

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

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, introduced in the Scottish Parliament on 30 September 2019.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 56-EN);
 - a Policy Memorandum (SP Bill 56-PM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 56-LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

The Bill

4. The Bill will amend the Animal Health and Welfare (Scotland) Act 2006 in the following ways:
 - it will increase the maximum available penalties for the most serious animal welfare offences to a prison sentence of five years, an unlimited fine or both (and make related procedural changes

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

including the removal of the six month time limit to bring prosecutions);

- it will give Scottish Ministers a power to make regulations allowing fixed penalty notices (FPNs) to be used in relation to certain animal welfare offences;
- it will increase the protection for service animals by making it easier to convict people of causing them unnecessary suffering; and
- it will give authorised persons (including certain inspectors and constables) new powers to transfer, sell, treat or humanely destroy animals that have been taken into possession to alleviate suffering.

5. The Bill will amend the Animal Health Act 1981 to give Scottish Ministers a power to make regulations allowing fixed penalty notices (FPNs) to be used in relation to certain animal health offences.

6. The Bill also amends several pieces of legislation protecting Scotland's wildlife in the following ways:

- it increases the maximum available penalties for the most serious wildlife offences to a prison sentence of five years, an unlimited fine or both;
- it increases the maximum penalty available for other wildlife offences remaining under summary conviction only, to a prison sentence of 12 months or a fine up to £40,000 or both; and
- it extends the time allowed for prosecution under summary conviction 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.

7. The offences for which penalties will be changed are at:

- Wildlife and Countryside Act 1981, sections 1, 5 to 11 and 14;
- Protection of Badgers Act 1992, sections 1 to 3;
- Conservation (Natural Habitats &c) Regulations 1994, regulations 39 and 41;
- Deer (Scotland) Act 1996, sections 17, 21 and 22;
- Wild Mammals (Protection) Act 1996, section 1; and

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

- Protection of Wild Mammals (Scotland) Act 2002, section 1.

8. The provisions of the Bill will impact on those that have committed an offence relating to animal welfare, animal health or wildlife, and on those who have a role in enforcing the legislation. The Bill provisions are not considered to impact on law-abiding animal owners, keepers or businesses more widely.

9. It is assumed that detection rates of animal health, welfare and wildlife offences will be unaffected by the provisions of the Bill, as no changes to detection methods are being proposed. Therefore figures relating to these offences from previous years have been used to estimate future costs, where possible.

10. 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.

11. Given the distinct elements of the Bill, this document addresses each of these in turn, in an effort to clearly define the costs to the Scottish Administration, local authorities and other bodies, individuals and businesses.

Increasing maximum penalties for welfare offences Costs on the Scottish administration – increasing maximum animal welfare penalties Introductory one-off costs

12. Increasing the maximum available penalties for the worst animal welfare offences in itself is not thought to be associated with any meaningful introductory costs for the Scottish Administration given that the proposals relate to existing legislation and any staff training will be a relatively simple update of the guidance and procedures surrounding the prosecution of these worst cases.

Scottish Prison Service (SPS)

13. The principal cost associated with increasing the maximum available penalties for animal welfare offences is likely to be an additional cost of any longer custodial sentences for the SPS.

14. Consideration of whether to prosecute any case lies with the Crown Office and Procurator Fiscal Service, (COPFS) as would the decision of whether to prosecute the case using summary or solemn procedure. If a case is prosecuted using summary procedure, the maximum penalty will be twelve months imprisonment as the increased maximum sentence of five years imprisonment provided for by the Bill will only apply to cases prosecuted on indictment.

15. Sentencing in any given case is a matter for the courts. The court decides an appropriate sentence within the overall legal framework. The Bill will increase the maximum penalties for certain offences. This will enhance the penalties available to the court in a given case, subject to decisions made by COPFS as to whether to prosecute the case at summary level or on indictment.

16. Data on the number of convictions in recent years for cases of unnecessary suffering (section 19) and animal fighting (section 23) which would benefit from increases in the maximum available penalties are set out in Table 1, as follows:

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

Table 1: Animal Welfare convictions under sections 19 & 23 in the last ten years

	Disposal	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Totals
Section 19(1)	Custody	3	3	3	2	2	1	2	3	2	1	22
	Community sentence	2	3	-	4	5	1	1	3	3	3	25
	Monetary	9	11	9	1	4	3	5	8	5	7	62
	Other	-	-	1	2	1	2	2	-	2	2	12
Section 19(2)	Custody	-	-	1	2	1	1	4	5	-	3	17
	Community sentence	5	6	6	12	7	22	24	10	10	19	121
	Monetary	37	64	38	51	51	34	45	26	20	14	380
	Other	9	17	14	14	22	15	11	12	6	8	128
Section 19(3)	Monetary	-	-	1	-	-	-	-	2	-	-	3
Section 23(2)	Custody	-	-	-	2	-	-	-	-	-	-	2
	Community sentence	-	-	-	1	-	-	-	-	-	-	1
Totals		65	104	73	91	93	79	94	69	48	57	773

17. As can be seen from Table 1, there have been 41 custodial sentences for relevant animal welfare offences in the past ten years (an average of 4.1 per year).

18. Within this context, it is challenging to make assumptions about the length of sentences in future cases. It is also not possible to predict what sentences may be appropriate without making assumptions about the type

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

of cases that will come before the courts in terms of the type, range and severity of offending and also about the profile of the offender e.g. age, previous convictions (including similar offending), personal circumstances and means etc. All of these factors will inform the appropriate sentencing outcome in any court case.

19. It is considered that any extra costs to the SPS will arise from courts using their enhanced sentencing powers to impose custodial sentences for the offences in question which are longer than can be currently imposed. Such costs would relate to the additional time people convicted of relevant offences may spend in custody in future years (when maximum sentences of up to five years apply) as compared to sentencing practice currently (where maximum sentences of up to one year apply).

20. In order to estimate what those extra costs might amount to, sentencing data for the period 2008 to 2018 for relevant offences under the Animal Health and Welfare (Scotland) Act 2006 has been considered to inform reasonable estimates of potential future sentences after maximum penalties are increased. The Scottish Government have developed potential scenarios and made assumptions about future sentences using the data held on previous offences for unnecessary suffering (section 19) and animal fighting (section 23). These scenarios assume that the average cost of a year in prison is £35,000 per year (Costs of Criminal Justice System in Scotland, May 2018).¹

21. The provisions in the Bill do not provide for mandatory minimum prison sentences. Rather, the provisions increase the maximum penalties available by way of prison sentence for certain animal welfare offences from twelve months to five years.

22. The proposed increase to maximum prison penalties is not expected to change sentencing significantly for the majority of cases; it would, however, ensure that the courts have sufficient sentencing powers to deal with the

¹ Scottish Prison Service, Source SPS accounts 2015-16. The cost of a prisoner place is £35,000. This is a rolling 3 year average of the average cost per prisoner place, calculated on a resource accounting basis (including depreciation and impairment charges). A 3 year rolling average is presented to smooth the effects of including impairment charges which can significantly affect the value of a single year's average cost of a prison place.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

worst and most severe types of conduct that constitutes the relevant offences.

23. In the past ten years there have been three cases that received a custodial sentence of over three hundred days. This cohort of cases has been used to represent the “worst offences” that could merit a sentence over twelve months in the future. There is no reason to expect that the frequency of such cases will increase in future, and therefore calculations are based on the assumption that there will be a further three cases severe enough in nature to merit a significant custodial sentence over the next 10 years; an average of 0.3 cases per annum.

24. A range of scenarios has been developed using these assumptions to help estimate the potential impact of the higher maximum prison penalties. These scenarios also assume that most offenders continue to be tried by summary process and receive sentences similar to those handed out in the past, but that those 0.3 cases per annum receiving a custodial sentence close to the current maximum sentence would in future receive either:

- A sentence of the new maximum of 5 years, or
- A sentence of 3 years, or
- A sentence of 2 years.

25. It is also assumed that early release rules would continue to apply; these impact on the cost estimates. A release factor of 0.5 (which means release after half of any sentence has been served), has been assumed unless otherwise stated. This is in line with the release statute for sentences less than four years. The scenarios are detailed in Table 2:

Table 2: Costs associated with increases in maximum sentences, for the "most severe" animal welfare cases

	Cost of existing sentences, serve ½	5 year sentence, serve maximum 4.5	5 year sentence serve 2.5	3 year sentence, serve 1.5	2 year sentence, serve 1
Early release factor	0.5	0.1	0.5	0.5	0.5

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

Average sentence (years)	1.16 ²	5	5	3	2
Assumed sentence served (years)	0.58	4.5	2.5	1.5	1
Cost of proposed sentence	£20,300	£157,500	£87,500	£52,500	£35,000
No of sentences issued (per year)	0.3	0.3	0.3	0.3	0.3
Difference in cost	£0	£137,200	£67,200	£32,200	£14,700
Maximum additional cost (per year)	£0	£47,246	£26,246	£15,746	£10,496

26. As can be seen from Table 2, the highest estimated cost increase is seen in the scenario where all of the most serious cases are given the maximum five-year sentence and are released six months before their sentence is over; this would result in an additional cost to the SPS of around £50,000 per year. In reality, it is unlikely that all cases tried by indictment would attract the maximum custodial sentence, and the actual additional costs are likely to be significantly less than this. This example is, however, included for illustrative purposes.

Cost of court procedures

27. As part of increasing the maximum available penalties, the Bill proposes that offences under sections 19 (unnecessary suffering) and 23 (animal fighting) could in future be tried either summarily or on indictment under solemn procedure. COPFS will decide the appropriate forum in each case taking into account, inter alia, the seriousness of the offending.

28. As noted previously, increasing the maximum prison penalties available is not expected to change sentencing significantly for the majority of cases, and the Scottish Government expects most cases to continue to

² The average custodial sentence is above the maximum currently available sentence because one of the three “most serious” cases received a sentence of 547 days as this was an aggravated sentence due to the offender breaching bail conditions.

be tried by summary procedure. Proceedings at solemn level are likely to be the exception for particularly extreme offending and possibly for persistent offenders.

29. In order to estimate potential additional court costs arising from the proposed increase to maximum penalties, and following on from the assumptions in the previous section, it is assumed that there will be three cases over the next ten years of a nature extreme enough to warrant court action under solemn procedure in relation to animal welfare offences. Details of the costs are detailed in Table 3:

Table 3: Estimates of the unit cost of criminal procedures, 2015-16

Level of Jurisdiction	Procedure	Average prosecution costs per procedure (COPFS)	Average court costs per procedure (SCTS)	Average legal assistance costs per procedure (SLAB)	Total average costs
Sheriff Court solemn	Section 76 pleas		£148	£1,344	£8,086
	Guilty plea at first diet		£195	£1,344	
	Guilty plea at trial diet		£249	£1,344	
	Trials - Evidence led		£9,056	£3,633	
	Average cost of procedure	£4,238	£2,234	£1,614	
Sheriff Court summary	Guilty plea at pleading diet	£421 * Please note this figure represents the average cost of procedure for the	£101	£562	£1,452
	Continued without plea then guilty plea tendered		£148	£562	

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

Guilty plea at intermediate diet	Sheriff Court Summary and Justice of the Peace court (excluding stipendiary cases).	£195	£566
Guilty plea at trial diet		£296	£566
Trials - Evidence led		£1,617	£751
Average cost of procedure		£441	£590
Average additional costs of solemn procedure, per procedure, assuming legal aid is claimed			£6,635

30. Solemn prosecutions cost COPFS an average of £4,238 to prosecute, as opposed to the average cost of a summary procedure of £421.

31. The average court costs for solemn procedures for the Scottish Courts and Tribunals Service (SCTS) is £2,234, as opposed to the average cost of a summary procedure of £441. These figures are the average cost of procedure and is a weighted average using the volume of procedures. The figure includes depreciation.

32. The average costs relating to the Scottish Legal Aid Board (SLAB) have been calculated as £1,614 for solemn and £590 for summary proceedings. These figures are average cost per legal aid certificate (per individual). These figures are calculated by dividing total legal aid costs for cases which finish at each procedure by the corresponding number of legal aid certificates. Where a case progresses through several procedures, all legal assistance costs are included in the costs of the final procedure.

33. The changes proposed to the maximum penalties are not expected to have a significant effect on the number of people applying for legal aid. Despite the potential for greater complexity and greater sanctions, it is considered reasonable that the same proportion of individuals will need to apply for legal aid in any case.

34. Therefore, it is estimated that the average additional cost to the Scottish administration (including legal aid) will be £6,635 for each case

pursued under solemn procedure. COPFS has advised that only the significant minority of cases are likely to be tried under solemn procedure. Using the previous assumption of 0.3 cases per annum on average over the next ten years, this would give an estimated total for additional court costs of £1,991 per annum. Estimates are also provided for other potential scenarios in Table 4;

Table 4: Additional costs for solemn procedure

Number of solemn cases (next ten years)	Additional costs	Annual costs (next ten years)
1	£6,635	£664
3	£19,905	£1,991
5	£33,175	£3,318
10	£66,350	£6,635

35. There may be a limited number of additional cases that come forward to COPFS due to the removal of the six month time limit. It is difficult to make a reasonable estimate about the number of cases in this category, and whether these would result in prosecutions and, if so, at what level. The determining factors in the course of each investigation and any resultant case reported to COPFS largely depend on the individual facts and circumstances involved in each instance. If any new cases were taken forward at solemn level, Table 4 illustrates the potential additional costs.

Additional protection for service animals

36. The Scottish Government takes attacks on service animals and their handlers extremely seriously, and the Bill proposes to require courts to disregard any claims that the accused was defending themselves, other persons or other animals during prosecutions for unnecessary suffering of service animals. This may result in a few additional convictions and increased sentences for unnecessary suffering; however, quantifying and costing this has proved particularly challenging.

37. It has not been possible to quantify how many times service animals have been attacked in the past. These incidents are not easily identifiable by charges reported to COPFS by Police Scotland; they could be reported

and prosecuted as a potential animal welfare offence or be included in a charge such as breach of the peace or threatening and abusive behaviour.

38. Attacks on service animals in Scotland are, however, thought to be rare. Anecdotally, Police Scotland has said that attacks on police dogs occur approximately once a year. However, it is concerned that this may increase.

39. COPFS has advised that disregarding self-defence when considering an offence of unnecessary suffering would not impact on the cost of bringing that case to court and would have no effect on the initial decision to raise proceedings.

40. In terms of costs to the SPS, there may be a few additional convictions and increased sentences for unnecessary suffering inflicted on service animals that might previously have fallen, and therefore there may be a few additional custodial sentences, and costs arising from the time those people spend in prison.

41. As with other unnecessary suffering offences, it is not possible to predict what sentences may be awarded in connection with attacks on service animals without making assumptions about the type of cases that will come before the courts in terms of the type, range and severity of offending and also about the profile of the offender, e.g. age, previous convictions (including similar offending), personal circumstances and means etc.

42. All of these factors will inform the appropriate sentencing outcome in any court case. Given the very small number of relevant incidents each year, any such additional cost is likely to be negligible. It is considered reasonable to assume that any additional costs to the SPS arising from providing this additional protection to service animals and any additional cases that come forward due to the removal of the six month time limit could be included in the upper estimate of the additional costs associated with the most serious welfare cases in Table 2 (i.e. between £10,000 and £50,000 per annum).

Costs on local authorities- increasing maximum animal welfare penalties

43. Local authorities have a significant role in the enforcement of the Animal Health and Welfare (Scotland) Act 2006 and regulations made under it. Their involvement includes the issuing of licences, the carrying out of inspections, providing advice to animal keepers, evidence gathering, reporting cases to COPFS, involvement in court cases, and taking steps to protect the welfare of animals considered to be at risk. The enforcement of animal welfare rules takes up a significant amount of local authority staff time on an ad hoc basis.

44. The increased maximum available penalties are not expected to add to the time and resource required as no new offences are being created that would require additional enforcement actions. Instead, what the Bill does is enhance the maximum sentences for offences relating to conduct that is already criminal.

45. Similarly, the introduction of the option of prosecuting these offences on indictment is unlikely to result in additional costs for local authorities, as the number and severity of the cases are assumed to be constant, and the evidence burden and local authority staff roles and responsibilities will also remain the same.

46. The procedural changes associated with increasing the maximum penalties result in the mandatory six-month time bar for commencing prosecutions being removed. This should benefit all the enforcement agencies including local authorities, allowing more time to gather evidence such as post mortems and prepare for what can often be complicated cases involving significant numbers of animals. Local authorities are specialist reporting agencies and have formal arrangements with the COPFS to ensure that reports of criminal conduct submitted to them for consideration contain the appropriate information to enable effective prosecutions. The current guidance from COPFS is that specialist reporting agencies (including local authorities) should aim to get the case reports to the COPFS within three months in order to fulfil the current six-month time limit to prosecute cases summarily.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

47. The removal of the six-month time limit within which any prosecution must be commenced could potentially result in an increase in the number of cases that get taken for prosecution. However, as local authorities are well-used to working to the current six-month deadline, this is not anticipated to be significant. The removal of the time bar may also enable local authorities to produce reports to a better standard, potentially resulting in a higher proportion of report cases being taken for prosecution by COPFS. However, this is not expected to impact on local authority costs, as the bulk of staff time and costs arises from their investigation of the case and their preparation of a report, rather than from any court case itself. This preparatory work must proceed in any case, whether prosecuted or not.

48. The changes to provide additional protection to service animals are not thought to add additional costs to the operations of local authorities.

Costs on other bodies, individuals and businesses – increasing maximum welfare penalties

49. The Scottish SPCA undertakes an important role in enforcing animal welfare rules in Scotland, acting on the front line in policing animal welfare legislation, rescuing animals in distress, and providing guidance and advice to animal keepers. Scottish SPCA inspectors are appointed as inspectors by Scottish Ministers, and their powers under the Act are the same as inspectors appointed by local authorities. They tend to deal with companion animal cases and can encounter a wide range of circumstances, often involving complicated criminal cases and multiple animals.

50. The Scottish SPCA routinely co-operates with local authorities and other enforcement agencies including Police Scotland, particularly at the outset of a public complaint about an animal welfare issue, when the authorities, including the veterinary staff of the Animal and Plant Health Agency (APHA) decide which organisation will lead on the investigation and any enforcement action.

51. The Scottish SPCA is also a specialist reporting agency and on average sends one hundred and thirty one cases annually to the COPFS.

52. The removal of the six-month time bar will hopefully allow for the Scottish SPCA to deal appropriately with the most complicated cases, with

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

the authorities having enough time to prepare for the case, and therefore allowing the courts to administer appropriate and proportionate justice.

53. The Scottish SPCA has indicated that the increase in maximum penalties should not have a cost implication, as all of the investigation work will remain unchanged, with only the end result potentially more proportionate.

54. The proposals to increase the maximum penalties for welfare offences will not have any impact on individuals and businesses that do not breach animal welfare legislation.

55. Any increases in fines imposed by the courts are not being considered as additional costs.

56. The changes to provide additional protection to service animals are not thought to impact on other bodies or organisations.

Increasing maximum penalties for wildlife offences

Costs on the Scottish administration – increasing maximum wildlife penalties

Introductory one-off costs

57. Increasing the maximum available penalties for the worst wildlife offences in itself is not thought to be associated with any meaningful introductory costs for the Scottish Administration, given that the proposals relate to existing legislation, and any staff training will be a relatively simple update of the guidance and procedures surrounding the prosecution of these worst cases.

58. The police will continue to report cases, and respond to complaints by the public in the same way as they do currently.

Scottish Prison Service (SPS)

59. The principal cost associated with increasing the maximum available penalties for wildlife offences is likely to be an additional cost of any longer custodial sentences for the SPS.

60. The provisions in the Bill do not provide for mandatory minimum sentencing. Rather, the provisions increase the maximum penalties available for wildlife offences from twelve months to five years. For wildlife offences to be prosecuted under summary procedure only, the maximum sentence will be increased from six months to twelve months and for those to be tried under either summary or solemn procedure, up to five years.

61. COPFS decides whether or not to prosecute any case and if so, at what level. This is relevant as the proposed increase in maximum penalties to five years for certain offences does not mean such a sentence will be available to the court in every case; that would depend on the decision by the prosecutor about the appropriate forum. If a case is prosecuted in a summary court, the maximum penalty will be 12 months as this is the general sentencing limit of a summary court even though the maximum provided under the Bill would be five years.

62. Sentencing in any given case is a matter for the courts. The court decides an appropriate sentence within the overall legal framework. This Bill will increase the maximum penalties for certain offences. This will enhance the penalties available to the court in a given case, subject to decisions about the appropriate forum, summary or solemn.

63. Data on the number of convictions in recent years for the relevant offences (i.e. the offences where the maximum penalties are being increased) is as follows:

Table 5 : Wildlife convictions in the last nine years

Disposal	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Total
Custody	1	0	7	8	1	1	1	1	2	22
Community sentence	0	0	1	1	4	2	4	5	3	20
Monetary	18	33	37	33	43	28	11	15	17	235
Other	5	4	3	14	12	4	4	1	3	50

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

Total	24	37	48	56	60	35	20	22	25	327
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64. As can be seen from table 5, there have been 22 custodial sentences for relevant wildlife offences in the past nine years (an average of 2.4 per year).

65. Within this context, it is challenging to make assumptions about the length of sentences in future cases. Also it is not possible to predict what sentences may be appropriate without making assumptions about the type of cases that will come before the courts in terms of the type, range and severity of offending and also about the profile of the offender, e.g. age, previous convictions (including similar offending), personal circumstances and means etc. All of these factors will inform the appropriate sentencing outcome in any court case.

66. It is estimated that any extra costs to the SPS will arise from courts using their enhanced sentencing powers to impose custodial sentences for the offences in question which are longer than can be currently imposed.

67. Any extra costs would relate to the additional time people convicted of the relevant offences will spend in custody in future years (when maximum sentences of up to five years apply) as compared to sentencing practice currently (where maximum sentences of up to one year apply).

68. In order to estimate what those extra costs might amount to, sentencing data for the period 2009 to 2018 for offences the wildlife legislation stated above have been considered to inform reasonable estimates of potential future sentences after maximum penalties are increased.

69. The Scottish Government has developed potential scenarios and made assumptions about future sentences using the data held on previous convictions for the relevant wildlife offences.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

70. The following scenarios use as an estimated costs that the average cost of a year in prison is £35,000 per year (Costs of Criminal Justice System in Scotland, May 2018).³

71. The new maximum sentences are intended to ensure the courts have sufficient powers to deal with the worst and most severe types of conduct that constitutes the relevant offences.

72. Keeping in mind that the enhanced maximum sentences are intended for the worst examples of conduct committed as part of the relevant offences, during the last ten years there have been three cases involving the wildlife offences mentioned above that have received a custodial sentence of over 150 hundred days; this can be represented as 0.3 per annum.

73. As explained above, this cohort of cases has been chosen to represent those deemed to be the most extreme in nature and therefore exactly the type of case where the enhanced maximum sentences might be considered for use.

74. A range of scenarios has been considered to help estimate the impact of the new maximum sentences. These are provided in the table below and are as follows:

- Assume all those receiving a custodial sentence close to the current maximum sentence will in future receive:
 - A sentence of the new maximum of five years,
 - A sentence of two years.

75. In addition and for illustrative purposes, the effect of early release rules is shown in different aspects of cases where the new maximum sentence of five years is imposed.

³ Scottish Prison Service, Source SPS accounts 2015-16. The cost of a prisoner place is £35,000. This is a rolling 3 year average of the average cost per prisoner place, calculated on a resource accounting basis (including depreciation and impairment charges). A 3 year rolling average is presented to smooth the effects of including impairment charges which can significantly affect the value of a single year's average cost of a prison place.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

76. Therefore, for the purposes of comparing future costs a release factor of 0.3 has been used (unless otherwise stated), which would mean release after two-thirds of any sentence.

77. A number of scenarios detailing the additional costs of potential future custodial sentencing are detailed in Table 6, the upper limit equates to a maximum of £50,000 for wildlife cases.

Table 6: Costs associated with increases in maximum sentences, for the "most severe" wildlife cases

	Cost of existing sentences, serve ½	5 year sentence, serve 4.5	5 year sentence, serve 3.75	5 year sentence, serve 2.5	2 year sentence, serve 1
Early release factor	0.5	0.1	0.3	0.5	0.5
Average sentence (years)	0.51	5	5	5	2
Assumed sentence served (years)	0.26	4.5	3.5	2.5	1
Cost of proposed sentence	£8,925	£157,500	£122,500	£87,500	£35,000
No of sentences issued (per year)	0.3	0.3	0.3	0.3	0.3
Difference in cost	£0	£148,575	£113,575	£78,575	£26,075
Maximum additional cost (per year)	£0	£50,000	£40,000	£30,000	£10,000

78. As noted above, the policy intent with the enhanced maximum sentences is to ensure the courts have sufficient powers to deal with the most severe types of case. It is not intended for sentences imposed generally to be increased. Sentence inflation is discussed above in Table 3.

79. The Scottish Sentencing Council has indicated its intention to develop a sentencing guideline on environmental and wildlife offences. The likely

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

timescale for this work, which will depend in part on any relevant legislative changes which may be made, will be announced by the Council in due course.

Court procedures

80. The costs of amending the available court procedures is discussed above in the section on increasing maximum animal welfare penalties.

Costs on local authorities- increasing maximum wildlife penalties

81. The investigation of wildlife crime falls to Police Scotland and local authorities do not enforce any wildlife legislation. The Bill provision to increase the maximum available penalties should not result in any additional costs.

Costs on other bodies, individuals and businesses – increasing maximum wildlife penalties

82. Scottish SPCA will also benefit from removal of the time bar, as it also has a duty under the 2006 Act to report some wildlife cases to the COPFS, and has indicated its support for this procedural change, as it often encounters complicated criminal cases involving serious organised crime elements, and multiple animals.

83. The removal of the six-month time bar will hopefully allow for the enforcement organisations to deal appropriately with the most complicated cases, with the authorities having enough time to prepare for the case, and therefore allowing the courts to administer appropriate and proportionate justice.

84. Scottish SPCA has indicated that the increase in potential maximum penalties should not have a cost implication, as all of the investigation work will remain unchanged, with only the end result potentially more proportionate.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

85. The proposals to increase the maximum penalties for wildlife offences will not have any impact on individuals and businesses that do not breach wildlife legislation.

86. The provision of vicarious liability currently applies to certain wildlife offences. It allows those who have management responsibility (e.g. game managers or employers) to be held responsible for specific offences, for example 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.

87. These changes will only apply to existing offences and the standard of proof for those is not changing.

Introducing the provision for fixed penalty notices costs on the Scottish administration – animal health & welfare fixed penalty notices

88. The Bill confers a new powers on the Scottish Ministers to introduce, by regulations, provision for the use of FPNs for less serious animal health and welfare offences. It does not, in itself, introduce a fixed penalty notice regime.

89. Detailed cost estimates for specific fixed penalty rules will be set out as part of the process to consult on, draft and introduce these Scottish Statutory Instruments (SSIs), which will be subject to affirmative procedure and scrutinised by the relevant parliamentary committee as and when they are to be introduced.

90. As a general observation, it is noted that the introduction of FPNs is not anticipated to result in any significant additional direct costs for the Scottish Administration, other than the associated introductory costs relating to the drafting of the subsequent SSIs and any necessary guidance as and when these regulations are made.

91. There may be a small saving to the SCTS and COPFS as it is expected that the introduction of proportionate FPN regimes will reduce the number of cases referred to the courts, although due to the minor and

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

technical nature of these types of offences it is assumed that the number of cases reported to the COPFS is currently very small.

Costs on local authorities – animal health & welfare fixed penalty notices

92. As noted previously, the Bill does not itself introduce a fixed penalty regime, and there will be no costs to local authorities arising from the conferring on the Scottish Ministers the power to introduce such regimes in future regulations. However, it is recognised that the new power may be used to confer on inspectors employed by local authorities the power to serve FPNs.

93. Detailed cost estimates for specific fixed penalty rules would be set out as part of the process to consult on, draft and introduce these SSIs, which will be subject to affirmative procedure and scrutinised by the relevant parliamentary committee as and when they are to be introduced. However, some general observations are provided here.

94. The introduction of FPNs by future regulations may give rise to some associated introductory costs in terms of training and the production of the relevant notices; however, these are likely to be minimal, given that local authorities have experience in using FPNs for a wide range of enforcement purposes, and would issue them whilst undertaking their usual duties. Once any new guidance is published and understood by staff an additional cost will be the production of the notice booklets (considered to be around £250 per booklet). One day of training for the staff involved has been suggested as reasonable. It is assumed that these costs could form part of business as usual expenditure for the local authorities.

95. The penalties to be imposed for each offence will be determined by the regulations. It is intended that these will be reasonable and proportionate in order to change behaviour, provide an immediate deterrent, and improve compliance. The regulations will also determine the destination of any funds received by an enforcement authority in consequence of the issuing of FPNs.

96. Currently, the type of technical offences anticipated to attract fixed penalties in future are dealt with by local authorities by either warning

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

letters, advice or the issuing of care notices. Some cases may be reported to the COPFS.

97. The proposed introduction of FPNs will provide local authorities with an additional enforcement tool, enabling enforcement staff to issue FPNs when administrative or technical breaches of the relevant regulations occur.

98. It is anticipated that this would result in savings in local authority staff time, as the issuing of a FPN could occur as soon as the enforcing authority is satisfied that the statutory tests (to be set out in the FPN regulations) for issuing it have been met; and in many cases no further enforcement action would be required (in the event that the penalty payment is made), including no further involvement of the courts.

Costs on other bodies, individuals and businesses – animal health & welfare fixed penalty notices

99. As the Bill does not itself introduce any fixed penalty regime, there will be no costs for any bodies, individuals or businesses arising from the proposed provision to give the Scottish Ministers the power to introduce such regimes in future by regulations. There are unlikely to be significant costs to other bodies, individuals or businesses associated with introducing future regulations. Any potential impact on other bodies, individuals and businesses would be considered at the time of developing and introducing the relevant regulations. However, no additional costs would be imposed on law-abiding persons.

100. All enforcement bodies have welcomed the proposed new power to introduce fixed penalty notice regimes by regulation and the Scottish SPCA and APHA are supportive of the proposal for local authorities to have a role in issuing such notices to enforce minor and technical offences that do not impact directly on animals' welfare.

Powers over animals to benefit animal welfare costs on the Scottish administration – powers over animals

101. The Bill confers new powers directly on “authorised persons” (certain inspectors and constables and persons or bodies specifically authorised by the Scottish Ministers) to make arrangements for animals that have been taken into possession by inspectors or constables to protect their welfare.

102. The new powers enable authorised persons to transfer the ownership of, administer treatment to, and in limited circumstances destroy, such animals. Arrangements for an appeals process to allow the previous owner of the animals in question to challenge the decision to dispose of the animals and the compensation due are also proposed.

103. This new process will supplement existing mechanisms in the 2006 Act to make permanent arrangements for such animals, all of which require a court order, and is expected to become the default mechanism in use.

104. There will be minimal costs to the Scottish Administration arising from the need to update the guidance to the 2006 Act to explain the new process.

105. 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 appeal process is expected to use the summary applications procedure available in the sheriff courts.

106. Similar costs currently arise from applications for a court order to make permanent arrangements for animals. Discussions with local authorities and the Scottish SPCA, suggest that the formal powers to dispose of animals (using a section 34 disposal order) have been used around forty times since 2006, or an average of around three incidents per year. In the next ten years, therefore, there could be thirty instances where these new powers are used.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

107. If all cases under the new powers resulted in one appeal (on either the decision or the compensation amount), this would equate to the costs of the current system for the Scottish Administration, where every such case requires to be heard by the court.

108. If there were to be an appeal of both the compensation value and the decision to dispose of the animals, that would result in a new additional cost; however in practice, it is considered that less than half of cases are currently challenged and therefore future appeals will be the exception rather than the norm.

109. Given that the Scottish Government is assuming that the intervention and detection rates for these situations will remain unchanged in the coming years, the assumption is that there will be no new costs to the Scottish Administration in organising and facilitating summary sheriff court appearances relating to appeals.

Costs on local authorities – powers over animals

110. The new powers to make permanent arrangements for animals seized to protect their welfare should result in significant savings for local authorities by reducing the amount of time animals need to be cared for in temporary accommodation, reducing all the associated staff and ancillary costs, and potentially reducing the number of occasions staff have to attend court proceedings to resolve these matters.

111. Although it is hoped that local authorities can use these new powers to intervene earlier to resolve welfare issues, in the assurance that any associated costs will be significantly reduced, as stated above, it is assumed that the detection and intervention rates for animals at risk will remain the same, and an estimate of thirty cases in the next ten years continues to be considered reasonable in this section.

112. Case studies of costs arising from animals being seized by local authorities under the current arrangements are set out in Table 7:

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

Table 7: Example costs

Case A		Case B	
300 sheep and lambs, 40 cows and calves		60 sheep and lambs, 25 cows and calves	
Animals taken possession (section 32)	20/04/10	Animals taken possession (section 32)	16/01/13
Civil disposal order (section 34) granted	21/05/10	Civil disposal order (section 34) granted	01/03/13
Final sale / disposal (after calving, and health restored)	28/09/10	Final sale / disposal (after calving, and health restored)	23/09/13
Did previous owner challenge / appeal proceedings?	no	Did previous owner challenge / appeal proceedings?	no
	£50,10	TOTAL EXPENDITURE	£17,59
TOTAL EXPENDITURE	4	TOTAL INCOME (livestock sales)	1
TOTAL INCOME (Livestock sales)	£18,40	TOTAL INCOME (livestock sales)	£21,60
FINAL COSTS INCURRED BY LOCAL AUTHORITY	<u>£31,69</u>	BALANCE PAID TO PREVIOUS KEEPER	<u>£4,016</u>
	<u>9</u>		

113. It should be noted that the principal difference between these two examples is the inclusion of the authority's staff costs in Example A; which related to over three hundred hours of staff time and over £20,000. Also the costs illustrated above occurred in 2010 and 2013, and therefore one would expect many costs to be significantly greater at today's prices (e.g. haulage, contractors etc).

114. These examples illustrate the unique circumstances of these challenging interventions, the need for bespoke arrangements, and the dangers of making too many assumptions about how much these interventions can cost. Some general observations and details about these interventions are set out here.

115. The decision to take the animals into possession of the authorities is often the culmination of months of multiple agency intervention in an attempt to resolve the animal welfare situation using the existing hierarchy

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

of enforcement, and encouraging the owner to take restorative action voluntarily.

116. Enforcement colleagues will first attempt to resolve any welfare issues in situ formally and informally by providing guidance, warning letters and care notices in order to encourage and enable the owner to take the necessary steps to secure the welfare of their animals.

117. Taking animals into possession under Section 32 of the 2006 Act is currently considered by local authorities to be the last resort to protect the welfare of the animals concerned.

118. Local authorities tend to deal with agricultural incidents, often in collaboration with the Scottish SPCA, Police Scotland at the initial investigation phase and relying on support from APHA veterinary staff to inspect livestock and take any necessary remedial action.

119. It is widely accepted that it is unusual and uncommon that a farmer intentionally maltreats their livestock, given farming is their lifestyle and their livelihood. It is the experience of the authorities that the majority of welfare cases on farms are the result of an unrelated issue such as a family bereavement, economic difficulties or mental illness rather than deliberate abuse. However the welfare of farmed animals can deteriorate quickly and the full extent of the welfare issue is often not realised until a full site inspection is conducted in conjunction with the veterinary staff of APHA.

120. At this time, when the extent of the welfare issue is established on farm, the authorities will often encounter animals in various conditions, often electing to destroy a cohort of animals to prevent further suffering, including those that are considered “unfit to travel” using the existing powers of section 32.

121. The surviving animals are routinely transported to a safe location where they can be cared for under the supervision of competent staff, at the cost of the authorities. It is common, and indeed the case in these examples that the authorities retain the animals in protective care until sporadic lambing or calving have occurred and the animals had been restored to health prior to any sales. These actions results in a significant loss for one authority (example A), whilst in the example B some money was returned to the previous owner.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

122. In both the case studies provided, the application for a civil disposal order under section 34 went remarkably smoothly, being granted four and six weeks after the animals had been seized. This is not always the case. The length of time it takes to obtain a court order is highly variable for reasons set out in the Policy Memorandum accompanying the Bill, and the potential mounting costs for accommodation, feed and care may be a limiting factor, potentially discouraging authorities from intervening earlier.

123. Local authorities do not have a dedicated budget for these emergency interventions, nor do they have access to suitable facilities to look after these animals, and therefore the costs for the temporary housing quickly escalate whilst the court decides the animals' fate.

124. Court proceedings to resolve the section 34 disposal order can routinely be frustrated and challenged to delay the decision of the court. This can currently result in such cases being dragged out for several years. The worst example cited has lasted over three years and has therefore cost the authority over £250,000.

125. The new process proposed in the Bill would allow local authorities, once they have assessed animals that have been taken into possession, to issue a decision notice to the owner setting out what permanent arrangements they intend to make for the animals in their possession, and giving a period of three weeks for the owner to apply to appeal the decision through the new appeals process, or for the animals to be released under section 33 of the 2006 Act.

126. It is anticipated that the majority of decision notices would be implemented without challenge, which would mean that, in the vast majority of cases, permanent arrangements could be made for animals three weeks after serving a notice on the owner, which is significantly less time than the current court procedure can often take to complete.

127. As well as benefiting the welfare of the animals concerned, this is also likely to result in significant savings to local authorities. However, it is challenging to quantify these savings given the ad hoc and bespoke nature of such cases and the variability in the length of time animals remain in possession currently. For example, the costs associated with accommodating one hundred cattle in summer in Fife will be significantly different from 20 sheep in the Hebrides in winter, not least because the

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

time of year and location will affect the availability of suitable temporary accommodation and staff to provide subsequent care.

128. There is potentially a cost to local authorities associated with defending appeals. However, as with the costs to the Scottish administration, these are likely to be similar to costs currently incurred whilst applying for a court order under section 34. As for the Scottish Administration, if all cases using the new powers resulted in one appeal, the change would be cost neutral. If all owners made two appeals, there would be potential additional costs and, if none of the cases were appealed, there would be a saving.

129. Assuming the authorities have acted in the best interests of the animals, and investigated the case correctly, it is considered unlikely that many competent appeals will be received by the courts, particularly as owners will be offered compensation based on the value of the animals less reasonable costs and any associated fines. Furthermore, the burden of proof will lie with the previous owner of the animals, who will have to identify relevant grounds of appeal and bring proceedings at their own expense.

130. It is therefore considered that there will be no new costs to local authorities as it is anticipated that the majority of decision notices would be implemented without challenge, representing a significant saving in both time and expense overall. What exactly that saving might be is difficult to estimate, however.

131. The compensation due to the previous owner under the new arrangements falls to local authorities to pay.

132. The Bill proposes that this amount is based on the value of the animals either at the time of seizure, or immediately before the decision on their future is implemented (whichever is the greatest) less any relevant expenses. It is anticipated that in most cases this will be cost neutral for local authorities.

133. Depending on the activities undertaken in relation to the animals and the opportunities for sale, there may be occasional cases where there is a cost to local authorities, as the value of compensation is less than the value achieved at a subsequent sale. This is difficult to quantify. However, it is

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

anticipated that this could be offset by savings in staff time and animal care relative to the current, often lengthy, process via court orders.

Costs on other bodies, individuals and businesses – powers over animals

134. As one of the largest charities in Scotland with facilities for housing rescued animals and with inspectors involved at the frontline of enforcing animal welfare rules, the Scottish SPCA is often responsible for the care of animals taken into possession to protect their welfare.

135. The proposed new process for making permanent arrangements for such animals would result in a significant saving for the Scottish SPCA, primarily relating to the reduction of time animals have to be kept in temporary accommodation awaiting any court decision.

136. Scottish SPCA estimates it has spent over £1.5 million since 2016 caring for animals involved in court proceedings. It estimates that such temporary cares costs £15 per kennel per day excluding veterinary costs to accommodate a dog, £6 for a cat, and £20 for horses. Therefore accommodation costs can quickly become significant.

137. Current commercial rates for dogs and cats are around £20 per animal per day.

138. The Scottish SPCA reports the majority of cases to the COPFS under Part 2 of the 2006 Act, and has on average reported 131 cases for prosecution annually in recent years. It is estimated that approximately fifty percent of owners voluntarily transfer ownership of the animals to the Scottish SPCA once the evidence of suffering is highlighted and it becomes clear that this means that the necessary veterinary care will be paid for by the charity and not be the responsibility of the previous owner. This means that animals can be rehomed as soon as their health is restored and a home can be found for them.

139. All other animals have to be cared for until either a disposal order is obtained under section 34 of the 2006 Act, or until the resolution of the associated criminal case, at which point the court may provide an order

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

depriving the convicted offender of the animals associated with the case under section 39 of the 2006 Act.

140. This results in a significant number of animals being kept in the temporary care of the Scottish SPCA and other animal charities for significant lengths of time. During a busy period in 2018 of the two hundred kennel places available, only two housed dogs were available for rehoming; all the other spaces housed dogs being kept in temporary refuge while awaiting the resolution of court proceedings.

141. A sample of cases illustrating these issues is detailed in Table 8;

Table 8: Estimated costs to Scottish SPCA (excluding veterinary costs)

Animals	Date animals seized by the Scottish SPCA	Date of sentencing in court	Days	Estimated cost for general care	Cost per animal
2 cats	02/05/2018	30/10/2018	181	£2,172	£1,086
1 dog	08/02/2018	15/08/2018	188	£2,715	£2,715
59 dogs	19/01/2016	24/10/2017	644	£569,940	£9,660
1 dog	13/08/2013	22/09/2017	1501	£22,415	£22,415
9 dogs	03/12/2016	29/08/2017	269	£36,315	£4,035

142. The Scottish SPCA does not routinely seek disposal orders under section 34, due to the additional legal costs associated with applying for a court order, partly because they do not have in-house legal advisors. It generally opts to wait for the conclusion of the criminal case, and the associated deprivation order which can only be achieved as the result of a criminal case. However, in some cases, what might be saved in legal costs by waiting for the deprivation order is added in costs for caring for the animals over an extended period of time. From a sample of recent cases, the average time the animals have remained in the care of the Scottish SPCA is over five hundred days.

143. The most recent disposal order sought by the Scottish SPCA was granted in its favour nine months after the seizure of the animals and cost over £42,000 in legal fees, with associated accommodation costs for 89

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

dogs of over £286,000 (not including veterinary fees). The decision to apply for a disposal order in this particular case has been vindicated given that the criminal case was only resolved two years after the initial incident, in August 2019, and the animals would have had to be housed in temporary accommodation at an additional cost of over £360,000.

144. Therefore, it is the Scottish SPCA's intention to use the new powers in the Bill in all future animal welfare cases where the animals need to be removed from their current situation in order to protect their welfare, and they cannot be returned to their owner and the owner does not voluntarily transfer ownership to the Scottish SPCA.

145. A potential cost to the Scottish SPCA will be defending any competent appeals lodged to dispute the decision notice issued. However, as with local authorities, the number of appeals is not anticipated to be high; and the costs of defending any appeals can be offset against the significant savings in accommodating and caring for animals until they can be rehomed.

146. The Scottish SPCA has stated that this type of legislative change is the best thing that could be done to assist its work of protecting animal welfare, saving it significant money, time and resources and potentially allowing it to assist a greater number of animals, as the pressure on the capacity of its emergency shelters will be alleviated.

147. The APHA are also supportive of these new formal arrangements, which could replace any informal ad hoc arrangements and increase the certainty of enforcement staff to act and intervene early on the assumption that the costs of the new procedure should be limited, even if there is a competent appeal.

148. The new regime for swiftly rehoming animals should result in savings in staff time for APHA veterinary staff who are routinely involved in ensuring the welfare of animals whilst they are in temporary care, often visiting weekly to assist in the administration of restorative care.

149. As discussed, the costs of any appeals (regarding the compensation value and the decision to dispose of the animals) will be borne by the previous keeper, who will have to arrange for legal representation to lodge a competent appeal.

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

Summary

150. A summary of the potential additional costs of the provisions of the Bill is set out in Table 9, below. It should be noted that the upper limit estimates have been used here. These potential costs could occur from 2020 onwards and represent the maximum estimated annual cost, based on the average number of offences in previous years;

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

Table 9: Summary of potential additional costs

	Increasing maximum animal welfare penalties & “Finn’s Law”	Increasing maximum wildlife penalties	All future Fixed Penalty Notice regimes	New powers over animals
Scottish Prison Service (SPS)	£50,000	£50,000	0	0
Scottish Courts & Tribunals Service (SCTS)			0	0
Crown Office & Procurator Fiscal Service (COPFS)	£7,000	£7,000	0	0
Scottish Legal Aid Board (SLAB)			0	0
Police Scotland (PS)	0	0	0	0
Local Authorities (LA’s)	0	0	N/A*	N/A*
Animal & Plant Health Agency (APHA)	0	0	0	0
Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA)	0	0	0	N/A*
General Public	0	0	0	0
Total additional costs	£114,000 per annum (Upper estimate)			

* - costs unquantifiable as offset by potential savings

This document relates to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 30 September 2019

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

Financial Memorandum

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