THE LAW COMMISSION

(LAW COM. No. 197)

DEER BILL

REPORT ON THE CONSOLIDATION OF
CERTAIN ENACTMENTS RELATING
TO DEER

Presented to Parliament by the Lord High Chancellor
by Command of Her Majesty
March 1991

LONDON: HMSO
£1.90 net

Cm 1476

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are-

The Honourable Mr. Justice Peter Gibson, *Chairman*
Mr. Trevor M. Aldridge
Mr. Jack Beatson
Mr. R. Buxton Q.C.
Professor Brenda Hoggett Q.C.

The Secretary of the Law Commission is Mr. Michael Collon and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London, WC1N 2BQ.

THE LAW COMMISSION

DEER BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO DEER

To The Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain.

In order to produce a satisfactory consolidation of certain enactments relating to deer it is necessary to make the recommendations which are set out in the Appendix to this Report.

The Home Office have been consulted in connection with the recommendations and agree with them.

PETER GIBSON, *Chairman, Law Commission*
11 March 1991

APPENDIX

RECOMMENDATIONS

1. Subsection (1) of section 1 of the Deer Act 1963 refers to a person who "wilfully" kills deer of particular species and descriptions during the prescribed close season. Section 2 of that Act provides that anyone who "wilfully" kills deer at night commits an offence. The Deer Act 1980 also refers, in section 3(7), to a person who "wilfully" obstructs an authorised officer or constable. But section 1(2)(a) of that Act talks of a person who "intentionally" takes, kills or injures deer.

There is some doubt as to the precise meaning of the word "wilfully", and, for that reason, common practice in recent legislation has been to avoid the term. In the three contexts in which "wilfully" is used in the 1963 and 1980 Acts we think it likely that the word could be replaced with "intentionally" without, in practice, making any significant change in the mental element required for each offence concerned. Any change that does result is, we believe, fully justified by the desirability of replacing a word which has given rise to such difficulties in the past with the word now accepted as preferable in statutory provisions of this kind. The use of "intentionally" throughout would also avoid the unsatisfactory situation under the present legislation, whereby one offence of "intentionally" killing deer co-exists with two of "wilfully" killing them.

We therefore recommend that where the Deer Act 1963 and the Deer Act 1980 use "wilfully" the corresponding provisions of the Bill should replace it with "intentionally".

Effect is given to this Recommendation in clauses 2(1), 3 and 11(7).

2. Subsection (1) of section 4 of the Deer Act 1963 provides that any person who attempts to commit an offence against that Act is guilty of a separate offence. Subsection (2) of that section provides that any person who, for the purpose of committing an offence against that Act, has in his possession any one of a number of specified articles is likewise guilty of an offence. The offences thus created by section 4(1) include attempting to commit an offence under section 4(2) (ie, attempting to have in one's possession a specified article for the purpose of committing another offence against the 1963 Act), and attempting to commit an offence under section 11 of that Act (ie, attempting to do an act authorised by a Nature Conservancy Council licence in contravention of a condition imposed on the grant of the licence). Section 4(2) similarly makes it an offence to have in one's possession a specified article for the purpose of attempting to commit any other offence against the Act, or of doing an act authorised by a Nature Conservancy Council licence in contravention of a condition subject to which the licence was granted.

When the Bill for the Deer Act 1963 was introduced, it was divided into several Parts. The provision relating to close seasons was Part I, and Part II comprised various other offences relating to deer. Part III contained clause 6, which made it an offence to attempt to commit an offence against Part I or Part II of the Bill, and the provision about Nature Conservancy Council licences was in Part IV. In this version, therefore, it was clear that attempting to contravene conditions imposed on the grant of a Nature Conservancy Council licence was not

an offence.

Clause 5(2) of the Bill for the 1963 Act as introduced made it an offence to be found in possession of "prohibited weapons" in circumstances which afforded reasonable grounds for suspecting that they had been used for the purpose of committing an offence under certain earlier provisions of the Act. Clause 6 (attempts) in theory applied to this offence. But clause 5(2) differed from the existing section 4(2) of the 1963 Act in that it presupposed the prior commission of another offence. Clause 5(2) itself did not apply to attempted offences, or to the offence of failing to comply with Nature Conservancy Council conditions.

In the 1963 Act as it finally emerged clause 5 of the Bill as introduced was omitted. The Act itself was no longer divided up and so all references to specific Parts had disappeared. One apparently unintentional consequence of this was that section 4(1), which had previously been clause 6, now applied to all offences under the Act and therefore covered both the offence (under section 11) of failing to comply with Nature Conservancy Council conditions, and offences under the newly inserted section 4(2). Section 4(2) had been added to replace, in a modified form, clause 5, and the fact that this provision applied to offences (under sections 4(1) and 11) which the old clause 5 had not covered also appears to have been unremarked.

We therefore believe that the provisions of subsections (1) and (2) of section 4 were never intended to apply to any offences other than offences under the preceding three sections of the 1963 Act, and that their application to each other and to section 11 was accidental. We recommend that the provisions of the Bill which correspond to section 4(1) and (2) should apply only to offences under the provisions corresponding to sections 1 to 3 of that Act, that is, clauses 2 to 4 of the Bill.

Effect is given to this Recommendation in subsections (1) and (2) of clause 5.

3. Since the Deer Act 1963 was enacted, the use of certain units of measurement has been affected by the Units of Measurement Regulations 1986. These Regulations provide that various units of measurement are no longer authorised for use in the circumstances specified by Council Directive No. 80/181/EEC. The 1963 Act uses two of the "unauthorised" units: "grain" in section 10A(2)(a), and "foot pound" in Schedule 2. In section 10A(2)(a) a metric equivalent is supplied, but Schedule 2 provides no such equivalent.

We recommend that where the 1963 Act expresses measurements in "unauthorised units" the Bill should use measurements in units that are stated by the 1986 Regulations to be authorised. However, under the Regulations it is permissible to use measurements expressed in unauthorised units to supplement measurements expressed in authorised units. Where supplementary indications are given, the "primary indication", in authorised units, will be the definitive measurement. We recommend that the Bill should provide such supplementary indications to assist users of the legislation. Thus, where section 10A(2)(a) of the 1963 Act refers to "350 grains (22.68 grammes)", we recommend that the Bill should refer to "22.68 grammes (350 grains)". This represents a slight change in the law because whereas in the 1963 Act the Imperial measurement prevailed over the metric one, if the order is reversed it is the metric measurement that will prevail. The metric equivalent of "1700 foot pounds" (which appears in Schedule 2 to the 1963 Act) is 2304.890 512 Joules. We recommend that this figure should be rounded up to 2305 Joules, so that the specification becomes "2305 Joules (1700 foot pounds)".

Effect is given to this Recommendation in clause 7(2)(a) and paragraph 2 of Schedule 2.

4. Section 10A of the Deer Act 1963 was inserted into that Act by paragraph 5 of Schedule 7 to the Wildlife and Countryside Act 1981. The substance of section 10A originated in an amendment, put down at the Report stage in the House of Lords, to the Bill for the 1981 Act. This was in due course superseded by a government amendment, to the same effect but differently drafted. The original amendment inserted several new subsections into section 3 of the Deer Act 1963; in particular, a subsection (1A), and a subsection (1E) which contained a reference to subsection (1A). The amendment which replaced this earlier version instead inserted what is now section 10A into the 1963 Act. Subsections (2) and (3) of section 10A contain provisions equivalent to the subsection (1A) inserted by the earlier amendment. Section 10A(4) corresponds to what had been subsection (1E). Section 10A(4) contains a power to amend section 10A(2) in various ways, including by the addition of "any further conditions that must be satisfied". But the conditions in question are in fact all contained in subsection (3) of section 10A; subsection (2) contains no conditions. This anomaly arose because the division of what had been subsection (1A) into two subsections was not taken into account when the amendment was re-drafted.

We therefore recommend that the power of the Secretary of State to add conditions should apply to the subsection which corresponds to subsection (3) of section 10A of the 1963 Act (clause 7(3)), and not to the subsection which corresponds to subsection (2) of that section (clause 7(2)).

Effect is given to this Recommendation in clause 7(5)(b).

5. Subsection (6) of section 3 of the Deer Act 1980 makes it an offence for a licensed game dealer to fail to comply with the provisions of that section. One of the provisions in question is subsection (5), which requires that a record book and related documents be preserved for a period of three years after a specified date. However, subsection (3) of section 3 provides that a licensed game dealer who has purchased venison from certain sources is "deemed to have complied with the requirements of" section 3 if he has recorded certain specified information in his record book. Thus, having made the correct entries in his book, he is deemed to have complied not only with subsection (1) (which deals with the information that has to be recorded by licensed game dealers generally) but with subsection (5) also.

It seems clear that the concept of "deemed compliance" introduced in subsection (3) of section 3 of the 1980 Act was intended to apply only to subsection (1) of that section, and that it was not meant to exonerate licensed game dealers complying with that subsection from the duty of keeping their record books and other related documents for the length of time required by subsection (5). This is evident from an earlier version of the Bill for the 1980 Act, which was introduced in 1977 but fell owing to lack of parliamentary time. In the Bill as it was originally introduced in 1977 the requirement to keep records, and the requirement to retain record books for a specified length of time, were in different sections and the "deemed compliance" did not bite on the retention of records at all. It was only when the Bill was amended and the sections amalgamated that the concept of "deemed compliance" was inadvertently extended to this requirement. We therefore recommend that the duty to keep record books and related documents for the specified time should extend to all licensed game dealers, regardless of the source of the venison purchased by them.

Effect is given to this Recommendation by omitting, from subsection (3) of clause 11, the concept of "deemed compliance". Instead, paragraph (b) of subsection (1) of the clause is framed in such a way as to make clear that the full requirements of that paragraph need not be complied with in circumstances where subsection (3) applies. Subsection (3) itself sets out the lesser requirements that must be met in those circumstances.

6. Section 6 of the Deer Act 1980 makes provision for the situation where an offence under that Act is committed by a body corporate. It applies to all the offences under that Act and therefore to offences under section 5(2)(c) (failure to surrender a firearm or shotgun certificate). There are in fact no circumstances in which a firearm or shotgun certificate would be granted to a body corporate. In practice, therefore, it would seem impossible for a body corporate to commit the offence under section 5(2)(c).

We recommend that the provision in the Bill which corresponds to section 6 of the 1980 Act should not apply to offences under the provision corresponding to section 5(2)(c) of that Act (clause 13(3)(c) of the Bill).

Effect is given to this Recommendation (by omission) in clause 14.

7. "Vehicle" is defined by section 9 of the Deer Act 1963 and by section 8 of the Deer Act 1980. In both Acts, "vehicle" includes an aircraft, but in the 1980 Act it is also stated to include a hovercraft or boat. Whether or not boats and hovercraft are, without express words, covered by the 1963 Act is a matter of doubt. "Vehicle" is used in sections 3(2), 5(1) and 6(3)(b) of the 1963 Act, and in sections 3(4)(b), 4(1) and 5(1)(b) of the 1980 Act. Section 5(1) of the 1963 Act and section 4(1) of the 1980 Act are in identical terms and have been consolidated in one provision (clause 12(1)) in the Bill. The same is true of section 6(3)(b) of the 1963 Act and section 5(1)(b) of the 1980 Act, which have been consolidated in clause 13(1)(b). The provisions can only be satisfactorily combined in this way if "vehicle" has a common meaning throughout. We therefore recommend that the uncertainty as to what is covered by the definition in the 1963 Act should be resolved, and that in the Bill "vehicle" should be expressly stated to include aircraft, hovercraft and boats.

Effect is given to this Recommendation in clause 16.

Printed in the United Kingdom for HMSO
Dd 0504925 3/91 C10 3382/2 4235 143634 Job No. 911163

HMSO

HMSO publications are available from:

HMSO Publications Centre
(Mail and telephone orders only)
PO Box 276, London SW8 5DT
Telephone orders 071-873 9090
General enquiries 071-873 0011
(queuing system in operation for both numbers)

HMSO Bookshops
49 High Holborn, London, WC1V 6HB 071-873 0011 (Counter service only)
258 Broad Street, Birmingham, B1 2HE 021-643 3740
Southey House, 33 Wine Street, Bristol, BS1 2BQ (0272) 264306
9–21 Princess Street, Manchester, M60 8AS 061-834 7201
80 Chichester Street, Belfast, BT1 4JY (0232) 238451
71 Lothian Road, Edinburgh, EH3 9AZ 031-228 4181

HMSO's Accredited Agents
(see Yellow Pages)

and through good booksellers

ISBN 0-10-114762-7

9 780101 147620