

Title: Wildlife Law IA No: LAWCOM0019 Lead department or agency: Law Commission Other departments or agencies: Department for Environment, Food and Rural Affairs	Impact Assessment (IA)
	Date: August 2012
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Keith Vincent 020 3334 0262
Summary: Intervention and Options	RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£115.62 m	£m	£m	No	NA

What is the problem under consideration? Why is government intervention necessary?

The legislative provisions which govern wildlife have evolved over more than 180 years. A complex legislative landscape has developed, resulting in inflexibility, inaccessibility and inconsistency in the powers, rights and obligations of those subject to the law. In particular, the implementation of the UK's obligations under international law, primarily EU law, has not always been carried out in the most straightforward way. Consequently, it is difficult for those subject to the law to understand their rights and obligations; there is a perceived lack of transparency in the domestic law. Only primary legislation can resolve these problems.

What are the policy objectives and the intended effects?

The policy objectives are to create a modern regulatory regime which is: (1) simple and rational, promoting an efficient regulatory system; (2) accessible, so that those subject to it can easily understand their rights and obligations; (3) comprehensive, not allowing for any unjustifiable gaps; (4) transparent and balanced, so that competing interests are appropriately balanced; and (5) compliant with the UK's international objectives, especially those under EU law which require adequate implementation into domestic law. The intended effect of reform is to create a clear, flexible, modern and efficient legal framework governing the protection, management, usage and welfare of wildlife.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing.

Option 1: Simplification and reform of the regulatory framework governing the protection, management, usage and welfare of wildlife (the *preferred option*). In general terms, this option involves consolidating existing legal provisions and promoting a more efficient and effective legal structure by establishing a single wildlife statute.

The preferred option 1 is a rational approach which appropriately balances competing interests.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			NO		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro	< 20	Small	Medium	Large
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0	Non-traded: 0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Description: Simplification and reform of the regulatory framework governing the protection, management, usage and welfare of wildlife

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £115.62

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.02	£0.45	£3.73

Description and scale of key monetised costs by 'main affected groups'

Transitional costs: Regulators and non-government organisations - producing guidance £21,000 (best estimate)
 Ongoing costs: Regulators - cost of administering civil sanctions £446,680 per year (best estimate)

Other key non-monetised costs by 'main affected groups'

Transition costs for wildlife law users, such as developers and farmers, including training.
 Increased administrative burden as new regime is established (regulators).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	£14.35	£119.35

Description and scale of key monetised benefits by 'main affected groups'

Ongoing benefits: Users of the regulatory regime – reduced cost of external advice (consultancy advice) - £12,936,000 per year (best estimate); Savings from increased maximum time limits for certain licences - £128,707 per year (best estimate); RSPCA and CPS savings to prosecutors to wildlife related crime as a result of full use of civil sanctions - £796,328 per year (best estimate); HM Court Service - shift of cases to civil sanctions, £489,634 per year (best estimate).

Other key non-monetised benefits by 'main affected groups'

Reduction in brake on economic development caused by complexity in current legal regime.
 Ability to deliver policy choices (regulators and general public).
 Avoidance of EU infringements.

Key assumptions/sensitivities/risks	Discount rate	3.5%
Key assumptions: 1. Savings in providing advice are passed on to users of wildlife regime. 2. There is a 20% shift from criminal sanctions to civil sanctions. Risks: 1. The savings potential is over-estimated as there is the less than 20% shift from criminal sanctions to civil ones.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs:	No	N/A
Benefits:		
Net:		

PART 1: INTRODUCTION

This is an initial impact assessment which is produced as part of our consultation process. The consultation process is the first stage in our project as we work towards producing a final report. At that stage, we will publish a final impact assessment. The figures contained in this impact assessment are our initial estimates based on the evidence available. We will be working with stakeholders in order to gather further information. We welcome any additional views and evidence as part of our consultation process.

Background to the problem

Until the twentieth century, wildlife law in England and Wales was focused primarily on the creation and protection of rights associated with land. Wildlife was historically treated by the law as an economic or a leisure resource, or as something to be controlled, rather than something worthy of protection in its own right.¹ In more modern times, the utilitarian status afforded to wildlife has continued, allowing wildlife to be managed to permit activity such as the building of a road, the operation of an airport, and many other activities.

However, towards the latter half of the nineteenth century, considerations of animal welfare and conservation began to feature in the legal framework. This gained momentum during the 1960s and 70s, the age of television bringing about increased public awareness of wildlife. This, in turn, led to the formation of many wildlife charities and lobby groups which sought to use the law to protect and conserve particular wildlife species.

The result was a series of self-contained, species-specific legislative regimes. Consequently, and despite repeated legislative interventions, the current law remains a patchwork of competing provisions, serving different – and sometimes competing – policy objectives. Some measures are fairly broad, such as those for wild birds; others are focused on a single species, such as badgers and deer. Some measures are concerned with the rights of landowners; others are underpinned by protection and conservation goals. A complex legislative landscape has evolved, resulting in inflexibility, inaccessibility and, in places, inconsistency in the powers, rights and obligations of those subject to the law.

For these reasons, the Department for Environment, Food and Rural Affairs (DEFRA) proposed a project to review the law relating to wildlife as part of the Law Commission's Eleventh Programme of Law Reform.

For the purposes of the wildlife project, we are concerned with the law relating to wild mammals, birds, fish, reptiles, amphibians, invertebrates, plants and fungi. The law relating to these species is set out in more than 400 legal provisions contained in well over 40 major pieces of legislation.

There are four particular constraints on the wildlife project.

1. Habitats: the legislative provisions on habitats are excluded from the project.
2. Levels of species protection: we are not provisionally proposing fundamental changes to the level of protection afforded to a particular species, except where a specific set level of protection is required by EU law. Specifically, we are not considering reform to the Hunting Act 2004.
3. General schemes: the principal focus of certain legislative regimes, such as disease control powers under the Animal Health Act 1981, is not the regulation or protection of wildlife but the protection of agriculture and of public health. Reform to their provisions is outside the scope of our project.

¹ For example, the Game Acts of the nineteenth century sought to protect the economic interests in wildlife of those in control of the land on which the wildlife was present: Night Poaching Act 1828, Game Act 1831, Game Licences Act 1860, Ground Game Act 1880.

4. Marine extent: we have limited ourselves to the consideration of legislative schemes which have a jurisdictional reach of 12 nautical miles seaward of the baseline, so to the outward edge of the “territorial waters” of England and Wales.

Problem under consideration

There are six key difficulties with the law relating to wildlife.

First, the law governing wildlife is unduly complicated. The development of the law has led to the creation of micro-regimes which differ depending on the species to which they apply. Although some species do warrant different management regimes, the complexity of the law makes it unnecessarily difficult for those subject to it to understand their rights and obligations.

Second, the implementation of the UK’s obligations under EU law in respect of wildlife has not always been carried out in a simple and straightforward way. Nor, on occasion, has the opportunity been taken to integrate the UK’s EU obligations with domestic provisions. Consequently, there are inconsistencies between the EU wildlife regime and the domestic law regime. Not only does this make the law unnecessarily complex, it exposes the UK to potential legal proceedings brought by the European Commission.

Third, there is a lack of flexibility in some of the current regime. It is recognised that in certain places the regime needs a degree of rigidity in order to meet the expectations placed on it, whether for wildlife protection or otherwise. However, in places, the lack of flexibility is hard to justify – for example, the lack of licensing powers in certain acts, such as the Game Act 1831, or that not all of the schedules in the Wildlife and Countryside Act 1981 can be amended. The consequence of this inflexibility is that changes in species protection preferences cannot be made without recourse to primary legislation, which is often slower and more expensive than using other legislative tools, such as secondary legislation or binding codes of practice.

Fourth, some areas of the current regime lack clarity. This is, in part, a product of the general piecemeal evolution of wildlife law – for example, the protective regime for certain species, such as bats, is strewn across a collection of Acts which inevitably leads to uncertainty. At other times, there is debate on key terms within the legislation, such as “no other satisfactory solution”.

Fifth, there are significant gaps in the law. This is particularly true in respect of the regime for the control of invasive species, though there are other examples, such as there being no power to create closed seasons for certain species.

Finally, one criticism of our current domestic law is a lack of transparency. For example, some species offences have civil sanctions available, while others do not, and there is considerable variation in the civil sanctions that are available for many species. It is hard to see why these choices have been made (since there is no obligation on decision-makers to provide an explanation), and this can lead some to think that priority is given to a particular interest.

Rationale for intervention

Market failure arises from the existence of a negative externality. An externality is a spill-over effect on a third party who had nothing to do with the original contract. Under these conditions resources are no longer allocated in the most efficient way as the scale and cost of market transactions do not reflect the wider cost to society which has to deal with the harmful effects. In the case of wildlife management, a negative externality occurs at several levels. For example, harmful environmental effects are indicated through the under-protection of native wildlife which has economy-wide adverse consequences as they risk extinction at worse.

Market failure may also occur as incomplete or inaccessible information affects the capacity to act in a way which will deliver an optimal outcome. Complicated and inaccessible law has made it difficult for landowners to understand their responsibilities. The risk-averse landowner will potentially limit activity and under-utilise resources, whilst risk lovers will be inclined to go beyond what is desirable.

Legal guidelines provide a non-market based incentive contributing towards the optimum level of economic activity. Clear guidelines and standards enable the control of wildlife and form part of an integrated environmental policy.

The problems with the current law can only be remedied through Government intervention to amend the current regulatory regime which governs wildlife. The objectives can only be achieved by way of primary and secondary legislation, supported by codes and guidance as proposed.

Policy objectives

The policy objectives are to create a modern regulatory regime governing the protection, management, usage and welfare of wildlife, which is:

1. Simple and rational

The purpose of reform would be to replace the current patchwork of laws with a simple and cohesive legal framework governing the protection, management, usage and welfare of wildlife. A simplified and rational legal framework would promote a more accessible and efficient regulatory system, yielding both economic and practical benefits.

2. Accessible

A key objective of reform would be to make wildlife law clearer and easier to understand. In particular, an accessible legal framework would ensure that key terms within the legislation are unambiguously defined, and that provisions relating to particular species or behaviour are logically grouped together rather than strewn across a collection of statutes.

3. Comprehensive

A modern regulatory regime would be comprehensive. There would be no unnecessary gaps in the law. Specifically, it would properly address the management of invasive non-native species, appeals and challenges to wildlife-related decisions, and the mechanisms for enforcement, including criminal offences, to ensure full functioning of the regulatory regime.

4. Balanced Decisions

There are inevitably competing interests within wildlife regulation, such as conservation, welfare, control and exploitation. Sometimes, conservation interests should predominate, while at other times economic interests should prevail. To that end, wildlife law must ensure that competing interests are taken into account and a balanced and rational decision is reached, one appropriate to the specific facts that the decision is concerned with.

5. Compliant with the UK's international obligations

A reformed regulatory regime would align domestic law with the UK's international obligations. In respect of the UK's obligations under EU law, this would involve adequate implementation of the relevant EU directives into the domestic legal regime.

Scale and scope

Key users of the wildlife legal regime include those involved in the game industry, agriculture, horticulture, aquaculture, forestry and development. The legal regime is also of particular relevance to those engaged in the conservation and protection of wildlife, as well as ordinary citizens, and needs to serve all those interested in a balanced manner.

The subject matter of the legal regime for wildlife has a significant effect on the national economy. The shooting industry alone has been valued as worth £1.6 billion to the UK economy.² Agriculture's contribution to the national economy is measured by its contribution to Gross Value Added, which in 2011 was estimated at £8.8 billion or 0.55% of UK Gross Value Added. Agriculture's contribution to

² Public and Corporate Economic Consultants, *Shooting Sports* (2006).

national employment was estimated at 1.52%.³ Conservation and the presence of wildlife can also have a significant influence on the general economy, through leisure and tourism.

The main regulatory bodies in respect of wildlife management are as follows:

1. The Department for Environment, Food and Rural Affairs (DEFRA)

DEFRA is the government department responsible for environmental protection, food production and standards, agriculture, fisheries and rural communities in the United Kingdom. It makes policy and legislation, and works with others to deliver its policies, in areas such as the natural environment, biodiversity, plants and animals; sustainable development and the green economy; food, farming and fisheries; animal health and welfare; environmental protection and pollution control; and rural communities and issues. Although DEFRA only works directly in England, it works closely with the devolved administrations in Wales, Scotland and Northern Ireland.

2. The Welsh government

Under Part 4 of the Government of Wales Act 2006, nature conservation and animal welfare (except hunting with dogs) are devolved matters. Like DEFRA, the Welsh government makes policy and legislation in areas such as farming; animal health and welfare; protection, conservation and management of the environment; forestry; food and fisheries; energy; and climate change.

3. Natural England

Natural England is the non-departmental public body of the UK government responsible for ensuring that England's natural environment is protected and improved. Its powers include issuing wildlife licences, designating "Areas of Outstanding Natural Beauty" and "Sites of Special Scientific Interest", managing certain national nature reserves, overseeing access to open country and other recreation rights, and enforcing the associated regulations. It is also responsible for the administration of numerous grant schemes and frameworks that finance the development and conservation of the natural environment.

4. The Countryside Council for Wales (CCW)

The CCW is an independent, Welsh government sponsored body and is Wales's wildlife conservation authority. As a statutory advisory and prosecuting body, the CCW aims to sustain Wales' natural environmental, both on land and at sea. It advises on matters which affect the environment; issues wildlife licences; carries out research and survey work on the state of the environment, its habitats and wildlife; works with owners and occupiers of land that has "protected" status to ensure that the wildlife or geological value of their sites are retained and enhanced; and works to promote the enjoyment of the Welsh countryside and coast.

5. The Marine Management Organisation (MMO)

The MMO is a non-departmental public body responsible for ensuring sustainable development in the marine area and promoting the UK government's vision for clean, healthy, safe, productive and biologically diverse oceans and seas. Its powers include implementing a new marine planning system, issuing marine and wildlife licences, managing UK fishing fleet capacity and UK fisheries quotas, creating and managing a network of marine protected areas, and responding to marine emergencies.

³ DEFRA, *Agriculture in the United Kingdom 2012* (2012). p 5, <http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-crosscutting-auk-auk2011-120709.pdf> (last accessed 17 August 2012).

Licensing

Licences are issued by Natural England, the Countryside Council for Wales, the Welsh government and the Marine Management Organisation. Each will be considered in turn.

Natural England

A total of 28,109 wildlife applications were processed by Natural England over the three year period of 2009/10 to 2011/12. On average, there were 9,370 applications per year.

Table 1: Species breakdown of licences processed in 2009/10 - 2011-12⁴

	2009/10	2010/11	2011/12	Average*
Science & Conservation	4,356	5,009	5,393	4,919
EPS Mitigation	1,758	2,204	2,358	2,107
EPS (bat) Exclusion	64	59	62	62
Badgers	1,069	981	764	938
Birds	1,023	1,308	1,081	1,137
Other Mammals	1	2	15	6
Non-Native Release	32	31	37	33
Destructive Imported animals	16	14	18	16
Deer	43	30	48	40
Seals	0	2	0	1
Falconry and sales	147	129	50	109
Damage	3	1	1	2
Total	8,512	9,770	9,827	9,370

*Rounded up to nearest whole number

This table does not contain information on the number of applications received, only those fully processed.

There are two aspects of wildlife licence application costs to consider: internal costs to Natural England and costs faced by the applicant. With respect to internal costs, these are based on the assessment of processing times undertaken in 2007 and assume administrative and technical staff input, but excludes site visits, compliance-checking or handling of re-submissions. As regards costs to the applicant, Natural England does not charge applicants to apply for a wildlife licence. However, some applicants will incur costs in completing their licence application since applications can be very complicated and require a substantial amount of supporting information. Some applications, especially those affecting a European Protected Species, may require the employment of an environmental or ecological consultant to undertake surveys of the affected wildlife and to draft plans to mitigate or compensate for any harm. Costs for putting together an application package can, therefore, run to several thousands pounds.

⁴ Natural England figures, <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/statistics.aspx> (last visited 14 August 2012)

Table 2: Internal costs to Natural England and costs to the applicant per wildlife licence application, 2007⁵

	European Protected Species	Great Crested Newt	Birds	Licence to interfere with a badger sett
New applications:				
Internal cost	£231	£393*	No site visit required: £60-100 Site visit required: £250	No site visit required: £60-100 Site visit required: £250
Applicant cost	£1,125**	£1,125**	£21	£21
Total cost	£1,356	£1,518	£81-271	£81-271
Resubmissions:				
Internal cost	£173	£173	N/A	N/A
Applicant cost	£175	£175	N/A	N/A
Total cost	£348	£348	N/A	N/A

*Licence applications relating to the Great Crested Newt attract a higher cost than for other European Protected Species due to their generally greater complexity, thereby lengthening the processing time.

**Assumes use of an environmental or ecological consultant for three days at £50/hour. Also assumes (1) a straightforward application proposal affecting a dwelling house, and (2) that the consultant has all the necessary information to hand.

The Welsh government and the Countryside Council for Wales

Although both the CCW and the Welsh government do not charge applicants to apply for a wildlife licence, it is assumed that the applicant costs set out above in respect of licences processed and issued by Natural England would apply equally to licences processed and issued by the CCW.

The cost to the CCW (which includes the cost of processing the application, further consultation with applicants or consultants, expert advice, legal advice, and any site visits required prior to the issue of a licence) can be calculated as follows.

Table 3: Cost to the CCW to process and issue wildlife licences⁶

Staff grade	Person days	Cost
Band A	175	£43,325
Band B	405	£119,880
Band C	244	£79,446
Band D	68	£25,160
Total		£267,811

Given that 800-900 licence applications are processed by the CCW each year, it costs the CCW an average of £315 per licence application.

In 2011, the Welsh Government issued 384 licences. We are unable to monetise this cost

⁵ Natural England figures, <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/statistics.aspx> (last visited 14 August 2012)

⁶ Based on 892 person days throughout the CCW, covering approximately 17 different staff of various grades. Information supplied by the CCW.

The Marine Management Organisation

The MMO issues two types of licence: wildlife licences and marine licences. For the purposes of our proposals, we are most concerned with MMO wildlife licences.

Applicants are not charged to apply for a wildlife licence issued by the MMO. A total of 4 wildlife licence applications were processed by the MMO from July 2011 to June 2012.⁷ Given the small number, the MMO was unable to provide us with an estimated cost to process and issue a wildlife licence.

Invasive non-native species

Invasive non-native species (INNS) are defined by the Invasive Non-Native Species Framework Strategy for Great Britain as those species “whose introduction and/or spread threaten biological diversity or have other unforeseen impacts”.⁸ Economic costs can arise because INNS affect the ordinary functioning of ecosystems to produce the goods and services that humans use.

Direct costs to the economy include control and eradication costs, structural damage to infrastructure, or loss of production due to the presence of an INNS. There are also prevention and control costs associated with INNS, as well as costs associated with repairing damage, research and publicity. Other direct costs include decreased yield and productivity, increased flooding and erosion caused directly by the presence of an INNS in a particular environment. INNS may also cause indirect costs to the economy, such as a reduction in employment opportunities or higher prices for goods as their production is affected by an INNS.

The economic costs depend very much on the INNS concerned. Therefore, we focus on two examples: Japanese Knotweed and the Ruddy Duck.

Example 1: Japanese Knotweed

Japanese Knotweed was introduced to Britain from Japan as an ornamental garden plant in the mid-nineteenth century. It has become widespread in a range of habitats, particularly roadsides, riverbanks and derelict land, where it causes serious problems by displacing native flora and causing structural damage. Japanese Knotweed can grow more than a metre a month and is able to push through tarmac, concrete and drains. The total annual cost of Japanese Knotweed in England and Wales is £161,179,000.⁹

Table 4: Total annual costs of Japanese Knotweed¹⁰

	England	Wales
Local authorities	£270,000	£66,000
Research	£319,000	£19,000
Railways	£1,726,000	£100,000
Roadsides	£3,901,000	£438,000
Riparian	£3,444,000	£469,000
House devaluation	£963,000	£56,000
Development	£141,358,000	£7,644,000
Householders	£383,000	£23,000
Total	£152,364,000	£8,815,000

⁷ Information supplied by the MMO.

⁸ Department for Environment, Food and Rural Affairs, *The Invasive Non-Native Species Framework Strategy for Great Britain* (2008) para 3.3.

⁹ F Williams, R Eschen, A Harris, D Djeddour, C Pratt, R S Shaw, S Varia, J Lamontagne-Godwin, S E Thomas and S T Murphy, *The Economic Cost of Invasive Non-Native Species on Great Britain* (November 2010) p 41.

¹⁰ As above.

It is estimated that there are 12,845 development sites in England and Wales with Japanese Knotweed treatment requirements. The cost associated with Japanese Knotweed control on each site is estimated at £11,600 annually. The total annual cost, therefore, for Japanese Knotweed on development sites in England and Wales is £149,002,000.¹¹

Homeowners are, of course, also affected by Japanese Knotweed on their land. It is estimated that 270,760 households in England and Wales are infested with Japanese Knotweed. Of those, it is assumed that 10% – 27,076 households – will take action to control it. With an estimated cost of £15 per household, the total annual cost for householder control of Japanese Knotweed in England and Wales is £406,140.¹²

Example 2: Ruddy Duck

The Ruddy Duck is a North American bird introduced to the UK over 60 years ago. A small number escaped from captivity and formed a feral population which, at its peak in 2001, numbered around 4,400 birds.¹³ Ruddy Ducks present no threat in the UK; therefore, unlike Japanese Knotweed, Ruddy Ducks cost nothing in the UK in terms of any damage they can cause. However, in the early 1990s, Ruddy Ducks, almost certainly originating from the UK, began to appear in Spain where they can hybridise with the native White-headed Duck. In the long-term, hybridisation could lead to the extinction of the White-headed Duck.

After conducting research into the control of Ruddy Ducks, Fera found that control measures costing £300,000 annually was sufficient to prevent further increase in population numbers but not sufficient to bring about a reduction.¹⁴ Following several years of research into the most effective methods, an eradication programme for Ruddy Ducks in the UK began in 2005.

Following the eradication programme, the UK Ruddy Duck population is thought to have fallen to around 60 birds. It is estimated that the total cost of eradication was £3.3 million.¹⁵

Wildlife crime and enforcement

Measuring the extent of wildlife crime is difficult, especially since most wildlife offences do not require notification to the Home Office. In October 2011, the NWCU recorded 2,702 wildlife incident reports between September 2010 and May 2011, representing an increase of 6% over the same period in the previous year. Hare coursing accounted for the most incidents, representing 27%, while badger persecution accounted for 16% of incidents. In respect of wild bird crime, the RSPB received a total of 527 incident reports in 2010.¹⁶

The RSPB's total expenditure on monitoring, detecting and investigating wild bird crime in England and Wales amounts to approximately £325,000 for the 2012-13 financial year. This is primarily staff resource.¹⁷

There were 104 wild bird-related prosecutions in England and Wales in 2010 covering a total of 277 charges.¹⁸ Of these, 40 prosecutions were by the RSPCA itself; the remainder were prosecuted by the CPS.¹⁸

76 prosecutions resulted in a finding of guilt. The penalties imposed ranged from two youth referral orders, six community orders, eight fines, 14 conditional discharges, and 17 prison sentences (the majority of which were suspended).¹⁹

¹¹ As above, p 35.

¹² As above.

¹³ Information supplied by DEFRA.

¹⁴ Information supplied by Fera.

¹⁵ Information supplied by DEFRA.

¹⁶ RSPB, *Birdcrime 2010 – Offences against wild bird legislation in 2010*, appendix I, p 51.

¹⁷ Information supplied by the RSPB.

¹⁸ RSPB, *Birdcrime 2010 – Offences against wild bird legislation in 2010*, appendix VI, p 62-73.

The RSPCA's total expenditure on its prosecutions operations in 2011 was £8,770,000.²⁰ Its costs per defendant taken to court averaged £3,439.²¹ This figure is calculated across all types of prosecution that the RSPCA brings, from domestic dog beatings, neglect of small mammals, equine and wildlife cases, and so on, and therefore is not reflective of the average costs per defendant in a wildlife case. Wildlife cases can be considerably more expensive to prosecute. For example, in respect of the five wild animal cases reported in the RSPCA's Prosecutions Department Annual Report 2011, the RSPCA spent £59,700 in total.²²

In respect of prosecutions by the CPS, the average cost to the CPS per defendant in 2008/09 was £2,397 in the Crown Court, and £137 in the magistrates' court.²³ This figure is an average of all the offences – not just wildlife offences – of which the CPS prosecutes. Prosecuting wildlife crime also bears court costs to Her Majesty's Court Service. The average cost per sitting in the Crown Court is £4,381. The average cost per session in the magistrates' court is £1,972.²⁴

Appeals and challenges against regulatory decisions

Challenges to licensing decisions

There is currently no formal appeal against wildlife licensing decisions taken by Natural England or the Marine Management Organisation, whether they concern individual, class or general licences. Instead, disagreements about licensing applications are resolved either through negotiations with the relevant regulator during the application assessment process, or through the regulator's internal complaints procedure.

A significant proportion of complaints are from third parties complaining about the grant of a licence in a particular case, or about the issue of general licences which are perceived by some groups as too lax. It is very common for people objecting to, for example, a planning development, to challenge the issue of a wildlife licence, since this is seen as a way to stop a development if they have failed to do so through the planning process.²⁵

Wildlife licensing decisions can also be subject to legal challenge by way of judicial review. These are relatively rare – typically, there is only one judicial review challenge per year, although this can vary.

Challenges to prescriptive orders and civil sanctions

Prescriptive orders and civil sanctions are appealed to the First-tier Tribunal (Environment). There is no fee to appeal to the Tribunal, although an appellant may, of course, have costs if they are represented. No figures are available to indicate the general costs of running the Tribunal and the costs of conducting a hearing since, at the time of writing, no appeals have ever gone through the system.

Main stakeholders

The main stakeholders are:

- regulators, i.e. DEFRA, the Welsh government, Natural England, the MMO and the CCW;
- non-governmental organisations and charities with an interest in wildlife;
- users of the regulatory regime –

¹⁹ As above.

²⁰ RSPCA, *Trustees' report and accounts 2011*, p 29.

²¹ Information supplied by the RSPCA. This figure only includes legal fees, expert witness costs and photographic costs, not boarding and veterinary treatment of the animals.

²² RSPCA Prosecutions Department, *Annual Report 2011*. These costs do not, however, include photographic expenses which can range from £20 to hundreds of pounds if there are multiple animals and each need to be photographed, which is often the case in wild bird cases. They also do not include the cost of investigators' time, which the RSPCA calculates at £30 per hour, of which complex forensic or multiple animal cases can require considerable investigators' time.

²³ Criminal Justice System, *Cost-Benefit Framework* (February 2010) p 26.

²⁴ As above, p 27.

²⁵ Information supplied by Natural England.

- individual land owners and occupiers;
- developers;
- the rural community;
- the fishing community;
- those involved in country sports;
- the general public;
- prosecutors of wildlife-related crime (the RSPCA and the CPS); and
- Her Majesty's Court Service,

PART 2: POLICY OPTIONS AND OPTION APPRAISAL

Two options have been considered:

- Option 0 – Do nothing;
- Option 1 – Simplification and reform of the regulatory framework, as proposed in the Consultation Paper.

Option 0 – Do nothing

This option would mean retaining the existing legal structure for wildlife. Some of the key features of the current law, which give rise to the issues identified earlier, are as follows.

- The current law is a patchwork of self-contained, species-specific regimes. This is partly the result of the manner in which wildlife law has been enacted. Each piece of legislation has been a reaction to a particular pressure on domestic law, whether domestic or external. There have also been species-specific Acts that were driven by concerns focused on particular species. This has led to a duplication of provisions. This option would therefore maintain the complexities present in the law.
- The current law is, in places, inconsistent. For example, breaching a licence condition is an offence under some statutes and not others.
- The law is inflexible. For example, it is not possible to amend closed seasons for some species; nor is there a power to create closed seasons for animals which do not currently have them. This means the current regime cannot reflect any change in species protection preferences without recourse to primary legislation.
- The current law does not comply fully with the UK's obligations under EU law.
- General licences are used to permit hunting. It is likely that the permitting of hunting in this way is outside the powers in the Wildlife and Countryside Act 1981. Although hunting is not prohibited as a matter of EU law, there is generally no basis for licensing it under domestic law.
- There are gaps in the current law. For example, the regime within England and Wales for the control of invasive non-native species contains no emergency provisions to enable a quick response to an emerging situation. Further, there is no power to require an individual to report the presence of an invasive species on their land.
- There are no opportunities to formally appeal a decision taken by Natural England, the MMO, the Welsh government or the CCW in respect of a wildlife licence application.

Option 1 – Simplification and reform of the regulatory framework

The main provisional proposals as set out in the Consultation Paper are detailed below.

A new framework for wildlife regulation (Chapter 5 of the Consultation Paper)

We propose that there should be a single wildlife statute dealing with species-specific provisions for wildlife conservation, protection, exploitation and control. The single statute should contain a series of statutory factors to be taken into account by decision makers taking decisions within the new regulatory regime. Individual species should continue to be organised and listed on a species by species basis, so as to allow different provisions to be applied to individual species or groups of species. We propose that there should be a requirement to review all listing of species at least every five years. Equally, there should be a general power allowing close seasons to be placed on any animal, and close seasons should be capable of amendment by order. The maximum length of a wildlife licence should, we propose, be two years for all species that require licensing, and ten years for all other licence provisions. Finally, we propose that there should be a general offence of breaching a licence condition.

Reforming the regulation of species protected under EU law (Chapter 6 of the Consultation Paper)

In considering the proper transposition of the Wild Birds and Habitats Directives, we make a number of proposals. First, the term “intentionally or recklessly” should be used to properly transpose the term “deliberately” in the Wild Birds and Habitats Directives. Second, the disturbance provisions contained in the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2010 and the Protection of Badgers Act 1992 should be brought together and simplified. Third, there should be a general defence of acting in pursuance of an order made under the Animal Health Act 1981. Fourth, in considering the regulation of hunting wild birds, Article 7 of Wild Birds Directive should be transposed into the law of England and Wales. The transposition of Article 7 should be accompanied by the establishment of species-specific close seasons, and by codes of practice (issued by the Secretary of State or Welsh Ministers) explaining “wise use”. A defendant would have to show how he or she had complied with “wise use”, otherwise the underlying offence of taking or killing a wild bird would have been committed. Finally, the term “judicious use of certain birds in small numbers” should be one of the purposes for which a wildlife licence may be granted.

Reforming the regulation of species protected solely by domestic law (Chapter 7 of the Consultation Paper)

We propose reforms to the offence of poaching. We propose that the offence should be defined by reference to whether the person was searching or in pursuit of specified species of animals present on another’s land, with the intention of taking, killing or injuring them, without the landowner or occupier’s consent, or lawful excise, to do so. We also suggest that there should be a power to amend the species covered by the crime of poaching. Further, we propose to unify the common exceptions to prohibited acts set out in existing wildlife legislation.

Invasive non-native species (Chapter 8 of Consultation Paper)

We propose that there is a sufficient case for the reform of the regulatory and enforcement tools available for the delivery of Government policy on invasive non-native species. In respect of these tools, we propose that there should be a mechanism allowing for the emergency listing of invasive non-native species; that the Secretary of State and Welsh Ministers should be able to issue an order requiring specified individuals to notify the competent authority of the presence of specified invasive non-native species; that the full range of licences can be issued for activity prohibited in respect of invasive non-native species; and that there is the power to make species control orders, as modelled on the Wildlife and Natural Environment (Scotland) Act 2011.

Sanctions and compliance (Chapter 9 of the Consultation Paper)

We propose that offences for wildlife should have their sanctions harmonised. We also propose that, so far as is practicable, the full range of civil sanctions should be available for the wildlife offences, and that guidance is issued by the relevant regulator as to how it will use its civil sanctions.

Appeals and challenges against regulatory decisions (Chapter 10 of the Consultation Paper)

We make no proposals in respect of appeals and challenges against regulatory decisions, but do ask consultees about the possibility of creating a new appeals process for wildlife licences and how it should be configured.

Cost/benefit analysis

This impact assessment identifies both monetised and non-monetised impacts of intervention, with the aim of understanding the overall impact on society and the wider environment. The costs and benefits of each option are measured against the “do nothing” option (Option 0). Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms. However, there are important aspects that cannot sensibly be monetised. These might include impacts on equity and fairness, either positive or negative, or on enhanced (or diminished) public confidence.

The impact assessment process requires that we make an assessment of the quantifiable costs and benefits even when there is insufficient material on which to base those calculations. Where possible we have spoken to stakeholders to inform our view of the likely impact of our proposals and have used this as the basis for our calculations. Where it has not been possible to obtain a rough indication of numbers in this way, we have had to make a realistic estimate. In such cases, we have taken a conservative approach and have tended to use figures that we consider likely to under-estimate benefits and over-estimate costs.

When calculating the New Present Values (NPVs) for the impact assessment, we have used a time frame of 10 years, with the current year (2012) being year 0. We have assumed that the transitional costs and benefits occur in year 0, and ongoing costs and benefits accrue in years 1 to 10. A discount rate of 3.5% has been used in all cases in accordance with Treasury guidance. Unless stated, all figures are in 2011-12 prices, and have been up-rated using the GDP deflator.

Option 0 – Do nothing

Option 0 is the base case against which our other options are measured. Because the “do nothing” option is compared against itself, its costs and benefits are, of course, zero, as is its NPV. While there would not be any additional costs, current costs would continue to be incurred. These are discussed below to provide context for the assessment of the other options.

Costs

The “do nothing” option would leave the existing system unchanged. It is not a cost-free option. Unnecessary and inefficient costs associated with the current unsatisfactory state of the law would persist. For example, duplication of certain provisions increases administrative costs and can confuse users, often requiring them to seek external advice as to their rights and obligations. Equally, in its current form, the law does not comply fully with the UK’s obligations under EU law. The improper transposition of the Wild Birds and Habitats Directives carries the risk of costly legal proceedings being brought by the European Commission against the government.

Benefits

Doing nothing would avoid the costs of reform.

Option 1 – Simplification and reform of the regulatory framework

The *preferred option* is to simplify and reform the regulatory framework governing the protection, management, usage and welfare of wildlife, as set out in the Consultation Paper. In general terms, this option involves consolidating existing legal provisions and promoting a more efficient and effective legal structure by establishing a single wildlife statute.

Transitional costs

We anticipate three transitional costs involved with Option 1.

Regulators and non-government organisations

1. There would be transitional costs associated with producing or amending guidance and updating marketing materials (such as information on regulators' websites) to reflect the new regulatory regime. We anticipate that these costs would be £21,000 and likely to be absorbed within the day-to-day costs of the regulator.²⁶
2. Equally, educating users of the regulatory regime about the new legal framework would attract a negligible cost, since the majority of our proposals are simplifying and clarifying the law rather than create new systems. We therefore anticipate that training costs would likely be absorbed within the part of the regulators' expense budgets which is already dedicated to professional development.
3. Codes of practice would also need to be issued, specifically codes of practice explaining "wise use", as we propose. This would attract a transitional administrative cost. We are unable to monetise this cost.
4. There would be some additional costs to business, which are the result of changes to a regulatory regime. These costs would include training on the new regime. We are unable to monetise these costs.

On-going costs

We anticipate four on-going costs involved with Option 1.

Regulators

Reviewing all species listing

1. Reviewing all listing of species every five years, as we propose, would bear some administrative costs. Since the Department for Environment, Food and Rural Affairs already periodically reviews the majority of schedules to the Wildlife and Countryside Act 1981, we anticipate that the additional administrative costs to review *all* the schedules would be minimal.

Enforcing the breach of a licence condition offence

2. There is also likely to be a cost attached to enforcing the proposed breach of a licence condition offence. We are unable to monetise this cost.

Invasive non-native species

3. Emergency listing and compulsory notification of invasive non-native species, and the making of species control orders, as we propose, would attract administrative costs. We are unable to monetise this cost. However, it is recognised that these costs are minimal as compared to the potential costs of damage, clean-up and eradication that an unmanaged invasive non-native species can bring.

Cost of administering civil sanctions

4. It is anticipated that full use of civil sanctions will reduce the cost of criminal prosecution by 20%, since it is assumed that 20% of prosecutions will switch to civil sanctions.²⁷ Our best estimate of the administrative cost to the regulator to impose civil sanctions would be £405,800,²⁸ with a +/- 5 percent range. It is noted here that this cost is minimal compared to the cost of pursuing criminal proceedings, which is considered in detail below under "on-going benefits".

Annual cost = £446,680 [best estimate]

Present value over 10 years = £3,714,861

²⁶ Centre for Ecology and Hydrology, *An estimate of population increase of aquatic invasive species in the period 2010 -2015* (2010), p 12.

²⁷ Centre for Ecology and Hydrology, *An estimate of population increase of aquatic invasive species in the period 2010 -2015* (2010),

²⁸ Centre for Ecology and Hydrology, *An estimate of population increase of aquatic invasive species in the period 2010 -2015* (2010),

Table 6: Summary of the key costs of Option 1

	Low estimate	Best estimate	High estimate
Transitional costs			
1. Updating guidance and information, education and issuing codes of practice		£21,000	
On-going costs			
1. Imposing civil sanctions	£424,346	£446,680	£469,014

Transitional benefits

We do not foresee any transitional benefits.

On-going benefits

We have identified 11 on-going benefits involved with Option 1.

Simplifying the law

Users of the regulatory regime and the general public

1. If the law was set out in a single, comprehensive statute, users would no longer have to trawl through the myriad of existing statutes in order to determine their rights and obligations. A single statute would also increase consistency in the law, where different terms have been used to mean the same thing in different statutes. Equally, the rationalisation and simplification of certain provisions, such as the disturbance provisions contained in the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2010 and the Protection of Badgers Act 1992, would make the law easier to use and understand.

2. This simplification of the regulatory regime for wildlife reduces the cost of external advice provided by environmental or ecological consultants. At the time of writing, there are an estimated 5,000 environmental and ecological consultants in England and Wales. In 2007, the majority of consultants (49%) surveyed by the Institute of Ecology and Environmental Management reported that their hourly rate ranged from £25-£88.²⁹ Anecdotal evidence suggests that, on average, environmental/ecological consultants spend 80% of their time advising on the criminal aspects of wildlife law. This amounts to 1,568 hours per consultant per year. Therefore, the best estimate of the overall annual cost to users to consult environmental and ecological consultants on wildlife law matters is £431,200,000. A single wildlife statute would, we estimate, reduce this cost by 3%,³⁰ which, across the industry, amounts to a saving of £12,936,000. See table 7 below.

Table 7: Savings to users as a result of reduced external advice

	Low estimate	Best estimate	High estimate
A. Number of consultants in England and Wales	2,000	5,000	8,000
B. Hourly rate	20	55	80
C. Time spent advising on wildlife law per year – one consultant	70%* = 1,372 hours	80%* = 1,568 hours	90%* = 1,764 hours
D. Time spent advising on wildlife law per year – all consultants in England and Wales(A x C)	2,744,000 hours	7,840,000 hours	14,112,000 hours
E. Overall annual cost to users (B x D)	£54,880,000	£431,200,000	£1,128,960,000
F. Single wildlife statute: reduce cost by %	1%	3%	5%
G. Overall annual saving to users (E x F)	£548,800	£12,936,000	£56,448,000

*of 1,960 hours per year (based on a 40 hour week and a 48 week working year).

²⁹ Information supplied by the Institute of Ecology and Environmental Management.

³⁰ We have taken the reduction in the administrative burden of simplifying the statute at 3%. This is consistent with current economic practice.

Assumptions:

- Those consultants surveyed by the Institute of Ecology and Environmental Management are representative of all consultants in England & Wales.
- Consultants work 40 hours weeks for 48 weeks per year.
- Anecdotal evidence of the time spent advising on wildlife law per year can be applied to all consultants generally.
- That cost savings would be passed on to users of consultants.

Annual savings = £12,936,000 [best estimate]

Present value over 10 years = £107,583,606

We would be grateful for evidence from consultees and their views on this area and the quantification of the costs and benefits anticipated.

Rationalising the law

In addition to simplifying the law, our proposals work to better rationalise the law.

Users of the regulatory regime

3. There are some institutions, such as the Natural History Museum and the Zoological Society London, that hold dead wild bird specimens or wild bird eggs that have to be licensed, but where their continued holding of those wild bird specimens or wild bird eggs is not a threat in any kind to the wild environment. The current law does not allow these institutions being granted a longer licence than two years. There are also examples where the length of a given development project is going to be greater than two years, and therefore licences have to be reapplied.

A maximum time limit of ten years in such cases, as we propose, would increase legal certainty for such institutions and developers, and would decrease the administrative burden placed on them and on the issuing regulator. As outlined above, each European Protected Species licence resubmission costs applicants on average £175, and Natural England £173, totalling £348 per reapplication. On average, Natural England receives 2,286 European Protected Species licence applications per year.³¹ 29% (663) are reapplications. It is estimated that of those reapplications, 3% fall within the category considered above. Therefore, we estimate that increasing the maximum time limit from two years to ten years would bring an overall annual saving of £128,707 [best estimate].

Table 8: Savings deriving from increased maximum time limits for certain licences

	Low estimate	Best estimate	High estimate
A. Percentage of licence applications which are reapplications/number of licence reapplications per year	10% = 937 reapplications	30% = 2,811 reapplications	40% = 3,748 reapplications
B. Percentage/number of reapplications of which 10 year time limit would apply	1% = 9 reapplications	3% = 84 reapplications	4% = 150 reapplications
C. Total cost per reapplication	£287	£383	£575
D. Overall cost for reapplications of which 10 year time limit would apply (B x C)	£2,583	£32,172	£86,250
E. Overall saving for reapplications of which 10 year time limit would apply* (D x 4)	£10,343	£128,707	£345,000

*Increasing the time limit from two years to ten years would reduce the number of reapplications within that time period by 4.

³¹ Information supplied by Natural England.

Assumptions:

- The percentage to which reapplications for European Protected Species account for wildlife licence applications (29%) is representative of reapplications for all types of wildlife licence.

Annual savings = £128,707 [best estimate]

Present value over 10 years = £1,070,405

Regulators

4. Our proposal that *all* the schedules in the Wildlife and Countryside Act 1981 are reviewed periodically and amended by order would mean that changes in species protection preferences can be made without recourse to primary legislation. Primarily legislation is often slower and more expensive than using other legislative tools, such as secondary legislation or binding codes of practice, and is not the appropriate method of amending schedules.

We would be grateful for evidence from consultees and their views on this area and the quantification of the costs and benefits anticipated.

Increased transparency and balancing of interests

Users of the regulatory regime

5. One potential criticism of our current regulatory framework is the lack of transparency, and this can lead some to think that priority is given to a particular interest. The introduction of statutory factors would play a role in ensuring transparent decision-making and thereby improve the engagement of those representing competing interests and ensure an appropriate balance of human and animal interests. A number of our other proposals also work to achieve this balance.

For example, allowing close seasons to be placed on any animal facilitates a balancing of welfare considerations (since close seasons can prevent the killing and taking of animals when they are either pregnant or have dependent young), population maintenance (since the protection of a species during the breeding and rearing seasons is seen as a way of ensuring species populations at a time when taking or killing could have the greatest impact on species numbers), and species management (lengthening the close season for one species whilst reducing it for another similar species gives a preference in favour of the former).

These benefits have not been monetised. We would be grateful for evidence from consultees and their views on this area and the quantification of the benefits anticipated.

Compliance with EU law

Regulators

6. A number of our proposals work to ensure full compliance with the UK's obligations under the Wild Birds and Habitats Directives. They reduce the potential risk of costly legal proceedings ("infringement" proceedings) being brought by the European Commission against the government for failing to comply with EU law.

These savings have not been monetised. We would be grateful for evidence from consultees and their views on this area and the quantification of the costs and benefits anticipated.

Invasive non-native species

Regulators, users of the regulatory regime and the general public

By employing better regulatory and enforcement tools to identify and manage invasive non-native species at an early stage, as we propose, early preventative and control measures can be taken more easily and more speedily. We anticipate that, consequently, the following costs will be reduced:

1. the cost of eradicating well-established invasive non-native species;
2. the cost of damage (structural damage to infrastructure, decreased productivity etc) caused by invasive non-native species over the medium-long term, and the clean-up costs of invasive non-native species; and
3. the cost of the decline in numbers or the total extinction of another species, caused by an invasive non-native species.

It is very difficult to quantify the overall savings that our proposals will bring, since the costs identified above vary greatly depending on the invasive non-native species concerned.

7. By way of example, as described above, the total cost of eradicating the Ruddy Duck is estimated to be £3.3 million. Even if our proposals relating to early identification and management would minimise the expense of eradication by, say, 3%, that still represents a considerable saving of almost £100,000.

8. Equally, as identified earlier, the total annual cost of Japanese Knotweed in England and Wales is £161,179,000. This figure includes the cost of damage caused by Japanese Knotweed and the clean-up costs (to local authorities, developers, householders etc). Again, even if our proposals would minimise this cost by 3%, that still represents a saving of £4,835,370.

9. The cost of the decline in numbers or the total extinction of another species, caused by an invasive non-native species, and the benefits our proposals will bring in respect of reducing this cost, are more difficult to quantify.

There are economic benefits involved in preserving certain species. For example, since the reappearance of white-tailed eagles on the Isle of Mull, these birds have delivered considerable benefits, both through direct enjoyment and through the impacts the birds have within the local economy. Inevitably, visitors, who are drawn to Mull to see these birds, spend money, which supports significant additional income and jobs on the island. In 2010, the RSPB commissioned an independent series of surveys on Mull to investigate the extent of the economic benefits local businesses gain from this tourism. The main findings of this study were:

- £5 million of tourist spend on Mull is attracted every year by white-tailed eagles;
- 110 jobs are supported by this spend each year;
- £2.4 million of local income is supported each year; and
- Economic benefits delivered by white-tailed eagles on the Isle of Mull have more than trebled since 2005.³²

10. There is also a more general benefit involved in safeguarding certain species: the preservation, maintenance or restoration of local biodiversity. Though this may not necessarily represent a monetised, economic benefit, biodiversity forms an integral part of our natural heritage and its conservation is imperative for “its own intrinsic value, for the vital life-support services it provides, and because it enriches people’s lives”.³³

We would be grateful for evidence from consultees and their views on this area and the quantification of the costs and benefits anticipated.

³² RSPB, *Wildlife at Work – The economic impact of white-tailed eagles on the Isle of Mull*, p 4.

³³ Department for Environment, Food and Rural Affairs, *Conserving Biodiversity – The UK Approach* (October 2007) p iii.

Civil sanctions

So far as is practicable, we propose that the full range of civil sanctions should be available for the wildlife offences. In doing so, we anticipate that less reliance will be placed on criminal sanctions.

Prosecutors of wildlife-related crime: the RSPCA and the CPS

11. Criminal prosecution for environmental breaches is time-consuming, costly, and is sometimes considered disproportionate. As explained above, it is anticipated that full use of civil sanctions will reduce the cost of criminal prosecution by 20%, since it is assumed that 20% of prosecutions will switch to civil sanctions.³⁴ This represents a best estimate saving to prosecutors of, in total, £796,328. See table 9 below.

³⁴ Department for Environment, Food and Rural Affairs, *Impact Assessment of the Fairer and Better Environmental Enforcement Proposals* (6 April 2010) para 56.

Table 9: Saving to prosecutors of wildlife-related crime as a result of full use of civil sanctions

	RSPCA	CPS	
		Magistrates' court	Crown Court
A. Average cost per defendant	£3,439	£146	£2,562
B. Uplift for wildlife crime cases, cost per defendant	Best (150%): £8,598	Best (150%): £365	Best (150%): £6,405
C. Total number of wildlife-related prosecutions per year	104 bird prosecutions in 2010 Birds account for 12% of licence applications Assuming 104 wild bird prosecutions = 12% of all wildlife-related prosecutions, 100% = 866 wildlife-related prosecutions per year Best (100%): 850 prosecutions		
D. Proportion of wildlife-related prosecutions, as between each prosecutor <i>(% of C)</i>	40/104 wild bird prosecutions in 2010 were prosecuted by the RSPCA = 38% Assuming this percentage is representative of RSPCA prosecutions for all wildlife: Best: 35%, 323 prosecutions	64/104 wild bird prosecutions in 2010 were prosecuted by the CPS = 62% Assuming this percentage is representative of CPS prosecutions for all wildlife: Best: 65%, 553 prosecutions	
E. Proportion of wildlife-related prosecutions, as between each court <i>(% of D)</i>	N/A	45/64 wild bird prosecutions prosecuted by the CPS in 2010 took place in the magistrates' court = 70% Assuming this percentage is representative of CPS prosecutions for all wildlife: Best: 387 prosecutions	19/64 wild bird prosecutions prosecuted by the CPS in 2010 took place in the Crown Court = 30% Assuming wild birds are representative % of CPS prosecutions for all wildlife: Best: 166 prosecutions
F. Total annual cost of prosecuting wildlife-related crime <i>(B x E)</i>	Best: £2,777,154	Best: £141,255	Best: £1,063,230
G. Shift to civil sanctions	20%	20%	20%
H. Total savings <i>(20% of F)</i>	Best: £555,431	Best: £28,251	Best: £212,646

Assumptions:

- Wildlife crime is considerably more expensive to prosecute: average cost per defendant uplifted by 100-200%, 150% being the best estimate.
- The percentage to which wild birds account for wildlife licence applications (12%) is representative of the proportion to which wild bird crime accounts for all wildlife crime.

Annual savings = £796,328 [best estimate]

Present value over 10 years = £6,622,746

Her Majesty's Court Service

12. Equally, a 20% shift from criminal prosecutions to civil sanctions would bring a best estimate saving to Her Majesty's Court Service of £489,634 since the time spent in court prosecuting wildlife-related cases would be reduced.

Table 10: Savings from shift in criminal prosecutions to civil sanctions

	Magistrates' court	Crown Court
A. Average cost per session/sitting	£2,108	£4,682
B. Total number of wildlife-related prosecutions (RSPCA and CPS) <i>(Based on row C in table 9 above; 70% in magistrates' court and 30% in Crown Court, see row E in table 9 above)</i>	Best: 595 prosecutions	Best: 255 prosecutions
C. Total cost to Her Majesty's Court Service per year (A x B)	Best: £1,254,260	Best: £1,193,910
D. Shift to civil sanctions	20%	20%
E. Total savings (20% of C)	Best: £250,852	Best: £238,782

Assumptions:

- Percentage of CPS prosecutions in the magistrates' court (70%) and Crown Court (30%) is a representative proportioning for all prosecutions, including those by the RSPCA.
- A wildlife-related prosecution would require only one session/sitting: the total cost to HMCS per year (row C) is, therefore, likely to be an underestimate since more complex cases which involve forensic or expert evidence may require a longer session/sitting.

Annual savings = £489,634 [best estimate]

Present value over 10 years = £4,072,093

We would be grateful for evidence from consultees and their views on this area and the quantification of the costs and benefits anticipated.

Appeals and challenges against regulatory decisions

Although we make no proposals in respect of appeals of wildlife licensing decisions, it is worth considering the potential economic impact if it were possible to appeal such decisions.

We anticipate that appeals to the Planning Inspectorate or the First-tier Tribunal (Environment) would considerably reduce the costs to an appellant, since both avenues are generally cheaper than pursuing what are often very costly judicial review proceedings.

Equally, there may be other, non-monetised benefits associated with having an appeals process for wildlife licence decisions. Appeals processes can improve the quality of decision-making.

However, there are also potential costs. First, any appeals system (even applicant only) is likely to drive up the number of appeals (at least initially), with a consequent increase in costs to Natural England, Welsh Government and Countryside Council for Wales. This could result in delays to the regime as a whole, as resources are allocated to appeals rather than the initial granting of licences.

Second, the creation of an appeals system could have the effect of "legalising" the general administrative process and removing any iterative component of the existing process. This could increase the likelihood of eventual appeals as the administrative regime becomes more adversarial. This would apply primarily as an effect on applicants.

We would be grateful for evidence from consultees and their views on this area and the quantification of the costs and benefits anticipated.

Table 11: Summary of the key benefits of Option 1

On-going benefits	Low estimate	Best estimate	High estimate
1. Reduced need for environmental and ecological consultants	£548,800	£12,936,000	£56,448,000
2. Increased time limits for some wildlife licences	£10,343	£128,707	£344,752
3. Full use of civil sanctions: savings to prosecutors	n/a	£796,328	n/a
4. Full use of civil sanctions: savings to HMCS	n/a	£489,634	n/a

PART 3: SPECIFIC IMPACT TESTS

An impact assessment must consider the specific impacts of a policy option upon various groups within society. These specific tests are carried out below and refer to the implementation of Option 1.

Statutory equality duty

We do not think our proposals will have any adverse equality impact on any social group as defined by their race, religion or belief, sexual orientation, gender, age or disability.

Please see the attached equalities impact assessment.

Competition

We do not anticipate that there will be any particular effect, whether positive or negative, on competition.

Small firms

We do not anticipate that there will be any particular effect, whether positive or negative, on small firms.

Environmental impact and wider environmental issues

Environmental impacts are considered throughout the impact assessment. The proposals being put forward seek to allow policy choices on the number and variety of species and on ecosystems to be delivered more flexibly and effectively.

Health and well-being

We do not anticipate that there will be any particular effect, whether positive or negative, on health and well-being.

Human rights

We have outlined the potential impact of maintaining reverse burdens of proof on the rights to a fair trial under Article 6 of the European Convention of Human Rights. As we have noted in Chapter 7 of the Consultation Paper, whether a reverse legal burden imposed by statute is incompatible with article 6(2) of the ECHR requires a court to consider the factors summarised by Lord Bingham in *Sheldrake v DPP*.³⁵

Justice system

We have considered the potential impact of the provisional proposals on the criminal justice system. The proposals aim to both harmonise and simplify the criminal sanctions available for wildlife offences. Coupled with the increased use of civil sanctions, these changes will benefit criminal agencies and the court system.

Rural proofing

We have considered whether the provisional proposals will have an impact on rural areas throughout this impact assessment. The provisional proposals seek to create a simplified regime for wildlife law that will deliver benefits to those using the law. Such benefits will accrue in both rural and urban areas. However, given the subject matter, it is likely that rural areas and people will benefit from this simplification to a greater extent than urban.

Sustainable development

The impact on sustainable development issues is considered throughout this impact assessment.

³⁵ *Sheldrake v DPP* [2004] UKHL 43, [2005] 1 AC 264 at [21].