

# **CONSULTATION ON AMENDMENTS TO THE SCOTTISH EXECUTIVE GENERAL LICENCES UNDER THE WILDLIFE AND COUNTRYSIDE ACT 1981**

## **Response from Advocates for Animals.**

### **1. Do you agree with the proposed new arrangement and format for the licences?**

We understand the rationale for arranging licences so that they are defined in terms of function rather than method, and we think that the grouping within the numerical list is logical. We have no difficulty with the division of topics for the licences and their general content, although we have a few queries about the drafting of some, as will be mentioned below with regard to the specific licences.

#### General conditions

We welcome the general conditions that licences must not be used as an “excuse” to cull certain species, and that non-lethal methods of control must be considered. We would go further and say that they must have been tried and shown to fail. We note that this is to be weighed against “cost” (SEGEN1 para 17 for example), and we seek guidance as to what cost might be considered “excessive” in this regard.

We would also like to see it clearly stated that operators must comply with the provisions of the Animal Health and Welfare (Scotland) Act 2006, in particular as regards making appropriate welfare provision for captive animals, and abandonment of animals.

Concern over potential misuse of general licences in the past has primarily stemmed from the fact that they could simply be downloaded over the internet. There is no competency check or monitoring of compliance or to ensure that conditions, including despatch, are humane. There is currently no accountability for the numbers of birds killed. Where traps with decoy birds are concerned, there are genuine and serious animal welfare issues, as will be discussed later.

### **3. Do you have any suggestions regarding the format and layout of the new licences which would make them clearer and more user-friendly?**

We note that some licences contain “conditions”, while others have “draft” or “proposed” conditions. There are also “General conditions”, which is slightly confusing. We look forward to seeing final drafts before the licences become operational.

We have some reservations about the clarity of the licences and whether users will fully understand their responsibilities. Some examples are given in response to Question 5, regarding specific licences.

#### **4. What views do you have on the content changes which are proposed to be made to the licences eg bird species which can be controlled and length of period between trap inspections?**

We welcome the reduction in the species that may be controlled and we would hope that this is reviewed regularly to take account of changing populations and objective evidence about the need for control of any species.

We understand that the current legislation provides for daily inspection of traps and the new requirement is for inspection “within each 24 hours” which is an improvement. It would be clearer however to say “at intervals of not more than 24 hours”. We would in fact prefer twice-daily inspection and we understand that this is also the view of BASC; and that the Scottish SPCA recommends that all traps should be inspected at intervals of 1 – 12 hours.

#### **5. Do you have any proposals on the content of the licences?**

We have comments on a few of the licences. Some of these comments apply to more than one – for example, our comments on Larsen traps and cage traps apply to licences SEGEN 1 – 4 inclusive.

Under the current regime, operators of traps must comply with animal welfare legislation and we assume that this will still be the case although it is not stated on the face of the draft licences. We would suggest that it should be, for the avoidance of doubt.

We would like to see guidance within the licences that the more humane approach - the taking and destruction of eggs is the most desirable solution. This would presumably include pricking and oiling of eggs.

##### SEGEN 1 Licence to kill or take certain wild birds for the purpose of conserving wild birds (Land Manager’s Licence)

##### SEGEN 2 Licence to kill or take certain birds for the purpose of protecting livestock, crops, vegetables and fruit (Agriculture and horticulture licence)

##### Purpose

We note that the methods permitted under SEGEN1 may be used by land managers and their agents to protect stocks and populations of 1. wild birds where those populations are under threat, or/and 2. wild birds which are subject to a breeding and rearing programme aimed at increasing or maintaining the local regional or national population level, or protecting their distribution. We assume that this licence would not therefore be applicable for the purpose of protecting reared game birds which are destined to be shot rather than augmenting any local population, and clarification would be helpful.

We welcome the proposal for a legal condition that the licence may not be used unless there is no other satisfactory solution available.

### Draft conditions

We welcome the removal of Herring, Greater Black-backed and Lesser Black-backed Gulls, Starling and Sparrow from SEGEN 1, and House Sparrow, Starling (except in Orkney) and the Herring and Lesser Gulls for SEGEN 2. We would add that Collared Doves and Wood Pigeons do not pose a significant threat to other wild birds, and we believe they should also be removed.

Our comments regarding Larsen and other cage traps in this licence apply equally to the other licences where they are a permitted method of control. Advocates for Animals would like to see Larsen traps banned altogether. We do not consider that they provide the animal welfare standards that the public would expect, if they were more familiar with the operation of these traps.

In aiming to provide reasonable animal welfare standards for animals under the control of man, the Animal Health and Welfare (Scotland) Act 2006 provides that a person commits an offence if he does not take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.

The circumstances to which regard is to be had include a) any lawful purpose for which the animal is kept, b) any lawful activity undertaken in relation to the animal. Clearly the licence is only intended to be used in a lawful manner. However, we are aware of many examples where Larsen and cage traps have been used unlawfully (not being inspected regularly, for example), or carelessly (failure to secure or remove the door when not in use, for example). These breaches lead to animal welfare problems.

The needs which must be provided for are:

- a) the animal's need for a suitable environment,
- b) its need for a suitable diet
- c) its need to be able to exhibit normal behaviour patterns
- d) any need it has to be housed with, or apart from, other animals
- e) its need to be protected from suffering, injury and disease.

We would submit that it is extremely difficult to provide these conditions for wild birds confined in Larsen and cage traps, particularly the decoy birds, and that welfare problems are exacerbated the longer the bird is kept there.

The Larsen Trap exposes the decoy bird to considerable stress and mental suffering, by confining it close to the ground in full view of predators. The desperate fluttering of lone decoy birds is evidence of this distress. Birds have been found with feathers worn down to stumps and bleeding carpal joints, from flying against the side of the cage and attempting to perch on wire.

We therefore ask for the insertion of much more comprehensive definitions of the terms "shelter" and "perch" at paragraph 11. Cages have been seen with a piece of plastic less than the size of an A4 sheet of paper serving as shelter.

Perches that are too narrow cause the bird's hind claw to come round and dig into its foot, causing injury and pain. Perches should therefore be thick enough for the bird to use it without its foot curling round, and at least part of the perch must be under the shelter. While that may seem rather obvious, cages have been seen where this was not the case.

Once birds are trapped they are forced to remain in close proximity to one another. Traps are not always checked daily despite the legal requirement to do so, and birds have been found dead from starvation and thirst.

We welcome the requirement to remove the decoy bird at each inspection, although we feel that the relevant condition (number 7) could be more clearly expressed to avoid misunderstanding. It should perhaps be made clear that any subsequent humane destruction must be carried out *in situ* and the bird must not be relocated for use in another trap.

If a newly-captured bird is permitted to be kept as the replacement decoy, it might be helpful to state that there is an absolute limit of 24 hours after which it must be released or humanely destroyed, regardless of whether any new birds have been caught. Potential misinterpretation of paragraph 7 could mean that birds were kept for several days in the trap, which would be unacceptable, and inconsistent with the standards applicable to other live traps.

It should be clearly stated that only a single decoy bird may be used, to prevent the operators of traps claiming that multiple birds in an uninspected trap are all decoys.

We welcome the intention to prevent amateur usage of SEGEN1, SEGEN2 and SEGEN3 by excluding activities carried out in domestic gardens. We considered that it was entirely inappropriate for untrained private individuals to access a general licence and then interfere with local wild bird populations by trapping and killing birds. In such a context it has been impossible to ensure that the traps were being used properly and that captured birds were efficiently and humanely killed. We do however wonder whether the condition is clearly enough drafted, and would suggest that it could be reviewed to avoid misunderstanding

#### General conditions

We note that the licence may be held by landowners and occupiers, by persons authorised by the local authority where activity is undertaken, or by SNH, water authorities and fisheries boards. We would welcome clarification as to how local authorities should assess the persons that they authorise and how they would be able to satisfy themselves that the person will always comply with the requirement (paragraph 15) for there to be a known or reasonably likely problem within a specific area or set of areas. We wonder whether a pest controller working for a local authority would invariably be able to satisfy the condition in paragraph 17 which requires consideration of alternative non-lethal methods of control in (we assume) all cases. If the person does consider non-lethal control and is "convinced that such methods

could not work without excessive cost”, we wonder how excessive cost is defined and whether it means only financial cost? For example, would extra time and work be considered as costs? Clarification in the definitions section would be helpful.

We welcome the condition in paragraph 18 that birds must be destroyed humanely and as quickly as possible. We note that the definition in paragraph 23 defines “humanely” as “killing a bird instantly by a single swift action”. We are concerned that there is no requirement for competency here. We therefore assume that “as quickly as possible” in paragraph 18 means “as soon as possible after capture” and we suggest that it might be helpful to restate this a little more clearly.

### Definitions

We think it is misleading to include accidental wounding within the definition of killing. We assume that the purpose is to exempt persons from prosecution for an accidental act, but we feel that the approach is illogical. It would mean, for example, that accidental wounding is somehow “authorised” under the licence and that would not make sense.

We assume that the intention is to ban domestic gardeners from destruction of eggs and nests, as well as from shooting and trapping birds. However, we are not sure that the general condition stating: “Nothing in this licence applies to anything done in a domestic garden” exactly conveys what is intended – that **none of these methods should be used** in a domestic garden. Again, clarification on the face of the licence would be helpful.

### SEGEN 3 Licence to protect public health, public safety and to prevent the spread of disease

We have welcomed the removal of Herring, Greater Black-backed and Lesser Black-backed Gulls from SEGEN 1 and SEGEN 2 in view of their conservation status, and we would hope to see their presence on this licence kept under review.

The Purpose of this licence refers to birds posing “a physical threat through their habits and actions”. It further states that “seagulls may cause a threat by attacking people, but may also cause a threat at power stations where they can cause electricity to arc”. We agree that these are matters of concern, but we are keen that the response to these problems is proportionate and humane.

For example, although they undoubtedly cause mess, there is a very low risk of gulls transmitting diseases such as Salmonella, Campylobacter or E. coli to humans.<sup>1 2</sup> In spite of this, gulls are often wrongly perceived as spreading

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<sup>1</sup> J R Calladine, K J Park, K Thompson and C V Wernham. Review of Urban Gulls and their Management in Scotland. A report to the Scottish Executive. May 2006.

disease; this misperception can even be found in some Local Authority material, even while otherwise giving good advice. For example, in 2004 an information leaflet from Aberdeen City Council stated: 'These birds [ie pigeons and gulls] carry a wide range of diseases, such as salmonella and tuberculosis, which are potentially fatal to humans.'<sup>3</sup> The advice from Health Protection Scotland is that 'whilst there is a theoretical risk of infection passing from urban gulls to the human population (because of the feeding sites used by gulls and their scavenging habits), in practice any risk is likely to be very low because in general there is limited opportunity for humans to ingest an infective dose of any pathogen carried by a gull.'<sup>4</sup> There has been no evidence to date of any disease produced by gulls nesting on school roofs or playing fields, and the infectious risk associated with fouling by gull droppings is also thought to be minimal.

In November 2006, we wrote to all Scottish local authorities asking about their approach to managing urban gull populations. Out of 14 responses, it appeared that ten Scottish councils did not particularly favour either lethal control or the taking and destruction of eggs or nests. There was a clear preference for proofing methods. If this is the case, we do not think that lethal methods should be widely available for unofficial private control. We recommend that lethal control should be confined to authorised persons such as local authorities or to licensed pest control companies.

Glasgow City Council commented in its response:

"The Council takes due regard of animal welfare and does not consider the degree of 'nuisance' caused by gulls in the City to be worthy of taking extreme measures, i.e. killing gulls or destroying their nests, which may affect the birds' welfare. In any case such actions may be illegal and could lead to complaints of criminality being made against the Council by animal welfare and conservation bodies."

#### SEGEN 4 Air Safety Protection Licence

We note that the introduction to the consultation paper states that, for the purposes of the air safety licence, it is proposed to allow shooting from a mechanically propelled vehicle. This is not specified in the draft licence, and there is therefore no condition regarding the way in which vehicles may be used. In our view there would be no circumstances under which it would be acceptable to shoot from a vehicle while it was moving, as this would significantly increase the risk of wounding and undue suffering as a result.

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<sup>2</sup> P Rock. Birds of a Feather Flock Together. Environmental Health Journal, May 2003, p132-135.

<sup>3</sup> Aberdeen City Council, Environmental Protection Service leaflet, Protect Your Environment, Don't Feed Pigeons and Gulls. 14/9/04

<sup>4</sup> J R Calladine, K J Park, K Thompson and C V Wernham. Review of Urban Gulls and their Management in Scotland. A report to the Scottish Executive. May 2006.

### SEGEN 5 Licence to keep certain wild birds for the purpose of rehabilitation

We generally agree with the provisions in this licence. We are advised, however, that the period of 15 days is not necessarily long enough for a bird to be ready for release into the wild, even though it is expected to recover from its injury. There is a potential welfare cost involved in registration, as it necessitates the application and subsequent removal of a ring. We understand that a bird recovering from an injury could be stressed by the extra handling and cause itself further injury by flapping and attempting to escape.

We note that the equivalent licence for England (WLF100099) only refers to inspectors of the RSPCA and not the RSPB.

We agree that full-time officials of the Royal Society for the Protection of Birds (RSPB) should be authorised, even though that organisation does not undertake rehabilitation and recommends that an injured bird should always be passed onto a local vet, RSPCA in England and Wales, SSPCA in Scotland, USPCA in Northern Ireland or an independent rescue centre.

Our understanding is that RSPB officials ring birds and work closely with licensed rehabilitators. In such a context they might be required to keep wild birds.

In terms of the other parties whom it is proposed to authorise, we appreciate that it is important to protect Schedule 4 species from exploitation by those who might have an interest in taking them from the wild. We feel it is important however to foster future rehabilitation skills and ensure that these are more available throughout the country, rather than in a few specialist centres as is currently the case. The true aim of rehabilitation is self-evidently to return birds to the wild, which is a benefit. We wonder therefore whether it would be possible to add a category of authorised person who would be training under the supervision of an RSPB official or a licensed rehabilitation keeper (LRK), providing that the official or keeper was aware of the birds being kept by the trainee.

### SEGEN10 Licence to permit the competitive showing of certain captive-bred live birds (Birds which must have a ring)

### SEGEN11 Licence to permit the competitive showing of certain captive bred live birds (which do not require a ring)

Advocates for Animals does not agree with the use of birds for entertainment or exhibition, but that is not the subject of this consultation. We found the presentation of these two licences a little unclear on first reading, The annexes contain lists which are identical, but have opposite purposes, and it is possible that others might also experience some confusion.

**6. Airports already have to submit returns to the Executive detailing actions they have taken, and the numbers of birds killed under the General Licences. Should the same be required of all General Licence users? Or would this be a disproportionate requirement?**

We do not think this would be disproportionate although we assume there will be some resistance to the proposal. We believe that individuals should account for the wild animals that they kill, particularly in the case of wild birds which are otherwise protected by the law, and in view of past concern about the lack of accountability under the General Licence scheme.

The requirement to make returns would be consistent with the Executive's stated aim of preventing unauthorised culling.

**7. Should a Registration Scheme for Dead Birds be developed for taxidermists to replace the taxidermy element of the sale of dead birds licence? If so, how do you envisage that this would work?**

One or two high-profile cases in Scotland and England in recent years have shown that there is a problem with illegal sale and acquisition of dead birds, outwith the legitimate taxidermy trade. A registration scheme would be an appropriate response to this.

**8. Should operators of traps be allowed to keep decoy birds in aviaries overwinter?**

No. Confinement of wild birds for long periods inflicts severe stress, to the extent that their survival is compromised. Even in good rehabilitation aviaries with excellent shelter and adequate perches, crows are known to injure themselves in attempts to escape. We would view it as frankly unethical to confine a wild bird in this way when its ultimate purpose is to be used as a decoy and then destroyed.