

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

Policy Memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy 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 Financial Memorandum (SP Bill 56–FM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP 56–LC).

3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives of the Bill

4. The Bill amends the Animal Health and Welfare (Scotland) Act 2006 ("2006 Act"), several pieces of wildlife legislation, and the Animal Health Act 1981 for the purposes of further protecting health and welfare in connection with animals and wildlife in Scotland. It achieves this by:

- increasing the maximum available penalties for the most serious animal welfare and wildlife offences to a prison sentence of five years or an unlimited fine, or both, and making 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

- increasing the maximum available penalties for other wildlife offences, including the disturbance of animals or damage of nests or shelters, to a prison sentence of one year or a fine up to £40,000, or both,
- giving the Scottish Ministers powers to make regulations for the issuing of fixed penalty notices in relation to certain animal welfare offences (as an additional enforcement tool),
- giving the Scottish Ministers powers to make regulations for the issuing of fixed penalty notices in relation to certain animal health offences (as an additional enforcement tool),
- increasing the protection for service animals by making it easier to convict people of causing them unnecessary suffering and
- giving authorised persons (including certain inspectors and constables) new powers (as regards animals taken into possession to alleviate suffering) to transfer, sell, treat or, in limited circumstances, humanely destroy those animals.

Legislation to be amended

Animal Health and Welfare (Scotland) Act 2006 (“2006 Act”)

5. Part 2 of the 2006 Act consolidated and modernised animal welfare legislation for Scotland. The 2006 Act defines “protected animal” as an animal of a kind which is commonly domesticated, or under the control of man, or not living in the wild. The provisions in Part 2 help to promote the welfare of protected animals and prevent harm through measures such as the creation of the offence of failing to take reasonable steps to ensure the welfare of animals, which in effect places a “duty of care” on those who are responsible for animals, and provisions that allow for protected animals that are suffering, or in danger of suffering, to be taken into possession.

6. In particular, the 2006 Act:

- made it an offence to cause a protected animal unnecessary suffering,
- strengthened the provisions for offences involving animal fights,

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

- made provision allowing an inspector or constable to take possession of an animal which is suffering or likely to suffer if its circumstances do not change, and
- gave powers to the courts allowing them to make orders to deprive a person of possession or ownership of an animal on conviction for certain offences.

7. The most serious animal welfare offences are those under section 19 (unnecessary suffering) and section 23 (animal fighting). Section 19(4) specifies things which the court should have regard to in deciding whether the suffering was unnecessary. One such consideration is whether the conduct was for a legitimate purpose, such as the purpose of protecting a person, property or another animal.

8. The 2006 Act was an important landmark for animal welfare in Scotland that consolidated previous animal welfare legislation and offered improved protection for all domesticated animals. With its over-arching principles and powers to put in place secondary legislation to protect animal welfare in specific circumstances, the Act was widely recognised as a ground-breaking piece of legislation.

9. However, in light of over a decade of experience of enforcing the 2006 Act, concerns have been raised about some aspects of enforcement of both the 2006 Act and of regulations made under it. In particular:

- the maximum penalties available under the 2006 Act to punish the perpetrators of the most severe animal cruelty offences (currently a prison sentence of one year or a £20,000 fine, or both) are considered insufficient to allow the court, when sentencing, to impose a sentence that reflects the public revulsion towards the extreme nature of some of these cases,
- non-compliance with minor and technical animal welfare requirements is not always best dealt with through the court system; fixed penalty notices are considered to be a more effective remedy by ensuring that such breaches are dealt with more quickly and proportionately,
- the court procedures available to enforcement authorities by which arrangements may be made for animals that have been

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

taken into possession to protect their welfare are extremely variable in duration and can therefore delay action being taken which would benefit the welfare of such animals.

Animal Health Act 1981 (“the Animal Health Act”)

10. Under the Animal Health Act inspectors are appointed by a local authority or Scottish Ministers (such as employees of local authorities, and the Animal and Plant Health Agency (APHA)).

11. Enforcement of the Animal Health Act can be undertaken using a variety of methods including non-statutory verbal advice, warning letters, notices and prosecution. In many cases, the first response of an inspector when non-compliance of the Animal Health Act is brought to their attention will be to offer compliance advice, guidance and support. Advice is provided to assist individuals and businesses in rectifying non-compliance as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter may state what should be done to rectify and to prevent re-occurrence.

12. A notice may be served on the owner or occupier of the premises, or immediate enforcement action taken, if there is significant contravention of the legislation, or if the consequence of non-compliance could be potentially serious to animal or public health. If a notice is served, it may require action to be taken or, that certain operations or activities be stopped immediately. For example, if disease is suspected on a premises, a notice may be issued to prohibit the movement of animals on or off the premises in order to control the potential spread of a contagious disease.

13. Secondary legislation made under Animal Health Act may also include the power to issues notices requiring particular actions. For example, under the Sheep Scab (Scotland) Order 2010 an authorised person may in certain circumstances serve a notice on the keeper of sheep requiring the keeper arrange a veterinary enquiry to establish if sheep scab is present in the premises.

14. Service of a notice may be followed by an investigation and further enforcement action, including prosecution, may ensue. It is an offence not to comply with a notice without reasonable excuse. For cases of a more serious nature, or cases where a notice has not been complied 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

inspectors would normally gather evidence and put a case forward to the procurator fiscal for prosecution through the Scottish courts.

15. However, as with the 2006 Act, experience has shown that requiring the prosecution of minor and technical animal health breaches may not always be the most effective deterrent and remedy in some cases. Non-court disposals are considered to be a quicker and more proportionate means of dealing with the relevant behaviour.

Wildlife legislation

16. Wild animals in Scotland are protected by several different pieces of legislation. This allows us to meet national and international obligations to conserve rare and vulnerable species by:

- making sure they are protected and managed in a fair and humane way,
- addressing wildlife crime through co-ordinated enforcement,
- managing conflicts between mankind and wildlife where they arise,
- protecting wildlife from cruel or inappropriate management activities.

Wildlife and Countryside Act 1981 (“the Wildlife Act”)

17. The Wildlife Act was originally enacted to implement the EU Birds Directive and Bern Convention. Since then, it has been amended by the Habitats Regulations 1994, to enact the EU Habitats Directive and also through both the Nature Conservation (Scotland) Act 2004 and Wildlife and Natural Environment (Scotland) Act 2011 as a result of devolution.

18. The Wildlife Act applies to Scottish terrestrial environment and inshore waters (within 12 nautical miles of land) and comprises four parts:

- Part 1 covers the protection of wildlife, including birds, their nests and eggs; wild animals, mammals and wild plants,
- Part 2 extends to the countryside and national parks, and the designation of protected areas including Sites of Special Scientific Interest (SSSIs),

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

- Part 3 covers public rights of way, including footpaths and bridleways, and
- Part 4 deals with miscellaneous provisions i.e. areas of application, offences, interpretation, amendments, repeals.

Protection of Badgers Act 1992 (“the 1992 Act”)

19. The 1992 Act protects badgers and their setts. It consolidated and improved upon previous legislation. It provides for the following offences:

- taking, injuring or killing badgers,
- cruelty to badgers,
- interfering with badgers setts,
- selling and possession of live badgers, and
- marking and ringing.

The Conservation (Natural Habitats, &c.) Regulations 1994

20. The Regulations cover the requirements for:

- sites that are internationally important for threatened habitats and species – i.e. Natura sites,
- species requiring strict protection – i.e. European protected species, and
- other aspects of the Habitats Directive.

21. The Regulations provide for the designation and protection of ‘European sites’, the protection of ‘European protected species’, and the adaptation of planning and other controls for the protection of European Sites.

Deer (Scotland) Act 1996 (“the Deer Act”)

22. The right to take or kill wild deer is limited to the owner of the land on which they are found. Other people such as tenants may take or kill wild deer for certain purposes. The Deer Act sets out:

- when, where, how and by whom deer can be taken or killed,
- the dates of the open and closed seasons – during which the killing of deer is either permitted or prohibited.

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

23. While many of the offences in the Deer Act could be considered 'property crimes' e.g. the poaching of deer without the landowner's permission, some offences directly concern deer welfare including:

- wilfully killing or injuring deer by any means other than shooting,
- using a firearm or any ammunition for the purpose of wilfully injuring deer.

Wild Mammals (Protection) Act 1996 ("the 1996 Act")

24. The 1996 Act makes it an offence for any person to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering.

25. Exemptions apply to:

- the attempted killing of any such wild mammal as an act of mercy if the person shows that the mammal had been so seriously disabled otherwise than by their unlawful act that there was no reasonable chance of its recovering,
- the killing in a reasonably swift and humane manner of any such wild mammal if the person shows that the wild mammal had been injured or taken in the course of either lawful shooting, hunting, coursing or pest control activity,
- doing anything which is authorised by or under any enactment,
- any act made unlawful by section 1 if the act was done by means of any snare, trap, dog, or bird lawfully used for the purpose of killing or taking any wild mammal, or
- the lawful use of any poisonous or noxious substance on any wild mammal.

26. A "wild mammal" means any mammal which is not a domestic or captive animal within the meaning of the Protection of Animals Act 1911 or the Protection of Animals (Scotland) Act 1912.

Protection of Wild Mammals (Scotland) Act 2002 ("the 2002 Act")

27. The 2002 Act protects wild mammals from being hunted with dogs by banning traditional fox hunting and hare coursing. The Act states that:

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

- a person who deliberately hunts a wild mammal with a dog commits an offence,
- it is an offence for an owner or occupier of land knowingly to permit another person to enter or use it to commit any such offence, and
- it is also an offence for an owner of, or person having responsibility for, a dog knowingly to permit another person to use it to commit any such offence.

Penalties and procedures available to the courts

Current provisions

28. Currently, the maximum available penalties for the most serious animal welfare offences under the 2006 Act are imprisonment of up to one year or a fine of up to £20,000, or both. These penalties are available to the courts for offences under section 19 (unnecessary suffering) and section 23 (animal fighting) of the 2006 Act. The maximum penalties for other animal welfare offences under the 2006 Act, such as abandoning an animal (section 29) or failing to take reasonable steps to ensure that the welfare needs of an animal are met (section 24) are imprisonment of up to six months or a fine not exceeding level 5 on the standard scale (currently £5000), or both. Any offences created by regulations made under Part 2 of the 2006 Act carry the penalty specified in the regulations, but these penalties cannot exceed sentences of imprisonment for six months or fines not exceeding level 5 of the standard scale, or both.

29. All offences under the 2006 Act must currently only be prosecuted using a form of court procedure known as “summary procedure” (where there is no jury and it is the court, in the form of either a Sheriff or Justice of the Peace, who determines whether an accused is guilty of an offence and, if so, what the sentence should be). As a consequence of this, there is an automatic time limit for bringing a prosecution under section 19 (unnecessary suffering) of 6 months from the date of the offence. This time limit is set out in section 136 of the Criminal Procedure (Scotland) Act 1995 and applies to all offences that are only triable by way of summary procedure, unless a time limit is otherwise specified in statute. Specific

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

rules enabling longer time limits for prosecuting offences under 23 (animal fights) are set out in section 44 of the 2006 Act.

30. At present most wildlife offences can only be tried summarily and only a few offences have the option to be tried under either summary or solemn procedure (conviction by a jury). The maximum available penalties for wildlife offences are set at different levels depending on the offence and the legislation that they are laid out in. The offences that section 5 of the Bill would amend currently attract penalties under summary conviction ranging from three months' imprisonment or a fine of up to level 4 on the standard scale (£2,500) or both, up to a maximum of one year of imprisonment or fine up to £40,000 or both. Where both summary and solemn options are available, it is for the Crown Office to decide whether a case is brought under summary or solemn procedure and the choice will normally be determined by factors including the seriousness of the offence. The Protection of Badgers Act 1992 allows some offences to be tried by solemn proceedings, attracting a higher penalty of up to three years imprisonment or an unlimited fine or both.

31. A longer time limit for prosecuting all summary offences is set out in section 20 of the Wildlife Act and section 12A of the Protection of Badgers Act 1992. Regulation 102 of the Conservation (Natural Habitats, &c.) Regulations 1994 sets out longer time limits for prosecuting offences under regulations 39(1) and 43(1). The remaining summary offences contained within the Deer (Scotland) Act 1996, the Wild Mammals (Protection) Act 1996 and the Protection of Wild Mammals (Scotland) Act 2002 are subject to the time limit specified in the Criminal Procedure (Scotland) Act 1995. Those offences that may be tried under either summary or solemn procedure are not subject to any time limit, unless specified by the enactment, as detailed above.

Concerns

32. In recent years there have been a number of animal cruelty cases that have attracted media interest because the offence committed was so shocking that the maximum sentence available to the court was considered by many to be insufficient. In particular, cases that involve deliberate, calculated and sadistic behaviour are considered to require higher penalties than those currently available. One horrific example of such an atrocity is that of a Staffordshire terrier found tied to a tree and burnt to

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

death in Fife, having been doused in flammable liquid and set on fire while still alive. Another example is the vicious attack on a police dog called Finn during the course of his duties, which sparked a campaign seeking to make it easier to prosecute persons who attack service animals.

33. Similar concerns have also been raised in relation to crimes against wild animals. Crimes in recent years include those involving deliberate and sadistic behaviour such as badger baiting and hare coursing. There have been a number of instances of the deliberate targeting of birds of prey, resulting in death or serious injury. Some of these crimes have involved the use of banned pesticides which not only pose a serious health risk to wildlife but to any animals or people who come into contact with it. Wildlife crimes can also have a serious impact on the conservation status of species resulting for example in the loss of local bird of prey populations and the extinction of freshwater pearl mussel populations from certain rivers.

34. The Scottish Government considers that the current maximum custodial penalties and the maximum available fines available under the 2006 Act and various pieces of wildlife legislation are insufficient in relation to the most serious offences. This is because the existing maximum penalties for the most serious examples of the type of offending behaviour as described above do not fully recognise the seriousness of the crime being committed and means the court does not have sufficient powers to deal with such criminal conduct. On wildlife, this view is supported by an independent review chaired by Professor Mark Poustie (the Poustie Review),¹ which found that the current maximum penalties may not be serving as a sufficient deterrent or reflect the serious nature of some of the crimes that are being committed. Key findings were that:

- an appropriate range of penalties should be available to the courts to ensure maximum deterrent impact to deal with the range of offenders from corporate entities to individuals with few or no resources,
- current maximum penalties made available by wildlife legislation to punish the perpetrators of the most severe animal cruelty offences are considered too low to reflect the extreme nature of some cases, and

¹ <https://www.gov.scot/publications/wildlife-crime-penalties-review-group-report/>

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

- in general, financial penalties for wildlife crimes have not been raised for many years, in contrast to other areas of environmental law such as pollution control where penalties have been raised regularly.

35. With regard to attacks on service animals, the current wording of the 2006 Act allows a person to argue in court that an attack on an animal was motivated by self-defence (or the desire to protect another person or property) and so was not an offence. The Scottish Government considers it inappropriate for such a legal defence to be available in cases where attacks have been made on police dogs or horses and other service animals during the course of their duties. These animals are, by the very nature of their job, required to interact with people to prevent or stop criminal activity or escape, and those people may in some cases violently resist the actions of both the service animal's handler and the service animal itself.

36. The Scottish Government takes the matter of attacks on both service animals' handlers and service animals during the course of their duties very seriously. The ability of an accused person charged with causing unnecessary suffering to a service animal to claim that the accused was justified in using physical force against that animal in self-defence significantly weakens the protection of the animal's welfare while they are on duty. This is not what was intended by the provision, which was meant to protect people defending themselves from an unwarranted attack by an animal, and it is clearly at odds with public concern that service animals should be primarily regarded as sentient beings rather than simply as police property.

Proposed amendments

37. Section 1 of the Bill increases the maximum sentence available to the courts for the most serious animal welfare offences under Part 2 of the 2006 Act. These are offences under sections 19 (unnecessary suffering) and 23 (animal fights) of the 2006 Act. The Bill increases the maximum sentence from one year to five years imprisonment and/or an unlimited fine.

38. In addition to increasing the maximum penalties to five years, the Bill makes such offences triable "either way" i.e. able to be prosecuted using either summary procedure or solemn procedure. This allows for higher

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

penalties to be specified and removes the current statutory time limits for bringing a prosecution (as per the Criminal Procedure (Scotland) Act 1995) for offences under sections 19 and 23 as these would no longer be triable only by way of summary procedure. The Bill also removes the current special rules on time limits for bringing prosecutions of the offence under section 23, as they would no longer be required.

39. In relation to wildlife, sections 5 to 10 of the Bill increase the maximum prison sentence available to the courts for serious wildlife offences under the following legislation:

- Wildlife and Countryside Act 1981, section 1, 5 to 11, 13 and 14,
- Protection of Badgers Act 1992, sections 1 to 3 and 13,
- 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
- Protection of Wild Mammals (Scotland) Act 2002, section 1.

40. In particular, amendments will allow some offences, such as those that involve injuring or the un-licensed killing or taking of wild animals, to be tried under solemn procedure and the maximum penalties which may be imposed for the commission of such offences are increased to imprisonment for up to five years or an unlimited fine, or both. The maximum penalties available for other wildlife offences which are subject to summary conviction only, including the disturbance of animals or damage of nests or shelters, are increased to imprisonment for a period of up to one year or a fine up to £40,000, or both. Details of each wildlife offence and proposed amendments can be found in Annex A to this document.

41. For those wildlife offences detailed in Annex A, which remain triable under summary procedure only, the Bill extends the time allowed for prosecution under summary conviction for wildlife crime offences to six months from when sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence.

42. Section 3 of the Bill amends the 2006 Act to require the court to disregard the purpose in section 19(4)(c)(ii) of the 2006 Act (protecting a

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

person, property or other animal) when determining whether a person has committed the offence of unnecessary suffering under section 19(1) against a service animal. Service animals for these purposes are animals under the control of a “relevant officer”, being a constable, a special constable, a prison custody officer, or another person who is carrying out police functions. The court will be required to disregard the purpose in section 19(4)(c)(ii) where the service animal was being used in the course of the relevant officer’s duties.

43. It is not proposed that these changes would apply to offences committed before the date these proposed changes come into force.

Alternative approaches considered

44. The main alternative approach considered was to *not* amend the penalties and procedures available to the courts for the most serious animal welfare and wildlife offences. This would be significantly at odds with the views expressed in response to Scottish Government consultations which clearly signal the public’s growing concerns regarding animal welfare.

45. On maximum penalties, it would mean Scotland being the only part of the UK not to increase penalties for offences relating to animals under human control. It would also be at odds with the recommendations arising from the Poustie Review on wildlife legislation. Keeping the maximum penalties the same is not considered an appropriate approach as it would mean the courts would not be empowered to sentence appropriately in the most serious types of animal welfare and wildlife offences as described within this memorandum.

46. On procedures, it would mean the existing time bars for the prosecution of animal welfare and wildlife offences remaining in place. This would mean that the investigation, report writing, consideration of the case by the procurator fiscal, and marking of the case for prosecution, would continue to need to be completed within six months of the date of the offence. Given that crimes against both wildlife and animals under human care can often occur in remote or rural locations, it is not always possible to fully investigate incidents within the statutory time limit. Regardless, of location, sometimes vital evidence may come to light too late to put a case to the procurator fiscal. For wildlife it can often be several weeks after an

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

offence has been committed before the police are made aware that a potential crime may have occurred. Further, investigating offences increasingly involves the gathering and analysis of forensic evidence and the undertaking of post-mortem examinations. A fully researched expert report may also need to be obtained which may take several weeks. Given the complex nature of the crimes being considered, maintaining the six-month time bar is not considered to be appropriate.

47. The greater protection afforded to service animals by the changes being made to section 19 of the 2006 Act aligns with the approach taken in England and Wales by the Animal Welfare (Service Animals) Act 2019. It is accepted that the 2006 Act only requires the court *to have regard to*, rather than to necessarily accept, the purpose of protecting a person, property or another animal. However, even the possibility of that defence is considered inappropriate for service animals acting for the benefit of society. Attacks on Scottish service animals are currently more likely to be prosecuted under either the offence of malicious mischief (the common law crime of damaging or destroying the property of another, or interfering with it to the detriment of the owner) or under the offence of vandalism, which is provided for by section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995. The Scottish Government is concerned that prosecution via these routes encourages attacks on service animals to be viewed as attacks on police property, rather than on sentient animals. This is at odds with the views of the Scottish Government and the views expressed in response to the Scottish Government's consultation, and it is considered more appropriate to have an effective prosecution route for such cases that is clearly based on the impact on the service animal's welfare.

48. On other actions that could be taken to improve the implementation of wildlife legislation, the Poustie review made 10 recommendations. The Scottish Government's published response² broadly accepted the recommendations made by the group and the 2016-2017 Programme for Government³ committed to improving the protection available for all animals in Scotland. Ongoing work related to wildlife crimes includes the following:

² <https://www2.gov.scot/Resource/0049/00494565.pdf>

³ <https://www.gov.scot/publications/plan-scotland-scottish-governments-programme-scotland-2016-17/>

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

- Scottish Natural Heritage (SNH) has developed impact statement guidance for all staff for wildlife crimes. Within this guidance is a system for the provision of impact statements to the Crown Office and Procurator Fiscal Service (COPFS), to enable SNH to meet the recommendations made within the Wildlife Crime Penalties Review (The Poustie Review). Additionally, in 2018, 13 SNH specialist advisory staff, together with key managers received training on the provision of expert witness statements and giving evidence at court. Training was delivered by COPFS, Police Scotland and the National Wildlife Crime Unit.
- The Scottish Sentencing Council has indicated its intention to develop a sentencing guideline on environmental and wildlife offences. The likely 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.

Benefits of proposed amendments

49. The key benefits of the amendments made by the Bill to penalties and procedures are:

- The standardised maximum penalties for certain wildlife crime offences, and the ability to try serious wildlife and animal welfare offences either by summary proceedings or on indictment, provides the courts flexibility to issue appropriate penalties for these offences.
- Increasing the maximum penalties will send a clear message that perpetrators of the worst animal welfare offences and wildlife crimes can be dealt with more severely, reinforcing the seriousness of such offending.
- Removal of the time bar will provide enforcement authorities with more time for the collection of sufficient evidence to put forward the best case possible regarding the most serious wildlife crime and animal welfare offences.
- Requiring courts to disregard section 19(4)(c)(ii) will make it easier to establish criminal liability in the case of attacks on service animals; providing clarity and confirmation that they are fully protected from serious animal welfare offences while they are carrying out their duties.

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

Enforcement tools to protect animal welfare

Current provisions

50. There are a variety of tools available to enforcement authorities to encourage compliance with legislation protecting animal welfare and health. As regards animal welfare, these include non-statutory verbal advice, warning letters, statutory care notices (under the 2006 Act) and prosecution.

51. The Scottish Government considers that the most serious animal welfare offences, such as those under sections 19 and 23 of the 2006 Act, should always be dealt with through the criminal courts system to ensure appropriate penalties can be imposed on the perpetrator. In such cases it is important to gather evidence and put a case forward to the procurator fiscal for consideration of prosecution through the Scottish courts. This enables a court to take full account of all the facts of a case and to apply a suitable penalty where appropriate. It also serves to demonstrate that such cases are taken seriously and the publicity around them may act as a warning to others.

52. However, preparing and prosecuting cases is time consuming and costly for both the enforcement authorities and the courts. For less serious offences relating to animal welfare, alternatives to prosecution may be a more effective means of deterrence. Such offences often relate to requirements meant to protect a certain animal population as a whole, for example farm animals. Breaching some of these rules may not necessarily impact on the welfare of an individual animal, but wider compliance with the legislation is necessary to protect the population as a whole.

53. Inspectors appointed under the 2006 Act by a local authority or the Scottish Ministers (such as employees of local authorities, the APHA and the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA)) may issue statutory care notices, as provided for in section 25 of the 2006 Act. A statutory care notice can be issued when it comes to an inspector's attention that a person is failing to secure the welfare of an animal for which that person is responsible and it appears to the inspector that the failure constitutes an offence under section 24 of the 2006 Act (failure to take reasonable steps to ensure that the needs of an animal are met). These notices allow inspectors to require that those responsible for animals to deal with welfare problems by following specific advice. It is an

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

offence to not comply with a statutory care notice without reasonable excuse.

54. Secondary legislation made under the 2006 Act may also include the power to issue notices requiring particular actions. For example, under the Microchipping of Dogs (Scotland) Regulations 2016 an authorised person may, in certain circumstances, serve a notice on the keeper of a dog requiring that a keeper have the dog microchipped.

55. For cases of a more serious nature, or cases where a statutory care notice has not been complied with, inspectors would normally collect evidence and report the case to the procurator fiscal for potential prosecution.

Concerns

56. Enforcement agencies must deal appropriately with cases across the whole range of crime types. Cases where there has been clear animal suffering are more likely to be referred to the COPFS than cases involving breaches that have had no direct impact on individual animals. These offences generally attract relatively small penalties and there is a risk that prosecution for such offences could result in disproportionate costs for enforcement agencies, and for the individuals involved should they seek to engage legal assistance to defend charges.

57. Enforcement agencies have a range of alternatives to immediately referring cases to the COPFS for consideration of prosecution that can be used where appropriate. In cases where a person is willing to act on verbal or written advice to address animal welfare or health breaches, this will sometimes be the most effective enforcement action to take to remedy the breach. Statutory notices, for example care notices issued under the 2006 Act or notices to microchip under the Microchipping of Dogs (Scotland) Regulations 2016, are also an important enforcement tool and can be an effective means of securing remedial action. However, there are cases where a notice is not complied with, and a person may become liable for a technical offence of failing to comply with a statutory notice, sometimes in addition to any original welfare breach. Again, it may not always be considered proportionate to immediately refer such offences to COPFS considering the wider crime context, demands on the criminal justice and courts system and the level of penalty available.

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

58. There is, therefore, concern that for much of the legislation intended to protect animal welfare, the enforcement measures used in practice can seem relatively light. This can promote a culture of non-compliance, with potentially serious consequences for the welfare of wider animal populations. For example, individual cases of non-compliance with the requirement for the microchipping of dogs may have no impact on dogs that are never lost. However, widespread non-compliance would seriously hamper efforts to re-unite stray dogs with owners generally.

Proposed amendments

59. The Scottish Government considers that there is a need for an additional level of non-court based enforcement whereby enforcement authorities can impose proportionate monetary penalties without the need for a court order. Fixed penalty notices are proposed as an effective additional enforcement tool to improve general compliance with legal requirements where this is important to safeguard animal welfare overall, but where the time and expense of taking individual court cases could be seen as disproportionate considering the likely penalties available.

60. Sections 2 and 4 of the Bill therefore introduce new powers for Scottish Ministers to set out, in regulations, how fixed penalty notices may be used to enforce certain rules that protect animal welfare and health. These powers could then be used to specify the precise situations in which fixed penalty notices may be issued. In relation to animal welfare offences, for example, it is anticipated that these might be offered as an alternative to prosecution for relatively minor or technical offences such as failure to comply with record keeping requirements or other infringements that do not involve direct harm to animals.

61. The specifics of any fixed penalty notice regime would be tailored to the situation. One approach might be to, by regulations, empower enforcement bodies to impose a fixed monetary penalty on an individual unless that person chooses to request that his or her case is dealt with by prosecution, allowing the fixed penalty amount to be recovered by standard debt recovery procedures if not paid within a specified time, such as 28 days. Discounts could be available to encourage prompt payment, for example 50% for payment within 14 days. The amount of the fixed penalty for each offence would be set out in the regulations, taking account of the seriousness of the offence. But the amount would not exceed level 5 on 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

standard scale. The option to refer a case to COPFS for consideration of prosecution instead of offering a fixed penalty would continue to be available for use as appropriate.

62. The new powers in the Bill will allow provisions enabling the issue of fixed penalty notices to be inserted into existing and future regulations that create offences which protect animal welfare and health. The powers may be used to give authorised inspectors and constables the power to issue fixed penalty notices in specified circumstances, and to set amounts that are proportionate and effective penalties.

Alternative approaches considered

63. The alternative approach would be to not introduce new powers for the issue of fixed penalty notices, and to continue to rely on the existing enforcement tools previously outlined. However, fixed penalty notices would be a useful additional enforcement tool.

Benefits of proposed amendments

64. Use of non-court based disposals for a range of less serious criminal conduct is already well-established in Scotland. For example, fixed penalty notices are already widely used by local authorities in contexts beyond animal welfare and health legislation and are recognised as a valuable enforcement tool.

65. It is expected that providing authorised inspectors and constables with the power to issue fixed penalty notices in accordance with regulations protecting animal welfare and health would achieve the following key benefits:

- allow minor and technical offences to be dealt with quickly and effectively,
- reduce the likelihood of re-offending,
- improve standards and encourage compliance,
- deal with rule breaches more quickly (persons issued with a fixed penalty notice need not attend court),
- reduce the number of cases being dealt with by the COPFS, the court system, welfare enforcers and animal keepers, 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

- give more flexibility to local authorities by providing them with an enforcement option as an alternative to issuing care notices or prosecution in the criminal courts.

Animals taken into possession to protect their welfare

Current provisions

66. Section 32 of the 2006 Act allows authorised inspectors and constables to take possession of animals and any dependent offspring in the following circumstances:

- where a veterinary surgeon certifies that an animal is suffering or is likely to suffer if its circumstances do not change, or
- without certification by a veterinary surgeon, if it appears that the animal is suffering or is likely to suffer if its circumstances do not change.

67. Animals taken into possession will usually be taken to a place of safety such as an animal rescue centre, including those run by the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA), where they will be assessed and cared for on what is intended to be a temporary basis. Ownership of the animals remains with the original owner, who in many cases may be facing prosecution for related welfare offences.

68. Once the initial welfare concerns for the animals are addressed, attention is turned to making permanent arrangements for those animals. The owner of the animal, or any other person appearing to the court to have a sufficient concern for the animal, may apply for a release order under section 33 of the 2006 Act. The court, if satisfied that these arrangements will not be to the detriment of the animal's welfare, may then order that an animal taken into possession must be given up to a specified person.

69. Other arrangements must be made where there are welfare reasons that prevent animals being returned to the owner or released to a specified person. These arrangements may include sale, other forms of rehoming or, in the rare cases where it is appropriate, humane destruction. The owner may in some cases voluntarily transfer ownership of the animals

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

concerned to the enforcement authority, which is then free to make appropriate permanent arrangements for those animals as soon as it is ready to do so. This is a useful and pragmatic approach to take in many cases and may be viewed favourably by the court in any related prosecution.

70. Where an owner does not agree to voluntarily transfer ownership of the animals concerned, permanent arrangements for any animals taken into possession may currently only be made under a court order. This may be achieved on conviction of the owner of an offence under the 2006 Act via a deprivation order under section 39. This is an order that the court may make depriving someone convicted of a relevant offence of the animals concerned in that offence. However, a trial may take some time to conclude, and there is often no good reason to keep the animals concerned in temporary accommodation until then.

71. There is also provision for an application to the court for a disposal order under section 34 of the 2006 Act. This is an order that the court may make requiring the treatment, sale, other re-homing, or in the rare cases where it is appropriate the destruction, of the animals concerned. An application may be made by inspectors, certain constables, any person with whom an arrangement for the care of the animal has been made (such as the Scottish SPCA), any person specifically authorised by the Scottish Ministers to make such an application, the owner of the animal and any person appearing to the court to have sufficient concern for the animal. Where an application is made by someone other than the owner, the owner of the animal must be given the opportunity to make representations to the court, if practicable, before a disposal order is made.

Concerns

72. The 2006 Act introduced powers for enforcement authorities to take possession of animals if they are “likely to suffer”. This was a hugely important development intended to allow immediate improvements to the safety and welfare of animals that may have been found in sometimes appalling conditions.

73. It is important that such animals find permanent homes that provide for all of their welfare needs. For example, puppies taken into possession, or indeed puppies born after their mother has been taken into possession,

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

need exposure to a normal domestic setting in order to undergo proper socialisation. Lengthy stays in a rescue shelter can prevent normal socialisation, limiting their suitability for rehoming and affecting their welfare for the rest of their lives. Farm animals often present special challenges. Finding temporary accommodation for farm animals and staff to look after them can be difficult as cases often involve significant numbers of animals. The challenge is particularly acute during winter months as they will often need to be housed in purpose-built agricultural sheds, which can be in short supply. The best option for farm animals is often to be sold to competent keepers who have the necessary accommodation.

74. In many cases where animals cannot be returned to their owners, voluntary transfer of ownership provides a pragmatic solution that enables permanent arrangements to be made for the animals as quickly as possible. However, this approach may not always be appropriate in cases where the owner is unable to give informed consent, such as in cases of mental illness. In other cases, the owner may simply not be willing to sign over the animals concerned. It is, therefore, often the case that, where animals are taken into possession under section 32, the animals must remain in the temporary care of the enforcement authorities until a court order can be obtained.

75. The time taken for a court order to be obtained to make permanent arrangements for animals that have been taken into possession varies considerably. As outlined previously, deprivation orders can be issued following conviction for an offence associated with the seized animals, which can be months, and in some cases years, later. The existing provisions for a disposal order under section 34 are meant to allow permanent arrangements to be made without awaiting the conclusion of any trial. However, discussions with enforcement authorities including local authorities, the Scottish SPCA and the APHA, have provided numerous anecdotal accounts of the process often being extremely time-consuming. The fastest reported time to obtain a disposal order was 14 days, whereas the longest was 18 months.

76. Some of the factors noted as affecting the speed and ease of obtaining a disposal order include:

- the availability of court time,
- the prioritisation or weighting of that case-load,

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

- how many days per week or month the court sits,
- failure of the owner to appear in court on specified dates,
- failure of the owner to receive court motions,
- disputes regarding ownership of animals, and
- lack of, or changes to, legal representation for the owner.

77. In practice, when animals are taken into the possession of enforcement authorities they may remain their responsibility for an extended period because of often complicated circumstances surrounding them. The welfare of the animals in all of these cases is of equal importance, and the need for permanent arrangements to be made for them is equally present.

78. In addition to the direct effects on the welfare of animals, lengthy stays in temporary accommodation can place a significant burden on enforcement authorities. The funding required to care for animals taken into possession can be significant and local authorities usually have no specific budget allocated to such care. Although the Scottish SPCA has suitable facilities for many animals, these are not limitless, and their use also comes at a cost. Further consideration of this may be found in the Financial Memorandum. The 2006 Act provides that expenses reasonably incurred by an inspector or constable in consequence of taking the animal into possession are to be reimbursed by the owner or person responsible for the animal. However, recovery of expenses is rare in practice. Owners are often unable or unwilling to pay the expenses and the costs incurred routinely exceed the value of the animal recovered through any sale.

79. Taking into consideration the variability in the speed and ease of obtaining a disposal order, the impact of a lengthy stay in temporary accommodation on the welfare of the animals, and the potentially high costs to enforcement authorities, the practical effect of the current arrangements could be argued to discourage the use of the section 32 powers to take animals into possession where they are at risk. Taking animals into possession is generally only undertaken as an absolute last resort where animals are clearly suffering. Once they are in possession, there are no standard timescales for ensuring that appropriate permanent arrangements are made for them, meaning that the potential impact of the decision to take possession may vary widely.

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

Proposed amendments

80. Chapter 2 of the Bill introduces a new power to enable enforcement authorities to make appropriate permanent arrangements for animals taken into possession more quickly and without the need for a court order and makes some adjustments to existing related provisions in light of those new powers.. The new power is set out in section 11 and is available to “authorised persons”, namely inspectors appointed under the 2006 Act, constables and other persons specifically authorised by the Scottish Ministers to use the new power (which may include bodies such as local authorities and particular animal welfare organisations). The power can only be exercised following service of a notice on a person established to be the owner of the animal. The notice must include, amongst other things, the following information:

- a description of the animals concerned,
- the particular decisions taken in relation to those animals,
- the reasons for making those particular decisions;
- an explanation of the procedure for appealing the decision taken in relation to the animals (including the period within which an appeal may be commenced).

81. The owner of, and any person with sufficient concern for, the animals has a three-week period from the date of service of the notice to appeal the decisions taken in relation to the animals. Such an appeal would be made by summary application to the sheriff. The authorised person would not be able to implement the decisions taken in relation to the animals during the three-week period and, if an appeal is commenced, would not be able to implement any decisions that have been appealed whilst the appeal is ongoing. The sheriff would have the power to order, upon determination of the appeal, that the decisions taken in relation to animals should not be implemented. The court would also have the power to dispose of an appeal in other ways, such as by making an order that other arrangements to those set out in the decision notice be made in relation to the animals to which the appeal relates.

82. Upon service of the notice, the owner of any of the animals, or any other person appearing to have sufficient concern for any of the animals, will have three weeks to apply to the sheriff for a release order under section 33 of the 2006 Act. This existing procedure under section 33 of 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

2006 Act enables the owner or other concerned person to seek release of any animal that has been taken into possession under section 32 of the 2006 Act.

83. Where there are no successful appeals or applications for a release order, the proposed arrangements would be carried out. This could involve animals being sold or otherwise rehomed, given treatments, or (where a vet has certified that destruction would be appropriate) humanely killed. The arrangements could be carried out regardless of whether the previous owner or keeper of the animal was subject to any criminal prosecution in relation to the welfare of the animal.

84. The owner of the animals is in some circumstances entitled to compensation following implementation of the decision taken in relation to the animal, if the animal in question had a monetary value. Where the decision in relation to the animal involves destruction or transfer of ownership of the animal, the compensation is the greater of the value of the animal at the time it was taken into possession and the value of the animal at the time that the decision was implemented, less reasonable costs. Where the decision taken in relation to the animal is solely to administer treatments to the animal, the compensation is the diminution in value, if any, of the animal following the treatment, less reasonable costs. The reasonable costs are the costs of caring for the animal after it has been taken into possession and implementing the decision, in so far as such costs are reasonable. Where the animal has no value, or where the reasonable costs exceed the value of the animal, no compensation will be payable in relation to that animal. A person would need to demonstrate ownership of the animal before being paid the compensation. The authorised person's assessment of the amount of compensation due to the owner may be challenged by the owner by application to the sheriff.

85. The authorised person has the ability to defer payment of the compensation amount when criminal proceedings have commenced, or the authorised person is of the reasonable opinion that there is a risk that criminal proceedings will be commenced, against the owner of the animal in relation to one of a list of certain criminal offences, insofar as the offence arises from the circumstances in which the animal was taken into possession. The purpose of such deferral of the compensation amount is to provide the convicting court in criminal proceedings, if it saw fit, to order the forfeiture of any compensation in the course of sentencing.

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

Effects of the new power on existing provisions

86. The new powers inserted into the 2006 Act by section 11 of the Bill will become the default means by which authorised persons may make permanent arrangements for animals. These new powers must be used by an authorised person whenever legal authority is required to destroy or transfer ownership of the animal (unless a notice communicating such a decision cannot be served on the owner of the animal). An authorised person may only have resort to section 34 where such service is not possible.

87. Service of a notice of a decision in relation to an animal also has the following effects: doing so prevents any other person (including the owner) making an application to the sheriff for a disposal order under section 34 of the 2006 Act unless or until specified circumstances occur (see new section 32F of the 2006 Act, as inserted by section 11); and doing so limits the period within which a person can make an application to the court for a release order under section 33 of the 2006 Act to a period of three weeks (see new section 32F of the 2006 Act, as inserted by section 11). Otherwise, the new power is without prejudice to other powers in relation to animals provided for in the 2006 Act.

88. The Bill will also amend section 32 of the 2006 Act to allow an inspector or constable to administer, or arrange for the administration of, treatments in limited circumstances without the need to resort to the new power or to seek authority from the court (see section 12 of the Bill). An authorised person need only resort to such other powers or procedures where the treatment proposed is of a nature that falls outside the power in section 32 of the 2006 Act.

Alternative approaches considered

89. The alternative approach would be to not introduce new powers to enable enforcement authorities to make permanent arrangement for animals more quickly and without a court order and to continue to rely on voluntary sign-over of animals and the existing powers in sections 34 and 39 already outlined.

90. However, given the multiple and variable factors impacting the speed with which any given court is able to consider animal welfare cases, including applications for a disposal order, it is hard to see how existing

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

arrangements will provide more consistent or improved welfare outcomes for the animals concerned.

Benefits of proposed amendments

91. The key benefits provided by the new powers for authorised persons to make permanent arrangements for animals taken into care are:

- Authorised persons will be able to take timely, transparent and consistent steps that best serve the welfare needs of sentient animals taken into care while, through procedural safeguards and entitlement to compensation, having due regard to the property rights of their owners.
- The requirement to state clear grounds for appeal against the decision regarding an animal will encourage owners to think seriously about what is best for their animals before taking action to stop the decision being implemented.
- The right to compensation, and the separate appeal processes for the decision on permanent arrangements for the animal and for the amount of that compensation, may discourage appeals by the owner against the proposed arrangements where the owner's only concern is the loss of any value in the animal.
- Making the sheriff's decision on appeal under the new power final avoids potential delay to the implementation of the decision in relation to the animal due to a further appeal procedure.
- The ability to make permanent arrangements for animals in a more consistently timely manner will improve the welfare of those animals concerned and is also likely to significantly reduce the costs to enforcement authorities. This will minimise an important potential barrier to taking animals into possession under section 32 of the Act and may enable enforcement authorities to consider intervening earlier where animals are at risk.

Consultation

92. As well as formal public consultations, the Scottish Government has had various discussions with those who have an interest in the Bill either because they might be affected by it or because they have an interest in the welfare of animals.

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

Formal consultations

Animal welfare

93. The Scottish Government public consultation on proposed amendments to the Animal Health and Welfare (Scotland) Act 2006 ran for 12 weeks from 1st February 2019 to 26th April 2019. Overall the consultation received 4,595 responses. Of these, 69 were from groups or organisations. An additional 20 responses were received from local authorities and the remaining 4,506 were from members of the public. Full results from the consultation analysis were published in July 2019.⁴

Maximum penalties

94. Key results were:

- Nearly all (99.4%) respondents agreed that the maximum penalties for the most serious animal welfare offences should be strengthened.
- A majority (96.9%) of respondents agreed that the maximum prison sentence available for offences under section 19 (unnecessary suffering) and section 23 (animal fighting) should be increased from twelve months to five years imprisonment.
- A majority (94.1%) of respondents agreed that there should be no upper limit on fines for offences under section 19 (unnecessary suffering) and section 23 (animal fighting).

95. Views expressed in support of the proposed amendments included: that the current maximum penalties available are too low; that increasing the maximum penalties would give sheriffs more sentencing options, sizeable fines would be appropriate where the perpetrator has profited from the crime, that ultimately the increase in maximum penalties would act as a deterrent. that increased sentences would indicate the seriousness of animal welfare offences

Time-bars

96. A majority (92.6%) of respondents agreed that there should be no statutory time limit for prosecuting offences under section 19 (unnecessary suffering) and section 23 (animal fighting).

⁴ <https://www.gov.scot/publications/animal-health-welfare-scotland-act-2006-analysis-consultation-responses/>

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

97. Views expressed in support of the proposed amendments included: that crimes should be followed up regardless of the length of time elapsed since the offence; it can take considerable time to gather evidence and that time constraints would be detrimental with regards to obtaining successful prosecutions; eliminating the statutory time limit would act as a deterrent and that perhaps each case should be treated individually.

Protecting service animals

98. A majority (79.8%) of respondents agreed that further amendments to legislation were necessary.

99. Views expressed included: the belief that there is a conflict in the current legislation between the maximum prison sentences available under the 2006 Act and the Criminal Damage Act 1971; concern that where service animals have been attacked the perpetrator may claim they acted in self-defence and the need to prevent such claims, and the suggestion that harming a service animal has the same implications as harming the handler. A minority were against further amendments as they considered that the legislation should be the same for all animals. These views were considered; however the Scottish Government has concluded that the amendment proposed in Section 3 of the Bill is required to properly protect service animals used to deal with potentially violent offenders.

Fixed Penalties Notices (FPNs)

100. A majority (61.4%) of respondents agreed that the introduction of proportionate fixed penalty notices would improve the enforcement of animal welfare offences.

101. View expressed included: any FPNs should be a large sum to act as a deterrent; it would be a quick and effective way of dealing with offences; FPNs should be used for lesser offences only and that it would give enforcement bodies more options. There was concern that FPNs may not be effective if the individual is unable to pay and that for this reason it would not act as a deterrent. The Scottish Government had taken on board these views, and remains of the view that FPNs provide a useful additional enforcement tool.

Animals taken into possession to protect their welfare

102. Key results were:

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

- A majority (91.6%) of respondents agreed that there is a need to speed up the process of making permanent arrangements for animals taken into possession under section 32 of the Act.
- A majority (87.9%) of respondents agreed that the ability to make suitable permanent arrangements for animals taken into possession after service of a notice and after lapse of a specified period will benefit the welfare of animals.
- A majority (86.3%) of respondents agreed that the ability to make suitable arrangements for these seized animals after a short period will free up resources of the relevant enforcement authorities and animal welfare charities; allowing them to help a greater number of animals.
- A majority (61%) of respondents agreed that three weeks is a reasonable period of notice before making suitable permanent arrangements for animals taken into possession.

103. Views expressed included: that speeding up the process of making permanent arrangements for animals taken into possession would reduce the development of any behavioural issues and improve their welfare and rehoming prospects; that welfare charities are stretched (both financially and in terms of resources) with the volume of animals currently housed and speeding up the process of making permanent arrangements for animals taken into possession would free up rehoming centre resources.

104. A majority (95.4%) of respondents thought that the power should apply to all animals, not just commercially kept animals (such as puppies in breeding facilities or agricultural livestock) as was originally proposed.

105. Views expressed included: that animals should not be treated differently, it is morally wrong to hold certain animals in higher repute than other animals and that animal abuse can occur in any species and not just commercial animals. These views were taken on board and the proposed new powers in the Bill apply to all animals.

106. Only a minority of respondents (35.5%) agreed that the owner or previous keeper should have an opportunity to appeal against permanent arrangements being made within a short time period. An even smaller minority (3.5%) of respondents agreed that the previous keeper should be

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

able to apply for compensation based on the commercial value of these animals, less reasonable costs.

107. Views expressed on appeals included; that if there is any inclination that the person has caused suffering they should relinquish the right to appeal; appeals adversely affect rehoming chances and appeal may only be allowed depending on the seriousness of the crime, if the previous keeper has the right to appeal in the interests of fairness this should only if there is a genuine case and appeals should be carried out within a short time frame. Views on compensation included: that if the person was guilty of animal abuse they have then lost the rights to any compensation and that if compensation was given it should allow for reasonable costs to be awarded to rehoming agents. These views have been taken on board and the Scottish Government believes that the proposed amendments strike the correct balance between protecting a person's property rights, protecting animal welfare, and allowing the courts to decide whether compensation should be forfeited according to the facts and circumstances of each case.

Animal health

108. The Scottish Government is consulting on proposals to allow for FPNs to be issued in relation to less serious animal health offences. The power in the Bill allowing for animal health FPNs to be set out in regulations is very similar to the power in the Bill which allows for animal welfare FPNs to be set out in regulations. The main difference is that the animal welfare FPN power includes an illustrative list of how the power may be used. This is because the animal health FPN power is intended to act as a 'marker' provision to support the principle of FPNs for animal health, paving the way for amendments which will likewise set out in more detail how this power might be used. The consultation is intended to clarify the way that future FPN regimes may be appropriate in different circumstances and concerns that may exist, rather than the general principle itself. The public consultation will start at the beginning of October 2019 and run for 12 weeks. The intention is to provide Parliament with an analysis of consultation responses received and details of how the powers could be used. This consultation will also invite comments on the effectiveness of other aspects of the Animal Health Act 1981 as proposed in the 2019-2020 Programme for Government.

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

Wildlife

109. The Scottish Government public consultation⁵ on increasing the maximum penalties for wildlife crimes ran for four weeks from 19th July 2019 to 16th August 2019. Overall the consultation received 557 responses. Of these, 33 were from groups or organisations and the remaining 524 were from members of the public. Full results from the consultation analysis are due to be published later in 2019; a preliminary overview of responses and key themes is provided here.

Maximum penalties

110. Key results were:

- Nearly all (97%) respondents agreed that the maximum penalties for the most serious wildlife offences should be strengthened.
- A majority (94%) of respondents agreed that the maximum prison sentence available for serious wildlife offences (for example; the injuring or un-licensed killing, or taking of wild animals) should be increased from six months to five years imprisonment.
- A majority (90%) of respondents agreed that there should be no upper limit on fines for those offences.
- A majority (87%) of respondents agreed that the maximum prison sentence available for other wildlife offences (for example; the disturbance of animals or damage of nests or shelters) should be increased from six to twelve months imprisonment.
- A majority (85%) of respondents agreed that the upper limit on fines for those offences should be increased to £40,000.

111. Views expressed in support of the proposed amendments included: that the current maximum penalties available are too low; that increasing the maximum penalties would give sheriffs more sentencing options, current financial penalties are too affordable for businesses such as property developers and estates, that ultimately the increase in maximum penalties would act as a deterrent. Significant recognition was given to Scotland's wildlife as a matter of tourism and the negative reputational impact wildlife crime could have on Scotland.

⁵ <https://consult.gov.scot/wildlife-management-and-protected-areas/wildlife-crime-penalties/>

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-bars

112. A majority (70%) of respondents agreed that the statutory time limit for prosecuting wildlife offences under summary procedure should be increased to six months from which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence.

113. Views expressed in support of the proposed amendments included that it can take considerable time to gather evidence and that the additional time for difficult investigations would increase prosecutions.

Stakeholder engagement

Animal welfare

114. The Scottish Government's animal welfare team has a close working relationship with many animal welfare charities and stakeholders who are involved with the enforcement of Part 2 of the 2006 Act.

115. In 2016 the animal welfare team conducted an informal consultation with enforcement agencies, local authorities and animal welfare charities regarding potential changes to the 2006 Act with a view to strengthening enforcement. The response was very supportive, with all respondents in favour of changes to introduce fixed penalty notices, increase maximum available penalties and increase the time-bar rules. Since then, discussions have also been held with key enforcement stakeholders regarding the need for and possibility of introducing a mechanism to enable swifter rehoming of animals that were taken into possession to protect their welfare. The Scottish SPCA, and the APHA have both expressed strong support for the package of refinements proposed in terms of the enforcement to enhance protection for animals and assist the authorities in conducting their duties. A wide range of animal welfare charities are also supportive, acknowledging the potential benefits for animal welfare in reducing the time spent in temporary or emergency accommodation.

116. In preparation for the introduction of the Bill, the focus for stakeholder engagement has been on the organisations involved in enforcement of Part 2 of the 2006 Act, in conjunction with the 12-week public consultation. During this process the animal welfare team in the Scottish Government has had several face-to-face meetings with local authorities, the Scottish SPCA, APHA and the COPFS to update these key organisations on how

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 Bill was developing and to seek details around the costs and challenges of the enforcement of the 2006 Act.

Animal health

117. The Scottish Government's animal health team has a close working relationship with those that enforce animal health legislation.

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

119. Stakeholders will be invited to respond to the formal consultation that is due to open in September 2019. A wide range of organisations and businesses that have previously notified an interest in animal health will be sent the consultation directly.

Wildlife penalties

120. As well as the public consultation, in August 2019 the Wildlife Management team met with Police Scotland, the COPFS, the Scottish SPCA and the Royal Society for the Protection of Birds.

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

122. Police Scotland particularly supported increasing the time limit allowed for prosecution of these crimes, citing the difficulties encountered when investigating wildlife crimes within the statutory time limit, as did the Scottish SPCA.

123. In addition to the public consultation held in 2019, Professor Poustie conducted a targeted stakeholder consultation as part of the wildlife crime

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

penalties review.⁶ An overview of responses to questions regarding wildlife penalties is provided here:

- The majority (70%) of respondents believed the penalties **available** to the courts for wildlife crime in general are not a deterrent.
- The majority (90%) of respondents believed the penalties **issued** by the courts for wildlife crime in general are not a deterrent.
- The majority (81%) of respondents believed wildlife crime penalties to be too low.

124. Views expressed by respondents included that the potential benefits of the offence to the offender could significantly outweigh deterrent effect of existing penalties and that corporate developers, tended to comply with the law because of reputational concerns rather than the deterrent effect of the penalty.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

125. An Equality Impact Assessment (EQIA) has been carried out and a summary of its findings is provided below. The full EQIA will be available to view on the publication area of the Scottish Government website.⁷

126. The EQIA did not demonstrate any particular positive or negative impact with regards to any of the protected characteristics and did not highlight any equality issues that needed to be mitigated against.

127. The increase in maximum penalties available for animal welfare and wildlife crime has relevance to all protected characteristics as the penalties will apply equally across all protected groups.

⁶ <https://www.gov.scot/publications/wildlife-crime-penalties-review-group-report/>

⁷ <https://beta.gov.scot/publications/>

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

128. These changes will only affect those convicted of an animal welfare or wildlife offence and will only apply to existing animal welfare and wildlife offences, with the standard of proof required remaining unchanged. Therefore, the impact of the amendments is limited and does not impose any additional impacts on any individuals falling within any of the current protected characteristics when compared to the existing policy.

Human rights

129. Exercise of the new power to make arrangements for animals without the need to first obtain a court order (see section 11 of the Bill) will likely engage Article 1 Protocol 1 (the right to the peaceful enjoyment of possessions) to the European Convention of Human Rights. Exercise of this power in order to administer treatment to an animal may involve interference with property rights. Exercise of the power in order to destroy or transfer ownership of an animal is likely to permanently deprive a person of property.

130. The new power has been designed with the property rights of the owners of animals in mind and is therefore considered to be compliant with the rights conferred by Article 1 Protocol 1. The procedural safeguards that must be complied with prior to exercise of the power and the availability of compensation to the owner of the animal following exercise of the power are of particulate note.

131. The procedural safeguards require that notice be served at a place likely to be connected to the owner or person in control of the animal before there can be resort to the new powers. In addition, the owner of the animal and any person having sufficient concern for the animal has three weeks from service of said notice to appeal the decision taken in relation to the animal or, alternatively, seek an order for its release.

132. The availability of compensation, measured with reference to value of the animal lost to the owner upon destruction or transfer of ownership of the animal (or any loss of value in the animal following the administration of treatment), following exercise of the power is considered to be an important consideration when considering whether any interference with property rights using the new powers is justified. There is scope for the entitlement to compensation to be deferred and ultimately forfeited. However, such steps can only be taken in limited circumstances.

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

133. The new power to make arrangements for animals involves a procedure for determining property rights and is therefore considered to engage Article 6 (the right to a fair and public hearing). However, the various procedural safeguards, including the availability of the right of appeal to a sheriff with full jurisdiction, ensures that the new procedure is compliant with Article 6.

134. Exercise of the new power to administer treatment to animals, without any right to compensation, service of notice or the need for any court order, that is inserted into section 32 of the 2006 Act (see section 12 of the Bill) may also engage Article 1 Protocol 1. This power to administer treatment is considered to be compliant with Article 1 Protocol 1 because of the limited circumstances in which it may be exercised and the fact that exercise of the power is unlikely to result in loss to the owner of the animal.

135. The provisions of the Bill which increase penalties for various offences are capable of being brought into force in a manner that is compatible with the European Convention of Human Rights. The other provisions of the Bill do not engage the protections of the European Convention of Human Rights.

Island communities

136. It was not considered necessary to conduct an Islands Impact Assessment with the assumption that the amendments to the existing legislation have no adverse impacts on rural or island communities.

137. During the development of the Bill it has come to light that any delays associated with court applications under section 34 of the 2006 Act can be accentuated in rural locations; because the courts are busy and do not sit often, and this may mean it takes a long time to get a hearing for animal welfare issues, in the context of the courts' other numerous priorities. As the new powers to deal with animals will allow authorised persons to treat, transfer or destroy animals taken into possession without the need for a court order, the Bill provisions should relieve the pressure on all courts.

138. It can also be noted that instances where animals need to be taken into possession to protect their welfare can often be complicated and more expensive in island or rural locations. The costs associated with these enforcement actions (e.g. haulage, food, accommodation) and 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

difficulties in seeking alternative accommodation and staff to supervise these movements and any subsequent care can be undoubtedly be magnified in rural areas.

Local government

139. The introduction of future fixed penalty notice regimes will satisfy an explicit request from local authorities to have an additional enforcement tools, in the hierarchy of enforcement options available.

140. The introduction of the new process to more quickly transfer, sell, treat and, if necessary in rare cases, humanely destroyed of animals (previously taken into possession) will help to further protect their welfare. It will also greatly reduce the associated costs of keeping the animals in temporary accommodation until the resolution of a civil or criminal court case. It is hoped that this new and innovative process will provide local authorities with the assurance to intervene early, given the prospect of animals taken into possession being more quickly transferred, sold, treated or, if necessary, humanely destroyed.

Sustainable development

141. A full strategic environmental assessment was not considered necessary. This Bill does not create any new animal welfare or wildlife offences and offers changes to the consequences of criminal behaviour. Therefore, the amendments do not impose any additional direct impacts (positive or negative) on sustainable development, when compared to the existing provisions.

142. Certain wildlife offences, such as those relating to the killing or taking of certain species or the use of poisons, can have wider negative impact, such as causing damage to established eco-systems. Wildlife crimes can also have a serious impact on the conservation status of species resulting for example in the loss of local bird of prey populations and the extinction of freshwater pearl populations from certain rivers.

143. Increasing the maximum penalties attached to these offences will reflect the serious impact that these crimes can have and reinforce the seriousness of such offending; demonstrating the importance and value we place on protecting our natural environment.

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

144. Courts would be provided with much greater flexibility in the range of penalties available to them where a person is convicted of such an offence. This will allow a court to take full account of all the facts of a case and the penalties awarded to more closely reflect the nature and impact of any specific offence. However, it is assumed that detection rates of animal welfare and wildlife offences will be unaffected by the provisions of the Bill.

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

Annex A

Wildlife penalties to be amended

1. Wildlife and Countryside Act 1981				
<u>Section</u>	<u>Offence</u>	<u>Current Penalty summary</u>	<u>New penalty summary</u>	<u>New penalty indictment</u>
1(1)(a)	Intentionally, recklessly: kills, injures, takes wild bird	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
1(1)(b)	Intentionally, recklessly: takes, damages, destroys nests	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(1)(b a)	Intentionally, recklessly: damages, destroys etc nests habitually used Schedule A1 bird	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(1)(b b)	Intentionally, recklessly:	6 months maximum imprisonment	12 months maximum imprisonment	N/A

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

	obstructs, prevents any bird using nest	t or level 5 standard scale fine (£5,000), or both	nt or £40,000 fine, or both	
1(1)(c)	Intentionally, recklessly: takes, destroys egg of any wild bird	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(2)(a)	Possession: live, dead bird part of	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(2)(b)	Possession: egg or part of	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(5)(a)	Intentionally, recklessly: disturbs Schedule 1 wild bird; nest building,	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A

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

	near nest with eggs or young			
1(5)(b)	Intentionally, recklessly: disturbs Schedule 1 wild bird; dependent young	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(5A)	Intentionally, recklessly: disturbs Schedule 1 wild bird whilst lekking	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(5B)	Intentionally, recklessly: harasses Schedule 1A wild bird	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
1(5C)	Knowingly cause, permit - foregoing provisions	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A

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

5(1)(a)	Prohibition of certain methods of killing or taking wild birds: sets particular articles or poisonous substance	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
5(1)(b)	Prohibition of certain methods of killing or taking wild birds: use of such articles; nets, board, lime etc	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
5(1)(c)(i)-(viii)	Prohibition of certain methods of killing or taking wild birds: use of bows, explosives, certain guns,	6 months maximum imprisonment or level 5 standard scale fine (£5,000) or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both

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

	lighting, gas etc			
5(1)(d)	Prohibition of certain methods of killing or taking wild birds: use as a decoy of sound recording, tethered bird etc	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
5(1)(f)	Knowingly cause or permit offences 5(1)(a) to 5(1)(e)	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	As for the underlying offence	As for the underlying offence
6(1)(a)	Sale etc: sells, offers, possesses, for purpose of sale wild bird, part of or egg	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
6(2A)	Knowingly cause or permit offences	6 months maximum imprisonment or level 5	As for the underlying offence	As for the underlying offence

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

	6(1)(a) or 6(2)(a)	standard scale fine (£5,000), or both		
6(3)(a)-(b)	Causes or permits, purposes of competition, any live wild bird etc	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
7(1)	Registration: captive birds, Schedule 4	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
8(1)	Protection: captive birds; cage requirements	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
8(3)(a) and (b)	Protection: captive birds; shooting etc and permitting of that	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A

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

9(1)	Protection : certain wild animals: intentionally or recklessly kills, injures, takes and Schedule 5 wild animal	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
9(2)	Protection : certain wild animals: possession any live, dead part of Schedule 5 wild animal	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
9(4)(a)	Protection : certain wild animals: intentionally or recklessly damages, destroys, obstructs shelter of Schedule 5 wild animal	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A

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

9(4)(b)	Protection : certain wild animals: intentionally or recklessly disturbs Schedule 5 wild animal whilst occupying shelter	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
9(4A)(a)(b)	Protection : certain wild animals: intentionally or recklessly disturbs, harasses Schedule 5 animal (dolphin, basking shark etc)	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
9(5)(a)	Protection : certain wild animals: sells, possesses etc live, dead, part of	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A

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

	Schedule 5 animal			
9(5A)	Knowingly cause or permit offences 9(1), 9(2), 9(4), 9(4A) or 9(5)(a)	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	As for the underlying offence	As for the underlying offence
10A(1)	Protection : hares; Intentionally or recklessly kills, injures, takes Schedule 5A animal in their close season	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
11	Prohibition: methods of killing/taking animals	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
11B	Snares: duty to inspect	6 months maximum imprisonment or level 5 standard scale fine	12 months maximum imprisonment or £40,000	N/A

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

		(£5,000), or both	fine, or both	
11G	Prevention: poaching	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
11I	Sale or possession of unlawfully taken hares or rabbits	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	N/A
14	Introduction of invasive non-native species	12 months maximum imprisonment or fine not exceeding £40,000, or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
Conservation (Natural Habitats &c) Regulations 1994				
<u>Section</u>	<u>Offence</u>	<u>Current Penalty summary</u>	<u>New penalty summary</u>	<u>New penalty indictment</u>
39	Deliberately kill, take, disturb, destroy European	6 months maximum imprisonment or level 5 standard scale fine	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both

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

	protected species	(£5,000), or both		
41(6)	Prohibition of certain methods of killing wild animals	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
Wild Mammals (Protection) Act 1996				
<u>Section</u>	<u>Offence</u>	<u>Current Penalty summary</u>	<u>New penalty summary</u>	<u>New penalty indictment</u>
s1	Mutilates, beats, stabs, impales etc any wild mammal with intent to inflict unnecessary suffering	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
Deer (Scotland) Act 1996				
<u>Section</u>	<u>Offence</u>	<u>Current Penalty summary</u>	<u>New penalty summary</u>	<u>New penalty indictment</u>
17(3)	Killing or injuring deer otherwise than by shooting	3 months imprisonment or a fine of level 4 on the standard scale for	12 months maximum imprisonment or £40,000	5 years maximum imprisonment or unlimited

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

		each deer, or both	fine, or both	fine, or both
21(5)	Use of firearms or any ammunition to wilfully injure deer	3 months imprisonment or a fine of level 4 on the standard scale for each deer, or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
22	Unlawful killing, taking or injuring of deer or a breach of firearms by more than one person	6 months imprisonment or statutory maximum fine in respect of each deer killed, taken or injured, or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
Protection of Badgers Act 1992				
<u>Section</u>	<u>Offence</u>	<u>Current Penalty summary</u>	<u>New penalty summary</u>	<u>New penalty indictment</u>
S1(1)	Wilfully kills, injures or takes a badger	12 months maximum imprisonment or the statutory maximum fine of £10,000, or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
S1(6)	Knowingly cause, permit etc	12 months maximum imprisonment	12 months maximum imprisonment	5 years maximum imprisonment

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

	an unlawful act under (1)	t or the statutory maximum fine of £10,000, or both	nt or £40,000 fine, or both	nt or unlimited fine, or both
S2(1)(a)	Cruelly ill treat	12 months maximum imprisonment or the statutory maximum fine of £10,000, or both	12 months maximum imprisonment or £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
S2(1)(b)	Using badger tongs in the course of killing or attempt to kill etc	12 months maximum imprisonment or the statutory maximum fine of £10,000, or both	12 months maximum imprisonment or £40,000 fine, or both	5 years max imprisonment or unlimited fine, or both
S2(1)(c)	Digs for a badger (as excepted)	12 months maximum imprisonment or the statutory maximum fine of £10,000, or both	12 months imprisonment or maximum £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
S2(1)(d)	Use of inappropriate firearm &	6 months imprisonment or fine not exceeding	12 months imprisonment or maximum	N/A

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

	bullet (specified in Act) to kill, take	level 5, or both	£40,000 fine, or both	
S2(3)	Knowingly causes etc an offence in relation to an act made unlawful under section 2(1)(d)	6 months imprisonment or fine not exceeding level 5, or both	12 months imprisonment or maximum £40,000 fine, or both	N/A
s2(3)	Knowingly causes etc an offence in relation to an act made unlawful under section 2(1)(a) to (c)	12 months imprisonment or fine not exceeding statutory maximum, or both	12 months imprisonment or maximum £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both
3(1)(a)	Damaging a badger sett	6 months imprisonment or fine not exceeding level 5, or both	12 months imprisonment or maximum £40,000 fine, or both	N/A
3(1)(b)	Destroying a	6 months imprisonment or fine not	12 months imprisonment or	N/A

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

	badger sett	exceeding level 5, or both	maximum £40,000 fine, or both	
3(1)(c)	Obstructing a badger sett	6 months imprisonment or fine not exceeding level 5, or both	12 months imprisonment or maximum £40,000 fine, or both	N/A
3(1)(e)	Disturbing a badger in a sett	6 months imprisonment or fine not exceeding level 5, or both	12 months imprisonment or maximum £40,000 fine, or both	N/A
S3(2)	Knowingly cause, permit - S3(1)(a) to (c) or (e) offences	6 months imprisonment or fine not exceeding level 5, or both	12 months imprisonment or maximum £40,000 fine, or both	N/A

Protection of Wild Mammals (Scotland) Act 2002

<u>Section</u>	<u>Offence</u>	<u>Current Penalty summary</u>	<u>New penalty summary</u>	<u>New penalty indictment</u>
1(1)	Deliberately hunting wild mammal with a dog	6 months maximum imprisonment or level 5 standard scale fine	12 months imprisonment or maximum £40,000 fine, or both	5 years maximum imprisonment or unlimited fine, or both

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

		(£5,000), or both		
1(2)	Owner or occupier knowingly permits use of land to permit another to commit an offence	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months imprisonment or maximum £40,000 fine, or both	N/A
1(3)	Owner or responsible person of dog permits other to use that dog to commit an offence	6 months maximum imprisonment or level 5 standard scale fine (£5,000), or both	12 months imprisonment or maximum £40,000 fine, or both	N/A

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

Policy Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -

www.scottish.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.scot/documents