



Use of general licences for the management of certain wild birds

Department for Environment Food and Rural Affairs Consultation

Date: 13 May 2019

The Country Land and Business Association (CLA), is the membership organisation for owners of land, property and business in rural England and Wales. Our 30,000 members own over 10 million acres and operate over 250 different types of businesses in rural areas.

Whilst we have directed our members to respond to your call for evidence directly, we have asked a number of our members that currently sit on our regional and national Committees to provide a response to the CLA directly. The level and detail of the responses we have received in such a short space of time from a small section of our membership has been unprecedented. It demonstrates the level of concern that our members have felt around the sudden withdrawal of the previous General Licences 04, 05 and 06. We have compiled a proportion of the responses we have received below but have omitted a number where there was repetition of wording or substance.

It may be an obvious point but this is not solely a “shooting issue” but a matter that crosses a number of boundaries, including importantly food production both livestock and arable. It is plain from the responses and discussions with members that there is also a significant concern for the environmental impacts that the sudden withdrawal of the previous general licences has caused. There is also concern with the speed that the licences were withdrawn, the lack of consultation and the lack of clarity around the new approach.

To illustrate our concern about the uncertainty and lack of clarity we have set out below a number of specific concerns with one of the new general licences, as an example the new general licence relating to pigeons and crops (GL31):

1. The evidential burden is on the user to prove they're not guilty of an offence which is a significant weight to place on them. In addition, many users will be reliant on the actions and assessments of a third party, for instance the farmer being able to prove the damage or its likelihood to their crops and any deterrent action they have taken, to demonstrate that their use of the licence is valid and therefore not a criminal offence. The uncertainty this creates will make many unhappy to utilise the general licence which could significantly undermine its benefit.
2. How will a user prove that there has been actual loss and that those losses relate to wood pigeons? Before scarring them will it be necessary to film them?

3. What is the required nexus between the crop and where shooting takes place? Is that for a court to determine? Again, the inherent uncertainty of the new licence may undermine much of its benefit.
4. The licence can only be used as a “last resort”. Likewise the terms “reasonable endeavours”, “impractical” and “without effect or disproportionate in the circumstances”. In the event of a prosecution how will these terms be interpreted; they appear to be quite subjective. For many, a successful prosecution against them based on their misinterpretation of one of these terms or the evidence required to demonstrate that they have been met may result in a loss of firearms licence and shotgun certificate which could mean the loss of their livelihood.
5. “Crops” for the purpose of this licence refer to “cultivated plants grown on a sufficient scale to have economic or financial value”. How is a court to determine “sufficient scale” and “economic or financial value”? Is the financial position of the potential defendant or the person he is acting on the behalf of relevant? One patch of cabbages on an allotment has a financial value.
6. Whilst there are a number of definitions listed in s27 Wildlife and Countryside Act 1981, neither crops or vegetables are defined which indicates that the original intention was not to limit these categories.
7. What is the evidential test for the phrase “strong likelihood”? It could depend on other actions of other users/farmers, weather conditions, other crops being planted in the area. This puts in a significant degree of uncertainty, particularly for third parties relying on evidence collected by a farmer or landowner.
8. Why is there a requirement to exercise restraint in periods of severe weather? During this period the crops can be particularly at risk of damage from wood pigeons.
9. In our view the requirement that the licence cannot be used within 300m of, any protected site (SPA, Ramsar, SSSI) that has a bird interest is far too onerous and in the absence of a strong justification should be reduced considerably in line with the previous general licences. It may not be immediately obvious to many that their neighbouring farm has an area within 300 metres that is so designated and may lead to inadvertent breaches of the general licence. It will also lead to a significant amount of red tape in applying for individual licences.
10. It is difficult to see a justification for including a requirement for the licence not to be used “solely for commercial and/ or recreational purposes”. If the users meet the host of other stringent requirements of the licence then the reason or motivation for their activity would seem irrelevant.
11. In relation to bird scaring, there will be many areas where taking much of the suggested action is unsuitable and could lead to action against the occupier for noise nuisance either statutory or civil. This is particularly so around schools, hospitals or in fields close to built up/residential areas. This limitation needs to be recognised in the licence.

The new general licences are far more restrictive in a number of important aspects and importantly place far more burden on the user. The licences themselves have gone from 5 pages to 11 pages with significantly increased restrictions and conditions. The change to the new general licences makes necessary pest control unworkable in many instances.

We do not believe the new general licences that have been issued are a proportionate response to the legal challenge. As we understand Natural England received legal advice that set out that

the general licences they had issued were potentially unlawful. We do not know what assessments were being done by Natural England prior to the legal challenge by Wild Justice.

From the information that we have received from Natural England it appears that the key point at issue in the legal challenge was that Natural England had failed to undertake the necessary assessment as set out in section 16(1A) of the Wildlife and Countryside Act 1981:

(1A) The appropriate authority—

(a) shall not grant a licence for any purpose mentioned in subsection (1) unless it is satisfied that, as regards that purpose, there is no other satisfactory solution;...

In our view the legal challenge could have been answered with only a minor modification to the previous general licences. Natural England's new general licence goes beyond what is necessary and represents a risk averse approach, securing Natural England's position but doing so at the expense of certainty for those that rely on the licence.

Article 9(3) Birds Directive 2009/147/EC has always required the UK to send a report to the European Commission:

Each year the Member States shall send a report to the Commission on the implementation of paragraphs 1 and 2.

Article 9(4) sets out:

On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of the derogations referred to in paragraph 1 are not incompatible with this Directive. It shall take appropriate steps to this end.

The European Commission has been sent annual reports from the UK and always had the opportunity to take action if it felt that the terms of the UK derogation were too extensive and therefore inappropriate, but it has not done so.

Reference has also been made to European Commission guidance and in particular that the use of a derogation must only be as a "last resort" which is set out at 3.4.10

http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting_guide_en.pdf:

"The essential unifying characteristic of paragraphs (a), (b) and (c) of Article 9.1 is that a prohibition laid down in the Directive in the interests of bird protection may have to yield to other requirements; a derogation under this provision can therefore only be a last resort. In this context the term 'satisfactory' may be interpreted as meaning a solution which resolves the particular problem facing the national authorities, and which at the same time respects as far as possible the prohibitions laid down in the Directive; a derogation may only be allowed where no other solution which does not involve setting aside these prohibitions can be adopted."

There is a significant amount of scientific research from other organisations setting out the damage that can be caused by the pest species subject to the revoked general licences. In our view, these provide more than sufficient evidence for the national authority to be assured that there is no other satisfactory alternative to lethal control, there is no need for the additional complexity in the new general licences.

The same European Commission guidance sets out further information on the use of derogations for non-recreational hunting where damage is being caused:

- *Hunting with a non-recreational justification*

3.4.19 It is generally accepted that some huntable bird species can jeopardise the interests referred to in Article 9(1)(a) outside of the hunting season allowed under Article 7. It is also generally accepted that, in order to safeguard these interests, there may sometimes be no satisfactory solution other than destruction of birds. In this context, it would seem reasonable that the use of hunting is a legitimate means of safeguarding the interests mentioned in Article 9(1)(a). Of course, in this instance, hunting serves a non-recreational objective (i.e. damage prevention).

3.4.20 The species for which Article 9(1)(a) are invoked are sometimes referred to as 'pest species'. The justifications for their control include 'to prevent serious damage to crops, livestock, forests, fisheries and water' as well as 'for the protection of flora and fauna'. The first justification in particular relates to a wide range of species, including members of the Corvidae, Columbidae, Sturnidae, Laridae and Anseridae⁹⁹. Several of the species concerned are widespread and relatively abundant and are considered to have a favourable conservation status (see Figure 5 for consideration).

It is difficult to see the need for all of the additional conditions, restrictions and complexity within the new general licences in light of the clear advice above. Again, this is particularly so as the European Commission had been aware of the extent of the UK's derogation under the simple and pragmatic, now revoked general licence, for many years and had taken no action.

As a simple illustration of the necessity to control pest species, wood pigeon numbers have been estimated in 2009 as being at around 10.8 million in the UK¹ which equates to about 114.2² pigeons per square mile. This compares with Europe³ as a whole which at the high end of the estimate has around 58⁴ million pigeons equating to just 14.8 pigeons per square mile. The UK has a relatively high proportion of pigeons per square mile and this population is increasing, the International Union for Conservation of Nature's Red List notes that: "*The population is increasing in many parts of its range as it can exploit human-modified habitats.*" The fact that the pigeon population in the UK is significantly higher than in Europe and is increasing despite the less restrictive old general licences having been in place since 1992 demonstrates the urgent

¹ AHDB Horticulture: https://cereals.ahdb.org.uk/media/1191562/11-15_Woodpigeon_factsheet_web.pdf

² Area of UK: 94,530 square miles: https://en.wikipedia.org/wiki/United_Kingdom

³ Area of Europe: 10,180,000: <https://en.wikipedia.org/wiki/Europe>

⁴ International Union for Conservation of Nature's Red List:
<https://www.iucnredlist.org/species/22690103/131924602>

need for a more flexible approach with greater clarity than the new general licences currently offer.

The user is now in a position where they will have to justify their use of the licence and their compliance with its terms, either to a police officer or to an officer from Natural England. In our view the criterion within the new general licences are too extensive, in places ill-defined or too subjective and lack sufficient clarity to allow people to be assured that they will be able to avoid prosecution and a criminal conviction if they carry out pest control which is, and has always been considered, a necessity.

In our view the new general licences should be as simple and as clear as possible. We look forward to working with you to resolve this issue so that necessary pest control can continue.

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CLA reference (for internal use only): A2419145
