

Wildlife crime penalties

consultation

Open: 19 July 2019
Closes: 16 August 2019

Topic

This consultation seeks views on strengthening wild animal welfare legislation by increasing the maximum penalties available for certain wildlife cruelty offences.

Responding to this consultation

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space, at:

<https://consult.gov.scot/wildlife-management-and-protected-areas/wildlife-crime-penalties/>

You can save and return to your responses while the consultation is still open.

If you are unable to respond online using Citizen Space, please submit your response by email or post; including the Respondent Information Form (Annex A), and your consultation response (Annex B).

Please send your completed consultation response and your Respondent Information Form to our dedicated mailbox: wildlifepenalitiesconsultation2019@gov.scot

Alternatively you can post your response to;

Wildlife crime penalties: Consultation,
Scottish Government Wildlife Management Team,
Area 3G South,
Victoria Quay,
Edinburgh,
EH6 6QQ

Please ensure that consultation responses are submitted before the closing date.

Scottish Government consultation process

Consultation is an essential part of the policy making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Handling your response

If you respond using the consultation hub, you will be directed to the “About You” page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory or offensive materials, or where publication would be contrary to copyright or data protection laws, we will make responses available to the public at <http://consult.scotland.gov.uk>.

If you use Citizen Space to respond, you will receive a copy of your response by email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us, and an analysis report will be made available.

BACKGROUND INFORMATION

Introduction

The Scottish Government is committed to ensuring that all of our animals continue to enjoy the highest standards of welfare. However, an independent review of the current penalties available to punish perpetrators of wildlife crime found that the current penalties may not be serving as a sufficient deterrent or reflect the serious nature of some of the crimes that are being committed.

The Wildlife Crime Penalties Review Group was chaired by Professor Mark Poustie, and included representatives from Scottish Government, law enforcement, land management and conservation. The group's report was published in November 2015 and can be read at: <https://www.gov.scot/Publications/2015/11/2196>.

The group made ten recommendations including increases to maximum available penalties, use of impact statements, alternative penalties, legislative coherence and sentencing guidelines. The Scottish Government published response broadly accepted the recommendations made by the review group <https://www2.gov.scot/Resource/0049/00494565.pdf> and in our 2017-2018 Programme for Government we committed to improving the protection available for all animals in Scotland including:

'We will also progress ... Professor Poustie's recommendations to increase penalties for wildlife crime.'

In his 'Report of the Review of the Protection of Wild Mammals (Scotland) Act 2002', <https://www.gov.scot/publications/report-review-protection-wild-mammals-scotland-act-2002/> published in November 2016, Lord Bonyon recommended that the time limit for summary convictions made under this act be extended in this way to enable Police Scotland to have sufficient time to undertake their investigations.

The Scottish Government is now seeking to explore possible amendments to several pieces of legislation protecting Scotland's wildlife. We are proposing to:

- Increase the maximum available penalties for the worst type of wildlife offences to a prison sentence of five years, an unlimited fine or both.
- Extend the time allowed for prosecution under summary conviction 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.

Our consultation is not seeking views on the penalties for crimes committed against domestic animals. The Scottish Government recently consulted on proposals to increase the maximum available penalties for the worst type of animal welfare offences committed under Animal Health & Welfare (Scotland) Act 2006.

The consultation closed on 26 April 2019 and further information can be found at: <https://www.gov.scot/publications/consultation-amend-animal-health-welfare-scotland-act-2006/>

CURRENT SITUATION

Current maximum penalties in Scotland

The maximum available penalties for wildlife offences are set at different levels depending on the offence and are laid out in the following legislation:

- Conservation (Natural Habitats &c) Regulations 1994
- Protection of Badgers Act 1992
- Protection of Wild Mammals (Scotland) Act 2002
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act 1981
- Deer (Scotland) Act 1996

Most wildlife offences can only be tried summarily, that is, conviction by a sheriff sitting alone without a jury. At present, only a few offences have the option to be tried under summary or solemn procedure, that is, conviction by a jury. Where both options are available, it is up to the Crown whether a case is brought under summary or solemn procedure and the choice will normally be determined by factors including the seriousness of the offence.

Some examples of the penalties currently available are given below:

- The Wildlife and Countryside Act 1981: Maximum penalties of Level 5 on the Standard Scale (£5,000) on summary conviction and/or imprisonment of up to 6 months for the un-licensed killing of protected wild birds or animals.
- The Conservation (Natural Habitats &c.) Regulations 1994: The same as for killing domestically protected species under the Wildlife and Countryside Act 1981.
- The Wild Mammals (Protection) Act 1996: Offences relating to the mutilation or beating of protected wild mammals are punishable on summary conviction only with the maximum set at Level 5 on the Standard Scale (£5,000) and/or 6 months imprisonment.
- Protection of Wild Mammals (Scotland) Act 2002: The maximum penalties on summary conviction only are a fine of up to Level 5 on the Standard Scale (£5,000) and/or 6 months imprisonment for offences relating to the deliberate hunting of a mammal with dogs.
- Protection of Badgers Act 1992: The maximum penalties for killing, injuring or taking a badger on summary conviction are a fine of the statutory maximum (£10,000) and/or imprisonment of up to 12 months and there is the possibility of conviction on indictment with provision for a potentially unlimited fine and/or up to 3 years imprisonment for the principal offences under the Act.
- The Deer (Scotland) Act 1996: In relation to poaching, organised offences involving 2 or more persons attract higher penalties than poaching by individuals. So where an individual kills a deer in contravention of the provisions, the maximum penalties are a fine of Level 4 on the Standard Scale (£2,500) per deer and/or up to 3 months imprisonment. However, in cases of organised poaching the maximum fine on summary conviction is the statutory maximum (£10,000) per deer and conviction on indictment is possible with a potentially unlimited fine and/or up to 2 years imprisonment being provided for.

Concerns about maximum penalties

In recent years there have been a number of wildlife offences committed against wild animals of threatened conservation status. The impact of these crimes on such species can be so significant that the maximum sentence available to the court is considered by many to be insufficiently punitive.

The illegal killing or taking of some rare Scottish species, including freshwater pearl mussels¹, golden eagles² and hen harriers³ has serious implications. It has resulted in localised loss of bird of prey populations and the complete extinction of mussel populations from many rivers.

In other cases, especially those that involve deliberate, calculated and sadistic behaviour we believe that higher penalties than those currently available are required. Crimes of this type include badger baiting, in which a badger is dug out of its den and then set upon by dogs, resulting in the death of the badger and often serious injury to the dogs used.

In his review of wildlife crime penalties, Professor Poustie noted that in general, penalties for wildlife crimes have not been raised for many years, except in the case of new offences or legislation. This stands in contrast to other areas of environmental law such as pollution control where penalties have been raised regularly. For example, since 1991 the maximum fine on summary conviction for the principal environmental pollution offences has been raised twenty-fold from £2,000 to £40,000 while at the same time maximum fine on summary conviction for the principal Wildlife Crime Act offences has remained unchanged at £5,000. Even if simply adjusted in relation to inflation it should be noted that a penalty of £5,000 in 1981 would equate to over £18,800⁴ today.

The Scottish Government considers that the current maximum available prison term is too short and the maximum available fine is too low in relation to the most serious wildlife offences. These maximum penalties may neither recognise the seriousness of the offence nor act as an effective deterrent.

Where the maximum penalties are increased it will be still be for the courts to decide the appropriate sentence to impose, after taking into account all the evidence and mitigating factors presented to them. We do not expect that all individuals convicted of a wildlife offence will be awarded the maximum sentence.

Above all we consider that an appropriate range of penalties should be available to the courts to ensure maximum deterrent impact to deal with the range of offenders from corporate entities to individuals with few or no resources.

¹ Cosgrove, Peter & Watt, Jon & Hastie, Lee & Sime, Iain & Shields, Donald & Cosgrove, Cameron & Brown, Lorna & Isherwood, Isabel & Bao, Miguel. (2016). The status of the freshwater pearl mussel *Margaritifera margaritifera* in Scotland: extent of change since 1990s, threats and management implications. Biodiversity and Conservation.

² Daniel B. Hayhow, Stuart Benn, Andrew Stevenson, Patrick K. Stirling-Aird & Mark A. Eaton (2017) Status of Golden Eagle *Aquila chrysaetos* in Britain in 2015, *Bird Study*, 64:3, 281-294

³ Fielding, A., Haworth, P., Whitfield, P., McLeod, D. & Riley, H., (2011), A Conservation Framework for Hen Harriers in the United Kingdom, JNCC Report 441

⁴ According to the Bank of England inflation calculator (<https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>)

CONSULTATION PROPOSALS

Increase the maximum available penalties for serious wildlife cruelty offences

The Scottish Government proposes to increase the maximum prison sentence available to the courts for serious wildlife offences under the following legislation;

- Conservation (Natural Habitats &c) Regulations 1994, sections 39 & 41
- Protection of Badgers Act 1992, sections 1 – 3
- Protection of Wild Mammals (Scotland) Act 2002, section 1
- Wild Mammals (Protection) Act 1996, section 1
- Wildlife and Countryside Act 1981, section 1, 5 – 11 & 14
- Deer (Scotland) Act 1996, sections 17, 21 & 22

In particular, the Scottish Government proposes that some offences, such as those that involve injuring or the un-licensed killing or taking of wild animals, be amended to be allowed to be triable under solemn procedure and the maximum penalties be increased to:

- imprisonment for of up to 5 years; or
- a fine of no limit; or
- both such imprisonment and fine.

We also propose that the maximum penalty available for other wildlife offences remaining under summary conviction only, including the disturbance of animals or damage of nests/shelters, be increased to;

- imprisonment for of up to 12 months; or
- a fine up to £40,000; or
- both such imprisonment and fine.

We do not propose to create any new offences or amend the wording of existing offences at this time.

Extend the time limit allowed for prosecution

We will seek to extend the time allowed for prosecution either by making the offences triable by summary or solemn procedure or for summary procedures only by amending the time limit for these offences 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.

Wildlife crimes often occur in remote or rural settings. It can therefore often be several weeks after an offence has been committed before the police are made aware that a potential crime may have occurred. Further, investigating wildlife offences increasingly involves the gathering and analysis of forensic evidence and the undertaking of post-mortem examinations. A fully researched expert report may also need to be obtained.

By extending the time limit we seek to ensure that Police Scotland have sufficient time to carry out their investigation and to gather and analyse the range of evidence required bring forward proceedings.

By allowing offences to be tried under solemn procedure, the Scottish Government proposes to change the rules that specify the court procedures to be used for prosecuting offences. The majority of offences can currently only be prosecuted under summary procedure.

As a consequence of the requirement to bring prosecutions by way of summary procedure, the time limit for bringing a prosecution for these offences is six months from the date of the offence, unless the legislation expressly provides for an alternative time limit. This time limit is set out in the Criminal Procedure (Scotland) Act 1995⁵. Such a time limit does not apply to offences that may be prosecuted using solemn procedure.

In keeping with the proposals to increase the maximum penalties for some wildlife crimes, the Scottish Government proposes that the legislation above be amended to specify that some offences, such as those that involve injuring or the un-licensed killing or taking of wild animals, may be prosecuted using either summary or solemn procedure. By doing so, the current statutory time limit (six months from the date of the offence) for bringing a prosecution would no longer apply in relation to that particular offence, unless a time limit for bringing a prosecution is introduced.

The combined result of the proposals above would be that no statutory time limit would exist for bringing prosecutions for the most serious offences listed in the above legislation. It is not proposed that these changes would apply to offences committed before the date these proposed changes come into force.

A benefit of these proposals is that prosecution would become possible in circumstances in which sufficient evidence to prosecute an offence came to light over six months after such an offence had been committed.

For offences that are triable by summary procedure only we are proposing to amend the time limit 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. It is not proposed that these changes would apply to offences committed before the date these proposed changes come into force.

⁵ Section 136 (time limit for certain offences) of the Criminal Procedure (Scotland) Act 1995 provides that proceedings in respect of any offence triable only using summary procedure and consisting of the contravention of any enactment must be commenced within six months after the contravention occurred (or, in the case of a continuous contravention, within six months after the last date of such contravention) unless the enactment fixes a different time limit.

RESPONDENT INFORMATION FORM

Increasing maximum penalties for wildlife crimes consultation

Please Note this form **must** be completed and returned with your consultation response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes No

ANNEX B:

CONSULTATION QUESTIONS

Respondents should take into consideration the information provided in this document alongside any other knowledge or personal experiences that could be relevant. All opinions are welcome.

You are invited to answer all the questions. However, if you are unable to answer any question then please feel free to move on to the next.

If you intend to email or post your consultation response please ensure you complete a Respondent Information Form ([Annex A](#)). This will ensure that if you ask for your response not to be published that we regard it as confidential and will treat it accordingly.

Sector and Origin

It would be helpful for our analysis if you could indicate which of the sectors you most align yourself/your organisation with for the purpose of this consultation
(Please tick ONE which is MOST APPLICABLE to you):

- | | | | |
|---------------------------------------|--------------------------|------------------------------|--------------------------|
| Non-Government Organisation | <input type="checkbox"/> | Enforcement agency/officer | <input type="checkbox"/> |
| Animal Welfare Organisation | <input type="checkbox"/> | Member of the General Public | <input type="checkbox"/> |
| Local Authority | <input type="checkbox"/> | Rural business/Organisation | <input type="checkbox"/> |
| Conservation interest/Organisation | <input type="checkbox"/> | Veterinary profession | <input type="checkbox"/> |
| Land management interest/Organisation | <input type="checkbox"/> | | |

Other (please specify)

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?

Yes

No

Don't Know

Please explain the reasons for your answer

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?

Yes

No

Don't Know

Please explain the reasons for your answer

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?

Yes

No

Don't Know

Please explain the reasons for your answer

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

No

Don't Know

Please explain the reasons for your answer

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

No

Don't Know

Please explain the reasons for your answer

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

No

Don't Know

Please explain the reasons for your answer

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?

Yes

No

Don't Know

Please explain the reasons for your answer

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.

Please explain the reasons for your answer and what you would propose.

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?

- Very dissatisfied
- Slightly dissatisfied
- Neither satisfied nor dissatisfied
- Slightly satisfied
- Very satisfied

Please enter comments here

Question 10:

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

- Very dissatisfied
- Slightly dissatisfied
- Neither satisfied nor dissatisfied
- Slightly satisfied
- Very satisfied
- Not applicable

Please enter comments here



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