



PE01544 Briefing for the Public Petitions Committee

Petition Number: [PE01544](#)

Main Petitioner: Olivia Robertson

Subject: Increasing the maximum sentence for convictions under the Animal Health and Welfare (Scotland) Act 2006

Calls on the Parliament to urge the Scottish Government to increase the maximum sentence for those convicted under the Animal Health and Welfare (Scotland) Act 2006.

Background

Part 2 of the Animal Health and Welfare (Scotland) Act 2006 consolidated and modernised animal welfare legislation for Scotland. The main purposes of the welfare provisions of the Act are to promote the welfare of animals and prevent harm through measures such as introducing a duty of care on those responsible for animals and allowing animals either suffering or in danger of suffering to be removed.

The main provisions of Part 2 of the Act replaced and repealed a number of existing provisions in animal welfare legislation and are designed to prevent animal cruelty, promote animal welfare and protect animals in distress. The Act makes it an offence to cause a protected animal¹ unnecessary suffering or to fail to take reasonable steps to ensure the welfare of animals for which a person is responsible (the duty of care), prohibits the giving of animals as prizes, raises the age at which young people can be sold animals, re-affirms the specific offence of abandonment and strengthens the provisions for offences involving animal fights. It increased the penalties for certain offences and allows an inspector or constable to take possession of an animal which is suffering or likely to suffer. It allows the courts to make orders to deprive a person of possession or ownership of an animal on conviction for certain offences; and to disqualify a person from participating in animal-related activities following conviction for certain offences.

The Act gives Scottish Ministers the power to make regulations which will require some animal businesses to be licensed or registered with a local

¹ "Animals" are defined as vertebrates other than man. For an animal to be a "protected animal" it needs to satisfy just one of the following conditions: it is of a kind commonly domesticated in the British Islands.; or it is under the control of man on a temporary basis or on a permanent or it is not living in a wild state.

authority. The proposals for any regulations must be consulted on before they are presented to Parliament for approval.

Section 43 of the Act sets out the penalties for convictions for animal welfare offences. The maximum penalty for summary conviction² for causing unnecessary suffering to a protected animal or for animal fighting offences³ is 12 months imprisonment or a fine of up to £20,000 or both. The maximum penalty for other animal welfare offences in part 2 of the Act is 6 months imprisonment, or a fine not exceeding level 5 on the standard scale (currently £5,000) or both. For regulations made under the Act, section 43 provides that the maximum penalty for conviction of offences under the regulations is 6 months imprisonment or a fine up to level 5, or both.

Scottish Government Action

Since Parliament passed the Animal Health and Welfare (Scotland) Act 2006, the Scottish Government has been working to develop regulations and codes of practice to deal with particular animal welfare issues.

Statutory animal welfare codes can be made under section 37 of the Act. Since the Act was passed the Government has developed new codes on the welfare of practice on cattle, equidae (horses, ponies, donkeys), laying hens, pigs, sheep, gamebirds, cats, and dogs.

Section 20 of the Act prohibits “mutilations” of animals. Mutilation is the carrying out of an operation that interferes with the bone or sensitive tissue of an animal. Operations can be exempted from the prohibition through regulations. Several sets of regulations have been made under these provisions, currently the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010. These exempt a number of operations that are routinely carried out in farming e.g. castration of lambs, calves and piglets so that these have been allowed to continue. The regulations do not exempt tail docking of dogs, so that practice is currently prohibited in Scotland. Other jurisdictions in the UK have enacted similar legislation, but have allowed tail docking of working dogs to continue. There have been calls for this to be allowed in Scotland. Following a study by vets from the University of Glasgow, the Scottish Government has recently consulted on whether tail docking of working dogs should be allowed in Scotland, and is considering the responses to that consultation.

Section 26 of the Act contains a wide power for Scottish Ministers to make regulations to secure animal welfare. In response to concerns about the trade in puppies and kittens, the Scottish Government has developed proposals through consultation which have resulted in the passage of the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009.

² Summary conviction is a case heard by a sheriff or judge sitting alone.

³ Keeping or training an animal for an animal fight; possessing equipment for use at an animal fight; causing an animal fight to take place; arranging an animal fight; participating in making arrangements for an animal fight; making or accepting a bet on an animal fight; taking part in an animal fight; being present at an animal fight; supplying, publishing; showing or possessing a video of an animal fight

The regulations require dealers of puppies and kittens to be licensed for local authorities, and make provisions for allowing inspections of premises etc. to check their suitability.

In 2014 the Scottish Government consulted on whether regulations should be made to ban the use of wild animals in circuses in Scotland.

Much animal welfare legislation, especially relating to farm animals, stems from EU legislation. This has been made as part of the Common Market to ensure that minimum animal welfare standards apply throughout the EU. Member States are generally free to impose more stringent animal welfare standards than those specified in EU legislation. The Scottish Government has also been engaged in work to transpose EU animal welfare legislation. An example is the EU rules on the welfare of animals at the time of slaughter, contained in EU regulation 1099/2009. The Scottish Government consulted on how these regulations should be implemented in Scotland, and they have been transposed through the Welfare of Animals at time of killing (Scotland) Regulation 2012.

Scottish Parliament Action

The Scottish Parliament considered the Bill which was enacted as the Animal Health and Welfare (Scotland) Act 2006.

The then Environment and Rural Development Committee's Stage 1 report [commented](#) on the penalties for offences under the animal welfare provisions in Part 2 of the Bill:

Penalties

271. A number of witnesses suggested that there should be a distinction in the range of available penalties between those who are guilty of certain malicious acts and those guilty of other welfare offences. Section 42 provides that the penalties in respect of animal fight offences are more severe (imprisonment for up to 12 months or a fine not exceeding £20,000, or both) than those for the other welfare offences (imprisonment for up to 6 months or a fine up to level 5, which is currently £5000, or both).

272. Many witnesses argued that the increased penalties should also be available to other offences which involve acts of deliberate or malicious cruelty. Libby Anderson noted the Executive's explanation that the concept of an 'aggravated offence' was not normally part of Scots law, and so a gradation of penalties could not be specified in each offence. However, some witnesses argued for the abandonment offence to carry the same increased penalties as for animal fights. A number of witnesses also agreed with the BVA's argument that "the increased penalties available to courts under section 21 should also be available under section 17 [unnecessary suffering]. Those offences also imply a degree of deliberate cruelty, whether it be by neglect, or as a deliberate act. Such offences are significantly more serious and

therefore deserve the higher penalties.”²²⁶ The ILPH also suggested that provision should be made to refer repeat offenders to a higher court.

273. The Committee considers that it is important for the penalty regime to be appropriate to the severity of the offence. The Committee requests that the Minister explains how the range of penalties proposed in the Bill relates to existing penalties for similar offences, and considers whether the higher penalties are available for the appropriate offences.

The Scottish Government [responded](#) to the Committee as follows:

78. On the basis of further consideration of the arguments in favour of increasing the penalties for animal welfare offences, and, in particular, the serious nature of the actions which may fall to be prosecuted under section 17 (unnecessary suffering), the Executive intends to bring forward an amendment to increase the penalty available for offences under section 17.

A Government amendment to increase the penalties for convictions of causing unnecessary suffering of a protected animal was moved by the Government at Stage 2 and unanimously agreed⁴, and this is reflected in the provisions on penalties in s.43 described above.

The regulations and codes relating to animal welfare developed by the Scottish Government described above have been considered by and approved by the Parliament.

John Park MSP asked a series of questions about animal welfare offences under the Animal Health and Welfare (Scotland) Act 2006 in 2010 and the answers to these have been used to produce the following table.

Table 1 – Prosecutions, convictions, fines and sentences for animal welfare offences under the Animal Health and Welfare (Scotland) Act 2006, 2006-07 – 2008-09

	Prosecutions	Convictions	Fines	Custodial sentences
2006-07	3	3	2	0
2007-08	71	60	46	2
2008-09	102	80	56	4

Source: S3W-36076; S3W-36077; S3W-36078; S3W-36079

⁴ Amendment 148:
http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=991&mode=html#.VImpP5R_u_s

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11 December 2014

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