

**Partial
Business and Regulatory Impact Assessment**

**Animals and Wildlife
(Penalties, Protections and
Powers) (Scotland) Bill**

October 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

Title of Proposal

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill
Partial Business and Regulatory Impact Assessment

PURPOSE AND INTENDED EFFECT

Background

The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill will amend various legislation to;

- Increase penalties for animal cruelty, dog fighting and various wildlife offences that involve harm to wild animals or their habitats,
 - Introduce the power to develop Fixed Penalty Notice (FPN) regimes as a valuable additional enforcement tool to improve compliance with animal health and welfare requirements,
 - Increase the protection for police dogs and other service animals by implementing “Finn’s Law”;
- and
- Make it quicker and easier to deal with animals that have been taken into care to protect their welfare; allowing authorities to promptly make the best permanent arrangements for these animals without the need for a court order.

Objective

The objective of the Bill is to further protect the health and welfare of animals and wildlife in Scotland. The Bill achieves this by amending the Animal Health and Welfare (Scotland) Act 2006, several pieces of wildlife legislation and the Animal Health Act 1981 so as to address concerns regarding current penalties, enforcement powers and to improve the way this legislation operates in practice.

Rationale for Government intervention - Animal Health & Welfare

The proposed changes to the legislation are in step with the Scottish Government’s vision of a society which treats all with kindness, dignity and compassion, respects the rule of law, and acts in an open and transparent way. This will help to increase the respect and protection given to all of the animals, captive or wild, in Scotland.

The increased penalties will give a clear signal that crimes against animals are taken seriously and will not be tolerated in Scotland and give the courts sufficient powers to deal appropriately with such crimes, leading to our communities being safer places where humans and animals will be able to interact in ways beneficial to both. The increased penalties will also provide Scotland’s law enforcement animals greater protection and assist those whose function is to ensure safe enjoyment of our empowered and safer communities.

The introduction of powers to provide for fixed penalty notice regimes in relation to minor and technical animal health and welfare offences links into a number of National Outcomes and Sustainable Development Goals (SDG), including Sustainable Cities & Communities(SDG 11) and Peace, Justice & Strong Institutions (SDG16), Responsible, Consumption & Production (SDG 12) and Life on Land (SDG 15).

It is expected that Fixed Penalty Notices will promote compliance with legislative requirements which will be beneficial for the overall health and welfare of animals whilst supporting the economic and social wellbeing of people working in the livestock sector through the avoidance of expensive, stressful and restrictive disruptions caused by large scale disease outbreaks.

The improvements being made to permit the early rehoming of at-risk and abused animals will have primary impact in SDG 12 (Responsible, Consumption & Production) and SDG 15 (Life on Land). For example, the life of all of Scotland’s farmed animals and those who rely on them for their livelihood, will be improved by increased livestock welfare. This will help to increase the reputation and profitability of the farming sector and also bring some benefits to Scotland’s wild animals sharing the same landscape; therefore benefitting Scotland’s economy and environment.

Rationale for Government intervention - Wildlife

By increasing the maximum penalties available for wildlife crimes, we would progress the 2018 National Performance Framework Environmental vision of:

“We take a bold approach to enhancing and protecting our natural assets and heritage.”

In doing so we would also contribute to the 2015 ‘Life on land’ UN Sustainable development goal; *“15.5 Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species”*

ANIMAL HEALTH & WELFARE - CONSULTATIONS

The proposed amendments to Animal Health & Welfare legislation represent real practical improvements to their enforcement. They are resultant from close working relationships with key stakeholders, including an initial informal stakeholder engagement exercise with enforcement authorities in 2016.

Within Government

Scottish Government Animal Welfare Division veterinary team, has provided input on the animal welfare impacts of these proposals;

Scottish Government Legal Directorate has provided advice on the legal issues raised in relation to the Bill proposals; and

Justice Directorate, Scottish Government provided advice on issues relating to sentencing and increasing penalties (adjudication);

Justice analysts, Scottish Government have provided details of the offences created under the 2006 Act

Legal Aid Team, Scottish Government has provided advice on the implications for the legal aid fund;

Crown Office & Procurator Fiscal Service (COPFS) have provided advice on the current court and prosecution arrangements; and

Scottish Courts & Tribunal Service (SCTS) have provided advice on the arrangements for organising trials.

Enforcement agencies

The Scottish Government’s animal health and welfare teams have close working relationships with those that enforce the legislation.

Quarterly meetings are held with the Animal Health and Welfare Strategy Group who have been supportive of proposals to introduce fixed penalty notices for lesser animal health offences. The group is formally constituted through the Convention of Scottish Local Authorities. The remit of the group is to consider current and emergency issues in animal health and welfare and how best to address these through multi agency working, improved guidance and amendment to statute if necessary.

The Animal and Plant Health Agency (APHA), the Scottish Government Rural Payments & Inspection Directorate (SGRPID), the Scottish SPCA and local authorities have provided insights into current arrangements, and had an opportunity to respond to the consultations, and take part in a more detailed questionnaire relating to the costs and benefits of these enforcement proposals.

Business

A wide range of businesses that have previously notified an interest in animal health and welfare were sent the public consultation directly and were encouraged to respond.

We do not intend to specifically interview 6-12 businesses, as a key assumption is that law abiding businesses and individuals will not be affected by the current proposals, and only those committing offences under the legislation, and those enforcing these rules will be directly affected.

Public Consultations

The Scottish Government public consultation on proposed amendments to the Animal Health and Welfare (Scotland) Act 2006 ran for 12 weeks from 1st February 2019 to 26th April 2019. Overall the consultation received 4,595 responses. Of these 69 were from groups or organisations. An additional 20 responses were received from local authorities and the remaining 4,506 were from members of the public. Full results from the consultation analysis were published in July 2019. An overview of responses and key themes is at Annex A and the full report can be found at:

<https://www.gov.scot/publications/animal-health-welfare-scotland-act-2006-analysis-consultation-responses/>

The Scottish Government is consulting further on the proposal to give the Scottish Ministers powers to issue fixed penalty notices in relation to less serious animal health offences and will also invite initial comments on other aspects of the Animal Health Act 1981. It is anticipated that the responses to these questions will inform a wider review of the Animal Health Act at a later date.

The public consultation on the proposed amendment to the Animal Health Act 1981 is ongoing and can be found at:

<https://consult.gov.scot/animal-welfare/animal-health-act-1981>

Once concluded, the responses from the consultation will be analysed and a report of the findings published.

WILDLIFE - CONSULTATIONS

In his review of wildlife penalties in 2015, Professor Poustie conducted a targeted stakeholder consultation as part of the wildlife crime penalties review group. 68 responses were received, 20 from governmental and non-governmental organisations and 48 from individuals. Respondents identified themselves variously as being based in Scotland, England, Wales, Great Britain, the UK and the Republic of Ireland. An overview of responses to questions regarding wildlife penalties is provided at Annex B; the full report can be found at:

<https://www.gov.scot/publications/wildlife-crime-penalties-review-group-report/>

Within Government

Justice Directorate, Scottish Government assisted on issues relating to sentencing and increasing penalties (adjudication);

Legal Aid Team, Scottish Government has assisted regarding the implications for the legal aid fund;

COPFS have provided information about the current court and prosecution arrangements;

Stakeholder engagement

In addition to Police Scotland, the Scottish SPCA is the only other agency to report wildlife crimes to the COPFS. In August 2019, the Wildlife Management team asked key stakeholders who would be affected by the proposals if they would like to meet to discuss them. Several stakeholders accepted this offer and meetings were held with Police Scotland, the COPFS, the Scottish SPCA and the Royal Society for the Protection of Birds.

All stakeholders were in favour of increasing the maximum available penalties for wildlife crimes. The COPFS and Police Scotland welcomed the proposals and agreed that the maximum penalties for the most serious wildlife crimes should be raised. COPFS noted that the changes to legislation would be very meaningful for the most severe cases of wildlife cruelty.

Police Scotland were particularly in favour of increasing the time limit allowed for prosecution of these crimes, citing the difficulties encountered when investigating complicated offences.

Business

We do not intend to interview 6-12 businesses, as a key assumption is that law abiding businesses and individuals will not be affected by the current proposals; and only those committing offences under the legislation to be amended, and those enforcing these rules will be directly affected.

The provision of vicarious liability for certain offences allows those who have management responsibility to be held responsible for crimes against wild birds committed by their employees or agents. The increase in maximum penalties, including fines, for those underlying crimes will only affect businesses undertaking criminal activity. These changes will only apply to existing offences and the standard of proof for those is not changing.

Public Consultation

The Scottish Government public consultation on increasing the maximum penalties for wildlife crimes ran for 4 weeks from 19th July 2019 to 16th August 2019.

<https://consult.gov.scot/wildlife-management-and-protected-areas/wildlife-crime-penalties/>

Overall the consultation received 557 responses. Of these, 33 were from groups or organisations and the remaining 524 were from members of the public. Full results from the consultation analysis is due to be published later in 2019; a preliminary overview of responses and key themes is provided at Annex C.

OPTIONS

Option 1:

Do nothing, and retain the existing provisions in the 2006 Act, the 1981 Act and wildlife legislation listed above.

Option 2:

Adopt the provisions of the Bill.

Sectors and groups affected

The Bill will impact on those that breach animal health and welfare requirements or wildlife legislation and the enforcers of the legislation, including the following groups / organisations;

- Police Scotland;
- Crown Office and Procurator Fiscal Service (COPFS);
- Scottish Courts and Tribunals Service (SCTS);
- Scottish Legal Aid Board (slab);
- Scottish Prison Service (SPS);
- Scottish Government Rural Payments & Inspections Division;
- Local authorities;
- Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA); and
- Animal & Plant Health Agency (APHA) enforcement & veterinary staff.

BENEFITS

Option 1

There are no additional benefits to be gained by retaining existing provisions.

Option 2

All of the changes proposed in the Bill will benefit animal welfare and wildlife protection by streamlining the processes for enforcement authorities, introducing more proportionate penalties and improving compliance. Financial aspects are covered in detail in the Financial Memorandum accompanying the Bill; wider benefits are outlined here.

Increasing Maximum Penalties and increasing protection for service animals

Increasing the maximum available financial & custodial penalties for the worst cases, will provide the following benefits;

- Send a clear message that animal cruelty will not be tolerated and respond to widespread public concern regarding the protection of all animals in Scotland
- Provide flexibility for the courts to issue appropriate sentences for the thankfully rare but abhorrent cruelty cases, including badger baiting, or the targeting of wild animals of threatened conservation status where the impact of these crimes can be significant to the entire species; and
- Remove the six month time limit to prosecute certain animal welfare and wildlife offences; allowing enforcement authorities additional time to conduct investigations (including time to process forensic evidence and gather evidence) to ensure appropriate justice is administered.
- Removal of the requirement for courts to have regard to arguments that attacks on service animals were undertaken in self-defence or for the protection of others or property will make it much easier for true justice to be served in relation to attacks on animals helping to keep our communities safe.

Introducing Fixed Penalty Notices (FPNs) for animal health and welfare

The Bill confers the power on the Scottish Ministers to introduce FPN regimes to tackle a range of animal health and welfare issues via secondary subordinate legislation (at a later date), and therefore the benefits for a specific FPN regime will be set out in the supporting documentation for any subsequent Scottish Statutory Instruments (SSIs) which will be scrutinised by the appropriate parliamentary committee in detail at that time. However introducing a regime of FPNs may provide the following benefits;

- Improve animal health and welfare standards and encourage compliance, improving enforcement;
- Allow minor and technical offences to be dealt with quickly and proportionately;
- Reduce the likelihood of re-offending, whilst providing a timely and proportionate deterrent when prosecution in court and any resulting criminal record may be excessive;
- Speed up the process of dealing with offences; as persons issued with a fixed penalty notice would not have to wait to appear in court;
- Give more flexibility to enforcing authorities by providing them with an additional enforcement option as an alternative to issuing guidance, warning letters, care notices or prosecution in the criminal courts; and
- Potentially generate some income. The level of penalty and the recipient of any fines will be set out in regulations for each specific enforcement regime. The amount of income will depend on the level the fine and the numbers of breaches identified and dealt with.

New powers over animals that have been taken into care for welfare reasons

The Bill inserts new provisions into the Act which confer powers on authorised persons in relation to animals that have been taken into care for welfare reasons. These new powers include the power to transfer ownership of such animals using a new process specified in the Bill. This process will enable animals to be rehomed after a three week period and crucially removes the need for the authorities to obtain a court order. This innovative amendment to the 2006 Act will provide the following benefits;

- Considerable benefits to animal welfare, as animals will generally be rehomed in weeks as opposed to months, or sometimes years;
- The significantly shorter and more consistent timescale will have multiple benefits, including significant savings in staff time and resource, with no need for multiple visits, for example;
- Local Authorities will be better able to budget for earlier intervention action, in the knowledge that the whole process should be resolved quickly and at less expense;
- Reducing pressure on the court system; the three week process will not involve the courts at all (unless there is an appeal) therefore reducing court costs and avoiding the potential need for evidence relevant to criminal prosecutions to be disclosed in court prior to trial;
- Benefit enforcement and inspection agencies reputationally, as enforcement is expected to improve, with the powers in the 2006 act being used as intended to alleviate immediate animal welfare issues;
- Benefit the farming industry, and improve general compliance by dealing with the worst offences expediently;
- Potential benefit to a greater number of animals as temporary accommodation becomes available; reducing the pressure on the capacity of these facilities;
- Reducing the financial and human costs of current ad hoc, temporary and often “open ended” arrangements, providing swift and suitable alternative arrangements for animals.

COSTS

Option 1

There would be no additional costs from retaining existing provisions.

Option 2

The estimated financial costs arising from the provisions in the Bill are outlined in detail in the Financial Memorandum accompanying the Bill. Wider impacts are addressed in this document. There will be general costs to the Scottish Government of introducing and drafting the Bill, and drafting the associated guidance. There will also be general introductory costs for many of the organisations involved in relation to staff training and procedural changes.

Increasing Maximum Penalties and increasing protection for service animals

- Availability of solemn procedure may in some cases result in increased costs of prosecution, although it is likely that the significant majority of animal welfare and wildlife cases will continue to be tried under summary procedure;
- Longer sentences for the small proportion of cases anticipated to merit them will have costs for the Scottish Prison Service (SPS);
- Although detection rates and enforcement methods will not change, and therefore it is assumed the number of cases going forward should remain largely unchanged; there may be a small increase in the number of cases reaching the court system, given the removal of the time bar.
- Potential increased penalties for the small number of attacks on service animals, and any cases that may come forward due to the removal of the six month time bar.

Introducing Fixed Penalty Notices

The Bill confers a power on the Scottish Ministers to create FPN regimes via secondary legislation, and therefore the costs will be set out in the supporting documentation for any subsequent SSIs in detail. Any new FPN system will have some establishment costs for each local authority, including;

- training & guidance for new procedures, and any changes to processes
- staff costs and resources involved in issuing the FPNs; a greater number of FPNs may be issued compared to referrals to the courts, due to the ease of a new FPN process.

However all these costs and the level of the fixed penalties will be determined by the enforcement regime and the appropriate regulations. Therefore it is anticipated that the fines will cover much of

the associated costs to implement the regime, potentially providing an additional income stream. This will depend on the level of fine set and the recipient specified in the SSI, along with the number of breaches identified and dealt with using a FPN.

New powers over animals that have been taken into care for welfare reasons

The new powers conferred on authorised persons will avoid the need for such persons to commence court proceedings in order to transfer ownership of, destroy or administer treatments to animals that have been taken into care for welfare reasons. There will be costs associated with the procedural steps necessary to have recourse to the powers (such as those incurred in relation to serving notices that must be served before exercise of the powers) but these are expected to be less than the cost that would be incurred in commencing proceedings.

Authorised persons will incur costs in relation to court proceedings where there is an appeal against the decision taken in relation to the animal. However, in comparison to needing to initiate court proceedings for every single application for a disposal order under section 34 under current arrangements, it is not expected that there will be many appeals. The new appeal process will require the previous keeper to initiate proceedings. For an appeal against a decision notice to be successful it must have been based on an error of fact, wrong in law or unreasonable, and an appeal against a compensation amount would require an alternative valuation to be provided. Therefore it is considered that the costs of any future appeals are unlikely to be any greater than the costs of court proceedings under the existing procedures where the owner or other interested person opposes the decision taken in relation to the animal.

The new statutory appeal process could in theory give rise to additional costs. The previous owner would be offered two opportunities to appeal; they can appeal against the decision on what to do with their animals, and they can (separately) appeal the proposed compensation amount.

The organisations involved in the enforcement of the Bill may need to make some minor arrangements for staff training in order to familiarise all with the Bill provisions. However, given the Bill is amending existing legislation, is not creating any new offences, and for the most part is introducing and developing enforcement tools similar to those introduced at minimal cost under other legislation; it is expected that these introductory costs will be minimal.

The new and innovative approach will mean that authorised persons implementing the new power will, have to pay the previous keeper compensation for the agreed value of the animals. The initial valuation is likely to be met by the subsequent sale of the animals in most cases. However if (for any reason) there is a short fall, this figure will be paid by the enforcement organisation (e.g. Scottish SPCA and local authorities).

It is considered that all these costs will be offset by the savings resulting from the changes in procedure, and in particular the staff time and resources involved in accommodating animals for long periods.

Scottish Firms Impact Test

The intention is not to interview individual businesses, as the proposed changes will not adversely affect businesses that respect animal and wild animal welfare and the associated legislation.

Competition Assessment

There are no market effects considered to result from the proposed Bill. Therefore there is considered to be no competition concern to suppliers and consumers; including those providing and using public services.

Consumer Assessment

These proposals are not thought to have an impact on consumers as the amendment to the existing law will only impact on those committing these existing offences and those enforcing the rules.

Test run of business forms

No new business forms are proposed, although new legal notices will be required in relation to the new powers in relation to animals taken into possession for welfare reasons.

Digital Impact Test

There are no digital impacts considered to result from these proposals, as those who have committed the offences will either be served with a legal notice or a fixed penalty notice.

It may be that the local authorities have a variety of methods of payment for fixed penalty notices (e.g. Telephone hotline, online facility, drop in) however these arrangements will evolve over time, and are the responsibility of each authority and are out with the scope of this assessment.

Legal Aid Impact Test

The proposed changes to the legislation would have an impact on legal aid and these are addressed in broad terms in the table 1 below.

Table 1: Impacts of Bill on Scottish Legal Aid Board (SLAB)

| | |
|---|--|
| Increasing the maximum available penalties & improving protection for service animals | Twelve months is the maximum sentence in summary cases. Where cases are marked for solemn procedure in anticipation of greater sentences, this could raise the average case costs for the SLAB from £590 to £1,614, based on the latest average case costs for summary and solemn cases (17/18 Annual report). There is an average of 0.3 cases per year estimated to require solemn procedure, for both welfare and wildlife offences. Therefore the additional cost to the SLAB is estimated to be as $((£1,614 - £590) * 0.3) * 2 = £614$ per annum |
| Introducing the power to use Fixed Penalty Notices | The introduction of fixed penalties may well reduce the number of summary criminal and Assistance By Way Of Representation (ABWOR) cases (average costs £595 and £458) |
| Streamlining the rehoming of animals to protect their welfare | There is unlikely to be any increase in demand for legal aid as criminal advice and assistance would appear to be irrelevant as the new process it is a civil procedure. |

Enforcement, sanctions and monitoring

The Bill will make enforcement of animal health and welfare and wildlife laws more effective by providing increased maximum penalties for the worst cases and the ability to issue fixed penalty notices for lesser, technical offences. The Bill will also remove the six month time bar in relation to certain offences, meaning that there will no longer be a need to commence prosecutions for those offences within six months of the offence being committed.

The provisions of the Bill are intended to strengthen and simplify the enforcement of the various legislation, however much of the enforcement role of the various organisations will remain unchanged; with only the outcome of any investigation potentially changing (e.g. the issuing of an FPN and/ or increased sentences).

Implementation and delivery plan

The proposed changes are intended to come into force in 2020 on a date to be appointed by the Scottish Ministers in regulations, supported by Scottish Government guidance for enforcement agencies.

Post-implementation review

Due to the close working relationships between the Animal Welfare Team veterinarian staff and key stakeholders across Scotland, the impact of these changes will be closely monitored on an ongoing basis,.

Within the next ten years the Scottish Government's Animal Welfare Team have committed to a review of these proposals.

Under the Wildlife and Countryside Act 1981, the Scottish Government is required to produce an annual report on offences relating to wildlife, including information on the incidence and prosecution of such offences during the year to which the report relates.

The Partnership for Action Against Wildlife Crime represents a wide range of bodies concerned with the prevention and tackling of crimes against wildlife. It includes the Scottish government, Police Scotland, prosecutors as well as non-government organisations representing a wide range of conservation and land management interests. It has a number of working groups which meet on a regular basis to take forward specific areas of work related to tackling wildlife crime and provides a forum for feedback on Scottish Government Policies.

Summary and recommendation

We recommend that the Bill (Option 2) is pursued due to the costs and benefits and the wider impacts of the policy set out here, and in the accompanying documents published in support of the Bill.

Table 2: Summary costs and benefits table

| | Additional Costs | Benefits |
|--|---|--|
| 1: DO NOTHING | | |
| Increasing maximum available penalties | No additional costs | No additional benefits |
| 2: ADOPT THE BILL | | |
| Increasing maximum available Animal Welfare penalties | <ul style="list-style-type: none"> • Potential additional costs of increased sentences for a small number of the worst cases • Additional costs as some cases will be tried under solemn procedure. • Maximum additional cost estimated at £114,000 per year | <ul style="list-style-type: none"> • Send a clear message that animal cruelty will not be tolerated, respond to widespread public concern and offer further protection for all animals in Scotland, • Provide flexibility for the courts to issue appropriate sentences for the thankfully rare but abhorrent cruelty cases, • Remove the six month time limit to prosecute certain animal welfare and wildlife offences; allowing additional time to conduct investigations |
| Improving protection for service animals (Finn's Law) | <ul style="list-style-type: none"> • Some potential costs associated with potential increased sentences. • Any additional costs are incorporated into above "maximum additional cost" | <ul style="list-style-type: none"> • Increase protection for police dogs and other animals in the performance of their indispensable duties, recognising their welfare as sentient beings as well as their legal status as police property; and • Make it easier to prosecute those who cause unnecessary suffering to these service animals. |
| Introducing the power to introduce Fixed Penalty Notices (FPN) | <ul style="list-style-type: none"> • Minimal introductory costs, including training • All associated costs to be offset by income from future FPN fines | <ul style="list-style-type: none"> • Giving more flexibility to local authorities by providing them with a proportionate and effective additional enforcement option for less serious offences, • Allowing minor and technical offences to be dealt with quickly and effectively, • Reducing the likelihood of re-offending, • Improving standards and encouraging compliance, • Dealing with rule breaches more quickly (persons issued with a fixed penalty notice need not attend court); and • Reducing the number of cases being dealt with by the court system, welfare enforcers and animal keepers. |
| New powers in relation to animals taken into care for welfare reasons | <ul style="list-style-type: none"> • Some costs relating to initial implementation of new procedures; including training. • Potentially paying compensation, but should usually be funded by sale of animals. • Appeal costs. • All costs offset by savings in staff time, court time and temporary storage of animals taken into care. | <ul style="list-style-type: none"> • benefitting animal welfare; adopting a new and innovative approach to swiftly resolve the animal welfare issue by making the best arrangements for animals taken into care, • Relieve pressure on the court system, • Reduce the time and cost involved for all parties, in these often traumatic situations • Encourage early intervention by the authorities, with the assurance that any situation should be capable of being resolved more quickly using the new robust system • Balance the welfare needs of animals as sentient beings with the property rights of individuals whose actions may have led to animal suffering; offering compensation and an appeal process |

Declaration and publication

Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

A handwritten signature in black ink, appearing to be 'Mairi Gougeon', written in a cursive style.

Date: 26th September 2019

Mairi Gougeon
Minister for Rural Affairs and the Natural Environment

Scottish Government Contact point: Scottish Government Animal Welfare Team

Annex A: Animal Welfare Public Consultation

Question 1: The Scottish Government proposes that the maximum penalties for the most serious animal welfare offences should be strengthened. Do you agree?

- Nearly all (99.4%) respondents agreed.
- The majority of organisations and individuals, and all Local Authorities (LA's) agreed.
- Key themes included; the view that the current maximum penalties available are too low; that increasing the maximum penalties would give sheriffs more sentencing options and that ultimately the increase in maximum penalties would act as a deterrent.

Question 2: Do you agree that the maximum prison sentence available for offences under section 19 (unnecessary suffering) and section 23 (animal fighting) should be increased from twelve months to five years imprisonment?

- A majority (96.9%) of respondents agreed.
- The majority of organisations and individuals, and all LA's agreed.
- Key themes included; increasing the maximum prison sentence available would act as a deterrent; the current maximum prison sentence available was too low and that increased sentences would indicate the seriousness of animal welfare offences.
- Additional comments included the desire to increase the current maximum prison sentence to over 5 years.

Question 3: Do you agree that there should be no upper limit on fines for offences under section 19 (unnecessary suffering) and section 23 (animal fighting)?

- A majority (94.1%) of respondents agreed.
- Separating responses by respondent type showed that the vast majority of organisations, LA's and individuals agreed.
- Key themes included; the idea that the fines given should reflect the nature and severity of the crime; that it would act as a deterrent; sizeable fines would be appropriate where the perpetrator has profited from the crime and that fines should reflect the income of the individual.
- Concerns were raised about individuals who may not be able to pay the fine.

Question 4: Other than increasing the maximum penalties for unnecessary suffering; should we amend legislation in any other ways, in regard to attacks on service animals?

- A majority (79.8%) of respondents were agreed.
- The majority of organisations and individuals who answered agreed and a minority of LA's agreed.
- Key themes included; the belief that there is a conflict in the current legislation between the maximum possible prison sentences available under the animal welfare legislation and the Criminal Damage Act 1971; in the cases where service animals have been attacked the perpetrator may claim they acted in self-defence so tougher legislation to protect these animals may prevent such claims and that harming a service animal has the same implications as harming the handler.
- Of the individuals not supporting further amendments the argument was that the legislation should be the same for all animals.

Question 5: Do you agree that there should be no statutory time limit for prosecuting offences under section 19 (unnecessary suffering) and section 23 (animal fighting)?

- A majority (92.6%) of respondents agreed.
- The vast majority of organisations, LA's and individuals agreed.
- Key themes included; crimes should be followed up regardless of the length of time elapsed since the offence; it can take considerable time to gather evidence and that time constraints would be detrimental with regards to obtaining successful prosecutions; eliminating the statutory time limit would act as a deterrent and that perhaps each case should be treated individually. Concerns were raised that there may be a strain placed on enforcement activity by a statutory time limit.

Question 6: Do you agree the introduction of proportionate fixed penalty notices would improve the enforcement of animal welfare offences?

- A majority (61.4%) of respondents agreed.
- Of those who answered, a majority of organisations and individuals agreed while LA's were unanimously in agreement.
- Key themes included; any FPNs should be a large sum to act as a deterrent; it would be a quick and effective way of dealing with offences; FPNs should be used for lesser offences only and that it would give enforcement bodies more options.
- There was the concern that FPNs may not be effective if the individual is unable to pay and that for this reason it would not act as a deterrent.

Question 7: Do you agree that there is a need to speed up the process of making permanent arrangements for animals taken into possession under section 32 of the Act?

- A majority (91.6%) of respondents agreed.
- Of those who answered, the vast majority of organisations, LA's and individuals agreed.
- Key themes included; speeding up the process of making permanent arrangements for animals taken into possession would improve welfare; welfare centres are stretched (both financially and in terms of resources) with the volume of animals currently housed and that speeding up the process of making permanent arrangements for animals taken into possession would free up rehoming centre resources.

Question 8: Do you agree that the ability to make suitable permanent arrangements for animals taken into possession after service of a notice and after lapse of a specified period will benefit the welfare of animals?

- A majority (87.9%) of respondents agreed.
- Of those who answered, the vast majority of organisations, LA's and individuals agreed.
- Key themes included; the ability to speed up the process of making permanent arrangements for animals taken into possession would reduce stress in the animal and that it would improve the rehoming prospect of the animal.

Question 9: Do you agree that the ability to make suitable arrangements for these seized animals after a short period will free up resources of the relevant enforcement authorities and animal welfare charities; allowing them to help a greater number of animals?

- A majority (86.3%) of respondents agreed.
- The majority of organisations, LA's and individuals agreed.
- Key themes included; it was believed that welfare charities were overwhelmed and underfunded so the proposals would be a welcome change and that extensive periods in temporary accommodation is not always suitable for animals which can lead to behavioural issues.

Question 10: Should such a new power to make permanent arrangements for animals that have been taken into possession apply to all animals, or only to commercially kept animals; such as puppies in breeding facilities, puppies for sale and livestock?

- A majority (95.4%) of respondents thought that the power should apply to all animals.
- The majority of organisations, LA's and individuals thought that the power should apply to all animals.
- Key themes included; animals should not be treated differently; some respondents do not believe it is morally right to hold certain animals in higher repute than other animals and that animal abuse can occur in any species and not just commercial animals.

Question 11: Do you agree that the owner or previous keeper should have an opportunity to appeal against permanent arrangements being made within a short time period?

- Overall a minority of respondents (35.5%) agreed.
- Of those who answered, about half of organisations and just 35% of individuals agreed while 35% of LA's agreed.

- Key themes included; the previous keeper has the right to appeal in the interests of fairness; an appeal is permissible but only if there is a genuine case and appeals should be carried out within a short time frame.
- Concerns included; if there is any inclination that the person has caused suffering they should relinquish the right to appeal; appeals adversely affect rehoming chances and that an appeal may only be allowed depending on the seriousness of the crime.
- The way in which the question was interpreted may have influenced whether the respondents agreed or not.

Question 12: Do you agree that three weeks is a reasonable period of notice before making suitable permanent arrangements for animals taken into possession?

- A majority (61%) of respondents agreed with the proposal.
- Of those who answered, a minority of organisations but a majority of LA's and individuals agreed with the proposal.
- Key themes included; three weeks was a suitable time frame but only if the time for appeal was included; the time period should vary depending on the individual situation; the three week notice would subsequently mean that space could be freed up more quickly in rehoming centres; it was detrimental to the welfare of the animal to be kept for long periods of time in rehoming centres and there would be a cost saving benefit to local authorities.

Question 13: Do you agree that the previous keeper should be able to apply for compensation based on the commercial value of these animals, less reasonable costs?

- A minority (3.5%) of respondents agreed.
- Of those who answered, a minority of organisations and individuals but a majority of LA's agreed.
- Key themes included; if the person was guilty of animal abuse they have then lost the rights to any compensation and that if compensation was given it should allow for reasonable costs to be awarded to rehoming agents.
- The way in which the question was interpreted may have influenced whether the respondents agreed or not.

Question 14: Do you have any practical suggestions about how to value commercially kept animals other than farm livestock?

- Suggestions included; market value; insurance companies; the use of a 'specialist valuer'; the advice of an auctioneer or charity; advice of a vet; a panel of experts in the field; using bodies such as the Kennel Club; pet shop valuations; using fixed rates for a particular species to avoid inflating the values due to breeding potentials and basing the value on rehoming fees.

Question 15: Please provide any further comments or suggestions on the proposed new system for making permanent arrangements for animals.

- Suggestions included; that foster homes should be used for animals as an interim; the government or lottery should provide financial assistance to rehoming centres; the time given for appeals should be shortened and that advice from a vet should be sought about permanent arrangements for animals.

Annex B: Poustie Consultation

Question 1: Do you consider that the penalties available to the courts for wildlife crime in general are a deterrent?

- The majority of respondents disagreed (70%)
- Reasons given by respondents included that the potential benefits of the offence to the offender could significantly outweigh deterrent effect of penalties and that corporate developers, for example in relation to bat crime, tended to comply with the law because of reputational concerns rather than the deterrent effect of the penalty.

Question 2: Do you consider that the penalties imposed by the courts for wildlife crime in general are a deterrent?

- The majority of respondents disagreed (90%)

Question 3: Are there any particular sorts of wildlife crime where you believe the penalties imposed are not appropriate?

- The majority of respondents agreed (81%)

Question 4: Are there any particular sorts of wildlife crime where you believe the penalties imposed are appropriate?

- Respondents were almost equally split between Yes- (35%), No- (32%), Don't know- (33%)

Question 5: Are wildlife crime penalties, too low, about right, too high or some low and some about right?

- The majority of respondents believe the penalties to be too low (81%)

Annex C: Wildlife Crime Penalty - Consultation

Question 1: The Scottish Government proposes that the maximum penalties for some wildlife offences, for example the injuring or un-licensed killing or taking of wild animals should be strengthened. Do you agree?

- Nearly all (97%) respondents agreed.
- The majority of organisations and individuals, and all LA's agreed.
- Key themes included; the view that the current maximum penalties available are too low; that increasing the maximum penalties would give sheriffs more sentencing options, more enforcement of offences is required and that ultimately the increase in maximum penalties would act as a deterrent. Significant recognition is given to Scotland's wildlife as a matter of tourism and the negative reputational impact wildlife crime could have on Scotland.

Question 2: Do you agree that the maximum prison sentence available for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be increased to five years imprisonment?

- Nearly all (94%) respondents agreed.
- Key themes included; the sentence should reflect the severity of the crime and that perhaps 5 years should be a minimum term; include community payback and education for certain groups of offenders depending on the motivation of the crime i.e. profit v low education.

Question 3: Do you agree that the upper limit on fines for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be unlimited?

- Nearly all (90%) respondents agreed.
- Key themes included; current financial penalties are too affordable for businesses such as property developers/estates; the financial penalty should be proportional to income/profit/wealth; wildlife is priceless so there should be no limit on penalty; alternative penalties including confiscation of licences and land were also suggested; suggestions around guidance for fines to ensure cohesion.

Question 4: Do you agree that the maximum prison sentence available for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to twelve months imprisonment?

- The majority (87%) of respondents agreed.
- Key themes included; many of the respondents in support of this increase supported a further increase beyond 12 months maximum, this was also the reason for a high number of responses disagreeing with the 12 months maximum; many respondents noted the long term impact this could have on species and felt the crime could be as serious/more serious in some cases than killing individual animals outright.

Question 5: Do you agree that the upper limit on fines for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to £40,000?

- The majority (85%) of respondents agreed.
- Key themes included; the fines for these offences should be unlimited; £40,000 may still be too affordable for property developers/wealthy estates etc. when enforcement is rare; this is a better deterrent for many; an increase would reflect the loss to rural economy and knock on effect on biodiversity; repeat offences should have further penalty.

Question 6: Do you agree that the statutory time limit for wildlife crime offences that may be prosecuted under summary procedure only, e.g. the intentional or reckless taking, damage or destruction of nests under section 1(1)(b) of the Wildlife and Countryside Act 1981, should be increased to six months from which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence?

- The majority (70%) of respondents agreed.

- Key themes included; the additional time for difficult investigations would increase prosecutions; many mentioned an increase in resources for investigations/enforcement would act as a better deterrent.

Question 7: Do you agree that we should allow some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, to be tried under solemn proceedings before a jury in court?

- The majority (78%) of respondents agreed.
- Key themes included; all wildlife offences should allow solemn procedure (including disturbance), this should be in line with severity of crime (i.e. for profit/repeat offenders should face jury); Solemn procedure is more reflective of the seriousness of the crime; solemn proceedings has the benefit of no time limit for prosecution; a jury would be more representative of their peers/public.

Question 8: Please use this question to provide any other commentary or observations you have on the proposal to increase the available penalties for wildlife crimes.

- Suggestions included; a register for wildlife offenders; increased use of vicarious liability; stronger penalties for wealthy landowners/estates such as higher fines and confiscation of land; updating of wildlife offences is overdue; more resources for enforcement is required.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2019

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83960-224-5 (web only)

Published by The Scottish Government, October 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS642362 (10/19)

W W W . g o v . s c o t