

**Important note:** If at any point you are uncertain as to how to proceed with planning or actual works, **STOP** and seek advice from Legal Services and/or an ecologist

## 1 Purpose

On 25<sup>th</sup> April 2019 Natural England revoked some general licences permitting the control of certain wild birds. Network Rail may need to control these types of birds in order to safeguard railway operations or to protect passengers in station areas and it is now necessary to apply for a specific licence before undertaking the control activity.

The media reporting of this licensing issue raised a number of queries relating to Network Rail's activities and how any activities that may affect bird species can be undertaken legally thereby safeguarding railway operations and the personnel undertaking the work.

On 14<sup>th</sup> June Defra issued a number of general licences for the killing or taking of certain species of wild bird in England

This guidance note sets out the advice from Natural England and Defra in the context of railway operations.

The revocation of licences and the issues arising are only relevant in England. This guidance applies only to Network Rail Regions / Routes in England.

## 2 The law

The relevant piece of legislation is the Wildlife and Countryside Act 1981 (as amended).

All wild bird species, their eggs and nests are protected by law. **You must always try to avoid harming birds or to use measures which do not kill or injure them before considering taking harmful action.**

You are breaking the law if you:

- intentionally kill, injure or take wild birds;
- intentionally take, damage or destroy a wild bird's nest while it is being used or built;
- intentionally take or destroy a wild bird's egg.

Some birds, known as 'Schedule 1 birds', e.g. barn owls, have extra legal protection. For these bird species it is also an offence to do the following, either intentionally or by not taking enough care:

- disturb them while they are nesting, building a nest, in or near a nest that contains their young;
- disturb their dependent young.

You could get an unlimited fine and up to 6 months in prison for each offence if you're found guilty.

## 3 Avoid harm to birds and nests

In most cases you should be able to avoid harming wild birds and their nests by:

- timing your work to avoid the breeding season;
- using a range of methods that deter but don't harm them;
- identifying where birds are nesting and modifying work specifications accordingly. (NR/GN/ESD26 – Breeding Bird Checks)

If wild birds are causing you problems, there are ways to deal with them legally, including:

- scaring the birds away using visual (for example scarecrows or flight diverters (Figure 1) or audible devices;
- restricting access to food sources; and
- managing nearby habitat to make it less attractive to birds.

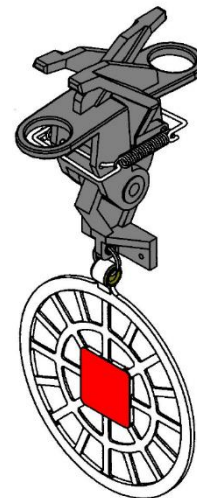


Figure 1: Bird flight diverter

## 4 Exemption and licences

### 4.1 Exemption

In exceptional cases there is an exemption to permit legal activities, where avoiding harm to the birds or nests is not possible, such as an imminent risk to public safety.

An authorised person shall not be guilty of killing or injuring any wild bird (except Schedule 1 species) if they show that their action was necessary for the purpose of preserving public health or public safety.

### 4.2 Licences

You may be able to rely on a Defra general licence or apply for a licence from Natural England for certain activities if you need to remove wild birds because they're causing problems. If you can't resolve your wild bird problem without harming the birds or damaging their nests, licences are available for a limited number of reasons that include preserving public health and safety.

Two licences are available, a general Licence to control certain species and one for any wild birds, including Schedule 1 species.

#### 4.2.1 General Licence to control certain species

It is possible to use the general licence to control the bird species listed below:

- carrion crows
- Canada geese
- feral pigeons
- jackdaws
- magpies
- monk parakeets
- rooks

The general licence does **not** cover collared doves, herring gulls, lesser black-backed gulls, jays or wood pigeons because of insufficient evidence that control was necessary for public health or public safety. The general licence

does have a specific condition of use that methods should not be restricted to lethal control and other legal techniques should be used alongside those used under licence.

The general licence Wild birds: licence to kill or take for public health or safety (GL35) can be downloaded from [Gov.UK website](#).

Those undertaking this immediate action must be in possession of the following **whilst undertaking the control**:

- a copy of the GL35 licence; and
- a copy of the reporting form (NR/GN/ESD25 – Reporting form for licences 19-01 GL35 and A08 (England)).

Any activity can only be for bird species listed on the licence for reasons of public health and public safety. Any deviation will need to be licensed separately.

### 4.2.2 Licence to protect public health and safety

For species of bird not listed in 4.2.1, the person locally responsible for the asset being affected by the presence of birds / birds' nests must make an application for a licence to preserve public health or public safety (NR/GN/ESD24a – ESD24 (part a) Licence A08 to control wild birds (England) and NR/GN/ESD24b – ESD24 (part b) Licence A08 to control wild birds (England) – template to complete). Applications should be accompanied by a letter detailing the nature of the health or safety issue to allow Natural England to prioritise their response.

It is not possible to carry out any activity until the licence has been granted.

This licence will allow those acting on the licence to:

- disturb wild birds and their eggs;
- kill wild birds and their eggs;
- damage or destroy the nest of a wild bird; and
- use a prohibited method on wild birds and their eggs.

You must report any actions you took using this licence on the report form template on this page. You must report no later than 2 weeks after your licence expires, even if you've taken no action.

Any activity can only be for bird species listed on the application, for the precise activities defined on the application in and for the reasons given, e.g. public safety. Any deviation will need to be licensed separately.



Figure 2: Starlings congregating on OLE

## 5 Other resources

### 5.1 Licence guidance

NR/GN/ESD24a – ESD24 (part a) Licence A08 to control wild birds (England)

NR/GN/ESD24b – ESD24 (part b) Licence A08 to control wild birds (England) – template to complete

NR/GN/ESD25 – Reporting form for licences 19-01 GL35 and A08 (England)

NR/GN/ESD26 – Breeding Bird Checks

Natural England guidance ([Gov.UK](https://www.gov.uk));

- <https://www.gov.uk/environment/environmental-management-wildlife-habitat-conservation-birds>

