Vegetation Cutting and its impact on birds
February 2018

This guidance note provides advice for the cutting of vegetation and, specifically, its impact on birds.

If you are in any doubt about cutting vegetation or impact on birds or their nests, please cease works immediately and consult your Rights of Way Warden.

Parish and Town councils can commission work to cut upgrowth alongside and on public rights of way and maintenance category 12 roads. Often it is necessary to trim overgrowth from adjacent hedgerows at the same time to enable access to upgrowth. Although cutting overhanging vegetation is a landowner duty, cutting overgrowth and upgrowth as one operation can maximise the benefit of any cutting to the users of the network.
The Rights of Way Team commissions Seasonal Vegetation Cutting of upgrowth during bird nesting season. This is normally done with a strimmer. This is done to fulfil the statutory duty under S130(3) of the Highways Act 1980 to prevent highway obstructions and / or will be done for safety reasons. It also commissions the cutting of cycleway verges using tractor mounted flails.

Parish and Town Council Contractors and/or volunteers, like the Rights of Way team, will be required to abide by the following guidelines and national guidance (where available) to minimise disruption to wildlife:

Breeding birds
1) Woody vegetation (hedges, bushes, trees) and dense brambles must not be cut back during the main bird breeding season, March to August inclusive. However, a Parish/Town Council might require such work to take place to prevent a PROW from becoming obstructed. In these circumstances, manual branch trimming can take place provided that a visual check by the contractor (under the guidance of the Warden) has ensured there will be no impact on active bird nest and a record of this kept.
2) If, for public safety reasons, woody vegetation must be cut and active nests disturbed, the Warden will provide advice on best practice in each situation. The Warden can also provide guidance on survey requirements for breeding birds.
3) If carrying out works in areas known to support Cirl Buntings (especially relevant to parts of Teignbridge, South Hams or Torbay) the Parish/Town Council will ensure that contractors/volunteers are not asked to cut scrub and hedges until after 15th September. [Under the Wildlife & Countryside Act, 1981 it is an offence to intentionally or recklessly damage or destroy the nest of any wild bird whilst it is in use or being built. It is also an offence to disturb a bird listed in Schedule 1 whilst it is in, on, or near a nest containing eggs or young. Cirl buntings are listed on Schedule 1. It should be noted that, whilst the main bird breeding season is from March to August inclusive, birds may nest before and after this period. Other than visible nests, signs include birds carrying nesting material or food for chicks and alarm calls.]

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Further advice
In consultation with the RSPB, the County Ecology Team has expanded on the above advice:

There is no set bird nesting season. Different birds have different nesting periods – some start early, some have more than one brood and some start nesting later. They may still have chicks in the nest into August or September. For example, Cirl Buntings can have unfledged chicks in the nest into early- or mid-September.

It is recommended that potential nesting habitat is not cut between 1 March and 31 August because this covers the period when the majority of birds can be expected to be nesting.

If routine vegetation cutting can be confined to September - February it will avoid the majority of nesting birds and therefore avoid the potential for committing an offence under the Wildlife and Countryside Act 1981. However, this would also avoid the main vegetation growing season so would not be a very practical solution. The Parish/Town Council will continue to have to commission vegetation cutting within the bird nesting season.

Q1. If bird nests are not present during bird nesting season, is it ok to use power tools / flails to cut hedges back?
If appropriate checks for nesting birds have been undertaken and no bird nest in current usage has been located, then works with mechanical flails and/or power tools can go ahead as planned to cut hedges back. An appropriate check for nesting birds must be carried out immediately prior to the works commencing (ideally the day before). Caution is attached to this method as it is not guaranteed to detect all active nests.

Q2. If bird nests are present, what guidance should be followed for cutting hedges near a nest?
There is no national guidance that provides a standard methodology to what should happen when working close to a confirmed bird's nest. Recognised practice is to leave a 'buffer zone' around the nest site (approximately 5m x 5m) and not to use flails within the adjacent hedgerow area. However, whilst this buffer zone means the nest has not been destroyed by the works, the works will have left the nest more vulnerable to natural predation and therefore it is not a recommended approach by the RSPB. Their recommended approach would be to stop any cutting of hedges if a nest if located and re-survey the hedge and nests in September in order to check the nest is not in use and any chicks have fledged. Once this has been confirmed, the hedge can then be cut back.

Q3. The authority has a power to serve an enforcement notice on adjacent landowners to cut their hedges back – under the Highways Act there is no restriction on when it can serve such a notice. If a notice is served, what guidance should a landowner adhere to when arranging the cutting? Clearly it is not a defence for a landowner to suggest that they cannot cut the hedge because it is bird nesting season.
It is an offence under Section 1 of the Wildlife and Countryside Act 1981 to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built and the

landowner should make every effort to ensure that an offence isn't committed and undertake hedge cutting adjacent to Public Rights of Way between September-February. However, section 4(3) of the 1981 Act states that a person shall not be guilty of an offence if they show that their action was necessary for the purpose of, amongst other things, preserving public health or public safety.
Furthermore, section 4(2)(c) states "Notwithstanding anything in the provisions of section 1 or any order made under section 3, a person shall not be guilty of an offence by reason of…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."

This means that if a landowner was to clear vegetation for legitimate reasons (for example, the removal of a highway obstruction or to preserve public safety) and a bird's nest was accidently destroyed in the process then the landowner would have a defence under the Wildlife and Countryside Act provided they can show that efforts had been made to avoid destroying a nest and there are sufficient reasons why the works could not of been done outside of 1st March to 31st August.

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Guidance prepared by Steve Gardner, Public Rights of Way Team, Devon County Council.

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