

Appendix 1: Issues with new Crow General Licence GL26, identified by the NGO

NGO evidence for General Licences. Appendix 1 & 2

General Comments:

The new licence runs to 11 pages. The one it replaces had 5. The new licence also cross references to other Natural England documents, some old, some just published by NE, which contain many additional requirements and conditions.

Overall, the increase in restrictions, conditions and definitions in the new licence, over and above the revoked licence, is immense.

Because of its length, complexity and cross referencing to other equally lengthy documents, the new licence is very hard to interpret. Many who work in the rural sector are finding it impossible to understand, through no fault of their own.

As far as those who wish to rely on the licence are concerned, it effectively changes the law on what they can and cannot do, and it does so in many substantive and highly restrictive ways.

It is extraordinary that NE can make such changes without prior public consultation or any opportunity for scrutiny by Parliament or anyone else.

Licence Paragraph	What it says (None of these were in the old GL04 General Licence)	Comments, Questions and Potential Implications
Overview	Control is only allowed where, "Reasonable steps to prevent predation by lawful methods have been and continue to be taken".	Users of the revoked GL04 only had to be satisfied other, non-lethal, methods would not work. They did not have to try them
Overview	Users are advised to keep a record of problems and the use of non-lethal methods.	Previously there was no advice that records should be kept. Licence users could just get on with the job.
Licence Terms and Conditions 3	GL04 used the definition of 'livestock' in Section 27(1) WCA: <i>"Livestock includes any animal which is kept (a) for the provision of food, wool, skins or fur; (b) for the purpose of its use in the carrying on of any agricultural activity; or (c) for the provision or improvement of shooting or fishing."</i> The types of 'livestock' for which the new licence may be used are additionally	This means, for example, that you can no longer shoot a crow that is pecking out the eyes and tongues of young calves, goats, llamas or alpacas. Farmed deer would also be excluded. It is a completely illogical and unjustified additional restriction. What is wrong with using the definition actually in the Act under which the general Licences are issued?

	limited to: "Sheep (including lambs) • piglets • domestic poultry and waterfowl and • reared gamebirds and wildfowl (including released birds while they are kept*)."	
Licence T&C 6	<p>Revoked GL04 allowed 'any otherwise lawful methods'.</p> <p>The methods permitted by the new licence are limited to: • Shooting with any firearm, including semi-automatic* firearms, shotguns or air guns • Pricking of eggs • Oiling of eggs using paraffin oil (also known as Liquid Paraffin BP or light/white mineral oil) • Destruction of eggs and nests • A Larsen* trap • A multi-catch* cage trap • Falconry • Hand-held or hand-propelled nets • By hand</p>	<p>Why make this change? It removes flexibility and the possibility of other lawful methods not listed (maybe not yet invented).</p> <p>And it imposes unnecessary detail, eg. defining the precise products which you must use if oiling an egg.</p> <p>No justification for the change has been offered, as with all the others. NE merely says they were 'all needed to address the legal action' they were facing. Well, Wild Justice has now released the terms of its challenge and it required none of these changes of detail whatsoever, even if it had got as far as being upheld in a court.</p>
Licence T&C 6	Restricts cage traps allowed to Larsen or 'Multi Catch' cage traps, which it defines as large enough for a man to enter. Any other sizes (which used to be permitted by revoked GL04) are thus now illegal.	The new licence defines a 'Larsen trap' in a way that appears to prohibit the use of a Larsen Mate or similar cage trap. Larsen Mates can be far more efficient than conventional Larsen traps. One typical upland gamekeeper catches 90% of his crows in Larsen Mates. And why define the size that a multi cage trap has to be – and so badly too. Does the man have to be able to walk into it or can he crawl?
Licence T&C 7	New licence "Can only be used by farmers and other keepers of the vulnerable livestock listed at '3' above, and by people acting on their behalf."	Revoked GL04 allowed licence use by any 'Authorised Persons', linking it to the definition in Section 27(1) WCA. The new restriction reduces flexibility and unforeseen circumstances and again has no justification, let alone in relation to the Wild Justice challenge.
Licence T&C 8a	GL31 usable, "Only as a last resort to prevent serious damage."	The old licence did not include this. Why has it been added?
Licence T&C 8b and Table 1	"Before using the licence reasonable endeavours must have been made to resolve the problem using the lawful methods identified in Table 1 (unless their use would be impractical,	The implication of this condition is to make the licence wholly impractical and, quite likely, impossible in law to comply with.

	<p>without effect or disproportionate in the circumstances) and any other lawful methods that may be appropriate in the circumstances.”</p> <p>Table 1 is long and detailed list of non-lethal approaches. It also cross references to a new 12-page ‘Good Practice’ guide that NE have produced on non-lethal approaches and Table 1 states that following this “will help demonstrate compliance with these requirements [of the licence]”.</p>	<p>How much non-lethal control do you have to have carried out for your endeavours to be ‘reasonable’? What definitions of ‘impractical’ and ‘disproportionate’ will be used?</p> <p>NE’s ongoing assurances that they will take ‘a proportionate and reasonable view’ of such things won’t apply to others seeking to cause trouble. NE needs to understand that shooting has an active opposition and that many police officers, too, are opposed to it. These matters <i>will</i> be tested in the courts and the evidential burden has been put on the user to prove they’re not guilty of an offence.</p>
Licence T&C 8c	<p>“Reasonable endeavours must continue to be made to resolve the problem using such appropriate lawful methods alongside use of the licence.”</p>	<p>Absurd and unworkable. In order to be able to rely on the licence, the user has to have proved that non-lethal options don’t work (see above), so what possible justification can there be for requiring their continuation whilst the licence is in use?</p> <p>Lethal controls such as shooting and trapping may not work either in conjunction with, say, gas guns.</p>
Licence T&C 8d	<p>“Only undertake lethal control of birds during the breeding season if lethal control at other times or use of other licensed methods (e.g. egg destruction) would not provide a satisfactory solution.”</p>	<p>How can a licence user know that non-lethal control at other times would not have provided a satisfactory solution. Its impossible. And the spring breeding season is the key time when control of crows is necessary, by gamekeepers and by farmers to prevent damage to young livestock, such as lambs.</p>
Licence T&C 8e	<p>Any person using the Licence, “Must be able to show, if asked by an officer of Natural England or the Police: (i) what type of livestock any action under this licence is protecting; (ii) what lawful methods have been, and are being, taken to prevent predation of such livestock by carrion crow or why the lawful methods have they have not been taken; (iii) what measures have been and are being taken to minimise losses to that livestock from other predators and causes; and (iv) why the threat of predation from carrion crows is sufficiently serious to merit action under this licence. Licence users are advised to keep</p>	<p>This is a particularly serious problem with the new General Licences (all of them).</p> <p>The old licences required a user to ‘be satisfied’ there was no other satisfactory solution (ie that non-lethal measures would not work). He now has to ‘show’ this if asked by the police or by NE. That is a wholly different legal test, requiring clear evidence, which the new licences expect the user to have. Some of the things you are required to ‘show’ (ultimately to the satisfaction of a court) could only be shown with certainty by a scientific research project and yet a licence user is expected to show such things not in the round but in relations to each and every use that he/she makes of the licence.</p> <p>It introduces a new reverse with the effect of law – a very serious</p>

	a record or log of predation and of efforts to address problems by legal methods.”	matter for which no approval or justification has been given.
Licence T&C 9a	“The use of traps and decoys under the authority of this licence must comply with the terms and conditions in document ‘Standard Licence Conditions for trapping wild birds and using decoys under a Natural England licence’ (WML-GU01)”	Yet more conditions and requirements that were never in earlier licences, introduced with no consultation, and yet which carry the force of law as far as licence users are concerned.
Licence T&C 11 and Advice Section	The licence cannot be used in protected sites (ie SSSI, SPA, RAMSAR etc), or within 300 metres of them, without first obtaining a further licence from NE, which is in addition to the usual consents for the purposes of Part 2 of the Wildlife and Countryside Act 1981 in respect to SSSIs. There is also a lot more detail on these restrictions in the ‘Advice’ section at the end of the new Licence.	No such restrictions applied under the old licences. Large parts of upland England are designated protected sites, as are many features on lowland farms. Add a 300m buffer, which has no basis in law, and the area where crows cannot be killed is huge. No justification for this additional and highly problematic restriction has been given and there has been no consultation of the public or Parliament. This is undemocratic rule by Quango.
Licence T&C 12	In the definitions, under ‘Prevent Serious Damage’, the new licence says: “The licence allows action to prevent damage which means the licence can be used if serious damaging is occurring or if there is a strong likelihood that it will occur in the absence of licensed action.” Table 2 then explains what amounts to “serious damage” for the purpose of the licence. This excludes “mere nuisance, minor damage or normal business risk.”	“Strong likelihood”; what is the evidential test for this phrase? How can a person know that there is a “strong likelihood”? In relation to kept gamebirds the licence says ‘normal business risk’ is the 60% expected loss of gamebirds that typically occurs between release and shooting and that, “The loss of some released game birds to crow predation is therefore not ‘serious damage’, it is an element of the normal business risk.” In extremis, therefore, a person could have to lose 60% of their young kept pheasants or partridges to crows before being able to use the licence.

Appendix 2: Issues with new Woodpigeon General Licence GL31, identified by the National Gamekeepers’ Organisation

The woodpigeon licence GL31 contains many of the same failings as the crow licence GL26. (The Canada goose licence GL28 likewise).

Licence Paragraph	What it says (None of these were in the old GL04 General Licence)	Comments, Questions and Potential Implications
3 and Table 2	<p>Defines 'serious damage' as <i>"damage to an economic or financial interest that exceeds mere nuisance, minor damage or normal business risk"</i>, referring to a new Table 2.</p> <p>Table 2 says, <i>"any person using this licence must be able to show, if asked by an officer of Natural England or the Police, what type of crop licensed action is protecting and why the threat of damage is sufficiently serious to merit action under the licence, notwithstanding the use of appropriate lawful methods to contain the threat. Relevant evidence will include examples of actual losses during the present year or in recent years."</i></p>	<p>Under this definition, does the licence allow home growers and allotment growers to control pigeons?</p> <p>The "Serious damage" definition is highly restrictive. What lesser damage could be viewed as a 'nuisance', 'minor damage' or 'normal business risk'? A plant which is eaten has suffered serious damage. How can a pigeon shooter show that damage to a particular crop is, or will become sufficiently serious to justify licence use? The licences says that evidence needed, "will include" (does this imply 'must include'?) examples of recent or present losses. If so, how does a pigeon shooter obtain such evidence? Dated video clips of pigeon eating a crop in a field?</p> <p>The definition does allow for use of the licence where no damage has occurred but there is a "strong likelihood" of it. But what evidence would be relevant here?</p>
6	Allows use of 'multi catch' cage traps for pigeons.	No traps of any kind are regularly used in wood pigeon control.
7	Licence can only be used by people growing crops or by those acting on their behalf.	What is the required nexus between the crop and where shooting takes place? Would shooting in a wood at roosting time (highly effective) or on stubbles to protect nearby crops be allowable? These two methods have been mainstays of pigeon control up till now. Is that for a court to determine? Again, inherent uncertainty.
8 (a) (b) and (c)	<p>Licence can only be used as 'a last resort'.</p> <p>Reasonable endeavours must have been made to resolve the problem/threat by non-lethal means, unless impractical, without effect or disproportionate.</p> <p>These measures must continue during licence use.</p>	<p>What definitions of 'reasonable', 'impractical' and 'disproportionate' will apply? Presumably the courts will decide.</p> <p>If all pigeon shooters have to make these endeavours, and continue them during shooting, it renders the licence wholly impractical. But how can they 'show' (see 8e below) that they need not deploy them?</p>
8 (d)	Licence users must, <i>"Only undertake lethal control of birds during the peak breeding season [defined in the licence as 'May to</i>	How can anyone know or show that in relation to each and every use of the licence? It's impossible.

	<i>September’] if lethal control at other times or use of other licensed methods (e.g. egg destruction) would not provide a satisfactory solution.”</i>	‘May to September’ (start and finish dates are not given) includes the major part of the crop growing period.
8 (e)	<i>“Any person using this licence must be able to show, if asked by an officer of Natural England or the Police: (i) what type of crop any action under this licence is protecting; (ii) what lawful methods have been, and are being, taken to prevent serious damage to such crops by woodpigeon or why the lawful methods have not been taken; (iii) what measures have been and are being taken to minimise losses due to other species and causes; and (iv) why the threat of serious damage from woodpigeon is sufficiently serious to merit action under this licence.”</i>	<p>Not only does a pigeon shooter have to have carried out the non lethal attempts to resolve ‘<u>the</u> problem/threat’ (ie. the particular, local problem/threat), or at to least know what they have in sufficient detail <i>to show</i> - and therefore presumably convince - NE or the Police, if asked, that the licence is being complied with. Hard to see how <i>any</i> pigeon shooting could be carried out with legal certainty on this basis.</p> <p>NE’s continual assurances that they will take a proportionate and reasonable view may be true but they won’t apply to others seeking to cause trouble. NE needs to understand that shooting has an active opposition and that many police officers, too, are opposed to it. These matters <i>will</i> be tested in the courts.</p> <p>The evidential burden has been put on the user to prove they’re not guilty of an offence. Many pigeon shooters will be reliant on actions and assessments by a third party (eg the farmer) to demonstrate they haven’t committed criminal offences.</p>
11 (a)	Licence cannot be used in, or within 300m of, any protected site (SPA, Ramsar, SSSI) which has a bird interest. Although NE “may subsequently publish” a list of such sites where this restriction would not apply. (Not yet published).	Not many crops will be on SSSI but there will certainly be SSSI woodland adjacent to crops where roost shooting needs to be carried out.
12	<p>“Crops” for the purpose of this licence refers to cultivated plants grown on a sufficient scale to have economic or financial value.</p> <p>“Strong likelihood” of damage: The licence allows action to prevent damage which means the licence can be used if serious</p>	<p>How is a court to determine “sufficient scale” “economic or financial value”? What is the justification for it? No inclusion of “reasonable” which would infer an objective test. Is the financial position of the potential defendant relevant? One patch of cabbages on an allotment has a financial value.</p> <p>“Strong likelihood”; what is the evidential test for this phrase? How can a person know that there is a “strong likelihood”? It could it not</p>

	damaging is occurring or there is a “ <i>strong likelihood</i> ” that it will occur in the absence of licensed action.	depend on the actions of other licence users, weather conditions, and other crops growing in the area? Again, this puts in a significant degree of uncertainty, particularly for third parties relying on evidence collected by a farmer or landowner.
Advice Section (ix)	<i>“Users of this licence are requested to exercise restraint when undertaking shooting or scaring activities during periods of prolonged severe weather and to extend the requirements of voluntary restraint and statutory suspension of wildfowling to activities undertaken under this licence.”</i>	Crop damage can be particularly bad in severe weather and pigeons are far less wary and therefore much more difficult to scare off crops already weakened by hard frosts. Shooting at such times has always been particularly important.
Advice Section (x)	<i>“IMPORTANT: this licence does not permit the killing of woodpigeons solely for commercial and / or recreational purposes, and only activities conducted in accordance with this licence are authorised. If there is evidence that this licence is being used inappropriately then Natural England may review this licence.”</i>	It is difficult to see a justification for including a requirement for the licence not to be used “solely for commercial and/ or recreational purposes”. It turns on the interpretation of ‘solely’. Does the prohibition of users relying on licence where action is solely for recreational imply that any third party acting to protect landowner/farmers crops must receive some form of remuneration for doing so? A large amount of pigeon shooting for control purposes is organised by professional ‘pigeon guides’, who bring parties of paying shooters to control pigeons on farms where the guide has negotiated permission to undertake the necessary control in this way. Is this ‘solely commercial’? Likewise shooting pigeons on a let game shooting day? Is that ‘solely commercial’? Is it ‘solely recreational’? Big question marks and legal uncertainties posed by this statement.
Scarring and Deterrents	Non-lethal attempts must, ‘Use a wide range of devices and methods, varying them as often as possible, and use active human scaring. Random movement, sound, and unpredictability help prevent the birds getting used to scaring devices.’	There will be many areas where taking much of the suggested action is unsuitable and could/ is likely to lead to action re noise nuisance either statutory or civil against the farmer/user such as around schools, hospitals or in fields close to built up/residential areas. This limitation needs to be recognised in the licence.