

Date: 27 January 2023

BY EMAIL ONLY

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Rachel Bailey

Deputy Director, Environmental Governance & Wildlife Reform Team, Defra

Dear Rachel

Proposal to re-issue General Licence (GL43) permitting the release of common pheasant and red-legged partridge within European Sites and within 500 metres of them for 2023/24: statutory advice in relation to the Conservation of Habitats and Species Regulations 2017 (as amended)

Thank you for your email and letter of 11 October 2022 formally requesting advice from Natural England in relation to the proposed re-issue of this General Licence ('GL43') during 2023/24.

The licence relates to two species which are game birds listed on Schedule 9 of the 1981 Wildlife and Countryside Act as it relates to England. This makes it an offence to release, without a licence, captive-bred common pheasants and red-legged partridges within the boundaries of European Protected Sites in England (i.e., Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)) and within a zone 500 metres wide immediately around each of them.

We note that Defra is minded to re-issue the 2022 GL43 - on the same terms and conditions – to take effect from 31 May 2023 (at the latest) for an anticipated further duration of one year.

We note that Defra considers the proposal to re-issue GL43 in 2023 to constitute a 'plan or project' within the scope of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) and is therefore under a duty, as the relevant competent authority, to consider Habitats Regulations Assessment. We note this request specifically seeks Natural England's advice to inform Defra's assessment.

This advice is provided 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.

Please find attached Natural England's advice as requested. This should be read in conjunction with the attached Addendum to the shadow assessment previously provided in January 2021. This advice is primarily focused on the new potential risk to the protected features of European Sites from the direct and indirect transmission of Avian Influenza associated with gamebird releasing, which we consider to be therefore relevant to the proposed GL43 re-issue and which has not been previously assessed by way of HRA. We would also highlight that this advice is specific to the features for which European Sites have been specifically designated and limited to the operations that fall within scope of the proposed re-issue of GL43.

This does not represent Natural England's advice on the wider policy implications for other bird species of conservation concern or for wild birds more generally (whether within or outside European Sites) of Avian Influenza transmission which may be associated with the continued releasing and/or shooting of pheasants and red-legged partridges in England more widely. Natural England continues to engage with, and provide general advice to, Defra, JNCC and NGOs as to the conservation response to 2022's Avian Influenza outbreak and to the significant detrimental impacts it has had on population numbers of wild bird species of conservation concern in England and around the world.

Our advice recognises that there is still considerable uncertainty about this virus, its impacts, and its effective mitigation. For this reason, we would also recommend that this General Licence, should it be re-issued, remains under annual review so that any future iterations of it can be informed by any new information and evidence relating to Avian Influenza gathered during 2023. Continued research and surveillance by Government and others will be critical to better understanding the spread and impacts of this disease and will help, in future, to improve the confidence in the action required to mitigate its impacts on SPA and wild bird populations alike.

Should you have any queries about it please do not hesitate to contact Steve Clifton (steven.clifton@naturalengland.org.uk). We look forward to receiving a further consultation from Defra on its HRA following its consideration of this advice and shadow assessment.

Yours sincerely



JOHN HOLMES

Director, Strategy & Government Advice, Natural England

Natural England's advice in relation to regulation 63(3) of the Habitats Regulations 2017 and shadow assessment of the proposed re-issue of General Licence 43 for 2023

- 1.1 Natural England notes that, in terms of regulation 63(3), the plan or project will be the decision by Defra (as the competent authority) to issue the new General Licence (GL43), which extends to European sites for the purpose of those regulations. We note that Defra is, at the time of this advice request, minded to rely on the contents of its previous HRA (published on 31 May 2022) carried out to inform its previous decision to issue GL43 in May 2022.
- 1.2 In relying on its previous HRA of GL43, Defra is also proposing to continue to rely upon, with some modifications, the rationale and conclusions reached by Natural England's shadow HRA for Defra (dated January 2021) and the safeguards that were suggested for European Sites at that time. These included the establishment of a 500metre buffer zone around European Sites and the use of tailored conditions and advisory recommendations which are in line with, or at least as precautionary, as we advised.
- 1.3 To inform the previous decision made by Defra to issue GL43 in May 2022, Natural England provided regulation 63(3) advice on 8 April 2022. We consider that this previous advice remains relevant to this proposed re-issue of GL43 in 2023 and we would draw your attention to it.
- 1.4 In providing this latest advice, Natural England advises that:
 - there appears to be no substantive changes being proposed to the proposed project under assessment (i.e., the content of GL43 that is being proposed for 2023) compared to the 2022 version
 - we are not aware of any new methods or techniques of undertaking the activity that would be authorised by way of GL43 that have not been covered in the previous assessment and which would pose potentially new risks.
 - there have been no new or amended European Sites (SACs or SPAs) designated or classified by Government during the period since the previous HRA was made
- 1.5 Given the above and the limited changes being proposed to GL43 for 2023/2024 and that it has not, in large part, become outdated by further information or developments, **Natural England's advice is that the previous assessment undertaken by Defra in 2022 can still be relied upon regarding the designated habitats and non-avian species of SACs in England.**
- 1.6 However, Natural England is aware of new relevant evidence additional to that previously acknowledged and outlined within Defra's previous HRA which indicates that a new credible risk has arisen during 2022 which should be considered by Defra as part of its renewed HRA for GL43 2023/24. This new risk is a mortality-

driven impact on the population abundance of classified species on SPAs due to the potential for inadvertent transmission of highly pathogenic avian influenza virus H5N1 ('HPAIV') as a consequence of gamebird releasing activity which may be undertaken during 2023 as authorised by GL43.

- 1.7 As regards SPAs, Natural England's advice is that Defra's previous HRA made to inform the 2022 licence cannot be completely relied upon. We advise that the assessment should be updated to consider this new risk before it can be relied upon to inform the decision as to whether to re-issue GL43 in 2023 in its current form.
- 1.8 To assist Defra, Natural England has therefore prepared an Addendum to the previous shadow HRA (dated January 2021) commissioned by Defra to inform the development and publication of GL43. This Addendum aims to consider the implications of this new risk-pathway in further detail in line with the assessment provisions of regulation 63 to assist Defra with the undertaking of its HRA for GL43. Irrespective of this advice, Defra as the competent authority remains responsible for ensuring its overall assessment and decision is consistent with the Habitats Regulations.
- 1.9 Natural England's Addendum to its shadow HRA is attached in full. Our advice based on this Addendum is summarised and set out below.

Natural England's advice on the new risk of significant adverse effects to classified SPA populations of wild birds caused by HPAIV transmission associated with the initial releasing of common pheasant and red-legged partridge under GL43 during 2023

- 1.10 Natural England has assessed the risk that a flock of kept pheasants or red-legged partridges released under GL43 during 2023 within or near to a SPA and which are, or soon become, infected with HPAIV at the point of, or shortly after, their release then go on to transmit HPAIV to wild birds which form part of a classified SPA population causing a level of mortality that has adverse population-level impacts.
- 1.11 To make its assessment, Natural England first reviewed the latest evidence relating to the risks to wild birds of increased spread of HPAIV associated with releasing common pheasants and red-legged partridges in England. Acknowledging the general prevalence of HPAIV and the background risk of transmission to poultry and wild birds (including SPA populations of wild birds), Natural England has reviewed the conclusions reached by Defra's recent Qualitative Risk Assessment ('QRA')¹, noting its overall assessment that 'major consequences' to wild bird populations from HPAIV infection were highly likely to result from the release of millions of common pheasants into the wider countryside during 2022. The QRA notes that the subsequent risks posed to wild birds during 2022 would have been high to very high for some taxa in some habitats and would have increased once

¹ Defra, 2022. *A Qualitative Risk Assessment on the spread of High Pathogenicity Avian Influenza (HPAIV) H5N1 to wild birds from released, formerly captive, gamebirds in Great Britain: pheasants*

game birds were released to more taxa in more habitats. A significant number of the wild bird species listed in the QRA as being at high risk are present as classified features of SPAs.

- 1.12 Natural England has considered the conclusions reached by the QRA to inform this shadow HRA addendum. Natural England has further considered whether these conclusions are likely to be relevant into 2023. We conclude that there is a high likelihood that the conditions underpinning the conclusions of this assessment will persist into summer 2023.
- 1.13 We have also assessed the risks associated with red-legged partridge releases which were omitted from Defra's QRA. We conclude that, although the susceptibility and potential to disseminate HPAIV may be lower for red-legged partridges than for pheasants, there will be a net increase in the abundance and density of gamebirds and an associated increase in the risk of transmission to wild birds with additional major consequences to susceptible wild bird populations.
- 1.14 We have also considered the role that wide-ranging species such as gulls could play in disseminating HPAIV from gamebird release sites at locations beyond the normal dispersal range of pheasants and red-legged partridges. This was also omitted from the Defra QRA. We conclude that there is a low but elevated additional risk of dissemination (by these 'bridging species') via this route.
- 1.15 Natural England therefore advises that there is likely to be a risk or possibility of a significant adverse effect (the mortality of SPA birds reducing population abundance), additional to the prevalent background risk, to the designated features within SPAs from HPAIV transmission both local to gamebird release sites and potentially at sites remote from release sites via bridging species of bird. This advice as regards the risk or possibility of a significant adverse effect is given with varying levels of confidence:
 - High confidence of an additional risk from pheasant releases
 - Medium to low confidence of an additional risk from red-legged partridge releases
 - Low confidence of an additional risk to remote sites from bridging wild bird species

This project has therefore been subject to a shadow appropriate assessment in view of Natural England's published advice as to the Conservation Objectives for SPAs (see attached Addendum), where the potential for these risks to result in significant adverse effects on the integrity of SPAs has been considered in further detail.

- 1.16 The shadow appropriate assessment concludes, that without additional mitigation, it cannot clearly be ascertained that there would be no adverse effects on site integrity due to the credible risk or possibility of significant adverse effects on SPA

population abundance that could arise from the direct or indirect transmission-pathways of HPAIV resulting from gamebirds being infected at, or shortly after, their release into pens or other areas. This conclusion has taken into account the current scientific uncertainties, and the assumptions necessarily made by the QRA, about the disease itself and its actual likely impacts on wild birds. It also acknowledges that, despite the presence of the identified risk-pathways to SPAs during 2022, there is currently limited evidence that directly demonstrates actual cause-and-effect of transmission between released pheasants or red-legged partridges and SPA populations during 2022.

- 1.17 After due consideration and mindful of the strict level of protection to be given to internationally important nature sites such as SPAs by the Habitats Regulations 2017 and the duties on to avoid their deterioration and prioritise their conservation, Natural England's view is that it would be appropriate for Defra to take a precautionary approach, recognising that approach should be proportionate to the level of credible risk. Our advice therefore is that Defra consider the incorporation of additional mitigating measures into GL43 for 2023 which could enable it to ascertain no adverse effects on the integrity of SPAs in view of SPA Conservation Objectives and in accordance with regulation 63 of the Habitats Regulations 2017.
- 1.18 Defra's [Mitigation Strategy for Avian Influenza in Wild Birds in England and Wales](#) currently provides limited guidance in terms of conservation or recovery responses to the HPAIV risk to wild birds, including SPA populations. Natural England's attached addendum to its shadow HRA therefore presents a number of bespoke options for Defra's further consideration which, in our view, are likely to mitigate this risk to enable Defra to ascertain no adverse effect on site integrity from its proposed GL43 re-issue.

We recommend that Defra, as competent authority, adopts either one, or a combination, of the following measures as it considers most appropriate:

- (A) No releasing within both SPAs and the current 500m SPA buffer zone
- (B) No releasing within SPAs - releasing within 500m buffer zones only.
- (C) Continue to permit releasing within SPAs and within 500m of a SPA but with reduced maximum release-density limits

If Defra does decide to permit further releases our advice is that the risk to SPAs whilst pheasants and red-legged partridge are being introduced, actively managed and kept within their release areas could be reduced by this additional option:

- (D) Continue to permit releasing within SPAs and 500m buffer zones at current release-density limits but with best-practice biosecurity measures (subject to further technical advice to Defra from APHA) as a mandatory requirement

- 1.19 Whilst our advice is that all of these mitigation options are likely to mitigate the identified risk of HPAIV transmission, our confidence in their reliability and efficacy

is mixed due to the current paucity of data and supporting evidence. To assist, the mitigation options above are ranked in order of the certainty we believe they will offer, with Option A (no releasing of pheasants or red-legged partridges within both SPAs and their 500m buffer zone) providing Defra with the greatest level of certainty that the risk of HPAIV transmission as a consequence of releasing common pheasants and red-legged partridges under the General Licence would be sufficiently minimised to ascertain no adverse effect on the integrity of SPAs.

1.20 Natural England's advice is that, with regard to SPAs, Defra adopts Mitigation Option A.

1.21 This advice is given based on the current specification of GL43 as dictated by the statutory parameters set in Schedule 9 of the Wildlife and Countryside Act 1981 as varied in May 2021. However, we would highlight that the parameter of the 500m buffer zone around European Sites is not based on mitigating a significant risk of HPAIV transmission from released gamebirds. The extent of this zone was determined at that time to specifically minimise the risk of nutrient enrichment of designated habitats being caused by high numbers of pheasants or red-legged partridges released close to a European Site dispersing and congregating within that site.

1.22 Natural England's advice is that this distance of 500m is a limiting factor to addressing and buffering this new and particular risk, given the evidence relating to the typical and maximum foraging and/or dispersal distances of both SPA species and gamebird species and their potential for interaction at some distance from SPAs. Defra may therefore wish to further consider the feasibility of expanding the radius of a SPA buffer zone as a further potential mitigation option.

1.23 We have considered the scope of these additional mitigating measures by assessing the likely vulnerability of each individual SPA to this new risk. We have concluded that the additional mitigating measures, as suggested above, should be applicable to all SPAs and all SPA buffer zones during 2023. This is because all terrestrial and coastal SPAs in England bar one (Falmouth Bay to St Austell Bay SPA) have been classified for at least one HPAI-vulnerable bird species and are exposed to at least one HPAI transmission risk pathway.

1.24 The supporting analysis and rationale for this advice is provided in the attached Addendum to the Shadow HRA of 2021. Defra may wish to further consider the feasibility of these measures, along with other possible mitigating measures it may identify, as part of its own HRA to inform its decision on the re-issue of GL43.