



House of Commons
Regulatory Reform Committee

Draft Regulatory Reform (Game) Order 2007

Seventh Report of Session 2006–07

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 12 June 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*)
Stephen Hammond (*Conservative, Wimbledon*)
John Hemming (*Liberal Democrat, Birmingham, Yardley*)
Mrs Sharon Hodgson (*Labour, Gateshead East & Washington West*)
Mr Stewart Jackson (*Conservative, Peterborough*)
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)
Mr Jamie Reed (*Labour, Copeland*)
Alison Seabeck (*Labour, Plymouth, Devonport*)
Mr Andrew Slaughter (*Labour, Ealing, Acton & Shepherd's Bush*)
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).

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Delegated Legislation Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is regrefcom@parliament.uk.

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Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Game) Order 2007 in accordance with Standing Order No. 141. We recommend unanimously that the Order be approved.

1 Introduction

2. The proposal for the Regulatory Reform (Game) Order 2007 was laid before the House by the Department for Environment, Food and Rural Affairs on 11 December 2006. We published our report on the proposal on 15 March 2007. A draft order was laid on 23 May 2007, but was withdrawn on 24 May 2007. On 4 June 2007 a second draft Order was laid before the House, together with an Explanatory Statement.¹

3. The purpose of the proposed Order is to reduce bureaucracy for those killing, taking or dealing in game and to prevent unnecessary restriction of their otherwise lawful activities. The laws which regulate these activities are the Game Act 1831 (“the 1831 Act”) and the Game Licences Act 1860 (“the 1860 Act”), collectively “the Game Acts”.

4. 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. The Game Acts require that a person obtain a licence to kill or take game and two separate licences to deal in them once killed. 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 issued by the Commissioners of Inland Revenue (a power subsequently 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. The present cost of such a licence is between £2 and £6 and has not been increased since 1968. The Government considers that the historic licensing system, which existed for the purpose of restricting access to hunting game, is no longer justified.

5. The Game Acts also contain provisions to control and license 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.

¹ Copies of the draft Order and explanatory statement are available to Members of Parliament from the Vote Office and to members of the public from the Cabinet Office. The draft Order is also available from the Cabinet Office website: <http://www.cabinetoffice.gov.uk/regulation/reform/orders/proposals.asp>

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 that dealers might 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 proposed Order would:

- Remove the requirement to hold a game licence to take or kill game;
- Remove the requirements to hold both 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.

9. The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolutions or report of the Committee or to any other representations made during the period for Parliamentary consideration.² Our discussion of matters arising from our consideration is set out below.

2 The report on the proposal

10. In our first stage report, we recommended that a draft Order in the form of the proposal should be laid before the House.³

The Department's response

11. The Department has laid before the House a draft Order substantially in the form of its proposal. A small number of textual amendments have been made in response to advice given to the Department by our Legal Adviser and by the Legal Adviser to the House of Lords Committee on Delegated powers and Regulatory Reform.⁴

2 Standing Order No. 141(7)

3 First Report from the Regulatory Reform Committee of Session 2006-07: Proposal for the Regulatory Reform (Game) Order 2007 HC 384: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmdereg/384/38402.htm>

4 These textual points are detailed at paragraphs 18 to 21 of the Explanatory Statement. The Department has confirmed to our staff that the reference in paragraph 20 to the "Parliamentary Clerk to the Delegated Powers and Regulatory Reform Committee" should be to our Legal Adviser.

12. We are satisfied that the responsible Minister has had due regard to previous report on the proposal for this draft Order.

3 Other representations made on the proposal

The House of Lords Select Committee on Delegated Powers and Regulatory Reform

13. The Committee issued its report on the proposal on 5 February 2007. The Committee was satisfied that each element of the proposal satisfied the requirements of the Regulatory Reform Act 2001 and it would be appropriate to make an Order to give effect to them. As noted above, a number of minor textual improvements have been made in response to suggestions made by the Legal Adviser to the Committee.

Other representations

14. The period for Parliamentary consideration of the proposal as defined by the 2001 Act began on 11 December 2006 and ended on 9 March 2007. The Department records that no representations were made to the Minister during that period. However, one response to the proposal was made outside the defined scrutiny period by Mr Nicholas Crampton, a lawyer for the Crown Prosecution Service in Norwich, who wrote to the Department in his personal capacity. We informally requested that the Department consider Mr Crampton's representation. The Department has annexed Mr Crampton's letter to their Explanatory Statement for the draft Order and commented on the representation as if it required formal statutory consideration.⁵ **We welcome the Department's willingness to consider this representation formally even though it was strictly out of time.**

15. The substance of Mr Crampton's representation concerned article 5 of the proposed Order. As currently drafted, article 4 would repeal the existing section 4 of the 1831 Act so as to make it lawful to deal in game birds all the year round. Doing this alone would make it possible lawfully to deal in birds which had been unlawfully taken during the close season, so it is also proposed that a new section 3A would be created 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. On conviction of this offence a person 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. The burden of proof for this offence would rest with the prosecution, who must prove that the accused either knew of, or had reason to believe, that the birds had been taken or killed unlawfully.

16. Mr Crampton, argued that the proposed new offence should be differently worded. He argued that securing a prosecution would be too difficult and that the prosecution should not have to establish that the accused person knew or had reason to believe that birds had

been unlawfully taken or killed. He noted that, while the proposed new offence is analogous with a similar offence in respect of the selling of unlawfully killed deer under the Deer Act 1991, offences relating to the trade in other huntable species under the Wildlife and Countryside Act 1981 and the Control of Trade in Endangered Species (Enforcement) Regulations 1997 are committed on a basis of strict liability, with an exception or defence dependant on the defendant showing that it applied to him.⁶ Mr Crampton stated that, to his knowledge, there are relatively frequent prosecutions for the relevant offences under those two pieces of legislation but he has never been aware of a prosecution under the Deer Act 1991 for the same type of offence.

17. As we note above, under the current law, it is not illegal to trade in unlawfully killed game birds (except during the closed seasons, when all trade is illegal). When we considered Article 5 of the Order during our scrutiny of the proposal, we asked the Department to comment on the proportionality of the proposed new offence. In its response, the Department argued that the form of the new offence was proportionate on a number of grounds, including that the need for the prosecution to prove that sale of unlawfully killed birds was done in the knowledge of their having been unlawfully killed would act as a protection for any person who might innocently sell such birds. The Department also noted that EC Regulation 178/2002 imposes requirements concerning the traceability of foodstuffs and, in particular, Article 18 of that Regulation requires that food and feed businesses must identify suppliers of food and food producing animals and the businesses to which they have supplied products and maintain appropriate records which can be made available to enforcement authorities on demand. The records must also include names and addresses of those who have supplied the relevant produce and the nature of products supplied, with the dates of all relevant transactions and this information would assist the authorities in identifying and dealing with instances of unlawful trade.

18. It appeared to us at the time of our scrutiny of the proposal for this Order that the form of the proposed new offence was a proportionate new burden, given that it was imposed in the context of a new freedom to deal in lawfully killed birds all the year round. Having considered the creation of the proposed new offence, we did not raise any specific concern about the ability to prosecute the proposed new offence on the basis of the proposed burden of proof. The effect of the proposed Order is clearly to make unlawful specific activities which it would be undesirable to permit and the fact that the proposed offence was analogous with that established under sections 10(3) and (4) of the Deer Act 1991 in respect of the trade in venison did and does appear to us to be a relevant precedent. **In the absence of any evidence that this element of the proposed Order would represent an opportunity to those who might wish to trade in unlawfully killed birds and in the light of the protection it affords for game we remain content for the Order to be made.**

4 Recommendation

19. In accordance with Standing Order No. 141(15) we recommend unanimously that the draft Order be approved.

⁶ Strict liability is the legal doctrine under which a person is guilty of an offence by simple commission of an act, regardless of their intentions at the time.

Formal minutes

Tuesday 12 June 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks

John Hemming

Dr Doug Naysmith

Alison Seabeck

Ms Angela C Smith

The Committee considered this matter.

Draft Report (Draft 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 19 read and agreed to.

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

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

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

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