

Title: Wildlife Law IA No: LAWCOM0042 Lead department or agency: Law Commission Other departments or agencies: Department for Environment, Food and Rural Affairs	Impact Assessment (IA)		
	Date: 26/04/2015		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: David Connolly 02033343968			
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, Two-Out? Measure qualifies as
£46.86m	£m	£m	Yes/No In/Out/zero net cost

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

The legislative provisions in connection with the conservation, welfare, control and exploitation of 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) flexible so as to ensure its protection provisions may be adapted over time; and (5) compliant with the UK's international and EU obligations. The intended effect of reform is to create an efficient legal framework governing the protection, management, exploitation 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 conservation, management, exploitation and welfare of wildlife. In general terms, this option involves consolidating existing legal provisions and promoting a more efficient and flexible legal structure by establishing a single wildlife statute. This is the preferred approach. It is rational and 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 No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: -		Non-traded: -

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

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

FULL ECONOMIC ASSESSMENT

Price Base Year 2014/15	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £15.66	High: £154.87	Best Estimate: £46.86

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	£0.04	1	£0.10	£0.84
High	£0.04		£0.45	£3.78
Best Estimate	£0.04		£0.28	£2.32

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

Transitional costs: Regulators and non-governmental organisations - Training – negligible costs; Her Majesty's Courts and Tribunals Service (HMCTS) – Establishment of appeals system - £37,000 [best estimate]

On-going costs: Regulators - Expense incurred through review of all species listings; potential for increased number of licence applications; Compulsory notification of invasive non-native species. We are unable to monetise these costs because of volume uncertainties for reasons explained in the evidence base, however these are not expected to be significant

HMCTS – marginal increase in number of appeals following the increased scope for the use of civil sanctions. Criminal Justice System: There will also be an increase in costs for the Crown Prosecution Service (CPS), HMCTS, Legal Aid Agency (LAA) and National Offender Management Service (NOMS- prison and probation) as a result of prosecuting these amended either way offences in the Crown Court £275,000 per year [best estimate]

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	0	1	£1.98	£16.51
High	0		£19.08	£158.65
Best Estimate	0		£5.91	£49.18

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

No transitional benefits identified.

On-going benefits: Users - Clarification of legislation secures the reduced need for external consultancy advice £2,548,000 per year [best estimate]; Annual savings from extended maximum licence limits £18,163 per year [best estimate]; Regulators - Reduced need for costly primary legislation; HMCTS – Greater use of civil sanctions effectively reduces reliance on costly criminal prosecutions; Economy-wide – gains from early notification and eradication of invasive non-native species £3,347,863 per year [best estimate]

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

Users: Increased accessibility from simplified law; increased legal certainty for developers; Regulators - Compliance with EU law.

Key assumptions/sensitivities/risks	Discount rate	3.5
Assumptions: Regulators increase the use of civil sanctions.		
Risk: Use of civil sanctions remains at current low level effectively limiting the scale of benefit.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs:	Yes/No	IN/OUT/Zero net cost
Benefits:		
Net:		

Evidence Base

1. Introduction

The wildlife law project was proposed by the Department for Environment, Food and Rural Affairs for the Law Commission's 11th programme of law reform, effective from July 2011. In March 2012, the Department asked us to include consideration of appeals, and we have done so.

The project includes consideration of the law relating to the conservation, control, protection and exploitation of wildlife in England and Wales. We are concerned with the law relating to wild mammals, birds, fish, reptiles, amphibians, invertebrates, plants and fungi. It does not include discussion of the law relating to habitats or the Hunting Act 2004. A number of other self-contained regulatory regimes have been excluded from the scope of the review, including the Salmon and Freshwater Fisheries Act 1975, the Wild Mammals (Protection) Act 1996, the Animal Welfare Act 2006 and the Offshore Marine Conservation (Natural Habitats) Regulations 2007.

Our consultation paper was published on 14 August 2012. Consultation ran from that date to 30 November 2012. The deadline was further extended to 21 December for some respondents from the sea fishing industry. We received 488 consultation responses.

In February 2014 we published a Final Report recommending the introduction of additional powers to control invasive species, on the basis that Defra was interested in legislating early on that topic.¹ Our recommendations in the Final Report on the control of invasive non-native species have now been given effect through sections 23 to 25 of the Infrastructure Act 2015.

Background to the problem

In the last two centuries wildlife legislation has developed in a piecemeal fashion, often in reaction to specific pressures on domestic legislation, whether local or international. The result is that the current legislation governing the control, exploitation, welfare and conservation of wild animals and plants in England and Wales has become unnecessarily complex and inconsistent.

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. The law relating to these species is set in over 20 major pieces of legislation. 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.

Problem under consideration

In England and Wales there exists a comprehensive legislative framework in place to protect threatened species and the most important wildlife sites. This legislative framework provides an essential foundation to deal with market failures associated with biodiversity. Failure to take account of externalities and public good aspects of biodiversity may lead to losses in biodiversity beyond what is best for society. However, there are a number of 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 protection and 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

¹ Wildlife Law: Control of Invasive Non-native Species (2014) Law Com No 342.

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 infraction proceedings before the Court of Justice of the European Union.

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 less burdensome legislative tools, such as secondary legislation.

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.

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.

Sixth, the available enforcement mechanisms to enforce wildlife law are unsatisfactory on the basis that when prosecutions are brought against offenders, the available penalties are sometimes insufficiently deterrent and can be easily absorbed by many individuals and businesses. Available maximum penalties for wildlife crimes are also inconsistent with the significantly higher penalties available in connection with other environmental crimes, such as the penalties available in connection with the international trade of endangered species. The existing regime for issuing civil sanctions as an alternative to criminal prosecutions for wildlife crimes is also inconsistent and is unavailable in connection with a number of key wildlife offences.

2. Rationale for intervention

The law on wildlife management is concerned with the conservation, control, protection and exploitation of wildlife. Market failure within this context derives from harmful environmental effects resulting from economic decisions that do not factor in the wider cost to society of biodiversity loss. For example, the natural environment is at risk through the under-protection of native wildlife which underpins the delivery of many ecosystem services that deliver benefits to people and the economy.

Market failure may also occur as incomplete or inaccessible information facilitates behaviour which does not 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.

3. Policy objectives

The purpose of the project is to produce clear, workable and coherent wildlife law, which allows those subject to the law to understand their obligations.

The purpose of reform is 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 will promote a more accessible and efficient regulatory system, yielding both economic and environmental benefits.

A key objective of reform is to make wildlife law clearer and easier to understand. In particular, an accessible legal framework will 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.

A modern regulatory regime for wildlife law should also be flexible, so as to ensure that its protection provisions may be adapted over time to the progressive changes to our natural environment, policy preferences and socio-economic needs.

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.

4. Scale and scope

Wildlife has important economic and environmental effects. Its management is informed by the law relating to the conservation, control, protection and exploitation. The key users of the wildlife legal regime include those involved in the shooting industry, agriculture, horticulture, aquaculture, forestry and development. However 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. This section provides a sectoral overview as follows:

- An outline of the environmental and economic effects;
- The responsibilities of the main regulatory bodies;
- The role of licensing;
- The damaging effect of invasive non-native species;
- Wildlife crime and enforcement [to also include appeals against decisions]; and
- Compliance with EU law.

Environmental and economic effects

Sustainable development indicators track progress towards a sustainable economy, society and environment using a traffic light system². Three levels of progress [or lack of progress] are indicated where green represents clear improvement, red represents deterioration and amber – no change. See chart 1 below.

² See Sustainable Development Indicators, July 2014, page 34, Office of National Statistics at <http://www.ons.gov.uk/ons/rel/wellbeing/sustainable-development-indicators/july-2014/index.html> last accessed 10th December 2014

Chart 1: Wildlife Indicator

Indicator assessment	Long-term	Short-term	Latest year
Breeding farmland birds	 (1970-2011)	 (2006-2011)	Increased
Breeding woodland birds	 (1970-2011)	 (2006-2011)	Increased
Breeding wetland birds	 (1975-2011)	 (2006-2011)	Decreased
Breeding seabirds	 (1986-2012)	 (2007-2012)	Increased

Source: Sustainable Development Indicators, July 2014, page 34, Office of National Statistics,

Populations of key species provide a good indicator of the broad state of wildlife and the countryside because they occupy a wide range of habitats and key positions in the food chain. All four categories of birds experienced considerable decline over the long term. The breeding farmland and woodland birds indices declined by 49 percent and 18 percent respectively from their 1970 value, and the breeding water and wetland bird index was 7 percent lower than its 1975 value.

The economic sectors affected by the legal regime for wildlife are highlighted below. The shooting industry alone has been valued as worth around £2 billion, gross value added [GVA], to the UK economy as a result of direct spend and stimulus to the wider economy.³ GVA measures the contribution to the economy of each sector. For 2014 the GVA of agriculture was estimated at £9.7 billion in current prices.⁴ Conservation and the presence of wildlife can also have a significant influence on the general economy, through leisure and tourism. In 2013, natural heritage tourism's contribution to the UK GDP was estimated at £4.5 billion.⁵ Recent data from Monitor of Engagement with Natural Environment (MENE) indicates that in England, 2.9 billion visits to the natural environment were made (1.3 billion to countryside locations) in 2013-14 with associated expenditure of an estimated £17 billion.

The main regulatory bodies in respect of wildlife management:

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 Public and Corporate Economic Consultants (2014), *The Value of Shooting*, available at: www.shootingfacts.co.uk/pdf/The-Value-of-Shooting-2014.pdf (last visited: 26.10.2015).

⁴ See <http://www.ons.gov.uk/ons/rel/gva/gross-domestic-product--preliminary-estimate/q4-2014/rft---adhoc-spreadsheet.xls> (last visited 26.10.2015)

⁵ See Oxford Economics (2013) *The Economic Impact of the UK Heritage Tourism*.

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. Natural Resources Wales

Natural Resources Wales is the principal adviser to the Welsh Government on wildlife, environmental protection and sustainable development. It has taken over the functions of the Countryside Council for Wales, Environment Agency Wales and Forestry Commission Wales, as well as some functions of Welsh Government. It is the regulatory authority in Wales for a wide range of environmental legislation, including waste, industrial pollution, water resources, commercial fisheries, habitats and wildlife conservation and management. For most of the above activities Natural Resources Wales is responsible for granting permits, undertaking compliance assessment and taking formal enforcement action.

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.

Licensing

In the context of wildlife protection and management law, licences play the important role of authorising, subject to relevant conditions, desirable activity affecting defined lists of species. Licences are issued by Natural England, Natural Resources Wales, the Welsh Government and the Marine Management Organisation. Each will be considered in turn.

Natural England

Just under 48,000 wildlife applications were processed by Natural England over the five year period of 2009/10 to 2013/14. On average, there were 9,600 applications per year.

Table 1: Species breakdown of licences processed in 2009/10 - 2013-14

	2009/10	2010/11	2011/12	2012/13	2013/14	Average*
Science & Conservation	4,356	5,009	5,393	5,089	4,212	4,811
EPS Mitigation	1,758	2,204	2,358	2,736	2,885	2,388
EPS (bat) Exclusion	64	59	62	43	54	56
Badgers	1,069	981	764	882	907	921
Birds	1,023	1,308	1,081	1,291	1,367	1,214
Other Mammals	1	2	15	5	3	5
Non-Native Release	32	31	37	52	31	37
Destructive Imported animals	16	14	18	23	23	19
Deer	43	30	48	53	30	41
Seals	0	2	0	0	1	1
Falconry and sales	147	129	50	93	107	105
Damage	3	1	1	2	1	2
Total	8,512	9,770	9,827	10,269	9,621	9,600

Source: Data from Natural England
 *Rounded up to nearest whole number

There are two aspects of wildlife licence application costs to consider: internal costs to Natural England and costs faced by the applicant. Internal costs are broken down into “simple” (relatively straightforward small scale applications not requiring a site visit) and “complex” (applications affecting larger number of individuals of the species, high risk activity often requiring a site visit). Applicant costs are based on estimated charges for completion of the licence application form with supporting data (see table 2 below).

Previously it was the case that some applicants incurred significant costs in completing their licence application, especially those affecting a European Protected Species. Natural England has subsequently introduced a ‘Species Licensing Improvement Programme’ (SLIP) designed to look at reducing administrative costs and delays by allowing applicants to add missing information to pending licence applications (“Annexed Licences”), so as to ensure that applications would not have to be resubmitted multiple times before being processed by the licensing authority. Since the SLIP system was introduced for great crested newt applications in June 2013 (and more recently for bats and dormice) Natural England has reportedly issued 545 Annexed Licences with an estimated £345K in customer savings (up to the end of December 2014) and reduced the delays associated with reapplication by 1635⁶ weeks.

Table 2: Internal costs to Natural England and costs to the applicant per wildlife licence application, 2015⁷

	European Protected Species*	Great Crested Newt	Birds	Licence to interfere with a badger sett
New applications:				
Internal cost	Simple £368 Complex £920	Simple £460 Complex £1,390	Simple £138 Complex £690	Simple £392 Complex £690
Applicant cost	Simple £1,750 Complex £2,813	Simple £1,750 Complex £3,875	Simple £142 Complex £185	Simple £501 Complex £571
Total cost	Simple £2,118 Complex £3,733	Simple £2,110 Complex £5,265	Simple £280 Complex £875	Simple £893 Complex £1,261
Resubmissions:				
Internal cost	£184	£690	N/A	N/A
Applicant cost	£344	£969	N/A	N/A
Total cost	£528	£1,659	N/A	N/A

Notes: Internal costs based on Natural England charging rate of £92/hour

* cost for bat licensing only (figures for other EPS available although they make up a very small proportion (5% of mitigation licence applications) in comparison to bats and great crested newts)

Natural Resources Wales

Although Natural Resources Wales 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 Natural Resources Wales (NRW).

⁶ On average three weeks of savings per reapplication from speaking directly to the customer and resolving issues over the phone [545 x3]

⁷ Natural England figures, <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/statistics.aspx> (last visited 26.10.2015)

The cost to Natural Resources Wales (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) is indicated in table 3 below.

Table 3: Cost to Natural Resources Wales to process/issue wildlife licences, 2014/15

Staff grade	Person days	Cost
B1	396	£46,332
B3	880	£145,200
C1	531	£113,103
D1	252	£80,892
Total		£385,527

Source: Natural Resources Wales

Table 4: The number of licences processed/issued in 2013/14 and 2014/15

	2013/14	2014/15	Average
Science and conservation	596	709	652
EPS (IROPI)	367	364	365
Birds	186	208	197
Badgers	17	18	17
Non-native	9	7	8
TOTAL	1175	1306	1239

Source: Natural Resources Wales

Based on the average number of licences processed [table 4 above] the average cost of processing a licence to Natural Resources Wales is £311 per licence application.

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. The MMO does not currently charge for the process and issue of wildlife licences. The number of licences issued is generally less than 12 per year – the most that has been issued in a one year period.⁸ Given the small number and the considerable variation in pre-application advice, the MMO was unable to provide an estimated cost to process and issue a wildlife licence that was not inflated by extreme values.

The damaging effect of invasive non-native species

The annual cost of invasive non-native species to the economy is estimated at £1.3 billion in England and £125 million in Wales.⁹ These costs relate to control and eradication, structural damage to property or infrastructure and loss of production (for instance in agriculture or forestry) due to the presence of invasive non-native species. There are also prevention costs associated with invasive non-native species, as well as costs associated with repairing damage, research and publicity. The biggest cost is to agriculture, estimated at over £910 million annually in England and Wales.¹⁰ However, there are significant costs to other sectors. For instance, the total estimated cost of invasive non-native species to the construction and development sector, as well as to infrastructure in Great Britain is some £226 million annually.¹¹ Other direct costs include increased flooding and erosion caused directly by the negative impact of an invasive non-native species on existing ecosystem services.

⁸ Information supplied by the MMO.

⁹ Williams and others, *The Economic Cost of Invasive Non-Native Species on Great Britain* (2010), p 11.

¹⁰ Williams and others, *The Economic Cost of Invasive Non-Native Species on Great Britain* (2010), p 11.

¹¹ Williams and others, *The Economic Cost of Invasive Non-Native Species on Great Britain* (2010), p 129.

Estimated costs by sector

In a report prepared for Defra, the Scottish Government, and the then Welsh Assembly Government, Williams and others estimated the following as the annual costs to the economy of invasive non-native species. It is worth noting that the figures include some species that have been established for a considerable time (such as rabbits) and that in some cases (such as deer) it is difficult to distinguish between the cost of damage caused by non-native and costs caused by native plants or animals.

Table 5: Estimated total cost of invasive non-native species in England and Wales by sector

Sector	England	Wales
Agriculture	£839,189,000	£71,110,000
Forestry	£45,780,000	£14,950,000
Quarantine and Surveillance	£14,523,000	£1,956,000
Aquaculture	£4,370,000	£2,053,000
Tourism and Recreation	£78,920,000	£5,759,000
Construction, Development, Infrastructure	£194,420,000	£11,078,000
Transport	£62,894,000	£8,768,000
Utilities	£8,515,000	£483,000
Biodiversity and Conservation	£11,176,000	£6,218,000
Human Health	£37,844,000	£5,816,000
Total costs	£1,291,461,000	£125,118,000

Source: F Williams and others, *The economic cost of invasive non-native species on Great Britain* (2010), p 189. (Note, the total costs given take into account some double counting in the sectors above. They are not, therefore, a mathematical total of the figures by sector).

Cost of state intervention

In table 6 below we outline the costs of eradication at different stages. So, for example, the estimated cost of eradication operations in respect of the Asian long-horned beetle (which attacks hardwood trees) would be £34,000 if carried out early, but £1,316,426,000 if carried out after the specie is established, not including losses resulting from damage or destruction of trees.

Table 6: Cost of eradication by species (2010)

Species	Control stage	Cost
Asian long-horned beetle	Early stage eradication	£34,000
	Late stage eradication	£1,316,416,000
Carpet sea squirt	Early stage eradication	£2,356,000
	Late stage eradication	£927,608,000
Water primrose	Early stage eradication	£73,000
	Late stage eradication	£241,908,000
Grey squirrel	Early stage eradication	£440,000
	Late stage eradication	£850,734,000
Coypu	Mid stage eradication	£4,700,000
	Late stage eradication	£18,800,000

Source: F Williams and others, *The economic cost of invasive non-native species on Great Britain* (2010), p 184.

Wildlife crime and enforcement

Measuring the extent of wildlife crimes is difficult, especially since most wildlife offences do not require notification to the Home Office. In October 2011, the National Wildlife Crime Unit [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. The absence of a centrally managed national database makes it difficult to fully assess the extent of wildlife crime.

In respect of wild bird crime, the RSPB received a total of 341 incident reports in 2013 but this excludes data from RSPCA and is therefore a significant under-estimate.¹² The five year average for the preceding years, 2008-2012, was 575, with annual incident reports fluctuating between 446 and 770.

The Ministry of Justice has provided data in connection with the prosecutions of wildlife offences in England and Wales under Part 1 of the Wildlife and Countryside Act 1981¹³ and the Protection of Badgers Act 1992.¹⁴ These are all summary only offences with maximum sentences which range from a fine to 6 months imprisonment (or both) in the case of the Protection of Badgers Act 1992. In the case of the Wildlife and Countryside Act 1981 the maximum sentence is a fine up to level 5 of the standard scale¹⁵ The Wildlife and Countryside Act 1981 covers offences connected with the protection of wild birds, their nests and eggs and a large number of other wild animals and plants and prohibits such things as the sale, possession, disturbance, killing, capture or (in relation to plants) destruction of protected species. The Protection of Badgers Act 1992 prohibits, among other things, the killing of badgers, the commission of acts of cruelty towards badgers, activities interfering with their setts and the sale and possession of live badgers. The latest statistics on both offences is indicated in the tables below.

Table 7: Data for the Protection of Badgers Act 1992

	2010	2011	2012	2013	2014
Proceeded against	42	48	64	50	18
Found guilty	24	24	31	26	11
Sentenced	24	24	31	26	11
Custody	13	8	17	11	6
Suspended sentence	3	-	3	4	-
Community sentence	-	2	3	3	1
Fine	6	13	8	8	4
Average fine amount [£]	£380.00	£194.62	£111.25	£493.75	N/A
Average custodial sentence length [mths]	0.9	1.2	2.4	3.6	1.0

Notes: The number of defendants found guilty in a particular year may exceed the number proceeded against as the proceedings in the Magistrates' court took place in an earlier year and/or defendants were found guilty in the Crown Court in the following year – or the defendants were found guilty in the Crown Court of a different offence to that for which they were originally proceeded against in the magistrates' Court; Figures relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe; Every effort is made to ensure that the figures presented are accurate and complete; The number of offenders can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed at the Crown Court, may be sentenced the following year; Average custodial sentence length is displayed in months and excludes life and indeterminate sentences. Where there were less than 5 custodial sentences, then the average is not shown as there were not enough cases to provide a reliable estimate; Average fine is displayed in pounds and pence. Where there is less than five fines given as sentences then the average is not shown, as there are not enough cases to provide a reliable estimate. Source: Data from Ministry of Justice

¹² RSPB, *Birdcrime 2013 – Offences against wild bird legislation in 2013*, appendix I, p 35. But note that the 2013 figures do not include the full annual dataset usually included from the RSPCA as a result the figures for 2013 are significantly lower than the true total. The average annual for 2008 to 2012 is 575.

¹³ All offences under ss 1, 3, 5, 6, 7, 8, 9, 11 and 17 of the Wildlife and Countryside Act 1981.

¹⁴ All offences under the Protection of Badgers Act 1992 other than s 13.

¹⁵ The Criminal Justice Act 1982, s 37(2), provides that a level 5 fine is equivalent to £5,000; by virtue of s 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, however, since March 2015 offences punishable by a magistrates' court on summary conviction with a maximum fine at level 5 may now be punished with an unlimited fine.

Table 8: Data for Part 1 of the Wildlife and Countryside Act 1981

	2010	2011	2012	2013	2014
Proceeded against	38	34	36	25	23
Found guilty	21	24	28	18	13
Sentenced	21	24	28	18	13
Custody	-	-	-	-	-
Suspended sentence	2	-	5	1	1
Community sentence	3	1	7	6	2
Fine	7	12	10	4	10
Average fine amount [£]	£790.71	£222.08	£453.50	N/A	£530.00
Average custodial sentence length [mths]	N/A	N/A	N/A	N/A	N/A

Notes: The number of defendants found guilty in a particular year may exceed the number proceeded against as the proceedings in the Magistrates' court took place in an earlier year and/or defendants were found guilty in the Crown Court in the following year – or the defendants were found guilty in the Crown Court of a different offence to that for which they were originally proceeded against in the magistrates' Court; Figures relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe; Every effort is made to ensure that the figures presented are accurate and complete; The number of offenders can differ from those found guilty as it may be the case that a defendant found guilty in a particular year, and committed at the Crown Court, may be sentenced the following year; Average custodial sentence length is displayed in months and excludes life and indeterminate sentences. Where there were less than 5 custodial sentences, then the average is not shown as there were not enough cases to provide a reliable estimate; Average fine is displayed in pounds and pence. Where there is less than five fines given as sentences then the average is not shown, as there are not enough cases to provide a reliable estimate. Source: Data from Ministry of Justice

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.¹⁶

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.

¹⁶ Information supplied by Natural England.

Her Majesty's Court Tribunal Services' [HMCTS] policy is to charge start up and running costs for 10 appeals in the first year of implementation. The start-up costs cover all activities required to bring a new appeal into force even if no appeals are expected in practice. Running costs cover all salaried staff involved in the hearing, e.g. judges, expert panel members and lay members. The start up cost is £7,000 and the cost per case is £3,000. The first year minimum of ten appeals requires a deposit of £30,000. Up until the time of writing, no appeals against civil sanctions imposed in connection with wildlife crimes have ever gone through the system on the basis that no civil sanctions have been imposed so far in this area of law.

Compliance with EU law

A number of our proposals work to ensure full compliance with the UK's obligations under the Wild Birds and Habitats Directives, thus reducing the risk of costly legal proceedings that may be brought by the European Commission against the UK Government for failing to adequately transpose and give effect to the Directives in the law of England and Wales.

5. Main stakeholders

The main stakeholders are:

- regulators, i.e. DEFRA, the Welsh Government, Natural England, the MMO and Natural Resources Wales;
- non-governmental organisations and charities with an interest in wildlife;
- users of the regulatory regime –
 - individual land owners and occupiers;
 - developers;
 - the rural community;
 - the fishing community;
 - those involved in country sports;
- the general public;
- Ministry of Justice.
- prosecutors of wildlife-related crime (the RSPCA and the CPS); and
- Her Majesty's Courts and Tribunals Service.
- Legal Aid Agency.
- National Offender Management Service (prison and probation impacts).

6. Public Consultation Exercise

A majority of consultees agreed that a single wildlife statute should be introduced to deal with species-specific provisions for wildlife conservation, protection, exploitation and control. There was overwhelming support for retaining the existing regulatory approach: the new framework should continue to prohibit certain behaviour, permit limited exceptions and otherwise authorise competent authorities to license desirable activity affecting defined lists of species.

Consultees, including Defra, also broadly supported the standardisation of the existing licensing regime for species protected for domestic reasons around the derogation reasons listed under article 9 of the Bern Convention. There was, on the other hand, no real consensus as to the appropriate regulation of the length of wildlife licences. Natural England argued that imposing licence length requirements reduces the flexibility of the regulatory regime undesirably. Others argued that there was a danger that imposing maximum licence lengths would encourage regulators to use the maximum length as the standard length of every

licence. Consultation responses were also evenly split as to whether certain activities should only be capable of being authorised through individual licences.

Consultees overwhelmingly agreed that the current legislative framework is insufficient to tackle the problems with invasive non-native species effectively. There was broad support for powers to make species control orders for invasive non-native species and require notification of their presence, subject to these powers not placing disproportionate burdens on individuals.

Consultees from all sides of the spectrum agreed that the current sanctions for wildlife offences are insufficient. It was argued that wildlife crimes are very rarely prosecuted and the available penalties often do not provide a sufficient deterrent. Furthermore, it was stated that the current sanctions are inconsistent with the significantly higher penalties available in other areas of environmental law.

In general, consultees favoured the creation of a comprehensive scheme of civil sanctions, accepting that our provisional proposals would form a useful enforcement mechanism within a balanced regulatory regime. However, some consultees raised concerns which essentially equated the creation of a regime for civil sanctions with a lessening of sanctions, a reduction in the powers of police and the possibility of creating confusion between the regime for civil sanctions and criminal prosecution.

7. POLICY OPTIONS AND OPTION APPRAISAL

Two options have been considered:

- Option 0 – Do nothing;
- Option 1 – Simplification and reform of the regulatory framework.

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, with a number of animal and plant species, for instance, being protected by virtually identical provisions under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010. 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, maximum criminal penalties available for wildlife crimes vary for no apparent reason and civil sanctions are only available in connection to some wildlife offences. The reasons for which a wildlife licence may be granted also vary, for no apparent reason, depending on the species in question. The validity of certain wildlife licences is limited to two years; this makes it potentially difficult to impose ongoing monitoring obligations in connection with activities authorised under a licence or for large infrastructure projects to secure funding.

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 and international law. For instance, the Court of Justice of the European Union (CJEU) ruled that the term "deliberate" is broader than the concept of "intentionality", and covers activities where a person is aware of a serious risk of harm and nevertheless carries out the prohibited activity, accepting the potentially harmful consequences of the

activity. The Wildlife and Countryside Act 1981 currently only prohibits “intentional” activities in connection with the killing or capture of birds protected from “deliberate” conduct under the Wild Birds Directive. Other examples include the continuous existence of defences which are inconsistent with the derogation regime authorised under the Wild Birds Directive. Those include, among others, the “incidental results of a lawful operation defence” and the defence authorising anything done in pursuance of an order under the Animal Health Act 1981 or section 98 of the Agriculture Act 1948.

There are gaps in the current law. For example, it is also currently impossible to licence the killing or capture of game birds during the close season, or issue wild bird licences for reasons other than the strict list of reasons listed in section 16(1) of the Wildlife and Countryside Act 1981. There are also no powers to require individuals to report the presence of an invasive species in certain areas and no powers to issue civil sanctions in connection with crimes committed against species protected under the Habitats Directive.

Option 1 – Simplification and reform of the regulatory framework

The main recommendations as set out in the Final Report are detailed below.

A new framework for wildlife regulation

We recommend that there should be a single wildlife statute dealing with species-specific provisions for wildlife conservation, protection, exploitation and control. 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 regulations. The length of wildlife licences should not be expressly limited, although licences should expressly state how long they will apply for and should not be issued for a particular period of time unless there is no other satisfactory alternative than to issuing it for that period of time. Finally, we propose that there should be a general offence of breaching a licence condition.

Reform of the regulation of species protected under EU law

In considering the proper transposition of the Wild Birds and Habitats Directives, we make a number of recommendations. First, the term “deliberate” should be transposed in domestic legislation in line with the CJEU ruling in Case C-221/04 *Commission v Spain*. In other words, wildlife crimes giving effect to the Wild Birds and Habitats Directives should be capable of being prosecuted where; (1) the defendant carried out an activity intentionally, (2) where the defendant's actions presented a serious risk to animals of the relevant species unless reasonable precautions were taken and he or she was aware that that was the case but failed to take reasonable precautions, or (3) his or her actions presented a serious risk to animals of the relevant species whether or not reasonable precautions were taken, and he or she was aware that that was the case. Second, the “incidental results” defence should be repealed. Third, there should be a general defence of acting in pursuance of an order made under an animal health order or a pest control order; the Secretary of State or Welsh Ministers, however, should not be capable of issuing the above orders if likely to interfere with a species protected under EU or international law unless they are satisfied that the issuing and terms of the order are compliant with the derogation regime authorised by the relevant international or EU instrument. 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 by means of regulation-making powers and duties additional to those currently available under section 2 of the Wildlife and Countryside Act 1981. Finally, in line with article 9(1) of the Wild Birds Directive, the Secretary of State or Welsh Ministers should be capable of issuing wild bird licences the term “judicious use of certain birds in small numbers” should be one of the purposes for which a wildlife licence may be granted.

Reform of the regulation of species protected solely by domestic law

We recommend 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 consent of the person with the sporting rights in the relevant land. We also recommend 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 and harmonise the grounds for issuing wildlife licences around the derogation reasons listed in article 9(1) of the Bern Convention.

Invasive non-native species

We recommend the introduction of a power to require specified individuals to notify the competent authority of the presence of specified invasive non-native species, modelled on the reforms introduced under in Scotland through the Wildlife and Natural Environment (Scotland) Act 2011. We further recommend the rationalisation of existing powers and prohibitions connected to the control of non-native species so as to provide regulatory authorities with a consistent regulatory toolkit to tackle the threat of non-native species to the natural environment or other socio-economic interests, from prevention to early eradication and long term control.¹⁷

Sanctions and compliance

We recommend that it should be an offence for a person to knowingly cause or permit another person under his or her control to commit a wildlife offence. So as to give effect to the Environmental Crime Directive, a legal person should be criminally liable when a person acting as an employee or agent commits a relevant wildlife offence¹⁸ and the relevant offence would not have been committed but for the failure of an officer of the legal person to exercise proper supervision or control over the actions of the employee or agent.

We recommend that available penalties for wildlife offences should be increased; wildlife offences under the new framework should be made triable on indictment and punishable for up to two years imprisonment or a fine (or both). We also propose that, so far as is practicable, the full range of civil sanctions should be available for the wildlife offences under the new regime. Appeals against civil sanctions should be brought to the First-tier Tribunal (Environment).

Other option considered but subsequently not pursued

We considered whether an effective reform of wildlife law could be achieved by merely amending the existing statutes rather than by recommending the creation of a completely new protection framework that consolidates all wildlife law into a single statute.

In line with the views of the overwhelming majority of consultees, we concluded that this approach would strip the reform project of its main economic and environmental benefits. As many consultees pointed out, one of the main problems with current wildlife protection and management legislation is the fact that it is scattered across a large number of statutes dating back to the beginning of the nineteenth century: the result of the current regulatory structure is that wildlife law is intricate, inflexible and unnecessarily difficult to navigate for users. In the light of consultation we concluded that only the creation of a single statute can effectively address such fundamental problems.

8. 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.

¹⁷ In our Final Report *Wildlife Law: Control of Invasive Non-native Species* (2014) Law Com 342 on species control orders we recommended that regulators should have the power to issue specie control orders for the purpose of controlling or eradicating invasive non-native species on relevant land; our recommendations have now been given effect by sections 23 to 25 of the Infrastructure Act 2015.

¹⁸ A relevant offence is an offence specified in articles 3(g) and (f) of the Environmental Crime Directive in connection with animals or plant species within the meaning of articles 2(b)(i) and (ii) of the Directive.

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 (2015) 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 2014-15 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. 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.

Costs

Transitional costs

Regulators and non-governmental organisations

1. Updating guidance, training and procedural changes

There would be transitional costs associated with producing or amending guidance and updating information on regulators’ websites to reflect the new regulatory regime. We anticipate that these costs are likely to be absorbed within the day-to-day costs of the regulator. Guidance for the CPS, HMCTS and the judiciary may also have to be updated when dealing with the amended offences, which may incur costs. Some training on our new procedures are likely to also fall on businesses but educating users of the regulatory regime about the new legal framework is likely to attract a negligible cost, since the majority of our proposals are simplifying and clarifying the law rather than creating new systems. Additional training

costs would likely be absorbed within the part of the regulators' expense budgets which is already dedicated to professional development. There may also be 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.

HMCTS

2. Increased number of appeals

The expanded power to extend civil sanctions to offences in relation to animals or plants protected under the Conservation of Habitats and Species Regulations 2010, and some other offences under the Protection of Badgers Act 1992, the Deer Act 1991 and the Conservation of Seals Act 1970 which are not currently covered, will potentially increase the likelihood of appeals to the First Tier Tribunal which has jurisdiction for hearing the great majority of appeals against environmental civil sanctions. We do not think that the extension represents more than approximately a 20 percent increase in the power to issue civil sanctions. Since the set-up of the appeal process there have been no appeals against existing civil sanctions (on the basis that no civil sanctions in relation to wildlife offences have been issued since Natural England was provided with the power to do so in 2010). This suggests that the requisite £30,000 paid in advance remains in place. We do not anticipate the number of appeals will escalate beyond 10 appeals over the ten year period based on past performance. However, in the case of new control orders to do with pests and weeds this requires the creation of a new system with £30,000 paid in advance plus £7,000 for the start up costs. It is anticipated that there will be very few cases each year and the £30,000 will be sufficient payment over the 10 year period.

Total cost: £37,000

On-going costs

Regulators

3. Review of all species listing

Currently just schedules 5 and 8 of the Wildlife and Countryside Act 1981 are regularly reviewed by the Joint Nature Conservation Committee every five years. Recommendations to review all listing of species every five years would bear some additional administrative costs. The best estimate of current costs to amend schedules 5 and 8 is about £60,000 over the three year period during which work on the amendments are actually takes place, however this is a very rough guess for several reasons. The Joint Nature Conservation Committee does not keep records of time spent on individual projects (it only keeps records at a Programme level). For this reason the amount of time JNCC spent on this project in the last 3 years has to be a best estimate. Furthermore, the estimate excludes any time spent on this project by agency staff outside of JNCC who attended the meetings. The same goes for stakeholders who were consulted¹⁹.

On this basis by way of illustrative example only, if the inclusion of the additional schedules was equivalent to a further 100 percent increased workload at a minimum administrative cost to review *all* the schedules would increase by a further £60,000 over the three years. But for the reasons outlined above we are unable to provide a robust estimate.

4. Compulsory notification of invasive non-native species

¹⁹ The estimate relies on the contribution of 20 people and assumes the same salaries as used for the statutory body staff. For reasons identified the JNCC considers the overall costs given to be significantly under- estimated and not particularly accurate."

Compulsory notification of invasive non-native species, would attract some administrative costs to the regulators. There will also be costs to members of the public but 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 which have not been detected on time for can bring.

5. Increased number of licences

There may be a potential increase in the number of licences that may have to be issued for the purpose of authorising otherwise prohibited activities. The primary reason for this is that, for the purpose of ensuring compliance with EU law, the scope of certain prohibitions in connection with wild birds or animal or plant species protected under the Habitats Directive will have to be expanded. For the purpose of ensuring compliance with international and EU law a number of automatic defences to certain activities will also have to be removed or restricted. We envisage that the potential increase in the number of wildlife licences may primarily affect activities that, whilst not directed at particular species, are likely to have indirect effects on protected species (such as farming, forestry and development).

6. Cost of administering civil sanctions

We do not anticipate increased costs from extending the full use of civil sanctions to replace criminal prosecutions. This is because the tasks undertaken by local staff for a prosecution are expected to be very similar to that required of civil sanctions.

Criminal Justice System (CJS)

7. Cost of prosecuting serious offences in the Crown Court

Serious offences will now move to the Crown Court as most wildlife offences will be triable either way (rather than summary only as they are now).

By way of illustrative example we have modelled the impact of amending several offences in the Wildlife and Countryside Act 1981 from summary only to triable either way²⁰. It is envisaged that the maximum penalty for these amended offences would be two years custody on indictment.

Data from 2009-2013 for the existing summary offences in the Wildlife and Countryside Act 1981 was used to model the cost per defendant for the summary only offences at the current time.²¹ A similar methodology was used to model a cost per defendant for the proposed either way offences after they have been amended, as applied to the existing either way offences in the Control of Trade in Endangered Species (Enforcement) Regulations 1997, using data from 2011 to 2013.

On this basis it is estimated that each additional prosecution under the existing summary only offences could cost the criminal justice system [CJS] £1,100²²²³ per defendant and if amended to triable either way this could cost the CJS up to £12,800²⁴ per defendant. (See Annex A for further details)

Cost estimates have been produced using unit costs for different parts of the CJS and are broken down as follows²⁵:

²⁰ Modelled by the Ministry of Justice analytical team. See accompanying Annex A for all underpinning assumptions.

²¹ This data was averaged over the five years because of the relatively low volumes of prosecutions. Because volumes are relatively low, the offences in scope were analysed together.

²² Rounded to the nearest £100 and in 2013/14 prices.

²³ This includes CPS and HMCTS costs which are calculated on a per case basis.

²⁴ Ibid.

²⁵ All costs in the paragraph below are rounded to the nearest £100 and are in 2013/14 prices. The costs below may not sum to the total CJS costs per defendant in the paragraph above because of the rounding convention used.

CPS: Approximately £200 per defendant for summary only offences and up to £700 for either way offences.
 HMCTS: Approximately £300 per defendant for summary only offences and up to £700 for either way offences

Legal Aid²⁶: Approximately £200 per defendant for summary only offences and up to £400 for either way offences.

Prison costs: £0 per defendant for summary only offences and up to £9,400 for either way offences.

Probation costs: Approximately £500 per defendant for summary only offences and up to £1,800 for either way offences.

In the light of the available data in connection with the levels of sanctions being imposed in summary convictions under existing wildlife protection legislation, we estimated that it would be likely that under the new regime an average of 20% of prosecutions would be brought before the Crown Court. Assuming that the volume of prosecutions will not change for the new either way offences under the new regulatory regime²⁷, we have estimated that total costs would increase from approximately £50,000 per year to up to £450,000 per year.²⁸ Our best estimate is the mid-point between £100,000 and the High estimate of £450,000.

Annual cost: £275,000 [best estimate]

Present value over 10 years: £2,287,066

Table 9: Summary of the key costs of Option 1

COSTS	Low estimate	Best estimate	High estimate
Transitional			
Appeals set-up		£37,000	
On-going			
Prosecution costs	£100,000	£275,000	£450,000

Benefits

Transitional benefits

We do not foresee any transitional benefits.

On-going benefits

²⁶ Legal Aid eligibility in the magistrates' court is dependant on a defendant passing the interests of justice test, and a means test. For more information, see: <https://www.gov.uk/legal-aid/eligibility>

²⁷ This is based on the average volume of prosecutions from 2009 to 2013 for the existing summary offences in the Wildlife and Countryside Act 1981. If there are more/fewer proceedings for the new either way offences compared to the old regulatory regime then this would mean costs would be higher/lower.

²⁸ Rounded to the nearest £50,000 and in 2013/14 prices

Users of the regulatory regime and the general public

1. Increased accessibility from simplifying the law

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. Savings from reduced consultancy advice

The simplification of the regulatory regime for wildlife reduces recourse to external advice provided by environmental or ecological consultants. 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. A single wildlife statute would, we estimate, reduce this cost by a conservative estimate of 0.5%, which, across the industry, amounts to a saving of £2,548,000. See table 10 below.

Table 10: Savings to users as a result of reduced external advice

	Low estimate	Best estimate	High Estimate
A. Number of consultants in England and Wales	3,000	5,000	7,000
B. Hourly rate+	30	65	100
C. Time spent advising on wildlife law per year – one consultant	70%* = 1,372 hrs	80%* = 1,568 hrs	90%* = 1,764 hrs
D. Time spent advising on wildlife law per year – all consultants in England and Wales(A x C)	4,116,000 hrs	7,840,000 hrs	12,348,000 hrs
E. Overall annual cost to users (B x D)	£123,480,000	£509,600,000	£ 1,234,800,000
F. Single wildlife statute:% reduction in cost	0.25%	0.5%	1%
G. Overall annual saving to users (E x F)	£308,700	£2,548,000	£12,348,000

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

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 = £2,548,000.00 [best estimate]

Present value over 10 years = £21,190,710

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

Users of the regulatory regime

3. Rationalised law

In addition to simplifying the law, our proposals work to better rationalise the law. 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 way to the wild environment. The current law does not allow these institutions being granted a longer licence than two years, so they are required to frequently re-apply for licences. 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 for.

Removing the time limit for licences in such cases, as we recommend, 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 £344, and Natural England £184, totalling £528 per reapplication. Based on an earlier consultation response from Natural England regarding reapplications received from annual European Protected Species licence applications we have retained the average of 29% as a measure of proportion of licence reapplications as there has not been a significant change in application proportions. It is estimated that of those reapplications, 3% fall within the category considered above. Therefore, we estimate that removing existing maximum time limits for wildlife licences would bring annual saving of £18,163 [best estimate].

Table 11: 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% =960 reapplications	30% = 2,880 reapplications	40% = 3,840 reapplications
B. Percentage/number of reapplications that would benefit from the removal of the two-year time limit	1% = 10 reapplications	3% = 86 reapplications	4% = 154 reapplications
C. Total cost per reapplication	£528	£528	£528
D. Overall saving for reapplications of 10 years duration* (B x C x 4)	£21,120	£181,632	£325,248

*Increasing the time limit from two years to ten years [the time period covered by the impact assessment] reduces the number of reapplications within that time period by 4.

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 = £181,632 /10 = £18,163

Present value over 10 years = £151,054

4 Reduced number of licences from revised “wild bird” definition

Changes to the definition of “wild bird” will reduce the number of licences that are now issued to kill non-native birds.

Regulators

5. Reduced need for costly primary legislation

Our recommendation that all the schedules listing protected species or prohibited methods are reviewed periodically and capable of being amended by regulations would mean that changes in species protection preferences can be made without recourse to primary legislation. Primary 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.

Prosecutors of wildlife-related crime

6. Reduced reliance on criminal prosecutions

So far as is practicable, we propose that the full range of civil sanctions should be available for wildlife offences. In doing so, we anticipate that less reliance will be placed on criminal sanctions. 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 to the criminal justice system. We have been unable to monetise the savings to RSPCA from pursuing fewer cases through the court system.

Users

7. Increased legal certainty for developers

Our recommendation to harmonise the grounds for issuing wildlife licences for species protected for domestic reasons around the derogation reasons listed in article 9(1) of the Bern Convention will make it possible for regulators to issue licences authorising interferences with protected species on grounds of overriding public interest. This means that under the new framework developers will be able to license development activities interfering with protected species.

As Natural England suggested in consultation, the inability to obtain licences on those grounds under a number of licensing regimes currently forces regulatory addressees to rely on general criminal defences which do not guarantee immunity from prosecution and legal certainty in connection to what activities may or may not be carried out in the area where development activities are taking place.

Legal certainty for certain development projects will also increase as a result of our recommendation to remove the existing time limits for wildlife licences. The ability to issue longer licences will facilitate the developers' ability to obtain funding for development projects running for longer than two years, on the basis that the prospect of being unable to renew wildlife licences after two years may affect the developers' ability to obtain long term finance.

8. Increased information flow in connection with the presence of invasive non-native species

The introduction of a proportionate power to require particular persons to notify a competent authority about the presence of an invasive non-native species in certain areas potentially enhances the ability of regulators to take early and cost-effective eradication or control measures for tackling the spread of non-native species which are likely to cause significant effects on biodiversity, other environmental interests and socio-economic interests.

Certain consultees expressed concern in connection with the creation of a general power to require notification of certain species on the basis that provisions in earlier legislation resulted in excessively broad

and, as a result, unenforceable obligations to report.³⁰ We are not persuaded that a modern power to impose notification requirements modelled on section 14B of the 1981 Act as it applies to Scotland would raise such problems. First, the power to require notifications will be limited to persons who have or should have knowledge of, or are likely to encounter, the relevant species. Secondly, the obligation to notify the competent authority will only apply to cases where a relevant person is aware, or has become aware, of the presence of a relevant species. Lastly, as opposed to the notification requirements imposed under the Destructive Imported Animals Act 1932, the new power will provide the Secretary of State or Welsh Ministers with the discretion to impose the requirement in a targeted way, by restricting their application to particular individuals, businesses or other organisations that are likely to encounter the invasive species in question because of their profession or location.

We identify potential savings from early notification facilitating early stage eradication based on the ‘nudge’ effect. There is convincing evidence that tiny factors create strong incentives towards behaviour that people want to take. In estimating the societal-wide benefit we rely on the evidence from table 6. In the case of our best estimate we take a very conservative stance using just the 5 species to derive savings equivalent to 0.1 percent of the difference between early and late stage eradication. See table 12 below.

Table 12: Savings from early stage notification

A. Early stage eradication cost [£mn]	B. Late stage eradication cost [£mn]	C. Difference Between B-A [£mn]	Low estimate C x 0.0005 [£mn]	Best estimate C x 0.001 [£mn]	High estimate C x 0.002 [£mn]
£7.60	£3,355.47	£3,347.86	£1.67	£3.35	£6.70

Annual savings: £3.35 million [best estimate]

Present value over 10 years: £27.84 million

Table 13: Summary of the key benefits of Option 1- Annual savings

On-going benefits	Low estimate	Best estimate	High estimate
1. Reduced need for environmental and ecological consultants	£308,700	£2,548,000	£12,348,000
2. Increased time limits for some wildlife licences	£2,112	£18,163	£32,524
3. Early eradication of invasive non-native species	£1,673,932	£3,347,863	£6,695,726
Total annual savings	£1,984,744	£5,914,026	£19,076,250

³⁰ Until very recently the effect of the Grey Squirrels (Prohibition of Importation and Keeping) Order 1937 issued under s 10 of the Destructive Imported Animals Act 1932 was to make it an offence for any occupier of land to fail to report the presence of grey squirrels to the relevant government department, thus criminalising virtually any occupier of land in England and Wales

Summary

Table 14 below provides a summary of the costs and benefits arising from option 1.

Table 14: Option 1 Cost-Benefit Summary [£mn]

Option 1	Low estimate	Best estimate	High estimate
Transitional cost	£0.04	£0.04	£0.04
On-going cost	£0.10	£0.28	£0.45
Present value over 10 years [Cost]	£0.84	£2.32	£3.78
Transitional benefit	0	0	0
On-going benefit	£1.98	£5.91	£19.08
Present value over 10 years [Benefit]	£16.51	£49.18	£158.65
Net Present value	£15.66	£46.86	£154.87

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 recommendations 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

The proposed reform of wildlife protection and management legislation will obviously have an impact on small firms as 92.7% of the turnover of the agriculture, fishing and forestry sectors is produced by small and medium enterprises, the great majority of which are micro-businesses.³¹ We envisage that the flexibility introduced by the present reform, together with the general simplification of wildlife protection legislation, will result in long term positive net benefits for small firms by making the legislation significantly more accessible to non-experts and adaptable to external changes.

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 Chapters 4 and 5 of the Final Report, 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*.³² We have concluded that the existing reverse burdens imposed on defendants are compliant with article 6(2).

Justice system

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

Rural proofing

We have considered whether the recommendations will have an impact on rural areas throughout this impact assessment. The recommendations 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,

³¹ Department for Business Innovation and Skills, *Business Population Estimates for the UK and Regions 2013* (2013) p 11, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254552/13-92-business-population-estimates-2013-stats-release-4.pdf (last visited: 26.10.2015). See also Independent Panel on Forestry, *Progress Report* (2011) p 19, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183095/Independent-Panel-on-Forestry-Final-Report1.pdf (last visited: 26.10.2015); and Commission for Rural Communities, *Rural micro businesses: what makes some thrive in a challenging economic climate?* (2011) p 13, available at: <http://www.wireuk.org/uploads/Rural-micro-businesses-what-makes-some-thrive-in-a-challenging-economic-climate2.pdf> (last visited: 26.10.2015).

³² *Sheldrake v DPP* [2004] UKHL 43, [2005] 1 AC 264 at [21].

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.

ANNEX A: Progression of cases through the CJS³³

Data from 2009 to 2013 for the summary only offences in the Wildlife and Countryside Act 1981³⁴ and data from 2011 to 2013 for the either way offences in the Control of Trade in Endangered Species (Enforcement) Regulations 1997³⁵ was used to model the flow of these offences through the criminal justice system (CJS).

The reason this time period is different is because for the either way offences we could only find robust data over the last three available years (2011 to 2013).

Assumptions	Risks
<p>Proportion of cases tried in the magistrates' vs. the Crown Court</p> <p><i>Summary only offences</i></p> <ul style="list-style-type: none"> • It is assumed that 100% of defendants are tried in the magistrates' court and 0% are tried in the Crown Court. <p><i>Either way offences</i></p> <ul style="list-style-type: none"> • It is assumed that 80% of defendants are tried in the magistrates' court and 20% are tried in the Crown Court. This is based on an assumption by the Law Commission. 	<ul style="list-style-type: none"> • More defendants may be tried in the Crown Court where the costs of trials are more expensive.
<p>Proportion of defendants found guilty</p> <p><i>Summary only offences</i></p> <ul style="list-style-type: none"> • It is assumed that 68% of defendants are convicted. <p><i>Either way offences</i></p> <ul style="list-style-type: none"> • It is assumed that 100% of defendants are convicted. 	<ul style="list-style-type: none"> • More defendants will be convicted which could lead to higher costs.

³³ All costs provided below have been rounded to the nearest £100 and are in 2013/14 prices.

³⁴ <http://www.legislation.gov.uk/ukpga/1981/69?type=Finjan-Download&slot=000000C1&id=00000CC0&location=0A64020E>

³⁵ <http://www.legislation.gov.uk/uksi/1997/1372/contents/made>

<p>Disposals given:</p> <p><i>Summary only offences</i></p> <ul style="list-style-type: none"> It is assumed that of those sentenced after conviction, around 0% of offenders are given a custodial sentence. <p><i>Either way offences</i></p> <ul style="list-style-type: none"> It is assumed that of those sentenced after conviction, around 38% of offenders are given a custodial sentence. <p>Average custodial sentence length (ACSL):</p> <p><i>Summary only offences</i></p> <ul style="list-style-type: none"> It is assumed that the ACSL would be 0 months. This is because based on the data for the summary only offences, it is assumed that no offenders receive a custodial sentence. <p><i>Either way offences</i></p> <ul style="list-style-type: none"> It is assumed that the ACSL would be 22 months. 	<ul style="list-style-type: none"> That the ACSL given is longer / shorter, meaning costs would be higher / lower. Offenders given less than 12 months in custody are not currently subject to supervision on release. Under the Offender Rehabilitation Act 2014 this will change but for the purposes of this IA we have based estimates of cost on current practice.
<p>New policies</p> <ul style="list-style-type: none"> Our analysis does not take into account the possible interaction with other policies that have not yet been commenced. 	<ul style="list-style-type: none"> There is the risk that such policies, once commenced, could have an impact on the base case set out in this impact assessment. As a result, the associated impacts may be under or over estimated.

Cost assumptions

CPS costs, advocacy costs:

- The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks).

Source: CPS 2014; MoJ internal analysis, 2014

- The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated.

HMCTS costs (magistrates' court):

To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,100 per sitting day in 2013/14 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.

Timings data for offence categories:

- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits.
- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits.
- Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity.
- The timings are collection of data from February 2009. Any difference in these timings could influence costings.
- The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.
- Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).

HMCTS average costs per sitting day:

HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.

<p>HMCTS costs (Crown Court):</p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown Court costs per sitting day. This was added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2013/14 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> • The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing. • Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate. • The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. • Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences. <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> • HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.
<p>Legal Aid Costs:</p> <p><i>Cases in the magistrates' court</i></p> <ul style="list-style-type: none"> • It is assumed for both the summary only offences and the either way offences that the eligibility rate for legal aid in the magistrates' court is 50%. • The average cost per case is £500 and assumes that there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014 (Main tables, table 2.3). <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> • It is assumed for the either way offences that the eligibility rate for legal aid in the Crown Court is 100%. • The average cost per defendant is around £1,000 in 2013/14 prices for these offence types. • We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2013/14 data as a proxy for the cost per defendant. 	<p><i>Magistrates' court</i></p> <ul style="list-style-type: none"> • Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings. • More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost. <p><i>Crown Court:</i></p> <ul style="list-style-type: none"> • Assuming 100% eligibility for legal aid in the Crown Court carries several other risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary. • There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.

<p>Source: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</p>	
<p>Prison costs:</p> <ul style="list-style-type: none"> It is assumed that an offender serves half of their given custodial sentence: For the either way offences, this means it is assumed that offenders will on average serve 11 months in prison. The cost per prison place is approximately £26,700. <p>Source: NOMS management accounts addendum (2013/14)³⁶.</p>	<ul style="list-style-type: none"> The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be relatively low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs would be significantly higher as contingency measures will have to be found.
<p>Probation costs:</p> <p>Post release licence costs:</p> <ul style="list-style-type: none"> It is assumed that post release probation costs are approximately £2,700 per year in 2013/14 prices. <p>Independent probation costs:</p> <p>Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices. The probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-13 and uprated in line with the GDP deflator of 1.84% (https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2014-quarterly-national-accounts).</p> <p>Source: MoJ internal analysis, 2013/14.</p>	<ul style="list-style-type: none"> The Offender Rehabilitation Act 2014 includes provisions to introduce post release licence conditions for offenders given a custodial sentence of less than 12 months. These have commenced, but the implications of these changes to our modelling are being considered. Our methodology will be updated in due course.
<p>Volume of proceedings:</p> <p>It is assumed that the volume of prosecutions will not change for the new either way offences</p>	<ul style="list-style-type: none"> If there are more/fewer proceedings for the new either way offences compared to the

³⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf

under the new regulatory regime. This assumption is based on the average volume of prosecutions from 2009 to 2013 for the existing summary offences in the Wildlife and Countryside Act 1981.

old regulatory regime then this would mean costs would be higher/lower.