Licensing the control of wild birds in England

Advice provided under the Wildlife & Countryside Act 1981

Statutory basis of Advice

1. Pursuant to sections 16(9)(a) and 16(10)(b) of the Wildlife and Countryside Act 1981 (as amended, 'the 1981 Act'), Natural England offers the Secretary of State the following advice as to the circumstances in which general licences should be granted:

   - to kill or take wild birds
   - to destroy the eggs or nests of wild birds and
   - to use prohibited methods to kill or take wild birds

   issued for the following purposes in section 16(1) of the 1981 Act:

   - conserving wild birds [section 16(1)(c)];
   - conserving flora or fauna [section 16(1)(cb)];
   - preserving public health or public or air safety [section 16(1)(i)];
   - preventing the spread of disease [section 16(1)(j)]; and
   - preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters [section 16(1)(k)].

Scope

2. This advice is Natural England's reply to a request received on 15 May 2019 from Shirley Trundle, Director Wildlife, International, Climate and Forestry. That request for advice concerns general licences relating to the purposes covered by the three Natural England general licences that were revoked on 26 April 2019. These general licences were:

   - General licence WML-GL04: To kill or take certain species of wild birds to prevent serious damage or disease
   - General licence WML-GL05: To kill or take certain species of wild birds to preserve public health or public safety
   - General licence WML-GL06: To kill or take certain species of wild birds to conserve flora and fauna

Natural England's role

3. Natural England has two roles that are relevant to this request for advice: that of statutory conservation advisor, and that of wildlife licensing authority in England.

   - Natural England is the UK conservation body responsible for advising government relating to conservation matters in and relevant to England[1]

   - Natural England is, with respect to wild bird licensing:

[1] Natural Environment and Rural Communities Act 2006 (in particular s32) and the Wildlife and Countryside Act 1981

- an appropriate authority for licences issued under sections 16(1)(a)-(cb) and (h) in accordance with section 16(9) of the 1981 Act, except in respect to the restricted English inshore region, and is

- authorised to issue licences on behalf of the Secretary of State under sections 16(1)(d)-(k) of the 1981 Act by a Part 8 Agreement[2] under section 78 of the Natural Environment and Rural Communities Act 2006 and does so in accordance with government policy.

4. As of 4 May 2019, by exchange of letters, the Secretary of State and Natural England have agreed that for the time being the function of granting general licences under sections 16(1) paragraphs (c), (cb) and (i) to (k) will not be undertaken by Natural England. This agreement does not affect Natural England's function of issuing individual licences under the above provisions.

5. This advice is given without prejudice to Natural England's licensing function. The conduct of our licensing function is set out in the *'Agreement on Natural England's discharge of Wildlife Management Functions'*[3].

General advice on licensing

Principles

6. It is advised that any proposal to grant a licence under wildlife legislation is assessed according to the principles set out below. These principles underpin Natural England's approach to wildlife licensing and are derived from conditions and concepts embedded in European and domestic wildlife legislation and international conventions, such as the Bern Convention[4]. The principles are:

   (i) There is a genuine problem to resolve or need to satisfy for which a licensing purpose is applicable;
   (ii) There are no satisfactory alternatives;
   (iii) The licensed action will contribute to resolving the problem or meeting the need;
   (iv) The action to be licensed is proportionate to the scale of the problem or need; and
   (v) The licensed action will not have an adverse effect on the conservation status of any species or habitat.

7. These principles apply to all licensing, although not inflexibly. In the case of certain introduced but protected species, licensing policy may permit or actively encourage management practices to reduce abundance or distribution of that species[5], and in some cases even eventual eradication[6].

Wild bird licensing

8. All the species of birds listed on the three revoked general licences fall within the definition of a 'wild bird'[7] in the 1981 Act and are fully protected by the provisions of Part 1 of the Act. In

[2] Version 20 March 2010
[3] The Agreement on Natural England's discharge of Wildlife Management Functions is published at: https://webarchive.nationalarchives.gov.uk/20140305133527/http://archive.defra.gov.uk/wildlife-pets/wildlife/management/documents/wma.pdf
[4] These principles were adopted in 2007. See: Heydon et al. 2010. Wildlife conflict resolution: a review of problems, solutions and regulation in England. Wildlife Research, 37(8), 731–748
[5] For example, the **Canada goose, ring-necked** and **monk parakeets**, which were listed on the revoked general licences.
[6] For example, the **ruddy duck**, which is controlled under General Licence GL21
[7] 'Wild bird' is defined in section 27 of the 1981 Act

relation to the control of wild birds covered by this request for advice, this means that it is unlawful, except under the authority of a derogation (such as a licence) to:

- kill, injure or take any wild bird;
- damage or destroy the eggs of the nest of any wild bird while that nest is in use or being built; or
- use certain prohibited methods of killing or taking wild birds.

9. In respect to the grant of a licence to control wild birds, the first two principles listed at paragraph 6 (above) are also legal tests. Specifically, a licence can only be issued for a purpose listed in section 16(1) and only where the licensing authority is satisfied there is no other satisfactory solution[8]. It is important to note that the licensing purposes in section 16(1) apply to all wild bird species equally. The 1981 Act itself does not differentiate between species for the purposes of the grant of licences for lethal control (i.e. the law applies equally to a **carrion crow** as to a **buzzard**).

10. Applications for licences under sections 16(1)(d)-(g) and (i)-(k)[9] are also expected to take into account relevant Government policy[10], and specifically:

- the overarching '*Defra wildlife management policy'* (May 2011)[11] and the
- '*Policy Statement – Species licensing under Part 1 (excluding section 14) Wildlife and Countryside Act 1981'* (May 2011)' which is relevant to the licensing of wild birds under section 16 of the 1981 Act.

11. The overarching policy states that conflict between species conservation and socio-economic activities need to be balanced in a sustainable way and that most problems can be resolved using non-lethal methods of control. However, it recognises that there are some situations where lethal methods of control are required.

12. Recent case law[12] has clarified that any policy applying to the granting of species licences must be made public, and any such policy must be applied consistently across all species and to all applicants for licences. Furthermore, in determining whether or not to grant a licence the licensing authority must not take into consideration public opinion or a section of public opinion[13].

13. While a policy may apply in the generality of cases, it is a basic principle of administrative law that the licensing authority must still consider each licence on its merits and be open to the possibility of making an exception to such a policy. Finally, a licence should be authorised only on the basis of a decision containing a clear and sufficient statement of reasons[14].

Duties in respect to protected sites

14. A licence, including a general licence, is a plan or project in respect to the duty in regulation 63 of the Conservation of Habitats and Species Regulations 2017 and must be treated as

[8] Sections 16(1) and 16(1A)

[9] These licensing purposes are: (d) protecting any collection of wild birds; (e) falconry or aviculture; (f) any public exhibition or competition; (g) taxidermy; (i) preserving public health or public or air safety; (j) preventing the spread of disease; (k) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters.

[10] In accordance with the '*Agreement on Natural England's discharge of Wildlife Management Functions'*

[11] https://webarchive.nationalarchives.gov.uk/20130402224313/http:/archive.defra.gov.uk/wildlife-pets/wildlife/management/documents/overarch-policy.pdf

[12] Judgement of 13 November 2015 *in R (McMorn) v Natural England and the Department for Environment, Food and Rural Affairs* [2015] EWHC 3297 (Admin).

[13] Paragraph 150 of the 13 November 2015 Judgement

[14] Case law: *C-60/05 WWF Italia and others v Regione Lombardia* [2006] ECR I-5083 EU:C:2006:378 at [34]

such when consenting or authorising activities that may have implications for a European Site[15]. A Habitats Regulations Assessment is needed if a plan or project is likely to have a significant effect on a European site.

15. The Secretary of State will be aware of recent case law[16], which usefully clarified the expectations of Habitats Regulations Assessments for species licences and for Natural England's discharge of its duties under section 28G of the 1981 Act.

Specific advice on wild bird general licences under s16(10)(b) of the 1981

Request: "*Under s16(10)(b) of that Act, in relation to the grant of a licence of any description, we should be grateful if Natural England would provide advice as to the circumstances in which, in its opinion, licences of that description should be granted."*

Advice

16. This is advice on the circumstances in which licences, including general licences, for bird control can be issued for the purposes listed at paragraph 1 and is not advice on any specific proposal or application for a licence (or licences). Whether or not the grant of a particular licence is justified will need to be judged on its individual merits.

17. A licence can only be granted where the activity to be authorised is compatible with one of the purposes and where there is sufficient, credible evidence of the need for that activity to justify action against a protected species. The 1981 Act does not define the scope of the purposes or the criteria which need to be satisfied. Summarised below is Natural England's advice on interpreting the relevant purposes and guidance on assessing a proposal for a licence.

For the purpose of conserving wild birds and flora and fauna - sections 16(1)(c) and (cb)

18. Natural England has produced an *Internal Guidance Note* (IGN) to explain the circumstances in which bird control licences can be issued for this purpose and how to apply the law and Government policy to the licence determination process. The IGN explains the approach from the perspective of an individual licence, but the approach outlined also applies to class and general licences.

- *'Licensing lethal control of birds for the purposes of conservation*' (SD/IGN/2017/002; see Appendix A)

19. As explained in the IGN, the two 'conserving' purposes may be used in situations where it is judged necessary to take action against a protected bird species to maintain the conservation status of another species or habitat. It may be that the species or habitat benefiting from the proposed action provides other uses, for example a habitat that supports livestock, a game species that is hunted, or a species that provides profit through attracting ecotourism. These uses do not preclude a licence being issued under this purpose, however the aim of licensed action must be to maintain the conservation status of a habitat or species, rather than to achieve any other benefit. The case for issuing a licence using a conservation purpose is likely to be strongest, but is not restricted to, circumstances where:

[15] Namely: Special Protection Areas (SPA) and Special Areas of Conservation (SAC) and, in accordance with government policy, potential SPAs and possible SACs, and listed or proposed Ramsar sites (see paragraph 176 and footnote 59 of the National Planning Policy Framework (February 2019)).

[16] Judgement of 15 August 2018 in *R (Langton) v The Secretary of State for Environment, Food and Rural Affairs & Natural England* [2018] EWHC 2190 (Admin); [2019] Env LR 9 ("Langton 1"), and judgement of 13 March 2019 in *R (Langton) v The Secretary of State for Environment, Food and Rural Affairs & Natural England* [2019] EWHC 597 (Admin) ("Langton 2").

- its use is directly linked to the maintenance of populations of native species that are vulnerable, rare, endangered or that are endemic, or the maintenance of natural habitats (e.g. priority habitats);

- the species or habitat benefiting from the proposed action is in a poorer conservation status than the species for which the licence is sought to undertake control, and / or

- the species causing the problem is listed on Annex 2 of the Birds Directive.

Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit and growing timber - section 16(1)(k)

20. Natural England has produced an IGN to explain the circumstances in which bird control licences can be issued for this purpose and how to apply the law and Government policy the licence determination process:

    - '*Licensing lethal control of birds to prevent serious damage*' (SD/IGN/2016/001; see Appendix B)

21. As explained in the IGN, damage must relate to an economic interest and be 'serious' (i.e. not nuisance, minor or normal business risk) and be either occurring or highly likely to occur[17].

Preserving public health or public safety - section 16(i) and

Preventing spread of disease purposes - sections 16(k)

22. These purposes are not defined further in law, and at present there are no relevant IGNs available. The general sections of the IGNs referred to above (covering other satisfactory solutions, proportionality, etc) which set out how to apply the law and government policy are, however, also relevant to the granting of a licence for these purposes.

23. In respect to the scope of '*public health or public safety*' there should be a demonstrable risk to human health or an increased risk of accidents[18]. The level of evidence required to satisfy this test needs to take account of the nature and scale of risk to people and to the conservation and welfare of the protected species concerned (i.e. we apply proportionality to the test). Licences may be granted on a preventative basis. Because this purpose relates to human health and safety the application of the precautionary principle favours, as an exception, the safe-guarding of the lives of people over the conservation status and welfare of protected species.

24. As the grant of licences to prevent the '*spread of diseases*' that affect people is implicitly covered within '*public health and safety*', this purpose is typically used where a licence is required to prevent the spread of diseases affecting livestock and other domesticated animals, wild animals or plants, or which affect both people and other species. The approach to this purpose is similar to that explained above in respect to evidence and application of the precautionary principle.

Other satisfactory solutions

25. A licence can only be issued as a last resort. This means that a licence may only be granted where no other solution "which does not involve setting aside" the protection afforded to wild

[17] Paragraphs 3.5.7 - 11 of the European Commission's 2008 guidance on the hunting of birds: http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/guide_en.htm

[18] Paragraph 3.5.5 of the 2008 guidance

birds (under Part 1 of the 1981 Act) "can be adopted". Where another solution exits, any argument that it is not "satisfactory" will need to be strong and robust[19].

26. The licensing authority must, therefore, be satisfied that there is no other satisfactory solution to the proposed licensed action to lawfully grant a licence[20]. Satisfying this requirement is relatively straightforward in the case of an application for an individual or organisational licence as the details of the specific case (e.g. the nature of the problem and the actions the applicant has already taken to resolve this problem) are known to the licensing authority. Because this information is not available to a licensing authority contemplating the grant of a general licence it is necessary to include conditions in any general licence that ensure its use is limited to situations where the authority can be confident that all appropriate alternative solutions will have been considered and, if applicable, employed to resolve the problem prior to use of the licence. If a person seeking to use a general licence cannot comply with necessary conditions then there remains the option of applying for an individual licence and having the justification for a licence tested according to their specific circumstances.

27. Furthermore, the licensing authority must be satisfied in all cases that any alternative solutions (including non-lethal measures) that can contribute to resolving the problem continue to be used, as appropriate, alongside use of the licence. This is necessary to ensure that the licence is used only where there is no satisfactory alternative other than actions that the licence permits in order to achieve the relevant purpose.

28. If the licensing authority cannot satisfy itself that the licence will only be used where there are no other satisfactory solutions on each occasion that the licence is used then a general licence is not an appropriate mechanism for derogating the protection afforded by Part 1 of the 1981 Act. In this situation a more restricted licence (e.g. an individual, organisational or class licence) which allows the evidence and conditions of the licence to be addressed on a case-by-case basis, should be used.

29. Further advice on assessing alternative solutions is given in the IGNs (Appendices A and B) and the following guidance note published by Natural England lists non-lethal methods of managing problems caused by wild birds that are relevant to the bird species listed on the revoked general licences:

    - '*Legal measures to resolve conflicts with wild birds WML-GU01'* (April 2019)[21]

<u>Conservation status of licensed species</u>

30. While there is no '*favourable conservation status'* test in the 1981 Act, licenced action must not lead to deterioration in the present conservation status of a licensed species. This is required by Article 13 of the Wild Birds Directive and Article 9 of the Bern Convention. This requirement only applies to species of bird naturally occurring in a wild state in Europe[22] but can, as a matter of Government policy, be applied to non-native species. In accordance with Government policy concerning the issue of invasive non-native species, including adoption of the precautionary approach, there should be a presumption that it does not apply to any

[19] Paragraph 3.4.10 of the 2008 guidance
[20] Section 16(1A) of the 1981 Act
[21] '*Legal measures to resolve conflicts with wild birds WML-GU01'* (April 2019) is available at: https://www.gov.uk/government/publications/wildlife-management-advice-notice-legal-measures-for-managing-wild-birds-wml-gu01
[22] Specifically, *'naturally occurring birds in the wild state in the European territory of the Member States'*

species judged to be an invasive non-native species[23] by the GB Non-Native Species Secretariat (this is relevant to the application of Principle (v) at paragraph 6, above)[24].

31. Any proposal to permit lethal control of a wild bird under a licence should take into consideration the conservation status of that species. The status of UK bird species is periodically assessed against a set of objective criteria to place species on one of three lists – green, amber and red – indicating an increasing level of conservation concern. The most recent assessment was published in 2015[25] and is supplemented by a 2017 review of annual, periodic and one-off surveys and monitoring studies of birds[26]. These assessments can be used to inform licence decision making. There is no fixed approach to licensing species that are red or amber, but Natural England recommends that there is a presumption against permitting the lethal control of such species under a general licence. Due to conservation concerns, a number of species have been removed from general licences (the **starling** and **house sparrow** in 2005, and the **herring and great black-backed gulls** in 2010).

32. By the same measure, species may be added to general licences if control is justified and doing so is consistent with their conservation status. The following species were added to general licences for the first time in 2010: the **Egyptian goose**, the **ring-necked and monk parakeets**; while the **sacred ibis** and the **Indian house crow** were added, on a precautionary basis, in 2014.

33. There is an outstanding proposal from the Natural England's 2014 public consultation on general and class licences[27] to remove the **lesser black-backed gull** (which is amber listed). Based on an assessment of the conservation status of this species, Natural England recommends that this species is not included in any new general licence permitting lethal control.[28]

<u>Reducing reliance on licences to control wild birds</u>

34. The Secretary of State will be aware of Recommendations 48 – 53 of the Law Commission's Review of Wildlife Law[29]. The effect of these proposals would be to allow lawful control of up to seven species[30] listed on the revoked general licences outside a close season (the close season would protect each species during peak breeding and, if relevant, migration periods).

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[23] All non-native species listed on the three revoked general licences are regarded as invasive species (i.e. **Canada** and **Egyptian geese; ring-necked and monk parakeets**, **sacred ibis** and **Indian house crow**). However, the Law Commission recommended that the **Canada goose** is treated similarly to naturally occurring species of wild bird owing to its inclusion on Annex II of the *Wild Birds Directive* (see paragraphs 4.36 – 4.37 of Law Commission, 2015).

[24] This position is consistent with the advice of the Law Commission in paragraphs 4.4.-4.15, which recommended excluding "*from the general protection regime non-native species whose protection, in most cases, would not serve any conservation purpose*" (Law Commission, 2015)

[25] Eaton et al. 2015. Birds of Conservation Concern 4: the population status of birds in the United Kingdom, Channel Islands and Isle of Man. British Birds 108, 708–746. Available online at: https://www.bto.org/our-science/publications/psob

[26] Hayhow et al. 2018. The state of the UK's birds 2017. The RSPB, BTO, WWT, DAERA, JNCC, NE and NRW, Sandy, Bedfordshire. Available at: https://www.rspb.org.uk/globalassets/downloads/documents/conservation-science/220-0653-17-18-sukb-2017-web-20-3-18.pdf

[27] See p13 and Annex D of the public consultation on '*General and Class licences under wildlife legislation in England: February 2014'*. Available at: https://consult.defra.gov.uk/natural-england/general-and-class-licences/

[28] There are also outstanding proposals from the 2014 consultation to consider the addition of feral **greylag geese**, **Egyptian geese** and **mallard duck** to certain general licences and to consider whether there is sufficient evidence to justify the inclusion of the **jay, jackdaw** and **collared dove** on general licences.

[29] The Law Commission. 2015. Wildlife Law: Volume 1 Report. Law Comm Number 362. p112-113. Available at: http://www.lawcom.gov.uk/app/uploads/2015/11/lc362_wildlife_vol-1.pdf

[30] **Carrion crow, rook, magpie, jay, jackdaw, woodpigeon** and **feral pigeon**

These species are listed on Annex II of the Wild Birds Directive and their control could be permitted under English law through inclusion on Schedule 2 Part I of the 1981 Act so long as it does not harm their conservation status and occurs outside breeding and migratory periods.

35. This reform measure would reduce reliance on licences to manage problems caused by these species and satisfy demand to hunt these species for recreational purposes, the pursuit of which is incompatible with any of the licensing purposes available in section 16. This latter point is particularly relevant to the **woodpigeon**. If it would assist the Secretary of State to do so, Natural England will provide advice on the conservation status and appropriate close seasons for each species.

36. A licensing regime would still be required to address any residual, but strictly necessary, lethal control during the closed season, and the granting of any such licence(s) would be subject to the same considerations outlined in this advice.

Deciding if a General Licence is appropriate

37. The legal tests applicable to the grant of a licence apply to all types of licences (e.g. they apply equally to individual, class or general licences).

38. A licence can be issued to named individuals, organisations, projects or to wider categories of people who satisfy certain criteria (e.g. 'farmers' or 'owners or occupiers of land'). Licences granted to these broader categories of users are typically referred to as either 'class' or 'general' licences. The 1981 Act does not specify the circumstances in which each licence type should be issued. It is Natural England's advice that in making the choice of licence type the licensing authority needs to consider how best to meet user needs and demand, while taking account of the:

- likelihood a licence would be issued if judged on a case-by-case basis;
- risk of non-compliance by users; and
- risk of adverse ecological outcomes.

39. It is Natural England's advice[31] that a general licence may be appropriate where:

- there is a negligible or low risk of adverse impact on the conservation or welfare of a species;
- high levels of compliance by licence users are anticipated;
- the licence permits common or widespread activities that follow well-established or standardised practices;
- there are multiple users who will benefit from having a single licence with standard terms and conditions; and
- it is highly likely that a licence would be issued if judged on a case by case basis

40. The use of all licences should be monitored and reviewed periodically to ensure the appropriate type of licence is used. This applies particularly to class and general licences which are not assessed on a case-by-case basis. Monitoring should, in particular, examine the:

- effectiveness of licensed measures at resolving problems;
- whether there remain no other satisfactory solutions;
- compliance with the conditions of licences; and
- ecological impacts of licensed activities

[31] This advice is based on Natural England's approach to licence choice; summarised in Appendix C

41. Appendix 3 provides a summary of the different licences types and their typical characteristics. Further guidance on the circumstances in which general licences may be issued is given in the *Policy Statement – Species licensing under Part 1 (excluding section 14) Wildlife and Countryside Act 1981'* (May 2011).

Understanding the drivers for increased lethal control of protected species

42. Half of the common and widespread avian predators monitored by the Breeding Bird Survey[32] (8 of 16 species) increased significantly in numbers between 1995-2015, including the **crow, jackdaw** and **jay**, which were listed on the three revoked general licences. There is evidence that levels of lethal control of some avian predators, such as the **crow** and **magpie**, have increased[33], and since 2015 licences have been issued, for the first time since the 1981 Act came into force, to lethally control a raptor species to protect gamebirds from predation (**common buzzard**).

43. Increases in the populations of generalist predators may have adverse implications for some species of conservation concern (e.g. ground-nesting birds like **lapwing** and **curlew**). A recent review of evidence suggested a possible link between increased populations of generalist predators and increases in anthropogenic food sources, from sources such as modern farming practices, human waste and game bird releasing (including the feeding of released birds)[34]. For example, the number of pheasants and red-legged partridges released each year (now totalling about 50 million birds pa) is estimated to have increased 9-fold and 200-fold respectively since the 1960s[35]. It is estimated that approximately 60% of released birds are neither shot or otherwise recovered and thus provide a potential source of food for predatory and scavenging species[36]. The role of anthropogenic sources of food in sustaining the growth of predator populations merits investigation to better understand the cause of high predation rates of species of conservation concern.

Specific advice on conservation licences under s16(9)(a) of the 1981 Act

Request: "*Under s16(9)(a) of the Wildlife and Countryside Act 1981, in relation to the grant of a licence (or licences) for the purposes of paragraph (1)(c) (conserving wild birds) and paragraph (1)(cb) (conserving flora or fauna), we should be grateful if Natural England would provide advice on whether such licence(s) should be granted."*

Advice

44. Section 16(9)(a) makes provision for the Secretary of State to consult an advisory body as to whether to grant a licence under these sections. Natural England is not in a position to advise whether a licence (or licences) should be granted for the purposes stated as it has not received details of the Secretary of State's proposed licence (or licences). At such time as we are provided with relevant information we will be able to provide advice on that licence (or those licences).

[32] See analysis in Roos, et al. 2018. A review of predation as a limiting factor for bird populations in mesopredator-rich landscapes: a case study of the UK. Biol Rev Camb Philos Soc. 93(4):1915-1937.
[33] Aebischer. 2016. National gamebag census: woodcock, woodpigeon and pests. Review of 2015. Issue 47. Game & Wildlife Conservation Trust, Fordingbridge, Hampshire
[34] Roos, et al 2018. See above for full citation details.
[35] Based on published industry figures, typically about 40% of released gamebirds annually were shot and recovered annually between 2009 and 2015 (published data do not distinguish between pheasants and partridges).
[36] Based on published industry figures, typically about 40% of released gamebirds annually were shot and recovered annually between 2009 and 2015 (published data do not distinguish between pheasants and partridges).

45. Any decision to grant a licence under these purposes should follow the general advice (given above) and the guidance on determining licences given in the IGN for '*Licensing lethal control of birds for the purposes of conservation*' (SD/IGN/2017/002; see Appendix A). Whether or not the grant of a particular licence is justified will need to be judged on its individual merits.

END

Natural England

21 May 2019

Appendices (provided as separate documents)

- Appendix A: Licensing lethal control of birds for the purposes of conservation (SD/IGN/2017/002)
- Appendix B: Licensing lethal control of birds to prevent serious damage (SD/IGN/2016/001)
- Appendix C: Species licence types and their characteristics

Internal Guidance Note SD/IGN/2017/002
Licensing lethal control of birds for the purposes of conservation

1. Scope

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

- This guidance note applies to licensing lethal control, including egg and nest destruction, of wild birds that are protected by law, but which are not considered to be either "very rare or endangered"[1] and does not apply to invasive non-native birds (eg parakeets). It thus encompasses most species of wild bird in England.

- It applies to any application for a licence for the purposes of either conserving wild birds or of conserving flora or fauna (hereafter both are referred to simply as "conservation" purposes)[2]. This IGN makes extensive reference to hunting. This is because the principal source of Europe Commission guidance on interpreting the Birds Directive is contained in its guidance on sustainable hunting[3]. This IGN is, however, applicable to all conservation applications, and applies equally to geese grazing water crowfoot on a SSSI river as to gulls predating chicks in a breeding little tern colony.

- It explains the defined circumstances when it is Defra policy to issue licences to take action against birds, their nests and eggs, and provides advice for Advisers assessing whether the defined circumstances have been met.

1.2. Who is this Internal Guidance Note for?

- This IGN is for use by Advisers assessing licence applications: to kill or take birds; to take, damage or destroy nests, or to take or destroy eggs. Although nest destruction alone is not a lethal method of control, it is usually licensed in conjunction with action to eggs or chicks within the nest. This IGN therefore applies to nest destruction.

- It provides advice to enable Advisers to assess such licence applications against the four principles given in the Defra policy in robust and 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

[1] Whether a bird species is considered "very rare or endangered" will need to be determined for individual cases. Lists of 'rare breeding birds' published by the Rare Breeding Birds Panel give some guidance (list (a) - Regular Breeders; and, in some cases, list (b) - Occasional Breeders, will be most relevant). Additional information is published by the British Birds Rarities Committee. However factors such as national or regional variations in species abundance and status will need to be taken into account in each case (see the 'Implicit principle: Implications for the conservation of the species' section for further guidance). Specialist advice should be sought if necessary.

[2] Sections 16(1)(c) and (cb) of the Wildlife and Countryside Act 1981

[3] Guide to Sustainable hunting under the Birds Directive: Council Directive 2009/147/EC on the conservation of wild birds (2008) ("EC 2008 Hunting Guidance")

therefore able to provide the information necessary to enable an assessment to be made.

2. Contents

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.[4]

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.

[4] Licences for the purposes of conserving wild birds, and of conserving flora and fauna are issued under sections 16(1)(c) and 16(1)(cb) respectively of the 1981 Act

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.

4. Policy

4.1. Defra's overarching wildlife management policy[5] states that the conflicting priorities which sometimes occur in respect to the conservation of different species or habitats need to be balanced in a sustainable way. The policy 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*
> - *all other reasonable non-lethal solutions have been tried and/or shown to be ineffective and*
> - *there is a genuine problem/need;*
> - *there are no satisfactory alternatives;*
> - *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."*
>
> *Defra May 2011*

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

4.3. 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.

In accordance with Defra policy (see 4.1, above) there is a presumption, all else being equal, that less severe options to resolve problems will be preferred. For example, in the context of licensed activities, lethal control also includes the destruction of eggs; however destruction of eggs is considered a less severe option than lethal control of adult birds or chicks, and this will be preferred if it will resolve the problem.

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

[5] This is available online at: http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/wildlife-pets/wildlife/management/documents/overarch-policy.pdf

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]

6. Principle A: There is a genuine problem/need.

6.1. The 'conservation' licensing purpose may be used in situations where it is judged necessary to take action against a protected species to maintain the conservation status[7] of another species or habitat. It may be that the species or habitat being conserved provides other uses, for example a habitat that supports livestock, a game species that is hunted, or a species that provides profit through attracting ecotourism. This does not preclude a licence being issued, however the aim of licensed action must be to maintain the conservation status of a habitat or species, rather than to achieve any other benefit.

6.2. There also needs to be a high degree of confidence that the species of bird being applied for is actually causing the conservation impact. Evidence on the interactions between certain species is provided at Annex 1 and, where relevant, should be used in conjunction with other available information for the site and species in question.

6.3. In respect to hunting, the rationale for allowing hunting is that the population level, geographical distribution and reproductive rate of hunted species are sufficient for them to sustain exploitation[8]. Logically, therefore, it runs counter to this rationale if hunting is only sustainable if a natural predator is controlled by man. In view of this, we would not normally issue a conservation purpose licence to permit the control of protected predatory species solely to enable hunting to attain or maintain sustainability (but see point on 'balance' below).

6.4. Ecosystems are formed of communities of interacting species. These natural interactions include predation and competition for resources and should be considered part of normal ecosystem functioning. The fact that one species is known to have an impact on another does not – by itself – provide a justification for licensed action.

6.5. Unlike the purposes of preventing serious damage[9], the wording of the conservation licensing purpose does not require the likelihood of a 'serious' effect to be demonstrated. However, we need to be satisfied, based on the available evidence and experience, that the target species is causing a sufficient adverse impact on the conservation status of another species or habitat to merit intervention. This assessment needs to take account of natural interactions between species (e.g. the relationship between predators and their prey) as well as normal fluctuations in species abundance, breeding success, etc.

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[6] The order that the principles are addressed has been adjusted to more closely follow the decision-making process for applications

[7] 'Conservation status' refers to an overall assessment of the abundance, distribution, habitat (or status of typical species for habitats) and future prospects of species and habitats, following the definition in Article 1 of the Habitats Directive. The red / amber / green listings in Birds of Conservation Concern can be used to inform the assessment of conservation status, as can any Favourable Conservation Status (FCS) statement, and guidance on how to evaluate FCS.

[8] Birds Directive Article 7 and EC 2008 Hunting Guidance paras 2.3.1 and 2.4.2

[9] Preventing serious damage to livestock foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters

6.6. The case for issuing a licence using the conservation purpose is likely to be strongest, but is not restricted to, circumstances where:

- its use is directly linked to the maintenance of populations of native[10] species that are vulnerable, rare, endangered or endemic species or the maintenance of natural habitats,
- the species or habitat benefiting from the proposed action is in a poorer conservation status than the species for which the licence is sought to undertake control[11], and / or
- the species causing the problem is listed on Annex 2 of the Birds Directive. Annex 2 lists species whose population level, geographical distribution and reproductive rate throughout Europe is considered sufficient to sustain control[12]. In accordance with the terms of Article 7, and to ensure licensing does not jeopardise conservation efforts, those Annex 2 species with an Amber or Red listing in Birds of Conservation Concern status[13] are to be treated in the same manner as non-Annex 2 species.

6.7. It is likely that a licence will ordinarily only be justified where the relationship is out of balance, for example, the density of the problem species in an area is unusually high (so its impact exceeds that which normally occurs), or the species or habitat affected is particularly vulnerable (e.g. small, isolated or recovering populations of species of conservation concern that are unable to sustain even 'natural' levels of predation).[14]

6.8. Applicants should provide evidence of the adverse impact which they are seeking to address, including documented/recorded observations of the behaviour and numbers of all the species involved. The precise evidence required will need to be considered on a case by case basis. Assessment should consider the impact on a wider scale. For example, it would not be unusual for a predatory species to have a high impact on prey species within its foraging home range. However, considered in a wider context, this naturally-occurring localised impact would not normally result in a conservation impact on the population of the prey species that is, by itself, sufficient to justify licensed action.

7. Principle B: There are no satisfactory alternatives.

7.1. 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.[15]

7.2. Applicants should demonstrate that they have first identified and defined other possible solutions and then considered if they are satisfactory. It is important to consider the impact of other factors, such as habitat, predators or competing species, which (either alone or in combination) may be contributing to the problem attributed to the target

[10] The Birds Directive is concerned with the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States.
[11] EC 2008 Hunting Guidance para 3.5.16-17 and also EC 2007 Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC para III.2.1(15)
[12] "Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area." EC Birds Directive Article 7.
[13] For details of the status of UK birds see the latest edition of Birds of Conservation Concern. At the time of writing this is the 4th Edition
[14] EC Birds Directive Article 7(4) makes reference to measures adhering to the principles of "… ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species"
[15] EC 2008 Hunting Guidance para 3.4.10

species. Where other factors are significant, appropriate solutions such as habitat management and/or legal control should be considered.

7.3. 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 the level of impact (eg by offering nesting sites or cover/perches for the problem species, other natural food sources being out if balance, or lack of cover for vulnerable species)? Where a direct link exists, non-lethal methods in combination with habitat management should be considered and evaluated.
- Will disturbance[16] (such as shooting to scare) or displacement resolve the conflict?
- Can the birds be physically excluded or deterred?
- Is there scope to reduce the impact by adapting management practices? For example, is an artificially high density of birds being attracted to the location by the provision of a food source, such as food waste, food being provided by members of the public, or vulnerable livestock or poultry? Where this is the case, can this food source, or access to it, reasonably be reduced?
- Would a non-lethal action or another licensed action, less severe 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 is it a reasonable and practicable alternative to lethal control of adult birds?

7.4. 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 of the target species, 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 and should be explored.

7.5. Translocation may seem attractive as it does not involve lethal control, although the applicant should be made aware of the high time and financial costs likely to be involved. 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 translocations will often serve little benefit to the conservation of the target species, but may be an appropriate solution in some cases.

7.6. 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.

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

[16] Note that disturbance of some species, such as those listed on Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), may require licensing during the breeding season.

8.1. The applicant, and Natural England, must 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 be workable, 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. This assessment needs to take account of the Defra policy presumption that where conflict occurs most problems can be resolved using non-lethal methods of control (see paragraph 4.1).

8.2. 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?[17] 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.[18]

8.3. There is potentially a wide range of alternative non-lethal actions that could be undertaken to reduce or prevent the impact 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 range of techniques competently.

8.4. Non-lethal measures should include those regarded as being 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.[19] Equally, however, non-lethal measures should not be required in circumstances where there is evidence that such measures are unlikely to have any worthwhile benefit in addressing the problem.

8.5. Where the aim is to conserve one species by minimising the impact of another, habitat management is likely to be the most effective long-term non-lethal solution. Applicants should consider ways to manage the habitat to minimise the undesirable interactions between species, for example improving cover for vulnerable species, or creating conditions that are less attractive to the problem species.

8.6. Physical or acoustic deterrents are often inappropriate in these cases as they are difficult to target at just one species, but may be useful to minimise impacts on habitats or plant species.

8.7. 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, or less severe lethal options that avoid killing adult birds (e.g. egg oiling or pricking); but only after options that do not require a licence have first been discounted.

[17] EC 2008 Hunting Guidance para 3.4.2
[18] EC 2008 Hunting Guidance para 3.4.10 - 12
[19] EC 2008 Hunting Guidance para 3.4.11

8.8. 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. Habitat management which is not maintained is unlikely to be effective in the longer term. 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 sufficiently effective. Even if lethal control is allowed, these non-lethal measures will in most cases still be required to minimise the lethal control required.

9. Principle D: 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. There needs to be a significant degree of confidence that any licensed action will actually resolve or sufficiently improve the conservation status of the species or habitat benefiting from the licensed action to justify action against the protected species.

9.2. Any action permitted under licence must be limited to that necessary to resolve the problem.[20] 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 (e.g. 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. It is generally the case that if individuals are removed, the void they leave is soon filled by others from the wider local population. 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. The applicant may consider that the respite between removing problem birds and the void being filled by others will be sufficient to reduce the problem to an acceptable level. Do we agree?

9.4. The action and numbers requested should also 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 conservation problem in a proportionate manner. Advisers should consider whether any such approach is suitable or if a different approach should be considered.

9.5. It is likely that you will require the following information from the applicant to help determine whether the proposed action is proportionate:

- What is the conservation impact, and why is action necessary to address this?
- What evidence is there that the species subject to the licence application is responsible for the conservation impact?
- Are other species causing or contributing to the problem as well, and if so what action is being taken to address these impacts?
- Is there a seasonal pattern to the impact?
- Is the impact exclusively at the location in question or in the surrounding area too?
- Does the problem occur at specific times of the day?

[20] EC 2008 Hunting Guidance Para 3.4.12 "…the need to limit a derogation to the extent necessary to resolve the problem addressed."

- Is the proposal to shoot to reinforce non-lethal scaring, or remove specific problem birds, or remove sufficient birds to reduce the population present?
- How many birds, eggs or nests 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?

9.6. 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 eliminate the problem, but we need to be confident that it will improve the conservation status of the benefiting species.

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 Favourable Conservation status (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 the core aim of the law[21].

10.3. The implications of the proposed control for the conservation status of the target species (or any other species or sites likely to be affected) need to be evaluated. This evaluation should take account of cumulative effects[22], including the likelihood that control action will need to be repeated in future (e.g. where licensed action is likely to provide only a temporary respite from the problem) and the effects of other licences affecting the same species. If repeated action is likely to be required, then it may be appropriate to require the applicant to consider, and where appropriate, implement additional measures to mitigate the problem to reduce the need for licenced action in future. If multiple licences affect the same population of the target species then it may be appropriate to limit the numbers each licensee may kill (much as we do where a population of cormorants predates on different fisheries). Ultimately, you need to be confident that collectively, licensed action will not result in the deterioration of the conservation status of native species[23].

10.4. Reference should be made to any Favourable Conservation Status (FCS) statements for both species and/or habitats involved where these are available. Interpretation at a smaller geographic scale may also be available where species/habitats are subject to recovery plans or other regulatory regimes which require this understanding. Specialist advice should be sought if needed.

10.5. Advisers need to look at the evidence for the species abundance and trends for both the species the applicant is seeking to control, and the species they are seeking to protect. For bird species this may be obtained from BTO BirdFacts and Birdtrends web pages, which will give population trends for areas of England for many species. Local

[21] Furthermore, the Birds Directive (and thus the WCA 1981) implement the Bern Convention and the derogation provisions of the Convention include the proviso that "*the exception* [the licence] *will not be detrimental to the survival of the population concerned*".
[22] The Defra policy for s16 WCA licensing makes reference to cumulative effects
[23] Furthermore, the EC 2008 Hunting Guidance para 2.4.2 states that "the practice of hunting must not represent a significant threat to efforts for the conservation of both huntable as well as non-huntable species"

county bird club reports also are likely to yield good data on the species abundance in that local area.

10.6. There is a presumption against controlling a more threatened species to conserve a less threatened species (eg controlling a Red / Amber listed species to conserve a Green listed species[24]). There is also a presumption against licensing action in order to protect a non-native species. Exceptions may be considered but will need to be fully justified.

10.7. There is a presumption against licensing control of adult birds in the breeding season, due to both the higher impact on conservation status that action at this time will have, and also the welfare implications where dependent young are present[25]. This does not preclude action against species in their breeding season where necessary, but exceptions to this will need to be fully justified, including explaining why action has not been, and cannot be taken, outside the breeding season. Where control during the breeding season is proposed, we would expect to see a particular emphasis on the effort put into trying alternative, non-lethal solutions. Measures to minimise welfare issues, such as identifying non-breeding individuals or locating the dependent young of removed individuals (for licensed killing or taking into captive rearing) should be included where feasible to minimise adverse welfare outcomes.

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.

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

[24] For details of the status of UK birds see the latest edition of Birds of Conservation Concern. At the time of writing this is the 4th Edition

[25] This principle is consistent with Article 7(4) of the Birds Directive. The Directive requires protection of huntable species during their breeding seasons, and this applies equally to the so-called 'pest' species, including corvid species listed on Annex II, as to traditional quarry species.

Annex 1: Species specific evidence and guidance

Effects of Buzzards on Grey Partridge numbers – review by Specialist Services Ornithologist

Buzzards and Grey Partridge review 080

Effects of Buzzards on Grey Partridge numbers

Introduction

Some birds of prey, including Buzzards, have undergone dramatic population increases in the UK in recent years. This has coincided with declines in many other bird species, especially those associated with lowland farmland. These changes have led to a growing concern that birds of prey, along with other predators, are at least partly responsible for the declines of prey species. There has been much research into the effect of predators on bird populations. Although, in general terms, there is little evidence of population levels effects for most species, there is growing evidence that the breeding populations of some ground-nesting birds are limited by mammalian and avian predation, particularly ground-nesting waders and gamebirds (Roos et al. 2012). There are examples where predator removal has increased breeding numbers (e.g. Tapper et al 1996), and it has been concluded that this form of intervention can be a useful tool for conservation managers in some circumstances.

This review focuses on the impacts of birds of prey on gamebirds, specifically the effect of Buzzards on the Grey Partridge. It is concerned with population level effects on true wild birds, in other words effects on the numbers of breeding birds, rather than on the numbers of post-breeding birds available for shooting. It is well established that post-breeding numbers of ground-nesting birds can be successfully increased by killing their predators, although there is less evidence of an increase in breeding numbers in subsequent years (Roos et al. 2012).

The main conclusions of the review are as follows:

- The Buzzard is an opportunistic feeder switching food sources depending on availability.
- Studies of nest remains indicate that a large range of species is taken and that the Grey Partridge is not an important prey item.
- The main predators of Grey Partridges are Red Fox, corvids and birds of prey and nest predation (by foxes and mustelids) is estimated to have much greater effects on partridge breeding densities than raptor predation.
- There are few studies which attempt to quantify raptor predation of Grey Partridges, and those reviewed here relate to specific times of the year.
- No study has been able to distinguish reliably between kills by different raptor species. What evidence there is suggests that Buzzards probably account for little more than 1% of all losses of wild Grey Partridges to predation.
- Overshooting in response to intensive Pheasant and Red-legged Partridge game-rearing can result in unsustainably high mortality of Grey Partridge, as well as other indirect negative effects on the species.

Conservation status

Common Buzzard

The Buzzard *Buteo buteo* is a resident species of mixed farmland with hedgerows, small woods and scrub supporting an abundance of mammalian and avian prey. It has an increasing population trend and is now considered to be one of the most numerous raptors in Europe.

Buzzards underwent a protracted period of range contraction in Britain from the 18th century which continued into the late 20th century. This was largely the result of persecution and, more recently, reduced rabbit abundance following the introduction of myxomatosis, and also the impacts of organochlorine pesticides. Once widespread in England, by the 1960s only a remnant population persisted in the western counties. More recently the buzzard has made a rapid recovery, more than doubling its range in England since the 1970s and increasing from as few as 8,000 pairs to at least 56,000 pairs in Britain in 2009. The reasons for this recovery are not fully understood, although improvements to bird protection legislation in the 1950s, a more positive attitude to birds of prey, with a consequent reduction in persecution, and a great diminution in the use of toxic organochlorines, are likely to be important (Balmer et al. 2013; Brown & Grice 2005).

Buzzards are now widespread in England and only a relatively small number of 10km squares lack evidence of breeding (Balmer et al. 2013). However, although the English population is now estimated at 22,000-30,000 pairs, breeding birds remain relatively scarce in some areas, notably in some upland areas and eastern counties.

Grey Partridge

The Grey Partridge *Perdix perdix* was once Europe's most numerous gamebird, with over 20 million shot annually in the 1930s. This was reduced to 3.8 million by the mid-1980s as a result of population declines (Potts 1986), with further reductions since (Potts & Aebischer 1995). Grey Partridges are widespread across much of lowland England except for the southeast and southwest. They have declined in the UK by 91% since the early 1970s and are now absent from many areas of their former range, although local extinctions may be masked by the release of captive-reared birds for shooting; about 100,000 are released in Britain each year (Balmer et al. 2013).

The decline in numbers of Grey Partridges is caused by poor chick survival due to the application of herbicides to the food plants of the young chicks' invertebrate prey, a fall in nesting success because of increased egg and hen predation, and a loss of grassy nesting cover through hedgerow removal and field enlargement (Potts 1980, 1986; Ewald et al. 2012). Reductions in brood and chick survival due to habitat degradation are exacerbated by increased nest predation by Red Fox and corvids resulting from reduced control of nest predators by gamekeepers as shooting moved from wild game to released birds (Potts 1980; Potts & Aebischer 1995; Tapper et al. 1996). A recent study shows that reducing nest predation can increase the rate of population recovery (Aebischer & Ewald 2004).

The Grey Partridge is on the NERC S.41 list of priority species in England and is a Red-listed Bird of Conservation Concern because of its rapid decline (Natural England, 2013; Eaton et al. 2015).

Buzzard diet

Buzzards take a wide variety of prey, mainly small mammals but also birds, reptiles, amphibians, larger insects and earthworms (Snow & Perrins 1998). They are opportunistic feeders and will switch to different food sources depending on availability (Dare 2015). Thus Buzzards are more likely to take food which is relatively abundant and easily available, be that live prey or carcasses. A 13-year investigation of animal remains at 212 Buzzard nests in two areas of northern Scotland revealed only four Grey Partridge remains (Swann & Etheridge 1995). The main prey items in this study were Rabbits *Oryctolagus cuniculus*, small mammals such as voles and Moles *Talpa europaea*, and birds, particularly Woodpigeon *Columba palumbus* and young Pheasants *Phasianus colchicus* in one area and Meadow Pipits *Anthus pratensis* and Chaffinches *Fringilla coelabs* in the other area. The information on prey abundance indicates that Buzzards took larger prey where available (e.g. rabbits). The opportunistic nature of the Buzzards diet is well illustrated by this study, with a large variety of prey taken (over 60 species), mainly bird species, which ranged in size from Goldcrest *Regulus regulus* to Lesser Black-backed Gull *Larus fuscus*.

Another, more recent study, again concluded that Grey Partridge is not an important prey item for Buzzards. Smart (2002) found Grey Partridge remains in only one out of 73 prey items from five Buzzard nests and 295 prey items from five Sparrowhawk *Accipiter nisus* nests.

Effect of raptors on Grey Partridge

Much of what is known about the ecology and population dynamics of the Grey Partridge in the UK comes from the Game Conservancy Trust's Sussex Study (Potts 1980, 1986). The main predators of Grey Partridges are Red Fox *Vulpes vulpes* (taking adult females during incubation), corvids (taking eggs) and birds of prey (taking adults and chicks, Park et al. 2008; Tapper et al. 1996; Parish & Sotherton 2007). Raptor predation is more important during the winter, with foxes and mustelids the main predators during the breeding season (Potts 1980, 1986). Nest predation is estimated to have a much greater effect on partridge breeding densities than raptor predation during the non-breeding season (Tapper et al. 1996; Watson et al. 2007).

Some recent correlative studies in the UK and abroad indicate that the population dynamics of Grey Partridges might not be completely independent of raptor densities (Aebischer 2000). For example, the long-term Sussex study indicates that a decline in Grey Partridge density appeared to be related to adult mortality rather than poor breeding productivity. The areas with lowest partridge densities corresponded to areas with a high raptor presence, although this does not suggest a direct effect of raptor predation. Other factors that might explain this correlation include habitat effects which favour birds of prey but not Grey Partridge (Aebischer 2000). In one

study, the areas with lowest partridge densities also coincided with areas of intensive shooting management (Watson et al. 2007).

There are few studies which attempt to quantify raptor predation of Grey Partridges. A survey of 45 Grey Partridges, freshly killed by raptors and supplied by gamekeepers across the UK, indicated that 39 were killed outside the breeding season and, of those, 31 were found in February-March, indicating that losses to raptors are primarily after the shooting season (Watson et al. 2007).

Radio-tagging of 181 Grey Partridges across 20 sites indicated that 18% were taken by raptors, after adjustment for fox scavenging (Watson 2004). It is not known if these were wild or released birds, or both, which may be significant as relatively naïve released birds, normally present in high densities, are probably more likely to be taken by predators than wild birds (Parish & Sotherton, 2007). Tagged birds might also be more vulnerable to predation under at least some circumstances.

A study in Sussex estimated 127 (52%) of 243 wild partridges died over winter, based on declines between autumn partridge counts and spring partridge counts and assuming no net emigration or immigration (Watson et al. 2007). Of these 127, 78 partridges (68%) died from shooting and 41 (32%) from other causes. Whereas shooting mortality was based on bag returns (plus a 10% allowance for wounding losses), no carcasses were retrieved to confirm the cause of mortality for the vast majority of the remaining 41 birds, Predation was considered to be the sole cause of death for these 41 birds on the basis of the five carcasses which were retrieved. It was assumed there were no losses to other factors such as disease or collisions with overhead wires and power lines.

The rate of fox scavenging in this study was estimated using trials with carcasses of Red-legged Partridges *Alectoris rufa* (7 trials with 30 carcasses each examined at 24 hours and 72 hours for signs of fox scavenging). These trials estimated that on average 31% of the simulated raptor kills had fox sign left on them or were removed completely. The main sign used to identify raptor kills is plucked feathers; this feature was therefore replicated for simulated raptor kills as part of the scavenger removal trial, As scavenging of fox kills by raptors was ruled out, any signs of apparent raptor predation could not be attributed to fox. It was therefore unclear why the full 31% figure was used to increase the predicted proportion of partridges likely to have been killed by raptors, as this uplift would include the proportion of carcasses with fox signs predicted to remain in-situ and thus available for identification via carcass searches as raptor kills. As such, there is a possibility that the adjustment for fox scavenging in this case has resulted in an inflated estimate of kills by raptors.

Following the adjustment for fox scavenging, it was estimated that 56% of predated partridges were taken by raptors, based on the five retrieved carcasses, three apparently the result of fox kills and two raptor kills (Watson et al. 2007). Population modelling indicated that Grey Partridge mortality to raptors between autumn and spring lay between 9·5% of autumn density (assumes losses to raptors occurred before shooting) and 15% of post-shooting density (if all losses to raptors were post-shooting).

Buzzard predation of Grey Partridge

Predator identification is almost entirely based on prey remains and it is not normally possible to distinguish species of raptor from partridge remains alone. Information on predation by Buzzards in particular is very limited. In one study of survival of released and wild radio-tagged partridges, Buzzards were seen to perch on or near release pens and both Buzzards and Sparrowhawks were seen attacking live partridges, and Buzzards were twice flushed from freshly killed partridges (Parish & Sotherton 2007).

The Sussex study was unable to distinguish reliably between the kills of different raptor species. During the 2 years of the study, however, Sparrowhawks were observed attacking or feeding on partridges 25 times and a Buzzard only once. Although caution should be taken when making inferences, the sample of 26 appears reasonably robust in comparison to the sample of just two carcasses upon which the effects of raptor predation were extrapolated. If indeed the sightings were representative, these visual data would suggest that Buzzards might account for little more than 1% of all wild Grey Partridge losses to predation.

Effects of shooting on Grey Partridges

The multiple-site study by Watson (2004) concluded that the impact of raptor predation is greatest at low partridge densities (less than 5 pairs/100ha) and that many more Grey Partridges are shot than predated by raptors, at least in the Sussex study area. The use of a population model in the Sussex study predicted that Grey Partridge mortality resulting from intensive release-based shooting reduces autumn densities by 35-39%, more than double the loss due to raptor predation, and spring densities by 68-85% in the absence of raptors. The authors concluded that overshooting has greater implications for Grey Partridge conservation than raptor predation (Watson et al. 2007).

Overshooting of Grey Partridges is not deliberate but results from intensive commercial shooting based on large-scale releases of Pheasant and Red-legged Partridge. Overshooting results because the number of shoot days depends on the numbers of gamebirds released, regardless of the density of wild partridges (Watson et al. 2007). Although numbers of Grey Partridges shot are small, when densities are low a small number shot can represent an unsustainably high proportion of the population (Aebischer & Ewald 2004). Such intensive releasing has other negative consequences such as changes in land management, increased risk of disease transmission from reared to wild birds, the risk of genetic dilution, and the reduced need for beneficial habitat management to maintain wild stocks (Aebischer & Ewald 2004; Watson et al. 2007).

Watson (2004) concludes that raptor predation could be reduced by providing tall cover in February and March and by boosting productivity by improving nesting and brood-rearing cover. In many cases, such beneficial habitat management will only be of value if carried out alongside effective precautions which avoid the shooting of wild grey partridges.

Conclusion

Available evidence indicates that birds of prey can be significant predators of Grey Partridges in the winter, although the effects of such predation appear small in comparison to losses caused by intensive farming, shooting and the effects of nest predators. The Buzzard is an opportunistic predator and scavenger which will take a very wide range of prey items and which usually takes those species that are most abundant and easily available, rather than relatively scarce species present at very low densities. There is no evidence to indicate that the Buzzard is anything other than a minor cause of partridge predation. Effective conservation of the Grey Partridge requires suitable habitat management which provides cover and abundant invertebrate food for chicks. The control of nest predators can help increase the rate of population recovery. Where partridge numbers are low it is essential to reduce mortality due to shooting which can have disastrous effects on their numbers.

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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.
- It should be read in conjunction with relevant species / licence-type specific guidance on the SD Toolkit.

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.

2. Contents

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.[1]

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.

[1] 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?[2]

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.[3]

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.[4] 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.[5]

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

[2] EC 2008 Hunting Guidance para 3.4.2
[3] EC 2008 Hunting Guidance para 3.4.10 - 12
[4] EC 2008 Hunting Guidance para 3.4.11
[5] 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.[6] 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.

[6] 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[7], 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, and should notify relevant area team management.

[7] 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

Species licence types and their characteristics

Guidance to assist the choice of licence

Which licence to use?

Licences permit activities that are normally unlawful affecting protected species.

Selecting the appropriate licence for an activity involves assessing and balancing risks, and considering how best to meet user needs and demand

Increasing risk of harm to species from the activity or of non-compliance by users

Increasing likelihood a licence would be issued if judged on case by case basis

Small numbers of users
Unusual or one-off activities
Bespoke terms and conditions for activity
Low or uncertain compliance
Uncertain or higher risk of ecological harm from activity or adverse welfare outcomes

Many users
Common or routine activities
Well-established or standardised practices
High levels of compliance
Negligible or low risk of ecological harm or adverse welfare outcomes

Licence types	**Individual (personal, organisational, project etc)**		**Class**	**General**
	Higher tier	*Lower tier*	*Used for earned recognition*	
Key features of each licence type	• User known • Merits individually assessed • Bespoke terms and • Tailored limits • Report of action • Compliance checking • Able to assess ecological consequences	• Like *Higher Tier* except assessment focuses solely on ecological impact mitigation, as a 'need' and 'alternatives' are dealt with via a general assessment of evidence (a '*generic licensing assessment*')	• User known • General assessment of merits • Generic conditions • Report of action • Generic limits • Compliance checking • Able to assess ecological consequences	• User unknown • General assessment of merits • Generic conditions • No report • No limits (e.g. on killing) • No compliance checking • Unable to assess ecological consequences
Administrative characteristics	• Need to apply to obtain the licence (simplified process for repeat licences) • Need to provide evidence in support of application • Reporting requirement • Compliance routinely (≈5%) checked	• A streamlined application process with a significantly reduced requirement for evidence to support the application	• Need to register before first use of licence • May need to provide evidence of skills or experience, but not to justify use of licence • Reporting requirement • Compliance may be checked	• No need to seek permission to use licence • No requirement to provide supporting evidence • No requirement to report on licensed activities • Compliance checking not possible

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