
This document was published as part of Defra's decision to issue the gamebird release general licence for 2022 to 2023.

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Date: 8 April 2022

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Defra

BY EMAIL ONLY

Dear [REDACTED]

General Licence (GL43) permitting the release of common pheasant and red-legged partridge within European Sites and within 500 metres of them: statutory advice under the Wildlife and Countryside Act 1981 and Conservation of Habitats and Species Regulations 2017

Thank you for your email of 29 March 2022 in which you, on behalf of the Secretary of State for Environment, Food and Rural Affairs, requested advice from Natural England in relation to the proposed re-issue of this General Licence ('GL43') during 2022/2023.

The licence intends to permit the release of captive-bred common pheasant and redlegged partridge 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. The licence relates to two species which are non-native game birds listed on Schedule 9 of the 1981 Wildlife and Countryside Act as it relates to England.

We note that Defra is minded to re-issue this General Licence with effect from 31 May 2022 for an anticipated duration of one year.

We note this request seeks Natural England's advice in accordance with:

- section 16(10)(b) of the Wildlife and Countryside Act 1981 on the granting of the licence, specifically as to the circumstances in which, in its opinion, the licence should be granted.
- regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (as amended): duty to make a Habitats Regulations Assessment

- section 28I of the Wildlife and Countryside Act 1981 (duty when authorising operations that may damage a SSSI) **Our role and the approach to this advice**

The following 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.

Please note that this advice relates to our understanding of the proposed content of GL43 and the supporting information as provided to Natural England on 29 March 2022 and reviewed during the period 4 – 5 April 2022. It does not consider any further changes that may have been made to the draft General Licence since that time.

In addition to the formal advice attached to this letter, we would like to mention the current situation with regard to avian influenza and suggest that Defra may wish to consider the implications of this for the users of this General Licence and if so whether it would be beneficial to include any further advice within the Licence.

We hope you find this advice helpful. Should you have any queries about it please do not hesitate to contact [REDACTED].

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

1. Advice under section 16(10)(b) of the Wildlife and Countryside Act 1981 as to the circumstances in which, in its [*Natural England's*] opinion, the licence should be granted.

- 1.1 Natural England has previously provided its advice to Defra on 22 April 2021 on the circumstances in which, in its opinion, it considers it appropriate to grant GL43.
- 1.2 Our view is that this earlier advice, provided in Annex B (p7) of the letter dated 22 April 2021, remains relevant to this request, and to avoid

unnecessary repetition we have mainly focused this latest advice below on changes proposed for this General Licence in 2022.

2. Advice under regulation 63(3) of the Habitats Regulations 2017 - assessment of the proposed General licence

- 2.1 We note that in terms of regulation 63(3), the plan or project will be the decision by Defra (the competent authority) to issue the new general licence (GL43), which extend to European sites for the purpose of those regulations, and that Defra is minded to rely on the contents of the HRA which was carried out in relation to its previous decision to authorise the GL43 in May 2021.
- 2.2 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. These included the adoption of a 500metre buffer zone and the use of tailored conditions and advisory recommendations which are in line with, or at least as precautionary, as we advised.
- 2.3 To inform the decision made to issue GL43 in 2021, Natural England provided its regulation 63(3) advice on 22 April 2021 (see Annex C, p7-13). We consider that this previous advice still remains relevant to the proposed re-issue of GL43 in 2022 and we would draw your attention to it as attached.
- 2.4 In offering renewed advice based on this request, Natural England has considered the following;
- 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 2022) compared to the 2021 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.
 - we are not aware of new relevant evidence additional to that previously acknowledged and outlined within Defra's previous HRA (as informed by Natural England's shadow HRA) which would indicate that any new and additional risks should be considered
 - there have been no new or amended SACs or SPAs designated or classified by Government during the period since the previous HRA was made
- 2.5 Therefore, Natural England's advice is that the previous assessment undertaken by Defra in 2021 can still be relied upon, given the above and the limited changes being proposed to GL43 to run during 2022/2023. In our

opinion the assessment and reasoning of Defra's previous assessment has not become outdated by further information or developments. However, irrespective of this advice, Defra as the competent authority remains

responsible for ensuring its decision to rely on its previous HRA is consistent with the Habitats Regulations.

3. Advice under section 28I of the Wildlife and Countryside Act 1981 (authorising operations that may damage a SSSI)

- 3.1 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').
- 3.2 Section 28G of the Wildlife and Countryside Act 1981 (as amended) places a general duty on all section 28G authorities to '*take reasonable steps, consistent with the proper exercise of the authority's functions to further conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest*'.
- 3.3 The land within SACs and SPAs which fall within the scope of this proposed GL will also be notified as Sites of Special Scientific Interest (SSSIs) under the 1981 Wildlife and Countryside Act (as amended). Where the features of special interest for which the component SSSI of European Protected Sites have been notified directly coincide with the same features for which the SAC or SPA has been designated, these will have been considered as part of the scope of the regulation 63 HRA. In Natural England's opinion, the safeguards provided by the proposed terms and conditions of these GLs (as informed by Defra's HRA and this and previous advice) will provide the same protective function to these SSSI features as to European Site features.
- 3.4 There may be other notified SSSI features which do not coincide with the SAC or SPA features and are therefore not within the scope of the HRA. 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 full list of individual SSSIs and a description of each site's special interest can be found at <https://designatedsites.naturalengland.org.uk/SiteSearch.aspx> .
- 3.5 The authorisation that would be provided by GL43 allows for licenced activity to potentially take place adjacent to those SSSIs that are also designated as

European Sites. The obligation on owners and occupiers of SSSI land to first obtain SSSI consent for listed operations does not apply to land outside of notified SSSI boundaries. There is a residual risk of potentially significant effects from non-native gamebird releases (depending on the nature of that activity in a given location) which takes place outside SSSIs.

3.6 As regards the proposed GL43 for 2022 and having taken into account the additional four SSSIs¹ notified by Natural England since last year's advice about GL43, we would re-iterate that our previous advice provided on 22 April 2021 (see Annex D, p13) stands for the purpose of this advice request. In summary, we welcome the proposed continued inclusion of a 500m wide buffer zone around these sites to mitigate this risk and we advise that the proposed terms and conditions of GL43 that relates to this zone will provide the same protective function to any SSSI features as to European Site features that may be present on these sites.

4. Additional advice

4.1 We would like to also suggest that further clarification is made to the current wording of the GL43 at paragraph 2 of the '*Information and advice specific to this licence*' section to make it clearer who requires a SSSI consent and in what circumstances. The amendments we suggest are highlighted below. We would be happy to discuss this further in due course.

'2. Owners or occupiers of land who are anyone relying on the general licence to release birds must have or obtain a [SSSI consent from Natural England](#) (where such a release is listed by a SSSI notification as an operation requiring Natural England's consent) before releasing or permitting the release of common pheasants or red-legged partridges within a European site. They must follow the terms and conditions of that consent unless this general licence stipulates otherwise. This may include includes any related activities This applies to any related activities also listed as requiring Natural England's consent such as.....'

Natural England | April 2022

¹ These sites are: Swanscombe Peninsula SSSI, Dearne Valley Wetlands SSSI, Cotswold Water Park SSSI (extension) and Pinkworthy & Driver Farm SSSI.
