



House of Commons
Regulatory Reform Committee

Proposal for the Regulatory Reform (Game) Order 2007

First Report of Session 2006–07



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*Report, together with formal minutes and
written evidence*

*Ordered by The House of Commons
to be printed 6th March 2007*

The Regulatory Reform Committee

The Regulatory Reform Committee is appointed under Standing Order No. 141 to consider and report to the House of Commons on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any "subordinate provisions order" made under the same Act.

Current membership

Andrew Miller (*Labour, Ellesmere Port & Neston*) (Chairman)
Gordon Banks (*Labour, Ochil and South Perthshire*)
Lorely Burt (*Liberal Democrat, Solihull*)
Mr James Gray (*Conservative, North Wiltshire*)
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Ms Angela C Smith (*Labour, Sheffield, Hillsborough*)
Mr Anthony Steen (*Conservative, Totnes*)

Criteria against which the Committee considers each proposal

Paragraph (6) of Standing Order No.141 requires us to consider any proposal for a regulatory reform order against the following criteria:

... whether the proposal—

- (a) appears to make an inappropriate use of delegated legislation;
- (b) removes or reduces a burden or the authorisation or requirement of a burden;
- (c) continues any necessary protection;
- (d) has been the subject of, and takes appropriate account of, adequate consultation;
- (e) imposes a charge on the public revenues or contains provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (f) purports to have retrospective effect;
- (g) gives rise to doubts whether it is *intra vires*;
- (h) requires elucidation, is not written in plain English or appears to be defectively drafted;
- (i) appears to be incompatible with any obligation resulting from membership of the European Union;
- (j) prevents any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (k) satisfies the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Regulatory Reform Act 2001;
- (l) satisfies the test of desirability set out in section 3(2)(b) of the 2001 Act;
- (m) has been the subject of, and takes appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation; or
- (n) includes provisions to be designated in the draft order as subordinate provisions.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/regrefcom. A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Mick Hillyard (Clerk), Stuart Deacon (Committee Specialist) and Liz Booth (Secretary/Committee Assistant).

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Summary

Overall recommendation

We have examined the proposal for the Regulatory Reform (Game) Order 2007 in accordance with Standing Order No. 141. We recommend unanimously that a draft Order in the form of the proposal should be laid before the House.

Outline of the proposed Order

The purpose of the proposed Order is to amend legislation governing the issuing of licences for the killing, taking and sale of game in England and Wales to bring it up to date and make it less onerous to observe.

The proposed Order would:

- Remove the requirement to hold a game licence to take or kill game;
- Remove the requirement for a local authority licence and an excise licence in order to deal in game; and
- Remove the restriction on dealing in game birds and venison during the close season, permitting sale all year round provided the game was lawfully killed.

The proposal for the Regulatory Reform Order was laid before the House by the Department for Environment, Food and Rural Affairs on 11 December 2006. We have considered the proposal against the criteria set out in paragraph (6) of Standing Order No. 141 and report the following conclusions to the House:

Criterion (a): appropriate for delegated legislation

In our view the proposal appears to be appropriate for delegated legislation.

Criterion (b): removal or reduction of burdens

The proposal would remove or reduce a number of burdens.

Criterion (c): maintenance of necessary protection

We are satisfied that no necessary protection would be lost.

Criterion (d): adequate consultation

We consider the proposal has been the subject of, and appropriate account has been taken of, an adequate degree of consultation.

Criterion (e): charges on public revenues, payments to the Exchequer or any public authority

The proposal would not impose any requirements of this kind.

Criterion (f): retrospective effect

The proposal would not have retrospective effect.

Criterion (g): vires of the proposal

The proposal gives rise to no doubts as to whether it is intra vires.

Criterion (h): requires elucidation, is not written in plain English or appears to be defectively drafted

We do not consider the proposal gives rise to any concerns of this kind.

Criterion (i): compatibility with membership of the European Union

We have seen no reason to consider that the proposal is incompatible with obligations arising from membership of the European Union.

Criterion (j): prevention of the exercise of rights and freedoms it would be reasonable to expect to continue

We consider that the proposal would not prevent the exercise of any right or freedom that any person could reasonably expect to continue to enjoy.

Criterion (k): new burdens are proportionate to the benefit which arises from them

We consider the burdens imposed by the proposal would be proportionate to the beneficial effects which would arise from them.

Criterion (l): extent to which the Order removes burdens or has other beneficial effects makes it desirable for it to be made

We consider the proposal meets the test of desirability in its removal and reduction of burdens.

Criterion (m): estimates of increases or reductions in costs or other benefits and the account taken of them

We consider the Department has made reasonable efforts to foresee the costs, savings and other benefits that could arise from the proposal.

Criterion (n): subordinate provisions

The proposal contains no provisions which are designated as subordinate provisions.

1 Explanatory report

1. The proposal for the Regulatory Reform (Game) Order 2007 was laid before the House by the Secretary of State for Environment, Food and Rural Affairs (“the Department”) on 11 December 2006.

2. The purpose of the proposed Order is to amend the Game Act 1831 (“the 1831 Act”) and the Game Licences Act 1860 (“the 1860 Act”), referred to collectively as “the Game Acts”, together with related and consequential amendments to the Deer Act 1991 (“the 1991 Act”). The Department considers that these provisions impose burdens which are without justification or are unduly onerous and which reflect a wish to control access to the hunting and killing of game species in a way which is no longer appropriate.

3. The Game Acts established a system by which persons who paid the required fees could be issued with licences which permit them to kill, take or sell game in England and Wales. Each of the Game Acts contains a subtly different definition of the term “game”, but collectively they include: pheasants; partridges; red grouse; heath or moor game; black game; hares; coney (i.e. rabbits); woodcock; snipe and deer. The Game Acts require that a person obtain a licence to kill or take these game species and two separate licences to deal in them once killed.

4. The Department has explained in the Explanatory Statement on the proposal that, prior to the 1831 Act, it was unlawful for any person other than those appropriately qualified by virtue of their social rank or ownership of land to take game animals, and such persons, or their sons and heirs, were the only people qualified to hold a game certificate. The Game Acts provided that any person who paid the necessary fees could be granted a licence to kill and take game; licences were issued by the Commissioners of Inland Revenue (a power now transferred to the appropriate district council, London borough council or the Common Council of the City of London in England, and county council or county borough council in Wales). At the time of the 1831 Act, the level of fee payable for a game licence was set at the equivalent of £1,600 at 2005 prices, thus putting the cost beyond the poorer sections of society.¹ The present cost of such a licence is between £2 and £6 and has not been increased since 1968. The Department considers that it is not necessary to limit the lawful killing of game by means of pricing out some of those who might wish to obtain a licence and that the historic licensing system, which was brought into being for the purpose of restricting access to hunting game, is no longer justified.

5. The Game Acts also contain provisions to control and licence the buying and selling of dead game animals and birds. Their effect is to make it unlawful to deal in game birds during the various close seasons and restrictively to define who may sell game, from whom those persons may purchase it and to whom they may sell it. Licences allowing persons to sell game are issued by local authorities. Premises dealing in game must also be the subject of a separate excise licence. No comprehensive information about the cost of local authority licences has been compiled, but the Department states that some authorities issue

¹ Explanatory Statement, paragraph 30

licences free of charge while, of those which do charge, it is aware that charges vary between £1 and £340. An excise licence costs £4.

6. The 1831 Act makes it unlawful to sell game birds after ten days have expired from the start of the close season. However, the Game Act 1970 provides that it is legal to possess game birds after this date in order to allow people to store game in frozen form at home to eat during the close season and to allow dealers to hold stocks of frozen game to sell after the end of the close season.

7. Under the Deer Act 1991 any person not licensed as a game dealer under the Game Acts may not lawfully sell, offer or expose for sale or possess for sale venison in the period between the expiry of the tenth day after the start of the close season for deer and the end of the last day of the close season. Those who are licensed to deal in game may sell venison throughout the year. The 1991 Act also requires that all persons who deal in venison as licensed game dealers must keep a record in a prescribed form of all their purchases and receipts relating to this trade.

8. The Explanatory Statement indicates that successive Governments have had an intention to reform the Game Acts for some time and records that as far back as July 1994 the then Home Secretary (Michael Howard) announced that licences to kill and take game would be abolished.² The Department encapsulates its reasons for proposing this Order thus:

“The proposed draft Order seeks to reduce bureaucracy for those killing, taking or dealing in game and to prevent unnecessary restriction of their otherwise lawful activities. It will save central Government resources which are currently being put into the administration of a licensing system which is not serving a useful purpose”.³

9. The House has instructed us to examine the proposal against the criteria specified in Standing Order No. 141(6) and then, in the light of that examination, to report whether the Government should proceed, whether amendments should be made, or whether the Order should not be made.

10. Our discussion of matters arising from our examination is set out below. Where a criterion specified in Standing Order No. 141(6) is not discussed in the report, this indicates that we have had no concerns to raise about that criterion. In the course of our examination, we requested further information from the Department about a number of issues relating to the proposal and the text of our questions to the Department is reproduced in Appendix A to this report. The Department’s response is reproduced as Appendix B.

2 Explanatory Statement, paragraph 15, Commons Hansard 20 July 1994, col 287

3 Explanatory Statement, paragraph 6

2 Extent of the proposal's application

11. The proposed Order would apply to England and Wales. The Department indicates that the National Assembly for Wales, which was consulted as required by the Regulatory Reform Act 2001, had no comment to make on the proposals.

12. It is indicated in the Explanatory Statement that the Scottish Executive is planning to undertake its own review of game legislation in 2007. Similarly, it is intended that there will be a review of game legislation in Northern Ireland in 2007.

3 Assessment of the proposal against the Standing Order No. 141(6) criteria

Inappropriate use of delegated legislation

13. **The proposal appears to be appropriate for delegated legislation.**

Removal and reduction of burdens

14. The Department has described those burdensome aspects of the existing provisions which it believes the proposed Order would remove in the list presented at paragraphs 26 and 27 of the Explanatory Statement. The burdens deriving from the existing provisions fall naturally into three groups:

- i. Burdens associated with the requirements in the Game Acts which impose a requirement to hold a game licence in order to take or kill game. These burdens are:

1831 Act

- A person may only lawfully take or kill game where they have first obtained a licence, for which they must pay a fee (section 6);⁴
- While gamekeepers may be issued with a particular form of gamekeepers' game licence, it is specifically provided that that licence shall not entitle them to do any more in respect of the killing and taking of game than is provided for in the terms of their appointment as gamekeeper (section 6);
- Landlords who have reserved game rights in respect of land which is leased may only authorise persons who hold game licences to enter on their land for the purposes of killing or taking game (section 11);

⁴ The 1831 Act uses the term "game certificate". In the 1860 Act the equivalent term is "licence" which is explicitly applied to instances where the word "certificate" has been used in the earlier enactment. We use the term licence throughout this report.

- Similarly as above, Lords of manors etc. may only authorise persons who hold game licences to enter on wastes and commons in their ownership for the purpose of killing or taking game (section 10);
- A person who kills or takes game without a game licence (and thus commits an offence) may have his “dogs, nets and other engines and instruments for the taking and killing of game” seized by the gamekeeper appointed by the person owning the rights to the unlawfully taken game (section 13);
- Any person without a game licence who kills or takes game or who makes use of various equipment with the purpose of so doing commits an offence and is liable to conviction and the imposition of a fine not exceeding level 1 on the standard scale (section 23).⁵

1860 Act burdens

- In order to obtain a licence for the taking, killing or pursuing of game, a person must pay the necessary duty on that licence (sections 2 and 4 of the 1860 Act);
 - Game licences may only be taken out on behalf of another person employed as gamekeeper or acting in that capacity in respect of land for which the person employing or otherwise directing the gamekeeper holds game rights (section 9 of the 1860 Act);
 - Any person discovered carrying out any activity for which a game licence is necessary may be required to produce his licence by, or to give his name and address to, any officer of the Inland Revenue, lord or gamekeeper of the manor, royalty, or lands where the person is found, or by any person who holds a game licence, or the owner, landlord, lessee or occupier of the land where that person is found. If a person so discovered fails to produce a licence or give the required details he commits an offence and may be required on conviction to pay a fine not exceeding level 2 on the standard scale (section 10 of the 1860 Act);⁶
 - Any person holding a game licence who is convicted of an offence against section 30 of the 1831 Act or under the Game (Scotland) Act 1832 is subject to the nullification of his licence on that conviction (section 11 of the 1860 Act);
 - The Commissioners of Inland Revenue are required as and when they see fit in such manner as seems to them proper to publish lists of the names and addresses of those persons to whom game licences have been granted (section 12 of the 1860 Act).
- ii. Burdens associated with the requirement in the Game Acts to hold a licence from the relevant local authority and an excise licence from the Commissioners of Inland Revenue in order to deal in game. These burdens are:

5 £200

6 £500

- It is a condition of holding a licence to deal in game that the person so licensed display a board at his place of trade giving his name and bearing the words “licensed to deal in game” (section 18 of the 1831 Act);
- Any person with a licence to deal in game who is convicted of any offence against the 1831 Act during the lifetime of that licence shall have his licence nullified (section 22);
- Any person who sells game who does not have a game licence and is not a licensed dealer in game commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale (section 25 of the 1831 Act);⁷
- Any person who holds a game licence who unlawfully sells game to persons who are not licensed to deal in game commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale (section 25 of the 1831 Act);
- Any person who is not licensed to deal in game who buys game from anyone other than a licensed dealer or someone who purports to be such by virtue of the display of the appropriate notice commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale (section 27 of the 1831 Act);
- Any person licensed to deal in game who buys game from someone not authorized to sell it for want of a game licence or licence to deal in game or because of irregularities in the display of the relevant notice commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale (section 28 of the 1831 Act);
- Any person who is not licensed to deal in game who trades in game while feigning to be licensed commits an offence and is liable on conviction to a fine not exceeding level 1 on the standard scale (section 28 of the 1831 Act);
- There is a requirement to take out a licence before selling game to any licensed dealer in game (section 13 of the 1860 Act). The amount of the fee for this licence is not prescribed and is determined by the relevant local authority. The Department indicates that charges may vary from £1 to £340 for an annual licence or that the local authority may not actually issue licences at all and game is therefore sold in these areas without the licence. The penalty for dealing without a local authority licence is £200;
- All licensed game dealers must obtain an excise licence before dealing in game; otherwise they commit an offence and are liable on conviction to a fine set at level 2 on the standard scale (section 14 of the 1860 Act). These licences are obtainable from post offices at a charge of £4;
- The issuing of licences to deal in game is restricted only to those persons who have already obtained the required excise licence (section 15 of the 1860 Act);

- An excise licence is also required in order to deal in game imported into Great Britain (section 16A of the 1860 Act);
 - A person convicted of relevant offences under the 1991 Act may be disqualified from holding a licence to deal in venison by order of the Court (section 13 of the 1991 Act).
- iii. Burdens associated with the restrictions on dealing in game birds and venison during the respective close seasons and requiring records to be kept in prescribed form of trade in venison. These burdens are:
- The sale or purchase of (dead) game birds is unlawful beginning from 10 days after expiration of the open season for killing those birds and any game dealer convicted of dealing during the proscribed period is liable to a fine not exceeding level 1 on the standard scale. The Department carefully notes that it is not illegal to possess game birds outside this period (as for the purpose of eating them) or to deal in dead game birds sourced from abroad, thus privileging the foreign game trade to the disadvantage of domestic game. (section 4 of the 1831 Act);
 - Any person who is not licensed to deal in game under the 1831 and 1860 Acts may not sell, offer or expose for sale or possess venison within the period beginning on the expiry of the tenth day after the end of the open season and ending on the expiry of the close season of the relevant deer. Any person contravening this prohibition commits an offence and is liable on conviction to a fine not exceeding level 3 on the standard scale.⁸ This is felt to be an unnecessary restriction on those persons who might wish to dispose of lawfully killed deer who are not themselves licensed to dispose of it by sale (section 10 of the 1991 Act);
 - The 1991 Act imposes detailed requirements as to keeping of records for all purchases and receipts of venison. The Department has summarised these requirements at paragraph 38 of the Explanatory Statement (section 11 of the 1991 Act).

15. The Department has considered that it is a burden that any person who wishes lawfully to take or kill any game animal has to be in possession of a game licence (burdens b-f, h, i and n-r).⁹ This is true, but it may not be the most accurate and realistic way of identifying the burden to which these provisions relate. Generally speaking, it would be more correct to say that where an activity is prohibited in law and subject to criminal penalty, and where it is possible nonetheless to carry out the prohibited activity lawfully provided one holds a certain licence, that the essential burden so created is the prohibition on carrying on that activity and the criminal penalty for failing to observe the prohibition. At present, anyone who kills and takes game without a licence is guilty of an offence. To obtain a licence gives a person the ability to enjoy the exemption which holding the licence confers. The 'need' to hold a licence would disappear under the proposal by virtue of the fact that the prohibition and criminal sanction to which the licence effectively confers an immunity would themselves be abolished. So regarded, it is clear that the essence of the burden is the general

8 £1000

9 As identified by letter references in paragraph 26 of the Explanatory Statement

prohibition and related criminal penalty, not the fact of having to take some action (ie obtain a licence) in order to enjoy exemption from it.

16. Initially, it was not apparent that the Department recognized the existence of a burden imposed by section 23 of the 1831 Act as described above, and we therefore asked it to consider whether a burden as described existed at present and would be removed by the proposed Order. The Department indicated that it agreed with our view.¹⁰ **Subject to the inclusion of the burdensome aspect of section 23 of the 1831 Act, we agree with the Department that the effect of the proposed Order would be to remove a series of burdens as described above.**

Imposition of new burdens and proportionality test

17. The Department has proposed to repeal section 4 of the 1831 Act so that it would be lawful to deal in game birds all the year round. However, the effect of the mere removal of the current restriction by itself would also make it possible to deal lawfully in game birds which had been unlawfully taken during the close season. The Department believes it would be undesirable to allow this and so it is proposed to permit dealing in game birds at any time of year, but that it will only be lawful to deal in game birds which are lawfully taken or killed during the relevant open season.

18. Article 5 of the proposed Order would therefore create a new section 3A in the 1831 Act whose effect would be to make it an offence to sell, offer or expose for sale, possess or transport for the purpose of sale any game bird killed or taken in contravention of that Act or other relevant legislation where the person concerned either knows or has reason to believe the bird(s) had been so taken or killed. A person convicted of this offence would be liable to a fine not exceeding level 5 on the standard scale or imprisonment for a period of up to 6 months, or both.¹¹

19. We therefore agree that the effect of the proposed new provision would be to create a new burden in the form of the restriction and a criminal sanction. The Department stated that the burden would “fall only upon those who wish to deal in game birds, rather than the public at large”. Purely as a matter of law this does not appear to us to be true, as the proposed provision burdens everyone in the form of a prohibition and criminal penalty for transgression, although we agree that the burdensome effect would indeed be felt only by those who may wish to deal in game birds.

20. The Department considers that the imposition of this new burden is necessary in order to maintain protection of game bird populations during the close seasons. We asked the Department also to comment on how the new burden would satisfy the test of proportionality in section 1(1)(c)(ii) of the Regulatory Reform Act. In response, the Department considered that the new burden is proportionate on the basis that it is imposed in the context of the new freedom to deal in game birds at any time of year – the new restriction is required in order to protect against the risk of excessive pressure on game bird populations during the close seasons. The new offence is considered by the

¹⁰ Appendix B, answer to question 1

¹¹ £5,000

Department to be analogous to those which offer protection to other 'hunnable species' protected by the Wildlife and Countryside Act 1981. Further, the Department drew attention to the form of the proposed new provision in article 5, the effect of which is to require of the prosecution in any case brought under the 1831 Act revised as proposed that it prove any person selling game which had been unlawfully killed or taken either knew, or had reason to know, that this was so. In light of this, the Department believes that any person who innocently sells unlawfully killed game birds would escape prosecution.

21. We agree that the effect of the proposed provision in article 5 of the proposed Order would be to create a new burden which meets the test of proportionality as described above.

Fair balance and desirability

22. The tests of fair balance and desirability have been addressed at paragraphs 65 and 66 of the Explanatory Statement. The Department reasons that the fair balance test would be met by the way that the game market would be liberalised while continuing to prevent unscrupulous persons dealing in unlawfully sourced game birds.

23. The Department also considers that the test of desirability is met by means of the removal of 25 burdens. The effect of this is considered to be:

- It would be easier to take or kill game by removing the need to hold a licence;
- The 'rationalisation' of the legislation would make it easier for the public to understand;
- It would be easier to deal in game because there would be no requirement to hold two licences to do so; and
- It would be possible to obtain legally obtained British game all year round, thus benefiting the UK game trade.

24. We agree that the tests of fair balance and desirability are met as described by the Department.

Consequential Amendments

25. In addition to those repeals and amendments previously described, the proposed Order would in its article 6 and related Schedule make various other consequential changes to other legislation. **We consider that no difficulties arise as a consequence of these proposed further amendments.**

Necessary protection

Abolition of (i) requirement to hold a game licence to kill or take game and of (ii) requirement to hold local authority licence and an excise licence in order to deal in game

26. The Department considers that no protections currently exist as a result of the requirement to hold a licence in order to kill game species. It is argued that the licence requirement does not act to limit the killing of game or to impose any standard with respect to the act of killing. The penalties for shooting outside the various close seasons would not be affected. Similarly, property rights to game would not be affected, as poaching and related trespass would remain illegal under the 1831 and Night Poaching Acts. Finally, it is noted that the proposal has no relevance to the issue of public safety from firearms, as the licensing system for guns is entirely separate from this legislation.

27. It is proposed that there should be no system for the licensing of game dealers and that persons should be entirely free to trade in lawfully killed game. The Department considers that the existing legislation requiring the licences to deal in game does not currently provide any protection to the public health, as the process of licensing has no connection with the enforcement of food standards under the Food Safety Act 1990 and the General Food Regulations 2004.

28. The Department has also reasoned that the existing legislation has no direct effect on the conservation and protection of game species. This is because any person who pays the necessary fees can obtain licences to kill and trade in game – the licensing machinery therefore does little if anything to restrict access to the practice of hunting or the trade in its products.

29. While we found it easy to accept that the form of the existing provisions in themselves did nothing to restrict the number of game animals taken and killed, we were concerned that any proposal designed to make it easier to kill and to sell game might unhelpfully incentivise activities which are, and would remain, illegal. We therefore asked the Department to explain what forecasts it had made of the effects of the proposed Order on quantities of domestic game demanded and supplied; on levels of poaching and on the possible impact which an increased demand for game might have on other wild animals, such as birds of prey, which could potentially suffer the consequences of being predator species in respect of an expanded game industry.

30. In relation to future levels of demand for domestically sourced game within the United Kingdom, the Department gave a less than unequivocal position, although we well understand why it might be difficult to offer any very meaningful forecasts in this respect.¹² The majority of game from the UK is sold abroad, and the Department reasons that demand for UK sourced game will therefore largely depend on “how domestic costs of production compare with those experienced by world suppliers, and it is not certain what the result will be”. The Department believes that domestic consumer demand will have only a marginal effect on UK game supply, given that the UK has not been a major

¹² Appendix B, answer to question 4

consumer of game, whether domestically or foreign-sourced. While the deregulatory effects of the proposed Order might make it easier to increase UK consumers' awareness of game, and thereby bring about some increases in domestic demand, the Department stated that it was not possible to make any predictions with confidence but its "best assumption" was that domestic demand would not substantially change. On the basis of the Department's advice on this issue, we are not aware of any firm reason to consider that demand for UK sourced game would substantially change as a result of the deregulatory effect of the proposed Order.

31. In respect of the effect of the proposed Order on future levels of poaching, we note first of all that poaching would remain a crime under the proposal. In its response to our question, the Department has not offered a forecast of the effect of the proposal on the level of poaching. It has instead stated that there are in its view mechanisms in place to monitor and respond to any future change in the levels of poaching through the newly established National Wildlife Crime Unit (NWCU), which provides a forum for the exchange of intelligence between police and HM Revenue and Customs across the country. Should levels of poaching increase, the Department considers the NWCU would "raise this issue directly with Department officials ... Steps could then be taken to raise enforcement activity where it was required".¹³ The Department further notes that the requirements under EU legislation relating to traceability of foodstuffs require traders in game to keep records which would enable them to identify the source of the game they sell, if asked to do so by the enforcement authorities (in this case, the Food Standards Agency, and local Trading Standards or Environmental Health Departments).¹⁴ **On the basis of these considerations, we conclude that there is no evidence that the proposed Order would increase the unlawful killing of game or trade in illegally killed game birds. We also believe the Game Laws amended as proposed, other related statutory provisions controlling the killing of wild animals and the related enforcement machinery would be adequate to address any criminal activities arising in the context of reasonable changes in the level of demand for game.**

32. Another point on which we questioned the Department was the possible effects of the proposal, and of any increase in demand for game it might occasion, on the protection and conservation of non-game species such as, for instance, birds of prey. The issue of concern to us was whether a demand for game might lead to an increase in the commission of illegal acts against species which prey on game birds.

33. The Department responded that, because the existing game licence is no effective barrier to participation in game shooting, its abolition is unlikely to have an effect on levels of illegal activity against non-game species. It stated that, while it has been recognised that birds of prey do take some birds released at game shoots, most of the birds so taken by raptors are pheasants and red legged partridge, which are preyed upon by sparrowhawks, buzzards and tawny owls, none of which birds of prey is a species of conservation concern. It noted that the British Association for Shooting and Conservation, which provides advice to gamekeepers on legal methods of control, has acknowledged that a small number of pheasants are taken from release pens.

¹³ Appendix B, answer to question 5

¹⁴ See discussion at paragraphs 36-39 below

34. The Department stated that a number of efforts have been made to prevent the unlawful killing of birds which prey on moorland game, such as hen harriers and peregrine falcons. In particular Operation Artemis, launched in 2004 and continuing, is the national police strategy to catch criminals involved in illegal activity against these rare birds. Under the aegis of this strategy, volunteers carry out monitoring of the population of hen harriers throughout the year. Monitoring of the wild bird populations in general is carried out by the British Trust for Ornithology through the Government's statutory conservation adviser, the Joint Nature Conservation Committee (JNCC).¹⁵ The JNCC is able to advise Government on any long term trends in respect of the population of endangered bird species.

35. It therefore appeared to us that the question for consideration was whether the removal of the requirement to hold a licence to kill game, or to hold licences to trade in game, or the permitting of trade in lawfully killed game throughout the year would be likely in themselves to cause a significant increase in the number of endangered birds killed in order to facilitate that trade. There is no meaningful evidence about the possible effect of the proposal on levels of demand for game sourced in the UK. **In view of the fact there is no reason to consider that UK demand for game would be significantly enhanced by the proposal and of the extant provisions in law and the on-going administrative action of Government and voluntary bodies to protect rare birds we do not consider that the proposed Order would remove any necessary protection for endangered animals.**

Abolition of the restriction on dealing in game birds and venison during close seasons and permitting year round sales of lawfully killed game

36. The Department considers that the proposed requirement that only lawfully killed game could be sold throughout the year will prevent any loss of protection. If a person takes or kills game during the close season, they will still be committing an offence and the Department further proposes that the selling of birds taken or killed unlawfully (under the Night Poaching Act 1828, the 1831 Act, the Poaching Prevention Act 1862 or Wildlife and Countryside Act 1981), where the person selling either knew or had reason to believe it was unlawfully taken or killed, should be an offence. It is already an offence to sell venison taken contrary to the 1991 Act. The new offence created by this element of the proposal is analogous with provisions of the 1991 Act concerning the sale of venison.

37. The Department stated in the Explanatory Statement that record keeping required under EC Regulation 178/2002 will provide enforcement authorities with information necessary to mount prosecution of those who deal in unlawfully killed game birds and deer, whether under the new offence created by article 5 of the proposed Order or the existing offence in section 11 of the 1991 Act. We therefore asked the Department to specify the record keeping requirements imposed by EC Regulation 178/2002 and to explain how these compared with the provision it is proposed should be repealed.

38. In its reply, the Department notes that, while information required to be recorded under the Regulation is similar to that required under the existing section 11 of the 1991

¹⁵ The JNCC was originally established by the Environmental Protection Act 1990 and was reconstituted by the Natural Environment and Rural Communities Act 2006.

Act, it is not identical. In particular it notes that the Regulation makes requirements about record keeping only for the purpose of ensuring traceability of foodstuffs and it therefore makes no requirement in respect of recording the place or premises at which any deer was killed, or how it was killed. The response states that Article 18 of the Regulation requires that food and feed businesses must identify their suppliers of food and food producing animals, identify the businesses to which they have supplied products and maintain appropriate records which can be made available to the appropriate authorities on demand. Records kept must include the name and address of suppliers and business customers, the nature of products supplied and the date of transaction or delivery. However, there is no requirement that records must be capable of being used to track all inputs to outputs (as would be necessary to provide full internal traceability).

39. We consider that there is a possibility that unlawfully killed venison might in future be sold contrary to the 1991 Act (as of course can sometimes occur now). However, it does not appear to us that the additional existing requirements in respect of record keeping of the 1991 Act can be said to offer any substantial impediment to those who would wish to carry on this illegal trade. In particular, we note that while the Regulation does not require records to be kept of the place and manner of killing of deer, any person supplying deer he knew to have been unlawfully taken or killed would be most unlikely to offer that information to another person in order for its illegal place and manner of killing to be duly recorded. The requirement in the Regulation to record from whom venison has been received appears to offer a more helpful means for enforcement officers to pursue cases of illegal supply. On this basis the requirements of the 1991 Act, where they differ from those of the Regulation, appear to serve no effective purpose in respect of maintaining protection against the unlawful killing of deer. **We agree that this element of the proposal would give rise to no loss of necessary protection.**

Continued exercise of rights and freedoms

Abolition of requirement to hold a game licence to kill or take game

40. The Department summarises the effect of this element of the proposal on existing rights and freedoms in the Explanatory Statement thus: “Removing the requirement for a licence would enable everyone who wished to take or kill game outside the close season to do so without the unnecessary administrative burden that licences impose, providing they have the right to kill game over that land”. **We agree.**

Abolition of requirement to hold local authority licence and an excise licence in order to deal in game

41. The Department considers that no existing rights and freedoms would be affected by the removal of the existing licensing requirement and that freedoms are enhanced by removing the requirement to hold licences to deal in game. **We agree.**

Removal of the restriction on dealing in game bird and venison during close season and permitting year round sales of lawfully killed game

42. The Department proposes to expand existing rights by permitting the sale of game birds and venison at any time, providing the birds and deer have been lawfully taken or killed. A new offence of selling a game bird which has been unlawfully taken or killed is proposed and to that extent, an existing freedom is removed. There is already a similar provision in the 1991 Act regarding illegally obtained venison. The Government does not consider it can be reasonable to expect to continue to be free to trade in birds which have been illegally killed or taken. **We agree.**

43. **We consider that no person would be deprived of any right or freedom they might reasonably expect to continue to enjoy as a result of the proposal.**

Estimates of costs and benefits

44. The Department has presented its consideration of the costs and benefits which it expects would arise from the making of the proposed Order in the Regulatory Impact Assessment reproduced at Annex B to the Explanatory Statement. Paragraphs 87–89 of the Explanatory Statement are headed as a summary of this, but they deal largely with the existence of the alternatives of reform and leaving the extant legislation in place.

45. **Removal of licensing requirements** – The Department states that it is estimated that 480,000 people are currently involved in the shooting of live quarry but that only 20% of these people are believed to be compliant with the Game Acts, presumably meaning that they have obtained a licence to shoot game. The costs of the licensing system are born between the Department, local authorities who issue the licences and the individuals who pay for them. At full compliance, the estimated breakdown is given as:¹⁶

	Value of Benefit (£) per annum
Individuals' licence costs	400,000
Individuals' Licence Admin Costs	600,000
Government Licence Admin Costs	300,000
Licence Revenue for local Authorities	- 400,000 (cost)
Net benefit	900,000

¹⁶ Explanatory Statement, Annex B, paragraph 32

46. It is stated that the current licensing fees are set at a level which allows for the recovery of administration costs. While the Department acknowledges that licence fees could be increased and the revenue raised applied to some related and beneficial purpose, such as supporting the conservation of game species, it also states that “there is a considerable risk that if licence charges are increased significantly then compliance will fall with the result that licence receipts will not cover the costs of the new system. It is unlikely that enforcement of the licensing provisions would increase above present levels”. It is noted that only seven people were sentenced under the relevant provisions of the 1831 Act during 2004. Given that Government does not believe it is worthwhile enforcing the licensing system, there does seem little point in revising the charges for any purpose.

47. Removing requirement to hold licences to deal in lawfully killed game – The Department records that it has no comprehensive information on the costs of local authority licences – some authorities do not bother even to issue the licences, some issue them free of charge and of those which do charge, the cost to the applicant is said to vary from under £1 to £340 per annum.¹⁷ Excise licences cost £4. During 2004, 1,621 were issued from post offices in Great Britain. Aggregate costs of the system to applicants for licences are said to be £75,000 in administration and £25,000 in licence fees. It is not known how many game dealers there are. The licensing system is said to be without benefit in terms of industry and hygiene regulation, which is provided for under other, more modern legislation.

48. Dealing in game birds and venison during close season – The Department notes that the existing restrictions affect the UK game and deer meat industries insofar as it is presently legal to sell foreign sourced game birds right round the year but not domestic birds, and legal to sell farmed venison and legally killed wild venison similarly the year round through licensed dealers, but that unlicensed dealers (such as deer managers or stalkers) cannot legally sell deer they have killed after 10 days following the start of the close season. No estimates are given of the negative effect of this on the domestic game trade. It is considered that the removal of the existing restriction will have the benefit of removing a distortion from the market for domestic game.

49. A new offence would be created of selling game birds if they had been unlawfully killed or taken and the person concerned knew or had reason to believe that this was so. The burden of proof in this offence would rest with the prosecution. While the Department has stated elsewhere in its statement that it would be unreasonable to expect to continue to be free legally to sell birds which had been unlawfully taken or killed, it nevertheless says “It is not anticipated that the level of illegal dealing in game birds will increase significantly as a result”.

50. It is proposed that the existing recording requirements in section 11 of the Deer Act 1991 be repealed and that game dealers will only have to keep records to the level specified in EC Regulation 178/2002. It is estimated that this will save around £6,500 annually in administrative costs.

¹⁷ Explanatory Statement, Annex B, paragraph 47

51. We consider that the proposal has been the subject of, and taken appropriate account of, estimates of the costs and benefits which may result from its implementation.

Adequate consultation

52. The Department published a consultation document on the proposals contained in this proposal and various other possible reforms relating to the management of game birds. The document was sent to those bodies listed at Annex A to the Explanatory Statement, including every local authority in England and Wales, and it was published electronically on three central government websites.¹⁸ Paper copies of the consultation were available from the Department on request.

53. The Department informed us that it received 186 responses to its consultation, 43 from 'stakeholder organisations' and 143 from private individuals. None of them were reckoned to have made any criticism of the consultation process and none are recorded by the Department as having expressed concerns about the effect of the proposal on burdens, freedoms or necessary protection.

54. **Removal of the requirement to hold a game licence to kill or take game** – The Department records that some respondents would have preferred for the licensing system to be retained and the level of fees payable increased in order to raise income for conservation projects. As elsewhere in the statement, the Department states that it did not favour this alternative, as to raise a worthwhile amount of income would require a significant increase in the level of fees which might price some individuals out of the sport. Given that so many of those involved seem not to obtain licences, it would also be the case that, in the absence of any effective enforcement, the increased cost would have to be borne by a minority of those actually involved in taking and killing game. It is recorded that 81% of stakeholders and 64% of the members of the public who expressed a view on this element of the proposal were in favour of it.

55. **Removal of the requirement to obtain two different licences to deal in game** – The Department records that 91% of Stakeholders and 87% of the public who responded were in favour of this element of the proposal.

56. **Removal of the restriction on dealing in game birds and deer during the close season provided they have been lawfully killed** – Of those who responded to the element of the proposal relating to sale of game birds, 89% of stakeholders and 95% of members of the public were in support of it. The equivalent figures for the sale of venison were 91% and 86%.

57. The Department states that some respondents were concerned that permitting year round selling would act to encourage poaching and the sale of illegally killed birds and animals. The Department does not share this fear and notes in this context that it is

18 <http://www.defra.gov.uk/corporate/consult/game-licensing/index.htm>;
<http://www.cabinetoffice.gov.uk/regulation/reform/orders/consultations/2006/index.asp>, and
<http://www.businesslink.gov.uk/bdotg/action/consultations?furlname=consultations&furlparam=consultations&ref=html%3A>

proposing to create a new offence of selling birds which have been illegally killed; the sale of illegally killed venison is already unlawful.

58. The Explanatory Statement records that the responsible Minister has made no changes to the proposal as a result of the consultation responses.

59. **We consider that the proposed Order has been the subject of, and appropriate account has been taken of, adequate consultation.**

Compatibility with obligation arising from membership of the European Union

60. The Department states that the proposal is not incompatible with the EC Council Directive on the conservation of wild birds and there are said to be no EC obligations relating to game licensing. At our request, the Department helpfully supplied us with a statement for its reasons for this conclusion based on a reading of the text of the EC Council Directive on the conservation of Wild Birds (79/409/EEC) and in the light of there being no EU obligations relating to game licensing.¹⁹ **On the basis of the evidence supplied to us by the Department, we are content that the proposals do not appear to be incompatible with any obligation arising from United Kingdom membership of the European Union.**

4 Conclusion

61. **We conclude that a draft Order in the form of the proposal should be laid before the House.**

19 Appendix B, answer to question 9

Formal minutes

Tuesday 6 March 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks

Alison Seabeck

Dr Doug Naysmith

The Committee deliberated.

Draft Report [Proposal for the Regulatory Reform (Game) Order 2007], proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 61 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House.

[Adjourned till a day and time to be fixed by the Chairman.]

List of written evidence

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B Extract from letter from Department for Environment, Food and Rural Affairs to the Committee Specialist and extract from annexed paper 27

Appendix A

Extract from letter from the Committee Specialist to Department for Environment, Food and Rural Affairs: Proposal for the Regulatory Reform (Game) Order 2007

Thank you for the presentations which you made yesterday with your colleagues on the subject of Defra's two current RRO proposals.

The Committee considered both proposals and decided to seek further information on them from you. The issues which concern the Committee are set out below, under the indicated category for consideration in the Regulatory Reform Act and the Committee's Standing Order.

Proposal for the Regulatory Reform (Game) Order 2007

Whether the proposal removes or reduces a burden or the authorisation or requirement of a burden; (S.O. 141 (6)(b))

1. The Committee notes that the effect of the existing section 23 of the Game Act 1831 is to prohibit the taking and killing of game, and that section 6 of that Act makes separate provision for the issuing of licences (called therein "certificates") which exempt the holder from that prohibition and the related criminal penalty it otherwise imposes. Any person who takes or kills game without a section 6 licence therefore is currently guilty of an offence, but holding a licence gives a person the ability to enjoy the exemption from that burdensome prohibition which the licence confers.

2. Article 2 of the proposed Order would repeal sections 6 and 23 of the 1831 Act and the need to hold a licence in order lawfully to kill and take game would therefore be abolished as a concomitant of the abolition of the existing offence to which the licences confer an effective immunity. On this basis, it appears to the Committee that the proposed Order would remove a burden in the form of the prohibition and criminal sanction imposed by section 23 of the 1831 Act. The Explanatory Statement does not appear to consider that such a burden exists and would be removed.

Q1. Does the Department agree that the prohibition on taking and killing game in section 23 of the 1831 Act constitutes a burden which would be removed by the proposed Order and if not, why not?

Whether the proposal satisfies the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Regulatory Reform Act 2001; (S.O. 141 (6)(k))

3. In article 4 of the Order the Department proposes to repeal section 4 of the Game Act 1831 so that it would be lawful to deal in game birds all year round. Article 5 would create a new section 3A in that Act whose effect would be to make it an offence to sell, offer or expose for sale, possess or transport for the purpose of sale any game bird killed or taken in contravention of that Act or other relevant legislation and where the person concerned either knows or has reason to believe the bird[s] had been so taken or killed. This would constitute the imposition of a new burden for the purposes of the Regulatory Reform Act.

Q2. Please confirm whether the Department considers that the imposition of this new burden would satisfy the condition of proportionality required by section 1(1)(c)(ii) of the Regulatory Reform Act and if so how it does so.

Whether the proposal continues any necessary protection; (S.O. 141 (6)(c))

4. The Committee notes that article 6 of the proposed Order would repeal the existing provisions in the Deer Act 1991 which currently impose records requirements for traders in venison with regard to the origins etc of venison received and sold. The Department considers that no necessary protection would be lost on the repeal of this provision on the basis that EC Regulation 178/2002 also separately requires that traders keep records.

Q3. Please explain what requirements in respect of record keeping are imposed by EC Regulation 178/2002 and how these compare with the existing requirements of the analogous provisions of the Deer Act 1991.

5. Articles 4 and 5 of the proposed Order would abolish existing restriction on the sale of game birds during the close season and permit the sale of these all year round, provided that the animals were lawfully killed. In this context the Committee has noted the views the Royal Society for the Protection of Birds and Natural England who are concerned that a possible effect of this will be to increase the demand for domestically sourced game with a concomitant effect on the conservation of other non-game species. An example of this would be where birds of prey are killed, clearly illegally, in order to mitigate the numbers of game birds they would otherwise take as kill.

Q4. Please indicate what forecasts the Department has made of the effect of the proposed Order if implemented on quantities of domestic game demanded and supplied.

Q5. Please indicate what steps the Department has taken to establish the possible effect of the proposed Order if implemented on levels of poaching.

Q6. Please explain what consideration the Department has given to the possible impact of the proposed amendments to the game laws on i) the conservation of non-game species such as birds of prey, ii) what reasons it has for its conclusions in respect of any forecast effects and iii) what plans it has for monitoring the effect of the proposed Order on non-game species.

Whether the proposal has been the subject of, and takes appropriate account of, adequate consultation; (S.O. 141 (6)(d))

6. The Committee notes that it is recorded in the Explanatory Statement that 143 organisations and individuals responded to the consultation on the proposals. However, when the Committee received copies of the individual consultation submission and a schedule giving the identity of respondents, these letters counted to 185 responses.

Q7. Please confirm the number of respondents and of responses received to the consultation on the proposals under section 5 of the Regulatory Reform Act.

Q8. Please explain the basis for the calculation of statistics for the analysis of consultation responses given in Appendix A of the Explanatory Statement. Where the Annex states that a given percentage was either in favour of or against a specific element of the proposal what account has been taken in the compilation of these statistics of responses which expressed no view either for or against the proposition in question.

Whether the proposal appears to be incompatible with any obligation resulting from membership of the European Union; (S.O. 141 (6)(i))

7. The Committee notes that it is the opinion of the Department that the proposal is not incompatible with the EC Council Directive on the conservation of wild birds and that there are no obligations arising from membership of the EU in respect of game licensing.

Q9. Please explain what steps the Department has taken to satisfy itself that no incompatibility exists between the proposal and obligations arising from UK membership of the EU.

I would be grateful to receive your response to these questions, together with any additional information which the Department believes would be helpful to the Committee not later than 9 February 2007.

...

Appendix B

Letter from Department for Environment, Food and Rural Affairs to the Committee Specialist: Proposal for the Regulatory Reform (Game) Order 2007

Thank you for your letter of 1 February that raised a number of questions on the two RRO proposals on game and deer following the presentation to the regulatory Reform Committee on 31 January.

The attached paper, plus 3 annexes, provides the Department's response to [all] the questions raised by the Committee. Unfortunately we are unable to provide complete responses to questions 28 and 29 pending further legal consideration. I will forward the department's response to these questions by 16 February. I hope this does not inconvenience your work too much.

I hope the Committee finds these responses useful and informative. If, however, anything in the response is unclear, or any issue requires further clarification, please do not hesitate to contact me.

9 February 2007

Extract from annexed paper giving answers relating to the game proposal

Proposal for the Regulatory Reform (Game) Order 2007

Q1. Does the Department agree that the prohibition on taking and killing game in section 23 of the 1831 Act constitutes a burden which would be removed by the proposed Order and if not, why not?

The Department agrees with the Committee that the prohibition on taking and killing game in section 23 of the 1831 Act constitutes a burden which would be removed by the proposed Order. Section 23 of the 1831 Act contains the penalty for killing or taking game without a game certificate and would be repealed under this proposal. If section 23 were repealed, a burden as defined by section 2(1)(a) of the Regulatory Reform Act 2001, would be removed by the proposed Order. The Department concedes that it overlooked the inclusion of this burden under paragraph 26 (b) in section 6.1 of the Explanatory document. The effect of the removal of this burden on necessary protection and impact on rights and freedoms is covered in terms of proposal A in sections V.iv and V of the Explanatory Document submitted to the Committee

Q2. Please confirm whether the Department considers that the imposition of this new burden would satisfy the condition of proportionality required by section 1(1)(c)(ii) of the Regulatory Reform Act and if so how it does so.

The Department confirms that the imposition of the new burden would satisfy the condition of proportionality required by section 1(1)(c)(ii) of the Regulatory Reform Act. The Department believes the new burden is small and proportionate to the benefit created, especially when compared to the overall aim of reducing burdens on game dealers in the rest of the proposed Order.

Removing the restriction on dealing in game birds during the close season would enable game lawfully taken during the open season to be bought and sold during the close seasons. However, removing the restriction could also allow a game bird that was illegally taken to be lawfully sold during the close season. For this reason, the Department consider that the dealing in game birds should be permitted all year around, but only if lawfully killed or taken during the relevant open season. Currently there is no prohibition on dealing in game birds which have been unlawfully killed or taken.

The new burden would create a new criminal offence of selling game birds which have been unlawfully killed or taken where the person concerned knew or had reason to believe that they were so killed or taken. The new offence is necessary to maintain the protection afforded to game birds during the close season whilst allowing the sale of game lawfully taken during the open season to be sold all year round. The new burden would

ensure game birds would be protected during the close season and game bird populations sustained. The new burden would bring the legislation regarding the sale of game birds into line with other huntable species protected under the Wildlife and Countryside Act 1981 (“the 1981 Act”). The new offence would also ensure that the legislation with respect to the sale of game implements Article 6 of the Wild Birds Directive²⁰ (Article 6 restricts the sale, transport for sale etc of wild birds). The new offence complies with the restrictions of sections 3(3) and (4) of the 2001 Act. After carefully considering possible alternatives, the Department decided that the onus of proof under the new offence should remain with the prosecution. The prosecution would therefore need to show that the person selling game knew that the game bird had been unlawfully killed. This means that ‘innocent’ sellers of unlawfully taken game will not be caught by the offence. The Department considers this to be a reasonable and proportionate approach and is consistent with the provisions of the Deer Act 1991 regarding the sale of venison.

The Department considers that the new burden is proportionate to the benefit which is expected to result from its creation by:

- being able to deal in game birds all year round;
- the commercial gains in sales that may be generated during the close season, which are currently not permitted; and
- ensuring protection for game birds provided by the close seasons is maintained.

The sentence levels are considered proportionate as they correspond to similar offences for other huntable species contained in the 1981 Act. It would be disproportionate to have more stringent sentence levels for similar offences that are contained in the 1981 Act.

Q3. Please explain what requirements in respect of record keeping are imposed by EC Regulation 178/2002 and how these compare with the existing requirements of the analogous provisions of the Deer Act 1991.

Under EC Regulation 178/2002, game dealers are required to record similar information to that currently required under section 11. However, the information required under these Regulations is only recorded for food traceability purposes and would not include information regarding the premises or place where the deer was killed or the means by which it was killed, which are required under section 11 of the Deer Act. Full details of the Regulation are given below.

Record keeping requirements under EC Regulation 178/2002

The Food Safety Act 1990 (Amendment) Regulations 2004 and the General Food Regulations 2004 came into force on 7 December 2004 and 1 January 2005 respectively. They align domestic legislation with the general principles and requirements of Regulation 178/2002, and introduce new enforcement powers.

Under Article 18 of Regulation 178/2002, food businesses are required to keep records relating to traceability. Traceability records must be kept at all stages of the food and feed chain including production, processing and distribution, but not sale or provision to the final consumer, as they are not food businesses. Internal traceability, i.e. the matching up of all inputs to outputs, is not required.

Article 18 requires food and feed businesses to:

- identify their suppliers of; food, food-producing animals and any other substance for incorporation into food or feed;
- identify the businesses to which they have supplied products; and
- maintain appropriate records and ensure that such information is made available to competent authorities on demand (i.e. when asked for).

²⁰ Council Directive of 2nd April 1979 on the Conservation of Wild Birds (79/409/EEC)

However, EC law has to be interpreted according to its purpose and account has to be taken of the relevant recitals and the notification requirements in Article 19. In order to fulfil the purpose of Article 19, the records kept should also include the name and address of customer or supplier, nature of products, and the date of transaction or delivery.

There is no specific time period for which traceability records should be kept laid down in the Regulation. It is the view of the Food Standards Agency that it is for businesses to decide how long they should keep their records, bearing in mind the nature of the food or feed, its product life and the circumstances under which they might be required to keep records, should a notification or assistance to enforcement authorities be subsequently required

Main general requirements of food law set out in the Regulation

These are:

Article 14, which gives food safety requirements. This states that food should not be placed on the market if it is unsafe, i.e. injurious to health or unfit for human consumption.

Article 15, which gives feed safety requirements.

Article 16, which says that the labelling, advertising and presentation of food or feed and the information which is made available about them shall not mislead consumers.

Article 17, which sets out general responsibilities for food and feed operators and Member States.

Article 18, which gives requirements for keeping traceability records.

Article 19, which sets out the requirements for food business operators with regard to withdrawal, recall and notification.

Article 20, which sets out the requirements for feed business operators with regard to withdrawal, recall and notification.

Recording keeping requirements under Section 11 and Schedule 3 of the Deer Act 1991

Section 11(3) – where a game dealer has purchased or received venison from another licensed game dealer, or from a venison dealer licensed under section 33 of the Deer (Scotland) Act 1996, he need record in his record book only -
(a) that the venison was so purchased or received
(b) the name and address of the other licensed game dealer or the venison dealer so licensed
(c) the date when the venison was so purchased or received
(d) the total weight of the venison
Schedule 3 – proforma for keeping records where venison is not purchased or received by a licensed dealer from another licensed dealer
Date of purchase or receipt
Species
Means by which the deer was killed

Particulars of carcasses purchased or received (weight, sex)
Particulars of parts of carcasses purchased or received (description, weight)
Particulars of seller, or in the case of a receipt the source from which receipt obtained, and registration number of vehicle delivering venison
Notes:
Date shot - where the venison comes from deer killed by the dealer
If killed by a rifle or smooth bore gun, enter "rifle" or "smooth-bore gun"
Name of premises or place in which killed - where the venison comes from deer killed by the dealer

Q4. Please indicate what forecasts the Department has made of the effect of the proposed Order if implemented on quantities of domestic game demanded and supplied.

Given that the existing regulations represent a restriction on the market for game, it is possible that the current pattern of exports and imports do not truly reflect the relative costs of production. Economic welfare is maximised if the country exports those goods which we are relatively efficient at producing, and import those that have higher relative production costs in this country. Removing the restrictions should improve net economic welfare, irrespective of whether it results in an increase/decrease in exports.

It is likely that some domestically produced game will be sold to British consumers in the close season, replacing at least a proportion of imports. However, the pattern of trade in the absence of the restrictions will depend on how domestic costs of production compare with those experienced by world suppliers, and it is not certain what the result will be. If competitors on world markets happen to have higher production costs, domestic producers will still choose to export a substantial quantity of game. Deregulation is most likely to affect informal and small scale sellers, who are unlikely to be exporters at present and will now have access to a market in the close season. The size of transport and transaction costs of international trade will affect the extent to which imports are substituted for. The overall demand for domestic game is unlikely to change significantly, given that the UK is not a dominant consumer of game on an international scale.

Also, the ability to market to supermarkets through deregulation may make information on game more readily available, and might cause some additional increase in demand. Due to the unavailability of requisite information on market conditions, it is not possible to assess with confidence the potential of this effect but our best assumption is that overall domestic demand will not change.

Q5. Please indicate what steps the Department has taken to establish the possible effect of the proposed Order if implemented on levels of poaching.

The Department considers that there are existing frameworks in place that will deal with establishing the possible effect of the proposed Order. There are several Agencies already in place to enforce current legislation.

1) The National Wildlife Crime Unit (NWCU) was launched in October 2006. A multi-agency operation, the NWCU gathers, analyses and co-ordinates wildlife crime intelligence and supports the enforcement activities of police and HM Revenue and Customs officers in the UK. A national strategy has been devised with the assistance of The Partnership for Action Against Wildlife Crime (PAW) which will ensure a strategic approach is taken to tackling wildlife crime and prioritising areas of concern. The Unit has a robust national tasking and co-ordination system in place to ensure that the right issues are dealt with, with the right resources and maintaining the strategic oversight needed from key stakeholders. It will create and develop a more sophisticated response to wildlife crime priorities, using appropriate technologies and techniques.

Departmental officials regularly meet with the Police mainly through the PAW. Should the NWCUC record increasing instances of poaching they would raise this issue directly with Department officials or through the wider forum of the PAW Steering Group. Steps could then be taken to raise enforcement activity where it was required.

2) The 178/2002 EC Regulations are enforced by: The Food Standards Agency (Articles 14 and 19); The local Food Authority (Trading Standards and/or Environmental Health) or the local Port Health Authority (Articles 14, 16, 18 and 19). Under Article 18 of EC Regulation 178/2002 food businesses are required to keep records relating to traceability. Traceability records must be kept at all stages of the food and feed chain including production, processing and distribution, but not sale or provision to the final consumer, as they are not food businesses. Therefore, if asked, game dealers would have to produce records indicating the source of the game they were selling. The new offence of selling or possessing game that had been unlawfully killed should also deter game dealers from sourcing game birds from unscrupulous persons.

Q6. Please explain what consideration the Department has given to the possible impact of the proposed amendments to the game laws on i) the conservation of non-game species such as birds of prey, ii) what reasons it has for its conclusions in respect of any forecast effects and iii) what plans it has for monitoring the effect of the proposed Order on non-game species.

The Department does not believe that the proposal to abolish the game licensing system will have a concomitant impact on the conservation of non-game species such as birds of prey. The Department does not anticipate an increase in shooting of non-game species because a licence to kill game birds is no longer required. The licensing system is not regarded as a barrier to participation, and the proposal to allow the sale of game on a year round basis should not, as outlined in the answer to question 4 above, lead to a significant increase in the market for game. We do not expect any level of illegal activity against non-game species associated with game shooting that may occur to increase.

Consultees did not indicate that they felt that shooting would increase as a result of abolishing the licence; instead, they were concerned that deregulating a licensing regime linked with the possession of firearms may result in unlicensed possession of firearms. However, the proposal does not affect any legislation governing the possession of firearms which will still be regulated under the provisions of the Firearms Act 1968.

The majority²¹ of game birds are “reared and released” for game shoots and any interactions around release pens tend to involve sparrowhawks (40,000 pairs in Britain), buzzards (38,000 pairs in Britain) or tawny owls (19,000 pairs in Britain). None of these three species are birds of Conservation Concern²² in the UK.

Game managers and gamekeepers can employ a range of legal methods to deter birds of prey from release pens. The British Association for Shooting and Conservation (BASC) has produced a practical guide for game managers and gamekeepers on “Birds of Prey at pheasant release pens” and notes that “in most cases, birds of prey appear to take relatively few poults, but in exceptional circumstances predation can be a problem.” The BASC guide offers practical advice to gamekeepers for legally managing predator losses, in addition, BASC recommends that gamekeepers also follow the Code of Good Shooting Practice where it is recommended that a few extra poults are released to allow for predator losses.

With respect to moorland game birds such as grouse, interactions may occur with other birds of prey such as hen harriers and peregrine falcons. As far back as 1995, Defra and its predecessors have worked with interested parties to address the perceived conflicts between the recovery of some bird of prey populations and their impacts on game birds and moorland management²³. This work is continuing under the auspices of the Hen Harrier Stakeholder Dialogue – a neutrally facilitated process to establish the views of stakeholders and their ideas for resolving the hen harrier/red grouse conflict.

21 The Game Farmers Association put the figure for birds reared for release at 20-30 million, of which the majority (80%) are pheasants and most of the rest (16-17%) are red-legged partridge. The final few percent are grey partridge and ducks.

22 <http://www.jncc.gov.uk/page-2902>

23 www.jncc.gov.uk/pdf/raptors.pdf

In February 2004, the Police launched Operation Artemis²⁴. At the commencement of Operation Artemis, farms and shooting estates with breeding hen harriers, or habitat suitable for breeding (heather moor), were visited by Wildlife Crime Officers/Rural Beat Officers. In an attempt to reduce inadvertent unlawful activities, affecting hen harriers, heather moor managers were provided with a comprehensive document outlining the legal status of the hen harrier and the aims of Operation Artemis, together with a Code of Best Practice in relation to hen harrier habitat management. Wildlife Crime Officers and the Operation Artemis Co-ordinator continue this dialogue. In England, crime prevention schemes using a variety of scientific and technical techniques together with a large number of volunteers are deployed during the breeding season. This has led to a year on year increase in the number of young birds fledging. Monitoring and bird protection is now a year round activity by Operation Artemis volunteers.

With regard to wild bird populations in general, the Government has a comprehensive monitoring system in place to detect trends in these populations. The UK has a well developed “alerts system” based on various bird surveys. Following each year’s survey results, the British Trust for Ornithology (BTO) prepares an advisory letter to the UK Governments’ statutory nature conservation advisor, the Joint Nature Conservation Committee (JNCC), giving any alerts. The alerts highlight or confirm long term trends of which the JNCC is aware, rather than demonstrate immediate and unexplained population crashes. The alerts system is based on long-term biological information and it is dangerous to try to identify “trends” from one year’s data set. The advisory letters highlight to the JNCC the species and issues where further research is desirable (to understand the causes of declines - this influences the BTO/JNCC Partnership work programme and is also used to advise the UK Biodiversity Action Plan process).

Further recent legislation was introduced in 2006 to provide additional protection to birds of prey. The Natural Environment and Rural Communities Act 2006 introduced a new offence of the possession of pesticides that are harmful to wildlife. The Secretary of State can list those ingredients of pesticides that he believes could cause harm to wild birds and/or animals. This means that it will be an offence to possess a pesticide containing a prescribed ingredient unless it can be shown that possession was for lawful use in accordance with relevant pesticide, biocide or poisons legislation.

This provision is necessary because, while it is already an offence under section 5(1) of the Wildlife and Countryside Act 1981 to use, or set in position, poisons to kill or injure wild birds, it has proven difficult to achieve successful prosecutions for this offence, by linking known poisoning cases to particular individuals, even where there is circumstantial evidence to suggest that they may be responsible for the illegal poisoning, and they have a motive. The Department plans to issue a consultation on ingredients of pesticides that should be listed on an Order later this year.

Q7. Please confirm the number of respondents and of responses received to the consultation on the proposals under section 5 of the Regulatory Reform Act.

Defra received 186 responses to the consultation, 43 from stakeholder organisations and 143 from private individuals. Please find enclosed a copy of the summary of responses at Annex 1 which has been updated and finalised. As a result of a campaign by the League against Cruel Sports, 132 members of the public commented on the proposal to remove the restriction on shooting on Sundays and/or Christmas day and did not consider the other proposals in the consultation paper.

Q8. Please explain the basis for the calculation of statistics for the analysis of consultation responses given in Appendix A of the Explanatory Statement. Where the Annex states that a given percentage was either in favour of or against a specific element of the proposal what account has been taken in the compilation of these statistics of responses which expressed no view either for or against the proposition in question.

The statistics for those in favour or against a specific proposal were based on those who clearly expressed a preference to a particular answer only. Those who did not respond to a specific question were not included in the statistics for that question.

As well as the overall percentages for or against proposals, statistics for stakeholder organisations and members of the public were given separately.

Please find enclosed copies of the summary of responses that have been update and finalised at Annex 1.

Q9. Please explain what steps the Department has taken to satisfy itself that no incompatibility exists between the proposal and obligations arising from UK membership of the EU.

The Department is satisfied that there is no incompatibility between the proposal and obligations arising from UK membership of the European Community under the EC Council Directive on the conservation of wild birds (79/409/EEC) (the “Birds Directive”) as members of the European Community.

A summary of the relevant articles of the Birds Directive in relation to species protection are (the full text of the articles is appended at Annex 2):

- Article 5 (establishing a general system of protection for all species of wild birds);
- Article 6 (prohibition of sale and transport of live or dead birds or their derivatives - except for lawfully sourced species referred to in Annexes III/I and III/2 to the Birds Directive);
- Article 7 (sustainable hunting provisions in relation to species referred to in Annexes II/1 and II/2 to the Birds Directive);
- Article 8 (prohibition of large-scale or non-selective methods for the capture of killing of birds and prohibition of hunting from certain modes of transport); and
- Article 9 (derogations from Articles 5, 6, 7 and 8 where there is no other satisfactory solution).

All of the game birds covered under the Game Acts are in Annex II and III of the Birds Directive and so can be lawfully sold and hunted under our European obligations. The United Kingdom has consulted the European Commission about the species listed in Annex III/2 as required by Article 6(3) of the Birds Directive.

In England and Wales, most of the above species protection obligations for wild birds are fulfilled through the 1981 Act. Game birds are excluded from the definition of “wild bird” in the 1981 Act because they are generally protected by provisions in the Game Act 1831 (e.g. prohibition on killing during the close seasons). There are two exceptions to this exclusion:

- section 5 (prohibition of certain methods of killing or taking wild birds); and
- section 16 (power to grant licences) of the 1981 Act (to enable derogations from the offence in section 5 as it applies to game birds).

The new offence of selling an illegally acquired game bird, set out in response to earlier questions above, is consistent with our European obligations.

There are no EC obligations relating to game licensing.

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