

10 May 2019



Natural England  
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Dear Colleague

**General Licences to kill or to take wild birds to prevent serious damage or disease; to preserve public health or public safety; and to conserve flora or fauna.**

Following discussions with representatives of licence users, Natural England is providing some further background to the claim for judicial review brought by Wild Justice concerning three general licences (GL04, GL05 and GL06) and Natural England's response. This also responds to requests from user groups to be able to better understand the reasons for some differences in the new general licences that Natural England has issued.

**Background**

The three general licences revoked by Natural England have been in place for many years. They were introduced by the Ministry of Agriculture, Fisheries and Food (MAFF) in the 1990s to licence activities that it considered carried a low risk to the conservation or welfare of the listed protected species. In 2004, a condition was added by Defra to the general licences which required the authorised user of the licence to consider 'other satisfactory solutions' before relying on the licence. The introduction of this condition in 2004 therefore preceded the formation of Natural England. Natural England took on responsibility for General Licences in 2008 and continued to follow Defra's approach. The three general licences covered 16 largely commonly-occurring bird species, including corvids (crows, rooks, jackdaws, magpies) and pigeons. They continued to include the requirement, introduced in 2004, that an Authorised Person could only rely on the licence when the Authorised Person was satisfied that appropriate legal methods of resolving the problem were either ineffective or impractical.

**Relevant legislation**

All wild birds have had legal protection since 1979 when the Wild Birds Directive was first introduced. In accordance with Article 1 of the Wild Birds Directive 2009/147EC such protection applies to "*all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies*" and to "*their eggs, nests and habitats*". Legal protection is given to all wild birds in England to give effect to the Directive under Part 1 of the Wildlife and Countryside Act

[www.gov.uk/natural-england](http://www.gov.uk/natural-england)

1981.

In accordance with Article 9 of the Wild Birds Directive, Member States may derogate from the legal protection given the wild birds, only when the competent authority is satisfied that there is no other satisfactory solution for achieving the specific purposes listed in the Directive. Under English law, licences can be given to kill or disturb wild birds if they are issued lawfully in accordance with section 16 of the Wildlife and Countryside Act 1981.

### **The legal challenge**

Wild Justice argued that the three general licences (GL04, GL05, and GL06) had been granted unlawfully as Natural England had not complied with section 16(1A) of the 1981 Act. Section 16(1A) of the Wildlife and Countryside Act 1981 says:

- (1A) The appropriate authority—  
(a) shall not grant a licence for any purpose mentioned in subsection (1) unless it is satisfied that, as regards that purpose, there is no other satisfactory solution;...

The case was made that Natural England not only failed to make its own assessment whether there were no other satisfactory solutions but also that it unlawfully delegated responsibility for deciding that matter to Authorised Persons using the licences.

Natural England had urged Wild Justice not to launch legal proceedings but rather to raise its concerns as part of Natural England's wider review of its general licences in 2019. Wild Justice decided not to wait for a review, and instead launched legal proceedings. Natural England then had to respond to those legal proceedings stating whether it was to contest the claim and to do so by 25 April 2019. Natural England, therefore, had to reach a view on whether the general licences had been lawfully granted and what it proposed to do constrained by Court procedures.

### **What Natural England has done**

Having taken legal advice, Natural England concluded that the three general licences were granted without Natural England being lawfully satisfied about the absence of other satisfactory solutions in all the cases to which the general licences applied, as required by section 16(1A)(a) of the Wildlife and Countryside Act 1981, and that it had unlawfully delegated that decision to Authorised Persons in the general licences.

Having concluded that the three general licences had not been lawfully granted and that Natural England was not then able to be satisfied that there were no satisfactory solutions other than the actions that the general licences permitted, Natural England had to act.

Natural England considered that, in the circumstances, it had no legal alternative under EU and domestic law other than to revoke the general licences. A decision not to have revoked the general licences in those circumstances would have been a decision effectively to permit activities thereafter that Natural England knew could not then be given a licence.

Once Natural England had concluded that the general licences were not granted lawfully and had said so in correspondence with Wild Justice and publicly (in the Acknowledgement of Service that it was required to file by 25 April 2019), any Authorised Persons who sought to rely on them would also have been potentially at risk of committing a criminal offence. Any period of legal uncertainty and risk should be kept to a minimum.

Natural England decided that the licences should be revoked at 11:59 on 25 April 2019.

When announcing its decision Natural England provided on-line application forms and drew attention

to the provisions in the 1981 Act that describe the circumstances in which a person may use lethal control before any application for a licence to permit its use is determined where such control is necessary .

Natural England also worked to grant general licences to permit actions for the preventative purposes specified in section 16(1) of the 1981 Act in those cases where it could be satisfied that there was no satisfactory solution other than such actions.

The new general licences had to meet at least three requirements:

1. The first was to ensure that Natural England was satisfied that the licences would only be used when there is no other satisfactory solution if the purpose for which a licence may be granted is to be achieved. Where non-lethal methods would be insufficient to achieve that purpose, lethal methods may be necessary (and thus used as a last resort). It is for this reason, for example, that the licence conditions for carrion crow say that *“before using the licence reasonable endeavours must have been made to resolve the problem using the lawful methods identified in Table 1 (unless their use would be impractical, without effect or disproportionate in the circumstances) and any other lawful methods that may be appropriate in the circumstances”* and why any such appropriate methods must continue to be used. The requirement that reliance on the licence in such circumstances is a “last resort” enables Natural England to be satisfied that, in all cases in which that licence may be relied on, there is no satisfactory alternative other than the actions that the general licence permits to achieve the relevant purpose. It also reflects advice of the Advocate General (repeated in [European Commission guidance](#)) that a derogation from the protection afforded to wild birds under the Wild Birds Directive (which the 1981 seeks to implement) “can only be a last resort”.
2. The second requirement was to ensure that the licences issued would not be detrimental for the conservation status of the species to which they applied. This is required by Article 13 of the Wild Birds Directive and Article 9 of the Bern Convention. This requirement applies to species of bird naturally occurring in a wild state in Europe.
3. The third requirement concerned the need to respect the protection accorded to certain areas. To the extent that activities permitted under a licence may have an impact upon a European site (Special Areas of Conservation/Special Protection Areas and, as required by Government policy, Ramsar sites) an appropriate assessment is required under the Conservation of Habitats and Species Regulations 2017 which transposes the requirements of the Habitats Directive into English law. In the case of SPAs and many Ramsar sites designated for bird features, this assessment extends to the functionally linked land surrounding those sites.

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