

**THE ROYAL PIGEON RACING ASSOCIATION**

**THE RAPTOR ALLIANCE**

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**ADVICE**

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THE RAPTOR ALLIANCE**

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**ADVICE**

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1. I am asked to advise the Royal Pigeon Association and the Raptor Alliance on the law relating to the protection of raptors. The question has arisen as a result of the continuing attacks by raptors on racing pigeons particularly within the confines of the home lofts and home training grounds.
2. The Association has 42,405 members but there is a real fear that with the continued rate of attacks membership will fall and in the end cause the Association to fold.
3. Attacks by raptors not only cause depletion of the owner's stock but considerable distress to the owners. Further, there is more often than not considerable financial loss. There has been an increase in the number of raptors in urban areas as consequently the attacks have increased. In consultation with members of my clients I was informed that the increase in the number of raptors has, at least, partly been brought about by the RSPB installing nesting sites for the raptors in urban areas, nor surprisingly that the majority of lofts are in urban areas. I was told that were a raptor to be removed from a site the natural process would be for another to take its place. The raptor that carries out the majority of attacks in the home area is the sparrowhawk.
4. The Association and the Alliance have no wish to kill raptors but to find some way in which to be able to remove them from the area when they attack their pigeons. When attacks take place in flight there is nothing that can be done, whether the pigeons are on a training exercise or racing any distance. The question is what if anything can be done when an attack happens within the private property of the pigeon owner and in the lofts.

5. While various methods of visual deterrents have been tried. These have included markings on the pigeons themselves or loft area deterrents. None have proved effective at resolving attacks as the Scottish Homing Union found through the research of Lancaster University.
6. One method of resolving such attacks would be to trap the raptor. This is fraught with risk. However traps do exist that would enable a raptor to be trapped without harm. Once trapped the bird would be taken to an authorised body such as a falconer or one of the Societies, alternatively released in the wild well away from any urban area.

### **THE LAW**

7. The Animal Act 1971 was passed to provide for civil liability for damage done by animals and for the protection of livestock from dogs. Section 2 of the Act provides for liability in respect of dangerous species or an animal that is likely to cause such damage unless restrained or if caused was likely to be severe and such likelihood was due to a characteristic not normally found in such animals of the same species. The term 'livestock' includes 'poultry' and under the Act domestic pigeons are included in the interpretation provision. However birds of prey do not appear to be classes as a dangerous species and since their natural characteristics include the seizing of other birds including pigeons liability would not fall on a keeper under the Act.
8. Protection of wild birds is currently provided by the Wildlife and Countryside Act 1981. The latter Act made provision for the protection, inter alia, of wild birds and for the issuing of licences to an authorised person to take steps necessary to protect 'livestock' from serious damage.
9. The 1981 Act protects any wild bird, including sparrowhawks, from being killed, injured or being taken; such actions are made criminal offences. Further protection and offences are set out to cover damage to nests and eggs or for possessing or controlling them. Under section 16 an exception is made where an authorised person, under licence, does a forbidden act where it is necessary to prevent serious damage to livestock. Section 16 gives power to the body now called Natural England to grant such

licences for such acts in order to prevent serious damage to livestock. However a licence will not be granted if there is some other satisfactory solution.

10. The statutory definition, section 27, of livestock includes any animal kept for the provision of food, wool, skin, fur or for use in carrying on agricultural activity or the provision and improvement of shooting or fishing. Racing pigeons are not kept for such purposes.
11. Case law has defined 'livestock' as being domesticated animals raised in an agricultural setting to produce commodities such as food, fibre and eggs.
12. Under the Act domestic pigeons do come within the definition of 'poultry'. However that term is not included in the definition of 'livestock' under the Act. This is perhaps where the Association and Alliance needs to look in order to persuade the Law Commission and/or Government to change the definition of 'livestock'.
13. Some raptors are protected at all times under Schedule 1 of the Act, for example peregrines, goshawks and harriers, whereas sparrowhawks do not but they are protected under the provisions of section 1.
14. There is European law, in addition to the UK legislation, that gives protection to raptors that applies to the UK.
15. The original EU Directive 79/409, dated the 2<sup>nd</sup> April 1979, which banned the intentional killing and trapping of wild birds was replaced by the Birds Directive 2009/147/EC, dated the 30<sup>th</sup> November 2009<sup>1</sup>. The Directive relates to the conservation of Europe's wild birds by giving protection from killing, capturing, destruction of nests or the taking of eggs. Despite the concern to ensure protection and conservation, the Directive was concerned to ensure that there should be provision for derogation in certain specific situations.
16. Under Article 1 the Directive was to relate to the conservation of all species of naturally occurring birds in the wild state. It applied to birds, their eggs, nests and habitats. Under Article 2 Member States are

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<sup>1</sup> I have included a copy of the Directive in the return of papers.

required to take requisite measures to maintain the population of the species under Article 1 at a level that corresponds in particular to ecological, scientific and cultural requirements, 'while taking account of economic and recreational requirements'.

17. Article 3 provides for the Member States to take requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats
18. The Association and Alliance should consider acquiring sufficient support from both its members and other organisations, such as land owners, land agents and gamekeepers to consider a joint approach to Government for it to consider its obligation to have regard to the proviso in Article 2 that such measures should take account of 'economic and recreational requirements'. An argument might be developed as to the impact on the economies of landowners losing chicks on game lands and to members of the Association in terms of losses of value and the Association in loss of members, as well as the impact on those who supply equipment and feed to members. There are clearly both economic and recreational requirements in urban and rural communities affected by the depredations of raptors of various types. There is an argument that might be added to the equation that the installation of nesting sites in urban areas by man to bring raptors into an urban area may not be a natural habitat; however, such argument will depend on expert evidence as to what might be a raptor's natural habitat.
19. Annex 1 under Article 4 of the Directive gives special protection in terms of conservation measures concerning habitat. The Annex does not cover the British sparrowhawk. If the UK sparrowhawk is, as it would appear to be, the 'Eurasian sparrowhawk' then it is relatively common now, since its decline after the Second World War and the use of pesticides, and is classified as being of 'Least Concern' by BirdLife International. Indeed the Eurasian sparrowhawk is resident in the UK year round and appears to be one of the commonest birds of prey. Its prey include not merely small birds (songbirds) and pigeons but also poultry. Those organisations representing poultry rearers may well have

similar problems and consequently join in with the Association and Alliance in making representations to the Government. An argument might be mounted that given the numbers a limited provision for the capture and relocation of the bird to a rural area might be permitted. However no such argument could be put forward without the evidential material discussed in consultation.

20. Birds given special protection under Annex 1 include the sparrowhawk with the binomial names:

- a. *Accipiter gentilis arrigonii*
- b. *Accipiter nisus granti*
- c. *Accipiter brevipes*.

These are subspecies of the *accipiter nisus*, which is the Eurasian sparrowhawk. Thus the subspecies are given special protection as above but the Eurasian sparrowhawk does not have the same extent of protection but is protected under Articles 1 and 2.

21. Articles 5 and 6 provide for Member States to take the requisite measures for the protection of all species of birds in Article 1 and the prohibition on the sale, transport for sale, keeping for sale and offering for sale of live or dead birds or their parts.

22. Article 7 provides for the hunting of certain species of bird in certain areas. Sparrowhawks/falcons are not included in this list.

23. Article 9 makes provision for Member States to derogate from the provisions of Articles 5-8 where, for example, there is no other satisfactory solution in situations where:

- a. It is in the interests of public health or safety,
- b. It is in the interests of air safety,
- c. It is necessary to prevent serious damage to crops, livestock, forests, fisheries and water,
- d. It is to protect flora and fauna.

Again, pigeons do not fall within the definition of 'livestock'. The derogation under this Article is not to prevent minor damage.

24. Under the EU Directive 2009/158/EC there are provisions in respect of the trade and importation of poultry and hatching eggs. In this

Directive the term 'poultry' includes pigeons. However in respect of any such bird 'poultry' means 'reared or kept in captivity for breeding, the production of meat or eggs for consumption or for re-stocking game supplies'. However this Directive does not apply to poultry for exhibitions, shows or contests. Those three classes cover the reasons for having and rearing racing pigeons and so would not be covered by the Directive.

25. A number of reports have been prepared over the years looking at the impact of raptor attacks and what can be done. The UK Raptor Working Group reported in about 1999, The Scottish Homing Union report in 2004. In the latter report it was suggested that pigeon racing could be dead in twenty years. As at the autumn of 2011 the Law Commission was to look at wildlife law. The areas that the Commission should be asked to look at are both the re-definition of the meaning of 'livestock' and 'poultry' as well as the word 'serious' in 'serious damage' under section 10(4) of the 1981 Act.

### **Conclusions**

26. Again, as discussed in the consultation such an approach to the Commission would gain weight from a joint approach by the representatives of the various organisations that are affected by the raptor attacks.
27. Under the 1981 Act provision is made for the granting of licences to take action against attacks where there is serious damage to livestock. For present purposes, as discussed and set out above, racing pigeons do not fall within this provision.
28. There are further problems facing the Association and Alliance. The RSPB supports the continued protection of raptors. In 2010 it presented a petition to the then Labour Government, signed by some 200,000 people, lobbying against the killing of birds of prey.
29. The Court of First Instance in Europe can entertain applications brought by individuals or Member States for example to ensure compliance with the EU Directive or in respect of damages due to

unlawful conduct on the part of a Community institution. There are considerable hurdles to any individual application by a member of the Association or the Association itself to the Court of First Instance, for example:

- a. The EU Directive's Objectives for the protection of such birds,
- b. The meaning of 'livestock',
- c. The meaning of 'serious' damage,
- d. Presentation of any evidence to demonstrate that the UK Government or that of Scotland had failed in meeting its obligations under Article 2 to take into account economic and recreational requirements.

30. From various reports there are steps that individual members can take at their lofts, though how successful they are is a matter of trial and error:

- a. Remove outdoor feed trays,
- b. Place lofts near or in areas of evergreen shrubs to give pigeons a refuge,
- c. Change home area training fly times as raptors can figure out a pattern of fly times,
- d. Whether feeding crows would assist may be speculative; crows apparently hate hawks and may harass or chase them,
- e. The use of CDs to reflect light or on a wind vane – this method has very limited results according to the literature.

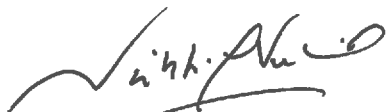
31. Under section 16 of the 1981 Act there is as set out above the power to grant a licence to take action where there is serious damage to livestock where there is no other satisfactory solution. Such licences, WML A08 can only be granted in respect of the 'protection' of 'livestock'. Presently racing pigeons do not fall within that definition.

32. In answer to the specific questions I am asked in the Instructions:

- a. There is no law to protect racing pigeons from raptor attacks on private property;
- b. All raptors have protection under the EU Directive and the 1981 Act;



- c. Application might be made to the Court of First Instance; however there is no evidence at the moment available that would justify such an application;
  - d. An evidential database needs to be built up, incorporating sound material from all organisations affected by the ravages of raptors in order that an approach can be made whether in petition form or direct representations to the Government and/or Law Commission to change the law as to the meaning of 'livestock' and as to the Directive the reconsideration by the Government of the economic and recreational requirements under Article 2.
33. In making a case for change efforts should concentrate on the current situation rather than rely on historical facts, such as the use of pigeons in times of war. The reduction of songbirds, though sad, is a natural consequence of the presence of birds of prey and does not make a case for the protection of the Association's members pigeons.
34. It is very important that the Association and Alliance advises members in the strongest terms that they must not take individual action against raptors in any form that breaks the protection afforded under the legal provisions. Such action is not only a breach of the criminal law but ultimately weakens any case that might be advanced to the Governments and its agencies to consider a change that would afford protection to racing pigeons.



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