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# Consultation Response

Amendments to the Animal Health and Welfare  
(Scotland) Act 2006

26 April 2019



## Introduction

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We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee and Rural Affairs Committee welcome the opportunity to consider and respond to the Scottish Government consultation: Amendments to the Animal Health and Welfare (Scotland) Act 2006 (the Consultation). The committee has the following comments to put forward for consideration.

## General

The Consultation is considering strengthening the Animal Health and Welfare (Scotland) Act 2006 (2006 Act) in relation to:

- increasing the penalties to punish perpetrators
- making it easier for approved bodies to make quickly the best arrangements for animals after they have been taken into possession to protect their welfare

In principle, we support a number of the Consultation's proposed amendments with regard to the proposed increase in sentencing provisions so that the most serious offences can be tried on indictment if felt appropriate.

What would have been helpful would have been examples of cases where prosecution was not possible or where the sentencing provisions have not reflected the serious level of the offence.

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

Yes.

We assume that the reference to strengthening the maximum penalties for offences arising under the 2006 Act means increasing the range of sentencing options for such offences.

The Consultation outlines that the maximum penalty is set at twelve months or a fine of £20000 or both for contraventions of sections 19 and 23 of the 2006 Act. What appears to us is that this precludes any prosecution on solemn procedure involving a jury as a forum in what are the most serious of cases. Including that option may be appropriate. This would require the extension of the sentencing options to include proceedings on indictment and therefore permit potentially custodial sentences to be imposed of longer duration than twelve months.

The Consultation outlines that the maximum penalty under the 2006 Act in respect of other offences is set at six months or a fine or both. It appears that it would be sensible to provide the full sentencing range available in the sheriff court. That would mean increasing the sentencing range to custodial sentences in excess of twelve months or a fine of £20000 or both in respect of other offences.

We note that the Consultation refers to “in recent years there have been a number of animal cruelty cases that have attracted media interest because the offence was so shocking that the maximum sentence available to the court was considered by many to be insufficiently punitive.” Producing evidence to show to what cases this refers and from whom concerns over sentencing options have been expressed would be helpful in understanding what the issues are. Though we support the principle of increasing the range of sentencing options, as outlined above, examples where the current sentencing options are not adequate and should be increased would assist those involved in the criminal justice process in improving the process.

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

Yes. This would bring the offences into line with sheriff and jury court cases being tried on indictment. There is no good reason why the most serious cases should remain restricted only to being tried on summary proceedings.

The Consultation refers to the current penalties not being sufficient to recognise the seriousness of the offences and not acting as an effective deterrent. As well as increasing any penalties on conviction, we would suggest that where there are successful convictions or indeed, in advance of any increase in the sentencing options, an effective publicity campaign should be organised. This would encourage both compliance with the law and the knowledge to those committing (and advising on) such offences of the likely penalties. This would help to provide a deterrent.

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

No. There is currently a maximum fine of £20000 available for such offences that seems in line with the top end of sentencing in other statutory offences. What needs to be considered is if by keeping the maximum penalty at £20000 that there is any restriction on the range of penalties capable of being imposed. We would think not.

Fines are not used by the courts as alternatives to sentences of imprisonment. Where the gravity of the offence committed is likely to attract consideration of a custodial sentence such as the example provided in the Consultation about Finn's Law<sup>1</sup> where service animals are attacked and injured, a fine is unlikely to be the court's choice of sentencing. Any fine that is imposed in any case would need to be commensurate with the means of the convicted offender. Maintaining the current maximum penalty would not exclude other sentencing options such as the imposition of community payback orders or indeed, a compensation provision were that thought to be appropriate.

We refer to our answer in Question 2 where as well as considering any increase in penalties or level of fines, there is a need for a robust publicity campaign on any changes which may be brought forward as a result of the Consultation.

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

No. There is no logical reason that mistreating an animal should be treated as less seriously if the animal is not in service. The courts consider all the facts and circumstances of each case and impose the sentence that is fair and appropriate, reflecting the seriousness of the case. To try and legislate for every possibility may often make for legislation which is not easy to apply. The courts can consider whether the fact that the animal was in service at the time of the incident is an aggravating feature which would result in the imposition of a more severe penalty.

We also refer to the role of the Scottish Sentencing Council.<sup>2</sup> That might be a route to suggest exploring in connection with the objectives of the Consultation as their aims are to:

- promote consistency in sentencing
- assist the development of sentencing policy
- promote greater awareness and understanding of sentencing.

<sup>1</sup> <https://www.finnslaw.com/>

<sup>2</sup> <https://www.scottishsentencingcouncil.org.uk/>

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

No. There are time bars set out in the Consultation at present. Time bars are necessary to prevent delay in proceedings being commenced.

It is recognised that the six-month time limit does not apply to proceedings on indictment. Therefore, there are no statutory time limits in the more serious (and often complex) cases.

All proceedings are governed by Article 6 of European Convention of Human Rights (ECHR) in respect of receiving a fair trial within a reasonable time.

Cases that are less serious will be prosecuted summarily. Summary justice is based on a system that is prompt and efficient. To remove statutory time limits totally will simply lead potentially to unjustified delays.

If there are genuine concerns that there may occasionally be cases where the offence is unknown or unreported at the time then, the statutory time limit can be amended to allow prosecutions to be raised within six months of the circumstances of the offence coming to the attention of the relevant authorities.

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

Yes. However, fixed penalty notices should only be available in respect of minor offences. These can provide a proportionate means of dealing with minor types of offending.

We believe that it is important to make people face up to their criminality in general and not simply to tax them on their criminal behaviour. There is a reference to care notices which needs to be more fully explained as to how these provisions fit into the potential scope of fixed penalty notices which would tend to be about the imposition of financial penalties.

Regulatory offences such as these types of animal welfare offences are good examples where fixed penalties provide an effective and prompt way of dealing with people. We stress that it is important to ensure that the range of offences are restricted that can be dealt with by fixed penalties.

We note the reference to the issue of fixed penalty notices issued by police officers and inspectors. There would need to be training provided for inspectors before such new powers are introduced.

We assume that there is also the intention to allow the Crown Office and Procurator Fiscal Office to issue fixed penalties too in respect of cases where they felt that this was an appropriate use of their discretion

and the use of an alternative to prosecution.<sup>3</sup> This seems to be implied in the Consultation rather than directly mentioned.

We note the proposal to introduce powers for Scottish Ministers to make appropriate regulations to allow for the introduction of the issue of fixed penalty notices. In order to ensure that fair notice is given, we question whether it would be intention of Scottish Ministers to provide that such regulations would be subject to affirmative or negative parliamentary procedures.

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

Yes. We support that it is in the best interests of the animal that such matters are dealt with promptly.

We note the restriction of any such new powers to business activities and to animal welfare protection. Both provisions would need to be carefully defined.

Though the Consultation did contain much useful detail as to how it is intended that such new provisions would operate, the exact details would need to be seen. There needs to be fairness in the procedures being adopted being in accordance with Article 6 of the ECHR.

What seems to be proposed is that there would be powers granted to categories of persons to make various arrangements for animals without obtaining a court order. If such powers are to be provided, there should be clear provisions for the court to ratify such a decision. It should not necessarily, as it seems to be suggested, that it is for the affected person to raise an appeal. This is an important point of policy that needs to be further considered.

There are various examples of existing court processes where access to a court requires to be made urgently. Examples include interim interdict hearings, detention of cash under the proceeds of crime legislation and summary applications. These are interim measure which all require ratification by the court in due course.

Our concerns too relate to the terms of the notice provision. Exactly on whom would such notice be served? This needs to be clarified. Also, there need to be specific provisions made as to the requirements of service. Any notice would need to include the details referred to in the Consultation regarding:

- the description of the animals affected
- the decision taken, by whom and advice on the interim arrangements made for the animals

<sup>3</sup> <http://www.copfs.gov.uk/about-us/what-we-do/our-role-in-detail/10-about-us/297-alternative-to-prosecution>

- an explanation of the procedures including the appeals mechanism regarding the decision taken with regard to the animals concerned
- access to legal aid and representation. Any new process that is introduced to resolve issues such as this will need to consider if automatic legal aid or ABWOR is required so that individuals can be represented at the earliest stages of proceedings.
- the time period in which appeals could be made- three weeks may well be much too short.

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

We cannot answer this question. This question is best directed to those that would have the knowledge about the welfare of the animals

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

Yes. This question is best directed to those that would have the knowledge about the use of the relevant resources. We would assume that the enforcement authorities and charities themselves can produce the management data to back this statement up.

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

We can see why such powers should be restricted to “commercially kept” animals so it would apply in these circumstances to dogs, cats and rabbits. Exactly what “commercially kept” means would need to be defined. It would not seem to be appropriate for such powers to make permanent arrangements in respect of a single animal kept for personal use.

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

Yes. It is important to allow representation and challenge to any sort of order. There must be provision for representation including funding of the same through legal aid.

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

It is difficult to be certain if three weeks would be long enough as it depends on what kind of processes and procedures would be envisaged when the animal is first taken into possession. Three weeks may not be ample if the person has to obtain advice, appeal and for any appeal process to be resolved.

There could be a provision that an individual can waive the period of the notice if it is their intention not to challenge the order.

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

Yes. The circumstances need to be more clearly set out as it would seem illogical to compensate a previous keeper if they were the person involved in the failure to provide for the animals' welfare.

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

No. This is not a question we can answer.

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

We have nothing more to add.

**Question 16: How satisfied were you with this consultation?**

We cannot answer this question.

**Question 17: How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?**

Not applicable

**For further information, please contact:**

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