



SACS
UK-WIDE SHOOTING
& COUNTRY SPORTS
ADVOCACY

NE GENERAL LICENCES FIASCO: SACS UPDATE AND FAQs

4th May 2019

****STOP PRESS: DEFRA LAUNCHES CALL FOR EVIDENCE ON GENERAL LICENCES ISSUE****

Defra has just launched a call for evidence on the current General Licences issue. Closing date 5pm 13th May. It is vitally important that all who are affected by the recent General Licences fiasco respond.

More information [HERE](#).

SACS UPDATE

Last week Natural England (NE) revoked three of the principal General Licences (those allowing lethal control for crop, livestock and conservation damage purposes) with just 36 hours notice. This followed a long-planned legal challenge by an anti-shooting group called 'Wild Justice' against the way Natural England had issued the licences under Section 16 of the Wildlife & Countryside Act 1981 (WCA).

As we may all now be aware, Wild Justice is headed by attention-seeking animal rights activists including Packham, Tingay and Avery and, following severe criticism from all corners, Packham has been backtracking on television interviews.

For a self-proclaimed wild bird conservation expert to seek to obstruct the lawful and necessary control of highly damaging pest bird species, such as crows, when so many of our ground-nesting wild birds are endangered and at their most vulnerable time of year, is mind-blowingly irresponsible. And that doesn't begin to emphasise the impact on farmers and supporting businesses. Evidently it is hard to see the real world picture when you are too busy looking in the mirror.

SACS has received an exceptional number of calls from members and even non-members looking for guidance and information. We are a Scottish-origin membership representative association with many members south of border, and necessarily, much of our work takes place there. Given our UK-wide experience in reviewing and advising on GLs and wildlife licensing, SACS is well-placed to help and guide. We aim to answer some of the more common questions below.

WHAT ARE GENERAL LICENCES?

The Birds Directive (Council Directive 2009/147/EC) is part of EU nature legislation. It protects all wild birds and their nests, eggs and habitats, within the European Community.

The Wildlife and Countryside Act 1981 was enacted in Great Britain (not Northern Ireland, which has its own relevant legislation and General Licences) to implement the Birds Directive.

All wild birds in Great Britain are protected under the Wildlife and Countryside Act 1981 (as amended). We will abbreviate this to 'WCA'.

Section 16 of the WCA permits Government agencies, such as Scottish Natural Heritage (SNH), Natural Resources Wales (NRW) and Natural England (NE) to issue licences as a derogation (legal exemption) from specific elements within the WCA and for specific purposes. Amongst other purposes, these include preventing serious damage to crops and livestock, preventing spread of disease and for helping conservation efforts.

The relevant part of the WCA that covers this is included below. This is the legal basis by which Natural England and other agencies can license the taking or killing of wild birds considered to be pests. Edited and summarised for ease of reading.

16. Power to grant licences:

(1) Sections 1, 5, 6(3), 7 and 8 and orders under section 3 do not apply to anything done—

(c) for the purpose of conserving wild birds;

(cb) for the purpose of conserving flora or fauna;]

(i) for the purposes of preserving public health or public or air safety;

(j) for the purpose of preventing the spread of disease; or

(k) for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber [F3, fisheries or inland waters],

if it is done under and in accordance with the terms of a licence granted by the appropriate authority.

The appropriate authority 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.

There are essentially two types of licence:

Individual Licences (ILs) – for which you have to make a specific application e.g. by providing evidence of damage.

General Licences (GLs) – that cover common circumstances with little or no significant population-level impact on the controlled species.

GLs avoid the need for people to apply for individual licences in circumstances where it would make no sense to do so and where individual applications would overload the system due to volume, an example being corvid or pigeon control.

The principle behind GLs is that Government scientists and experts consider that certain wild bird species are a 'pest' and their numbers and associated damage caused are serious enough to allow general control.

Unlike an Individual Licence, you don't need to apply to use a General Licence; however, each GL will have limitations and conditions, which it is your responsibility to comply with. Failure to comply with GL conditions may be regarded as an offence, for which you could be charged and prosecuted.

To follow GL conditions, it is important to read and understand them; this assumes that the licences are straightforward, non-complicated, concise and easy to follow. If the old NE GLs were not easy to follow or understand, sadly the new GLs being released are even harder to comprehend and, in SACS' view, are incompetent and not-fit-for-purpose. We cover this further down.

So that's the General Licences in a snapshot.

ARE FOLK IN WALES, NORTHERN IRELAND AND SCOTLAND AFFECTED?

No. This GL revocation nonsense is currently limited to England. The devolved administrations each have their own Government nature agencies who are able to issue licences, mostly on similar terms as elsewhere in the UK.

WHAT HAPPENED LAST WEEK?

Despite earlier reassurances to the contrary, last week Natural England gave us all 36 hours' notice that they were going to revoke GL04 (licence to take or kill to prevent damage or disease), GL05 (licence to take or kill for health or safety purposes) and GL06 (licence to take or kill for conservation purposes). These are (were) the principle lethal control General Licences.

Why did they do it? Leaving conspiracy theories about the new NE Chair's apparent long-standing friendship with the Wild Justice leaders aside, it may be that this whole cock-up was a direct consequence of cost-cutting at NE and a fundamental lack of department understanding of what they were doing – often referred to as 'institutional incompetence'.

SO WHAT'S HAPPENING NOW?

Everyone is aware of the immediate chaotic aftermath of the GL revocation by NE. SACS and other representative bodies responded quickly to condemn the NE decision and to press for the continuation of licensing.

NE were forced into providing a speeded-up process for Individual Licence applications, which would be prioritised for the more immediate threats such as corvid and pigeon damage. This IL application process was to be online and simplified, but when launched, it crashed straightaway due to demand. An alternative way of submitting applications via email was accepted – please see earlier SACS news updates on our website for links and instructions.

DO I NEED TO APPLY FOR A LICENCE, OR JUST WAIT FOR THE NEW GLs?

That's entirely up to you and depends on your circumstances. If you are a farmer suffering serious pest bird damage or someone who controls birds for a farmer suffering that damage, then you can apply for a temporary Individual Licence via the Natural England website, which can cover one or a combination of the below species, depending on your circumstances:

Crow, collared dove, lesser black-backed gull, jackdaw, jay, magpie, feral pigeon, rook, woodpigeon, Canada goose, parakeets, Egyptian goose.

New General Licences are being drafted and at the time of writing three are live:

[GL26 - To kill or take Carrion Crows to prevent serious damage to livestock including poultry and reared gamebirds](#)

[GL28 - Canada geese: licence to kill or take them for public health and safety](#)

[GL31 - To kill or take Woodpigeon to prevent serious damage to crops](#)

It was NE's intention to release new GLs on a species-specific basis to sort out their legal quandary, but as yet we do not know when the others will go live. The other priority GLs for magpie, rook etc. are due soon.

WHAT'S THE GOVERNMENT DOING ABOUT THIS?

As newspaper articles will attest, Michael Gove and Defra are not best pleased with NE and its actions and are rumoured to be stripping NE of its licensing responsibility. Defra minister Robert Goodwill has

emphasised that the Government takes this matter seriously and is pressing to get it resolved quickly as well as conducting a review into the failures at NE. We take some comfort from the fact that Mr Goodwill is a farmer himself.

WHERE CAN I FIND GL26, 31 AND OTHER GLS WHEN THEY GO LIVE

You can find them at the following link: [NE GENERAL LICENCES](#)

DOES PACKHAM HAVE A VALID LEGAL CHALLENGE?

That's up for debate. The contentious wording in the WCA appears to be:

“The appropriate authority 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.”

Essentially that comes down to exhausting alternative methods before the 'last resort' of taking or killing those bird pests. Alternative methods are often referred to as non-lethal methods e.g. scaring, gas guns, reflectors, scare crows etc.

But the crux of the challenge is *“The appropriate authority shall not...unless it is satisfied...”* i.e. the onus being on NE to be satisfied that all other potential solutions have been exhausted before permitting taking or killing under licence. But how on earth can they know every local circumstance? Of course they cannot, so previous GLs have delegated this legal responsibility of satisfaction to the user.

In earlier GL discussions with licensing authorities SACS has raised this legal grey area, but we and they were reasonably comfortable that passing the 'satisfaction' duty down the line to the user was both competent and expedient. It had never been legally tested, until Packham et al. came on the scene.

GL 26 & 31 HAVE BEEN ISSUED – ARE THEY OK?

We have not had an opportunity to review GL28 for Canada Geese, but GL26 and GL31 are not ok. In our view they are contradictory, confusing, hard to follow, not fit for purpose and incompetent.

The previous GLs were far from ideal, with a format and form of words that is challenging to all but seasoned readers of the Law Society Gazette; however, the new GLs issued take a few steps above the old GLs in obscure legal jargon and unnecessary wordiness. We have gone from a previous 6 pages to now 11 pages, though they do include tables and lists apparently trying to be helpful.

So what are the issues?

Old GL 'alternative methods' condition wording:

“This licence can only be relied on in circumstances where the Authorised Person is satisfied that appropriate legal methods of resolving the problem such as scaring and proofing are either ineffective or impracticable” i.e. the onus passed on to the licence user.

In the new GL26 it states: *“This licence may only used...where reasonable steps to prevent predation by lawful methods have been and continue to be taken.”* And *“Reasonable endeavours must continue to be made to resolve the problem using such appropriate lawful methods alongside use of the licence.”*

So, at the point that you decide that alternative lawful methods of preventing damage e.g. scaring, are either ineffective or impracticable and decide to move to lethal control, you still need to continue to use those non-lethal methods. This makes no practical sense.

However, in our view it also creates a position of legal jeopardy in that if non-lethal methods are still relevant and appropriate, by definition therefore you surely cannot be satisfied in law that “...*there is no other satisfactory solution.*” as required in law by the WCA?

This is very poor drafting by NE.

We are concerned by the wording: “*Before using the licence reasonable endeavours must have been made to resolve the problem **using the lawful methods identified in Table 1** (unless their use would be impractical, without effect or disproportionate in the circumstances) and any other lawful methods that may be appropriate in the circumstances.*” So, do we have to use/try all the lawful methods and in that order or are they presented in the table not as a to-do list, but as helpful suggestions? NE, you need to clarify.

In the new licence GL26 there is a need for the licence user to demonstrate what they are doing and why they are doing it:

Any person using this licence must be able to show, if asked by an officer of Natural England or the Police:

(i) what type of livestock any action under this licence is protecting;

(ii) what lawful methods have been, and are being, taken to prevent predation of such livestock by carrion crow or why the lawful methods have not been taken;

(iii) what measures have been and are being taken to minimise losses to that livestock from other predators and causes; and

(iv) why the threat of predation from carrion crows is sufficiently serious to merit action under this licence.

Licence users are advised to keep a record or log of predation and of efforts to address problems by legal methods.”

GL31 has similar wording for woodpigeon.

Essentially, this would be fulfilled by keeping a basic notebook of crops and livestock being protected, serious damage, a farmer’s requests for help and alternative methods attempted or why they would be impracticable. In any grey legal area keeping notes to justify your actions, should they be ultimately questioned, makes sense. At its core, if a licence user cannot answer the above questions, then it is not clear how they could justify use of either this new GL or any of the older ones.

Previously no recording or reporting was required. Now there is an advisory note for licence users to keep a “record of problems”, which we assume to mean predation or other damage. But there is still no need to report anything back to NE. So, again, a logbook seems appropriate.

Another issue: the new GLs continue to allow the taking, damaging or destroying of nests or destroying of eggs, but now only while that nest is in use or being built. This shows a total lack of understanding, especially the practicality of corvid control. Not only are the new GLs not fit for purpose, but they are absurd.

There are other issues, but we need to keep this Q&A as short as possible. Others have listed the wording “*Only as a last resort to prevent serious damage*” as an issue, but that doesn’t make any sense; the whole point and legal basis of the GLs is as a last resort to prevent serious damage where no other satisfactory solution exists.

LEGAL JEOPARDY AND ‘UNNECESSARY RISK’

NE have argued that in the new GLs they are trying to remove unnecessary risk on the licence user. They probably mean legal risk.

If removing unnecessary risk to the user is of such importance to NE, then they could start by removing the bit about having to continue non-lethal methods when deciding to undertake lethal methods. To us the principle is clear: lethal control can only be undertaken when “there is no other satisfactory solution.” Having to use non-lethal methods at the same time as lethal clearly means that there is not yet “no other satisfactory solution.” That is in SACS’ view not legally competent and therefore places our members at unnecessary legal risk – caused by NE!

Of course an alternative way forward is amending Section 16 of the WCA.

IS THERE AN EXAMPLE OF A GOOD GENERAL LICENCE FORMAT

Yes there is a good working alternative. SNH GL format is far easier to follow and understand. The current GL26 is linked below:

[Latest NE General Licence GL26](#) - Long, complex, confusing, hard to understand.

Now compare GL26 with:

[Current SNH General Licence based on SACS format](#)

Two years ago SACS submitted a new GL design format to Scottish Natural Heritage for updating and improving the ease of reading and understanding of the Scottish General Licences. SNH kindly listened and produced the above. Much better.

CAN I STILL USE LARSEN TRAPS

Yes, under the new GLs you can still use Larsen traps, but there is an additional document called [‘Standard Conditions document for using Larsen and other traps’](#) to clarify terms, conditions and obligations.

No mention of Larsen Mate and Larsen Pod traps yet, which is up for discussion in the wider consultation on GLs, but very much covered in the SNH GLs.

WHAT HAPPENS NEXT?

It appears that Defra have sacked NE from the licensing role. Defra have indicated that they take this issue very seriously and will no doubt be working hard behind the scenes to resolve it.

In SACS’ view we need three things:

1. GLs that are comprehensible and easy to follow as well as competent.
2. A full review of what went wrong at NE to be used as an example of how not to run a Government agency, i.e. ‘lessons learned’.

3. A full and broad consultation exercise later this year on the General Licences, to start at the WCA wording and move down the chain to the eventual user, ensuring that the end result is a simple to follow document that incentivises and supports necessary lethal control rather than obstructs it.

CAN I STILL ROOST SHOOT?

This hasn't changed from before. All birds are protected in law. The General Licences (at least until NE revoked them) allowed taking and killing for limited purposes including preventing serious damage. Any GL user, roost shooter or otherwise, needs to be absolutely certain that what they are doing is permitted under a relevant GL i.e. either preventing serious damage or, if they do not roost shoot or effect other control, serious damage may occur as a consequence.

It is up to you to justify your actions. If the roosting crows or pigeons are known to hammer your crops and, due to other limitations, roost shooting is the most expedient way of preventing damage, then that may be a valid argument.

It is also important that the farmer, if it is not you, actually wants you to prevent serious damage and in this way. It would be imprudent to roost shoot if the farmer cannot support your actions when questioned by police.

The big difference between the old GL and the new one is a need to continue with non-lethal methods even when undertaking lethal methods, which makes no sense at all, either in practice or in law.

Looking at it from this angle, you can see why it would be sensible to keep a basic logbook of what you are doing and why.

AM I STILL OK TO DECOY PIGEONS AND CROWS?

Exactly the same as for roost shooting (see above). You must be able to justify your actions under a relevant GL. And the farmer, if not yourself, must be able to support what you are doing. If the farmer is not suffering or likely to suffer serious damage, or does not really care about pigeons, then you may be committing an offence. The police would always speak to the farmer.

Again, good practice to keep a little log book, detailing your thinking, the farmer's requests and what you're doing. It doesn't have to be complicated, just sufficient to demonstrate you have been mindful of the law.

AND SHOOTING ON STUBBLE AND UNDER FLIGHT LINES?

Ok, again you need to be able to justify your actions under a relevant GL. If you are directly protecting a current or planned crop by shooting on adjoining fields to a crop, under nearby flight lines or stubble, then note your thinking down in your logbook.

If the farmer is turning in the stubble for a new crop then of course you may need to get ahead of any serious damage by shooting over stubble while you can. As all of us know, it is a limited window of opportunity. Just scribble your reasoning down in a logbook in case anyone ever asks. Again, make sure the farmer is supportive of what you are doing and that he/she is either suffering serious damage or likely to suffer serious damage if you don't shoot.

And remember the requirement to be able to demonstrate that you have attempted non-lethal methods (logbook entries may suffice) or that you can explain why they are impracticable e.g. crop is beside a bridleway so gas gun cannot be used; scarecrow was attempted last year to no effect or was

stolen/destroyed; and because of well-used bridleway I cannot really shoot that crop so have to do my control via decoys in a field next door or under a local flight line.

Remember, if when you write it down it doesn't make sense to you, it won't make sense to anyone else reading. Keep it simple and factual.

PREDATOR SUMPS

This is one for uplands or other areas where perhaps a large block of conifers or heavy cover acts as a 'predator sump' for corvids.

As long as you can demonstrate why you are controlling birds in that area e.g. conservation purposes or livestock protection in the vicinity and that other methods have failed or are impracticable, then that should be justifiable.

It's not always possible or feasible to control corvids in the fields where they are doing damage, but it is up to you to justify why you are doing a control activity away from those fields.

TRAGEDY OR COMEDY?

Well that depends on perspective. If you think this doesn't affect you, perhaps you can be forgiven for looking on in morbid curiosity. However, whoever and wherever you are, if you believe in the importance of a diverse and balanced environment, where endangered and struggling wild birds at least get a chance to breed before being consumed by a murder of crows, then this absolutely does affect you.

The bigger picture is that General Licences are a significant part of our environment, economy and national food security. They are not a play-toy for self-proclaimed eco-evangelists who would put their ideological objections to shooting ahead of protecting endangered wild birds. That's the reality.

We need our Government to take immediate and firm action to limit the damage already done by NE and 'Wild Justice': what justice for our waders, other ground nesters and farmers?

This is a total shambles that should never be allowed to happen again.