



Law Society
of Scotland



Consultation Response

Wildlife Crime Penalties

15 August 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

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 welcomes the opportunity to consider and respond to the Scottish Government consultation: Wildlife Crime Penalties (the consultation). Regarding the question on sector and origin, we would confirm as above that we are a non -Government organisation.

The committee has the following comments to put forward for consideration.

Question 1: The Scottish Government proposes that the maximum penalties for some wildlife offences, for example the injuring or un-licensed killing or taking of wild animals should be strengthened. Do you agree?

The consultation refers to concerns about maximum penalties and “the impact of these crimes on such species [wild animals of threatened conservation status] can be so significant that the maximum sentence available to the court is considered by many to be insufficiently punitive.” What would have been helpful to have supported this statement would have been references or judicial statements that the available sentencing powers were not currently adequate to reflect the seriousness of the relevant offences.

Regarding sentencing, the Scottish Sentencing Council is best placed to provide guidance to the judiciary as to how such offences should be punished to promote consistency. Their position is that they “believe that a guideline addressing environmental and wildlife offences would be of public benefit, these being matters of particular significance to Scottish communities and indeed the Scottish economy.”¹ They have reflected that the Scottish Government is taking forward, as outlined in this consultation, the recommendations from the Report of the Wildlife Crime Penalties Review Group to increase penalties for wildlife crime. That presumably has delayed any production of the guideline with the Scottish Government's commitment:

“to protect the environment from those who seek to damage it for personal gain. We will increase the penalties for wildlife crime and consider the creation of new sentencing guidelines in line with recommendations from the Wildlife Crimes Penalties Review Group.”

We would stress the importance of producing a guideline. Though the commission of wildlife crime can be serious, these cases do frequently arise, making it more challenging for ensuring consistency in sentencing. There is a need to ensure that the judiciary are aware of the relevant and essential factors as that will help in promoting and achieving effective sentencing. There is also a role for the Judicial Institute for Scotland in their remit to provide judicial education where appropriate too in relation to sentencing for such specialist crimes.

Appropriate sentencing and the production of a sentencing guideline means that the public, including interested groups, may be made aware of the likely sentences that the commission of any offence may attract. Similarly, the public should be aware of the seriousness of the offences to promote deterrence in the future.

Though the consultation seems to reflect domestic concerns, over time as a number of the offences were created some time ago, offences may well have become more serious, owing to greater knowledge and their potential effects on the diminishing wildlife population. We understand too that there may be links to wildlife crime on an international scale with potential links to serious organised crime.

“In recent years there has been growing evidence that that there are connections between the wildlife trade and serious organised crime, and it is now generally accepted that some wildlife trade, particularly at the international level, involves organised crime groups and trafficking networks.”²

We also note that several statutes and offences referred to in the consultation are also relevant in England and Wales. Given our observations about international offending, though we understand England and Wales have not to date produced any sentencing guidelines on wildlife crime, there should be consistency and proportionally regarding the penalties that can be imposed in respect of the relevant wildlife offences in all jurisdictions.

These all support this review of the relevant sentences, but we would stress that strengthening of sentencing does not lie in increasing the penalties alone. It must be associated with the points regarding education, awareness, consistency and proportionality outlined above.

² (quoted in Sentencing Wildlife Trade Offences in England and Wales Consistency, Appropriateness and the role of Sentencing Guidelines Cook, Roberts & Lowther, 2002; Cowdrey, 2002; UNEP, 2014; UNODC, 2010; Zimmerman, 2003). <https://www.wwf.org.uk/sites/default/files/2017-01/WWF-UK%20Report%20-Sentencing%20wildlife%20trade%20offences%20in%20England%20and%20Wales.pdf>

Question 2: Do you agree that the maximum prison sentence available for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be increased to five years imprisonment?

Don't Know

We refer to our answer to Question 1. Certainly, if the potential sentences are increased to five years, it will allow a sheriff when convictions arise on indictment to consider the full sentencing range.

Question 3: Do you agree that the upper limit on fines for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be unlimited?

Don't Know

We refer to our answer to Question 1. Where penalties may not have been increased since the offences were created, it is likely that the maximum fine may not have kept pace proportionately with inflation etc. There is merit in a review and increase as recommended. That will, if required, improve the sheriffs' powers in sentencing.

Question 4: Do you agree that the maximum prison sentence available for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to twelve months imprisonment?

Yes

This is probably consistent with other sentencing powers for other offences. However, whether there was anyone sentenced to imprisonment will be subject to the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 which affects convictions on or after 4 July 2019.

Question 5: Do you agree that the upper limit on fines for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to £40,000?

Yes

We refer to our answer to Question 1. Where penalties may not have been increased since the offences were created, it is likely that the maximum fine may not have kept pace proportionately. There is merit in a review and increase as recommended. That will if required improve the sheriffs' powers for sentencing.



Question 6: Do you agree that the statutory time limit for wildlife crime offences that may be prosecuted under summary procedure only, e.g. the intentional or reckless taking, damage or destruction of nests under section 1(1)(b) of the Wildlife and Countryside Act 1981, 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?

Yes

This seems sensible and in line with other types of offences which rely on information that may take time to be gathered and assessed for the purposes of prosecution.

Question 7: Do you agree that we should allow some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, to be tried under solemn proceedings before a jury in court?

Crown Office and Procurator Fiscal Service is the sole prosecuting authority for Scotland who are responsible for assessing evidence and deciding if there is sufficient admissible evidence to justify prosecution in the public interest. They decide in which forum the prosecution should be instructed, depending on a range of factors. Providing the option of prosecuting by summary and solemn procedure seems appropriate though it would be useful to have had examples where there had been problems in cases not being able to be prosecuted under solemn procedure.

Question 8: Please use this question to provide any other commentary or observations you have on the proposal to increase the available penalties for wildlife crimes.

We refer to our answer to question 1.

Evaluation Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published).

Question 9: How satisfied were you with this consultation?

Neither satisfied nor dissatisfied

We refer to our answer to Question 1.

Question 10: How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

Neither satisfied nor dissatisfied.

For further information, please contact:

Gillian Mawdsley
Policy Executive
Law Society of Scotland
DD: 0131 476 8206
gillianmawdsley@lawscot.org.uk