



# Nesting Birds - MCoS Guide for Climbers

*For many species of bird, the crag is their 'home'. Seeing wild birds is part of the attraction of climbing for many, and can add greatly to the enjoyment. From tiny wrens nesting in cracks to eagles with huge nests on ledges, and many more; all share the crags with us, and we generally coexist without detriment to the birds' breeding success, hence climbers do not pose a major threat to birds. It is egg collectors, unscrupulous gamekeepers, chick thieves, over-zealous birdwatchers and photographers which cause the greatest harm. Without care though, climbers may inadvertently contravene parts of the law, particularly regarding rarer birds such as peregrine and eagles, which benefit from special protection. As users of the countryside we should always strive to help protect it, and the wildlife in it, by acting responsibly and by helping to prevent wildlife crime.*

## Laws that Climbers Need to be Aware of

- Wildlife and Countryside Act 1981 (W&CAct 1981)
- Nature Conservation (Scotland) Act 2004 (NCSAct 2004)
- The Conservation (Natural Habitats, &c.) Regulations 1994 - implements the Council Directive 79/409/EEC on the conservation of wild birds (the "Birds Directive") and the Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (the "Habitats Directive")

## All Wild Birds

It is an offence to interfere with the nest of any wild bird, or obstruct a bird from using it; either intentionally or recklessly.

## Species with Extra Protection

Certain rare or more endangered species (listed on Schedule 1 and 1A (S1 and S1A) of the W&CAct 1981) have increased levels of protection and penalties. S1 status makes it an offence to disturb these birds while they are building a nest, are near a nest containing young, or dependent young (even when they are away from the nest). Many S1 species are ground nesting or tree nesting birds, but some are found on crags and sea cliffs. The S1 species that climbers may most commonly encounter on crags are the peregrine falcon and the golden eagle. The S1 and S1A birds that climbers may encounter are listed at the end of this advice note.



## How Does The Law Affect You?

It is NOT an offence to disturb most birds, although it is an offence to "interfere" with the actual nest or "obstructs or prevents any wild bird from using its nest". However, it is important that climbers follow some basic guidance in order to minimise disturbance to allow both birds and climbers to continue to coexist, and make sure we are not breaking the law. Your access rights also depend upon exercising those rights "responsibly."

Disturbance to a S1 bird is an offence when it is near to, or building, a nest, whether found to be done either deliberately or "recklessly." At present the law in Scotland states that it is an offence to 'intentionally' or "recklessly" disturb a S1 bird "at, on or near" the nest. It is also an offence to disturb

dependent fledged young. That means young birds which have moved away from the nest but are still dependent to some extent on their parents for food and protection. In the case of white-tailed eagle (protected by Schedule 1A), even interfering with an habitually-used nest site is an offence. This applies even if the birds are not there. A person charged with any of these offences would be tried under criminal law and if found guilty could be fined or imprisoned. If arrested, police will also take your climbing equipment as evidence at the trial, which of course can often take some time!



It is fairly clear what “at” and “on” means, but the law does not define either “near” or “disturbance”. It would be difficult to do this, as each bird species is different, and individual birds can vary considerably in their behaviour and tolerance. Usually what happens is a prosecution would call upon expert witnesses to testify that disturbance occurred.

“Recklessly” is not defined, but will probably be assessed objectively, and will involve some disregard by the person who disturbs the bird of the consequences for the bird. Following the guidelines in this leaflet may help to show you were not being reckless in the event you accidentally disturb birds. A climber who becomes aware of the presence of a nest or nesting or young birds and starts a climb or continues to climb in the vicinity should however appreciate that such action may be interpreted as “reckless,” as discussed below.

### **Should I Climb or Not?**

The following information gives a basic knowledge of some S1 bird behaviour to allow climbers to judge what action to take. It is not definitive, but is a general guide.

#### **The Nesting Period:**

The general timescales for nesting are usually within the period between 1st February and the end of July.

#### **The Most Important Period of Nesting**

For most birds the most sensitive period is when they have just laid eggs. This can be early in the season when the ambient air temperature is still low. If repeatedly or continually kept off the nest then the eggs will cool and perish. This period can be from late February to early May. The risk of cooling is affected by ambient temperature, crag aspect, time of day, but even in the best conditions protracted absence from the nest can be fatal.



Once the young have hatched, it is unlikely that the adults will desert them after being briefly disturbed. However, when they are newly hatched, they do not have protective feathers and are prone to rapid cooling. This is an important time too, and a rough guide would be in April or May. Once the chicks are a little older, then disturbance becomes less damaging.

#### **Before You Go**

Climbers visiting any crag in Scotland should make efforts beforehand to find out if there are S1 birds in residence on the crag they intend to visit. If there are, and there is an advice available for climbers to

avoid that area for a specified length of time, then please be prepared to change your plans accordingly. It may be that only some parts of the crag are affected, so other routes can be climbed.

The area of crag to avoid can vary depending upon various factors such the topography of the crags, the positional relationship between route and nest, the species involved, the location of approach routes and the tolerance of the individual birds at that site. Some species also vary their choice of nesting site each year either within a crag or between different crags. Advice will often change from year to year. You can help other climbers by notifying MCoFS of any birds nesting on crags, or their absence from notified crags.

## **At The Crag**

If you visit a crag not listed as having specific advice, but then notice activity from a peregrine or other S1 bird, then the guidance below will help you decide what to do. It can equally be used for other nesting birds you may come across. Obviously, your choice of what can be done will depend on a combination of the factors outlined below.

1. As you walk into the crag keep a look out for peregrines and other birds and note where they are flying from and to.
2. Before starting the route, assess whether there is a nesting site that is being used. The nest site of a peregrine varies from a bare ledge with some twigs to an obvious big collection of sticks, usually with some signs of excrement splashed on the rock below. This can be confused sometimes with a simple roosting site. Eagles nests are huge, but can be set well back on ledges, so not immediately obvious.
3. Peregrines may well be calling as they fly about the area. Try to notice where they originate from or look more closely for a nest. Eagles tend not to be very vocal, so you will probably have to rely on watching for flying activity.
4. Assess whether you feel your presence will be detrimental based on the following factors,. How far is the nest from the route? What is the topography of the crag- is your route separated from the nest by a buttress? Is the crucial period of egg incubation past? Based on these, you may find that the birds settle down and climbing does not cause them to leave the nest.
5. If the birds continue to appear agitated, and are staying away from the nest, then it is best to find another climb further away, on another part of the crag or indeed on another crag.
6. If you have done all of the above and have proceeded responsibly, only to then find a nest site on the route, then make every effort to complete the route as quickly as possible, or retreat if this is the safer / faster option.
7. Always exercise caution, and if in doubt avoid climbing when in your opinion there may be a reasonable risk of disturbance.

## **Judgement: What Is Disturbance?**

Humans and birds cohabit all over the UK. Birds nest in very close proximity to constant human activity and can be described as being disturbed all the time. They can become habituated to this. This is why many birds still nest on crags that are popular with climbers. Obviously not all disturbance is a problem. It becomes damaging when the disturbance keeps the adults from the eggs or very young chicks and this threatens their survival.

Most birds will act instinctively to protect their eggs and young when they perceive a threat. Different species react in different ways. For example, peregrine will often reaction initially to human presence by calling, often repeatedly and aggressively. They may then either return to the nest when they perceive there is no real threat fairly quickly, or only do so once you move to a distance acceptable to them.

It can be difficult for non-ornithologists to judge when a peregrine's call changes from normal activity to that of a protection call. Listen for a more aggressive tone. If the bird flies from the nest and stays away,

then they have been disturbed too much and it becomes detrimental to breeding success, and you should retreat to another position out of the disturbance zone, which may mean around a buttress or away from the crag completely.

Eagles react differently, and they are much more prone to disturbance from a distance. They tend to simply fly off and sit quietly until the hazard has left, so it can be very difficult to know if you are disturbing nest. Although their nests are huge they are generally located on areas of more broken crag with ledges and can be very difficult to spot, even with binoculars. Climbers need to be vigilant at all times, especially when walking in to the crag, and even when late season winter climbing.

### **Judgement: How Close Is Too Close?**

The extent of a minimum tolerance zone around a nest site will be dependent on how habituated the birds are. If the crag is very popular with climbers, then any nesting birds will probably be habituated to the presence of climbers. Habituated peregrines may be able to accept climbing in quite close proximity such as on a separate buttress, or around the other side of an arête.

At crags in more remote areas, where there is little climbing activity, and at eagle nest sites, the minimum tolerance zone will be more extensive.



### **Advice for Limiting Disturbance on Your Walk-in / Walk-out**

Ground nesting birds of all species will cope instinctively with the passage of walkers in the same way they cope with potential predators. As long as walkers do not remain in the area of the nest, but continue walking, the birds will either remain on the nest or will return quickly.

If wild camping in the Scottish mountains during the breeding season, before deciding on a pitch site, look for signs of nesting birds. If there is a bird repeatedly displaying to attract your attention away, or an agitated bird trying to get to its nest, then look for another pitch.

Loch and river edges are prime habitat sites for many birds and as a precaution these are best avoided as camp sites. This advice also helps maintain water hygiene.

### **Crag on Which Issues Have Been Recorded in Recent Years**

Sron Ulladale, Harris  
Moy Rocks, near Contin  
Meig Crag, Strathconon  
The Camel, Creag nan Clag, near Duntelchaig  
Ardnamurchan Ring  
Glen Lednock  
Creag Ghlas, Strathconon  
Clifton Crag  
Torr Nead an Eoin, North Arran  
Loudoun Hill  
Glen Ogle  
Clints of Drumore  
Glen Afton  
Lower Doonie, Glen Clova  
Creag Mac Ranaich  
Meikle Ross, D&G

## Help Prevent Wildlife Crime

As climbers you can help prevent others from intentionally, or recklessly, breaking the law. If you see people acting suspiciously, contact the MCoFS or the Police. Most Police forces now have Wildlife Liaison Officers assigned to deal with wildlife crime. A list of contacts is available on the MCoFS website. Your fellow climbers may not be as well-informed as you, so please help us to help them by passing information to MCoFS about nests in climbing areas.

## Sources of Further Information

In Scotland the MCoFS will give up to date information about known sites where there may be a greater risk of damaging disturbance. MCoFS is keen to receive reports of nesting birds in climbing areas, whether or not these are known about. Equally reports of birds not nesting in climbing areas where they are thought to do so, or previously did, would also be very useful. This ensures the information MCoFS provides is as up to date as possible.

- *The Scottish Mountaineer* (MCoFS magazine for members)
- MCoFS yearly updates on specific crags - [www.mcofs.org.uk/advice-and-policies.asp](http://www.mcofs.org.uk/advice-and-policies.asp)
- England & Wales – due to the difference in law and higher pressure on climbing venues in England and Wales, the BMC has agreed voluntary restrictions with the RSPB and they produce a list of sites. The details of crags and restrictions can be searched at <http://www.thebmc.co.uk/bmccrag/>
- RSPB *Brief Guide to Wild Birds and the Law* - [www.rspb.org.uk/ourwork/policy/wildbirdslaw/report.asp](http://www.rspb.org.uk/ourwork/policy/wildbirdslaw/report.asp)
- Acts of Parliament - [www.opsi.gov.uk/acts](http://www.opsi.gov.uk/acts)

## Appendix 1 – Species That May be Encountered when Climbing

### Schedule 1a - Relevant Species in Scotland

White-tailed Eagle (sea and inland cliffs, trees)

### Schedule 1 – Relevant Species in Scotland

Chough (cliff nesting – mainly sea cliffs)

Corncrake (ground nesting in Machair grass areas)

Divers (all species) (nests at lochan fringes)

Dotterel (ground nesting on high hills)

Golden Eagle (cliff nesting – mainly mountain)

Fieldfare (ground nesting)

Grebes (nests on and around lochs)

Harriers (all species) (ground nesting – usually in deep heather)

Hobby (ground and tree nesting)

Red Kite (tree nesting)

Merlin (usually ground nesting)

Peregrine (cliff nesting)

Green Shank (ground nesting in straths)

### Other Birds You May Meet

Remember, they are all protected by law, but there is no specific law against disturbance. The following are examples: buzzard, kestrel, raven, wren, wagtail, sparrow, jackdaw, swallow, house martin, puffin, guillemot, razorbill, fulmar, kittiwake, cormorant, shag.