

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

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 56-EN), a Financial Memorandum (SP Bill 56-FM), a Policy
Memorandum (SP Bill 56-PM) and statements on legislative competence (SP Bill 56-LC).**

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

[AS INTRODUCED]

An Act of the Scottish Parliament to increase penalties for the most serious animal welfare offences, to provide for fixed penalties in relation to animal welfare offences generally, to increase the protection for service animals from being caused unnecessary suffering, to provide for fixed penalties in relation to animal health offences, to increase penalties in relation to certain wildlife offences; to confer power on inspectors and constables, where animals have been taken into possession to alleviate their suffering, to make arrangements for the treatment, transfer or destruction of those animals; and for connected purposes.

CHAPTER 1

ANIMAL WELFARE, ANIMAL HEALTH AND WILDLIFE: OFFENCES AND PENALTIES

Animal welfare offences: penalties

1 Prevention of harm to animals: penalties for offences

(1) The Animal Health and Welfare (Scotland) Act 2006 (in this Act, “the 2006 Act”) is amended as follows.

(2) In section 46 (penalties for offences), for subsection (1) substitute—

“(1) A person who commits an offence under section 19 or 23 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.

(3) Section 44 is repealed.

2 Fixed penalty notices for certain animal welfare offences

In the 2006 Act, after section 46 insert—

“46A Fixed penalty notices for certain offences

(1) The Scottish Ministers may by regulations make provision for or in connection with the issuing of fixed penalty notices in relation to certain offences.

- (2) The offences in relation to which fixed penalty notices may be issued must be specified in or by virtue of regulations under subsection (1).
- (3) The offences which may be specified are offences—
- (a) under—
- (i) this Part,
- (ii) regulations made under section 26, 27 or 28 (whether made before, on or after the coming into force of this section), or
- (iii) another enactment (whether made or, as the case may be, passed before, on or after the coming into force of this section) which the Scottish Ministers consider relates to animal welfare, and
- (b) in relation to which the maximum penalty on conviction does not exceed imprisonment for a term of 6 months or a fine of level 5 on the standard scale (or both).
- (4) Regulations under subsection (1) may in particular include provision—
- (a) subject to subsections (6) and (7), prescribing the form of a fixed penalty notice,
- (b) prescribing the persons or categories of persons who are authorised to issue fixed penalty notices,
- (c) conferring on the Scottish Ministers the power to authorise a person to issue fixed penalty notices,
- (d) conferring powers to enter premises (other than dwelling-houses) in connection with the issuing of fixed penalty notices,
- (e) about the circumstances in which fixed penalty notices may be issued (including the test which must be satisfied before a person authorised to issue such notices may do so),
- (f) about the circumstances in which fixed penalty notices may not be issued,
- (g) about the circumstances in which fixed penalty notices may be withdrawn (including the effects of such withdrawal),
- (h) prescribing the amount of the fixed penalty which is to apply to an offence, being not more than level 5 on the standard scale,
- (i) prescribing the person to whom payment may be made (who need not be the person who issued the fixed penalty notice),
- (j) prescribing the period of time within which a fixed penalty may be paid (in this section, the “payment period”),
- (k) about the circumstances in which a person to whom a fixed penalty notice is issued may decline the notice or otherwise object to or challenge it (including the period within which the person may do so),
- (l) about the effects of failing to decline or otherwise object to or challenge a fixed penalty notice before the end of the period prescribed for doing so (including that such failure is deemed to be acceptance of the notice),

(m) conferring on the person who issued the fixed penalty notice or the person to whom payment may be made the power to extend the payment period in any particular case if the person considers it appropriate to do so,

5 (n) about the methods by which fixed penalties may be paid,

(o) for the amount of a fixed penalty to be discounted or increased by an amount or percentage in circumstances prescribed by the regulations (but not so as to make the amount payable more than level 5 on the standard scale),

10 (p) prescribing the effect of paying a fixed penalty within the payment period (for example, that no proceedings may be brought in respect of the offence to which the fixed penalty notice relates),

(q) about the consequences of not paying a fixed penalty within the payment period (including how liability to pay the penalty may be enforced),

15 (r) for additional procedure relating to fixed penalty notices (for example to make provision for hearings or appeals),

(s) for the destination of funds, the keeping of accounts and the preparation and publication of statements of account relating to fixed penalties provided for under the regulations,

20 (t) creating offences relating to—

(i) obstruction of a person who is exercising functions in relation to fixed penalty notices,

(ii) a failure to provide information requested in connection with a fixed penalty notice.

25 (5) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale.

(6) A fixed penalty notice provided for in regulations under subsection (1) must—

(a) identify the offence to which it relates, and

30 (b) specify reasonable particulars of the circumstances alleged to constitute the offence.

(7) A fixed penalty notice provided for in regulations under subsection (1) must also state—

(a) the date on which the fixed penalty notice is issued,

35 (b) the amount of the fixed penalty,

(c) the person to whom payment may be made and the person's address,

(d) the payment period,

(e) the method by which payment may be made,

(f) the effect of paying the fixed penalty within the payment period and the consequences of not paying the fixed penalty within that period,

40 (g) details of any procedure for challenging or appealing the fixed penalty notice.

- (8) Regulations under subsection (1) may modify any enactment (including this Act).
- (9) In this section, “fixed penalty notice” means a notice specifying a sum of money that may or must be paid as an alternative to prosecution for an offence.”

Protecting police dogs etc. from unnecessary suffering

3 Harming a service animal

In section 19 (unnecessary suffering) of the 2006 Act, after subsection (4) insert—

“(4A) In determining for the purposes of subsection (1) whether suffering is unnecessary in a case where it was caused by conduct for a purpose mentioned in subsection (4)(c)(ii), the fact that the conduct was for that purpose is to be disregarded if—

- (a) the animal was under the control of a relevant officer at the time of the conduct,
- (b) it was being used by that officer at that time, in the course of the officer’s duties, in a way that was reasonable in all the circumstances, and
- (c) that officer is not the person accused of committing the offence under subsection (1).

(4B) In subsection (4A), “relevant officer” means—

- (a) a constable,
- (b) a special constable within the meaning of section 9 of the Police and Fire Reform (Scotland) Act 2012,
- (c) a person (other than a constable or a special constable) who has the powers of a constable or is otherwise employed or engaged to carry out, or assist in the carrying out of, police functions (within the meaning of section 99(1) of that Act),
- (d) a prisoner custody officer within the meaning of section 114 of the Criminal Justice and Public Order Act 1994.

(4C) The Scottish Ministers may by regulations modify subsection (4B) to—

- (a) add to the categories of person specified in subsection (4B) other categories of person in the public service of the Crown,
- (b) vary any category of person for the time being specified in subsection (4B),
- (c) remove any category of person for the time being so specified.”

Animal health offences: penalties

4 Fixed penalty notices for offences relating to animal health

In the Animal Health Act 1981, after section 76 insert—

“76A Fixed penalty notices

- (1) The Scottish Ministers may by regulations make provision for or in connection with the issuing of fixed penalty notices in relation to certain offences.

- (2) The offences in relation to which fixed penalty notices may be issued must be specified in or by virtue of regulations under subsection (1).
- (3) The offences which may be specified are offences—
- (a) under—
- (i) this Act,
- (ii) orders or regulations made under this Act (whether made before, on or after the coming into force of this section), or
- (iii) another enactment (whether made or, as the case may be, passed before, on or after the coming into force of this section) which the Scottish Ministers consider relates to animal health, and
- (b) in relation to which the maximum penalty on conviction does not exceed imprisonment for a term of 6 months or a fine of level 5 on the standard scale (or both).
- (4) In this section, “fixed penalty notice” means a notice specifying a sum of money that may or must be paid as an alternative to prosecution for an offence.
- (5) Regulations under this section—
- (a) are subject to the affirmative procedure,
- (b) may make—
- (i) incidental, supplementary, consequential, transitional, transitory or saving provision,
- (ii) different provision for different purposes,
- (c) may modify any enactment (including this Act).”.

Wildlife offences: penalties

5 Wildlife and Countryside Act 1981: penalties for offences

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) In section 20(2) (summary prosecutions), for “Summary proceedings for an offence under this Part” substitute “Proceedings for an offence under this Part which is triable only summarily”.
- (3) The section title of section 20 becomes “**Proceedings for summary offences**”.
- (4) In section 21 (penalties)—
- (a) for subsection (1) substitute—
- “(1) Subject to subsection (5), a person guilty of an offence under a provision mentioned in subsection (1A) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).
- (1A) The provisions referred to in subsection (1) are—
- (a) section 5(1)(e) and (f) (in relation to an act made unlawful by section 5(1)(e)),
- (b) section 6(1)(b), (2) and (2A) (in relation to an act made unlawful by section 6(2)(a)),

(c) section 7 (other than section 7(1) and (5A) (in relation to an act made unlawful by section 7(1))),

(d) section 9(5)(b),

(e) section 11A,

5 (f) section 11C,

(g) section 11E,

(h) section 13,

(i) section 14B,

(j) section 15A,

10 (k) section 17,

(l) section 19ZC (other than an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by section 19ZC(3)(d)),

(m) section 19ZD.

15 (1B) Subject to subsection (5), a person guilty of an offence under a provision mentioned in subsection (1C) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).

(1C) The provisions referred to in subsection (1B) are—

20 (a) section 1 (other than section 1(1)(a) and (5C) (in relation to an act made unlawful by section 1(1)(a))),

(b) section 6(1)(a), (2A) (in relation to an act made unlawful by section 6(1)(a) and (3),

(c) section 7(1) and (5A) (in relation to an act made unlawful by section 7(1)),

25 (d) section 8,

(e) section 9 (other than section 9(1), (5)(b) and (5A) (in relation to an act made unlawful by section 9(1))),

(f) section 11B,

(g) section 11G,

30 (h) section 11I.”,

(b) subsections (4) and (4ZA) are repealed,

(c) after subsection (4A) insert—

“(4B) A person guilty of an offence under a provision mentioned in subsection (4C) is liable—

35 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(4C) The provisions referred to in subsection (4B) are—

40 (a) section 14ZC,

(b) section 14A,

(c) section 14K.

(4D) A person guilty of an offence under a provision mentioned in subsection (4E) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

(4E) The provisions referred to in subsection (4D) are—

(a) section 1(1)(a) and (5C) (in relation to an act made unlawful by section 1(1)(a)),

(b) section 5(1)(a) to (d) and (f) (in relation to an act made unlawful by section 5(1)(a) to (d)),

(c) section 9(1) and (5A) (in relation to an act made unlawful by section 9(1)),

(d) section 10A,

(e) section 11,

(f) section 14.”,

(d) in subsection (5)—

(i) after “(1),” insert “or (1B)”,

(ii) for “that subsection” substitute “the subsection in question”.

6 Protection of Badgers Act 1992: penalties for offences

(1) The Protection of Badgers Act 1992 is amended as follows.

(2) In section 12 (penalties)—

(a) in subsection (1)—

(i) for “six” substitute “twelve”,

(ii) for “level 5 on the standard scale” substitute “£40,000”,

(iii) for “that level” substitute “level 5 on the standard scale”,

(b) in subsection (1B)—

(i) for paragraph (a) substitute—

“(a) section 1(3) and (6) (in relation to an act made unlawful by section 1(3)),”,

(ii) paragraph (b) is repealed,

(c) after subsection (1B) insert—

“(1C) A person guilty of an offence under a provision mentioned in subsection (1D) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or both.

(1D) The provisions referred to in subsection (1C) are—

(a) section 1(1) and (6) (in relation to an act made unlawful by section 1(1)),

(b) section 2(1)(a) to (c) and (3) (in relation to an act made unlawful by section 2(1)(a) to (c)).”,

(d) in subsection (2), for “or (1A)(a)” substitute “, (1A)(a) or (1C)(a)”.

(3) In section 12A (time limit for bringing summary proceedings)—

(a) in subsection (1), for “any of sections 1 to 5 or 10(8) of this Act” substitute “a provision mentioned in subsection (1A)”,

(b) after that subsection insert—

“(1A) The provisions referred to in subsection (1) are—

(a) section 1(3), (5) and (6) (in relation to an act made unlawful by section 1(3)),

(b) section 2(1)(d) and (3) (in relation to an act made unlawful by section 2(1)(d)),

(c) section 3,

(d) section 4,

(e) section 5,

(f) section 10(8).”.

7 **Conservation (Natural Habitats, etc.) Regulations 1994: penalties for offences**

(1) The Conservation (Natural Habitats, etc.) Regulations 1994 (SI 1994/2716) are amended as follows.

(2) In regulation 39 (protection of certain wild animals), for paragraph (12) substitute—

“(12) A person guilty of an offence under this regulation is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.

(3) In regulation 41 (prohibition of certain methods of taking or killing wild animals), for paragraph (6) substitute—

“(6) A person guilty of an offence under this regulation is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.

(4) In regulation 102 (proceedings for offences: venue, time limits), in paragraph (2), after first “offence” insert “(other than for an offence under regulation 39 or 41)”.

8 Deer (Scotland) Act 1996: penalties for offences

In schedule 3 (penalties) of the Deer (Scotland) Act 1996—

(a) in the entry relating to section 17(3)—

- (i) in column 3(a), for “a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or 3 months imprisonment or both” substitute “a fine of £40,000 for each deer in respect of which the offence is committed or 12 months imprisonment or both”,
- (ii) in column 3(b) insert “a fine or imprisonment for a term of 5 years or both”,

(b) in the entry relating to section 21(3) and (5)—

- (i) in column 1, “, (5)” is repealed,
- (ii) in column 2, for “Offences relating to firearms and ammunition” substitute “Breach of firearms order”,

(c) after the entry relating to section 21(3), insert—

15	“21(5)	Firearms and ammunition: wilfully injuring deer	a fine of £40,000 for each deer in respect of which the offence is committed or 12 months imprisonment or both	a fine or imprisonment for a term of 5 years or both”,
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(d) in the entry relating to section 22—

- (i) in column 3(a), for “a fine of the statutory maximum in respect of each deer killed, taken or injured or 6 months imprisonment or both” substitute “a fine of £40,000 in respect of each deer killed, taken or injured or 12 months imprisonment or both”,
- (ii) in column 3(b), for “not exceeding 2” substitute “of 5”.

9 Wild Mammals (Protection) Act 1996: penalties for offences

In section 5 (penalties) of the Wild Mammals (Protection) Act 1996, for subsection (1) substitute—

“(1) A person guilty of an offence under this Act is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.

10 Protection of Wild Mammals (Scotland) Act 2002: penalties for offences

(1) The Protection of Wild Mammals (Scotland) Act 2002 is amended as follows.

(2) After section 7, insert—

“7A Time limit for summary proceedings

- (1) Proceedings for an offence under section 1(2) or 1(3) may be brought within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor’s knowledge.
- (2) But no such proceedings may be brought more than 3 years—
- (a) after the commission of the offence, or
- (b) in the case of an offence involving a continuous contravention, after the last date on which the offence was committed.
- (3) A certificate signed by or on behalf of the prosecutor which states the date on which evidence referred to in subsection (1) came to the prosecutor’s knowledge is conclusive evidence of that fact, and such a certificate which purports to be so signed is to be treated as being so signed unless the contrary is proved.”.

(3) In section 8 (proceedings and penalties), for subsection (1) substitute—

- “(1) A person guilty of an offence under section 1(1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (1A) A person guilty of an offence under section 1(2) or (3) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).”.

CHAPTER 2

ANIMAL WELFARE: POWERS IN RELATION TO ANIMALS TAKEN INTO POSSESSION

11 Taking possession of animals: additional powers

In the 2006 Act, after section 32 insert—

“32A Powers of authorised person where animal taken into possession

- (1) Where a protected animal has been taken into possession under section 32, an authorised person may—
- (a) without the consent of the owner of the animal or of any other person who is responsible for it, and
- (b) without having applied for or obtained an order under section 34,
- take any of the steps mentioned in subsection (2) (in this section and in sections 32B to 32L, “relevant steps”).
- (2) The relevant steps are—
- (a) administering treatment to the animal,
- (b) transferring ownership of the animal to another person,
- (c) destroying the animal.

- (3) Subject to subsection (4), in deciding to take a relevant step, the authorised person must have regard to the desirability of—
- (a) protecting the long-term welfare of the animal so far as it is reasonable to do so,
 - (b) where the relevant step is administering treatment to the animal, protecting the value of the animal,
 - (c) avoiding increasing any expenses which a person may be required to reimburse.
- (4) An authorised person may decide to destroy the animal under subsection (1) only if a veterinary surgeon certifies that destruction of the animal is appropriate.
- (5) An authorised person may take a relevant step only if—
- (a) a notice has been served in accordance with sections 32B and 32C, and
 - (b) either—
 - (i) the time period specified in section 32D(3) has expired without an appeal being made to the court under section 32D, or
 - (ii) such an appeal having been made, subsection (6) applies.
- (6) This subsection applies where—
- (a) the court has made an order under section 32D(6)(a) permitting the step specified in the notice under section 32B to be taken, or
 - (b) the appeal has been determined without any order being made which prevents the step specified in that notice being taken.
- (7) If a relevant step may be taken under this section, the authorised person has all of the powers an owner of the animal would have in relation to the taking of that step.
- (8) This section is without prejudice to—
- (a) the powers of inspectors and constables under sections 32 and 35,
 - (b) any other power or authority of an authorised person to take any relevant step or other action in relation to the animal.
- (9) In this section and in sections 32B to 32L—
- “authorised person” means—
- (a) an inspector or a constable who is caring for, or has arranged for the care of, the animal taken into possession under section 32,
 - (b) any other person—
 - (i) with whom an arrangement for the care of the animal has been made under section 32, and
 - (ii) who is authorised by the Scottish Ministers to exercise the power to take relevant steps under this section,
- references to the “taking” of relevant steps include references to arranging for those steps to be taken (and cognate expressions are to be construed accordingly),

“treatment” means any treatment or procedure which has as its purpose—

- (a) the prevention, reduction or alleviation of a protected animal’s illness, disease, pain or discomfort,
- (b) the better management of the protected animal,
- (c) the health, safety or well-being of any other animal or person.

32B Decision notice for exercise of powers under section 32A: content

(1) Before taking a relevant step under section 32A(1), an authorised person must serve a notice (in this section and in sections 32C to 32L, a “decision notice”) specifying—

- (a) a description of the protected animal,
- (b) the date on which the animal was taken into possession under section 32,
- (c) the relevant step that the authorised person intends to take in relation to the animal,
- (d) the reason for taking that step (including, if the step is to destroy the animal, confirmation that a certificate has been obtained from a veterinary surgeon in accordance with section 32A(4)),
- (e) how any compensation will be assessed and the process by which it may become payable in accordance with sections 32G to 32J if the step is taken,
- (f) the effect of section 32K,
- (g) how service of the decision notice affects rights to apply for court orders under sections 33 and 34,
- (h) the procedure for appealing to the court in respect of the step and the period within which such an appeal may be made.

(2) A decision notice which specifies a relevant step mentioned in section 32A(2)(b) need not include any details of the proposed transfer of ownership of the animal other than the fact that such a transfer is proposed.

(3) The authorised person may choose to include in the decision notice the market value of the animal at the time the animal was taken into possession under section 32.

32C Decision notice: service

(1) Before serving a decision notice, an authorised person must—

- (a) make reasonable enquiries to establish the identity of the owner of the protected animal, or
- (b) be satisfied that such reasonable enquiries have been made by another person.

(2) A decision notice must be served on the owner of the animal by—

- (a) leaving it at the owner’s home or business address, or

(b) sending it to such an address by—

(i) a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or

(ii) a postal service which provides for the delivery of the document to be recorded.

(3) A single decision notice may be served in respect of two or more animals where—

(a) those animals were taken into possession under section 32 under the same exercise of the power conferred by that section, and

(b) in the opinion of the authorised person, the animals have the same owner.

(4) The date of service of a decision notice is the date on which it was served under subsection (2).

(5) Evidence that a decision notice has been sent in accordance with subsection (2)(b)(i) or (ii) is sufficient evidence of service of it.

32D Appeal to the court in respect of decision notice

(1) A person mentioned in subsection (2) may appeal to the court for an order in respect of a decision notice.

(2) The person is—

(a) the owner of the protected animal to which the decision notice relates,

(b) any other person appearing to the court to have a sufficient concern for the animal.

(3) An appeal to the court under this section may only be made before the expiry of the period of 3 weeks beginning with the date of service of the decision notice.

(4) A person is entitled to be heard in relation to an appeal under subsection (1) if (despite not being the appellant) the person is—

(a) a person mentioned in subsection (2),

(b) an authorised person,

(c) an inspector (if not an authorised person),

(d) a constable who took the animal into possession under section 32 (if not an authorised person).

(5) The grounds on which an appeal to the court may be made under this section are that the decision to take the relevant step specified in the decision notice—

(a) is based on an error of fact,

(b) is wrong in law,

(c) is unreasonable.

(6) The court may—

(a) make an order permitting the relevant step specified in the decision notice to be taken,

- (b) make an order that the relevant step specified in the decision notice must not be taken,
- (c) make an order which would be available to the court on a valid application to it under subsection (1) of section 33 on the same terms as set out in that section,
- (d) make an order for one or more relevant steps to be taken in respect of the animal,
- (e) dispose of the proceedings in any other way it thinks fit.
- (7) An order under subsection (6) may include—
- (a) provision appointing a person who is to secure that the order is carried out,
- (b) such other provision as the court considers appropriate in connection with the order.
- (8) The decision of the court on an appeal under this section is final.
- (9) If the court makes an order under subsection (6)(b), an authorised person may, subject to following the procedure in sections 32A to 32C, decide to take a different relevant step in relation to the animal.
- (10) In this section, “court” means the sheriff.

32E Effect of decision notice on applications under section 33

- (1) The following provisions of this section set out how section 33 operates where a decision notice has been served specifying a relevant step mentioned in section 32A(2)(b) or (c) in respect of an animal.
- (2) Subject to subsection (3), an application to the court for an order under section 33 in respect of the animal may not be made after the expiry of the period of 3 weeks beginning with the date of service of the decision notice.
- (3) Where no application for an order under section 33 in respect of the animal is made within the period mentioned in subsection (2), such an application may not then be made unless and until one of the circumstances mentioned in subsection (4) occurs.
- (4) Those circumstances are—
- (a) the court makes an order under section 32D(6) which—
- (i) prevents the relevant step specified in the decision notice being taken, and
- (ii) does not result in the animal being returned to its owner or its ownership being transferred to another person,
- (b) the relevant step specified in the decision notice is not taken within 1 year beginning with the date mentioned in subsection (5),
- (c) an authorised person advises the owner in writing that the relevant step specified in the decision notice will not be taken.

- (5) The date referred to in subsection (4)(b) is—
- (a) the date on which the decision notice was served, provided that—
 - (i) no application under section 33 is made in accordance with subsection (2), and
 - (ii) no appeal under section 32D is made in accordance with section 32D(3),
 - (b) where an application under section 33 made in accordance with subsection (2) is rejected by the court, the date it is so rejected, provided no appeal is made,
 - (c) where a decision mentioned at paragraph (b) is appealed, the date on which the appeal is rejected,
 - (d) where an appeal under section 32D is made in accordance with section 32D(3) and the court makes an order under section 32D(6)(a), the date of that order, or
 - (e) where such an appeal is determined without any order being made which prevents the relevant step specified in the decision notice being taken, the date of that determination.
- (6) If an application is made to the court under section 33 before a decision notice has been served—
- (a) an authorised person may not serve such a notice in respect of the animal to which the application relates until the proceedings under section 33 are finally disposed of or abandoned, and
 - (b) if such a notice is served, it is of no effect.
- (7) If an application is made to the court under section 33 in accordance with subsection (2), an authorised person may not take the relevant step specified in the decision notice in respect of the animal until the proceedings under section 33 are finally disposed of or abandoned.

32F Effect of decision notice on applications under section 34

- (1) The following provisions of this section set out how section 34 operates where a decision notice has been served specifying a relevant step mentioned in section 32A(2)(b) or (c) in respect of an animal.
- (2) An application to the court for an order under section 34 in respect of the animal may not be made unless and until one of the circumstances mentioned in subsection (3) occurs.
- (3) Those circumstances are—
- (a) the court makes an order under section 32D(6) which—
 - (i) prevents the relevant step specified in the decision notice being taken, and
 - (ii) does not result in the animal being returned to its owner or its ownership being transferred to another person,
 - (b) the relevant step specified in the decision notice is not taken within 1 year beginning with the date mentioned in subsection (4),

- (c) an authorised person advises the owner in writing that the relevant step specified in the decision notice will not be taken.
- (4) The date referred to in subsection (3)(b) is—
- (a) the date on which the decision notice was served, provided that—
- 5 (i) no application under section 33 is made in accordance with section 32E(2), and
- (ii) no appeal under section 32D is made in accordance with section 32D(3),
- 10 (b) where an application under section 33 made in accordance with section 32E(2) is rejected by the court, the date it is so rejected, provided that no appeal is made,
- (c) where a decision mentioned at paragraph (b) is appealed, the date on which the appeal is rejected,
- 15 (d) where an appeal under section 32D is made in accordance with section 32D(3) and the court makes an order under section 32D(6)(a), the date of that order, or
- (e) where such an appeal is determined without any order being made which prevents the relevant step specified in the decision notice being taken, the date of that determination.
- 20 (5) If an application is made to the court under section 34 before a decision notice has been served—
- (a) an authorised person may not serve such a notice in respect of the animal to which the application relates until the proceedings under section 34 are finally disposed of or abandoned, and
- 25 (b) if such a notice is served, it is of no effect.

32G Compensation notice for exercise of powers under section 32A

- (1) If a relevant step specified in a decision notice is taken in relation to a protected animal, an authorised person must serve a notice (in this section and in sections 32H to 32L, a “compensation notice”) specifying—
- 30 (a) a description of the animal,
- (b) which relevant step has been taken,
- (c) the date on which the relevant step was taken,
- (d) the compensation amount (if any) and how this has been calculated in accordance with section 32H,
- 35 (e) the effect the existence or possibility of relevant criminal proceedings may have on the payment of the compensation amount,
- (f) the process for payment of any compensation amount,
- (g) whether the authorised person is electing to defer payment of the compensation amount under section 32J(3),
- 40 (h) the procedure for appealing to the court in respect of the compensation amount under section 32I.

(2) A compensation notice must be served on the relevant owner of the animal by—

(a) leaving it at the relevant owner's home or business address, or

(b) sending it to such an address by—

(i) a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or

(ii) sending it by a postal service which provides for the delivery of the document to be recorded.

(3) Subject to subsection (4), the authorised person must serve a compensation notice on the relevant owner of the animal within 3 months of a relevant step specified in the decision notice being taken.

(4) Where the decision notice specified more than one relevant step, the authorised person must serve a compensation notice on the relevant owner of the animal within 3 months of the earlier of—

(a) the last relevant step being taken,

(b) the expiry of the period of 1 year beginning with the date on which the first relevant step is taken.

(5) Where subsection (4)(b) applies, the authorised person must serve a compensation notice in respect of any other relevant step specified in the decision notice within 3 months of it being taken.

(6) A single compensation notice may be served in respect of two or more animals where—

(a) a single decision notice was served in respect of those animals by virtue of section 32C(3), and

(b) relevant steps have been taken by virtue of that notice in relation to all of those animals.

(7) Evidence that a compensation notice has been sent in accordance with subsection (2)(b)(i) or (ii) is sufficient evidence of service of it.

(8) In this section and in sections 32H to 32K—

“relevant criminal proceedings” means proceedings in respect of a relevant offence which arise from the circumstances which led to the protected animal being taken into possession under section 32,

“relevant offence” means an offence under any of the following—

(a) sections 19 to 23,

(b) section 24 or 25(7),

(c) section 29,

(d) section 40(11),

“relevant owner” means the person who was the owner of the animal at the time it was taken into possession under section 32.

32H Compensation amount

- (1) This section provides for the calculation of the compensation amount which is to be specified in the compensation notice.
- (2) Where the only relevant step specified in the decision notice is the step mentioned in section 32A(2)(a), the compensation amount is any decrease in the market value of the animal between—
- (a) the time it was taken into possession under section 32, and
 - (b) the time immediately after administration of the treatment,
- less any relevant expenses.
- (3) Where the relevant step specified in the decision notice is the step mentioned in section 32A(2)(b) or (c), or the step mentioned in section 32A(2)(a) along with another relevant step, the compensation amount is the greater of—
- (a) the market value of the animal at the time it was taken into possession under section 32, and
 - (b) the market value of the animal at the time immediately before the last relevant step specified in the compensation notice was taken,
- less the amounts referred to in subsection (4).
- (4) The amounts mentioned in subsection (3) are—
- (a) any compensation amount which has been the subject of a previous compensation notice in respect of that animal, and
 - (b) any relevant expenses which have not already been taken into account in calculating a compensation amount which has been the subject of a previous compensation notice in respect of that animal.
- (5) In this section, “relevant expenses” means—
- (a) any expenses reasonably incurred in relation to the animal after it was taken into possession under section 32, and
 - (b) the reasonable costs of taking the relevant step specified in the compensation notice,
- to the extent that they have been incurred by or on behalf of an authorised person or the authorised person’s employer and have not been reimbursed by or on behalf of the relevant owner.

32I Appeal to court in respect of compensation amount

- (1) The relevant owner of a protected animal may appeal to the court for an order in respect of the compensation amount.
- (2) Subject to subsection (3), an appeal to the court under this section may only be made before the expiry of the period of 3 months beginning with the date of service of the compensation notice (or, if more than one notice has been served by virtue of section 32G(4) or (5), the last of those notices).
- (3) Where the authorised person has deferred payment of the compensation amount under section 32J(3), an appeal to the court under this section may only be made within the period of 1 month beginning with the date determined in accordance with section 32J(4).

- (4) The court may—
- (a) order payment of the compensation amount specified in the compensation notice,
 - (b) order payment of a different compensation amount,
 - (c) order that no compensation be paid.
- (5) The decision of the court on an appeal under this section is final.
- (6) In this section, “court” means the sheriff.

32J Payment of compensation amount

- (1) Subject to any order of a convicting court under section 32K that the relevant owner’s right to compensation is forfeited (in whole or in part), this section determines when the compensation amount becomes payable.
- (2) Unless the authorised person opts to defer payment of it under subsection (3), the compensation amount becomes payable to the relevant owner (determined in accordance with subsection (6)) when either—
- (a) the period within which an appeal to the court may be made under section 32I has expired without an appeal being made, or
 - (b) such an appeal having been made, the court has made an order under section 32I(4)(a) or (b).
- (3) The authorised person may defer payment of the compensation amount where—
- (a) relevant criminal proceedings have been commenced against the relevant owner and have not been concluded, or
 - (b) in the opinion of the authorised person, the relevant owner is at risk of having relevant criminal proceedings brought against them.
- (4) Where the authorised person has deferred payment of the compensation amount, the compensation amount becomes payable to the relevant owner (determined in accordance with subsection (6)) as follows—
- (a) where relevant criminal proceedings had been commenced before the compensation notice was served or such proceedings were commenced within the period of 1 year beginning with the date that notice was served, on the conclusion of those relevant criminal proceedings,
 - (b) otherwise, on the expiry of the period of 1 year beginning with the date on which the compensation notice was served.
- (5) Once it has become payable, the compensation amount must be paid within 3 weeks of the relevant owner (determined in accordance with subsection (6)) providing details of the bank account to which payment may be made.
- (6) The person who is determined to be the relevant owner for the purposes of this section is—
- (a) in a case where no appeal has been made under section 32I and the authorised person is satisfied as to who the relevant owner is, that person,

- (b) otherwise, the person determined by the court to be the relevant owner—
 - (i) on an appeal under section 32D in relation to the decision notice,
 - (ii) on an appeal under section 32I in relation to the compensation amount,
 - (iii) on an application under section 33 or 34, or
 - (iv) on an application to the court for the purposes of this subsection.

32K Forfeiture of compensation

- (1) Where—
 - (a) a person is convicted of a relevant offence, and
 - (b) that conviction arises out of relevant criminal proceedings,
 the convicting court may order that the person forfeits (in whole or in part) any right to compensation which would otherwise be due under this Part in respect of the animal to which the offence relates.
- (2) Where the court makes an order under subsection (1), any compensation amount payable under section 32J is adjusted accordingly.

32L Modification of powers over animals

- (1) The Scottish Ministers may by regulations make provision—
 - (a) about the content and service of decision notices and compensation notices, including, in particular, provision in relation to—
 - (i) the matters which must be specified in a notice,
 - (ii) the person on whom a notice must be served,
 - (iii) the method by which service of a notice may be effected,
 - (iv) the date of service of a notice (including the evidence required to prove service has been effected),
 - (b) about the calculation and payment of the compensation amount, including, in particular—
 - (i) the person to whom the compensation amount may or must be paid,
 - (ii) the timing and procedure for payment of the compensation amount (including deferral of payment),
 - (iii) forfeiture of compensation,
 - (c) about appeals in relation to decision notices and compensation notices under sections 32D and 32I, including, in particular—
 - (i) the timing and procedure for an appeal,
 - (ii) the orders which a court may make on an appeal.
- (2) Regulations under subsection (1) may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.”.

12 Taking possession of animals: amendment of existing powers

In section 32 (taking possession of animals) of the 2006 Act—

- (a) in subsection (2), for “section 35 makes” substitute “sections 32A and 35 make”,
- (b) after subsection (6)(b) insert—

5 “(c) administer treatment (as defined in section 32A) to the animal, or arrange for treatment to be administered, but only where the treatment is, in the opinion of the inspector or constable, consistent with the long-term welfare of the animal and is unlikely to significantly—

- (i) reduce the value of the animal, or
- 10 (ii) otherwise affect the character of the animal.”.

13 Disposal orders where animals taken: restriction of application

In section 34 (disposal orders where animals taken) of the 2006 Act—

- (a) in subsection (4), before “or” where it appears at the end of paragraph (d) insert—

15 “(da) an authorised person (as defined in section 32A) who does not fall within paragraphs (b) to (d), ”,

- (b) after that subsection insert—

 “(4A) A person mentioned in paragraphs (b) to (da) of subsection (4) may only make an application for an order under subsection (1) if a decision notice cannot be served under section 32C(2).”,

- 20 (c) in subsection (5)(a), after “(c)” insert “, (da)”.

CHAPTER 3

GENERAL PROVISION

14 Commencement

- (1) The following sections come into force on the day after Royal Assent—

- 25 (a) this section,
- (b) section 15.

- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

- (3) Regulations under this section may—

- 30 (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.

15 Short title

The short title of this Act is the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.

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

[AS INTRODUCED]

An Act of the Scottish Parliament to increase penalties for the most serious animal welfare offences, to provide for fixed penalties in relation to animal welfare offences generally, to increase the protection for service animals from being caused unnecessary suffering, to provide for fixed penalties in relation to animal health offences, to increase penalties in relation to certain wildlife offences; to confer power on inspectors and constables, where animals have been taken into possession to alleviate their suffering, to make arrangements for the treatment, transfer or destruction of those animals; and for connected purposes.

Introduced by: Roseanna Cunningham
Supported by: Mairi Gougeon
On: 30 September 2019
Bill type: Government Bill

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