

2007 No. 2183

REGULATORY REFORM, ENGLAND AND WALES

ANIMALS, ENGLAND AND WALES

DEER

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

Made - - - - *25th July 2007*

Coming into force - - *1st October 2007*

This Order is made by the Secretary of State in exercise of the powers conferred by sections 1 and 4(3) and (6) of the Regulatory Reform Act 2001 (“the Act”)(a).

For the purposes of section 1(5) of the Act, this Order is made with the agreement of the Welsh Ministers(b).

For the purposes of section 3(1) of the Act, the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise.

For the purposes of section 3(2) of the Act, the Secretary of State is of the opinion, in relation to any burden created by this Order, that—

- (a) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burden, and

(a) 2001 c. 6. The provisions of the Regulatory Reform Act 2001 (“the 2001 Act”) (apart from section 13(1)(b) and (2), the definition of “the 1994 Act” in section 14 and section 15(1) and (2)) were repealed by section 30(1) of and the Schedule to the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”). However, section 30(2) of the 2006 Act provides that this does not affect the application of the 2001 Act in relation to the making of an order under section 1 of the 2001 Act giving effect (with or without variations) to proposals in a document laid before Parliament under section 6(1) of the 2001 Act before the day on which the 2006 Act came into force. A document containing the proposals to which this Order gives effect (with modifications) was laid before Parliament on 18th December 2006 and the 2006 Act subsequently came into force on 8th January 2007 (two months after the date on which it received Royal Assent – see section 33 of the 2006 Act). The function of the National Assembly for Wales in making a subordinate provisions order where an order under section 1 of the 2001 Act provides (by virtue of section 4(6) of that Act) for this power to be exercisable by the Assembly was transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32) immediately after the end of “the initial period” (as defined in section 161(5) of the Government of Wales Act 2006). The initial period ended with the day on which the first appointment was made under section 46 of the Government of Wales Act 2006, that is to say, 25th May 2007.

(b) The function of the National Assembly for Wales as regards the exercise of the power to give its agreement under section 1(5) of the 2001 Act was transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32) immediately after the end of “the initial period” (as defined in section 161(5) of the Government of Wales Act 2006). The initial period ended with the day on which the first appointment was made under section 46 of the Government of Wales Act 2006, that is to say, 25th May 2007.

- (b) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for the Order to be made.

The Secretary of State has consulted in accordance with section 5(1) of the Act(a).

The Secretary of State has laid a document before Parliament containing his proposals for this Order in accordance with section 6(1) of the Act.

The period for Parliamentary consideration referred to in section 8(1) of the Act has expired.

In accordance with section 8(4) of the Act, the Secretary of State has had regard to the representations made during that period and in particular to the Fourth Report of Session 2006-07 of the House of Commons Regulatory Reform Committee entitled “Proposal for the Regulatory Reform (Deer) (England and Wales) Order 2007”(b) and to the Fifth Report of Session 2006-07 of the House of Lords Delegated Powers and Regulatory Reform Committee(c).

In accordance with section 4(2) of the Act, the Secretary of State has laid a draft of this Order before Parliament, with a statement as required by section 8(5) of that Act.

The draft has been approved by a resolution of each House of Parliament.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Regulatory Reform (Deer) (England and Wales) Order 2007 and shall come into force on 1st October 2007.

(2) This Order extends to England and Wales only.

(3) In this Order “the 1991 Act” means the Deer Act 1991(d).

Use of prohibited weapons and other articles

2. In section 4 of the 1991 Act (use of prohibited weapons and other articles), in subsection (4)(a) after “deer,”, insert “when the vehicle is moving or when its engine is running.”.

General exceptions to certain provisions of the Deer Act 1991

3.—(1) Section 6 of the 1991 Act (general exceptions to certain provisions of this Act) is amended as follows.

(2) After subsection (2), insert—

“(2A) A person shall not be guilty of an offence under section 2 or section 3 above by reason of taking or killing a deer that he reasonably believes—

(a) has been deprived in any way (other than by an unlawful taking or killing by that person) of a female deer on which it was dependent; or

(b) is about to be deprived, by death from disease or a lawful taking or killing, of a female deer on which it is dependent.”.

(3) For subsection (4), substitute—

(a) Section 5(1)(c) was amended by the Justice (Northern Ireland) Act 2002 (c. 26), Schedule 12, paragraph 81.

(b) Session 2006-07, HC 411.

(c) Session 2006-07, HL 44.

(d) 1991 c. 54.

“(4) A person shall not be guilty of an offence under section 4(1) or (2) above by reason of the use of any reasonable means for the purpose of killing any deer if he reasonably believes that the deer has been so seriously injured, otherwise than by his unlawful act, or is in such condition, that to kill it is an act of mercy.”.

(4) After subsection (4), insert—

“(4A) In subsection (4) above, “any reasonable means” means any method of killing a deer that can reasonably be expected to result in rapid loss of consciousness and death and which is appropriate in all the circumstances (including in particular what the deer is doing, its size, its distance from the closest position safely attainable by the person attempting to kill the deer and its position in relation to vegetative cover).”.

(5) At the end, insert—

“(6) A person shall not be guilty of an offence under section 4(2)(a) above if he uses for the purpose of taking or killing or injuring any Chinese water deer (*Hydropotes inermis*) or muntjac deer (*Muntiacus reevesi*)—

- (a) a rifle having a calibre of not less than .220 inches and a muzzle energy of not less than 1,356 joules (1000 foot pounds), and
- (b) a soft-nosed or hollow-nosed bullet weighing not less than 3.24 grammes (50 grains).”.

Licences

4.—(1) Section 8 of the 1991 Act (exceptions for persons licensed by Natural England or the Countryside Council for Wales)(a) is amended as follows.

(2) For the heading, substitute “Exceptions for licensed persons”.

(3) After subsection (3), insert—

“(3A) A licence may be granted to any person by—

- (a) Natural England, in relation to any land in England, or
- (b) the Welsh Ministers, in relation to any land in Wales,

exempting that person from section 2 above in relation to any species and description of deer.

(3B) A licence may be granted under subsection (3A) above for the purpose of—

- (a) preserving public health or public safety, or
- (b) conserving the natural heritage.

(3C) Before granting a licence under subsection (3A) above in relation to any land the licenser must be satisfied that—

- (a) in the case of a licence required for the purpose of preserving public health or public safety, there is a serious risk of deer of the species and description to which the application relates putting public health or public safety at risk;
- (b) in the case of a licence required for the purpose of conserving the natural heritage, there is a serious risk of deer of the species and description to which the application relates causing deterioration of the natural heritage;
- (c) 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;

(a) As amended by the Countryside and Rights of Way Act 2000 (c.37), section 73(4), Schedule 8, paragraph 1(o), which substituted “English Nature” for “Nature Conservancy Council for England” and then further amended by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 128, which further substituted “Natural England” for “English Nature”.

- (d) the applicant has a right of entry to the land for the purpose of taking or killing deer under the licence; and
- (e) if the licence is to relate to red, roe or fallow deer, the taking or killing to be authorised by the licence will not compromise the ability of that species to maintain the population of deer in question on a long-term basis within its natural range in the numbers which exist after the taking or killing has taken place.

(3D) A licence may be granted to any person by—

- (a) Natural England in relation to any land in England, or
- (b) the Welsh Ministers, in relation to any land in Wales,

exempting that person from section 3 above in relation to any species and description of deer.

(3E) A licence may be granted under subsection (3D) above for the purpose of—

- (a) preserving public health or public safety,
- (b) conserving the natural heritage, or
- (c) preventing serious damage to property.

(3F) Before granting a licence under subsection (3D) above in relation to any land the licenser must be satisfied that—

- (a) in the case of a licence required for the purpose of preserving public health or public safety, there is a serious risk of deer of the species and description to which the application relates putting public health or public safety at risk;
- (b) in the case of a licence required for the purpose of conserving the natural heritage, there is a serious risk of deer of the species and description to which the application relates causing deterioration of the natural heritage;
- (c) in the case of a licence required for the purpose of preventing serious damage to property, property on the land has been seriously damaged in the year preceding the licence application;
- (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;
- (e) the applicant has a right of entry to the land for the purpose of taking or killing deer under the licence; and
- (f) if the licence is to relate to red, roe or fallow deer, the taking or killing to be authorised by the licence will not compromise the ability of that species to maintain the population of deer in question on a long-term basis within its natural range in the numbers which exist after the taking or killing has taken place.

(3G) A licence under subsection (3A) or (3D) above must state—

- (a) the purpose for which it is granted;
- (b) the land to which it relates;
- (c) the species and descriptions of deer to which it relates;
- (d) the method by which the licensee may take or kill deer; and
- (e) the period, not exceeding two years, for which it is valid.

(3H) Natural England and the Welsh Ministers may charge fees for the consideration of applications for licences under subsections (3A) and (3D) above.”.

(4) In subsection (4)—

- (a) for the words from “subsection (1)” to “Wales”, substitute “this section may be revoked at any time by the licenser”; and
- (b) for “either of those subsections”, substitute “this section”.

(5) In subsection (5), for “subsection (1) or subsection (2) above”, substitute “this section”.

(6) At the end, add—

“(6) In this section, “the natural heritage” means flora and fauna, geological or physiographical features or natural beauty and amenity of the countryside.”.

Close seasons

5.—(1) For the tables in Schedule 1 to the 1991 Act (close seasons), substitute—

“CHINESE WATER DEER (*Hydropotes inermis*)

Buck 1st April to 31st October inclusive

Doe 1st April to 31st October inclusive

FALLOW DEER (*Dama dama*)

Buck 1st May to 31st July inclusive

Doe 1st April to 31st October inclusive

RED DEER (*Cervus elaphus*)

Stags 1st May to 31st July inclusive

Hinds 1st April to 31st October inclusive

RED /SIKA DEER HYBRIDS

Stags 1st May to 31st July inclusive

Hinds 1st April to 31st October inclusive

ROE DEER (*Capreolus capreolus*)

Buck 1st November to 31st March inclusive

Doe 1st April to 31st October inclusive

SIKA DEER (*Cervus nippon*)

Stags 1st May to 31st July inclusive

Hinds 1st April to 31st October inclusive”.

(2) In section 2 of the 1991 Act, omit subsections (4) and (5).

(3) In section 15 of the 1991 Act(a), for subsection (2), substitute—

“(2) A statutory instrument containing an order made under section 4(3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

(4) In section 16 of the 1991 Act, after the definition of “deer” insert “ “species” includes any hybrid of different species of deer”.

Subordinate provisions

6.—(1) For the purposes of section 4 of the Regulatory Reform Act 2001, article 4(3) and the tables set out in article 5(1) of this Order are designated as subordinate provisions.

(2) The power to make a subordinate provisions order(b) in relation to any of the provisions mentioned in paragraph (1) shall be exercisable in relation to Wales by the Welsh Ministers.

(3) Before making a subordinate provisions order in relation to any of the provisions mentioned in paragraph (1), the Secretary of State or the Welsh Ministers (as the case may be) must consult

(a) As amended by S.I. 2007/2007, the Schedule, paragraph 4(c).

(b) See section 4(4) of the Regulatory Reform Act 2001.

those organisations who appear to him or them (respectively) to represent persons likely to be interested in or who would be affected by the order.

25th July 2007

Joan Ruddock
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 1 of the Regulatory Reform Act 2001 (2001 c. 6). It amends the Deer Act 1991 (1991 c. 54) (“the 1991 Act”) by removing certain burdens on those affected by it.

Article 2 amends section 4(4) of the 1991 Act as regards the use of mechanically propelled vehicles when shooting at deer. The effect of the amendment is that it is no longer an offence to shoot at deer from a mechanically propelled vehicle, provided that the vehicle is stationary and its engine is not running.

Article 3 amends section 6 of the 1991 Act (which is concerned with the exceptions to sections 2 to 4 of the 1991 Act). Those sections contain offences relating to the killing or taking of deer.

Article 4 amends section 8 of the 1991 Act (which is concerned with the granting of exemptions by licence) as follows—

- (a) it confers a power to grant a licence exempting a person from section 2 of the 1991 Act, (which makes it an offence, subject to an exemption, to take or kill deer in close season) for the purpose of preserving public health or public safety or for the purpose of conserving the natural heritage; and
- (b) it confers a power to grant a licence exempting a person from section 3 of the 1991 Act (which makes it an offence to take or kill deer at night) for the purpose of preserving public health or public safety, for the purpose of conserving the natural heritage or for the purpose of preventing serious damage to property.

Article 5 amends Schedule 1 to the 1991 Act (which sets out the close seasons in respect of different species of deer) and makes consequential amendments. It applies a close season, for the first time, to the taking or killing of Chinese water deer and it applies a close season, also for the first time, to the taking or killing of hybrid offspring resulting from a cross of a red deer with a sika deer.

Article 6 designates article 4 and the tables in article 5(1) as subordinate provisions for the purposes of section 4(3) of the 2001 Act. By virtue of section 4(2) of the Regulatory Reform Act 2001, the affirmative resolution procedure will apply to any subordinate provisions order made in relation to these provisions.

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from Defra (Wildlife Species Conservation Division), Temple Quay House (Zone 1/08a), 2 The Square, Temple Quay, Bristol, BS1 6EB.

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

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