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

[As Amended at Stage 2]

Supplementary Financial Memorandum

Introduction

- 1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this supplementary Financial Memorandum is published to accompany the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (introduced in the Scottish Parliament on 30 September 2019) as amended at Stage 2.
- 2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.
- 3. The purpose of this supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following the amendments made at Stage 2. This document addresses those amendments with anticipated or potential cost implications. Amendments agreed at Stage 2 which are not covered in this supplementary Financial Memorandum are considered not to significantly or materially affect the assumptions in the original Financial Memorandum.
- 4. This Financial Memorandum addresses the changes proposed by the Bill for fixed penalty notices (FPNs) for wildlife crimes.

Fixed penalty notices for certain wildlife offences

- 5. Sections 2 and 4 of the Bill give Scottish Ministers the power to make regulations allowing fixed penalty notices (FPNs) to be used in relation to certain animal welfare and health offences respectively.
- 6. At stage 2 the Bill was amended by the Environment, Climate Change and Land Reform Committee to introduce a power at section 10A to allow the Scottish Ministers by regulations to make provision for or in connection with the issuing of fixed penalty notices (FPNs) in relation to certain wildlife offences.
- 7. In line with the existing sections 2 and 4 FPN regimes, this amendment specifies that FPNs can only be used in relation to those minor wildlife offences that attract a maximum penalty on summary conviction of no more than six months imprisonment or a level 5 fine or both.
- 8. The provisions of this amendment will impact on those that have committed an offence relating to wildlife, and on those who have a role in enforcing wildlife legislation. The amendment provisions are not considered to impact on law-abiding animal owners, keepers or businesses more widely.
- 9. It is assumed that detection rates of animal health, welfare and wildlife offences will be unaffected by the provisions of the Bill, as no changes to detection methods are being proposed.

Introducing the provision for fixed penalty notices

Costs on the Scottish administration

- 10. The Bill as amended at stage 2 confers a new power on the Scottish Ministers to introduce, by regulations, provision for the use of FPNs for less serious wildlife offences. It does not, in itself, introduce a fixed penalty notice regime.
- 11. Detailed cost estimates for specific fixed penalty notice regimes will be set out as part of the process to consult on, draft and introduce the Scottish statutory instruments (SSIs), which will be subject to affirmative procedure and scrutinised by the relevant parliamentary committee as and when they are to be introduced.

- 12. As a general observation, it is noted that the introduction of FPNs is not anticipated to result in any significant additional direct costs for the Scottish Administration, other than the associated introductory costs relating to the drafting of the subsequent SSIs and any necessary guidance as and when these regulations are made.
- 13. There may be a small saving to the Scottish Courts and Tribunals Service (SCTS) and the Crown Office and Procurator Fiscal Service (COPFS) as it is expected that the introduction of proportionate FPN regimes will reduce the number of cases referred to the courts, although due to the minor and technical nature of these types of offences it is assumed that the number of cases reported to the COPFS is currently very small.
- 14. Currently, the type of technical offences anticipated to attract fixed penalties in future are dealt with by Police Scotland by either warnings, advice or criminal proceedings. Some cases may be reported to the COPFS.
- 15. The introduction of FPNs by future regulations may give rise to some associated introductory costs in terms of training and the production of the relevant notices; however, these are likely to be low, given that Police Scotland has experience in using FPNs for a wide range of enforcement purposes, and would issue them whilst undertaking their usual duties.
- 16. The penalties to be imposed for each offence will be determined by the regulations. It is intended that these will be reasonable and proportionate in order to change behaviour, provide an immediate deterrent, and improve compliance. The regulations will also determine the destination of any funds received by an enforcement authority in consequence of the issuing of FPNs.
- 17. The proposed introduction of FPNs will provide Police Scotland with an additional enforcement tool, enabling officers to issue FPNs when administrative or technical breaches of the relevant regulations occur.
- 18. This may result in savings in police staff time, as the issuing of a FPN could occur as soon as the enforcing authority is satisfied that the statutory tests (to be set out in the FPN regulations) for issuing it have been met; and in many cases no further enforcement action would be required (in the event that the penalty payment is made), including no further involvement of the courts.

Costs on local authorities

- 19. The investigation of wildlife crime falls to Police Scotland. Local authorities do not enforce any wildlife legislation.
- 20. As noted previously, the Bill does not itself introduce a fixed penalty regime, and there will be no costs to local authorities arising from the conferring on the Scottish Ministers of the power to introduce such regimes in future regulations. However, the new power allows the possibility to confer the power to serve FPNs in relation to wildlife offences on inspectors employed by local authorities, should it be deemed necessary.
- 21. Detailed cost estimates for specific fixed penalty rules would be set out as part of the process to consult on, draft and introduce these SSIs, which will be subject to affirmative procedure and scrutinised by the relevant parliamentary committee as and when they are to be introduced.

Costs on other bodies, individuals and businesses

- 22. As the Bill does not itself introduce any fixed penalty regime, there will be no costs for any bodies, individuals or businesses arising from the proposed provision to give the Scottish Ministers the power to introduce such regimes in future by regulations. There are unlikely to be significant costs to other bodies, individuals or businesses associated with introducing future regulations. Any potential impact on other bodies, individuals and businesses would be considered at the time of developing and introducing the relevant regulations. However, no additional costs would be imposed on law-abiding persons.
- 23. Police Scotland has welcomed the proposed new power to introduce fixed penalty notice regimes by regulations and the Scottish SPCA is supportive of the proposal for the issuing of such notices to enforce minor and technical wildlife offences that do not impact directly on animals' welfare.

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