



House of Commons
Regulatory Reform Committee

**Draft Legislative
Reform (Dangerous
Wild Animals)
(Licensing) Order 2010:
Second Stage**

First Report of Session 2009–10

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 19 January 2010*

The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

Current membership

Andrew Miller (*Labour, Ellesmere Port & Neston*) (Chairman)
Gordon Banks (*Labour, Ochil and South Perthshire*)
Lorely Burt (*Liberal Democrat, Solihull*)
Mr Quentin Davies (*Labour, Grantham and Stamford*)
Mr James Gray (*Conservative, North Wiltshire*)
John Hemming (*Liberal Democrat, Birmingham, Yardley*)
Mrs Sharon Hodgson (*Labour, Gateshead East & Washington West*)
Mr Stewart Jackson (*Conservative, Peterborough*)
Judy Mallaber (*Labour, Amber Valley*)
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)
John Penrose (*Conservative, Weston-Super-Mare*)
Mr Jamie Reed (*Labour, Copeland*)
Mr Anthony Steen (*Conservative, Totnes*)
Phil Wilson (*Labour, Sedgefield*)

Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (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 John Whatley (Clerk), Neil Caulfield (Inquiry Manager) and Liz Booth (Committee Assistant).

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Summary

Consideration of the draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009 was upgraded to the super-affirmative procedure by the Delegated Powers and Regulatory Reform Committee of the House of Lords. We agree with the proposed amendment introduced into the original draft Order by the revised draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010 which was laid before Parliament on 7 December 2009. Accordingly, we recommend that the revised draft Order be approved.

1 Report

1. The draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009 and Explanatory Document were laid before Parliament by the Department for Environment, Food and Rural Affairs on 17 June under section 14(1) of the Regulatory Reform Act 2006.

2. The purpose of that draft Order was threefold. It sought:

- to remove the mandatory requirement for inspections to be carried out in respect of certain applications for a replacement, or second-similar, licence (proposal 1);
- to extend the period of validity of a licence from a maximum of one calendar year to two years (proposal 2);
- to provide that licences (other than in the case of licence renewals) would come into force immediately upon their being granted (proposal 3).

3. Our Seventh Report of Session 2008—09 considered these proposals in full.¹ We deprecated the seeming current high level of non-compliance with the requirements of the Dangerous Wild Animals Act 1976 and the inconsistent applications of its terms by local authorities, but agreed that the proposed affirmative procedure was appropriate and recommended that the draft Order be approved.

4. The House of Lords Delegated Powers and Regulatory Reform Committee, however, whilst going along with proposals 2 and 3, took issue with proposal 1. It said that it:

...was not satisfied that proposal 1, which would remove a mandatory trigger for inspection and replace it with guidance, would sufficiently preserve the existing protections to the public, particularly in the weak and variable enforcement regime ...².

We too had made similar comments.³

5. The Department for Environment, Food and Rural Affairs accepted this point. As a result, a revised draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010, omitting proposal 1, was laid before Parliament on 7 December 2009, along with an accompanying Explanatory Statement.

6. Although we agree with the change, we would, on the basis of the initial evidence at our disposal, have been inclined to stand by the reasoning behind our previous endorsement (with reservations) of proposal 1 as part of the package. We said then that:

The proposed new arrangements should not be seen as a means of letting complacent local authorities off the hook by introducing a more relaxed regime for inspections. There is no excuse for them not to fulfil their obligations under the Act

1 Seventh Report from the Regulatory Reform Committee, Session 2008-09: The Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009 (HC 795).

2 Eleventh Report from the Delegated Powers and Regulatory Reform Committee, Session 2008-09 (HL 135).

3 *Ibid.* See paras 23 to 28.

given that the intention is for all costs to be recovered. They need to pay full attention to the potential public safety and animal welfare issues about which the Act charges them with oversight and target their efforts accordingly. **We urge DEFRA to police the situation more rigorously in future than it has done in the past.**⁴

7. But the Lords Committee's suggested amendment prompted a second consultation exercise on proposal 1, which took into account the desire to increase the life of a licence to two years. There were 61 responses this time. Overall, these indicated that the inclusion of proposal 1 would have little impact on administration and enforcement; would not produce a more focused inspection regime; and could lead to an absence of inspection. Furthermore, a majority of local authorities now said they would not be content to forego inspections at the two-yearly point or be prepared to leave a longer gap between inspections; would still inspect on renewal of licences every two years; and were not less likely to inspect premises where an application for a second-similar licence was made.⁵

8. In a letter to the Chairman of the Delegated Powers and Regulatory Reform Committee, Jim Fitzpatrick MP, Minister of State, Department for Environment, Food and Rural Affairs said:

the desire within local authorities for flexibility regarding the requirement to inspect is fairly low....On the basis of this new evidence there appears to be less appetite than we had previously thought among the local authorities for the flexibility of inspection which proposal 1 sought to provide, nor any sense that a more targeted inspection programme would increase the levels of enforcement and protection for which the act provides. On this basis there appears to be little mileage in removing the mandatory requirement for inspections ...⁶

9. Also, the point has now been made that overall local authority expenditure on responsibilities relating to the Dangerous Wild Animals Act 1976 is relatively small and little would be saved if proposal 1 was included.⁷ Moreover, the fact that mandatory duties placed on local authorities will inevitably take priority over discretionary ones has been spelt out.⁸ Given the criticisms we voiced in our first Report on the matter we were pleased to note the following observation contained in the Explanatory Statement:

...the majority of authorities want to be seen to be doing as much as they can to ensure the DWAA is implemented properly and that public safety is maintained...⁹

10. The altered scenario changes our view of proposal 1, which we now believe was a misguided part of the original draft Order. **We therefore fully support the Delegated**

4 Seventh Report from the Regulatory Reform Committee, Session 2008-09: The Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009, para 26 (HC 795).

5 See Explanatory Statement, p6 and Annex B.

6 Letter to the Chairman of the Delegated Powers and Regulatory Reform Committee from the Minister of State, Department for Environment, Food and Rural Affairs, October 2009. See also the Explanatory Statement.

7 Explanatory Statement, p14, paras6 and7.

8 *Ibid.*

9 *Ibid.*

Powers and Regulatory Reform Committee in its view that it should be dropped. Accordingly, we recommend that the revised draft Order be approved.

Formal Minutes relating to the report

Tuesday 19 January 2010

Members present:

Andrew Miller, in the Chair

John Hemming
Judy Mallaber

Dr Doug Naysmith

Draft Report (Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010: Second Stage), 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 10 read and agreed to.

Summary agreed to.

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

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

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

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
Second	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009: Second stage	HC 209
Third	Draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	HC 210
Fourth	Draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009	HC 399
Fifth	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 400
Sixth	Draft Legislative Reform (Limited Partnerships) Order 2009	HC 794
Seventh	Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009	HC 795
Eighth	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 883
Ninth	Themes and Trends in Regulatory Reform	HC 329-I and III (597)
Tenth	Draft Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2009	HC 1108
Eleventh	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 1111

Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II (1186)
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090