

Rùnaire a' Chaibineit airson Cùisean Dùthchail, Biadh agus an Àrainneachd
Cabinet Secretary for Rural Affairs, Food and the Environment
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John Pentland MSP
Public Petitions Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

In 2014 Scotland Welcomes the World



Ar faidhle/Our ref: 2014/0030629
27th March 2015

Dear John,

Thank you for your letter of 18 February 2015 to Mr Wheelhouse on behalf of the Public Petitions Committee of the Scottish Parliament, in which you ask for the Scottish Government's views on Petition PE1544, lodged by Ms Olivia Robertson and calling on the Scottish Parliament to urge the Scottish Government to increase the maximum sentence for those convicted under the Animal Health and Welfare (Scotland) Act 2006 (the Act). I am replying as animal welfare lies within my portfolio.

As the Committee is aware, I wrote to my colleague, Alison McInnes MSP, in September last year responding to concerns raised by Ms Roberts over the sentencing powers currently available under the Act. The views presented on this petition will strongly reflect that answer, and, as in that response, I would like to begin by stating that the Scottish Government takes the issue of animal welfare very seriously. Instances of animal cruelty and abuse are abhorrent and I completely agree that they cannot be tolerated in a modern civilised society.

In providing a view on the petition, it may be useful if I outline what the current penalties are, and then address each point raised in the petition in turn.

Current penalties

The Animal Health and Welfare (Scotland) Act 2006 was implemented in order to greatly increase both the protection afforded to protected animals and the powers of enforcement available to authorities to take action against offending individuals.

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In terms of existing penalties, section 19 of the Act makes it an offence for a person to cause an animal unnecessary suffering by an act or omission, or to fail to prevent unnecessary suffering. A person convicted of an offence under section 19 (unnecessary suffering) or section 23 (animal fighting) may be fined up to £20,000, or imprisoned for a maximum period of 12 months, or both. The Act also provides for other offences relating to, for example, mutilations, cruel operations or administering of poisons. The maximum penalties set for these offences is more lenient, with a maximum of 6 months in prison and/or a fine not exceeding level 5 on the Standard Scale (currently £5,000).

Remove two-tier penalties

The petitioner alleges that the application of more lenient penalties to some offences is illogical, since cruel operations and the administration of poisons can inflict unnecessary suffering.

As I explained in my letter to Ms Robertson last September, it should be noted that offences are not mutually exclusive. For example, a person could have charges laid against them regarding offences under section 22 on administering poisons *and* section 19 on unnecessary suffering. It is for the Courts to take a final decision on a case by case basis on whether an offence has been committed under section 19, which brings with it a higher penalty, and the Scottish Government consider that the current arrangement provides the Courts with a degree of flexibility in conviction and sentencing.

Put in place minimum penalty

The petitioner suggests that the minimum penalty for any welfare conviction should be 12 months imprisonment and an automatic life ban on owning animals.

In considering this proposal it is important to remember that many animal welfare incidents arise from neglect due to lack of knowledge or transient personal problems. While this does not negate the suffering caused, the Scottish Government does not consider it proportionate, for example, to put someone in prison for a year and ban them from keeping animals forever as a response to what may have been an unfortunate mistake for which the person feels genuine remorse. The Scottish Government believes it is important that courts should retain discretion in deciding how to sentence offenders in individual cases. If a court considers an offence, based on all the facts of the particular case, merits a tough custodial sentence, then we fully support the court in handing out that tough sentence.

Increase maximum penalty

Ms Robertson also suggests that maximum sentences should be increased.

This is not an unreasonable suggestion. There are a range of penalties applied to animal welfare offences in legislation around the world. Those applied in Scotland are not the highest; however, they are by no means the lowest either. When considering this suggestion, it should be noted that Scottish penalties are in line with those in the rest of Great Britain, and that the Scottish Courts have not yet used the maximum penalties already available to them. For these reasons, the Scottish Government believes that the powers that the Courts have are currently proportionate to adequately sentence those found guilty of animal welfare offences. Having said that, we recognise that it is only right that maximum penalties for any type of offence should be reviewed periodically, within the context of penalties for other offences.

Promote better welfare education

Ms Robertson suggests that the Scottish Government should promote better welfare education.

The Scottish Government agrees with Ms Robertson that education is a key tool in promoting animal welfare in Scotland. To that end we have published a number of Codes of Practice for the Welfare of animals, including cats, dogs, and horses, in addition to farm animals. We have also published husbandry guidance for more challenging types of animals that might be kept under the Dangerous Wild Animals Act 1976. These publications can be accessed at:

<http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/AnimalWelfare/Recommendations>

<http://www.gov.scot/Topics/farmingrural/Agriculture/animal-welfare/AnimalWelfare/DangerousWildAnimals/SpeciesGuidance>

The Scottish Government fully endorses the sterling work being undertaken by the Scottish SPCA with their free prevention through education outreach programme. In 2014 their Education Officers, Animal Rescue Officers and Inspectors delivered the education programme to over 317,000 primary school children throughout Scotland.

Animal welfare now also forms a key part of the Scottish Higher in Biology, with topics including the costs, benefits and ethics of providing different levels of animal welfare in livestock production; behavioural indicators of poor welfare; the observed behaviours of domesticated animals in natural or semi-natural settings; how to form hypotheses on animal behaviour in production surroundings that can be tested; and how to use preference tests and measurements of motivation in animal welfare studies.

(<http://www.educationscotland.gov.uk/highersciences/biology/unitthree/scienceoffood/topicde tails.asp#animal>)

You may also be interested to note that that SRUC, one of the Scottish Government's Main Research Providers, are currently undertaking research on promoting the duty of care to young people.

(http://www.sruc.ac.uk/info/120243/animal_behaviour_and_welfare/1319/promoting_a_duty_of_care_towards_animals)

Links with violence towards people

The petitioner asks that the Scottish Government recognise the issues of psychological welfare for animal abusers and the link to violence towards people and to take action to tackle it.

The Scottish Government acknowledges the increasing evidence base for links between animal abuse and violence towards people. However, tackling such issues, perhaps through counselling and rehabilitation of those convicted of animal welfare offences, is far from straightforward. While there are, unfortunately, some who purposefully commit atrocious acts of cruelty towards animals, the majority of welfare cases arise through ignorance and neglect, or through mental health issues that are unlikely to result in violence towards anyone.

The influence of people's behaviour as it relates to violence directed towards other people is outside the remit of my own portfolio. However, I previously informed Ms Robertson of the work of the UK-based Links Group (<http://www.thelinksgroup.org.uk/index.htm>). This group is made up of a number of animal and vulnerable person-focused organisations who recognise that research and clinical evidence increasingly support the concept of links between the abuse of children, vulnerable adults and animals, and suggest that a better understanding of these links can help to protect human and animal victims and promote their welfare. The group is chaired by Dr Freda Scott-Park of the British Veterinary Association and aims to raise awareness of the links to all professionals and to suggest ways in which they could be incorporated into working practice to help prevent related cases from going undetected

The latest figures requested on prosecutions, convictions, fines and custodial sentences are provided in Annex 1. Officials were unable to break down the figures by domestic and non-domestic animals as requested as the charges in Scottish Government data are based on the sections of the legislation, not on the type of animal concerned.

I hope this information is helpful in your consideration of Petition PE1544. If you require any further information I would be pleased to provide it.

Yours sincerely,

RICHARD LOCHHEAD

Annex 1: Figures on prosecutions and convictions

People proceeded against in Scottish Courts, for offences under Animal Health and Welfare (Scotland) Act 2006, where main charge, 2013-14

Section of legislation	Proceeded against	Main Result of Proceedings	
		Not Guilty	Guilty
SECTION 19(1)	9	2	7
SECTION 19(2)	89	17	72
SECTION 20(1)(A)	1	-	1
SECTION 24	18	2	16
SECTION 29(1)(A)(B)	1	1	-
SECTION 29(2)(A) & (B)	5	3	2
SECTION 40(11)	1	-	1
All	124	25	99

People receiving fines or custodial sentence for Animal Health and Welfare (S) Act 2006 offences, where main charge, 2013-14

Section of legislation	Fine	Custodial sentence
SECTION 19(1)	3	1
SECTION 19(2)	34	1
SECTION 20(1)(A)	1	-
SECTION 24	7	-
SECTION 29(2)(A) & (B)	1	-
All	46	2

Source: Scottish Government Criminal Proceedings Database.