

CONSULTATION RESPONSE ON LAW COMMISSION Paper No 206 (WILDLIFE LAW) ON BEHALF OF PIGEON RACING UK and IRELAND and OTHERS

Consultees

We act for the Welsh Homing Pigeon Union, the Scottish Homing Union, the Irish Homing Pigeon Union, the North of England Homing Union, the North West Homing Union, the Royal Pigeon Racing Association and for Pigeon Racing UK and Ireland and for various individuals, all listed below.

- 1 The Welsh Homing Pigeon Union is an unincorporated association regulated by rules. It was founded on 25 November 1933. Its main objects are “to control the Pigeon Fancy in Wales, for the benefit both economic and administrative of all its Members; to encourage the Sport of Long Distance Flying; to arbitrate, and adjudicate in all cases and disputes brought to its notice and to maintain through its administration the discipline and interest of its Members; the establishment of a Uniform System of Measurement for all flying routes, a Uniform Running Allowance, and the securing of a Uniform System of Timing.” Its Members are “Pigeon Fanciers with lofts in Wales and the Border Counties”. The “Border Counties” are not defined in the rules but its President, Mr E.C. Clark, confirms that they are taken to be clubs that fly in federations with their headquarters in Wales, (“the Welsh Union”).

- 2 The Scottish Homing Union is also an unincorporated association regulated by rules. It was founded in 1907. Its main objects are: -
 - “a.) The Provision of an Organisation for persons interested in Pigeon Racing and showing in branches;
 - b.) The Provision of Uniform Rules and Regulations for the Ringing and Registration of Racing Pigeons as to the ownership and transfer of same and for the conduct of Races and Shows; the Promotion of Races and Shows and the provision of money and other prizes for same and grant donations for objects approved by the Annual General Meeting; the trading in any requisites for the provision and benefit of Members as approved by the AGM from time to time; the provision of a Court of

Appeal for the final disposal of all questions or disputes that may arise between and among its members and organisations; the protection and advancement of the interests of its members, with legal aid in respect of questions arising between themselves and/or third parties on matters falling within the foregoing objects and approved by the Council. It has 2,752 individual members (“the Scottish Union”).

3 The Irish Homing Union is the official body for the regulation of the sport of pigeon-racing in Ireland. It is the longest established governing body for pigeon racing in all of Great Britain and Ireland, having been established in 1895. It is an all-Ireland organisation, with 3,318 members in 121 racing pigeon clubs spread throughout 19 of the 32 counties. It has a governing body called the Supreme Council which consists of a President, Secretary, and Treasurer, plus six delegates from each of the administrative areas, known as Regions. The North Region covers Northern Ireland. The Southern Region covers the Republic of Ireland. It too is an unincorporated association regulated by rules (“the Irish Union”).

4 The North of England Homing Union was founded in 1919. It has 4,495 individual members. It covers the counties of Northumberland, Durham, Tyne & Wear, Cleveland and North Yorkshire (“the North of England Union”).

5. The North West Homing Union was founded in 1969. It has 1,735 individual members. It is the newest and smallest of the Homing Unions. It covers the counties of Cumbria, Lancashire, Greater Manchester, Cheshire*, West Yorkshire and Flintshire (“the North West Union”).

*Now a ceremonial county.

6. The Royal Pigeon Racing Association (“RPRA”) was founded in 1897 and its objectives are:-

“The provision of an organisation for the benefit of Clubs, Groups and Individual Members established within the United Kingdom; the regulation of the sport of racing and showing homing pigeons and the control and supply of rings, seals,

apparatus and appliances connected with the said sport; the protection and advancement of the interests of its members in all matters connected with the said sport; the establishment of a uniform system of measurement for all flying routes, a uniform running allowance and the securing of approved systems of timing.” It has Officers, Council Members and Regional Secretaries and geographically extends across the whole of Great Britain and Northern Ireland. It too is an unincorporated association regulated by rules.

It has 28,413 individual members.

(“the RPRA”).

7. Pigeon Racing UK and Ireland is an unincorporated association formed by the Welsh Union, the Scottish Union, the Irish Union, the North of England Union, the North West Union and the RPRA. Its main object is to protect Homing and Racing Pigeons from raptor predation and to reduce the persecution of Homing and Racing Pigeons by raptors such as Sparrowhawks. It is a not for profit body. Pigeon Racing UK is campaigning for legislative reform to enable the 45,000 individual members who are presently inhibited by the provisions of the Wildlife & Countryside Act 1981 and regulations made under it to seek a general or class or individual licence to enable them to take the steps necessary to reduce or prevent raptor predation on Homing and Racing pigeons at and around their lofts.

8. We are also instructed by the following individuals:-
 - A. Colin Clark of The Welsh Homing Pigeon Union, Old Timothys Yard, Llanfoist Street, Ton Pentre, Rhondda, CF41 7EE.
 - B. Lee Fribbins of The Royal Pigeon Racing Association, The Reddings, Cheltenham, Glos, GL51 6RN.
 - C. Stewart Wardrop of The Royal Pigeon Racing Association, The Reddings, Cheltenham, Gloucestershire, GL51 6RN.
 - D. David Higgins of The Royal Pigeon Racing Association, The Reddings, Cheltenham, Gloucestershire, GL51 6RN.
 - E. Jim Hooper of The Royal Pigeon Racing Association, The Reddings, Cheltenham, Gloucestershire, GL51 6RN.

- F. Geoff Bennett of The North West Homing Union, 279 Mossy Lea Road, Wrightington, Near Wigan, WN6 9RN.
 - G. Gordon Burton of The North East Homing Union, 58 Ennerdale Road, Walkerdon, Newcastle Upon Tyne, NE6 4DG.
 - H. Eugene Fitzgerald of The Irish Homing Union, 73 Foxrock Ave, Foxrock, Dublin 18.
 - I. Ian Noble of The Scottish Homing Union, 386a Stewarton Street, Wishaw, Lanarkshire, ML2 8DU.
9. The Welsh Union, the Scottish Union, the Irish Union, the North of England Union, the North West Union and the RPRA have about 45,000 individual members who are involved in breeding, training and working homing pigeons throughout the United Kingdom and Ireland.

Introduction to Our Clients' Objectives

10. A first step towards our clients' objective is to have the provisions of the Wildlife and Countryside Act 1981 amended so that general, class and individual wildlife licences can be issued to protect Homing and Racing pigeons, some of which have been captive bred or domesticated for up to 200 years, from raptor predation, which is currently a large-scale problem impacting on the viability of the sport and the welfare of the birds concerned.
11. It may help the Commission to have an outline of the facts and matters leading up to this Submission as our clients understand them.
12. Our clients are fully conscious that domestic restrictions on killing and taking wild birds in the Wildlife and Countryside Act 1981 derive from the EU Directive on Wild Birds ("Directive 2009/147/EC", the codified version of Council Directive 79/409/EEC as amended).
13. The Directive requires member states to preserve and protect wild birds as per the overarching obligation in Article 2, which specifies that member states must take the

requisite measures to maintain the populations of wild bird species at a level that corresponds in particular to “ecological, scientific and cultural requirements, while taking account of economic and recreational requirements”. Our clients’ Submissions accord with that balance.

14. Article 5 requires member states to establish a general system that prohibits the deliberate killing or capturing of all species of wild birds. The system must also prohibit the destruction of, or damage to, their nests and eggs or removal of their nests.
15. Article 9 provides derogations to the general prohibition on killing or capturing wild birds or destroying their nests on specific grounds listed in that article “where there is no other satisfactory solution”. It includes scope for derogations from the prohibition where actions can be taken “to prevent serious damage to crops, livestock, forests, fisheries and water”. Livestock is not defined in the Directive. It also provides a derogation “to permit under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers”.
16. We note that these provisions have been transposed into UK law more strictly than necessary simply to transpose the terms of the Directive. The term “judicious use” as provided by Article 9 (c) does not appear in the Wildlife and Countryside Act 1981. Rather, uses are defined specifically in s. 16 WCA 1981 (e.g. for the purposes of falconry, aviculture, public exhibition and competition) (and we note in this regard the Law Commission’s Question 6-18 as to whether ‘judicial use’ is a more appropriate term). Further, the WCA 1981 gives an express definition of “livestock” (in s. 27) as including any animal which is kept for the provision of food, wool, skins or fur; for the purpose of its use in the carrying on of any agricultural activity; or for the provision or improvement of shooting or fishing. Such an interpretation of the term ‘livestock’ does not stem from the Directive and is more restrictive than the domestic meaning of ‘livestock’ in other statutory contexts: e.g. the Animals Act

1971 where 'livestock' includes 'poultry' (which in turn includes domestic varieties of 'pigeons').

17. Pigeon Racing UK have accordingly been advised by counsel that there is nothing in the Directive that would prevent Parliament as a matter of EU law from amending the domestic legislation so that the appropriate derogations could be made to safeguard domestic homing and racing pigeons.
18. A meeting was held on Wednesday 27 June 2012 at the RPRA's Headquarters with Dr Matt Heydon (Head of Wildlife Management and Licensing) and Nigel Shelton (Head of Bird Licensing) from Natural England.
19. Pigeon Racing UK and Ireland, then known as The Raptor Alliance, asked for a clear indication of the way forward regarding legislation and that clearer definitions were required regarding whether Homing and Racing Pigeons are Livestock or not Livestock for the purposes of classification. They were advised that Racing and Homing Pigeons are not classed as "Livestock" for the purposes of the Wildlife and Countryside Act 1981 ("the 1981 Act").
20. Natural England recommended that Pigeon Racing UK and Ireland seek clarification of the law and participate actively in the Law Commission's consultation in the hope of achieving a revised classification for Homing and Racing Pigeons so that NE can give consideration to granting licenses to allow them to be safeguarded from predation in appropriate circumstances.

Submissions on Consultation Paper

21. Our clients (known for convenience in these Submissions as Pigeon Racing UK and Ireland but including others as well, see paragraphs 1, 2, 3, 4, 5, 6 and 8 above) make the following submissions in response to Law Commission Consultation Paper no. 206:-

Comments on the Current Domestic Legal Regimes:

Paragraph	Comments
1.10	<p><u>Themes in Wildlife Law (Introduction to Pigeon Racing UK's Objective).</u></p> <p><i>The Predicament of Pigeon Fanciers:</i></p> <p>Pigeon Racing UK and Ireland seeks to control identified rogue Sparrowhawks and other raptors in particular when those rogue individuals loiter near or enter pigeon lofts to kill or injure Homing or Racing Pigeons. Pigeon Racing UK and Ireland does not seek to kill or injure the rogue Sparrowhawks and other raptors; merely to capture them and pass them on to licensed falconers so that the birds in question can be taken out of the district (and therefore away from the pigeon loft or lofts in question) and used in another human activity namely falconry. This allows the falconers to exploit the rogue Sparrowhawks and other raptors as a valuable natural asset. It also avoids doing harm to the individual Sparrowhawks and other raptors by killing them or injuring them; instead giving them a worthwhile role in human society as captive birds of prey. To a limited extent Pigeon Racing UK and Ireland may seek permission to destroy rogue birds' nests if the policy of capturing rogue individuals is not possible or not successful for any reason. The preferred method is to use a Larsen Trap with a live pigeon inside it. Alternatively to use a Larsen Trap containing dead pigeon remains. At present the general licence permitting Larsen Traps forbids the use of pigeons and pigeon remains because it will attract Sparrowhawks and other raptors.</p> <p>Put simply our clients welcome the Law Commission's statement that "the law provides a framework within which wildlife can be controlled, so that it</p>

does not interfere unduly with the conduct of human activity". Our clients take this to refer back to the consideration of "human activity" in the form of economic and recreational considerations mentioned in Article 2 of the Directive. Our clients have therefore expressed this submission as widely as possible.

The Change to the Law Sought:

Pigeon Racing UK and Ireland understands that domestic law on wildlife is restricted by EU Law, in particular in this context the Birds Directive. Our clients accept that it is appropriate as a matter of EU law and policy that they should have to be granted a licence in order to kill, capture, or disturb a raptor, (and subsequently act strictly within its terms), and that such a licence should only be granted if there is no other satisfactory solution for the purpose (s. 16 WCA 1981). It is acknowledged that a person making a licence application must show a considerable degree of damage to enable a licence to be granted and that mere nuisance or normal business risk will not suffice.

However, the definition of 'Livestock' in the 1981 Act does not come from the Directive. There is no reason, therefore, why it could not be expanded. At present the definition in s. 27 WCA 1981 states that it "includes any animal" that is kept for certain purposes. As such, it is not an exclusive definition in any event. Pigeon Racing UK and Ireland seek to persuade the Law Commission that Homing and Racing Pigeons ought to be added to the definition.

At present, the definition of 'Livestock' already includes reference to animals kept for sporting provision: for the provision or improvement of shooting or fishing. It would be a simple, clear, and precise drafting amendment to extend this part of the definition so that it reads "for the provision or improvement of shooting or fishing or pigeon fancying".

	<p>Categorising Homing and Racing Pigeons as Livestock would allow licences to be granted to protect them from raptors. This, we submit, is readily achievable as a matter of drafting (which would be sufficiently clear and precise: see Case C-60/05 <i>WWF Italia and Others v Regione Lombardia</i> [2006] ECR I-5083 at LC Paper para 2.58), is in accordance with the Directive, and the definition of Livestock in other domestic statutes (e.g. the Animals Act 1971).</p>
<p>1.11</p>	<p><u>Theme of Control.</u> Pigeon Racing UK and Ireland merely seeks to control rogue Sparrowhawks and other raptors which at present its members cannot control lawfully. It seeks to control rogue members of the population of Sparrowhawks and other raptors which are now pests as to rogue individual Sparrowhawks and other raptors which are destroying large numbers of valuable Homing and Racing Pigeons; at present without hindrance and in particular in and around pigeon lofts where the Homing and Racing Pigeons ought to be safe.</p>
<p>2.30</p>	<p><u>Aarhus Convention.</u> Although Pigeon Racing UK and Ireland has not, as far as we are aware, sponsored applications for licenses to take rogue Sparrowhawks and other raptors under the 1981 Act our understanding is that at present there is no external review procedure for licensing applications under the 1981 Act in the event that individual Homing and Racing Pigeon fanciers made applications for licences to take rogue Sparrowhawks and other raptors in particular when they were captured in or around pigeon lofts. At present an application is made to Natural England and there is an internal review procedure. There is then a third stage appeal which goes to DEFRA of which Natural England is an establishment. Our understanding is that at that third stage but not before an external appeal procedure is available but only as a judicial review application in the Administrative Court with the usual expense and other limitations. Pigeon Racing UK and Ireland strongly supports the transfer of</p>

	the review procedure from Natural England itself and from DEFRA as Natural England's proprietor to the First Tier Tribunal.
2.45	<u>Article 2 Requirements.</u> Pigeon Racing UK and Ireland's position is that the United Kingdom presently maintains populations of Sparrowhawks and other raptors at an unnaturally high level with the result that the ecological, scientific and cultural requirements of Homing and Racing Pigeon fanciers together with their economic and recreational interests are severely blighted by the numbers of Sparrowhawks and other raptors; and in particular rogue Sparrowhawks and other raptors attacking Homing and Racing Pigeons in and around their lofts.
2.46	Pigeon Racing UK and Ireland is not seeking absolute protection for Homing and Racing Pigeons by culling, let alone extermination of Sparrowhawks and other raptors. All that the Pigeon Racing UK and Ireland seeks is to strike a balance between the ecological, scientific and cultural requirements for the protection of wild birds (in this case Sparrowhawks and other raptors) against the ecological, scientific and cultural requirements of pigeon fanciers together with their economic and recreational requirements which are at present severely blighted by Sparrowhawks and other raptors and in particular rogue individuals. Permission is not sought to cull; merely to be able to apply for a licence to take individual rogues which enter pigeon lofts from the wild or to catch Homing and Racing Pigeons near their lofts and pass them to licensed falconers.
2.58 – 2.59	<u>Derogations.</u> As set out above, we are of the view (and have been advised) that adding the words "or pigeon fancying" to the definition of Livestock in WCA 1981 (or any subsequent transposing Act) would be sufficiently clear and precise as a matter of EU law and, as a precisely defined class, the adding of pigeon fancying would maintain a restrictive interpretation of the derogation to prevent the overall purpose of the Directive being

	undermined.
2.62 & 2.66	<p><u>No other satisfactory solution.</u> Pigeon Racing UK and Ireland will be commissioning research to bring the state of knowledge about Sparrowhawk and other raptor predation up to date (and have already set up an online system for the public to report attacks on homing and racing pigeons around the UK, the data from which can be used for statistical purposes and further scientific research). This will not be possible even by the Law Commission’s extended deadline of 30 November 2012. There are three major existing studies into raptor predation on Homing and Racing Pigeons: “Attacks by Birds of Prey on Racing Pigeons - A Report for the Confederation of Long Distance Racing Pigeon Unions of Great Britain and Northern Ireland” by Andrew Dixon, School of Biological Sciences, Lancaster University (March 2002); “Racing Pigeons – Impact of Raptor Predation – Report to Scottish Natural Heritage & Scottish Homing Union” by I. Hendersin, D. Parrott and N. Moore, Central Scientific Laboratory (March 2004); “The Report of the UK Raptor Working Group” by the UK Raptor Working Group, Stationary Office, London (2000). These studies indicate, as we hope and anticipate later scientific information and evidence will also do, that the scale of the problem of raptor predation goes beyond “mere nuisance and normal business risk” which would not be covered by the derogation (see European Guidance quoted at para 2.62). Scientific evidence is expected to support current studies which indicate that removing raptors is the best solution and that there is no other satisfactory solution to the problem of predation by Sparrowhawks and other raptors in and around pigeon lofts (although it is of course acknowledged that the terms of any licence will be limited to resolve the specific problem or situation in any given case).</p>
3.18	<p><u>Definition of Wild Birds.</u> In Foot Note 12, there is a reference to Wildlife & Countryside Act 1981 Section 27 (the Interpretation section) where pigeons are defined as Poultry along with a number of other domesticated birds. For the avoidance of doubt, Pigeon Racing UK and Ireland does not seek to have poultry added to the definition of a ‘wild bird’ in s. 27. Rather, for reasons which have already been explained, our clients are concerned that pigeon fancying can come within the purposes of protecting Livestock so that the applications for licences to take rogue Sparrowhawks or other</p>

	<p>raptors can be made and considered by Natural England.</p>
<p>3.46</p>	<p><u>Necessary Licence Conditions.</u> Pigeon Racing UK and Ireland accept that any licences under the 1981 Act must specify the methods, means or arrangements by which rogue Sparrowhawks and other raptors can be taken rather than killed i.e. those Sparrowhawks or other raptors which have entered pigeon lofts and have been caught there or which have taken to loitering bout pigeon lofts. Alternatively our clients might wish to be able to capture Sparrowhawks and other raptors near their lofts using a system for detaining them which would keep them away from the Homing and Racing Pigeons in question while the collector made the necessary arrangements to be licensed to do so.</p> <p>Our clients believe that Larsen Traps or cage traps currently used to catch magpies and crows can be modified to catch Sparrowhawks and other raptors if a pigeon or pigeon remains are is/are placed in a separate cage inside the crow cage as a decoy. This requires a change to the present General License as explained at 1.10 on page 7 above under The Predicament of Pigeon Fanciers.</p>
<p>3.47</p>	<p><u>Alternative Expansion of the Derogation itself.</u> Sub-paragraph (3) of para 3.47 is the key provision “for the purposes of preventing serious damage to livestock” and our clients hope that expanding the definition of Livestock, as set out above, so that it includes “for the purposes of ... pigeon fancying” will facilitate their aims. We note that an alternative approach would be to expand s. 16(1)(k) WCA 1981 so that the derogation itself would apply to anything done “for the purposes of preventing serious damage to livestock, <u>poultry</u>, foodstuffs for livestock or <u>poultry</u>, crops, vegetables, fruit, growing timber, fisheries or inland waters, if it is done under and in accordance with the terms of a licence granted by the appropriate authority.”</p>

	<p>It would be possible to add a specific modification making special arrangements for the keepers of Homing and Racing Pigeons bearing in mind that the economic value of top class birds is very considerable and we understand that a Racing Pigeon has recently been sold in Belgium for in excess of 1M Euros.</p>
<p>5.8</p>	<p><u>Full Range of Regulatory Techniques.</u> Pigeon Racing UK Ireland concurs with the comment that the use of a full range of regulatory techniques (e.g. class licences or general licences) adds clarity and potentially reduces the regulatory burden. However, for present purposes, our clients’ ambition is focused on individual licences for pigeon fanciers who have had particular problems.</p>
<p><u>Submissions on the Law Commission’s Approach to Reform:</u></p>	
<p>5.28, 5.36 & 5.38</p>	<p>Our clients’ position is that the Wildlife and Countryside Act 1981 does not currently take fanciers’ competing interests into account and that the present regulatory framework in relation to rogue Sparrowhawks and other raptors is not balanced or transparent. The injury of Homing and Racing Pigeons by Sparrowhawks and other raptors as opposed to killing Homing and Racing Pigeons is a particular factor, bearing in mind that there is a clear animal welfare dimension where individual Homing or Racing Pigeons are injured rather than killed. In particular our clients do not think that their economic needs or their Homing and Racing Pigeons’ welfare needs have been adequately reflected in the present legislative balance and that the opposing conservation interests in relation to Sparrowhawks and other raptors have been given undue weight. Our clients support Provisional Proposal 5-4: that a new regulatory regime should contain a series of statutory factors to be taken into account by decision makers.</p>

5.38 – 5.49	<p><u>Consolidated Definition for Habitats & Birds Directive Purposes.</u> Provisional Proposal 5-6 and Question 5-6. While our clients acknowledge the attractiveness of the simplicity of having a factor that reflects both “favourable conservation status” in the Habitats Directive and the requirement in Article 2 of the Wild Birds Directive, we foresee difficulties with the ‘one size fits all’ factor proposed. We note, as a generality, the Habitats Directive is primarily aimed at the protection of habitats and species, whereas the Birds Directive strikes the balance further towards human interests (and see in this regard the Law Commissions comments at para 6.41 that the Wild Birds Directive affords birds less protection than the ‘strict’ protection of a specific set of species in the Habitats Directive). The proposals in para 5.49 (1) and (2) are taken from the Habitats Directive and we consider they are too restrictive in the case of wild birds, bearing in mind the different overarching obligation in Article 2 (and the fact that the Birds Directive relates to all wild birds, and not solely set classes of species and habitats requiring special protection). In relation to para 5.49 (4) (wider social factors), we consider a new definition should also transpose the terms “cultural and recreational requirements” to reflect the wording of Article 2 of the Wild Birds Directive (otherwise the domestic legislation would arguably fail properly to transpose the Birds Directive). In relation to para 5.49 (5) (“the welfare of those animals potentially affected”), we consider that should be clarified to make clear that the specific animals that can benefit goes beyond the wild birds protected by the Directive (i.e. it could also include the homing and racing pigeons to be protected from injury and predation by raptors).</p>
5.75 – 5.76	<p><u>Licensing.</u> Question 5-13. Our clients have considered all concerns about the present Natural England regulatory technique in relation to licensing, and are happy with the range of licensing options available. Their concerns are focussed on the current position adopted in relation to raptors which are a serious threat to their interests and about which they cannot easily do</p>

	anything within the 1981 Act and regulations made under it.
6.5 – 6.16	<p><u>Defining ‘Wild Birds’</u>. Provisional Proposal 6-1 and Question 6-2. Our clients do not lobby to change the current definition of ‘wild birds’ in s. 27 WCA 1981. As set out above, their concerns are with the definition of ‘Livestock’ and permitted derogations on the protection afforded to wild birds. They do not seek to have Homing and Racing Pigeons themselves classified as ‘wild birds’. Pigeon Racing UK and Ireland are content that the general exclusion of poultry from the definition of ‘wild bird’ should be retained (e.g. as it might otherwise apply to homing and racing pigeons which have gone feral). Although there are populations of Homing and Racing Pigeons which have gone feral or wild in particular towns and cities in the UK, they are not ‘naturally occurring in the wild state’ and are not an indigenous species. Homing and Racing Pigeons have been in captivity for at least 200 years or about 100 generations. They should not be classified as ‘wild birds’, even if feral, for the simple reason that they are not.</p>
6.23 – 6.43	<p><u>Incorporation of Recklessness into the Criminal Offence</u>. Our Clients note Provisional Proposal 6-5 and confirm that, given the penalties and opprobrium attaching to these offences, they feel that the present wording is safer and more likely to serve the interests of justice. They feel that a specific intention needs to be proved so that only real wrongdoers are caught (as at present).</p> <p>Pigeon Racing UK and Ireland are particularly concerned with the position if a protected wild bird was in a pigeon loft and currently engaged in killing Homing or Racing Pigeons and efforts to remove it from the pigeon loft had been successful but the bird was injured. In such a case the person unintentionally injuring the wild bird during its removal might have committed a criminal offence (when at present they have not). If this proposal is implemented our clients and their members will be in danger of</p>

	<p>being successfully prosecuted even when their conduct is not ethically wrong and their intentions are good. Our clients feel strongly that the word “recklessness” should not be included in the proposed wording of any basic wildlife offences (such as that currently provided by S1 (1) of the 1981 Act). Incorporating “recklessness” would include instances of non-intentional killing and injuring of protected birds, for example in the situation given by way of example above where a rogue Sparrowhawk has entered a loft and is discovered by the fancier killing or injuring his birds. If “recklessness” is included in the wording of the 1981 Act or any successor provision in UK legislation it would mean that a person would be guilty where they had no knowledge of the law and no intention to do the act with its attendant consequences.</p> <p>Furthermore, we consider that incorporating the concept of recklessness into domestic law would narrow domestic legislation to an extent beyond that which is necessary to transpose EU law, and thus create more restrictive legislation than was envisaged by the Wild Birds Directive and the Habitats Directive (which employ only the term ‘deliberate’). It is up to the courts to interpret the term ‘deliberate’ in line with the jurisprudence of the Court of Justice, not Parliament.</p>
6.102	<p><u>Transposing the term “judicious use of certain birds in small numbers”.</u></p> <p>Provisional Proposal 6-18. Transposing the term “judicious use” from the Directive into domestic law is welcomed by our clients. Domestic law is currently unduly restrictive in terms of S16 of the 1981 Act, creating further criteria for licences which go beyond the derogation of “judicious use” as provided by the Directive. Replacing the S16 criteria with a test based on “judicious use” would give our clients and other affected citizens overdue and necessary freedom in accordance with the terms of the Directive itself. In particular, Pigeon Racing UK and Ireland are aware that others, e.g. falconers, sometimes need raptors from the wild state in small numbers</p>

	(e.g. because the DNA of birds of prey in captivity is becoming so diluted), and this derogation might be necessary for them.
7.35 – 7.39	<p><u>Consolidation of Permitted Exceptions.</u> Provisional Proposal 7-8. Pigeon Racing UK and Ireland considers that consolidating exceptions and definitions across legislation (so far as is possible) beneficial to the general public’s understanding and, further, is necessary to ensure that the legislation is sufficiently clear and precise. In particular, the varying definitions of ‘Livestock’ across the legislation (some of which include pigeons and others which do not) have the potential to cause confusion. Our clients consider that the definition of ‘Livestock’ in the Wildlife and Countryside Act 1981 (and any successor Act) should be amended as set out above in order to include animals used for the purposes of pigeon fancying (i.e. domestic homing and racing pigeons). This would accord with the wider definitions of ‘Livestock’ in the Animal Health and Welfare Act 1984 where ‘livestock’ includes any animal or bird not in a wild state (s. 10) and in the Animals Act 1971 where ‘livestock’ means, inter alia, ‘poultry’ and ‘poultry’ in turn means, inter alia, the domestic varieties of pigeons (s. 16). We note however that the Conservation of Species and Habitats Regulations 2010 has the same definition of ‘Livestock’ as is currently found in s. 27 of the WCA 1981 (see Regulation 53(14)). For consistency, we would therefore propose that the Habitats Regulations definition would also need to be amended; however, we do not foresee that this could cause any harm to the strict protection afforded by the Regulations (in particular, raptors e.g. Sparrowhawks and Peregrines are not European Protected Species).</p>
7.41 – 7.46	<p><u>Licensing and the Berne Convention.</u> Question 7-9. Our clients agree that the proposal to use the Berne Convention licensing provisions would simplify the law. They incorporate the derogations to prevent serious damage to livestock (and the judicial exploitation of certain wild animals) (see paras 7.44 (2) and (5)). Pigeon Racing UK and Ireland’s primary concern</p>

	<p>with expanding the definition of ‘Livestock’ so as to include homing and racing pigeons used for pigeon fancying is a separate matter, and the justification for the submitted change has already been outlined in this Submission (and will be the subject of further scientific evidence in due course).</p>
Chapter 10	<p><u>Appeals System. Questions 10-3 and 10-4.</u> Our clients consider that a formal appeal system if possible allowing an external tribunal for individual, class or general licences would be sensible. Our clients feel that the appeal process ought to be available for all types of wildlife licence. Further, they are of the view that the right balance is Option 2 proposed by the Law Commission (appeals should be restricted to the initial applicant for the wildlife licence), notwithstanding the provisions of Aarhus Convention, in order to ensure consistency with other regulatory regimes e.g. planning. Pigeon Racing UK and Ireland consider that the First-tier Tribunal (Environment) would have greater expertise to determine such appeals than the Planning Inspectorate (Question 10-5).</p>

Conclusions

Pigeon Racing UK and Ireland and those others who instruct us have sought to address the Law Commission’s proposals and questions as far as they are able. This Submission has necessarily been drafted broadly to also include, where relevant, our clients’ specific objective of having domestic legislation amended so that they are in a position to apply for licences from Natural England to seek to protect their Homing and Racing Pigeons from raptor predation. As set out above, scientific research already indicates, and further research is being currently carried out to support the fact, that raptor predation is a major threat to the welfare of the pigeons concerned and, in turn, the viability of the recreational activity of pigeon fancying.

It is considered that the simplest means to achieve our clients' objective is for there to be an amendment to the definition of 'Livestock' in the Wildlife and Countryside Act 1981 to include Homing and Racing Pigeons. The clearest way to do this, in our view, is to insert the words "or pigeon fancying" after the words "shooting or fishing" so that "'Livestock" includes any animal which is kept ... for the provision or improvement of shooting of fishing or pigeon fancying".

We note that:

- a) There would be no conflict with the Directive (which does not contain a definition of 'Livestock');
- b) Rather, such a definition would reflect the overarching principle of the Directive in Article 2 that the measures a member state takes to main the population of wild birds should take account of "economic and recreational requirements";
- c) Such an amendment would bring the definition in line with other domestic legislation e.g. the Animals Act 1971, which would achieve greater clarity for members of the public and ensure that the legislation is sufficiently clear and precise;
- d) "Pigeon fancying" is a logical extension of the list of affected recreational activities together with shooting and fishing. Although pigeon fancying is a smaller interest group than either shooting or fishing, its problems are similar and the solution of those problems ought to be achieved by the same means.

Pigeon Racing UK and Ireland have also made submissions about other parts of the current wildlife regime, in particular approval of transposing the term "for the purpose of judicious use", disapproval of the proposed incorporation of recklessness into the criminal offence, disapproval of the proposed licensing factors consolidated between the WCA 1981 and the Habitats Regulations, and approval of the proposed appeals system for licence decisions and Berne Convention considerations.

Our clients recognise that animal welfare and conservation bodies such as the RSPCA and RSPB may oppose this Submission for their own reasons, but as pigeon fancying is a lawful

activity our clients feel that it is proper to argue for modest legislative reform to facilitate and protect it.

Dated this 19th day of November 2012

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