



Wildlife and Countryside Act 1981 (as amended)

Guidance Note on applications for a licence to control gulls

This guidance relates solely to England. Different interpretations may exist in Wales and Scotland and the relevant licensing bodies in those countries should be consulted for advice.

Protection of wild birds

Under Part I of the Wildlife and Countryside Act 1981 (as amended) (“WCA 1981”) all wild birds, their nests and eggs, are given a level of protection in the UK. It is an offence under section 1(1) WCA 1981 to intentionally:

- (a) kill, injure or take any wild bird;
- (b) take, damage or destroy the nest of a wild bird included in Schedule ZA1 (currently golden eagle, white-tailed eagle and osprey);
- (c) take, damage or destroy the nest of any wild bird while the nest is in use or being built; or
- (d) take or destroy an egg of any wild bird.

It is also an offence under section 1(2) WCA 1981 to possess any live or dead wild bird or the egg of a wild bird.

The WCA 1981 gives additional protection to bird species listed in Schedule 1 of the Act. Under section 1(5) WCA 1981, it is an offence to intentionally or recklessly disturb birds listed in Schedule 1 whilst they are nest-building or at or near a nest with eggs or young; or to disturb their dependent young.

Legal provisions safeguarding wild birds have been transposed into UK law under European Council Directive 79/409/EEC on the conservation of wild birds (“the Wild Birds Directive”). Similar provisions relating to wild birds therefore apply across the European Community. You can read the full text of the Wild Birds Directive by clicking [here](#).

Licences

Despite this general level of protection, the law does permit a number of exceptions. For example, some species may be killed at certain times of the year (e.g. certain wildfowl outside the close season). Under section 16 WCA 1981, licences may also be issued on specific grounds. A licensing regime is consistent with the provisions under Article 9 of the Wild Birds Directive, which authorises derogations from the general principle of protecting wild birds in certain circumstances. Derogation under Article 9 is subject to three conditions:

1. The Member State must restrict the derogation to cases in which there is no other satisfactory solution (Article 9(1)).

2. The derogation must be based on at least one of the reasons listed exhaustively in Article 9(1). These include:
 - (a) in the interests of public health and safety, air safety, to prevent serious damage to crops, livestock, forests, fisheries and water, and for the protection of flora and fauna;
 - (b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;
 - (c) to permit under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

3. The derogation must comply with the precise formal conditions set out in Article 9(2), which are intended to limit derogations to what is strictly necessary and to enable the Commission to supervise them. Derogations must therefore specify:
 - (a) the species which are subject to the derogations,
 - (b) the means arrangements or methods authorised for capture or killing,
 - (c) the conditions of risk and the circumstances of time and place under which such derogations may be granted,
 - (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom,
 - (e) the controls which will be carried out.¹

Natural England is authorised as the appropriate authority in England to regulate derogations in the form of licensing under section 16 WCA 1981. Natural England was given certain licensing powers in a Part 8 Agreement dated 29 September 2006 between Natural England and Department for Environment, Food and Rural Affairs (“Defra”).² For more information please see the relevant page of Defra’s website by clicking [here](#).

Section 16(1) WCA 1981 lists the circumstances in which licences may be granted in respect of wild birds. These circumstances are similar to those specified in Article 9(1) of the Wild Birds Directive. Section 16(1A) WCA 1981 stipulates that as the appropriate authority, Natural England shall not grant a licence unless it is satisfied that there is no other satisfactory alternative. This reflects the ‘no other satisfactory solution’ test under Article 9(1) of the Wild Birds Directive. Sections 16(5A) and (6) contain provisions which interpret Article 9(2) of the Wild Birds Directive into English law.

The licensing regime operated by Natural England ensures that the conservation status of all native species subject to licensing is not adversely impacted by activities carried out under these licences. Natural England applies five general principles to all its licensing activities. These are:

- There is a genuine problem to resolve or need to satisfy for which a licensing purpose is applicable.
- There are no satisfactory alternatives.
- The licensed action will contribute to resolving the problem or meeting the need.

¹ See Case C-118/94, *Associazione Italiana per il World Wildlife Fund and Others v. Regione Veneto* ECR 2006 quoted in the European *Guide on the Sustainable Hunting of Wild Birds*, p. 44 and Article 9 of the Wild Birds Directive.

² See section 78 of the Natural Environment and Rural Communities Act 2006.

- The action to be licensed is proportionate to the scale of the problem or need.
- The licensed action will not have an adverse effect on the favourable conservation status of any habitat type or species within its natural range.

Licences may be issued on an individual or general basis. In simple terms, the choice of approach is based on a consideration of the level of risk to the conservation or welfare of protected species associated with the proposed activity.

General licences

Since the 1950s, certain authorised persons have been allowed to kill those bird species which were identified as causing damage to other wildlife, livestock or foodstuff. These birds could be killed at any time of the year and by any means (except for those specifically prohibited by law). From January 1993, this practice gave way to a system of annual general licences, which were implemented in order to bring the UK into compliance with the Wild Birds Directive. The key features of general licences are:

- The issuing authority has decided that there is sufficient justification to issue a licence without seeking evidence on a case by case basis.
- They are suitable for low risk situations (in terms of species conservation) where there is good evidence that the licensed activity is justified, subject to conditions, in all appropriate situations.
- They are used in situations where an activity would routinely be approved and a person would find applying for a specific licence an overly burdensome and bureaucratic task. They can be an effective means of removing burdens on both the public and the regulator.
- They are issued to a class of persons (e.g. 'all landowners or occupiers' or 'educational establishments') who do not need to seek individual permission to act under the licence. The user of such a licence is responsible for ensuring that they qualify to use the licence and that they meet the terms and conditions.

General licences reduce bureaucracy by allowing people to carry out activities that affect protected species without the need to apply for a personal licence. General licences are only used for activities that carry a low risk for the conservation or welfare of the protected species. Most general licences are valid from 1 January until 31 December each year and should be reviewed at least every two years in respect of wild birds to ensure that there continues to be no other satisfactory solution for their control.

General licences can be useful, especially for dealing with problems caused by common bird species, but they lack the level of control usually required when licensing species whose conservation status is a matter of concern. General licences also do not allow Natural England to set limits on the number of birds killed and (with a small number of exceptions) they do not generate any data on the number of birds actually killed under such licences.

A number of species of gull are covered by general licences, due to the damage they can cause to other wildlife, livestock and risks to public health and safety.

Natural England's decision to limit the use of general licences to manage problems caused by herring gulls and black-backed gulls

In 2007, Natural England was authorised by Defra to issue general licences. Prior to the issue of the first of these licences on 1 January 2008, Natural England reviewed the licences with the help of stakeholders. This review led to a number of changes, primarily

to aid clarity and improve understanding of the conditions attached to the licences. Natural England also introduced a number of new general licences and has continued to review and improve the licensing regime.

On 13 March 2009, public consultation on further changes to general licences closed. Documents relating to the consultation can be found on Natural England's website by clicking [here](#). The consultation led to changes to general licences. These changes came into force on 1 January 2010.

These changes included the removal of the herring gull and great black-backed gull species from general licences (the status of lesser black-backed gull was unaffected). Natural England made this decision due to the following concerns:

- the herring gull population has declined by 50% over the last 25 years (the English population is now estimated to be 45,000 breeding pairs) and the species is categorised as a 'Red' list³ species in the most recent assessment of Birds of Conservation Concern;
- the great black-backed gull is a relatively scarce species in England and has a breeding population of only around 1,500 breeding pairs (it is also an Amber list⁴ species).

While there is no evidence that licensed control is adversely impacting the populations of gulls, there is also no evidence to suggest that it is not. The lack of reporting under general licences means that Natural England is unable to assess whether killing gulls under licences is having any impact on overall numbers.

As the status of populations of both species of gulls is a matter of concern, Natural England has decided that it is appropriate to control the scale of killing under licences. Therefore, with some exceptions (for example, air safety and herring gull egg control in urban areas for public health and safety) action against both species will now be authorised via individual licences. This approach will help to ensure that killing is only undertaken where strictly necessary. It will also allow Natural England to limit the number of birds killed. This approach is consistent with European guidance which states that 'the need to ensure the maintenance of the population of the species at a satisfactory level becomes a pre-condition for granting derogations'.⁵

Individual licences

Where an activity is not suitable for licensing under a general licence approach, people are required to apply for a licence on an individual basis. This approach is adopted for most wild bird species killed under licence, including fish-eating species such as cormorants and herons, and native wildfowl such as the Brent geese, greylag geese and wigeons.

The European Commission has published guidance to assist national authorities which regulate derogations in the Member States. The guidance states that national authorities, such as Natural England, must bear the burden of proof when granting

³ Red list species are of high conservation concern. For further details see *Birds of Conservation Concern 3: the population status of birds in the United Kingdom, Channel Islands and the Isle of Man* (2009) by Eaton MA, Brown AF, Noble DG, Musgrove AJ, Hearn R, Aebischer NJ, Gibbons DW, Evans A and Gregory RD, in British Birds 102, pp296–341. Available online at: www.bto.org/images/news/bocc3.pdf

⁴ Species are 'amber listed' when they are in a medium conservation concern.

⁵ *European Guide on the Sustainable Hunting of Wild Birds*, p. 64

derogations and must motivate their decisions in a clear and sufficient manner.⁶ Decisions must also be based on a 'clear and sufficient statement of reasons, conditions and requirements' laid down in Article 9(1) and (2) of the Wild Birds Directive.⁷ In order to gather the information it requires to make decisions, Natural England requires supporting evidence from applicants. How much supporting evidence is required will depend on the species and the situation. Natural England undertakes to conclude its assessment of applications within a maximum of 30 working days.

Under the procedure for individual licences, applicants fill in a tailored application form which requests general information about why a licence is being sought. This form guides the applicant on the nature of evidence required in support of the application. On receipt of this information, regionally-based Natural England wildlife advisers may ask the applicant some further follow up questions relating to the specific circumstances of the site and whether alternative methods of control could be used. This will help the Natural England wildlife adviser to decide whether they are satisfied that there is no other satisfactory alternative to granting the licence. Natural England cannot issue a licence unless it is satisfied that this legal test set out under Article 9(1) of the Wild Birds Directive and section 16(1A) WCA 1981 has been met. In appropriate circumstances, the wildlife adviser may also make a site inspection to assess the habitat and observe, for example, the damage caused by the wild birds to fauna and flora. Natural England appreciates that in some circumstances the applicant may not be able to answer all of the follow up questions, although any information which applicants can provide will facilitate the decision process.

Where a problem recurs, there is a streamlined licence renewal process. In many cases, licences will be renewed where the applicant can verify that a licence is continued to be required. Licensees can indicate this when they submit their licence report. Most people issued with licences to control other wild birds, such as cormorants, brent and greylag geese are regular licensees. Natural England receive about 8,500 applications for individual licences each year, meeting timeliness targets in over 95% of wildlife management cases.

Requesting additional information from applicants when considering whether to grant individual licences is consistent with European guidance. The guidance states that when analysing whether there is 'no other satisfactory solution', national authorities must consider: What is the problem or specific situation that needs to be addressed? Are there other solutions? If so, will these resolve the problem or specific situation for which the derogation is sought?⁸ If another solution exists, any argument that is not "satisfactory" will need to be strong and robust.⁹ It is also a general proposition under the guidance that any determination that another solution is unsatisfactory should be based on 'objectively verifiable factors, and that close attention needs to be paid to the scientific and technical evaluation of these'.¹⁰ The new European draft guidance on derogations under Article 9 of the Birds Directive in respect of great cormorants also supports a scientific and technical evaluation approach to other alternatives. Natural England must therefore ensure that it has gathered enough information about the circumstances in which a licence has been requested before it can decide whether there are any satisfactory alternatives to licensing.

⁶ *Ibid*, p. 43.

⁷ See case C-60/05, *WWF Italia and others* ECR 2006 quoted in the *European Guide on the Sustainable Hunting of Wild Bird*, p. 43.

⁸ *European Guide on the Sustainable Hunting of Wild Birds*, p. 45.

⁹ *Ibid*, p. 47

¹⁰ *Ibid*, p. 48

The European guidance also provides guidelines which can be used when assessing the justification for derogations under Article 9(1). For example, in respect of preventing serious damage to crops, livestock, forests, fisheries and water this includes investigating whether the damage is serious, and goes beyond mere nuisance and normal business risk.¹¹ In respect of the protection of flora and fauna, the guidance states that '[e]ach case should be considered thoroughly and decided on advice from the conservation authorities...[d]ecisions should be made on the best available scientific information'.¹² This includes investigating whether the 'flora and fauna' in question have a poorer conservation status than the species for which the derogation is sought and whether good scientific evidence is available on the long-term impact on the affected population(s). The 'control' of wild birds can only be permitted when it is supported by 'compelling elements'. According to the guidance 'only in specific situations, to be determined by the conservation authorities or their agencies, could control of birds be an appropriate management measure, at the relevant geographical level, to effectively reduce the negative impact of certain bird species on vulnerable flora and fauna'.¹³

European guidance on Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora also contains similar provisions. This guidance states that, as a general rule, the severity of any of the conditions or tests which are considered when applying derogations will increase with the severity of the impact of a derogation on a species/population.¹⁴ In cases such as this, where the populations of certain species of gull are in decline, it is appropriate for Natural England to take particular care when assessing whether the information it has collected from applicants, (and, if necessary, from site visits), is sufficient to demonstrate that a licence is necessary. The guidance also states that derogations must be applied appropriately, according to precise requirements and specific situations and that 'assessments at lower levels are normally essential, since the derogations have to deal with specific problems and provide suitable solutions'.¹⁵

In order to properly comply with European guidance, it is necessary in certain circumstances for Natural England to ask applicants additional questions, or carry out site visits, in order to be satisfied that it has thoroughly investigated each case and can conclude that there are no satisfactory alternatives to issuing a licence. Whilst Natural England does not need to demonstrate to the European Commission that derogations are being properly applied in every case, Natural England does need to be able to demonstrate that it has a system for applying derogations which is consistent with Community law. Natural England must also ensure that it complies with WCA 1981, which also requires assessment on a case-by-case basis.

Changes to the regime

The decision to remove the herring gull and great black-backed gull species from general licences was made because their inclusion was no longer considered a 'low risk'. Lesser back-backed gulls, however, are still subject to general licences as their population remains stable.

¹¹ *Ibid*, p. 56

¹² *Ibid*, p. 58

¹³ *Ibid*

¹⁴ European Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC, p. 53

¹⁵ *Ibid*, p. 61

The use of individual and general licences to permit activities affecting protected species is subject to regular review to ensure that the regulation of species protection properly balances risks to protected species, the legal requirements set down under UK and European law and peoples' legitimate needs to manage problems caused by wildlife. Natural England will continue to monitor the situation and may in future revert to general licences for the herring gull and great black-backed gull species if the criteria for such 'light-touch' regulation are satisfied. Indeed all species subject to management under Natural England licences are continually monitored.

Further information

Legislation/guidance

- [Wildlife and Countryside Act 1981\(as amended\)](#)
- [European Council Directive 79/409/EEC on the conservation of wild birds](#)
- [European Guide on the sustainable hunting of wild birds](#)

Websites

- [Europa Website: Nature Conservation and Sustainable Hunting in the EU](#)
- [Defra website: Licensing under Section 16 of the Act 1981 \(except Non-natives\)](#)
- [Natural England website: Wildlife licensing](#)

Natural England, Wildlife Management & Licensing Service

March 2010 (revised April 2010)