



House of Commons
Regulatory Reform Committee

Draft Regulatory Reform (Deer) (England and Wales) Order 2007

Eighth Report of Session 2006–07

*Report, together with formal minutes and
written evidence*

*Ordered by The House of Commons
to be printed 18 July 2007*

HC 948

Published on 23 July 2007
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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 (3) 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) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No. 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union:

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.

Contents

Report	<i>Page</i>
Report under Standing Order No. 141	3
1 Introduction	3
2 The report on the proposal and the Department's response	4
Drafting of article 4 of the Order	5
Drafting of the Explanatory Note	5
Circumstances in which injured deer may lawfully be killed using any humane method	6
Use of .22 centre-fire rifles	6
Proposed subordinate provision making powers	7
Duration of the close season for female deer	7
Action to inform members of the public of the risk of night shooting	8
3 Other representations made on the proposal	8
The House of Lords Select Committee on Delegated Powers and Regulatory Reform	8
Other representations	8
4 Recommendation	9
Formal minutes	10
Reports from the Regulatory Reform Committee in the last and present Session	
	<i>inside back cover</i>

Report under Standing Order No. 141

The Regulatory Reform Committee has examined the draft Regulatory Reform (Deer) (England and Wales) Order 2007 in accordance with Standing Order No. 141.¹ We recommend unanimously that the draft Order be approved.

1 Introduction

1. The proposal for the Regulatory Reform (Deer) (England and Wales) Order 2007 was laid before the House on 18 December 2006 by the Department for Environment, Food and Rural Affairs (“the Department”). We published our report on the proposal on 2 April 2007.² The draft Order was laid before the House on 5 July 2007, together with an Explanatory Statement by the Department.³

2. The proposed Order would make a series of amendments to the Deer Act 1991 with the aim of making it easier for individuals to take action to control the deer population in England and Wales. It would also introduce various new provisions to that Act which aim at the enhancement of deer welfare, including the establishment of close seasons for kinds of deer which are currently not protected against killing at any time of year. In summary, the principal effects of the Order are to amend the 1991 Act to achieve the following purposes:

- a) To permit .22 centre-fire rifles to be used for shooting smaller species of deer;
- b) To allow any reasonable means of humanely despatching deer that are suffering due to injuries or disease;
- c) To allow dependent deer to be taken or killed if they have been deprived of, or are about to be deprived of, their mother, at any time of year;
- d) To enable licensed taking or killing during the close season to prevent deterioration of the natural heritage;
- e) To enable licensed taking or killing during the close season to preserve public health and safety;

1 On 4 July 2007 the House voted to amend Standing Order No.141 to take account of the Legislative and Regulatory Reform Act 2006 and to appoint a new Regulatory Reform Committee with identical membership to its predecessor. It also resolved that any Order laid under the Regulatory Reform Act 2001 and then before the House should be considered by both the newly appointed Regulatory Reform Committee and by the House itself as if such Orders were draft Orders subject to the Super-Affirmative procedure which were laid under the 2006 Act. We are therefore operating in accordance with the revised Standing Order No. 141 in force from 4 July 2007 in making this report.

2 Fourth Report of Session 2006-07 HC 411. The Department erroneously refers to this as the First Report in paragraph 5 of its Explanatory Statement.

3 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 Department. The draft Order is also available from the Better Regulation Executive website: <http://www.cabinetoffice.gov.uk/regulation/reform/orders/proposals.asp>

- f) To enable licensed taking or killing at night to prevent deterioration of the natural heritage;
- g) To enable licensed taking or killing at night to preserve public health and safety;
- h) To enable licensed taking or killing at night to prevent serious damage to property;
- i) To shorten the close season for all female deer to help allow better control of population numbers where necessary, without increasing the welfare risks for dependent young;
- j) To introduce a new close season for Chinese water deer from 1 April to 31 October inclusive;
- k) To ensure the close season applies to hybrids of a species as well as the parent species;
- l) To amend the meaning of “mechanically propelled vehicle” in the Deer Act to permit discharging firearms or projecting missiles from a mechanically propelled vehicle that is stationary.

3. The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(3) 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.⁴ Our discussion of matters arising from our consideration is set out below.

2 The report on the proposal and the Department's response

4. In our first stage report we recommended that the proposal be amended in a number of respects. We recommended:

- That the text of the proposed new section 8(3F)(d) inserted by the proposed article 4 of the Order be amended to refer to the taking and killing of deer at night, rather than during the close season.
- That the text of the Explanatory Note appended to the proposed Order be expanded to give a more adequate description of the Order.
- That the proposed article 3(3) of the Order be amended so that existing section 3(3) be retained and to permit any means of humanely despatching deer which are “in such condition” that to kill them would be an act of mercy, rather than permitting any means of humanely killing deer which are “so seriously diseased” that to kill them would be an act of mercy.
- That the proposed article 3(4) of the Order, which would permit the killing of various species of deer with .22 centre-fire rifles which have a muzzle energy of at least 1,356

4 Standing Order No. 141(6)

joules and certain specified types of ammunition, be amended to remove provision permitting the killing of roe deer.

- That the proposed article 6 be amended (i) to require that before making a subordinate provisions order in relation to any of the provisions mentioned in article 6(1), the Secretary of State and the National Assembly for Wales must consult those organisations who appear to them to represent persons likely to be interested in or who would be affected by the order and (ii) by omitting article 6(2) so that subordinate provisions orders shall be subject to the affirmative resolution procedure.
- That proposed article 5 be amended so that close seasons for female deer commence on 1 April rather than on 15 March, as provided in the proposed Order.

5. In addition to those elements of the proposal which we recommended should be amended before a draft Order was laid, our report made clear that we considered it would be appropriate for adequate steps to be taken to inform members of the public who might be in the vicinity when shooting of deer at night was carried out under proposed new licensing powers which would be created by amendments to the 1991 Act made under article 4(3).

Drafting of article 4 of the Order

6. In the proposed Order article 4 included new provision for insertion into section 8 of the 1991 Act amending existing machinery for the granting of licences to take and kill deer at night. The proposed new section 8(3F)(d) had provided that, before granting a licence, the relevant authority must be satisfied that “to achieve the purpose in question there is no satisfactory alternative to taking and killing the deer of the species and description to which the application relates *during the close season prescribed by Schedule 1 to this Act*” (our italics). It appeared to us that this was likely to be an error and when asked the Department confirmed that it was and that it should have referred to the taking and killing of deer at night rather than during the close season. We recommended that the Department amend the proposed Order accordingly and the Order would now therefore insert the following new section 8(3F)(d) into the 1991 Act:

“(d) to achieve the purpose in question there is no satisfactory alternative to taking and killing the deer of the species and description to which the application relates between the expiry of the first hour after sunset and the beginning of the last hour before sunrise;”

7. We are content with the new wording.

Drafting of the Explanatory Note

8. The original Explanatory Note provided for the proposed Order was short and uninformative and we recommended that it be expanded to give a fuller account of the Order it purports to describe. The revised Explanatory Note for the draft Order does

address the content of the Order more explicitly and we regard it as more useful to the reader than the original version.⁵

9. We are content with the Department’s response to our recommendation.

Circumstances in which injured deer may lawfully be killed using any humane method

10. The existing Schedule 2 to the 1991 Act allows the use of specified weapons to kill deer. Section 6(4) of that Act contains further provision allowing the use of any smooth bore gun for that purpose in circumstances where to kill a deer would be an act of mercy and section 6(3) permits the use of traps or nets to take or kill deer for preventing the suffering of injured or diseased deer. The Department had proposed that article 3(3) of the proposed Order should replace the existing sections 6(3) and (4) with a provision permitting a person to use any reasonable means to kill a deer if he reasonably believes that the deer has been so seriously injured, otherwise than by his unlawful act, or is so seriously diseased, that to kill it is an act of mercy.

11. We had two concerns. Firstly, it appeared to be supposed that there would not be any circumstances when it would be thought best to capture an injured deer but not to kill it. Secondly, the new provision applied the exceptional power to kill deer in circumstances where “it is so seriously diseased” that this would be an act of mercy; the equivalent existing provision specified killing deer “in such condition”. It appeared that the replacement provision might be construed as applying to a narrower range of circumstances.

12. The Department agreed that article 3(3) should be redrafted to retain the existing exceptional powers to capture deer or to kill them where they are in such condition that it would be merciful to do so.

13. We are content with the reworded form of the draft Order.

Use of .22 centre-fire rifles

14. Article 3(4) of the proposed Order contained provision which would have allowed the shooting of some smaller species of deer with guns and ammunition of a lower force than those presently permitted in the Deer Act 1991. It was proposed that, in view of the fact that populations of the smaller deer species had since become established in England and Wales, and were growing, the use of the lower power weapons and ammunition of the kinds specified should be permitted for killing Chinese water deer, muntjac deer and roe deer.

15. In considering this element of the proposal we took particular note of the views expressed by experts in wildlife management and animal welfare. In particular we noted that the RSPCA and Natural England took the view that there was not clear evidence to show that the use of these weapons would not prejudice animal welfare in respect of roe

⁵ We note that, as drafted, the penultimate paragraph of the Explanatory Note to the Order does not properly reflect the text of the Order. In that paragraph, referring to article 6, the reference to article 4 should be to article 4(3). The reference to section 4(3) of the Regulatory Reform Act 2001 should be to section 4 of that Act. We assume that these errors will be amended by the Department if and when the Order is presented to the Minister to be made.

deer, which are the largest of these smaller species of deer. We therefore recommended that this element of the Order should not permit the killing of roe deer with such weapons.

16. The Department indicates in its statement that it has reviewed the evidence available on this point and accepted the recommendation we made. **We welcome the exclusion of roe deer from the relevant provision in article 3 of the draft Order in line with our recommendation.**

Proposed subordinate provision making powers

17. The Department had proposed that Article 6 of the proposed Order should designate article 4(3) (licensing) and the tables of close seasons set out in article 5(1) as subordinate provisions and that any future subordinate provisions orders should be subject to negative resolution procedure in both Houses. The power to make such a subordinate provisions order in respect of Wales was proposed to be exercisable by the National Assembly for Wales.⁶ We had a number of concerns – in short, the proposed power was wider than analogous powers to amend the equivalent provisions in the 1991 Act, and yet it was still proposed to be exercisable subject to the negative resolution procedure. Neither did the proposed Order preserve existing requirements in respect of consulting interested parties before exercising the subordinate legislative power. We recommended that the proposed Order be amended to require consultation before use of the legislative powers which would be created and to make the use of the power subject to affirmative resolution procedure on the grounds that important matters relating to animal welfare and public safety would be involved and changes to legislation in such areas as these would properly require a vote in the House.

18. **The Department has accepted our recommendation.**

Duration of the close season for female deer

19. Article 5 of the proposed Order contained provision to amend Schedule 1 to the 1991 Act to commence close seasons for female deer on 15 March (and also to establish close seasons for various hitherto unprotected deer species, and for animals which are hybrids of red deer and sika deer parents). During the scrutiny period we received representations from the Deer Initiative and British Deer Society arguing that the close seasons for female deer should commence on 1 April. In light of the views of these bodies, and with the support for their argument given by the RSPCA, we recommended that the draft Order should provide that the close season for female deer should commence on 1 April. The Department has amended the draft Order accordingly.

20. As is noted in paragraph 21 of the Explanatory Statement, following the change discussed above the draft Order now also provides that the close season for male Chinese water deer should similarly commence on 1 April. This is because the male and female deer

⁶ In respect of Wales, the draft Order as laid now provides for subordinate provisions orders to be made by the Welsh Ministers, in line with the transfer of functions under section 4(6) of the Regulatory Reform Act 2001.

of this species are so hard to distinguish that it would expose the females to risk of shooting during their own close season if the males had a shorter close season.⁷

21. **We are content with the form of this element of the draft Order.**

Action to inform members of the public of the risk of night shooting

22. In addition to our recommendations for amendment to the form of the proposed Order, we also considered that it would be appropriate for licensing authorities to take particular care when issuing licences to permit the shooting of deer at night, and that in that context it would be important for consideration to be given to requiring particular action to bring the attention of the public to night shooting so that unnecessary risk might be minimised. We had in mind such expedients as the licensing authorities requiring the posting of notices in the vicinity of night shooting at local visitors centres as a condition for the issue of a licence.

23. In their response to this the Department has noted that while steps to publicise night shooting are necessary and must be carried out where there are public rights of way, they would need to be balanced against risks that might arise from such publicity, in particular that the activities of protestors so informed might in some circumstances actually expose individuals to danger. The Department states that “Licensing authorities will need to judge on a case-by-case basis the appropriateness of different publicity tools when advising deer managers”.⁸ **We agree with this and welcome the Department’s commitment, given in its Explanatory Statement, to bring our views to the attention of the licensing authorities.**

3 Other representations made on the proposal

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

24. The Committee issued its report on the proposal on 31 January 2007.⁹ The Committee considered that all elements of the proposed Order met the requirements of the Regulatory Reform Act 2001 and that it would be an appropriate use of the powers that Act confers.

Other representations

25. No other representations were received by the Department during the scrutiny period. The Department notes that it received copies of the letters we received from the Deer

7 Paragraph 6 of the Explanatory Statement states “This statement refers to the amendments made to the Order subsequent to the recommendations of the Committee. No further amendments have been made”. The amendment we discuss here is made by way of a supplement to our recommendation concerning the close seasons for female deer.

8 Explanatory Statement, paragraph 24

9 Referred to by the Department in paragraph 4 of the Explanatory Statement as the Fourth Report of Session 2006-07. In fact it is the Fifth Report of that Session.

Initiative and the British Deer Society regarding the future length of the shorter close seasons for female deer of some species that the proposal would have created.

4 Recommendation

26. In accordance with Standing Order No. 141(6) we recommend unanimously that the draft Order be approved.

Formal minutes

Tuesday 18 July 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks
John Hemming

Dr Doug Naysmith
Mr Andrew Slaughter

The Committee considered this matter.

Draft Report (Draft Regulatory Reform (Deer) (England and Wales) 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 26 read and agreed to.

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

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

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

Reports from the Regulatory Reform Committee in the last Session of Parliament

Session 2005-06

First	Proposal for the Regulatory Reform (Forestry) Order 2006	729
First Special	Legislative and Regulatory Reform Bill	878
Second	Proposal for the Regulatory Reform (Public Service Vehicles) Order 2006	879
Third	Draft Regulatory Reform (Forestry) Order 2006	880
Second Special	Government Response to the Committee's First Special Report of Session 2005-06: Legislative and Regulatory Reform Bill	1004
Fourth	Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006	1005
Fifth	Proposal for the Regulatory Reform (Registered Designs) Order 2006	1142
Sixth	Proposal for the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006	1309
Seventh	Draft Regulatory Reform (Registered Designs) Order 2006	1349
Eighth	Draft Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006	1555

Reports from the Regulatory Reform Committee in the current Session of Parliament

Session 2006-07

First Special	Scrutiny of Regulatory Reform Orders	160
Second Special	Revised Standing Orders	385
First	Proposal for the Regulatory Reform (Game) Order 2007	384
Second	Proposal for the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007	383
Third	Proposal for the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	397
Fourth	Proposal for the Regulatory Reform (Deer) (England and Wales) Order 2007	411
Fifth	Draft Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007	611
Sixth	Draft Regulatory Reform (Financial Services and Markets Act 2000) Order 2007	673
Seventh	Draft Regulatory Reform (Game) Order 2007	674