an offence at any time;
- it is only possible to use a licence issued under the WCA 1981 to take or kill bustard outside the close season specified in the Game Act 1831 (and not on Christmas Day or any Sunday). In other words, a licence cannot 'override' the prohibition on taking or killing in the 1831 Act; and
- the eggs of bustard may be collected by any person with the right of killing game on the land in question, or who has permission from someone with such rights, so long as they have a relevant licence under the WCA 1981.

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Using guinea fowl as alarm birds

Summary: Guinea fowl may be used as alarm birds within an enclosure (for example, a releasing pen) but allowing them to roam freely is likely to be unlawful.

No species of guinea fowl is native to Great Britain and none are considered ordinarily resident. Releasing or allowing guinea fowl to escape into the wild is therefore unlawful.

Under section 27 of the WCA 1981 'poultry' is defined as, amongst other things, guinea fowls and turkeys. This suggests an acceptance of these species being managed and tended as domestic poultry. Given the long-established and traditional practice of keeping small numbers of domestic poultry in an unenclosed state, for example in a farmyard or garden, but subject to a degree of control or dependency on man, we would not consider such keeping to amount to a release or allowing to escape into the wild. If, on the other hand, the birds are left unenclosed to wander and fend for themselves, this may constitute a release or 'allowing to escape' into the wild, which is unlawful.

Where guinea fowl are kept in game bird 'release' pens, so long as they are not themselves able to escape from the pen, we would not consider this a release or allowing to escape. If they are able to escape from the pen, or they are released or allowed to wander outside the pen, with no reasonable expectation that they will return, then we would consider this to be a release into the wild. In this context, it would not be sufficient that the person releasing the birds intended to recapture them at a later date - the release would still have taken place regardless of their later recapture or attempted recapture.

Further information

Legislation

UK legislation is publicly and freely available online from:

- Office of Public Sector Information:
www.opsi.gov.uk/

- The Statute Law Database provides versions of legislation incorporating subsequent legal amendments: www.statutelaw.gov.uk

Licensing

Natural England is the authority responsible for issuing licences under the Wildlife and Countryside Act 1981 (as amended) and Notices under the Agriculture Act 1947 in England. For advice and application forms visit the Natural England website or contact the licensing team directly.

Designated sites

To locate designated sites use the online mapping tool MAGIC: www.magic.gov.uk

Releasing, re-introductions and translocations

The International Union for the Conservation of Nature and Natural Resources *IUCN Guidelines for Re-introductions* available from: www.iucn.org

The Joint Nature Conservation Committee *Policy for Conservation Translocations of Species in Britain* available from: www.jncc.gov.uk/page-2920

Guidance on Section 14 of the Wildlife and Countryside Act 1981 (as amended) (which prohibits releases of certain species into the wild) in 'Government response to the public consultation: *Review of Schedule 9 to the Wildlife and Countryside Act 1981 and the Ban on Sale of Certain Non-native Species*' available from: www.defra.gov.uk/wildlife-pets/wildlife/management/non-native/legal.htm

Feedback

If you wish to provide feedback on this guidance or report inaccuracies or inconsistencies please contact Natural England or use the Better Regulation website www.betterregulation.gov.uk/

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Contact details

Natural England Wildlife Management & Licensing Team

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Natural England Technical Information Notes are available to download from the Natural England website: www.naturalengland.org.uk.

For further information contact the Natural England Enquiry Service on 0300 060 0863 or e-mail enquiries@naturalengland.org.uk.

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Footnotes

¹ The note provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.

² The Ptarmigan is included in the Game (Scotland) Act 1772, but not the Game Act 1831, which applies to England.

³ The Poaching Prevention act 1862 (which refers to woodcocks and snipes) and the Game Laws (Amendment) Act 1960 (which refers to bustards, woodcocks and snipes).

⁴ The 'bustard' was removed from the definition of game in the Game Act 1831 by an amendment introduced in the Protection of Birds Act 1954 (c. 30), Sch. 6. However, the provision of a close season for bustards remained in the 1831 Act. See topical issue 'Taking and killing of great bustard'.

⁵ Except 'in the county of Somerset or Devon or in the New Forest in the county of Southampton', where the close season extends between the dates of 10 December – 1 September.

⁶ See section 5 of the WCA 1981 for the full list of prohibited methods.

⁷ See section 16 of the WCA 1981 for a full list of licensing purposes.

⁸ Section 16(1A)(a) Wildlife and Countryside Act 1981.

Table 2 Catching and releasing game birds in England – a summary of the law (See text for a fuller explanation)

| Species | <u>Open Seasons</u> Birds may be lawfully taken or killed between (and inclusive of) | May be taken (for example, caught alive) in the Close Season | May be released into the wild without a licence | Nets and cage-traps may be used to catch birds | Artificial light, sound recordings and mechanically propelled vehicles may be used to aid catching | Eggs may be collected from wild living birds (for example, for captive rearing) |
|--------------------------------------|---|--|---|--|--|---|
| Black grouse <i>Tetrao tetrix</i> | 20 August to 10 December ⁹ | No | Yes | Yes (if solely for the purposes of breeding) | Only under licence | Yes |
| Partridges (all species) | 1 September to 1 February | No | Only the grey partridge <i>Perdix perdix</i> and red-legged partridge <i>Alectoris rufa</i> | Yes (if solely for the purposes of breeding) | Only under licence | Yes |
| Pheasants (all species) | 1 October to 1 February | No | Only the common or ring-necked pheasant <i>Phasianus colchicus</i> and hybrids between this and the green pheasant <i>P. versicolor</i> | Yes (if solely for the purposes of breeding) | Only under licence | Yes |
| Red grouse <i>Lagopus lagopus</i> | 12 August to 10 December | No | Yes | Yes (if solely for the purposes of breeding) | Only under licence | Yes |

The *Further information* section explains how to apply for a licence.

⁹ Except 'in the county of Somerset or Devon or in the New Forest in the county of Southampton', where the close season extends between the dates of 10 Dec – 1 Sep.

Table 3 Catching and releasing wild birds sometimes considered as game in England – a summary of the law (See text for a fuller explanation)

| Species | <u>Open Seasons</u> Birds may be lawfully taken or killed between (and inclusive of) | May be taken (for example, caught alive) in the Close Season | May be released into the wild without a licence | Nets and cage-traps may be used to catch birds | Artificial light, sound recordings and mechanically propelled vehicles may be used to aid catching | Eggs may be collected from wild living birds (for example, for captive rearing) |
|--|---|---|--|---|---|--|
| Capercaillie <i>Tetrao urogallus</i> | 1 October to 31 January | Only under licence | No | Only under licence | Only under licence | Only under licence |
| Common snipe <i>Gallinago gallinago</i> | 12 August to 31 January | Only under licence | Yes | Only under licence | Only under licence | Only under licence |
| Great bustard <i>Otis tarda</i> | 12 August to 31 January | Only under licence | No | Only under licence | Only under licence | Only under licence |
| Woodcock <i>Scolopax rusticola</i> | 1 October to 31 January | Only under licence | Yes | Only under licence | Only under licence | Only under licence |

The *Further information* section explains how to apply for a licence