

# General licensing consultation

## Response by RSPB Scotland

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### RSPB responses are in blue text

*The following are used throughout with these meanings:-*

*GL (or GLs for plural in context) – the General Licences that are the subject of this consultation*

*WCA – the Wildlife and Countryside Act 1981 (1981 c.69), as currently amended in Scotland*

*WANE – the Wildlife and Natural Environment (Scotland) Act 2011 (2011 asp 6)*

*INNS – Invasive non-native species*

*“We” – RSPB Scotland, i.e. the Scottish Directorate of the Royal Society for the Protection of Birds*

## 1. Introduction

[consultation document text omitted]

## 2. Background

[consultation document text omitted [but please see comments under Q18 at end of document](#)]

## 3. Respondent information

To make a valid response to the consultation you must at least provide your name and email address.

### Name / Organisation Name

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[EH12](#)

### How do you wish your response to be treated?

[Publish response with name \(but without email address – a more generic email address can be provided if required\).](#)

## 4. General Questions

### Licence format

#### Q1. Do you consider further change to the format is needed?

We have no view on the format of the GLs, other than to endorse clarity of meaning, scope and purpose (which is little more than stating the obvious).

If so, what changes would you suggest and why?

We have no further comment

### Raising awareness and improving communication

#### Q2. How might we work with others to better communicate and raise awareness of all our General Licences amongst users and the general public?

We have no view on the general issue of communication but we advocate specific guidance on trap use issued directly to the registered users of traps (see Q11 and Q12 below re registration)

## 5. Licence specific questions – General Licences 1, 2 and 3

(consultation document text omitted)

#### Q3. Bearing in mind the key principles of General Licences outlined earlier, do you consider that any of these species should be removed from General Licence 1, 2 or 3? If so, which species and from which Licence(s) and why?

Yes

We first reiterate a general point that we have made in previous consultations on the GLs. The history of the 'pest' listing of birds can be traced, at least, back to the second schedule of the Protection of Birds Act 1954. This was little more than a list of 'species we have always killed' and was as such a reflection of current wider cultural values rather than an exercise in objective assessment, balancing conservation status with proven damage. This list, somewhat amended, was translated into Schedule 2 Part II to the WCA, again without any (apparent) objective assessment process. This was later shown - at judicial review - to be an approach at odds with the Birds Directive and GLs were created in an attempt to provide some justification for permitting protected wild birds to continue to be killed in an unrestricted, unmonitored and unregulated manner. This may well remain at odds with the Directive, something that has yet to be tested. Some degree of objective assessment has been adopted by the various responsible authorities over the intervening period, often under duress, but the GL concept still approaches things in the wrong order by, in effect, saying, 'Here is a historic list of things that people have a habit of killing' (without explanation as to why) 'are there any that shouldn't be here?'. We would suggest that SNH needs to justify the presence of each and every species for each and every circumstance rather than relying on vague phrases like "well established issues or situations" without reference to evidence.

*Great black-backed gull (GBBG) from licences 1 & 3.*

Licence 1: We are not aware that SNH has provided any evidence that GBBG poses a conservation threat and certainly not on a scale that justifies unrestricted, unmonitored, unregulated killing. GBBG's amber-listed status, in any case, should require formal reporting on any licence use.

Licence 3: We are not aware that SNH has provided evidence that GBBG occurs in concentrations or numbers in circumstances that justify unrestricted, unmonitored, unregulated killing under this licence and its amber-listed status, in any case, should require formal reporting on any licence use.

*Carrion crow, hooded crow, jackdaw, jay, magpie, rook and wood pigeon from licence 3*

We are not aware of any evidence provided by SNH of a substantive threat to public health etc. posed by these species. We accept that, e.g., jackdaw nests in active chimneys pose a potential threat, in which case the licence, if retained, should be limited to this circumstance and possibly to other similar circumstances for the other species, though we can't immediately envisage any that meet the tests required by the terms of s.16 in the WCA.

*Rook and jackdaw from licences 1 & 2*

With regard to rook, in addition to the concerns above re licence 3, we draw SNH's attention to the species' reported 37%, statistically significant decline in Scotland from 1995-2014 (20% decline over the UK, so Scotland experiencing steeper decline than elsewhere)(Harris *et al.*, 2016<sup>1</sup>). This has yet to trigger formal UK amber listing but would do so if the listing criteria were applied at a Scotland level – i.e. if Scotland had its own listing system. The justification for SNH allowing unrestricted, unmonitored, unregulated killing is therefore absent.

We are not aware that SNH has provided any evidence of a conservation threat posed by jackdaws that justifies unrestricted, unmonitored, unregulated killing. Nor are we aware of any threat to agriculture etc. on a scale that is consistent with this level of permission.

*Jay and magpie from licence 1*

Whilst jays have been identified in studies as noted nest predators - e.g. of passerines - we are aware of no evidence that justifies their unrestricted, unmonitored, unregulated killing, especially in a Scottish context where their distribution remains fragmented. Even more so than jay, magpies' depredations on smaller passerines are well-documented. However, as with jay, evidence of actual conservation impact from this is negligible and does not appear to justify unrestricted, unmonitored, unregulated killing. We would be interested to see any evidence from SNH to the contrary.

*Ruddy duck (licence 1) and Canada goose (licences 1,2, & 3)*

We accept that these non-native species cannot, by definition, suffer any meaningful conservation impact. However, where they are known to pose conservation threats to other species – as evidenced for ruddy duck – this should be dealt with by properly funded, targeted action – as has been the case for ruddy duck. The random, free-for-all approach provided by GL inclusion cannot properly address such issues and may even compromise the efficient operation of any targeted approach. Where the evidence of damage is somewhat speculative, as with Canada goose and licences 1 and 3, the justification is unclear. In short, we would advocate a more rational approach to the licensed killing of non-native species rather than simply putting them on GLs on the

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<sup>1</sup> Harris et al., 2016. *The Breeding Bird Survey 2015*. British Trust for Ornithology Research Report **687**. BTO, Thetford.

basis that 'it can't really do any harm' or that it thereby appears that the authorities are 'doing something'. This seems a somewhat slapdash approach to the serious issue of invasive non-natives. Any rational approach should also include evidence-based assessment, of impacts and of anticipated future impacts, from other non-native bird species. In short, the GLs are not an appropriate tool for effective INNS management.

#### *Feral pigeon*

We take no issue with the licensed killing of feral pigeons under either licence 2 or 3. It would be useful to understand, however, how SNH resolves the question of the relict, wild rock dove population whose behaviour and status does not appear to justify the unrestricted, unmonitored, unregulated killing which the GLs authorise. Whilst the term 'feral pigeon' appears to exclude rock doves, the WCA requires that the scientific name be used as the ultimate legal identity of a species and feral pigeons and rock doves are, of course, one and the same in this respect.

#### *Wood pigeon*

It appears that the presence of wood pigeon on GLs is often used as a cover for what is purely sports shooting of the species. There is no reason – certainly no legal reason – why woodpigeon cannot be included in the WCA schedule authorising hunting but no UK administration has seen fit to do this so woodpigeon is not a quarry species. We understand that such a change is beyond the scope of the GLs and therefore of this consultation. We would nevertheless be interested to know SNH's views on this issue but note that we do not oppose the inclusion of woodpigeon on licence 2 (see above re licence 3).

**Q4. Bearing in mind the key principles of General Licences outlined earlier, do you consider that any other species should be added to these Licences? If so, which species and on which Licence(s) and why?**

Yes

#### *Pheasant to licences 1 and 3*

The option to kill pheasants when they are present in very high concentrations (from neighbouring ground) and pose a threat to the conservation status of local plant and invertebrate communities should be available. No current GL is competent to do this although legal scope exists to draft a licence under WCA s.16(1)(cb) or to modify licence 1 to encompass ss.(1)(cb) to an appropriate extent.

There is an issue of public (road) safety where very large numbers of pheasants are released close to public highways. We accept that it is difficult to envisage how inclusion on GL3 might actually mitigate this in practice since the local authority is the 'authorised person' in this instance and then only on the highway itself, but we draw attention to it in case SNH wishes to consider it or to bring it to the notice of another appropriate authority.

#### **Reporting requirements**

Where General Licences permit activities affecting species on the BoCC red list we will ask users to report back on actions carried out. As the lesser black-backed gull is not on the BoCC red list we are proposing to drop the need for operators to report on activities affecting this species.

**Q5. What is your view on the proposal to drop the reporting requirement for the lesser black-backed gull on General Licence 3?**

We strongly oppose this. The proposal appears to be for administrative convenience rather than for any conservation purpose. LBBG remains on the amber list of BoCC and we see no justification for not monitoring the risk of it becoming red-listed as a result of continuing to allow unrestricted, unmonitored, unregulated killing.

We would argue strongly, in more general terms that, if they are to be considered fit for purpose, the GLs need much greater monitoring of use and not less.

**Alternative licensing approaches**

Whilst we are not proposing to add any species to General Licences 1, 2 or 3 in this consultation, there can be demand for licences in relation to other species in parts of Scotland at particular times of year. Where a situation may not fit with all of the key principles of General Licences we can issue individual licences or develop more novel or adaptive approaches. We are interested in your views on the merits of exploring alternative licensing approaches in these circumstances. An example might be the development of regional or collaborative licences for specific areas where serious damage may be experienced by species such as greylag geese or raven. Such licensing solutions could permit more flexible and adaptive approaches to addressing problems whilst ensuring that they are appropriately monitored or controlled to ensure that they are effective and proportionate.

**Q6. What are your views on exploring novel licensing approaches? What sorts of issues might they be useful for?**

In addition to raven, we are aware, from time to time, of advocacy to place *inter alia* buzzard, sparrowhawk, black-headed gull and common gull on one or more GLs. We see no justification to do this for a range of reasons specific to the species concerned. The issue of alternative approaches to GL inclusion appears to us to be beyond the competence of a consultation on GLs themselves. It is too large and complex an issue with profound implications and cannot be adequately addressed in a single-answer, as an add-on to consulting on GLs. We would expect to be included in specific and detailed separate consultation on any such proposal. As to the general idea that such type of licence might be developed, we accept this in principle, with the reservation that there is much scope for a great deal of devil in the details.

We remain concerned that none of the General Licences are currently “appropriately monitored or controlled” since SNH has no indication of how widespread the use of these licences is and since there is no public authority undertaking monitoring of adherence to licence conditions. On that basis, the claim that novel licence models would be given appropriate scrutiny is unconvincing especially when terms such as “flexible” and “adaptive” are also used, since these are sometimes merely euphemisms for further relaxation of regulation.

**Trap operation**

We want to ensure that traps permitted for use under General Licences are effective at capturing target species whilst minimising welfare risks and the incidence of capture of non-target species. SNH commissioned research about cage trapping to improve understanding of current corvid trapping practices, the impact on target species and welfare implications. This research is now

complete. We disseminated the results to key parties at an event in May 2016 and the final report will be published during the course of this consultation. We are proposing to make several changes to General Licences 1, 2 and 3 in light of the results of this research. The cage trapping research results indicate that the general prescriptions in General Licences 1, 2 and 3 for trap operation work well in relation to animal welfare but improvements are possible. Given the range of traps that can be used and the variety of situations in which they can be employed it may be difficult to cover all eventualities, circumstances and prescriptions within each General Licence. One way to improve the clarity of General Licences whilst also allowing for better guidance on how traps are used in practice would be to remove detailed prescriptions and develop a Code of Practice which would have to be adhered to as a condition of the Licences.

**Q7. Would you support the development of a Code of Practice on trapping under General Licence? What should the Code contain?**

No.

Potentially we support the principle of a CoP but, as proposed here, this appears to be a substitute for detailed, legally binding licence conditions (and not even all of the current conditions are actually enforceable). Without knowing how a CoP would contribute to enforceable compliance, we cannot answer 'yes' to this question.

See our remarks below about better regulation (Q13).

The commissioned research referred to has provided useful information but its scope and therefore value is limited (to an extent fully understood by the researchers). Our view is that it gave some (limited) insight into trap use by those who are generally minded to remain within the law. What it did not address was the widespread abuse of traps that the GLs so easily facilitate whereby users may purport to be carrying out legal predator control but are actually targeting protected species. We have seen no initiative from any public authority directed at dealing with this issue. This remains our most pressing concern with regard to the GLs. As proposed here, it seems that a code of practice is likely to exacerbate this already poor situation.

**Trap types**

We are aware that there are some commercially available trap types which cannot be used under the existing General Licences. Some of these traps operate using similar principles to those which are permitted, such as those commonly set to trap feral pigeons. Other trap types do not appear to pose welfare risks or risks to non-target species.

**Q8. Should we define and include additional trap types which can be used? If so, which traps and why?**

No.

Before new trap types can be used, we recommend that thorough testing by independent organisations is carried out. Only when there is scientifically robust evidence that new trap types are humane and of low risk to non-target bird and mammal species should these be authorised and only then if there is also good evidence that novel designs provide a significant additional capability beyond that of tried and tested Larsen traps.

Crow control should otherwise be limited to Larsen traps and to shooting.

**Q9. Are there any traps that we should specify must not be used under our General Licences 1, 2 or 3? If so, which traps and why?**

We remain concerned that the design of so-called Larsen Mate traps is not sufficiently standardised, and that poorly-designed, home-made traps present an inherent risk of injury to birds. Therefore, we advocate they be removed from the list of approved traps.

We are also concerned that they have been used to target species not listed under the GLs. The ban on using meat as a bait seems to have reduced this risk. However, as the commissioned research highlighted, some species (i.e. large corvids and intermediate-sized raptors, such as buzzards) may get their head caught outside the trap, with a risk of the bird suffering many hours of distress.

We also advocate the removal of multi-catch traps from the list of traps that can be used under these licences. These traps are highly non-selective, and we have documented a wide-range of species, from wheatears and mistle thrushes to golden eagles, that have been captured in these cages. We repeat earlier concerns that such traps may not be possible to operate in compliance with the terms of the Birds Directive. Also, it is not possible to identify which birds held within these cages are intended to be a lawful decoy. At the very least we suggest that, if the use of these traps is to remain permissible, a single, identifiable decoy bird should be constrained in a separate compartment (and provided with adequate food, water, shelter etc.)

**Baits**

The cage trapping research identified that the use of Larsen mate ('clam'-traps) and Larsen pod traps do not raise significant welfare concerns for trapped species (target and non-target). Currently the use of meat-based baits with these traps is not allowed, but users and the trapping research suggest that this restriction makes the traps very ineffective at certain times of the year. Permitting the use of meat baits with Larsen mate and Larsen pod traps on General Licences 1, 2 and 3 providing operators tell us they are using these traps and what is caught, may be one way of enabling them to be used more effectively for the purpose of the General Licence whilst enabling us to better monitor and understand their use. Note that this proposal is relevant to our proposals for registration of trap operation (see below).

**Q10. We welcome your views on this proposal.**

See also our response above to Q9 (our second paragraph).

Our understanding of the trap research results is that the use of meat baits strongly increased the risk of non-target species, especially buzzards, being caught. Given our concerns about deliberate abuse of GL traps and given the total lack of any initiative from SNH to address this, we would be very strongly opposed to the reinstatement of meat baits.

**Registering traps used under General Licence**

The cage trap research identified problems with the current police system for registering details of trap operators. One possibility is that SNH take on responsibility for registering trap operators. This approach may also help with raising awareness and improving communication with General Licence users.

**Q11. What is your view on SNH registering details of trap operators?**

We support the idea of a registration system. This should form part of a wider system of better regulation (see below under Q13)

Having a registration system that is fit-for-purpose is more important than the identity of the registration authority, though we see no reason why this should not be SNH.

**Q12. If SNH does take over this role, how could we make the system work so that operators are clearly accountable for traps whilst at the same time retaining sufficient flexibility to ensure trap deployment is effective?**

The most important elements of registration system are that it should easily identify those responsible for day-to-day operation of a trap without any confusion as to the meaning or use of terms such as 'operator' or 'owner', and that this information should be readily accessible to the police and/or other competent public authority at all times (i.e. not just during normal office hours), something that SNH might not be able to provide.

It is essential that any system can quickly and accurately identify the operator or operators of any individual trap.

Notwithstanding that any registration system should be an integral part of a wider system of better regulation (see response to Q13 below) we suggest that:

- Any person who sets a trap must have an identification number. An identification number should only be issued to individuals who have been trained to operate such traps on an accredited course.
- An identification number should be displayed on a tag fitted to each trap being operated by that individual.
- The identification number which appears on a tag fitted to a trap is presumed in any proceedings to be the identification number of the person who set the trap.
- Any person who has an identification number must keep a record of the following:
  - a) The location of every trap set by the person which remains in position
  - b) The date(s) on which the trap was set
  - c) The date(s) on which the trap was unset
  - d) in relation to each bird caught in a trap, the species of bird and the date it was trapped.
- For the purposes of (a) & (b) above, the location of a trap is to be recorded.
- Any person who, without reasonable cause, fails to comply with the duty above, is guilty of an offence.
- Any person who is requested to produce the records kept (as outlined above) to a constable; and fails to do so within 21 days of being so requested, is guilty of an offence.



## Additional comments

### Q13. Do you have any other comments about General Licences 1, 2 or 3?

We have an underlying concern that GL 1 is routinely used to kill otherwise protected wild birds in order to provide an unnaturally high shootable surplus of legal quarry species. This is illegal. It is not an issue we are aware that SNH has made any attempt to address.

The other concerns we have outlined in respect of GLs 1 to 3 are in the context of the following direct experience.

During the period 2002 to 2015, RSPB Scotland has documented 249 confirmed incidents related to the misuse or deliberate abuse of crow traps. These include:

88 cases of set crow traps in illegal circumstances, including (post 2008) 38 incidents of no tag being fitted to the trap.

85 cases of unset crow cage traps in illegal circumstances (2013-2015), with 79 of these relating to a failure to remove or secure the door.

23 cases of set Larsen traps in illegal circumstances, mostly concerned with lack of provision of food/water/shelter for a decoy bird.

3 cases of set Larsen Mate traps in illegal circumstances, all with illegal baits ( one also had no tag).

18 cases where birds of prey were found in traps. As a result of these cases there were three prosecutions largely related to failure to check traps within 24 hours, with birds found starved to death, or with the deliberate killing of trapped birds of prey.

As an example, in just one year, 2012, when RSPB Scotland Investigations staff made efforts to undertake widespread monitoring of crow trap use in Scotland, we found:

- A trap not being checked for a period of 64+ hours, despite it being set and containing a live crow decoy
- A goshawk captured by a Larsen trap, baited with a jackdaw, being bludgeoned to death
- A goshawk, caught in crow trap, being stuffed into a bag and “taken away”
- A buzzard caught in a Larsen trap (on the same estate) also being removed and stuffed in a bag
- A set Larsen-mate trap, baited with a grouse, that had sharp points along either side of the jaws “likely to cause injury”.
- In two cases, a buzzard and a golden eagle were caught in illegal baited spring traps set adjacent to “legitimate” crow traps at high altitude; presumably the decoy bird in the trap acts as lure to attract a bird of prey close, then the bait beside the trap is an easy source of food.
- Two Larsen traps with jays being illegally used as a decoy.
- The decomposed remains of a buzzard stuffed in a tree-hole, adjacent to where a Larsen-mate trap was deployed
- A pheasant decoy in a fixed crow cage trap, (close to a Goshawk nest site)

- 18 crow cage traps apparently not in use, but with unsecured doors
- 12 set crow traps with no tag
- 1 set Larsen-mate trap with no tag
- Small Larsen-type traps set in woodland rides or under cover, clearly targeting birds of prey, likely to be *Accipiter* hawks
- Derelict traps – abandoned with no evidence of recent use, but still capable of catching birds

We remain concerned that the commissioned trapping study has not addressed issues related to the wider matters of design, date of use and the placement of traps. There is clear evidence that a significant number of operators use the General Licence system to deliberately target birds of prey, with several successful prosecutions for such activities. Obviously, however, as with all raptor persecution cases, prosecutions are rare because identifying the individual responsible is very difficult.

Even non-target species that are not deliberately captured are likely to suffer from impaired breeding performance if birds that should be incubating or feeding dependent young are held in a trap for up to 24 hours. We, therefore, wish to see the checking regime tightened up to twice within a 24 hour period, with at least 8 hours between daily checks during the period March 1<sup>st</sup> and July 15<sup>th</sup>. If this is impractical for operators, they may have too many traps in operation in relation to available personnel.

We strongly advocate better overall regulation of trap use under GLs 1 to 3. This should include a registration system as outlined above(Q11 and Q12). Elements from the snaring and bird-ringing regulatory systems could be used as a model, e.g. the following (indicative rather than definitive):-

- Participation in a mandatory course that teaches and demonstrates the use of various trap types. Best organisation to run such a course would be BASC and GWCT.
- Record keeping of birds and mammals caught in each trap, and how many of them were killed or released.
- Recording of trapping effort (i.e. the number of traps, the number of days each trap has been in operation and bait types used).
- Recording of injuries and fatalities on animals likely to have been inflicted whilst in the trap.
- Mandatory submission of data recorded under 1 and 2 to SNH's licence team, so that a better picture of what is being caught in the different trap types is available.

We anticipate that this suggestion will be met by resistance from some quarters, but as other groups involved in trapping birds, mammals and fish have reporting duties (e.g. bird ringers, bat surveyors trapping bats, salmon and sea trout anglers in Scottish rivers and marksmen in the debated badger cull in England) it is inconsistent not to apply similar standards to GL use.

At the very least we advocate that all trap operators should submit an annual return, listing the locations of traps, number and type of species captured and dates on which these occurred. While none of our outline proposals here address the issue of deliberate trap abuse, they have the potential to reduce unintended bad practice and to provide SNH with some meaningful measure of the impact of legal GL use.

We have yet to see any initiative from SNH seeking to address the pressing issue of deliberate abuse of GLs 1 to 3, in particular the targeting of birds of prey. To date we have seen only initiatives that

are likely to improve the way users who are seeking to make legitimate use of traps etc. behave and although we acknowledge the effort put in to this, it avoids the very issue that causes us most concern.

## **6. General Licence 4**

General Licence 04 /2016: To kill or take certain birds to protect air safety

General Licence 4 permits the killing or taking of certain birds for the purpose of air safety. Many Scottish airports operate under General Licence 4. Some of these airports also use individual licences to enable action against other species to ensure air safety. Operating according to a combination of general and individual licensing requirements is not ideal for airport managers or SNH. To streamline licensing procedures and ensure more tailored planning to manage the risk of bird strikes, we propose to remove General Licence 4 and work with operators to develop simple airport-specific licences, tailored to the particular species issues at individual airports.

### **Q14. What is your view on our proposal to remove General Licence 4 and develop individual licences with Scottish airports?**

We support this in principle but only if the resulting licences are available for public scrutiny, including all information regarding the location at which any licence applies.

The nature of the air safety licence is already such that it might more accurately be described as a 'class licence' rather than a general licence since it is (naturally enough) restricted to being used only by those who have an involvement with airfield management. That being so, there is a logic to no longer including this within the general licences, subject to the essential need for continued opportunity for public scrutiny.

## **7. General Licences 5 – 10 and 11**

### **General Licences 5-10**

General Licence 05/2016: To capture red grouse to administer medication.

General Licence 06/2016: To keep disabled, wild-bred Schedule 4 birds for rehabilitation.

General Licence 07/2016: To keep disabled, wild-bred Schedule 4 birds for veterinary treatment.

General Licence 08/2016: To rear chicks from captive-bred Schedule 4 birds.

General Licence 09/2016: To permit the competitive showing of certain captive-bred live birds.

General Licence 10/2016: To keep certain captive-bred live birds in show cages for training purposes.

### **Q15. We have no proposals to change these Licences but welcome your comments on their content and use.**

Regarding GL 5:-

Strictly speaking, this GL does not provide the right *per se* to capture grouse for medication but authorises only a means to do so – lamping/netting – which would otherwise be illegal. The underlying right to capture is in statute (WCA s.2(3C)).

This right stems from an amendment to the WCA provided by WANE which was introduced at a relatively late stage of the WANE Bill process with little or no consultation.

Whilst we fully understand that the GL is not competent to remove or modify this underlying right, it has some scope to restrict it (as it already does by requiring a 'close' season). The matter is, in any case, of sufficient environmental importance to justify drawing attention to certain issues here.

These are:-

- That the wider environmental impacts of substances typically used, such as acaricides and anthelmintics, are poorly researched and understood (e.g. c.90% of active constituent of certain medicines is said to be excreted and thus remains on or runs off the moor)
- That the timely withdrawal of use to avoid medicines entering the human food chain is not monitored/regulated
- That proper veterinary supervision of use is unlikely to be taking place
- That the long-term risks of resistance by disease to medication have not been assessed (the whole principle of mass medicinal treatment of an entire, albeit local, wild animal population needs proper risk assessment)

We have no current comments regarding GLs 6 - 10

### **General Licence 11**

General Licence 11/2016: To sell certain live captive-bred species of wild bird.

General Licence 11 permits the sale of certain captive-bred species of wild birds. We recognise that future changes to the way the trade in captive-bred birds is regulated in Britain are likely given the results of the Defra, Welsh Government and the Scottish Government joint consultation in 2015. We are not proposing other changes to General Licence 11 pending possible change in light of the joint Defra consultation.

**Q16. However, we welcome your comments on its content and use.**

We continue to have the same concerns regarding GL 11 that we have expressed in previous consultation responses on the GLs, both to SNH and to the Scottish Government/Scottish Executive. However, we note the possibility of changes to legislation and would expect to see consultation on any proposals in due course, to which we will respond.

## **8. General Licences 12-14**

### **General Licences 12-14**

General Licence 12 /2016: To sell feathers and parts of certain dead birds which have been captive-bred or legally taken from the UK.

General Licence 13 /2016: To sell certain dead birds which have been captive-bred or legally taken from the European Union.

General Licence 14 /2016: To take unsuccessful eggs laid by wild birds from nest boxes

**Q17. We have no proposals to change these Licences but welcome your comments on their content and use.**

We have no comments on these licences.

## **9. General Comments**

**Q18. Do you have any further comments to make on General Licensing in Scotland?**

We note that SNH do not wish to receive any comment on the ‘key principles’ underlining the GLs (Section 2 ‘Background’, above). However, we feel that it is not possible to comment objectively on the GLs without also alluding to the underlying principles especially since the key principles seem to us to be flawed.

There are five key principles stated.

- *That they [i.e the GLs] cover relatively common activities addressing well-established issues or situations where people may otherwise inadvertently be at risk of committing offence*
- *That the actions permitted follow relatively standardised practices*

The vagueness of the language, “relatively common activities”, “relatively standardised practices”, gives little confidence that the licences are based on clear, defined issues in relation to which there is an evidenced need to carry out the killing of otherwise protected wild birds. See also the preamble in our response to Q3 above. Essentially, GLs are founded on a historic, unregulated legal landscape and the inclusion of species is not based on specific evidence of damage but on the vague notions above and on the accident of historic habit.

- *That they cover situations where we accept that there may be no other satisfactory solution*

Section 16(1A)(a) of the WCA is very precise. A licence may only be issued when there “is” no other satisfactory solution, not when there “may be”. Again, a vague principle is applied where the law requires a precise situation. We do not see that SNH can escape this criticism simply by replacing “may be” with “is” since the almost total lack of regulation that attaches to the licences means that they can never have any way of knowing what circumstances are used to justify any single use of a GL.

- *That their use will not compromise the conservation status of the species affected*

There is an almost total lack of regulation applied to the use of the licences (the self-confessed “light touch approach”). There is therefore little or no information as to the temporal and spatial scale and the nature of use. Thus it is difficult to see how it can be possible to measure GL conservation impact other than by relying on vague, subjective intuition. Note that our concerns extend to the impacts on non-target species as well as target species and to circumstances where GLs are abused as well as to cases of non-deliberate by-catch.

- *That their conditions, including reporting requirements and other responsibilities placed upon users, will be proportionate to the potential risks of what is permitted*

Again, the almost total lack of regulation applied to the use of the licences mean that scale of the potential risk is not measured. It is therefore impossible to calculate the proportionality of the risk and any claim to be proportionate is thereby spurious.