

NESTING BIRDS AND WILDLIFE LAW

As climate change causes increasingly warmer spring temperatures, many of Britain's birds are nesting earlier in the year, some species like pigeons are even attempting to raise a brood during mild winter months. We found a fledgling pigeon on the nest in November last year. While data used as part of the Government's Climate Change Indicators show that some hedge-nesting birds, such as chaffinch, robin, yellowhammer and blackbird, are nesting 4-17 days earlier than they did 25 years ago. The RSPB advise that work on trees, shrubs and hedges should be limited during the period mid March to early August, while removing a hedge entirely should be avoided completely. The NFU advise farmers not to flail hedges between March and September.

The Primary legislation affecting wild birds in England, Scotland and Wales is the Wildlife and Countryside Act 1981 (as amended). In January 2001 the Countryside and Rights of Way Act 2000 (CRoW) included amendments, which strengthened the law in England and Wales. The basic principle of the Wildlife and Countryside Act 1981 (as amended) is that all wild birds, their nests and eggs, are protected by law and some rare species are afforded special protection. There are certain exemptions to this notably in respect of wildfowl, game birds and various species that may cause damage.

Despite the protection for nest being limited to the time during construction and use, it is important to be aware that nest building starts from the moment the first twig is laid. So consider this; if you see a bird flying along with a twig in its beak and it lands on the branch of a tree, then flies away leaving the twig on the branch, that is legally considered to be a nest. This represents a considerable problem when planning tree felling work or hedge reduction in spring, and an issue that continues to prevail throughout the summer months.

Legal definition and protection

A wild bird is defined as 'any bird of a kind which is resident in or a visitor to Great Britain in a wild state. (Game birds however are not included in this definition. They are covered by the Game Acts, which fully protect them during the close season.)

All birds, their nests and eggs, are protected by law and it is therefore an offence, with certain exemptions, to;

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird
- have in one's possession or control any wild bird, dead or alive, or any part of a wild bird, which has been taken in contravention of the Wildlife and Countryside Act 1981 (as amended) or the Protection of Birds Act 1954
- have in one's possession or control any egg or part of an egg which has been taken in contravention of the Act
- intentionally (or recklessly, in England and Wales only (CRoW 2000)) disturb any wild bird listed on Schedule 1 while it is nest building, or at (or near) a nest containing eggs or young, or disturb the dependent young of such a bird.

It will be an intentional act if, for example a contractor continues to reduce or remove a hedgerow, tree or shrub, after he/she discovers, or is told that birds are nesting there. The discovery of a nest during the process of work will also prohibit further cutting work within an area or buffer zone around the nest. This could mean leaving a section of hedge unreduced, or not working on part of a tree.

There are of course exemptions that allow certain work to continue; in section 4-2 (c) of the Wildlife and Countryside Act 1981 (as amended) it states, that it does not constitute an offence if the act can be shown to be the incidental result of an otherwise lawful operation, and could not reasonably have been avoided. There are also exceptions for incidents where disturbance or destruction of birds or their nests is necessary as a matter of public health and safety; while a similar allowance can be made, where the act is necessary for conservation reasons. These are allowed where the birds involved are included in a recognised list of 13 species (so called pest species) catered for under general nation-wide licence. However, some conditions do apply and it is important to consult the DEFRA to check the coverage of the licence.

In July last year, Julian Cable, of Stamford, Lincolnshire, became the first private individual to receive a conviction for the destruction of a house martin's nest on his house. He was witnessed dislodging the nest with a pole and putting the contents into a skip. Although the fine in this case was quite small, amounting to £250.00, the maximum penalties, in England and Wales, were increased under amendments made within the CROW Act 2000, up to a fine of £5000.00 or a six-month prison sentence, or both. Fines may be imposed in respect of each bird, nest, egg or skin. If more than one such item is involved then the total fine is determined as if the person had been convicted of a separate offence in respect of each bird, nest, egg or thing.

Also last year a landmark case was brought to court by the Crown Prosecution Service (CPS), where Ashfield District Council became the first local authority to be prosecuted for the destruction of birds' nests and their eggs. The act occurred in May 2001 when a 100 metre section of hedgerow was destroyed by a JCB, as part of some clearance work in Morvern Park, Kirkby-in-Ashfield, Nottinghamshire to make space for a local carnival. The JCB driver and council officers were informed by a local resident that the section of hedge contained a number of dunnock nests. However, despite holding a site meeting and agreeing to postpone the work the section of hedge was still removed.

Statements were obtained from a number of witnesses, who had seen the site before and afterwards. There was also evidence of destroyed nests and eggs where the hedge had been removed. Section 69 of the Wildlife and Countryside Act 1981 (as amended) provides for corporate liability and, after the CPS took legal advice, Ashfield District Council as well as two officials and the JCB driver were reported for four offences of intentional nest and egg destruction. Pleas to all offences by the Council were accepted at Nottingham Magistrates' Court on 17 December 2001 and it was fined £2,800.00 with £55.00 Costs.

Every case must be treated on its own merits, as we know every tree is different, and every job or contract we are asked to deal with has its own share of issues and problems. If you are concerned about a particular situation the RSPB investigations unit are very experienced and can offer some very useful advice. RSPB Investigations Officers,
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