

Recovery of a lost bird of prey – legal requirements

A licence is required to recover a lost bird of prey if it (i) falls within the definition of “wild bird” under the Wildlife and Countryside Act 1981 (as amended; referred to herein as ‘The Act’), or (ii) it is captive bred **AND** a prohibited method under Section 5 of the Act (such as net or trap) is to be used to recover it (see below section).

Wild birds

“Wild bird” means “any bird of a species which is ordinarily resident in or is a visitor to the European territory of any member State in a wild state” but does not include poultry or, except in sections 5 and 16, any game bird.

For the purposes of the ‘wild bird’ definition, if there is evidence of well-established wild-living populations anywhere in UK or the EU, then the species would be protected. This means that some non-native species are afforded protection under the Act.

“Wild birds” are protected from being taken under section 1(1) of the Act (unless captive-bred, see below) and the use of a prohibited method is an offence. A licence would be required to take the bird and use a prohibited method.

Captive bred birds:

A bird shall not be treated as bred in captivity unless its parents were lawfully in captivity when the egg was laid. Having been bred in captivity they will be considered “property” and are also deemed to be “under a person’s control” when being flown. The courts/police might consider a falconer’s hawk that has been lost whilst being flown and is evading capture as being a “release into the wild” if no action is taken to try and recover it.

Important note: if it is necessary to use a prohibited method (such as a net or trap) then a licence is required (as exemption for captive bred birds does not apply to these offences – see next section).

A licence would be required to take a captive bred bird **AND** to use prohibited methods where the species falls under the ‘wild bird’ definition.

A licence is required to recapture the following categories of raptors:

- A pure species of raptor which falls under the legal definition of ‘wild bird’ in the Act. Example species include peregrine falcon, goshawk, merlin, golden eagle, sparrowhawk, European kestrel, common buzzard, lanner and saker falcon.
- any sub-species of such a species that occurs in the EU, regardless of whether the subspecies itself is ordinarily resident in or a visitor to the European territory of any member State in a wild state. For example, the American anatum subspecies (*Falco peregrinus anatum*) of peregrine is just as protected by the 1981 Act as the European peregrine falcon sub-species (*Falco peregrinus peregrinus*), despite it not occurring in any EU member State. All subspecies are regarded as ‘of a species’. Therefore all subspecies of a protected species are protected.
- any sub-species hybrids of such species as detailed above are also considered to be “wild birds” and therefore protected. For example, a hybrid of the European peregrine falcon sub-species and the American anatum subspecies.

A licence is not required to recapture the following categories of raptors:

- Species that do not fall under the legal definition of 'wild bird' (i.e. they are not ordinarily resident in or a regular visitor to the European territory of any member State in a wild state) do not require a licence to be recaptured. Examples of commonly kept raptors that are not considered to be "wild birds" include harris hawk, prairie falcon and red tailed hawk.
- Any species hybrids' also do not need a licence to be recovered as they are not regarded as 'of a species'. For example gyr x peregrine falcon.
- If you are going to attempt to re capture a bird that does not require a licence issued via the W&CA 1981 you need to bear in mind that the courts/police might consider the use of a trap or similar device to be an offence under the Animal Welfare Act 2006 (based on the fact that the bird is owned/property and was under a person's control). It is therefore recommended that anyone considering doing this takes independent legal advice on the matter before undertaking any action.