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Dear *redacted*

Compliance with Council Directive 1999/22/EC relating to the keeping of wild animals in zoos

I refer to your complaint dated 13 April 2012 addressed to the EU Commission, by whom we have been asked to reply.

You claim that following a detailed study of zoo licences, zoo inspection forms and correspondence you obtained from local authorities in England relating to the operation of the zoo licensing system over the period 2005-2011, you have found evidence that the UK Government ('the Government') has not complied with the provisions of EU Directive 1999/22 ('the Directive') insofar as it relates to zoos in England.

This response sets out how the Government believes it has complied with the terms of the Directive and why it does not accept your claims. As your complaint relates only to zoos in England, this response is confined to the situation in England.

The Directive is transposed and implemented in Great Britain through the Zoo Licensing Act 1981 ('the Act'). Detailed guidance ('the guidance') on the provisions of the Act has been published by the Government and was updated last year. The guidance entitled 'Zoo Licensing Act 1981: Guide to the Act's provisions' is at:

<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/species-protection>. A copy is enclosed with this letter.

For the purposes of this letter, 'section' means section of the Act, and 'paragraph' refers to the relevant part of the guidance.

You summarise your complaint in seven points. Points 2, 4 and 5 which relate to compliance and enforcement issues are taken together and are discussed at the end of this letter.



Your complaint

The system of dispensations

1. *The UK zoo licensing system, because of the way dispensations have been defined and granted, allows zoos not to be licensed or to be under-inspected because their size and types of animals they keep, without using alternative methods to guarantee the wellbeing of such animals.*

The Act sets out a detailed and comprehensive licensing and inspection system for new and existing zoos:

- ‘Licence inspections’ must be carried out before the grant, refusal or renewal of a licence and before any significant alteration to a licence (sections 4(1A), 6(1A), 16(2B) and 16(3A) of the Act);
- ‘Periodical inspections’ must be carried out in the first year after the grant of an original licence (which is issued for four years) and not later than six months before the end of the fourth year of the period of the licence. For subsequent licences (which are issued for six years) periodical inspections are required during the third year and no later than six months before the end of the sixth year of the licence (section 10);
- ‘Special inspections’ may be carried out at any time if the local authority considers it appropriate in specified circumstances (section 11(1));
- ‘Informal inspections’ must be carried out once in any other calendar year when no other inspection has taken place (section 12).

Section 14 of the Act, which provides the Secretary of State with powers to relax these requirements for a zoo exhibiting only a small number of animals or a small number of different kinds of animals, is in line with the Directive’s definition of “zoos” (Article 2) in its reference to “establishments which Member States exempt from the requirements of this Directive on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of this Directive”.

- Section 14(1)(a) provides for the Secretary of State to direct that a zoo is exempt from the provisions of the Act;
- Section 14(1)(b) provides for the Secretary of State to direct that section 10 (periodical inspection) and/or section 11 (special inspection) shall not apply to a zoo;

- Section 14(2) provides for the Secretary of State to direct that section 10(4)(a) and (b) will not apply to a zoo and instead that those inspections shall be carried out by the inspector or inspectors appointed by him/her.

The guidance includes (paragraph 18 and Annex C) information to assist local authorities and zoo operators in deciding whether to apply for a direction under section 14(1) or (2), as applicable. Each application for a direction is considered on its merits. Safeguards are in place in that a) the guidance is clear about the factors which will be taken into account by the Secretary of State, b) directions can be varied or revoked by the Secretary of State at any time and c), with the exception of those covered by a direction under section 14(1)(a), all zoos must be inspected in each calendar year. The guidance is intended to serve as illustrative guidance only and was not intended to set out rigid criteria. The Government does not therefore accept your view that dispensations which fall outside the guidelines are 'wrong'.

The Government believes that this system provides for the appropriate exercise of the Secretary of State's powers and the proportionate and reasonable application of the legislation, consistent with the provisions of the Directive. It does not accept that these provisions mean that there is no guarantee of the wellbeing of animals kept in those collections. You have provided no clear evidence that the provisions have led to the weaknesses you claim; neither have you demonstrated that any animals in zoos subject to a dispensation are being kept in conditions which are unsuitable. If you have any such evidence it is open to you to present it to the Secretary of State at any time, so that he/she can consider whether there is a need to review the dispensation status of a zoo.

Duration of inspections/assessment of animals

3. *The UK zoo licensing system, and its implementation, does not allow sufficient inspection time for inspectors to assess properly the conditions of the animals kept in the majority of zoos.*

It appears that you have reached this conclusion through comparing the number of specimens reported to be held by the zoo with the length of time spent at the inspection. You appear to suggest that each animal should be individually identified, caught up, and assessed in order for an inspector to be able to be satisfied that its welfare and other requirements are being met.

The Government entirely rejects this argument. There is of course nothing in the legislation or guidance which limits the length of an inspection. This is a matter for the local authority and zoo operator to determine depending on the particular establishment and any history. I should also add that the purpose of the inspection is not, for example, to carry out a full veterinary examination. That is the responsibility of zoo staff and, in particular, its

veterinary surgeon or adviser. An inspector does, however, need to be satisfied that proper veterinary practices and procedures are in place and will discuss such matters with the zoo's staff. The inspector can also ask to see any veterinary or other records so that s/he can be satisfied that proper procedures are in place, and that any difficulties are identified, addressed and recorded. Inspectors may also make recommendations or suggest that conditions are attached to a zoo licence to ensure that these matters are addressed.

To help ensure a consistent approach to inspections, the Zoos Expert Committee (ZEC), independent advisers to UK Ministers on zoo matters, has produced an aide memoire that can be used by inspectors when carrying out inspections (enclosed with this letter). On page 3 of that document, examples are given of the situations where inspection of individual specimens would clearly be inappropriate. Pages 5 and 6 discuss the need to ensure that any recommended conditions are clear, time-limited and are able to be directly transposed onto a zoo licence. The Government has also revised its key zoo inspection report form (enclosed with this letter) to strengthen it and to achieve even greater consistency in the zoo inspection process.

Missed inspections

6. *The incorrect implementation of the UK zoo licensing system allows many zoos to miss required inspections.*

I have set out the system of licensing, and periodical, special and informal inspections above, and these ensure that a zoo (except for those issued with a dispensation under section 14(1)(a), which are exempt from the provisions of the Act) is inspected at least once in every calendar year. These provisions implement Articles 4.1, 4.3 and 4.4 of the Directive.

You claim that a large percentage of zoos are not being inspected regularly, but within that assessment you have included 'exempt' zoos on the basis that local authorities need to be satisfied that the exemption status remains valid. Paragraph 18.4 of the guidance advises that local authorities have no powers under the Act to inspect an 'exempt' zoo, but that they should review that exempt status from time to time. The guidance suggests that this might be achieved by means of inspections carried out under other legislation. However, there is no legislative requirement for an inspection and no requirement for a local authority to keep a formal record. The Government does not, therefore, accept that the absence of a record of an 'inspection' for an exempt zoo can be regarded as a missed inspection.

Similarly, there is no legal requirement for a record to be kept of an informal inspection (section 12 of the Act) although the guidance (paragraph 16) advises that a written record

is kept. Whether or not a written record is made, however, is a matter for the local authority. The absence of a record does not necessarily mean that an inspection has not taken place.

The Government is, however, aware that inspections have been missed in the past. This was one of the reasons why it commissioned ADAS to review the implementation of the Act by local authorities in England and Wales. The report of that project (enclosed with this letter), published in July 2011, found that although there was evidence of missed or late inspections prior to 2008, there was also evidence of significant improvements in this area in more recent years. Surveys carried out by ADAS revealed much evidence of a proactive approach among local authorities in terms of managing zoo licensing, for example using automatic electronic reminders to ensure adherence to timings.

We recognise that your study covers the period to March 2011 so does not cover more recent activity. If however you have evidence that inspections are continuing to be missed, the Government will consider it and determine whether any action is necessary.

Non-compliance with Article 3

7. The incorrect implementation of the UK zoo licensing system allows many zoos not to meet the requirements set by article 3 of the European Council Directive 1999/22/EC.

Details of the system for dispensations from the full provisions of the Act for certain collections are set out above, as are the system of inspections and the provisions for attaching conditions to licences. The provisions for local authorities to take steps to ensure compliance with those conditions, including ultimately to close a zoo (or the relevant part of it), are also set out above. We would, however, expect closure to occur only as a matter of last resort.

The Government does not accept that there is any evidence that the zoo licensing system is being incorrectly implemented on the scale that you claim, or that the requirements of Article 3 are not being complied with.

On the contrary, the Government believes that it acts in compliance with the Directive and that where any administrative weaknesses have been found, it has addressed them promptly, appropriately and proportionately. In particular, and as mentioned above:

- it has recently published updated guidance on the provisions of the Act which incorporate stronger and clearer information about the compliance process; and
- the ZEC has produced an aide memoire for Secretary of State-nominated zoo inspectors to help ensure an even more consistent approach to inspections and to completing inspection forms.

The Government remains committed to ensuring that it continues to comply and welcomes information about any specific instances where it appears that weaknesses might be coming to light. We recognise the careful work that has resulted in your report of your study. We are, however, concerned to look forward to ensure that any weakness which might have occurred in the past has now been addressed and that we continue to support local authorities and zoo operators in particular to ensure that they continue to achieve high standards.

Compliance and enforcement issues

2. *The UK zoo licensing system allows zoos to keep animals in an unsatisfactory manner for a considerable time without any effective enforcing action taken against the zoo operators.*

4. *The UK government, or any regional or local authority under it, does not close down most of the persistent sub-standard zoos.*

5. *The incorrect implementation of the UK zoo licensing system allows many zoos to remain open to the public despite being in breach of their zoo licence conditions.*

Strong and comprehensive provisions are in place to ensure the proper conduct of a zoo:

- The conservation requirements of the Directive are given force through section 1A and licence conditions to this effect are made mandatory by section 5(2A); a local authority may attach any other conditions it sees as necessary to ensure the proper conduct of the zoo (section 5(3)), and; the Secretary of State may direct a local authority to attach a condition to a licence (section 5(5));
- Local authorities have powers to enforce these conditions and may, after giving the licence holder an opportunity to be heard, direct licence holders to take specific steps to comply with the conditions, and, if necessary, to close temporarily all or part of the zoo while these steps are taken (sections 16A and 16B);
- If the conditions continue to be not complied with and relate to section 1A, the local authority must issue a direction permanently to close the whole zoo (section 16B), or must close permanently the affected section of the zoo by altering the licence in accordance with sections 16(1A) and (1B).

Your claim that animals are allowed to be kept in an unsatisfactory manner for a considerable time is based on your analysis solely of the documents you have been provided with. The Government does not believe that this approach can, by itself, yield reliable conclusions.

Analysis of the documents alone does not convey a complete picture of the operation of the zoo licensing system. The scoring system and statistical analysis undertaken to determine which zoos are considered by you to be up to standard or sub-standard does not allow for differentiation between what might be deemed a relatively straightforward issue (e.g. fixing a loose paving stone) and what might be a more serious matter (e.g. improvements to the construction of a large enclosure). For this reason the Government's view is that this system does not truly reflect the position in English zoos.

The Government would expect Secretary of State-nominated inspectors and other members of the inspection team to include in their reports any instances of where a zoo needed to make improvements. This might be as a result of reviewing progress made since the previous inspection and/or checking the operation of the zoo against the requirements of the legislation and against the standards set out in the Secretary of State's Standards of Modern Zoo Practice ('the Standards'). The Standards set out the minimum standards which zoos are expected to meet and are taken into account by inspectors and local authorities when carrying out inspections and when determining what conditions to attach to a licence. The Standards, which were updated and published last year, can be seen at: <https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/species-protection>. A copy is enclosed with this letter.

On pages 70-73 of your study you have listed 16 collections and have provided extracts from inspectors' reports which identify potentially unsatisfactory animal welfare conditions in those collections. It is a strength of the system and an indication of the professionalism of zoo inspectors that these issues have been highlighted. I note that the reports date between 2005 and 2010 but that you do not indicate whether the problems (potentially six years old at the time of your report) found were subsequently addressed, for example either immediately by the zoo itself, or whether following the imposition of a condition attached to the zoo licence. Neither do you provide any evidence that these issues have not now been addressed.

The Government does not believe that your report demonstrates that animals are being kept in an unsatisfactory manner or indeed that it can be extrapolated from the analysis that any zoos are sub-standard, let alone persistently sub-standard as you claim. If you have any specific evidence of the legislation failing to be complied with please submit it to the Government at any time and we will consider whether any action is necessary. Government officials met representatives of **[redacted]** shortly after they published their report based upon your findings. They were invited to submit examples or evidence of any current apparent non-compliance. Nothing has been submitted and the opportunity remains open to them.

You also claim that there is no effective enforcement of the licensing conditions being undertaken and that many zoos are allowed to remain open despite being in breach of their licensing conditions.

I have outlined the Act's provisions for local authorities to ensure compliance with zoo licences including the conditions attached to them. Section 19 sets out the offences and the penalties if the requirements of the Act are not met. These combined provisions transpose Article 4.5 of the Directive into national legislation.

Again, the Government does not accept that analysis of the documents alone gives an accurate or complete picture of the operation of the zoo licensing system. The legislation provides that before a local authority makes a direction specifying which condition has not been met (and the section of the zoo to which it relates, and the action to be taken to comply, and by when (section 16A(2)), and before it issues a zoo closure direction (section 16B(1)), it must give the zoo operator an opportunity to be heard. The Government would expect the majority of non-compliance incidents to be resolved quickly between the local authority and the zoo, which could obviate the need for the formal compliance procedures provided for in the Act. The prompt resolution of compliance problems in this way may not be captured through the analysis of documents alone.

Equally, actions such as the prompt removal of specimens from an enclosure which is deemed below standard to a better one, or the removal of animals to another collection, or a decision to take animals out of public view, would not necessarily be recorded in the documents you have analysed.

The Government does not accept that there is endemic non-compliance. Neither does it accept that there is a serious problem with a lack of enforcement. Again, the majority of the documents which you analysed are not current and conditions in zoos are likely to have changed in the meantime. As above, if you have any evidence that a zoo is currently operating in breach of its zoo licence conditions, please submit it to the local authority concerned in the first instance.

Having said that, the Government accepts that there have been instances, for example, where conditions were attached to a licence and, following non-compliance, were recommended to be re-attached by a subsequent inspection team. Irrespective of whether the conditions derive from the provisions of the Directive, the Government finds this unacceptable and accepts that, in this respect, the legislation appears not to have been administered appropriately.

The Government does not, however, accept that you have demonstrated that this occurs to the extent that you claim. In defining 'unsatisfactory issues' you have confirmed that you have counted occasions where 1) an inspector has ticked 'No' in response to a question

on an inspection form, 2) where a form or other document states that the SSSMZP have not been complied with, or 3) where an inspector has ticked 'yes' but where you have interpreted a comment alongside this to indicate that there is a problem. This latter criterion is, in the Government's view, neither safe nor reliable as in the absence of feedback from the inspectors, the zoos or the local authorities, it is not possible for a full or genuine understanding of the situation to be achieved.

The Government has, however, already taken action to clarify and strengthen its published guidance relating to the compliance and enforcement provisions of the Act (see paragraph 10 and Annex E: flowchart 12. See also Annexes J-M of the guidance relating to compliance and enforcement issues). We believe that the amended guidance removes any possible doubt about the compliance and enforcement provisions of the Act, which in turn implements the provisions of Article 4(5) of the Directive.

Conclusion

The Government believes that in concentrating on certain documents, your study gives an incomplete and misleading picture. Your study does not appear to have been peer-reviewed or its statements about individual establishments verified. Individual zoo operators and local authorities have not been given the opportunity to respond to your findings or your analysis of them. In addition, in many cases the position is likely to have changed with the passing of time.

The Government keeps the operation of the Act under review and has, since 2005, initiated a number of measures to ensure that local authorities, zoo inspectors and zoo operators are aware of their responsibilities under the legislation, most recently in updating its guidance on the provisions of the Act; updating the Secretary of State's Standards of Modern Zoo Practice; publishing the Zoos Expert Committee's Handbook; updating the main zoo inspection form; and in making available the Zoos Expert Committee's aide-memoire for zoo inspectors. The Government firmly believes that it complies with the provisions of the Directive and that your study does not demonstrate that it is failing to do so.

Thank you again for your letter and report.

Yours sincerely

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[redacted], Defra