

## RESPONSE FROM THE COUNTRYSIDE ALLIANCE

### NATURAL ENGLAND DRAFT INTERNAL GUIDANCE NOTE (SD/IGN/2016/001)

#### LICENSING LETHAL CONTROL OF BIRDS TO PREVENT SERIOUS DAMAGE

APRIL 2016

##### Introduction

1. The Countryside Alliance welcomes the opportunity to provide comment on this Natural England (NE) draft Internal Guidance Note (IGN). We understand that this IGN has been produced following the judgement in the High Court in the case of *McMorn v Natural England* which ruled in favour of the Claimant. We therefore welcome NE's efforts to implement Defra policy lawfully when licensing lethal control of birds to prevent serious damage.
2. The Countryside Alliance is broadly supportive of the process and criteria detailed in the IGN. However, we have some concerns about how this achieves neutrality and the use of evidence in the decision making process. We have severe concerns about the additional guidance document on "Non-lethal methods of resolving conflicts with birds". We believe that further consultation is needed with a broader range of stakeholders before this additional guidance can be used to determine Principle 1 of the IGN.

##### Internal Guidance Note

###### *Publication of IGN*

3. The Countryside Alliance welcomes the introduction of internal guidance for NE assessors but we believe that guidance should be publicly available. The publication of the IGN would enable potential applicants to consider whether reasonable grounds exist before making an application and, enable applicants to provide the necessary information.
4. The publication of the IGN is likely to result in applications being easier to assess which will reduce the administrative burden on NE and ensure that applicants receive a response as soon as possible. Publication of the IGN would also help increase transparency and accountability in the decision making process.

###### *Species neutrality*

5. The Countryside Alliance understands that the IGN is intended to be used for assessing applications for all species of wild bird for the purposes included in section 16 (1k) of the Wildlife and Countryside Act 1981. A key aspect of the judgement in *McMorn v Natural England* was the finding that it is un-lawful to have separate policies for separate species. It is essential that the IGN reflects this judgement.
6. The IGN is not only relevant to gamekeepers and the shooting industry but also to the agricultural and fisheries industries because of the need to take account of serious damage by wild birds on crops, livestock and fish stocks. The Countryside Alliance is concerned that the stakeholders approached for comment on the IGN appear limited to those involved in shooting and conservation. If the IGN is to achieve species neutrality and be applicable to all sectors where licences are required then it is vital that the interests of farmers and fishermen are taken into account and reflected in the IGN. It should also be noted that serious damage

is not limited to commercial interests and includes damage to non-game species including lapwing, curlew and sky lark.

7. We are concerned that the additional guidance on “Non-lethal methods of resolving conflicts with birds” is predominately focused on predation of gamebirds and preventing damage from buzzards. This calls into question the ability of this guidance to be used across all species and all sectors.
8. In order to ensure that species neutrality is central to the decision making process, we agree with The National Gamekeepers’ Organisation that this principle should be stated in Section 4 of the IGN. Differences in approach between species can only be justified if their conservation status would be adversely affected, as explained in Section 10 of the IGN.

#### *Existing guidance*

9. In order to ensure species neutrality, the existing species specific guidance documents on cormorants, gulls, geese etc. will presumably cease to have effect following the adoption of the IGN. It would be useful to receive confirmation from NE about which existing guidance documents the IGN will replace in order to assess the overall level of guidance which NE will be providing to assessors.
10. As previously mentioned (7) we are concerned that the additional guidance on “Non-lethal methods of resolving conflicts with birds” is predominately focused on predation of gamebirds and preventing damage from buzzards. This calls into question the ability of this guidance document to be used across all species and all sectors. We hope that NE do not intend on maintaining species specific guidance documents for assessing Principle 1 of the IGN, or any other Principles set out in the IGN, as this would be an obstacle to establishing a species neutral approach.

#### *Environment neutrality*

11. Serious damage caused by wild birds can occur in many different environments and it is essential that the IGN recognises this in order to ensure that there is no bias towards any particular type of environment.
12. In order to ensure neutrality we agree with The National Gamekeepers’ Organisation that in Section 7.2 of the IGN the words “*in the open countryside*” and “*for enterprises based there*” should be removed.

#### *Use of evidence*

13. The Countryside Alliance believes that evidence should be central to the decision making process. However, there should be no hierarchy of evidence and absence of one particular type of evidence should not be used as grounds to reject an application under Principle 2 of the IGN.
14. We agree with The National Gamekeepers’ Organisation that a new paragraph should be inserted at the end of Section 7 with the following words: “*In line with Defra policy, assessors need to determine applications on the available evidence. The absence of a particular type of evidence (e.g. photographic) cannot be cited as a reason for declining an application if other evidence which is available indicates that a licence should be granted.*”
15. Whilst evidence should be central to the decision making process, it is essential that assessors do not base decisions on evidence which it would be unreasonable or impractical to obtain. At present Principle 1 of the IGN can only be met if “*there is evidence that*” non-

lethal measures have been tried and proved ineffective. This might create a decision making process in which applications are only granted if every measure of non-lethal control has been attempted in every situation regardless of the merits of the individual case and the role of local knowledge and experience. In order to obtain “evidence”, the non-lethal measures might need to be tried and tested even if the assessor and the applicant believed such a measure would be ineffective, which would be counter-productive for both the applicant and NE.

### **Non-lethal methods of resolving conflicts with birds**

16. The Countryside Alliance has severe concerns about this guidance document forming the basis for determining Principle 1 of the IGN.
17. As previously mentioned (7 and 10) we are concerned that this guidance document is predominately focused on predation of gamebirds and preventing serious damage from buzzards. This calls into question the ability of this guidance document to be used across all species and all sectors. We hope that NE do not intend on maintaining species specific guidance documents for assessing Principle 1 of the IGN, or any other Principles set out in the IGN, as this would be an obstacle to establishing a species neutral approach.
18. The criteria used in this guidance document for assessing best practice in gamebird rearing is excessively high, and is above and beyond the existing statutory requirements for release of gamebirds contained in Section 9 of the Code of Practice for the Welfare of Gamebirds Reared for Sporting Purposes (2010). The Countryside Alliance will not support any conditions that exceed the existing statutory requirements. It should also be noted that some of the non-lethal measures set out in this guidance document would not only deter target species causing serious damage but also deter non-predator species and threaten bio-diversity.
19. We believe that further consultation is needed with a broader range of stakeholders including representatives from the agricultural and fisheries industries to ensure that this guidance document is practical to all species and all sectors where wild bird control is needed.