

## **Annex 1 - General Licence 2013 consultation details**

### **A. General Licence format**

Our vision is to have a suite of relevant General Licences which are clear, consistent and easily understood by practitioners. Therefore, we propose a new General Licence format for 2013.

The proposed new format would start with a short summary page which clearly introduces each General Licence, its purpose, use and key requirements. This section would be followed by a relevant list of conditions. The conditions would be divided into appropriate sections for clarity. For example, in General Licences 1 to 4, there might be conditions grouped under headings such as 'Species which may be killed', 'Means of permitted killing and taking' and 'Design of traps'. Reporting requirements would also be clearly explained in each Licence.

### **Question 1 – Do you agree with the need to improve the clarity of General Licences**

Agree X Disagree  No view

### **Additional Comments**

#### **Clarity**

We welcome the proposal to improve the format and presentation of the Licences. These aspects have improved since the last substantive review in 2007 but we think that still more could be done to improve the accessibility, and therefore the appropriate use and understanding, of the Licences.

If the Licences are to be accessed and properly understood, it is essential that they are comprehensible to the ordinary reader. We agree that the proposed new format would be an improvement but we would like to see it go further, for example by including clear explanatory notes, addressed to the Licence holder in simple direct language.

The equivalent licences for England, published by Natural England, are prefaced by a checklist showing the legislation under which the licence is issued, the period for which it is valid, the area covered, recording and reporting requirements, and so on. Subsequent paragraphs are short and broken up with bullet points and clear, meaningful sub-headings.

The current Scottish General Licences, by contrast, open with dense paragraphs of legalistic verbiage, some of which is difficult to understand. For example, the opening paragraph of General Licences 01 – 04 states: "*This licence is granted under Section 16(1)(k) of the Wildlife and Countryside*

*Act 1981 by Scottish Natural Heritage, and being convinced that there is no other satisfactory solution, it authorises the killing or taking of wild birds in accordance with the stated conditions, for the purpose of the prevention of serious damage to livestock, foodstuffs for livestock, crops, vegetables and fruit.”*

It is not clear here who or what is “*convinced that there is no other satisfactory solution*” – SNH, the licence itself, or the licensee – which is of concern as the paragraph might be relied on in court at some point. If it is the licensee, he needs to understand that this requirement is placed upon him.

It would be helpful if the Licences included standard clauses wherever possible, rather than minor variants from one to another, which may confuse users. For example, GL 01, 02 and 03 give a definition of a Larsen trap but GL 04 has no definition.

Permitted traps should be clearly defined and ideally listed by brand name, along the same lines as the various spring traps orders.

#### **User should demonstrate necessity**

It should also be stated more clearly in General Licences 01 – 03 that the Licence may only be used to counter a specific identified problem. Wood pigeons, feral pigeons, magpies and crows cannot be assumed always to be causing problems in all circumstances. We accept that these species can cause problems but serious damage must be demonstrable on each and every occasion when there is resort to the Licence. We suggest that Condition 2 be amended in these Licences to reflect this provision

#### **Prior convictions barring access to the General Licence**

We welcomed the Condition added in 2008 providing that anyone who had a previous wildlife or animal welfare conviction was not allowed to use the General Licence until the conviction was spent. However in 2009 an exception was added to this Condition for persons convicted but merely admonished by the court. Possibly the Scottish Government, who at that time administered the Licences, may have thought it disproportionate to impose a punishment (of not allowing a convicted person to access the General Licence) when the court had decided not to punish him. We on the other hand would not see the withdrawal of the General Licence as an additional punishment, but rather the withdrawal of a privilege made available to those who comply with the law.

We are not aware of any consultation having taken place on this matter which is of concern as it has undermined the purpose of the original Condition. It has also encouraged defence agents to seek to influence sheriffs in their sentencing decisions by saying that the convicted person’s livelihood will be put at stake (even though he can still apply for specific licences if required).

We note that the equivalent English licences do not contain this exemption.

We request that this Condition be reviewed.

### **Protection for birds in traps**

General Licences 01 – 04 contain a Condition concerning the welfare of decoy birds:

*“In the case of decoy birds, all relevant animal welfare legislation shall be complied with at all times, including the Animal Health and Welfare (Scotland) Act 2006. This includes providing decoy birds with adequate food, water and shelter and a suitable perch that does not cause discomfort to the birds' feet. Decoy birds shall also have adequate protection from the prevailing wind and rain.”*

This Condition should be extended to cover all birds in the trap, and not only the decoy bird. As soon as a bird is trapped in a cage, the operator becomes the responsible person in terms of the Animal Health and Welfare (Scotland) Act 2006 and has a duty of care towards it.

It is also desirable to define what is meant by “adequate” food, water and shelter, and a “suitable” perch. These are fundamental to the state of welfare of the birds in the trap. Nonetheless 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.

We believe there should be a requirement to remove the decoy bird at each inspection, with any subsequent humane destruction carried out *in situ* so that 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, there should be an absolute limit of 24 hours after which it must be released or humanely destroyed, regardless of whether any new birds have been caught. Otherwise wild birds can be kept for several days in the trap, which is unacceptable on animal welfare grounds, and would not be permitted in other trapping situations.

It should also 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 would like to see guidance within the General 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.

### **Inspection intervals**

Several Licences contain a condition providing for regular inspection of traps:

*“Except in the case where severe weather prohibits, any cage trap of any sort which is set under the terms of this licence shall be inspected by the authorised person, while it remains in use, at least once every day at intervals of no 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.

In addition, while it is reasonable not to expect people to take risks in severe weather conditions, we feel that the Licences should require people to anticipate the impact of changes in the weather whenever possible, rather than risk leaving birds trapped and left exposed for prolonged periods.

We recommend the approach taken in the equivalent English licences, which state:

*“The authorised person should have regard to the inspection requirements as contained in paragraph 9 when considering the use of a cage trap under this licence. As a matter of good practice, cage traps should not be used during severe weather conditions, or when such conditions are reasonably anticipated.”*

### **B. Adequacy of existing General Licences**

Currently there are 14 General Licences covering a range of situations. We welcome your views on the need for each Licence.

**Question 2 – Do you believe that the current suite of licences are clear as to their purpose and are they all necessary?**

Yes  No  No view X

**Additional Comments**

### **C. Conditions relating to methods of killing and taking**

Responses from consultees to the 2012 General Licence consultation highlighted concerns over what methods of trapping are permissible. Opinion was divided over whether or not certain traps ('clam', 'butterfly' or 'Larsen-Mate') should be excluded. These concerns remain as do uncertainties over welfare issues surrounding their use and the capture of non-target animals.

In order to remove ambiguity over which traps are permitted to be used under General Licence, in 2013 we propose to define those traps more clearly. The licences will name the Larsen Mate and Larsen Pod traps as well as the 'multi-catch crow' trap. It would also include 'By hand' (to allow for chicks in a nest to be killed or birds taken in a Larsen trap, for example).

We propose to add a condition to the General Licences to require anyone using these Larsen mate or Larsen pod traps to inform us that they intend to use them on their land. We will be commissioning research to look at the design and principles of use of these traps shortly. This research will include field trials to gather objective evidence on their use. Persons using these traps may be approached as part of this evidence gathering exercise.

We also propose to add a section on the 'Design of traps' which gives broad descriptions of the traps. Our intention in the longer term is that a Code of Practice will be developed that give detailed design parameters and methods of use for all trapping techniques permitted under General Licences.

**Question 3 – Do you agree with the proposed amendments to clarify the traps permitted for use under General Licence?**

Agree  Disagree X No view

**Additional Comments**

The consultation recognises that the use of traps under licence is an exception to the law prohibiting the taking and killing of wild birds. These actions have an impact not only on populations but also on the welfare of the individuals. There should therefore be a presumption against making the exceptions too broad. The Licences should be clear as to the limits of the exceptions being granted and that they may only be invoked where there is justification. We therefore welcome the proposal to clarify the definition of permitted traps.

The consultation letter states: "*it should be for the industry to demonstrate that any issues associated with welfare and the capture of non-target species have been addressed.*" That is a good starting point but we would like to see more pro-active commitment to the promotion of animal welfare and to eradicating non-target capture.

**Larsen traps and Larsen mate traps**

We strongly oppose the proposal to include Larsen mate or Larsen pod traps

in the Licences. We believe that both the Larsen trap and Larsen mate (clam trap) should be prohibited, on animal welfare grounds, the latter in particular.

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 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 well-nigh impossible to provide these conditions for wild birds confined in any form of Larsen traps (and crow cage traps), particularly the decoy birds, and that welfare problems are exacerbated the longer the bird is kept there.

The conventional Larsen trap already 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.

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 are pleased to see acknowledgment in the consultation that use of the Larsen mate/clam trap could be challenged under animal welfare legislation. As far as we can see they are not currently permitted under the General Licences as they do not conform to the definitions given, and they have therefore been used illegally up to now. Reference is made in General Licences 01 - 04 to a cage of two compartments containing a decoy bird. These traps are left open and contain bait rather than a decoy. We do not think that the solution to illegal activity taking place should be to legitimise it

A dead rabbit or hare is placed at the bottom of the trap and the trigger mechanism is in the form of a false perch in two pieces. When weight is put on the perch it collapses, slamming the two parts of the cage together. Although this trap is not intended to kill, its design and indiscriminate nature have the potential of causing great harm to any wildlife attracted to the bait at the bottom of the open cage.

Being set on the ground usually in large open areas, and baited with a dead rabbit or hare, other animals such as foxes, badgers and pine marten are inevitably attracted and put at risk of trapping the head, leg or other part of the body in the device. If the wire edge of the cage snaps across the animal's face as it struggles or tries to flee, it could be blinded. As the traps are not anchored, a struggling animal could potentially drag the cage away from the location or even stumble down a bank into a river or stream and drown.

Many species of bird – including non-target species such as raptors and ravens - will be drawn to the bait. As a large bird such as a buzzard or raven lands on the false perch its wings may still be open. When the cage snaps shut, the bird's body may be caught in the cage, with the wings outside; alternatively, a bird trying to escape could be caught across the body or wings.

The trapped bird then has to endure up to 24 hours inside this cage before it is checked by the trap operator. Currently there are no requirements to ensure that it has space to open its wings, to move, to be provided with food, water and shelter – unlike decoy birds in Larsen traps and crow cage traps

Larsen mate type traps found in the countryside have also given rise to concern that they may not only be intended for those species permitted under the General Licences.

One Larsen mate type trap was found on a Scottish shooting estate already using crow cage traps and Larsen traps. The trap was set out by a dry stone wall. Next to the wall a wooden perch about three meters high had been erected. The trap was on one side of the wall and a forest on the other side, about eight meters away from the trap. The trap was baited with a dead rabbit and the remains of two more rabbits were found not far from the cage, indicating that the cage had been in operation for a while. In the forest approximately fifteen meters from the trap, three raptors were buried in the ground amongst the trees there. Despite advanced decomposition two were identified as buzzards and the other possibly a kestrel. This gave rise to a concern that the trap might actually have been set to catch non-target species, and the relevant authorities were contacted.

In another case, two Larsen mate type traps were found close to a pheasant release area. Both traps were set and had been baited with dead hares. A buzzard was circling above one trap, approximately twenty meters off the ground, and four more buzzards were in the area close to the traps. The police were called and arrived at the scene at the same time as the gamekeeper, who had come to feed the pheasants. OneKind later learned that the police officer had removed one cage but left the other one with the keeper, possibly due to confusion as to the legal status of these traps.

In a third case, a Larsen mate type trap was known to have been set just

outside some woodland, at the corner of a field and close to two pheasant release pens. The trap was no longer on the site when it was visited, but the remains of the dead rabbit bait were left on the ground. Approximately fifteen meters from where the trap had been, a dead buzzard was found stuffed under a fallen tree inside the woodland.

OneKind cannot see any case for even considering this trap for licensing, given the significant negative welfare issues it presents, and the fact that it is inherently indiscriminate.

We note that SNH intends to commission research to look at the design and principles of use of these traps. We expect that research would support the case for banning Larsen mate traps and therefore, at least until this research is completed, their use should not be permitted.

If, despite the evidence of the welfare threat that they pose, it is decided Larsen mate type traps are to be permitted, we would support a Condition that anyone using them must inform SNH that they intend to use them on their land. We would also like to clarify that if these traps are to be permitted they must carry a tag or sign displaying an identification code for the estate and the operator. Currently they are not tagged.

#### **Welfare of trapped birds**

Traps have been found with several crows and rooks in them, but the cage has been set up to only provide shelter and a suitable perch for a single decoy bird. We think the current welfare Conditions should be amended to prevent this.

We cannot see why a single bird (the decoy) may get shelter, but any birds caught may be forced to endure severe weather conditions until the operator of the trap arrives to kill them. As far as we are concerned, the operator is responsible for birds as soon as they are captured and their needs – for food, water, shelter and a suitable perch – must be met as long as they are in captivity, which may legally be up to 24 hours, or longer in severe weather conditions.

Crow traps are used throughout the year and so inevitably adults that are nesting and who will have young depending on them will be captured. This will cause great stress on the captured parents as well as leading to the slow starvation of the chicks or young birds.

To capture and confine highly intelligent birds such as crows can only have a detrimental effect on their mental and physical wellbeing. Crows in cage traps are often observed to display what appears to be stereotypical behaviour where they hop from a perch onto the ground and back again, repeating this for up to five minutes. They are often seen flying from one side of the cage to the other for long periods, up to ten minutes at a time - again, a

likely indication of stress.

Even if there has not been any incident involving crows in the area, the gamekeeper can catch and kill crows when he wishes. Considering the possible welfare concerns in the use of this type of trap then there must be some genuine justification and evidence to show that a crow trap is the only option and all other measures have been taken to deter crows. It is wrong just to capture all crows in the area because they *may* cause a problem in the future. There appears to be an assumption that corvids may be controlled simply because they are there, rather than because they have been demonstrated to be causing a problem

### **Non-target capture**

At the time of the last substantive review of General Licences in 2007, the RSPB submitted that it had grave concerns about the threat to non-target species from the use of various designs of cage trap, possibly amounting to contravention of Article 5 of the Birds Directive which prohibits the deliberate killing or capture of birds covered by Article 1, and Article 8 which prohibits non-selective capture of the same.

The RSPB pointed out significant capture of non-target species in cage traps, including Larsen traps, including protected species. Efforts have been made to mitigate the effects of non-target capture and we welcome these efforts. A requirement to make the entrance of both funnel and ladder traps narrower could reduce the bycatch of raptors and ravens. However, non-target species remain vulnerable to capture and death from the use of cage traps.

### **Humane despatch**

We believe that humane destruction of captured birds should also have been the subject of a consultation question.

It is absolutely essential that guidance be given on humane methods of despatch on the clear understanding that failure to abide by humane practice is an offence under the Animal Health and Welfare (Scotland) Act 2006.

In 2011 the OneKind field research officer witnessed and filmed a gamekeeper killing seven crows out of a group of twelve by laying about him with a stick, taking several blows to kill individual birds. It was clear to any observer that birds were subjected to unnecessary suffering, being injured and terrified during the incident,

[http://www.onekind.org/live\\_onekind/blog\\_article/no\\_court\\_proceedings\\_for\\_beating\\_crows\\_to\\_death](http://www.onekind.org/live_onekind/blog_article/no_court_proceedings_for_beating_crows_to_death)

This trap was presumably set under the terms of General Licence No. 02/2012, which includes a Condition that: "*For the purposes of this licence, "humanely" means taking all reasonable precautions to ensure that any killing*

*of birds under this licence is carried out by a single, swift action.”*

The licence also states that: *“Failure to abide by any one of the conditions may invalidate the licence and could lead to prosecution.”*

Although the individual in this case was not prosecuted, it was very obvious that birds were not killed by a single swift action. We therefore seek clarification of the process for revocation of the General Licence as an alternative sanction. Who is responsible for progressing this? Should the police or the Crown Office notify SNH in such a case? And what standard of proof is required?

We have heard members of the gamekeeping industry and the justice system comment that this was not an unusual method to employ. We therefore urge SNH to provide much clearer guidance on humane killing and the sanctions for non-compliance.

#### **D. Species lists on General Licences**

General Licences can allow for particular species to be killed, taken, rehabilitated etc. in commonly arising situations that involve activities of low conservation impact. Therefore, few species are listed and often the same species feature on several Licences.

Clearly, it is important that General Licences feature the appropriate species which may be killed or taken in order to manage effectively regularly occurring problems. Thus, we are seeking views on the adequacy of the species list attached to each General Licence (where this is relevant).

In addition, we make the following proposals for change:

- I. Addition of Ruddy duck to General Licence 1 (to kill or take certain birds for the purpose of conservation of wild birds). This addition would benefit the conservation of the white-headed duck in Europe by allowing more effective control of ruddy duck.
- II. Addition of Canada goose to General Licences 1, 2 and 3 (to kill or take certain birds for the protection of livestock, foodstuffs and crops). This addition would help deal with a well documented problem involving a non-native species for conservation, public health and safety and agricultural reasons.
- III. Addition of robin, house sparrow, blackbird and swallow nests to General Licence 3 (to kill or take certain birds for preserving public health and safety). This follows numerous individual applications made by supermarkets and pest control companies where individual birds

have entered food shops and food preparation facilities and they are posing a threat to public health.

**Question 4 – Do you consider that the species listed on the current General Licences are appropriate?**

Yes  No  No view

**Question 5 – Do you agree with the proposed additions to species on the General Licences as described above?**

Agree  Disagree  No view

#### **Additional Comments**

As stated above, we believe that the emphasis of the General Licences should be on the problem that can be demonstrated, to the extent that it requires an otherwise illegal action to be permitted.

As an animal welfare charity we do not have specific ornithological expertise. We note, however, the comments that were made by the RSPB in the 2007 consultation, to the effect that the lists of permitted target species on a number of the Licences were too wide.

For example, regarding what would now be General Licences 01 and 02, the RSPB stated:

*“We see no current reason to retain rook, jackdaw, collared dove, feral pigeon or wood pigeon on either a game or conservation licence and believe that the case for retaining jay in a Scottish context needs to be made. Whilst these corvid species are recorded predated the young of other bird species, what evidence exists that this routinely constitutes serious damage and justifies a general licence? The three columbid species may present a threat to agriculture, foodstuffs or public health sufficient to justify their inclusion on other licences but not on licences dealing with the issues addressed by draft SEGEN1.”*

We note that collared dove, feral pigeon and wood pigeon remain on General Licence 02 and we hope that SNH will consult RSPB once more on this matter.

Regarding General Licence 04, again without claiming expertise, we are struck by previous RSPB comments that: *“the typical aerial behaviour of these species does not appear to us to constitute a threat to aircraft. They generally do not move around in flocks and, being territorial, are distributed in discrete pairs rather than colonies. The occasional gatherings of magpies are not aerial but on the ground.”*

We accept the need to safeguard public safety at airfields but we wonder if it is necessary to include these species on a General Licence.

As an animal welfare charity we are opposed to the culling of the Ruddy Duck. Given that these birds have now almost been eradicated from the UK we cannot see that it is necessary to add them to General Licence 01. Any further killing considered necessary could be carried out under a specific licence.

We are opposed to the addition of robin, house sparrow, blackbird and swallow nests to General Licence 3 (to kill or take certain birds for preserving public health and safety). We understand that this condition is intended to apply to live birds as well as nest removal and we believe this would be opposed by the general public. We appreciate the need for hygiene in food preparation and retail premises, but we believe the onus should be on the operators 1. to exclude birds as much as possible and 2. to engage in humane non-lethal removal methods such as live trapping and removal, or egg removal/pricking/oiling if absolutely necessary. If lethal control of individual birds is ever unavoidable, a specific licence could be sought as long as justification can be shown.

#### **E. Authorised persons**

General Licences allow actions which would otherwise be unlawful to be carried out by 'authorised persons' in accordance with certain conditions. We propose that each General Licence will more clearly define authorised persons and include those with spent convictions as currently identified. It is important to note that whilst persons with unspent convictions cannot act under a General Licence, these persons can apply for an individual licence to carry out the same activity.

We welcome your comments on who might constitute an authorised person.

#### **Question 6 – Do you consider that the current definitions of 'authorised persons' are appropriate?**

Agree  Disagree  No view

#### **Additional Comments**

It is widely understood that domestic gardeners are not permitted to invoke the General Licences to permit the destruction of eggs and nests, and the shooting and trapping of birds. We suggest that this should be explicitly covered in the authorised persons section.

We would welcome clarification as to how local authorities should assess the

persons that they authorise and how they satisfy themselves that the person will always comply with the requirement for there to be a known or reasonably likely problem within a specific area or set of areas.

We think consideration should be given to a Condition that tags should identify the person responsible for any type of cage trap, as well as the estate or enterprise. From a law enforcement perspective, the use of a single identifying code for multiple traps currently makes it almost impossible to prosecute an individual for illegal use of a trap.

## **F. Additional General Licences**

We are not proposing any new General Licences. However, you may consider that there are some situations which occur regularly and management actions taken to resolve them have a sufficiently low conservation impact to merit coverage under a General Licence. If so, we welcome your ideas.

### **Question 7 – Do you consider that there is a need for any additional General Licences?**

Yes  No X No view

#### **Additional Comments**

## **G. Communication of General Licences**

We intend to publish the 2013 suite of General Licences on the licensing pages of our website together with notes on how they differ from the 2012 General Licences. It might be that there are other ways of disseminating information on General Licences more applicable to practitioners. We welcome your views on how to ensure that the right people are aware of what General Licences say and do.

### **Question 8 – How do you think we could better communicate what General Licences do?**

An information sheet should be made available with every trap sold, explaining that a licence is required and where to access these – these devices are readily available from internet suppliers including general suppliers such as Amazon. Some vendors do give brief guidance on use of the traps but this is not comprehensive or always independent. Above all, vendors are unlikely to discourage use as official guidance might do.

Consultations on the General Licences should be more widely disseminated and publicised to stakeholders. Last year we were unaware of any

consultation despite having responded in the past to Scottish Government consultations, and this year we only received notification through PAW Scotland.