

Date: 20 April 2021



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Defra

BY EMAIL ONLY

Dear [REDACTED]

**Licensing the release of two non-native game birds in England: Request for formal advice**

Thank you for your email of 10 April 2021 and letter of 19 April 2021 requesting Natural England's formal advice on Defra's proposal to issue an interim Gamebird General Licence ('the GGL') covering the release of pheasant and red-legged partridge within the boundaries of European Protected Sites in England (i.e. Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)) and a 500m buffer zone immediately around them.

Defra propose that the GGL is to be interim in nature, reflecting the addition of common pheasant and red-legged partridge to Schedule 9 of the 1981 Wildlife and Countryside Act, due to come into force on 31 May 2021, which, subject to review, is due to expire after four years. We also note that Defra propose to issue the GGL annually and expect that, in practice, the GGL will only be used each year between 1 June (the earliest that birds are released) and 1 February (when the open season for game birds ends).

Specifically; the requests are for Natural England's advice;

- under section 16(10)(b) of the Wildlife and Countryside Act on the granting of the licence, specifically as to the circumstances in which, in its opinion, the licence should be granted.
- under regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (as amended): Stage 1 and Stage 2 'Habitats Regulations Assessment'
- under section 28I of the Wildlife and Countryside Act 1981 (authorising operations that may damage a SSSI)

Please note that this advice is given by Natural England in its role as the statutory adviser on natural environment matters and without prejudice to its own role as a wildlife licensing and consenting authority. The decision whether to grant any licence or consent is ultimately an evaluative judgement for the decision-maker, in this case the Secretary of State. Where Natural England grants a licence, whether general, class or individual, or issues a consent, it will make its own evaluative judgement according to its own operational policies, and this may differ from the approach followed for these proposals.

## **Context to our advice**

The proposed GGL is a product of Defra's recent review into the current legislative arrangements around the release of the common pheasant and red-legged partridge on and around European Protected Sites and whether there are ways in which their effectiveness could be improved.

Natural England recognises the very significant work done by the Department – at pace - over the last year to undertake its review, to engage with a wide range of stakeholders and obtain their views and needs, and to determine how best to improve the current legislative arrangements to ensure the conservation status of European Protected Sites is not adversely affected by gamebird releasing.

We also welcome the fact that the proposed interim GGL, and its accompanying HRA, takes into account the findings of the evidence-based review "*The Ecological Consequences of Gamebird Releasing and Management on Lowland Shoots in England*" (hereby referred to as 'the Evidence Review'), which took the form of a rapid evidence assessment, and which was separately commissioned by Natural England and the British Association for Shooting and Conservation and published on 20 August 2020.

Natural England has previously provided Defra with its advice on the key findings and conclusions of the Evidence Review (advice which was subsequently published by Defra on GOV.UK as '[Defra Witness Statement Exhibit 3](#)'). This previous advice remains relevant to this request for further advice on the proposed interim GGL.

This review of evidence confirmed that released gamebirds can have direct and indirect effects on the fauna and flora of the habitats into which they are released. The negative effects supported by the strongest evidence related to soil eutrophication and depletion of vegetation immediately within and around release pens and feeding stations. The degree and extent of these negative effects (eutrophication, physical disturbance of flora) from gamebirds were found to be density dependent. Natural England notes that it is the risk of these particular effects occurring that the interim GGL is seeking to minimise.

This Evidence Review also highlighted significant knowledge gaps and uncertainties. These include:

- No evidence or studies of the wider effects through the landscape. Though dispersal of released gamebirds seems to be limited to less than 500m from the release site, there are no actual studies of the effects of gamebirds at or beyond 500 m from a release site, including effects on the productivity and movement of generalist predator populations, foraging behaviour, disease spread, competition for food, and eutrophication.
- The poor compliance with the APHA Poultry Register may lead to underestimates of numbers of birds released by studies that use these data, generating higher levels of uncertainty in the evidence in respect of size and location of releases.
- A very limited evidence base about the effects of diseases and parasites introduced or harboured by released gamebirds, and their predation and disturbance effects on native reptiles and amphibians.

The proposal to develop and issue this interim GGL has also been informed by a lack of up to date information about the general scale of gamebird releasing, the scale of releasing within and close to European Protected Sites, and also its impact on the sites themselves. In summary, we know that gamebird releases can have a negative impact on the features of designated sites. Whilst there is no current evidence of a widespread and frequent national scale problem on any type of designated sites, there is nevertheless uncertainty about the precise extent and degree to which gamebird releases are currently having an impact, bar a small number of sites where impacts have been picked up in the course of a reduced site condition assessment programme (see *Annex A* for further details).

We therefore consider the introduction of the interim GGL, as a precautionary and preventative control measure, to be a welcome and timely one that can take account of the findings of the recent Evidence Review pending an improved understanding of the impacts from releases through better compliance with the APHA Poultry Register, further work to address existing knowledge gaps and additional monitoring of Protected Sites.

This interim licensing regime aims to put in place a regulatory mechanism to check and mitigate for the potential risks from releases taking place both within and around European Protected Sites. In this respect, we would draw your attention to the fact that the SSSI consenting regime provided by section 28E of the 1981 Wildlife and Countryside Act is not designed or able to regulate operations undertaken by SSSI owners and occupiers, or by others, outside a designated site's boundary.

## **Summary of our advice**

For convenience, our advice can be summarised as follows;

- Natural England notes that, in light of the findings of the Evidence Review, Defra's interim General Licence is intended to be a protective and preventative measure that represents an appropriate step to avoid the deterioration of the natural habitats

and the habitats of species, and the significant disturbance of those species, for which European Protected Sites have been designated.

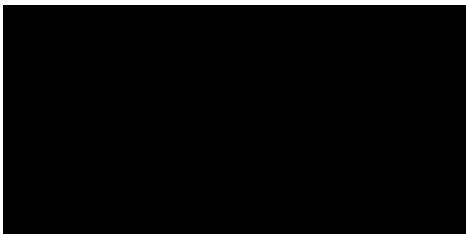
- Given there are currently no pre-emptive statutory controls on the location, scale or intensity of the existing releasing of these two species into the countryside (other than those releases taking place within SSSIs which are subject to the consenting requirements of section 28E of the 1981 Wildlife and Countryside Act), and that the overall trend in non-native gamebird releasing has been one of greater intensification over recent decades, Natural England welcomes, in principle, the interim GGL as a response to this.
- We believe that this proactive measure can act as an additional means of providing general protection to these sites of international importance. It will temporarily supplement both the SSSI consenting regime and the available suite of enforcement measures that can be used reactively to stop and remedy damage or deterioration (or the threat of it) caused *after* the release of gamebirds. The latter do not in themselves reflect the precautionary or preventative principle to prevent harm to European Protected Sites.
- Our advice is that the interim GGL, as a general precautionary measure, will significantly help to reduce the risk of deterioration (in the case of habitats and supporting habitats) and the risk of significant disturbance (in the case of species) occurring on European Protected Sites as a result of gamebird releasing. Accordingly, we advise that it can be ascertained that the interim GGL will not have an adverse effect on the integrity of SACs and SPAs, either alone or in combination with other plans and projects. This takes account of the proposed limited duration of the licensing arrangement and the incorporation of the mitigating measures proposed by Defra as general restrictions and/or conditions attached to the GGL (see *Annex C* for further details).
- We believe the overarching purpose of the GGL as a preventative measure and the safeguards provided by its proposed terms and conditions (as informed by Defra's HRA and this advice) will also provide the same protective function to any additional features for which Sites of Special Scientific Interest (SSSI) have been notified and which are also present within European Protected Sites within the scope of the Licence within European Site boundaries. Our view is that the activity of releasing gamebirds, as would be permitted under the proposed GGL (being still subject to a SSSI consent where this occurs within a site boundary), is also unlikely to result in damage to those SSSI features (see *Annex D* for further details).
- Given the general trend of intensification of this activity, its potential for negative effects as confirmed by evidence and the considerable gaps still present in understanding these impacts, we would further recommend that:
  - before re-issuing the GGL each year Defra undertakes a review of the licence (in line with standard practice) to ensure that the interim licensing arrangement

continues to take into account all of the relevant information, for example, any developments to the evidence base.

- Defra invests in ongoing research and monitoring to address the evidence gaps highlighted by the Evidence Review and to regularly evaluate the efficacy of the GGL conditions to allow for further improvement, such as adjusting release density limits in the buffer zone, to the GGL licensing regime (whilst this is in place) and/or to inform any alternative regulatory framework that may be put in place in the future.
- Defra seeks to improve the effectiveness of the existing statutory gamebird registration process operated by APHA so that future measures can be informed by a more comprehensive evidence base and understanding of the scale of the activity. In our opinion, compliance with the registration rules should be improved within the next 3 years and if not, Defra should consider further options to strengthen the registration requirements to ensure much higher levels of compliance.

Should you have any queries regarding this advice please do not hesitate to contact me.

Yours sincerely



Natural England

## Annex A

The limitations in the best available information relevant to gamebird licensing include:

- it is not currently known exactly where, or at what intensities, gamebird releases currently take place. The data suggests that only a minority of releases are being registered by shoots on the Government's Animal and Plant Health Agency (APHA) Poultry Register, despite the ongoing legal requirement for all poultry holdings releasing more than 50 birds (including game birds) to do so.
- the evidence base relating to the current condition of Protected Sites is currently not as up to date as we would wish. The conclusions of the Improvement Programme for England's Natura 2000 Sites ('IPENS') published in 2015 did not identify the release or management of non-native gamebirds as a significant or widespread pressure or threat on England's European Protected Sites as a whole. Although many Protected Sites are currently in an unfavourable condition, the historic and extensive body of site-based assessments undertaken shows that adverse condition change associated with the releasing of gamebirds has generally been low and isolated.
- however, in recent years Natural England's SSSI condition assessment programme has been adversely affected by the reduced capacity in monitoring effort agreed with Defra as part of the 2015 Comprehensive Spending Review implementation. As a result, 78% of SSSIs have not had a specific visit to determine their condition in the last six years. As condition monitoring accelerates over the next few years (subject to maintaining or increasing the renewed levels of investment), we anticipate that this will, over time, help to indicate whether the condition of individual sites may be being affected by gamebird releasing.

## **Annex B**

**Advice under section 16(10)(b) of the Wildlife and Countryside Act as to the circumstances in which, in its [*Natural England's*] opinion, the licence should be granted.**

Being as this particular Licence (the interim GGL) will, if issued, apply specifically and exclusively to European Protected Sites (comprising Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)) and an area surrounding them, it is Natural England's view that our advice provided in Annex C and Annex D below may also act as our advice in regard to section 16(10)(b) of the 1981 Wildlife and Countryside Act on the circumstances in which it should be granted.

## **Annex C**

**Advice under regulation 63(3) of the Habitats Regulations 2017: Stage 1 and Stage 2 Habitats Regulations Assessment of Defra issued general licenses**

The Secretary of State for Environment, Food and Rural Affairs (Defra) formally requests Natural England's advice under regulation 63(3) of the Habitats Regulations 2017: Stage 1 and Stage 2 Habitats Regulations Assessment (HRA) of a proposed Defra-issued interim general licence on the release of pheasant and red-legged partridge on European Protected Sites in England and a 500m buffer zone around them.

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

We note that Defra consider the plan or project subject to this HRA is the proposed interim gamebird general licence (GGL) itself. The HRA focuses on the impacts directly associated with the release of gamebirds (i.e. the activity that is being authorised by the GGL) and will not stray into wider impacts, such as those relating to the shooting of birds post-release which are outside the scope of the licence.

When undertaking an HRA, or when advising another competent authority on its HRA, Natural England would usually consider the primary activity(ies) and the foreseeable consequential activities which are most closely connected with or support the primary activity as part of the project being assessed.. We note that Defra has decided to focus its assessment exclusively on the primary activity (the release of birds) that is, in this case, being permitted by the GGL. We advise that Defra may therefore wish to satisfy itself, if it hasn't done already, that its chosen approach on this occasion satisfies the Habitats Regulations.

### *Purpose*

In reviewing and providing our advice on this assessment, Natural England notes that Defra's interim General Licence is intended to be a protective and preventative measure that is generally capable of helping prevent the deterioration and significant disturbance of the designated habitats and species of European Protected Sites as a result of gamebird releasing. This would be in accordance with the general duty set out by regulation 9(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) which encompasses the obligation originally derived from article 6(2) of the EU's Habitats Directive. We are also mindful of the ongoing obligation to construe these requirements derived from article 6 of this Directive (as transposed into the Habitats Regulations) as a coherent whole, with the obligations derived from both articles 6(2) and 6(3) (i.e. 'ascertaining no adverse effect on site integrity before undertaking or authorising new plans and projects') seeking to ensure the same and equivalent standard of protection for habitats and species<sup>1</sup>.

Natural England's advice is also provided in view of its advice as to the overarching Conservation Objective for every European Site in England, which is to ensure that the integrity of each SAC and SPA is maintained or restored as appropriate, and that each site contributes to achieving the favourable conservation status of its designated features across their natural range in the UK.

### *Scope*

NE agrees that entirely pelagic (marine) SPAs, SACs and Ramsar sites, where the entire sites and their designated features are seaward of the mean low water mark, to be out of the geographical scope of the assessment and that these sites can be eliminated from further stages of the assessment.

Natural England notes that Defra has also considered terrestrial Ramsar Sites to be out of scope of the Licence. We would advise that confirmation of this is clearly provided for the avoidance of doubt.

### *Screening for likely significant effects*

We agree with the assessment that the project is not wholly directly connected with or necessary to the management of European Site(s)'s qualifying features, and therefore further screening is required.

We note that scope of the screening assessment is restricted to those impacts directly related to the release of gamebirds as explored in the Evidence Review. We note that the GGL is concerned only with the release of gamebirds, and that Defra considers that risk-pathways that relate to consequential activity associated with releasing (such as the subsequent shooting of gamebirds) to be outside of the scope of the project and therefore also outside of the scope of this HRA. On this basis, Natural England concurs with the view that 19 specific terrestrial SACs and SPAs can be screened out from the stage of

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<sup>1</sup> Paragraphs 35 -37, C-127/02 *Waddenzee*



appropriate assessment because they are only designated for features considered to be at no risk of a significant effect from the proposed GGL.

Natural England would regard the vast majority of the habitats for which SACs and SPAs have been designated to be inherently sensitive to those direct negative effects highlighted by the Evidence Review. We therefore concur with the conclusion that the risk or the possibility of a significant effect cannot be ruled out for all other sites and, mindful that the purpose of the GGL is to generally prevent the deterioration of the natural habitats (and the habitats of species) and the significant disturbance to species for which European Protected Sites have been designated, further examination through an appropriate assessment is warranted as a precautionary basis.

#### *Appropriate assessment of likely significant effects*

We note Defra has undertaken an assessment of any potential adverse effects on those sites where likely significant effects cannot be ruled out, considering any incorporated and additional mitigation measures. As a result we note that Defra proposes to only permit releases under certain conditions (in order to ascertain no adverse effects and to avoid significant deterioration/disturbance) but to require an individual licence where the releasing activity is already subject to enforcement action by NE. Natural England welcomes this proposed approach to ensure the provisions of the GGL do not undermine or compromise such enforcement action or exacerbate damage to habitats and species that has previously been caused by releasing activity.

- Advice on conditions within the European Protected Sites:

The findings of the Evidence Review confirmed that the presence of large numbers and/or high densities of birds on a protected site can cause damage to sensitive habitats within a confined release site and its immediate vicinity (this applies whether birds are released onto the site or they disperse onto it from neighbouring areas). Natural England has previously advised that the evidence shows that the degree and extent of these negative effects appears to be density-dependent and it seems reasonable to assume that this risk declines as the number of birds released declines.

Natural England therefore supports, as a supplement to the existing SSSI consenting regime, the application of a maximum density threshold as a means of capping the number of birds and the intensity of releases that could be released within a site boundary. In doing so, our advice is that this will significantly help to reduce the risk of any adverse effects including deterioration to designated habitats.

It is noted however that these thresholds have not been fully tested as a general standard that, if universally applied in isolation to any European site where releasing is proposed, would provide sufficient certainty that the occurrence of significant adverse effects or deterioration would be avoided in each and every case. In lieu of further evidence-gathering, and to mitigate this risk, Natural England supports the proposals that all existing and new releases of pheasants and red-legged partridge must either not exceed these release thresholds or must comply with the release density where stipulated in a SSSI

consent, whichever is the lower. Should an existing SSSI consent currently allow releasing on European Protected Sites in excess of a maximum permitted density stipulated by the GGL, this measure would cap the numbers of birds released (reflecting the latest best available evidence) and provide a protective measure that will significantly reduce the risk of any deterioration, should this unknowingly be occurring.

- *Advice on size of the 500m buffer zone and its conditions*

The stated purpose of the buffer zone is to protect European Protected Sites from damage or deterioration caused by large numbers of gamebirds being released close to their designated site boundaries. This proposed measure recognises that the SSSI consenting regime does not apply to activity taking place outside of a European Site boundary.

We note that Defra recognises the credible risk of adverse effects/deterioration from either the potential dispersal and congregation of high numbers of birds released close to the site, or indirectly as a result of the management of release pens and birds within this zone. The credibility of this risk materialising is reinforced by a number of recent cases where Natural England has had to exercise its enforcement powers to prevent damage to European Protected Sites from intensive gamebird releasing on land adjoining them.

We note that given the broad application of the GGL across all European Protected Sites, which cover a wide variety of topography and habitats, Defra considers that an outcome-focused condition, as proposed during its consultation, is the most appropriate way to mitigate this risk. Defra has therefore proposed a condition in the GGL that stipulates *“Activity in the buffer zone, including the siting of pens and feeding of birds, must not encourage the released birds towards or over the boundary of the adjacent European Protected Site or to congregate within the habitats.”*

Natural England advises that it is ideally preferable that releasing does not occur within this zone so as to provide a high degree of certainty of no significant adverse effects or deterioration occurring. As this is not being proposed, and given that the current body of evidence suggests the risk of adverse effects is heavily influenced by release location, release density and by the dispersal patterns of the released birds themselves, Natural England therefore welcomes the proposed controls to be provided by the GGL within the buffer zone of each site.

In our view, limiting the density of released birds to established thresholds, albeit this is the higher threshold as informed by the Evidence Review, will be able to limit the numbers of birds released so as to minimise the risk of large numbers of birds dispersing onto adjacent sites. We advise that this has not been fully tested as a general standard that, if universally applied in isolation to any European site where adjacent releasing is proposed, would provide sufficient certainty that the occurrence of deterioration would be avoided in each and every case. In our view, the effectiveness of such controls within a buffer area is also likely to be a function of the distances between a site boundary and the release area and those interdependent gamebird management techniques used to habituate released birds in available nearby habitat. We therefore advise that whilst the condition as currently proposed may help to reduce the risk of adverse effects and significant deterioration of

habitats occurring, it may be too permissive to provide sufficient certainty of its effectiveness.

We therefore support the additional proposal by Defra to include further practitioner-level guidance to help licence users comply with this condition to assist in their decision making. In the context of the HRA of the GGL, we advise that Defra gives further consideration to securely embedding this guidance into the GGL to strengthen the effectiveness of the proposed condition and to ensure widespread compliance. Alternatively, a further reduction in the maximum density threshold (and number) of birds that could be released adjacent to European Protected Sites, for example, to the lower threshold of 700 birds/hectare of pen, would, in our view, also improve the effectiveness of the controls set within the buffer zone.

For the avoidance of doubt, we suggest Defra consider an amendment to the wording of this condition so that it is more specific to the impact risk that it intends to manage, which is to minimise the potential problems of eutrophication and surface damage to the habitats within these sites. We suggest the following:

*'Activity in the buffer zone, including the siting of pens and feeding of birds, must not encourage the released birds to inhabit or occupy the designated habitats of the adjacent European Protected Site'.*

We would like to highlight a potential omission from the conditions as proposed. It has been drawn to our attention that red-legged partridges can also be subject to immediate or 'hard' releases i.e. birds are released directly into the wild (often into sown game crop cover) without first being placed into a release pen. In light of this, we would advise that the proposed conditions also stipulate an upper limit to the number of red legged partridges that can be released immediately into the wild in a given area without the use of a release pen.

Natural England welcomes the proposed inclusion of a recommendation to address the risk of nutrient run-off from releasing activity into watercourses flowing onto adjacent sites designated for water-dependent sensitive features. Based on the available evidence and the likely degree of risk (in practice, likely to be dependent on local circumstances), we note Defra considers that a recommendation is sufficient and a specific condition on nutrient run-off is not required. We consider this to be a sensible precautionary distance of 50 metres and one which is generally consistent with those measures contained in the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 ('the farming rules for water') to reduce the risk of diffuse agricultural pollution arising from the management of livestock.

This proposed recommendation also refers to any pens and feeding stations located within the buffer zone being placed on 'level ground'. We also suggest Defra consider clarifying this term further to allow for more practical flexibility. For example, the farming rules for water mentioned above recommend that the risk of nutrient runoff and soil erosion can be reduced where the angle of slope on land is less than 12 degrees.

### *Conclusions on site integrity*

Your appropriate assessment concludes that Defra is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that, as a general measure, we concur with the assessment's conclusion, providing that the preventative/ mitigating measures are appropriately secured within the terms and conditions of the GGL as issued.

## **Annex D**

### **Request for Natural England's advice under s28I of the Wildlife and Countryside Act 1981 (authorising operations that may damage a SSSI)**

As a 'section 28G authority', the Secretary of State for Environment, Food and Rural Affairs also requests Natural England's advice under section 28I of the Wildlife and Countryside Act 1981: authorising operations that may damage a SSSI.

The land within SACs and SPAs which fall within the scope of the proposed GGL will also be notified as Sites of Special Scientific Interest (SSSIs) under the 1981 Wildlife and Countryside Act (as amended). The features of special interest for which the component SSSI of European Protected Sites has been notified may directly coincide with the same features for which the SAC or SPA has been designated. There may be other notified SSSI features which do not and are therefore not within the scope of the HRA. Section 28I requires that before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a SSSI is of special interest, a section 28G authority shall give notice of the proposed operations to Natural England. This applies even if the operations would not take place on land included in a site of special scientific interest.

We therefore regard the issuing of the GGL to be an authorisation of operations (i.e. the permitting of the release of these two species of gamebird).

The groups of SSSI features which may not directly overlap with those habitats and species which comprise European Site features, will include a wide range of semi-natural habitat types, individual populations or assemblages of invertebrates, plants, fungi, mammals and birds, and geological, geomorphological or physiographic features. A list of individual sites and a description of each site's special interest can be found at <https://designatedsites.naturalengland.org.uk/SiteSearch.aspx>

In Natural England's opinion, the overarching purpose of the GGL and the safeguards provided by its proposed terms and conditions (as informed by Defra's HRA and this advice) will provide the same protective function to these SSSI features as to European Site features. Our view is that the activity of releasing gamebirds as permitted by the proposed GGL (and subject to a SSSI consent where this occurs within a site boundary) is also unlikely to be damaging to the SSSI features, including their supporting habitats, which are present within the designated SACs and SPAs within scope of this project.