

## Summary

Work carried out by Man Coed VM or its contractors may involve disturbance to nesting birds or animals. In some instances, it may be an offence under the Wildlife and Countryside Act to disturb a nesting bird, eggs, dependent young, or an animal.

This Health & Safety Instruction (HSI) summarises the main problem areas, gives an interpretation of the law, and presents procedures for minimising the potential for disturbance.

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## 1.0 Introduction

- 1.1 The Man Coed VM carries out tree cutting for local authorities and utility companies throughout the year. This is essential safety work which must take priority over other considerations.

However, there is a possibility that in some circumstances the tree cutting may be at risk of committing an offence under the Wildlife and Countryside Act 1981, (& its subsequent amendments and regulations, and other related legislation).

In any case there is a general concern by Man Coed VM staff and Contractors' staff alike to minimise the harmful effects, and maximise the potential benefits, to wildlife and the environment resulting from our activities.

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1.2 The following situations are considered to be of most concern:

- a) Disturbance of nesting birds.
- b) Disturbance of bat roosts.
- c) Disturbance of badger's setts.

1.3 This (HSI) sets out the general principles by which Man Coed VM expects its employees and tree cutting contractors to abide; also procedures to be implemented to minimise the risk of disturbance of birds and animals. It also provides an overview of the relevant legislation.

## **2.0 Man Coed VM Aims and Objectives.**

2.1 Man Coed VM has as its highest priority the maintenance of adequate clearances of tree growth to allow the safe operation of the System and associated Plant and Apparatus.

2.2 Cutting is required throughout the year to keep tree growth adequately in check.

Cutting must be organised in a systematic and efficient manner. Man Coed also recognise that it would not be possible to maintain its well-motivated and highly trained staff or Contractors if the work was made seasonal.

2.3 Man Coed VM recognises that the various forms of vegetation management involved in the tree cutting programme do have an impact on birds, animals and their wider environment. This can include negative effects such as disturbance of nests or shelters, removal of screening, perching or feeding habitat, or even accidental physical injury or stress.

The programme can also have very beneficial long term effects, by creating more habitat plentiful food supplies and shelter, and by introducing more conservation - minded management systems (such as layering of hedges, woodland coppicing, creating woodland glades and restoration of lowland heath micro-habitats).

2.5 Given the priorities outlined above, Man Coed VM aims to minimise any adverse impact and to maximise the beneficial effects of its tree cutting programme on wildlife and the environment generally.

2.6 The proposals set out in section 4.0 are designed to meet Man Coed VM's objective of complying fully with both the letter and the spirit of the Wildlife and Countryside Act 1981. (Part 1) as it relates to nesting birds, bat roosts and badger setts.

## **3.0 Contractor's Responsibilities**

3.1 Contractors involved in the tree cutting programme are responsible for ensuring their actions, and those of their employees or sub-contractors, do not constitute an Offence under the Wildlife and Countryside Act and related legislation.

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3.2 Contractors are responsible for ensuring that their staff are aware of and work towards achieving - Man Coed VM aims and objectives.

3.3 The procedures outlined below will only work if individual surveyors and team members take them to heart, and are prepared to work with and develop them. Man Coed are looking to individuals to develop expertise in:

- identifying / assessing risks to wildlife
- methods of work to minimise the negative impact and maximise the beneficial impact of our operations.

As Utility Tree Care professionals we are all committed to such continuous improvement anyway.

#### **4.0 Procedures**

##### **4.1 To avoid disturbance to nesting birds or their young.**

4.1.1 The main period of nesting is thought to be the period April to June inclusive.

However, in southern areas birds may be nesting from early March to July, with the possibility of secondary nesting as late as August or September.

4.1.2 Unfortunately, because of the scale of the task, employing well over one hundred skilled cutters full-time, it is impossible for the Man Coed tree cutting programme to be restricted to ensure it is completed outside the nesting season.

4.1.3 However, Man Coed VM are committed to minimise the risks and consequences of disturbing nesting birds by the tree cutting programme. We also want to maximize the long term benefits and nesting opportunities that the cutting work can often create for nesting birds.

4.1.4 Man Coed VM will support and encourage contractors to develop efficient working procedures and programmes which minimise disruption in the nesting season.

4.1.5 The following procedure is based on what is informally being practised by most contractors at present. It has been agreed with English Nature and will be presented to other interested parties for comment and modification. We require this procedure to be adopted and developed by all surveyors and team leaders, to minimise the risk of disturbing nesting birds.

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**Procedure to minimise risk of disturbance to nesting birds.****Surveyors:**

- 4.1.6 Will question owners about known nest sites and -where necessary- explain to owners the procedures given below.
- 4.1.7 Will assess work required on each span for risk of disturbance to nesting birds or dependent young. (Depends on site vegetation and time of year.)
- 4.1.8 Will clearly identify known nest sites when work is to be done in or around the nesting season.

**Contractors:**

- 4.1.9 Will defer all non- urgent work on high risk sites to outside the nesting season,  
  
or -Where work cannot be deferred will complete the minimum work necessary to clear the conductors or reduce the safety hazard, and will defer other work to outside the nesting season.
- 4.1.10 Where a schedule 1 nesting species is identified, will contact English Nature for advice prior to commencement of any work on the site. Man Coed VM are to be notified in writing if a schedule 1 nesting bird is identified. (Appendix 1 lists Schedule 1 species).

**Team Leaders:**

- 4.1.11 Will clearly identify the position of known inhabited nest sites prior to commencement of work. Use of marker paint to either spot-mark the trunk, or to mark a section of hedge on the ground - is recommended. All members of the team must be aware of the location of nests.
- 4.1.12 Work will be planned to avoid (or at least minimise) damage to vegetation which supports or screens the nest, and habitats of general importance to birds such as lowland heath or semi/ unimproved grassland.
- 4.1.13 Organization of work will be planned to minimise disturbance to nesting birds, or dependent young.

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#### 4.1.14 Accidental damage of nest sites.

- Adjust work to minimise further disruption to the nest.
- Decide whether there are sitting birds or eggs or dependent young. Try to identify species.
- If a schedule 1 species is identified contact English Nature for advice.

4.1.15 The general rule is that sitting eggs will be abandoned if the habitat around the nest site is disturbed too much, as the parents will lose landmarks to identify the nest.

4.1.16 However if fledglings are re-sited in a safe position as close as possible to the original nest site, and further disruption minimised, there is a good chance that the parents will return to the nest. The same applies to dependent young out of the nest.

#### 4.1.17 High & Low Risk habitats

High Risk Habitats	Low Risk Habitats
Bushy, dense hedgerows Particularly Hawthorn, Blackthorn	Young, fast-growing Ash and Sycamore hedges.
Large, over-mature trees with Evidence of cavities & decay	Open-branched healthy open Grown trees
Dense thicket	Drawn -up hedgerow or plantation trees with poor side insulation
Open - grown conifers and thick conifer hedges	Plantation conifers after canopy closure
Conifers prior to canopy closure	Hedges which are side-flailed annually
Open lowland heath, Gorse, unimproved grassland	

## 4.2 Procedure to avoid disturbance to bat roosts in trees.

4.2.1 It is clear from the legislation that any tree cutting which interferes with roosting or hibernating bats may only be done under an English Nature licence. Any is otherwise an offence under the provisions of the Wildlife and

4.2.2 It is therefore essential that contractors familiarise themselves with habitats where bat roosts may be present, and ensure that measures are taken to avoid the risk of disturbance.

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#### 4.2.3 High and Low Risk Habitats

High Risk Habitats	Low Risk Habitats
Varied mature broadleaved woodland and parkland trees	Young, healthy trees
Large hedgerow trees with dieback D decay, sparse crowns, cavities	Most conifer and broadleaved plantation trees
Old pollards and hulks – particularly on insect-rich sites such as near water. (Veteran trees)	Small diameter scrub, shrub and hedge

#### 4.2.4 Look out for:

- Trees with stunted foliage, extensive deadwood or bracket fungi. These can all indicate decay and possible hollowing.
- Cavities or cracks in trunk, under bark, in branch forks or old / broken branch stubs, old Woodpecker holes.
- Faecal staining (sometimes seen in summer) below cavities.
- Faeces on branches and on ground below cavity.

#### Action

- 4.2.5 All surveyors must look out for potential bat sites and make a risk assessment.
- 4.2.6 Avoid any work in or around a suspected bat roost. Inform Man Coed immediately in writing and request a site inspection visit.
- 4.2.7 Inform Man Coed VM Office
- 4.2.8 Agree a written action plan to avoid damaging the roost and surrounding habitat - also the licence requirement - before any work takes place.
- 4.2.9 Where possible avoid felling trees with potential future bat habitat if they can be made safe and give clearance by pruning instead.
- 4.2.10 Where good potential bat roosts have to be removed Man Coed VM are happy to consider installation of artificial bat roosts. (See Further Reading.)
- 4.2.11 Make a written record of identified bat roosts under or close to conductors. Send written record to Man Coed VM.

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4.2.12 In the event of accidental disturbance to a bat roost seek advice immediately from English Nature.

#### 4.2.13 Other notes

- Bats hibernate between September and May; at which time they are particularly vulnerable to damage.
- Bats tend to be faithful to established summer and winter roosting sites.
- Bat roosts in trees are rare.
- 15 or more species known in U.K. Two woodland species Barbastelle and Bechstein's are extremely rare. Lesser and Greater Horseshoe bats are only found in S.W. England.
- Man Coed cutting can generally improve foraging habitat for bats by introducing diversity into hedgerows and woodlands, and improving insect food sources.

#### 4.3 Procedure to avoid disturbance to badger setts.

- 4.3.1 A licence must be obtained from either English Nature or the Ministry of Agriculture, Fisheries and Food, for any activities likely to disturb a badger's sett.
- 4.3.2 Tree surgery operations which do not involve felling trees, and where the disposal of arisings does not significantly alter ground conditions, are unlikely to fall within the requirement for licensing.
- 4.3.3 However, where a number of trees are to be felled, or vehicle access or treatment of arisings are required which may alter ground conditions, it will be necessary to apply for a licence prior to commencement of work.
- 4.3.4 Inform English Nature and Man Coed at Avon Bank in writing and seek advice from the local English Nature office on ways to minimise disturbance. This must be done well in advance of commencement of work.

## 5.0 Legislation

### 5.1 Wildlife and Countryside Act 1981 (amended).

This is the most important piece of legislation dealing with the protection of wildlife. Part one covers protection of birds, animals and plants.

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## 5.2 Birds

Under the act all birds are covered some of the time, and some birds are covered all of the time.

It is an offence to:

- Kill, injure or take any wild bird
- Take, damage or destroy the nest of a wild bird while in use or being built.
- Take or destroy the eggs of a wild bird.

However, under section two an authorised person may kill or take pest species such as crows, rooks, feral pigeons and also take, damage or destroy their nests and eggs.

## 5.3 The wording of the act with reference to exceptions is as shown below:

"However a person shall not be guilty of an offence by reason of:

- a) the taking of any wild bird if he shows that the bird had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer
- b) the killing of any wild bird if he shows that the bird had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
- c) any act made unlawful by those provisions if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.

An authorised person shall not be guilty of an offence by reason of the killing or injuring of any wild bird, other than a bird included in schedule 1, if he shows that his action was necessary for the purpose of-

- a. Preserving public health or public or air safety.
- b. Preventing the spread of disease; or
- c. Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, or fisheries."

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#### 5.4 Definitions:

Schedule 1 birds are species protected by increased penalties and which cannot be intentionally disturbed during nest building, or while nesting with eggs, young or with dependent young out of the nest.

(Appendix 1 gives the list of schedule 1 birds.)

##### 5.4.1 Authorised Person

the owner or occupier of any land on which the action takes place or any person authorised by the owner or occupier. It can also be somebody authorised in writing by a local authority, English Nature, a local fisheries committee, a water authority or any other statutory water undertakers.

##### 5.4.2 Licence

issued by one of a number of authorities, including the Department of the Environment, English Nature, MAFF to permit an otherwise illegal act. The licence will specify precisely what action is permitted under it.

##### 5.4.3 General Licence

these are licences which permit authorised persons (in some cases anyone) to carry out an otherwise illegal act. Such licences need not be applied for.

##### 5.4.4 No 3. Killing of birds to preserve public health/ air safety.

Allows killing of certain birds including damage or destruction of their nests by an authorised person (issued by DOE).

#### 5.5 Disturbance of roosting and hibernating bats.

##### 5.5.1 The Wildlife and Countryside Act 1981 (part 1) states that:

"Subject to the provisions of [the act], if any person intentionally kills, injures or takes any wild animal included in Schedule 5, he shall be guilty of an offence."

Appendix 3 contains the list of species protected under schedule 5.

##### 5.5.2 Of these the situation most likely to be encountered is a bat roost or hibernation chamber in a hollow tree branch or stem.

##### 5.5.3 Under the act (and also The Conservation of Wild Creatures and Wild Plants Act 1975) it is also an offence:

"Subject to the provisions of this Part, if any person intentionally:

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- a) damages or destroys, or obstructs access to, any structure or place which any wild animal included in schedule 5 uses for shelter or protection; or
- b) disturbs any such animal while it is occupying a structure or place which it uses for that purpose."

**5.5.4 Exceptions are allowed where:**

- a) an animal is taken where it is shown that the animal was disabled other than by [his] unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled.
- b) the killing of any such animal if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
- c) any act made unlawful by that section if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.

**5.5.5 However:**

"In the case of anything done in relation to a bat, subsection [2c] shown above does not provide a defence (other than in the living area of a house), unless he had notified [English Nature] of the proposed action or operation and allowed them a reasonable time to advise him as whether it should be carried out and, if so, the method to be used."

**5.5.6 Also:**

"... an authorised person shall not be guilty of an offence by reason of killing or injuring of a wild animal included in schedule 5 if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries."

**5.5.7 However, the Act states that:**

"An authorised person shall not be entitled to rely on the defence provided by [subsection 4] as respects any action taken at any time if it had become apparent, before that time, that action would prove necessary for the purpose mentioned in that subsection and either-

- a) a licence under section 16 authorising that action had not been applied for as soon as reasonably practicable after that fact had become apparent; or
- b) an application for such a licence had been determined."

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## 5.6 Other relevant legislation.

Amendments to the Wildlife and Countryside Act 1985. Wildlife Bill 1994 (extends protection to Badgers setts). The Conservation (Natural Habitats, &c.) Regulations 1994.

European Union Directives on the Conservation of Wild Birds (79/409/EEC), and on the Wild Fauna and Flora (92/43/EEC).

## 6.0 Further reading:

Wildlife & Countryside Act 1981 (Part 1)

Wild Birds and the Law (published by the RSPB)

RSPB Campaign for the Countryside Hedges Information Leaflet.

Forestry Commission Research Information Note 165 -Habitat Management for Woodland Bats.

Wildlife, the Law and You (published by English Nature)

## Appendix 1

### Schedule 1 Part 1 Birds protected by special penalties at all times

Avocet	Greenshank	Sandpiper, Wood
Bee-eater	Gull, Little	Scaup
Bittern	Gull, Mediterranean	Scoter, Common
Bittern, Little	Gyr Falcon	Scoter, Velvet
Blue throat	Harrier (all spp)	Serim
Brambling	Heron, Purple	Shorelark
Bunting, Cirl	Hobby	Shrike, Red-backed
Bunting, Lapland	Hoopoe	Spoonbill
Bunting, Snow	Kingfisher	Stilt, Black-winged
Buzzard, Honey	Kite, Red	Stint, Temminck's
Chough	Merlin	Stone-curlew

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Corncrake	Oriole, Golden	Swan, Bewick's
Crake, Spotted	Osprey	Swan, Whooper
Crossbill (all spp)	Owl, Barn	Tern, Black
Diver (all spp)	Owl, Snowy	Tern, Little
Dotterel	Peregrine	Tern, Roseate
Duck, Long-tailed	Petrel, Leach's	Tit, Bearded
Eagle, Golden	Phalarope, Red-necked	Tit, Crested
Eagle, White-tailed	Plover-Kentish	Tree creeper short-toed
Falcon, Gyr	Plover, Little ringed	Warbler, Cetti's
Fieldfare	Quail, Common	Warbler, Dartford
Firecrest	Redstart, Black	Warbler, Marsh
Garganey	Redwing	Warbler, Savi's
Godwit, Black-tail'd	Rosefinch, Scarlet	Whimbrel
Goshawk	Ruff	Woodlark
Grebe, Black necked	Sandpiper, Green	Wryneck
Grebe, Slavonian	Sandpiper, purple	

However, there is only a risk of you coming across the following breeding species; most of these are highly unlikely:

Cirl Bunting      Farmland, hedgerows, scattered trees and bushes.

Honey Buzzard Deciduous woodland. Treetop nest sites. (very unlikely)

Crossbill spp      All conifers.

Goshawk      Forest/ small woodland.

Hobby      Open country with scattered trees. (very unlikely).

Kingfisher      Tree hole nester - Mature trees close to lowland water.

Montague's      Marshes, Fens, young Conifer plantations (very unlikely).

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Harrier

Black Redstart Tree hole nester (very unlikely).

Dartford Warbler Dense gorse scrub (very unlikely).

Woodlark Heaths, scattered trees, verges, parkland, farmland. (very unlikely).

## Appendix 2

Animals which are protected (Schedule 5).	Adder (in respect of section 9(5) only)	Bats, Horseshoe (all species)
Bats, Typical (all species)	Beetle, Rainbow Leaf	Burbot
Butterfly, Chequered Skipper	Butterfly, Heath Fritillary	Butterfly, Large Blue
Butterfly, Swallowtail	Cricket, Field	Cricket, Mole
Dolphin, Bottle-nosed	Dolphin, Common	Dragonfly, Norfolk Aeshna
Frog, Common (in respect of 9(5) only)	Grass Hopper, Wart-biter	Lizard, Sand
Lizard, Viviparous (in respect of 9(5) only)	Moth, Barberry Carpet	Moth, Black-veined
Moth, Essex-Emerald	Moth, New Forest Burnet	Moth, Reddish Buff
Newt, Great Crested	Newt, Palmate (in respect of 9(5) only)	Newt, Smooth (in respect of 9(5) only)
Otter, Common	Porpoise, Harbour	Slow-worm (in respect of 9(5) only)
Snail, Carthusian	Snail, Glutinous	Snake, Grass (in respect of 9(5) only)
Snake, Smooth	Spider, Fen Raft	Spider, Ladybird
Squirrel, Red	Toad, Common (in respect of 9(5) only)	Toad, Natterjack

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