



**Aim to
Sustain**

Protect.
Preserve.
Promote.

Employment Toolkit

Raptor Persecution



**Aim to
Sustain**

Protect.
Preserve.
Promote.

Introduction

This toolkit is designed to cover those aspects of employment documentation in relation to the employer's zero tolerance for raptor persecution and wildlife crime. If the clauses are included in a Contract of Employment, the recommended clauses should be complementary to and not contradict the remainder of the Contract.

It has been divided into three sections and contains:

1. Contract: draft provisions to be included in the employment contract.
2. Policies and procedures: draft provisions to be included in the disciplinary policy and procedure and a draft zero tolerance policy.
3. Guidance on communicating and Implementation zero tolerance.

The guidance notes at the beginning of each section should be read in conjunction with the draft provisions.

This Employment Toolkit has been prepared on behalf of the membership organisations within Aim to Sustain by the CLA Legal Department and is for guidance purposes. It is applicable to the employment of keepers or employees involved in game management, pest control or predator management. Owners or employers should always consult with their own Human Resources department or with an Employment Adviser.

The Joint Statement of Zero Tolerance can be found on the GWCT, BASC or other web sites.

August 2021

No responsibility for loss occasioned to any person acting or refraining from action in reliance on or as a result of the material included in or omitted from this publication can be or is accepted by the author(s), the CLA or its officers or trustees or employees or any other persons.

Section 1

Guidance on Employment Contracts

We have set out below our suggested inclusions when issuing new employment contracts. These would help to ensure that keepers are under contractual obligations in connection with raptor persecution.

The employment contracts of existing employees should be checked to see if they already contain adequate protection for the employer. Existing employment contracts can only be amended with the agreement of the employee.

The parties are usually defined terms in an employment contract and it is a matter for individual employers to decide on the definitions they adopt. Here, the employer is referred to as “the Employer” and the employee as “you”. Employers should check their existing definitions and terms for consistency.

A Duties:

Generally, insofar as the employer’s requirements can change or there can be a change in the law, we have kept the obligations relatively general so that the employment contract does not have to be updated or varied if there is a change, e.g., a new general licence. The reason is that it can be difficult to vary employment contracts as employees may not agree to the proposal.

We also have included a separate draft provision about reputation, since, although an employee may not have been prosecuted and/or be under investigation, the allegations could themselves bring the employer into disrepute.

The provisions themselves should be self-explanatory.

B Training:

Although there is no legal requirement to provide an employment contract, for many years now, employers have been required, under what is now section 1 of the Employment Rights Act 1996 (as amended) (ERA), to provide their employees with a written statement setting out various terms of their employment, usually known as a “section 1 statement” or “section 1 particulars”.

On 6 April 2020, there was a further change going forward, (not retrospectively). New employees have to be provided with additional particulars, including any terms relating to training. Employers must now include details of any training entitlement they provide, including listing out any part of that training that the employee is required to complete and is paid for by the employer as well as any other mandatory training that the employer will not pay for. Details of non-compulsory training can be set out in another easily accessible document.

We have set out suggested provisions for employers to adapt: Option 1 provides for the employer to pay for the training and this includes a further option in square brackets if the employee's pay includes an element of training. Option 2 says that the employee will bear the cost. It may be that an employer will pay for some of the training – this is a matter for the individual employer – and, in this case, the employer should set out which elements of the training are paid for by the employer and which the employee will be required to pay for. It is normally recommended that the employer covers the cost of training.

It is recommended that employers ensure that all appropriate staff (new and existing) attend relevant and up-to-date training, since not only is this included in the “Zero Tolerance” Joint Statement but it may also be helpful to employers on other issues, e.g., the fairness of a dismissal.

Employers should also keep their own training records.

C Disciplinary and grievance:

These provisions follow the statutory requirements for inclusion in written statements (see above) and are generally included in an employment contract. They are standard provisions.

It is recommended that the disciplinary and grievance procedures themselves are not contractual for two reasons. First, as with all non-contractual policies, they can be updated or amended from time to time outside the terms of the contract and, secondly, any failure by the employer to comply with its own process can give rise to a claim for breach of contract by the employee.

There are options about providing the procedures which must be “readily accessible” to the employee. The simplest method is to include the procedures in the Staff Handbook or Employee Manual as part of the pack when sending the employment contract. If the employer does not have a handbook or manual then the procedures, along with the Zero Tolerance policy should be included with the employment contract.

D Termination – gross misconduct

These suggested provisions are to mirror the duties.

Gross misconduct is behaviour by an employee which is so bad that the employer cannot be expected to employ the employee any longer. It must be a fundamental breach, going to the root of the contract. The misconduct must be “gross” i.e. extreme and blameworthy and conduct which is incompatible with the employee's duties of fidelity, trust and confidence. It could also be a series of acts which when aggregated together are sufficiently grave to amount to a breach of trust and confidence. Insofar as these are contractual provisions, if the employee's conduct were not to amount to “gross misconduct” then the employee would have a claim for breach of contract known as wrongful dismissal, the breach being the failure to give the correct notice to terminate the contract or make a payment in lieu of notice. This is a separate issue from the law of unfair dismissal (see Section 2 below: Policies and Procedures).

Section 1 [continued]

Employment Contracts

Suggested draft provisions are contained within A – D below – employers should use/follow their own clause numbering

A Duties clause:

[insert clause number] Duties

During your employment you will:

[INSERT other duties as sub-clauses and continue]:

[.] comply with all legislation, regulations, relevant licences and laws from time to time in force relating to your employment, including those relating to birds of prey;

[.] comply with all rules, regulations, policies and procedures of the Employer;

[.] report to the Employer any illegal activities on the Employer's holding which come to your attention;

[.] use your best endeavours to ensure that you do not damage any goodwill of the shooting business and/or the reputation of the Employer;

[INSERT further provisions]

B Training clause:

[insert clause number] Training

OPTION 1

[.] You are required to complete training in relation to legal forms of pest and predator control [SET OUT DETAILS OF THE TRAINING, TIME-SCALE AND FREQUENCY] [INSERT OTHER TRAINING REQUIRED]

[.] The Employer will bear the cost of this training [IF APPLICABLE: except where your pay incorporates an element which is intended to pay for training]

[.] You must keep an accurate record of training events and courses you have attended for inspection by the Employer at any time and provide the Employer with a copy of the record.

OPTION 2

[.] You are required to complete training in relation to [legal forms of pest and predator control] [SET OUT DETAILS OF THE TRAINING, TIME-SCALE AND FREQUENCY] at your own expense.

[.] You must keep an accurate record of training events and courses you have attended for inspection by the Employer at any time and provide the Employer with a copy of the record.

C Disciplinary and Grievance

[insert clause number] Disciplinary and grievance procedures

[.]1 You are subject to the Employer's non-contractual disciplinary rules and procedures which

OPTION 1

accompany this contract.

OPTION 2

are contained in the Staff Handbook.

OPTION 3

are contained in the Employee Manual.

OPTION 4

are available from [INSERT].

[.]2 If you wish to appeal against any disciplinary decision or any decision to dismiss you, your appeal must be made in writing to [INSERT name or position] and you should set out the reasons for your appeal.

[.]3 If you wish to raise a grievance you must do so in writing to [INSERT name or position] in accordance with our non-contractual grievance procedure which

OPTION 1

accompanies this contract.

OPTION 2

is contained in the Staff Handbook.

OPTION 3

are contained in the Employee Manual.

OPTION 4

is available from [INSERT name or position].

D Termination clause:

[insert clause number] Termination

[INSERT clause and sub-clause numbers]

[INSERT provisions relating to notice to terminate the employment contract by the employer or by the employee]

[].[] The Employer will be entitled to terminate your employment, with immediate effect by notice in writing if:

[].[].[] you are guilty of any gross misconduct in connection with or affecting the shooting business of the Employer;

[].[].[] you commit any serious or repeated breach or non-observance of any of the provisions of this contract or you refuse or neglect to comply with any reasonable and lawful directions of the Employer;

[].[].[] you engage in conduct which in the opinion of the Employer has brought, brings or may bring the Employer into disrepute;

[].[].[] you are convicted of any offence relating to wildlife crime including but not limited to raptor persecution or you are convicted of any criminal offence (except for minor road traffic offences) that impacts on your suitability to do your job or your relationship with the Employer, work or colleagues;

[].[].[] you are in serious breach of any rules or policies issued by the Employer;

[INSERT ADDITIONAL]

Section 2

Guidance on Policies and Procedures

A Disciplinary policy and procedure

As mentioned above, if policies and procedures are not contractual terms, the employer can alter them or introduce new ones.

We have set out a list of conduct issues which the employer considers to be gross misconduct in relation to raptor persecution for inclusion into disciplinary procedures.

It is good practice to set out what the employer considers to amount to gross misconduct. An employer will be in a better position should there be a disciplinary issue or if a claim for unfair dismissal is brought against it, if the procedure sets out that which the employer considers to be gross misconduct. There will be other examples, outside the scope of this note, e.g. theft, dishonesty.

We would mention that the first example covers the Employer's zero tolerance policy – but the employer may well have other policies and procedures, e.g., expenses, lone working, absence, data protection etc.

Following a disciplinary hearing, the employer can impose a less harsh sanction.

Employees have a right of (internal) appeal from a formal disciplinary sanction, such as dismissal.

Unfair dismissal relates to the reasons for and the manner of a dismissal, i.e., the substance and the procedure. The disciplinary procedure looks at the fairness of a dismissal and generally follows the ACAS statutory Code of Practice. It is for the employer to show the reason and conduct, (or rather misconduct or gross misconduct), is a potentially fair reason. The fairness of a dismissal depends on whether the employer acted reasonably in the circumstances, based on the information available to it at the time. For a dismissal to be fair, the employer has to genuinely believe that the employee committed the misconduct in question, have reasonable grounds for believing this, had carried out a reasonable investigation and the employer has to show that the dismissal falls within what is known as "the band of reasonable responses".

Each case will depend on its own facts, the nature of the allegation and the employer's belief, but it is possible that a dismissal can be unfair because the employer failed to follow a reasonable procedure or take into account any mitigating circumstances or for a dismissal to be fair although the misconduct is conduct less serious, following a fair procedure.

Generally, an employee needs to have two years' continuous employment to be able to bring a claim for unfair dismissal. Claims are brought in the employment tribunal and a successful employee can receive a basic award (calculated in the same way as a statutory redundancy payment) and a compensatory award which is capped at the lower of either 52 weeks' gross pay or £89,493 (as at April 2021 – the cap is usually increased annually in April).

B Zero Tolerance and raptor persecution policy

This is a draft zero tolerance policy. We have included a suggested reminder about being familiar with the law.

Section 2 [continued]

Policies and Procedures

(Either provided separately or included in Employee Manual/Staff Handbook)

Suggested draft provisions are contained within A and at B below – employers should use/follow their own/ existing numbering and formatting

A Disciplinary Procedure

Suggested draft examples of gross misconduct to be included in the employer's disciplinary procedure are set out below:

- serious breach of the Employer's policies or procedures
- conduct which in the opinion of the Employer has brought, brings or may bring the Employer into disrepute
- any act or omission which the Employer reasonably believes is a contravention of legislation and/or laws relating to wildlife management, including raptor persecution
- conviction of any criminal offence relating to wildlife crime including but not limited to raptor persecution
- conviction of a criminal offence (except for minor road traffic offences) that impacts on your suitability to carry out your job or on your relationship with the Employer, work colleagues or the Employer's customers, suppliers or business partners
- failure to report to the Employer any potential illegal activities in connection with wildlife or animal welfare crime on the Employer's holding which come to your attention.

B Employer's Zero Tolerance Policy in relation to raptor persecution

A suggested draft policy is below.

Raptor persecution zero tolerance policy

The Employer has zero tolerance for and condemns all forms of wildlife crime including raptor persecution.

The Employer does not permit, tolerate or condone any form of wildlife crime including raptor persecution and takes any allegation or suggestion of raptor persecution very seriously.

Employees who are alleged to have acted or be acting in contravention of the law are liable to be reported to the police and will be subject to disciplinary proceedings which may result in summary dismissal.

Employees should recognise that game-keeping is a complex and high profile activity with considerable scope for external public interest. The Employer expects employees to conduct themselves in such a manner so as not to bring the Employer into disrepute.

Any employee whose conduct has brought, may bring or brings the Employer into disrepute will be subject to disciplinary proceedings which may result in summary dismissal.

Employees are expected to be conversant with all laws relating to their employment and are reminded that, subject to the terms of relevant general licenses, wild birds are protected by law and that there are several criminal offences (subject to certain exceptions) concerning raptor persecution.

If any employee has any questions about this zero tolerance policy they should contact their line manager or Employer.

Section 3

Guidance on communicating and implementing Zero Tolerance

New employees

Employers should include the suggested provisions in the contracts of employment of new employees, and send their updated disciplinary policy and zero tolerance policy as part of their employment documentation before the employee starts work.

Existing employees

Employers may not be able or it may not be practicable to change their existing employees' contracts. However, employers should nonetheless set out their zero tolerance policy in writing, update their disciplinary policy to include the provisions on raptor persecution, as appropriate, and disseminate the documents so that their employees are appropriately informed. This is best done by updating the Staff Handbook or Employee Manual or Procedures and informing their employees of the updates. This would also provide employers with evidence that they have drawn their employees' attention to the issue, should it be necessary in the future.

Communication and implementation would depend on the employer's existing practices. It would, perhaps, be preferable for employers to provide existing employees with a copy of the policy and the updated disciplinary procedure together with an explanatory covering letter/email informing them of the reasons for employer's adherence to Zero Tolerance.

Employers should retain records.