

## **General Licences for Bird Control in England: Evidence from the Countryside Alliance**

13 May 2019

### **Introduction**

With members and supporters totalling over 100,000, the Countryside Alliance promotes understanding and acceptance of the rural way of life and activities in a managed landscape, in order to protect them from bias, misinformation and over regulation.

### **Background**

On 25 April 2019 Natural England revoked three licences, issued under section 16 of the Wildlife and Countryside Act 1981, for the management of certain wild birds. The General Licences (known as GL04, GL05, GL06) operated in England and enabled the use of lethal control against certain wild bird species for three purposes: public health and safety; protection of crops and livestock; and the conservation of wildlife. Under section 16(1A) of the Act the Secretary of State or the appropriate authority can only issue a licence for one of the purposes listed in section 16(1) if satisfied that there is 'no other satisfactory solution'. The revocation followed a legal challenge, brought against the 'authority', Natural England, stating that they were failing in their duty to assess the other solutions, i.e. non-lethal methods.

The implications of the withdrawal of these licences for pest controllers, farmers and gamekeepers has been considerable. For this reason, the Secretary of State has taken back the decision making powers with respect to the three licences in question, and to better understand the impact of their withdrawal, and to ensure that section 16(1A) is complied with, the Secretary of State, through Defra, has sought evidence for the damage caused by each species. Within the call for evidence the Secretary of State is also considering what action he might take to resolve the immediate issues that have arisen from the revocation.

The Countryside Alliance has assisted with this call for evidence by alerting its members to it, requesting that they respond with specific evidence and first-hand experiences. There is no need to repeat what our members have said, instead this response focuses on the key issues for consideration, and the actions that we believe the Secretary of State now urgently needs to take.

### **Countryside Alliance position on the General Licences**

The Countryside Alliance supports the ability to control species under section 16(1) of the Wildlife and Countryside Act 1981. The licensing process that has been in place since the early 1990s has worked efficiently and effectively, providing users with a lethal tool to manage certain wild birds for the specific purposes of public health and safety, the protection of crops and livelihoods, and the conservation of wildlife. Due to the nature of the General Licences, records are not held of the number of people that rely on them, but Defra estimates that up to 50,000 may have been affected by their withdrawal.

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The ability to manage wildlife is essential. Using just one example, it is estimated that the number of woodpigeons in England has increased by 39% from 1995 to 2017<sup>1</sup>, and a 2014 estimate of woodpigeon damage to the overall UK oilseed rape crop was approximately £2 million for a 'low impact' year (2% of national crop severely damaged) and approximately £5 million for a 'high impact' year (5% of national crop severely damaged)<sup>2</sup>. These losses were incurred whilst woodpigeons were being controlled under the General Licence, and with no such control they would have been significantly higher. Lethal control is therefore a necessary management tool, and it is essential that the Secretary of State issues, at the earliest opportunity, a set of licences that are open, light-touch and practical.

## Delivery and Assessment of the General Licences

Defra's call for evidence has provided numerous first-hand examples and evidence of the requirement for species listed on the General Licences. There is also considerable scientific evidence demonstrating the ability of these species to cause damage, negatively impact conservation efforts, and risk public health and safety<sup>3</sup>. First-hand examples and scientific evidence taken together provide the data necessary to decide which species are listed on the General Licences.

That decision can also be aided by collating the information gathered from the original assessment and the continuous assessments that have been made on each species listed on the General Licence. Consultations and assessments in the past have resulted in the inclusion of certain species (Canada Goose), and omission of other species (Greater black-backed gull) where their population or otherwise has changed.

The benefits delivered through the General Licences over the past 30 years have been immeasurable. They have also, however, been unmeasurable as there is no baseline to compare them with, given that the lethal control of certain species has always been possible. To calculate the benefit in terms of monetary and conservation value would require the cessation of all control and to start again from the very beginning. This would be both impossible and irresponsible. **Instead consultations and assessments should continue to take place at regular intervals to ensure the correct species remain on the General Licence, and that the delivery of the General Licences is working for those that need to use them.**

### 'No other satisfactory solution'

Following the legal challenge brought about by Wild Justice, there appears to be confusion surrounding section 16(1A), and the test for 'no other satisfactory solution'. In the case of the three newly published General Licences, the requirement for the user to try non-lethal methods is significantly over-emphasised.

The new General Licence – GL31 – states that 'before using the licence, reasonable endeavours must have been made to resolve the problem using the lawful methods', in other words those that are non-lethal. This is legally unsound as what is reasonable to one enforcement officer may differ for another. Natural England have also failed in their

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<sup>1</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-05-01/249798/>

<sup>2</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-05-01/249797/>

<sup>3</sup> <https://basc.org.uk/wp-content/uploads/downloads/2019/05/Benefits-of-general-licence-control-FINAL-V1.0-1.pdf>

consideration of the practicalities, cost, and time-consuming nature of each non-lethal method. In failing to consider these issues, Natural England has placed too much importance on trying non-lethal methods over lethal methods, resulting in legal uncertainty and General Licences that are unfit for purpose.

Take for example a pest controller contracted to deal with feral pigeons for the purpose of health and safety. Is it reasonable for the business/individual to incur the costs for the pest controller to undertake reasonable endeavours in respect of non-lethal methods? A conservationist may have a lot of ground to cover and will not have the capability or resources to try non-lethal methods before the damage is done, likewise farmers who are over stretched and hard-working. Whilst non-lethal methods should be considered when dealing with 'pest' species, the test of reasonable endeavour is unsound, especially with no examination of the non-lethal methods by Natural England.

Species are listed on the General Licence for a reason, and lethal control is a necessary tool to counter their impact. Section 16(1)(k), 'for the purpose of preventing serious damage', should not be licensed only when there is an imminent threat of damage. The key word in law is 'preventing'. For example, the roost shooting of woodpigeons may be argued illegal if there is no crop that requires immediate protection, however, controlling woodpigeon numbers in the present will prevent damage occurring in the future. The licensing of lethal control needs to account for the species' population, in the knowledge of the damage that the population can/will cause.

When it comes to section 16(1)(c), 'for the purpose of conserving wild birds', the requirement to take immediate action is even more fundamental. Should we have to wait for the magpie to approach the songbird's nest before taking lethal action, or can we conserve fauna in the knowledge that the magpie will predate the nest at some point, and it is better to control the species prior to them causing damage.

This over emphasis on section 16(1A) leads to confusion within the legislation, and a bias towards non-lethal methods. There are many examples where the only acceptable method of control is lethal. This is particularly so for the purpose of conserving wild birds (section 16(1)9(c)). If, for example, you manage to scare off a magpie or jay from predated one nest, they will immediately go to the next nest. There is no satisfactory non-lethal method for dealing with a hungry corvid during the nesting season. Any time spent undertaking reasonable endeavours is wasted and merely threatens vulnerable nesting birds.

When dealing with public health and safety (section 16(1)(i)) there are occasions where attempting non-lethal methods will put human lives at risk. This is unacceptable and not what is intended by 'no other satisfactory solution'. Finally, in the case of preventing serious damage (section 16(1)(k)), no matter how long is spent using non-lethal methods of control, the woodpigeon and rook will still end up at certain times of year eating seed drillings. In this instance the only way to prevent damage to crops, whether on land where you have permission to shoot, or on neighbouring land (to where you have scared the pigeons or rooks), is to use lethal methods.

It is the opinion of the Countryside Alliance, that the responsibility of proving there is no other satisfactory solution falls to the licensing authority not the user of the licence. To apply pressure on the user to undertake reasonable endeavours is unworkable and not what the law intends. **The Secretary of State or appropriate authority need to satisfy themselves that whilst there are non-lethal methods that can be applied, they are not always**

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**practical, can be costly, and time-consuming. In making this judgement the users should be allowed to make their own decision on the best action to take forward.**

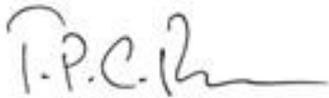
### **Practicality**

The European Charter on Hunting and Biodiversity<sup>4</sup>, which was adopted by the Bern Convention in 2007 lists some important principles with regards regulations of this nature. The Charter lists 12 principles, of which Principle 2 'Ensure that regulations are understandable and respected' advises governments and stakeholder to:

*a) Formulate simple, flexible, and logical regulations which address biological principles, (inter)national policy, the socio-economic context, as well as reasonable stakeholder concerns and expectations;*

*b) Impose only those restrictions on methods and means which can be justified from the standpoint of conservation and that will be easily understood by stakeholders*

The revocation of the General Licences has caused mass confusion and misunderstanding. **The Secretary of State or appropriate authority need to communicate quickly and clearly their plan to bring about a new set of licences that reflect the users' requirements, and these need to be put in place as matter of urgency.**



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<sup>4</sup> [https://fp7hunt.net/Portals/HUNT/Hunting\\_Charter.pdf](https://fp7hunt.net/Portals/HUNT/Hunting_Charter.pdf)