

Amendments to the Animal Health Act 1981

Consultation

Open: 03 October 2019

Closes: 23 December 2019

Topic

This consultation is seeking views on strengthening animal health legislation by enabling secondary legislation to be made that will allow fixed penalty notices to be used in relation to appropriate animal health offences. It also seeks preliminary views and opinions on the Animal Health Act 1981 and what might need to be updated to ensure primary legislation used to protect the health and welfare of livestock from disease remains fit for purpose.

Responding to this Consultation

We are inviting responses to this consultation by 23 December 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/animal-welfare/animal-health-act-1981>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23 December 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Animal Health Act Amendment
Scottish Government Animal Health Team
P Spur
Saughton House
Broomhouse Drive
Edinburgh, EH11 3XD

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 If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.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.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

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 material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at animalhealthconsultation2019@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking 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>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

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.

BACKGROUND INFORMATION

Introduction

The Scottish Government is committed to the highest possible welfare standards for all animals. As part of this, we are committed to upholding and seeking improvements in our legislation and enforcement framework to benefit animals. Animals which are cared for appropriately and in accordance with existing biosecurity and welfare standards are more likely to be healthy and less likely to spread disease.

Our policy on disease control is that prevention is better than cure. We encourage good animal health and ensure appropriate contingency plans are in place to deal with disease outbreaks. This approach works by reducing the chance of animal disease entering the animal population, and if it does then it can be quickly spotted and dealt with through preventative measures. This is beneficial for animals' treatment and recovery, while also supporting the economic and social wellbeing of people working in the livestock sector through the avoidance of expensive, stressful and restrictive disruptions caused by large scale disease outbreaks.

An appropriate statutory framework is needed to underpin our approach. As part of the Scottish Government's 2019-2020 Programme for Government¹ we announced that:

“we will begin a review of animal health legislation for livestock to ensure it remains fit for purpose”.

The Animal Health Act 1981 (the Act) was introduced to protect public health and the health of animals through reducing the risks of disease entering the animal population. It is the primary legislation that provides Scottish Ministers with the powers to make secondary legislation for the prevention, control and eradication of animal diseases. The Act, which is the cornerstone legislation that protects the health of livestock from diseases, is now almost 40 years old. It is therefore time to review this legislation to ensure it continues to be fit for purpose and is able to maintain Scotland's proud strong track record and commitment to the highest animal health and welfare standards.

This consultation therefore begins the process of that review and seeks views on the effectiveness of the existing provisions within the Act and whether there are any gaps that would help improve animal health standards both to help prevent an incursion of animal disease and to control and eradicate disease.

It is also appropriate to consider the need to update enforcement provisions, to ensure that all tools to deter but also punish maltreatment of animals are available. Organisations responsible for enforcement of the Act have raised concerns around some technical aspects. Enforcement bodies have suggested that there is a need for a level of enforcement that could be delivered without the intervention of the Scottish courts, whilst still providing a meaningful penalty for those breaching animal health rules made under the Act.

This consultation seeks views on providing such measures through the forthcoming Animals & Wildlife (Penalties, Protections & Powers) (Scotland) Bill. We are proposing to give Scottish Ministers a power to make regulations allowing fixed penalty notices to be used in relation to animal health offences.

¹ <https://www.gov.scot/programme-for-government/>

CURRENT SITUATION

Current enforcement mechanisms

Under the Animal Health Act 1981 (the Act) inspectors are appointed by a local authority or Scottish Ministers (such as employees of local authorities, and the Animal and Plant Health Agency² (APHA)). Enforcement of the Act's measures is currently undertaken using a variety of methods. These can include providing verbal advice without resorting to statutory measures or using statutory provisions to issue warning letters or notices and finally, pursuing prosecution through the courts.

In many cases, the first response of an inspector when non-compliance of the Act is brought to their attention will be to offer advice, guidance and support to achieve compliance. Advice is provided to assist individuals and businesses in rectifying non-compliance as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter may state what should be done to rectify and to prevent re-occurrence.

A notice (provided for under section 83 of the Act) may be served on the owner or occupier of the premises, or other immediate enforcement action taken, if there is significant contravention of the legislation, or if the consequence of non-compliance could be potentially serious to animal or public health. If a notice is served, it may require action to be taken or, that certain operations/activities be stopped immediately. For example, if disease is suspected on a premises, a notice may be issued to prohibit the movement of animals on or off the premises in order to control the potential spread of a contagious disease.

Secondary legislation made under the Act may also include the power to issues notices requiring particular actions. For example, under the Sheep Scab (Scotland) Order 2010³ an authorised person may in certain circumstances serve a notice on the keeper of sheep requiring the keeper arrange a veterinary enquiry to establish if sheep scab is present on the premises.

Service of a notice may be followed by an investigation and further enforcement action, including referral for potential prosecution, may ensue. It is an offence not to comply with a notice without reasonable excuse.

For cases of a more serious nature, or cases where a notice has not been complied with, inspectors would normally gather evidence and put a case forward to the Procurator Fiscal for potential prosecution through the Scottish courts. (The Procurator Fiscal also has non-court options available where appropriate including warning letters or fiscal fines).

Under current European Union (EU) regulations, the Scottish Government must carry out a number of inspections each year to confirm that conditions are being met in return for

² APHA is an executive agency of the Department for Environment, Food & Rural Affairs and works on behalf of the Scottish Government to safeguard animal and plant health for the benefit of people, the environment and the economy.

³ Section 6 (service of notice requiring veterinary enquiry) of the [Sheep Scab \(Scotland\) Order 2010](#) provides that if an inspector knows or suspects that there are (or there have been within the previous 16 days) on premises (other than common land, a market or place of exhibition) sheep or carcasses which have sheep scab, the inspector may serve a notice on the owner or (if different) the keeper of any sheep on the premises requiring that person to arrange for a veterinary surgeon to carry out a veterinary enquiry to establish whether there are on the premises sheep or carcasses which have sheep scab.

payments made under the various schemes we manage. Cross Compliance⁴ is a mandatory set of requirements and standards that land managers have to meet in order to receive support scheme payments. These requirements relate to public health, animal and plant health, animal welfare, and environmental protection. Failure to meet Cross Compliance requirements and standards may result in payment reductions being applied to support scheme payments.

The proposed new powers to make regulations, allowing fixed penalty notices to be used in relation to animal health offences, will not affect arrangements for the payment of financial support and Cross Compliance. This is because those arrangements operate separately from any proceedings for a criminal offence. For example, a claimant who is considered to have committed an offence (e.g. falsifying a cattle passport) might, by virtue of regulations made using the new powers, be required or given an option to pay a fixed penalty instead. Regardless of whether any such fixed penalty may be paid as an alternative to prosecution, separate consideration would still be given to whether a payment reduction ought to be applied to the claimant's support scheme payments as part of the Cross Compliance requirements.

Concerns about current enforcement mechanisms

During disease outbreaks, control measures are put in place to prevent further spread of disease and to protect public and animal health. These measures are also necessary to minimise the overall cost of the outbreak on the taxpayer and the wider industry. Following an outbreak of Avian Influenza in 2016/2017 a lessons identified exercise⁵ was carried out to look at whether any improvements could be made to the response of Government and industry. The lessons identified report focussed on a need to develop a more proportionate non-compliance strategy to deal with hobby flock keepers that were failing to comply with control measures to protect the welfare of their birds by housing them or by introducing enhanced biosecurity measures. The report suggested that the introduction of a provision to allow local authorities to issue fixed penalty notices to deal with less serious offences such as these, would allow offences to be dealt with quickly and be more appropriate than referral for possible prosecution in court, whilst also improving standards and encouraging compliance during disease outbreaks.

Dealing with animal health cases can be time consuming and costly for both the enforcement authorities and the courts. Fixed penalty notices would allow offences to be dealt with quickly, more proportionately and alleviate the burden on the procurator fiscal and court system.

It is common for secondary legislation to provide that failure to comply is a criminal offence. It is accordingly appropriate that action be taken in relation to these offences. However, seeking to prosecute an individual for an offence might not, depending on the circumstances, be the most proportionate or effective means of addressing the circumstances of a particular case, nor of securing future compliance with a legislative requirement. It is against this background that the Scottish Government considers that the ability to issue a fixed penalty as an alternative to seeking prosecution, would equip enforcement authorities with an important additional tool by which to promote future compliance with legislative requirements.

⁴ <https://www.ruralpayments.org/publicsite/futures/topics/inspections/all-inspections/cross-compliance/what-is-cross-compliance/>

⁵ Following an exotic disease outbreak, it is routine practice in the UK to evaluate how we responded, and to identify lessons for future outbreaks. The report summarises lessons from the outbreak of Highly Pathogenic Avian Influenza between December 2016 and June 2017. The report can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644416/avian-influenza-lessons-from-2016-to-2017-outbreak.pdf

CONSULTATION PROPOSALS

Introduce fixed penalty notices for less serious animal health offences

The Scottish Government considers that there is now a need for an additional level of enforcement that does not require referral to the procurator fiscal nor involvement of the Scottish courts, but provides a meaningful and dissuasive penalty for those who are considered to have committed a relevant animal health offence, and which will thereby promote future compliance with legislative requirements.

The Government considers that enforcement authorities should be empowered to issue fixed penalty notices in relation to relevant less serious animal health offences (e.g. those arising in relation to non-compliance of biosecurity codes). It proposes that such fixed penalties would be set, by regulations, at an amount that provides a proportionate but effective deterrent.

There is currently no provision in the Act which specifically gives the Scottish Ministers the power to make regulations providing for the use of fixed penalty notices. The Scottish Government proposes conferring such a specific power on the Scottish Ministers in relation to animal health offences. This power could be used to make appropriate regulations permitting the use of fixed penalty notices. The power could also be used to update such regulations in future. Such fixed penalty notices would provide an alternative to referral to the procurator fiscal for various specified offences.

An amendment to the Act to provide for such a power would be in step with proposals for a similar power in relation to animal welfare offences. The Government recently consulted on proposals to amend the Animal Health and Welfare (Scotland) Act 2006 to make provision for fixed penalty notices in relation to less serious animal welfare offences such as identification and licensing rules (e.g. microchipping of dogs).⁶ The Scottish Government considers it also to be beneficial to introduce a similar power for appropriate animal health offences, where the consequences of individual non-compliance may be relatively minor, but where general compliance is important to protect the wider population of animals overall and to deter similar behaviour.

It is proposed to amend the Animal Health Act 1981 to include such a power, to allow for secondary regulations which would specify the particular offences in relation to which fixed penalties may be imposed as an alternative to prosecution. It is anticipated fixed penalties would, for example, be made available as an alternative to prosecution for relatively common minor offences such as failure to comply with record keeping requirements. The particular approach to be adopted for different kinds of animal health offence would be set out in the regulations, including the amount of the fixed penalty which may be imposed for each offence. It would be helpful at this stage to receive views on what these offences should be. The alternative of pursuing a prosecution instead of offering a fixed penalty would continue to be available.

Fixed penalty notices are already widely used by enforcement authorities in relation to other kinds of offences, and can be a valuable additional enforcement tool.

⁶ The Scottish Government recently consulted on proposals to strengthen animal welfare legislation by increasing the maximum available penalties, introducing fixed penalty notices, and making it easier for approved bodies to make arrangements for seized animals. 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/>

It is expected that the new powers for fixed penalty notices would:

- allow minor and technical offences to be dealt with quickly and proportionately,
- promote compliance with legislative requirements, and
- reduce the number of lesser offences being dealt with by courts.

Review existing provisions within the Act and identify any improvements

As the Act is now almost 40 years old we are also looking for views on the effectiveness of the existing provisions within the Act and whether there are any gaps that would help improve animal health standards, both to help prevent an incursion of animal disease and to control and eradicate disease. This marks the start of our review of the Act and there will be further opportunities in future for stakeholders and individuals to provide their views throughout the process.

RESPONDENT INFORMATION FORM

Amendments to the Animal Health Act 1981 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):

Veterinary Profession	<input type="checkbox"/>	Enforcement agency / officer	<input type="checkbox"/>
Non-Government Organisation	<input type="checkbox"/>	Member of the General Public	<input type="checkbox"/>
Local Authority	<input type="checkbox"/>	Agricultural Business / Organisation	<input type="checkbox"/>

Other (please specify)

Question 1:

Do you agree that the introduction of proportionate fixed penalty notices would improve the enforcement of animal health offences?

Yes

No

Don't Know

Please explain the reasons for your answer

Question 2:

Different fixed penalty notice regimes exist. Which fixed penalty notice regime do you think should be used for animal health offences?

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

Question 3:

Are there any other amendments that could be made to the Act that you think will help to improve animal health? For example, amendments that may improve disease control, disease preparedness, biosecurity or animal movements.

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 4:

How satisfied were you with this consultation?

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

Please enter comments here

Question 5:

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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