



Legal feature

Catching up



Richard Atkins, partner with Knights Solicitors, explains the legalities we need to consider when catching up.

IN BOTH GAMEKEEPING AND FARMING IT IS sometimes frightening to see what is posted online, eg: “After a successful pheasant season the shoot I go to is interested in catching up the hens and giving them to game breeders in exchange for some poults later. I was wondering if anyone knew if anybody wanted some...”

The straight answer to that question is that it is illegal. Let’s start from the beginning. Birds, whether born or raised in captivity and which are released into the wild, are wild birds. The prohibition on snaring, trapping, catching and capturing wild birds as well as the provisions regarding injuring, maiming or killing wild birds is found in s5 of the Wildlife & Countryside Act 1981. There are no exceptions to this legislation unless the activity is permitted under the Act or some other piece of primary or secondary legislation. The best known examples are authorisation under the schemes for General or Special Licences.

So what about ‘catching up’ because many gamekeepers have undertaken

the practice, often with their fathers, or grandfathers? The answer is that the practice is legal provided it is conducted outside of the close season, that is *during* the shooting season. Natural England’s Technical Information Note TIN104 sets out the position and should be downloaded by every shoot manager or gamekeeper and pinned to the shoot noticeboard.

The dates when the relevant species can be captured or killed is set out in the chart opposite.

These dates should also be displayed on the noticeboard. Why then (as I am asked by many gamekeepers) is there a problem? Quite simply the commercial pressures of shooting, the ever-increasing number of shooting days right up to the last day of the season, coupled with other calls on gamekeepers leave them with no time to engage in any necessary tidying up, game conservation work or husbandry during the shooting season. But such excuses are not going to be accepted by any Magistrates’ Court.

For completeness, it has to be said

that no game may be killed or taken in any county on Sunday or Christmas Day and, for these purposes, this means all the gamebirds listed here in particular pheasant, partridge, red grouse and black grouse.

I am also frequently asked what gamekeepers should do about birds found injured or diseased on their rounds or during anti-poaching patrols. The answer is that they may only catch and humanely despatch birds that are seriously suffering from disease or injury during their *open* season. This presumably unintended and highly unsatisfactory state of affairs derives from Section 3 of the 1831 Game Act, which the Law Commission is proposing should be changed to allow ‘mercy killing’ of gamebirds at any time.

Even when it is permitted to kill and despatch a diseased gamebird humanely, there are prohibitions on the manner of despatch. In this short article, I can only highlight means of despatch and disposal which are prohibited and recommend you stick to best practice

SHOOTING SEASON DATES IN ENGLAND AND WALES

SPECIES	OPEN SEASON	CLOSE SEASON
Pheasant	Oct 1 – Feb 1	Feb 2 – Sept 30
Grey Partridge	Sep 1 – Feb 1	Feb 2 – Aug 31
Red-legged partridge	Sep 1 – Feb 1	Feb 2 – Aug 31
Red grouse	Aug 12 – Dec 10	Dec 11 – Aug 11
Black grouse	Aug 20 – Dec 10 (everywhere apart from Somerset, Devon and New Forest: Sep 1 – Dec 10)	Dec 11 – Aug 19 (Dec 9 – Aug 31)
Duck & goose (inland)	Sep 1 – Jan 31	Feb 1 – Aug 31
Duck & goose (below high water mark)	Sep 1 – Feb 20	Feb 21 – Aug 31
Common snipe	Aug 12 – Jan 31	Feb 1 – Aug 11
Woodcock	Oct 1 – Jan 31	Feb 1 – Sep 30
Golden plover	Sep 1 – Jan 31	Feb 1 – Aug 31
Coot/moorhen	Sep 1 – Jan 31	Feb 1 – Aug 31

in this necessary but difficult area of work. The means of despatch that are definitely illegal include spring traps, gin traps, electrical devices and poisons. Lastly, pursuit in mechanically propelled vehicles is prohibited, so deliberately running down a bird using a 4x4 or on a quad bike is excluded. Please note the same applies to motorists on any road.

So what is the most efficient manner of despatch? Well, for birds it is either shooting, a sharp blow or wringing the neck. It should be noted that recent research into neck-wringing has shown that that birds do not lose consciousness

as quickly as previously thought and this has led to restrictions on commercial activities. The same principles apply to catching up. For further details a visit to the Humane Slaughter Association at www.hsa.org.uk is worth the time. In terms of legislation, there is provision under s4 Animal Welfare Act 2006 of causing “unnecessary suffering”. For larger operations there is potential liability in certain circumstances under The Welfare of Animals (Slaughter or Killing) Regulations 1995, which also applies to birds. The extent of these regulations are, however, outside the scope of this article.

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 Richard Atkins is a Partner of Knights Solicitors, Tunbridge Wells. Knights Solicitors have dealt with numerous investigations and prosecutions under the Animal Welfare Act 2006 and Wildlife & Countryside Act 1981. Knights Solicitors specialise in countryside and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales. Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Joshua Quinn.

NGO FREE LEGAL HELPLINE
 NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Joshua Quinn, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:
 Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.