



Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdar air fad airson Alba air fad

General Licence Restrictions

Framework for Implementing Restrictions

Background

In 2013 Scotland's Minister for the Environment and Climate Change, Paul Wheelhouse, asked Scottish Natural Heritage to '*examine how and in what circumstances we can restrict the use of General Licences to trap and shoot wild birds on land where they have good reasons to believe that crimes against wild birds have taken place*'.

General Licences represent a relatively 'light-touch' approach to regulation, allowing persons to carry out activities without the need of applying for a specific licence. The rationale behind imposing a restriction on the use of General Licences is that light-touch regulation should not apply in situations where the regulator has lost trust or confidence.

This document outlines the approach that we have developed, with the Minister's approval, to implement restrictions on the use of General Licences.

Application

The procedure will only apply to General Licences 1, 2 and 3 which are granted for the following purposes:

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| General Licence 1: | To kill or take certain birds for the conservation of wild birds. |
| General Licence 2: | To kill or take certain birds for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables and fruit. |
| General Licence 3: | To kill or take certain birds for the purpose of preserving public health, public safety and preventing the spread of disease. |

Accordingly General Licences 1-3 now include the following wording: "*SNH reserves the right to exclude the use of this General Licence by certain persons and/or on certain areas of land where we have reason to believe that wild birds have been taken or killed by such persons and/or on such land other than in accordance with this General Licence*".

While the wording provides for the exclusion of individuals, it is the intention that where SNH has robust evidence that wild birds have been killed or taken or where there is intention to do so other than in accordance with a licence, SNH will exclude the area of land on which such evidence is found from General Licences 1, 2 and/or 3.

Individual restrictions will apply for a period of 3 years, but may be extended if evidence of further offences is obtained during this period.

Evidence

Decisions to impose a restriction will only be based on evidence received from the Police of an offence under the Wildlife and Countryside Act 1981 [“the 1981 Act”] having been committed in relation to wild birds and / or where the terms of General Licences were not being complied with. SNH has agreed an Information Sharing Protocol (ISP) with Police Scotland that allow the Police to pass on such evidence to SNH.

Examples of evidence recorded since 1st January 2014 which may be considered by SNH in any decision to impose a restriction include but are not limited to:

- Illegally killed birds being found on the land in question;
- Illegally poisoned baits being found on the land in question;
- Illegal poison and / or pesticides being found on the land in question;
- Cross-compliance decisions where the single farm payment has been withdrawn as a result of wildlife crime
- Illegal placement, design or use of traps or methods that are not in compliance with the requirements of the General Licences.
- Vicarious liability convictions relating to land on which General Licences are used.

The decision to restrict the use of a General Licence may be based on one or more pieces of evidence of this kind provided by Police Scotland to SNH and will be made on a case-by-case basis. In making a decision each piece of evidence will be assessed against criteria including:

- The strength of evidence that those activities had been carried out by owners or managers of that land
- The number or frequency of such instances
- The actual or potential conservation impact of those activities;
- The age of the evidence.
- Any history of previous, similar instances.

Recommendation to restrict

Evidence received by SNH from Police Scotland will be reviewed by SNH’s Licensing Manager. If, following that review, the Licensing Manager has reason to believe that wild birds have been killed and / or taken other than in accordance with the terms of a General Licence and considers that a restriction should be imposed, the Licensing Manager will recommend a restriction for SNH’s approval.

Notification

The Wildlife Operations Unit Manager will notify the owners and occupiers of the land in respect of which a restriction is recommended (“the Affected Parties”), in writing (“the Notification”). The notification will include a summary of the evidence on which the recommendation is based and will set out the reasons, the land to which the recommended restriction would apply and the duration of the recommended restriction (“the Decision Notice”). The possibility of a restriction being imposed will also be discussed with the Crown Office Procurator Fiscal Service to ensure there is no risk to any potential prosecutions.

Right to respond to a Notification

The Affected Parties will be entitled to submit to SNH, within 14 days of the date of the Notification, a written response to the Notification, setting out any reasons why they consider that a restriction should not be imposed.

The Wildlife Operations Unit Manager will review this in conjunction with the relevant Area Manager and the Director of Operations and where applicable will write to the Affected Parties to confirm that no restriction will be imposed.

The decision to restrict

Where no Response is received by SNH within 14 days from the date of the Notification, or where after considering any Responses that SNH continues to recommend a restriction, a restriction will be imposed. The Director of Operations will make the decision (in consultation with the Wildlife Operations Unit Manager and the relevant Area Manager) and notify the Affected Parties in writing of the decision to impose a restriction, the reasons for that decision, the land to which the restriction applies and the duration of the restriction (“the Decision Notice”).

The Decision Notice will also be published on SNH’s licensing web pages

The right to Appeal

Where a decision is made to impose a restriction, the Affected Parties will be entitled to appeal the decision within 14 days of the date of the decision. An appeal must be made in writing to SNH’s Director of Policy and Advice and must set out the grounds upon which it is proposed that the appeal be allowed.

An appeal shall have the effect of suspending the restriction from the date the appeal is received by the Director of Policy and Advice until the date of the Decision on Appeal, subject to the following exceptions:

- i) an appeal against the geographical extent of the restriction will only have the effect of suspending the restriction insofar as it applies to the geographical area to which the appellant contends the restriction ought not to apply;
- ii) an appeal against the period of restriction shall not suspend the restriction unless any shorter period contended for by the appellant expires prior to the date of the Decision on Appeal
- iii) There has been an actual breach in the conditions of the GL.

The Director of Policy and Advice must notify the appellant of the outcome of the appeal in writing, setting out the reasons for his decision (“the Decision on Appeal”) and would seek to do so within four weeks of receipt of a written appeal.

Extending a period of restriction

Where, during a period of restriction, new evidence is received by SNH which provides reason to believe that wild birds have been killed and / or taken, there is intention to do so, other than in accordance with the terms of a Licence and the Licensing manager considers that the existing restriction should be extended, the Licensing Manager will recommend to the Wildlife Operations Manager that the existing restriction be extended.

The procedure to be followed by SNH in the event that the Licensing Manager proposes recommendation to extend an existing restriction is the same as applies to a recommendation to propose a restriction, and the Affected Parties rights to respond to a Notification and to Appeal against a decision to extend an existing restriction are the same as in the event of a restriction.

Options available to landowners/managers under restriction

If an area of land is subject to a restriction on the use of a General Licence then it may be possible for persons working on that land to gain an individual licence to carry out activities that were previously permitted under General Licence. To do so they would need to apply for a licence directly to SNH licensing team. Any licence application would be judged on a case-by-case basis and would have to include the following information;

- Justification for the particular need for a licence in reference
- Justification for why there is no other satisfactory alternative to carrying out the licensed activity
- Detailed plans of the work proposed to be undertaken (e.g. what methods will be employed, and where, who would be carrying out the work etc.)

If a licence was to be subsequently granted it would be subject to strict conditions and compliance monitoring measures to ensure that those conditions are being adhered to and would place reporting requirements on the licence holder for all activities permitted.