

## Internal Guidance Note SD/IGN/2016/001



# Licensing lethal control of birds to prevent serious damage

## 1. Scope

### 1.1. What does this Internal Guidance Note (IGN) cover?

- This guidance note applies to wild birds that are protected by law, but which are not considered to be either “very rare or endangered” and does not apply to invasive non-native birds (eg parakeets). It thus encompasses most species of wild bird in England.
- It applies to applications for licences for the purposes of preventing serious damage to [livestock](#) foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters.
- It explains the defined circumstances when it is Defra policy to issue licences to kill birds and destroy eggs and provides advice for Advisers assessing whether the defined circumstances have been met.

### 1.2. Who is this IGN for?

- This IGN is for use by Advisers assessing licence applications to kill birds or destroy eggs.
- It provides advice to enable Advisers to assess such licence applications against the four principles given in the Defra policy in a consistent way.
- A copy of this IGN has been provided to the Web Team, so that potential applicants understand how we implement the law and Defra policy for this work area, and are therefore able to provide the information necessary to enable an assessment to be made.

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## 3. Background

- 3.1. The protection of wild birds in the UK stems from the EU Birds Directive (79/409/EC). This has been revised many times, with changes being codified into an updated version published in 2009 (2009/147/EC).
- 3.2. The Directive places an obligation on member states to conserve all species of wild birds, their eggs and nests (Article 1) and establish a general system of protection for all species of birds (Article 5).
- 3.3. In England the Directive has largely been transposed into law by the Wildlife and Countryside Act 1981 (as amended). Section 1 of the Act protects all wild birds and their eggs and nests. It lists some species which are subject to special protection; these are Schedule 1 species.
- 3.4. The Directive allows member states to derogate from the provisions of Article 5 for certain purposes where there is no other satisfactory solution. In England, derogations are undertaken by means of issuing licences under Section 16 (1) of the Wildlife and Countryside Act 1981.<sup>1</sup>
- 3.5. Article 2 of the Directive requires member states to maintain the population of species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of species to that level. In the UK this is achieved by Government policy.
- 3.6. Article 13 makes it clear that measures taken, which includes licences, may not lead to deterioration in the conservation of species of wild birds, and Article 14 allows member states to introduce stricter protective measures than those provided for under the Directive.

<sup>1</sup> Licences to prevent serious damage are issued under section 16(1)(k) of the 1981 Act

#### 4. Policy

- 4.1. Defra's [overarching wildlife management policy](#) states that the conflicting priorities which sometimes occur between species conservation and our socio-economic activities need to be balanced in a sustainable way. It promotes the use of non-lethal methods. It states that there is a general presumption that wildlife is not killed and that where conflict occurs, most problems can be resolved using non-lethal methods of control. However, the policy recognises that:

“There can come a point when damage caused by wildlife becomes unsustainable and lethal methods of control are required. As the legislation generally prohibits lethal control, Defra policy is to issue licences to kill in defined circumstances where

- 1) all other reasonable non-lethal solutions have been tried and/or shown to be ineffective and
- 2) there is a genuine problem/need;
- 3) there are no satisfactory alternatives;
- 4) the licensed action will be effective at resolving the problem and the action is proportionate to the problem. Wherever possible, humane methods of lethal control are used.”

- 4.2. Public opinion is not a factor that can be considered when determining a licence application. Natural England must assess all applications on their own merits and in line with the principles set out above.

- 4.3. In the context of licensed activities, lethal control also includes the destruction of eggs.

- 4.4. All other things being equal, the deciding factor on whether lethal control of birds at a given location is acceptable (that is, how many birds and which species) will be the impact of such control on the conservation status of the bird species involved.

#### 5. Meeting the four licensing principles – evidence and assessment

- 5.1. Whilst public opinion is irrelevant to the decision making process it is the case that many licences issued to kill wild birds are likely to attract public interest and may be subject to public scrutiny under FOI/EIR request. This scrutiny could lead to legal challenge and so it is important that every technical assessment is full and expansive, reporting the evidence presented and providing a sound evaluation of this evidence against the four principles in the Defra policy.

- 5.2. The following sections of this IGN provide information as to what evidence should be provided by or sought from the applicant for each principle.

#### 6. Principle 1: All other reasonable non-lethal solutions have been tried and/or shown to be ineffective.

- 6.1. The applicant, and Natural England, should be able to demonstrate that reasonable and practical non-lethal means of reducing or resolving the conflict have been considered and where possible been implemented and/or shown not to have worked, or to have had limited effect. It can be difficult to determine what is ‘reasonable’ and advisers are expected to apply expert judgement and past experience in making this assessment.

- 6.2. This principle can be considered as having three parts: What is the problem or specific situation that needs to be addressed? Are there other non-lethal solutions? If so, will

these non-lethal solutions resolve the problem or specific situation for which the derogation is sought?<sup>2</sup>

- 6.3. Where another solution exists, any arguments that it is not 'satisfactory' will need to be strong and robust, and should be based on objectively verifiable factors. Close attention needs to be paid to the scientific and technical evaluation of these.<sup>3</sup>
- 6.4. There is potentially a wide range of alternative non-lethal actions that could be undertaken to reduce or prevent the damage being caused by the protected species. As with all wildlife management situations, there is not one 'magic' solution and the best result will often be achieved by varying the application of a wide range of techniques competently.
- 6.5. Non-lethal measures should include those considered by the relevant industry as normal good practice. Some measures may have more than one application – a visual deterrent may also be a physical barrier. Unfortunately often the techniques most commonly applied are those which are least effective. However, with a little imagination, combination and thoughtful application the effects can usually be greatly enhanced. A non-lethal alternative should not be rejected simply because it would cause greater inconvenience to or compel a change in behaviour by the beneficiary of the licence.<sup>4</sup> Equally, however, non-lethal measures should not be required in circumstances where there is evidence that such measures are unlikely to have any notable effect in reducing the damage.
- 6.6. There is no requirement for applicants to have tried all known techniques, but you should be satisfied that the applicant has tried all reasonable non-lethal solutions that might resolve the conflict. Consideration should also be given to non-lethal options that would require a licence, for example nest destruction; but only after options that do not require a licence have first been discounted.
- 6.7. It is important that where non-lethal solutions are used, they are implemented in a competent manner. Deterrents which are left up or in place outside the 'season' or vulnerable period will soon become ineffective as birds quickly habituate to their presence. There are no hard and fast rules on what is reasonable and you will need to judge each case on its merits. You should however be satisfied that the non-lethal solutions tried have been deployed appropriately and shown not to be effective.
- 6.8. Licensing action against a protected species is a last resort, permitted only where no other solution which does not involve setting aside legal protection can be adopted to resolve the conflict.<sup>5</sup>

## 7. Principle 2: There is a genuine problem/need.

- 7.1. The applicant needs to provide evidence to show that damage caused by birds is, or is likely to be **serious**. Licences are not permitted to prevent the threat of minor damage. You should consider both the likelihood and the extent of damage. The fact that damage might occur is not sufficient. If damage is not yet apparent, past experience at the site or, if appropriate, elsewhere should demonstrate a high probability that damage will

<sup>2</sup> EC 2008 Hunting Guidance para 3.4.2

<sup>3</sup> EC 2008 Hunting Guidance para 3.4.10 - 12

<sup>4</sup> EC 2008 Hunting Guidance para 3.4.11

<sup>5</sup> EC 2008 Hunting Guidance para 3.4.10

occur. Furthermore, it should concern serious damage to an economic interest, and not mere nuisance or normal business risk.

- 7.2. Licensing is not an alternative to good practice and management. Damage caused by wild birds will be a dynamic factor and should be viewed as a part of normal business risk. The business risk associated with damage by birds will vary as both habitat and species populations can change significantly over time. We therefore expect applicants to have adapted to changes in risk of damage and to have adapted strategies to put reasonable, non-lethal measures into place where bird populations have significantly increased.
- 7.3. When considering licence applications to prevent serious damage, it may be helpful for assessors to consider publically available data (eg the typical business performance for the relevant sector). The Adviser should, however, also take into account data provided by the applicant as this, in some cases, may be a more objective measure of damage. Links to further information on losses that might be expected for different enterprises can be found on the [SD Toolkit](#).
- 7.4. Applicants should provide evidence of damage attributable to the species, such as photographic evidence, numbers of livestock lost, yield of crop damaged and the value of these to the enterprise. Observation of the birds' behaviour including numbers and frequency of damage should also be maintained. Simple diary entries can be very effective to depict the scale of any damage. This data may also be useful under analysis to determine any patterns of damage and to more effectively target action. The precise evidence required will need to be considered on a case by case basis.

## **8. Principle 3: There are no satisfactory alternatives.**

- 8.1. Applicants should demonstrate that they have first identified and defined other possible solutions and then considered if they are satisfactory.
- 8.2. There may be a number of alternative solutions. The following is not an exhaustive list, merely alternatives that are likely to be applicable in many cases and should be considered before lethal control is licensed:
- Is surrounding habitat directly affecting levels of damage (eg cover/perches for predators, or lack of cover for prey)? Where a direct link exists, non-lethal methods in combination with habitat management should be considered and evaluated.
  - Will disturbance (such as shooting to scare) or displacement resolve the conflict?
  - Can the birds be physically excluded or deterred from causing damage?
  - Is there scope to reduce damage by adapting management practices (eg releasing older / larger pheasant poults or stocked fish so they are less vulnerable to predation)?
  - Would a non-lethal action or a licensed action, other than lethal control of adult birds, such as nest destruction (displacement) or egg treatment (reducing population and feeding of dependent young pressure) resolve the conflict and be achievable by, or affordable to, the applicant?
- 8.3. Placing birds in captivity is sometimes proposed as an alternative to lethal control. There is little demand for many birds that cause damage to be held in captivity and it serves little in terms of conservation, as birds are still removed from the wild. It may also be expensive and difficult for an applicant without the correct contacts to be able to undertake. In some cases however, it may be an appropriate solution.

8.4. Translocation may seem attractive as it does not involve lethal control, however it is very time consuming and as such is an expensive procedure, often with very little conservation benefit. It is important to consider how any birds proposed for translocation would adapt to their receptor site and interact with the resident wildlife. It is also important to evaluate the risk of conflicts occurring at the receptor site and of spreading disease. Again however, it may be an appropriate solution in some cases.

8.5. An alternative solution cannot be deemed unsatisfactory merely because it would cause greater inconvenience to or compel a change in behaviour by the applicant. Where another solution exists, any arguments that this is not satisfactory will need to be strong and robust and should be based on objectively verifiable factors. You should ensure that your technical evaluation of the factors is scientifically sound, and seek specialist advice if required.

**9. Principle 4: The licensed action will be effective at resolving the problem and the action is proportionate to the problem. Wherever possible, humane methods of lethal control are used.**

9.1. The action and numbers requested should be proportionate to the severity of the problem. The applicant needs to explain how licensed action will effectively target the species of bird, or individual bird causing the damage in a proportionate manner. Advisers should consider whether any such approach is suitable or if a different approach should be considered.

9.2. Any action permitted under licence must be limited to that necessary to resolve the problem.<sup>6</sup> It is important to consider the range of options potentially available and not just the proposal put forward by the applicant. The evaluation should seek to identify the option that effectively resolves the problem with the least impact on the protected species. All else being equal, targeted action (eg improve/reinforce scaring or remove specific problem individuals) is preferred to less focused approaches that seek to resolve a problem by simply reducing the local population of the problem species.

9.3. There needs to be a significant degree of confidence that any licensed action will actually resolve or sufficiently reduce the scale of damage to justify action against the protected species. It is generally the case that if individuals are removed, the void they leave is soon filled by others from nearby populations. The likelihood of this, and the impact this is likely to have on the success of lethal control in removing or reducing damage needs to be properly evaluated.

9.4. The applicant may consider that the respite between removing problem birds and the void being filled by others will be sufficient to reduce the damage to an acceptable level. If this is the case, you should consider whether an application for control in subsequent years is likely and what the cumulative impact of repeat control will be on the conservation status of the species involved.

9.5. There also needs to be a considerable degree of confidence that the species of bird being applied for is actually causing the damage. Ventures in the open countryside are subject to a large number of external influences, including the weather.

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<sup>6</sup> EC 2008 Hunting Guidance Para 3.4.12 "...the need to limit a derogation to the extent necessary to resolve the problem addressed."

- 9.6. It is likely that you will require the following information from the applicant to help determine whether the proposed action is proportionate:
- What evidence is there that the species subject to the licence application is responsible for the conflict?
  - Are other species causing damage as well, and if so what action is being taken to prevent this conflict?
  - Is there a seasonal pattern to the conflict?
  - Is conflict exclusively at the location in question or in the surrounding area too?
  - Does damage happen at specific times of the day?
  - How many birds does the applicant wish to remove?
  - Is the applicant looking for a licence to carry out a one-off activity, or for repeated lethal control?
  - Is the proposal to shoot to reinforce non-lethal scaring, or remove specific problem birds, or remove sufficient birds to reduce the population present?
- 9.7. You should consider the evidence provided by the applicant alongside the behaviour of the species involved to determine whether lethal control is likely to be effective at resolving the problem. Lethal control does not need to remove the problem, but it does need to reduce the scale of damage to an acceptable level.

## **10. Implicit principle: Implications for conservation of the species**

- 10.1. The Government aim is to strike a balance between protecting species (and meeting international obligations to do so) and providing effective solutions to the problems that they cause.
- 10.2. Although there is no FCS test in the Birds Directive or the WCA 1981, there is an implicit requirement to consider impacts on conservation status that comes from Article 13 and, of course the legislation was designed to protect the conservation of species, so it is a core aim of the law.
- 10.3. The implications of the proposed control for the conservation status of the protected species (or any other protected species or protected sites likely to be affected) need to be evaluated. This evaluation should take account of cumulative effects<sup>7</sup>, including the likelihood that control action will need to be repeated in future and the effects of other licences affecting the same species. You need to be confident that collectively, licensed action will not result in the deterioration of the conservation status of protected native bird species.
- 10.4. Advisers need to look at the evidence for the species abundance and trends. This may be obtained from BTO [BirdFacts](#) and Birdtrends web pages, which will give population trends for areas of England for many species. Local county bird club reports also are likely to yield good data on the species abundance in that local area.

## **11. Further Points**

- 11.1. Applications to kill wild birds need to be assessed in line with Defra policy and can sometimes be of wider public interest. Advisers should seek advice on complex or sensitive applications from the cluster Senior Adviser, who should notify relevant area team management.

<sup>7</sup> The Defra policy for s16 WCA licensing makes reference to cumulative effects

11.2. Our chargeable, pre-application advice service was specifically designed to enable us to advise customers in drawing up a licence application and may be very helpful in enabling the applicant to provide the necessary evidence to allow the Adviser to make a timely decision. A site visit can often provide key information and context, but is unlikely to provide all the information necessary to make a firm decision alone. All the evidence and facts should be compiled and assessed, often in discussion with another Adviser.

## 12. Glossary

BTO	British Trust for Ornithology
EIR	Environmental Information Regulation
FCS	Favourable Conservation Status
FOI	Freedom of Information

## 13. Version control

Issue	Amendment Detail	Author	Date
v0.1	Initial draft	[REDACTED]	05/02/2016
v0.2	Technical comments from [REDACTED]	[REDACTED]	11/02/2016
v0.3	Draft for further comment	[REDACTED]	11/03/2016
v0.4	Revised draft for external comment	[REDACTED]	24/03/2016
v0.5	Revised draft following external comment	[REDACTED]	22/04/2016
v1.0	Approved version for immediate use following technical comments from [REDACTED]	[REDACTED]	03/05/2016