

Species Licensing Review - Terms of Reference

Introduction

In January of this year the Scottish Government committed to carrying out a review of NatureScot's species licensing functions.

This review, commissioned by Scottish Ministers, will set out to:

- ensure that the law is being applied correctly and that lethal control is only licensed where the conditions required for such a licence are demonstrably being met
- assess the potential to apply the principle of full cost recovery to species licensing
- assess the potential to introduce a public register of licenses to improve transparency, bearing in mind data protection and safety of licence holders.

The conclusions will be subject to external review.

The review will be carried out in the context of the Better Regulation principles and the Scottish Regulators Code of Practice.

Background

NatureScot is the licensing authority for a broad range of species licences and issues approximately 6,000 species licences a year over 90 different types of licences. As a result of the Wildlife management & Muirburn (Scotland) Act 2024 this number is set to increase. Licences are issued for purposes set out in a range of legislation, including for health and safety and prevention of damage. The licensed activity includes lethal control.

Species licences allow actions and activities to be carried out which could otherwise constitute an offence. Legislation sets out specific activities which can be licensed, generally described as licensable purposes. An application for a specific licence needs to demonstrate that it will meet the licensable purpose(s) and any other tests or conditions set by the legislation.

Over the years there have been requests for information on the number of species controlled under licences and the purposes for which those licenses are issued. There have also been discussions, including recently through the Wildlife Management & Muirburn (Scotland) Act 2024, on the need for cost recovery to recoup some of the administrative costs associated with issuing a licence and on the opportunities for more openness and transparency with regard to licensing.

This review will provide clarity around the current licensing approach and an opportunity to identify potential improvements.

Structure of the Review

The three elements of the review will be developed separately:

- Licensing lethal control

This section of the review will be undertaken by Law Firm Harper Macleod. They will be instructed to review the procedures which NatureScot has in place for licensing lethal control, and report on compliance with the relevant legislation.

- Potential to apply the principle of cost recovery

This section of the review will be undertaken by NatureScot licensing staff with input from internal stakeholders. It will identify and assess options for different approaches to cost recovery, including identifying different categories of licences. It will build on previous assessments and will recommend a way forward.

- Potential to introduce a public register of licences

This section of the review will be undertaken by NatureScot licensing staff and those involved with the current NatureScot on-line licensing project. It will identify options to develop a public register of species licences and explore how the on-line licensing system can be used to gather information to help develop a public register/portal for searchable information on licences.

Main areas to be covered in the Review

The findings of the Review will be presented in a report which will be subject to external review before being presented to Ministers. This report will include the following:

Licensing of lethal control

- Summary of the key legislation which underpins species licensing and lethal control, including the statutory tests for licensing lethal control:
 - Wildlife and Countryside Act 1981 (as amended) / Birds Directive
 - Conservation (Natural Habitats &c.) Regulations 1994 (as amended) / Habitats Directive
 - Protection of Badgers Act 1992 (as amended)
 - Deer (Scotland) Act 1996
- Summary of NatureScot's procedures for assessing applications and granting licenses for lethal control
- Assessment of whether those procedures comply with the relevant legislation

Potential to apply the principle of full cost recovery

- Review of previous assessments and current opportunities to develop cost recovery approaches
- Identification and assessment of options for different approaches to cost recovery, including identifying different categories of licence
- Consideration of the benefits and any potential unintended consequences
- Recommend a way forward

Potential to introduce a public register of licences

- Identification of the key characteristics and purpose of a public register
- Identification of the key considerations e.g. GDPR compliance
- Exploration of how the on-line licensing system can be used to gather information which could be used to help develop a public register/portal for searchable information on licences
- Exploration of options to develop a mechanism to provide this information i.e. building/developing a portal/public interface
- Recommend a way forward

Exclusions

The species licensing review will focus on the three aims set out in the introduction. It will not assess the legislation itself, or look at specific licences or applications, but will assess whether the procedures which NatureScot have in place comply with the legislation.

Stakeholder engagement

A number of stakeholders have expressed an interest in this species licensing review. We will contact all interested stakeholders in early June to provide them with a link to these Terms of Reference. Shortly after we will circulate a focused stakeholder questionnaire seeking broad feedback on the three sections.

Timetable

The timetable below is indicative. We aim for the report to be ready for external review in Autumn 2024.

By mid-July

- First draft of report from Harper Macleod on the assessment of whether or not 'law is being applied correctly'
- First draft of assessment of cost recovery options
- First draft of options to develop a public register

By mid-August

- Second draft of outline content of each of the three sections

By mid-September

- Detailed final draft report
- Seek broad feedback from stakeholders
- Seek sign off for the whole report

By beginning of October

- Agreed final version ready for external review

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