



Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020

2020 asp 14

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 17th June 2020 and received Royal Assent on 21st July 2020

An Act of the Scottish Parliament to increase penalties for the most serious animal welfare offences, to provide for fixed penalties in relation to animal welfare offences generally, to increase the protection for service animals from being caused unnecessary suffering, to require courts to consider making disqualification orders following convictions for animal welfare offences, to provide for fixed penalties in relation to animal health offences, to increase penalties in relation to certain wildlife offences, to provide for fixed penalties in relation to wildlife offences, to increase the protection for seals from being killed, injured or taken; to confer power on inspectors and constables, where animals have been taken into possession to alleviate their suffering, to make arrangements for the treatment, transfer or destruction of those animals; and for connected purposes.

CHAPTER 1

ANIMAL WELFARE, ANIMAL HEALTH AND WILDLIFE: OFFENCES AND PENALTIES

Animal welfare offences: penalties

1 Prevention of harm to animals: penalties for offences

(1) The Animal Health and Welfare (Scotland) Act 2006 (in this Act, “the 2006 Act”) is amended as follows.

(2) In section 46 (penalties for offences)—
(a) for subsection (1) substitute—

“(1) A person who commits an offence under section 19 or 23 is liable—

Changes to legislation: There are currently no known outstanding effects for the *Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020*. (See end of Document for details)

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”,
 - (b) in subsection (3)—
 - (i) after “Part” insert “ (other than under regulations made under section 46A) ”,
 - (ii) for “referred to in subsection (2)” substitute “ mentioned in subsection (4) ”,
 - (c) after subsection (3) insert—
 - “(4) The penalties referred to in subsection (4) are imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).”.
- (3) Section 44 is repealed.

Commencement Information

II [S. 1](#) in force at 30.11.2020 by [S.S.I. 2020/379](#), reg. 2(1), [sch.](#) (with reg. 3)

2 Fixed penalty notices for certain animal welfare offences

In the 2006 Act, after section 46 insert—

“46A Fixed penalty notices for certain offences

- (1) The Scottish Ministers may by regulations make provision for or in connection with the issuing of fixed penalty notices in relation to certain offences.
- (2) The offences in relation to which fixed penalty notices may be issued must be specified in or by virtue of regulations under subsection (1).
- (3) The offences which may be specified are offences—
 - (a) under—
 - (i) this Part,
 - (ii) regulations made under section 26, 27 or 28 (whether made before, on or after the coming into force of this section), or
 - (iii) another enactment (whether made or, as the case may be, passed before, on or after the coming into force of this section) which the Scottish Ministers consider relates to animal welfare, and
 - (b) in relation to which the maximum penalty on conviction does not exceed imprisonment for a term of 6 months or a fine of level 5 on the standard scale (or both).
- (4) Regulations under subsection (1) may in particular include provision—
 - (a) subject to subsections (6) and (7), prescribing the form of a fixed penalty notice,
 - (b) prescribing the persons or categories of persons who are authorised to issue fixed penalty notices,

Changes to legislation: *There are currently no known outstanding effects for the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020. (See end of Document for details)*

- (c) conferring on the Scottish Ministers the power to authorise a person to issue fixed penalty notices,
- (d) conferring powers to enter premises (other than dwelling-houses) in connection with the issuing of fixed penalty notices,
- (e) about the circumstances in which fixed penalty notices may be issued (including the test which must be satisfied before a person authorised to issue such notices may do so),
- (f) about the circumstances in which fixed penalty notices may not be issued,
- (g) about the circumstances in which fixed penalty notices may be withdrawn (including the effects of such withdrawal),
- (h) prescribing the amount of the fixed penalty which is to apply to an offence, being not more than level 5 on the standard scale,
- (i) prescribing the person to whom payment may be made (who need not be the person who issued the fixed penalty notice),
- (j) prescribing the period of time within which a fixed penalty may be paid (in this section, the “payment period”),
- (k) about the circumstances in which a person to whom a fixed penalty notice is issued may decline the notice or otherwise object to or challenge it (including the period within which the person may do so),
- (l) about the effects of failing to decline or otherwise object to or challenge a fixed penalty notice before the end of the period prescribed for doing so (including that such failure is deemed to be acceptance of the notice),
- (m) conferring on the person who issued the fixed penalty notice or the person to whom payment may be made the power to extend the payment period in any particular case if the person considers it appropriate to do so,
- (n) about the methods by which fixed penalties may be paid,
- (o) for the amount of a fixed penalty to be discounted or increased by an amount or percentage in circumstances prescribed by the regulations (but not so as to make the amount payable more than level 5 on the standard scale),
- (p) prescribing the effect of paying a fixed penalty within the payment period (for example, that no proceedings may be brought in respect of the offence to which the fixed penalty notice relates),
- (q) about the consequences of not paying a fixed penalty within the payment period (including how liability to pay the penalty may be enforced),
- (r) for additional procedure relating to fixed penalty notices (for example to make provision for hearings or appeals),
- (s) for the destination of funds, the keeping of accounts and the preparation and publication of statements of account relating to fixed penalties provided for under the regulations,
- (t) creating offences relating to—
 - (i) obstruction of a person who is exercising functions in relation to fixed penalty notices,
 - (ii) a failure to provide information requested in connection with a fixed penalty notice.

Changes to legislation: There are currently no known outstanding effects for the *Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020*. (See end of Document for details)

- (5) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale.
- (6) A fixed penalty notice provided for in regulations under subsection (1) must—
 - (a) identify the offence to which it relates, and
 - (b) specify reasonable particulars of the circumstances alleged to constitute the offence.
- (7) A fixed penalty notice provided for in regulations under subsection (1) must also state—
 - (a) the date on which the fixed penalty notice is issued,
 - (b) the amount of the fixed penalty,
 - (c) the person to whom payment may be made and the person's address,
 - (d) the payment period,
 - (e) the method by which payment may be made,
 - (f) the effect of paying the fixed penalty within the payment period and the consequences of not paying the fixed penalty within that period,
 - (g) details of any procedure for challenging or appealing the fixed penalty notice.
- (8) Regulations under subsection (1) may modify any enactment (including this Act).
- (9) In this section, “fixed penalty notice” means a notice specifying a sum of money that may or must be paid as an alternative to prosecution for an offence.”.

Commencement Information

I2 S. 2 in force at 30.11.2020 by [S.S.I. 2020/379](#), reg. 2(1), [sch.](#)

Protecting police dogs etc. from unnecessary suffering

3 Harming a service animal

In section 19 (unnecessary suffering) of the 2006 Act, after subsection (4) insert—

- “(4A) In determining for the purposes of subsection (1) whether suffering is unnecessary in a case where it was caused by conduct for a purpose mentioned in subsection (4)(c)(ii), the fact that the conduct was for that purpose is to be disregarded if—
 - (a) the animal was under the control of a relevant officer at the time of the conduct,
 - (b) it was being used by that officer at that time, in the course of the officer's duties, in a way that was reasonable in all the circumstances, and
 - (c) that officer is not the person accused of committing the offence under subsection (1).
- (4B) In subsection (4A), “relevant officer” means—
 - (a) a constable,

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- (b) a special constable within the meaning of section 9 of the Police and Fire Reform (Scotland) Act 2012,
 - (c) a person (other than a constable or a special constable) who has the powers of a constable or is otherwise employed or engaged to carry out, or assist in the carrying out of, police functions (within the meaning of section 99(1) of that Act),
 - (d) a prisoner custody officer within the meaning of section 114 of the Criminal Justice and Public Order Act 1994.
- (4C) The Scottish Ministers may by regulations modify subsection (4B) to—
- (a) add to the categories of person specified in subsection (4B) other categories of person in the public service of the Crown,
 - (b) vary any category of person for the time being specified in subsection (4B),
 - (c) remove any category of person for the time being so specified.”.”.

Commencement Information

I3 [S. 3](#) in force at 30.11.2020 by [S.S.I. 2020/379](#), [reg. 2\(1\)](#), [sch.](#) (with [reg. 3](#))

Animal welfare offences: disqualification orders

4 Disqualification orders

- (1) The 2006 Act is amended as follows.
- (2) In section 40 (disqualification orders)—
 - (a) in subsection (1), for “may” substitute “ must consider whether it is necessary, to protect animal welfare, to ”,
 - (b) for subsection (5) substitute—
 - “(5) The court must state its reasons—
 - (a) for deciding to make or, as the case may be, not make a disqualification order,
 - (b) where it decides to make such an order—
 - (i) for including in the order the particular disqualifications imposed by it,
 - (ii) for specifying, under subsection (9)(a), the period for which the order is to have effect, and
 - (iii) for specifying, under subsection (9)(b), a period within which no application under section 42(1) may be made.”.
- (3) In section 42 (termination or variation of disqualification orders), after subsection (5) insert—
 - “(6) The court must state its reasons—
 - (a) for granting or, as the case may be, refusing the application under subsection (1),