

The Rt Hon Theresa Villiers MP
Secretary of State
Department for Environment, Food and Rural Affairs
Seacole Building
2 Marsham Street
London, SW1P 4DF

29 July 2019

Dear Secretary of State,

Next Steps on General Licences for Bird Control

Our organisations collectively represent the majority of users of the General Licences for the control of birds in England. We would like to congratulate you on your appointment as Secretary of State for Environment, Food and Rural Affairs, and look forward to working with you.

Further to our joint letters to the then Secretary of State, the Rt Hon Michael Gove MP, of 27 April and 14 May 2019, and his meeting on 13 June with Ian Bell and Tim Bonner representing our organisations, we are writing to you now in order to suggest the future direction that General Licences (GLs) for bird control should take.

We first acknowledge that the three new GLs issued by Defra on 14 June (GLs 34, 35 and 36) went some way towards resolving the immediate crisis caused by Natural England's earlier revocations, and we have variously thanked the then Secretary of State publicly for doing that.

It is clear, however, not least from Defra's own response to its earlier 'call for evidence', that some big issues remain. Among them are the sheer complexity of the current licences, their exclusion of European protected sites, the additional and apparently unsupported inclusion of a 300m buffer zone around them and also certain changes of species on the licences compared to what went before. We had asked in our letter of 14 May, for new licences which covered all former species, were simple and easy to understand and which did not impact on bird control within designated sites, which is already regulated by other legislation.

We will, of course, be expanding on these points and others in our responses to the proposed Defra review later this year but we want to set out in this letter the overall direction we believe matters should now take. A big opportunity is presented by our departure from the EU and your own Department's proposed review of wildlife licensing. There is scope for bold Government which sets in place practical and workable licensing for the future; licensing that will help restore England's

wildlife, prevent serious damage to our farming and related industries and also protect the health and safety of the public.

But before looking forward, we want briefly to look back:

The GLs issued prior to 2005 were just two sides in length, simple and easy to understand. They also did their job and were entirely lawful both in terms of the Wildlife and Countryside Act 1981 (as amended) and the UK's obligations under the Birds Directive. Both statutes are clear that it is for the 'appropriate authority', the licensor, to be satisfied that there "is no other satisfactory solution" not the licensee (the person relying on the GL).

The judgement of RSPCA v Cundey, QBD 22 October 2001, simply clarified that reliance on a GL must only be for a purpose for which the licence had been granted. However, as a result of misapplication of that case, a new and unnecessary condition was introduced in the GLs to the effect that the licensee could only rely on a GL where they had 'satisfied' themselves that the non-lethal alternatives were not a solution.

It was this partial delegation of the responsibility of being satisfied which was the principal issue at stake in Wild Justice's threatened judicial review against Natural England and which triggered the recent crisis. Interestingly, the introduction of the additional condition in 2005 was limited to the GLs for preventing serious damage and protecting health and air safety. The introduction of the same condition into the GL for conservation purposes was only made in 2010.

Until 2015, the GLs also contained words taken verbatim from the 1981 Act. For example, the 2011 licence stated: "*Natural England has issued this licence in exercise of the powers conferred by Section 16 (1)(j) and section 16(5) of the Act, being satisfied that as regards the purpose set out at paragraph 1 there is no other satisfactory solution*". This wording was replaced in 2015 with new wording which states that: "*Natural England has issued this licence in exercise of the powers conferred by the 1981 Wildlife and Countryside Act (as amended)*." There seems no reason for this change and the absence of express wording reinforced the impression that the burden of being satisfied rested with the person relying on the licence, a further change – albeit perhaps an unwitting one – which nonetheless strengthened the legal hand of Wild Justice.

None of the many other additions made to the GLs since 2005 has been justified as being legally necessary and most simply complicate matters from the licensee's perspective without benefit. Animal welfare considerations, for example those about food and water, merely duplicate what is already required by law for all captive animals.

In light of this, there is no reason we can see that would prevent Defra or Natural England, or indeed the equivalent authorities in Scotland and Wales, from reverting in future to the much simpler form of licences pre-2005. Any alterations to those original texts would only need to reflect the few subsequent changes there have been to EU and UK law, together with any relevant case law.

As part of our preparation for your review, we are therefore collectively seeking Counsel's opinion on what wording some simple, pre-2005 type GLs could use in order to be practical and legally robust and, once we have it, we will make that text available to your officials as part of our response to your forthcoming review.

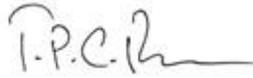
The simplicity we seek, with its clarity, legal certainty and therefore its potential longevity as a solution to the recent difficulties, will be crucial to the ultimate achievement of the important purposes for which the GLs exist. But conscious of the needs of our members we must also make reasonable preparation for the possibility that Defra may take a different route. You will therefore shortly be in receipt of letters from some of the individual signatories to this letter, reserving their own organisation's position in relation to challenging any unsatisfactory GLs in court.

It may be unusual for legislators to subsequently produce a simpler version of regulations they have already put in place, but this is what we believe is needed in this instance, and we stand by to help you deliver that.

Yours sincerely,



Ian Bell
Chief Executive
BASC



Tim Bonner
Chief Executive
Countryside Alliance



Tim Breitmeyer
President
CLA



Sir Jim Paice
Chairman
GWCT



Liam Bell
Chairman
NGO



Amanda Anderson
Director
Moorland Association



Dominic Boulton
Chairman
Game Farmers Association