

Animal Health, Fixed Penalty Notice (FPN) Scheme

**Partial Business and Regulatory Impact
Assessment (BRIA)**

March 2025

Partial Business Regulatory Impact Assessment

1. Title Of Proposal

Animal Health Fixed Penalty Notice Scheme

2. Purpose and intended effect

Background

The [Animal Health Act 1981](#) (the “1981 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.

In 2020, an amendment was made to the 1981 Act through the [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020](#) (the “2020 Act”), which gave the Scottish Ministers the power to make regulations allowing for fixed penalty notices (FPNs) to be used for certain animal health offences. Section 6 of the 2020 Act inserted a new section 76A (Fixed Penalty Notices) into the Animal Health Act 1981. The new section conferred a power on the Scottish Ministers to make provision by regulations for or in connection with the issuing of FPNs in relation to certain offences. The offences which may be specified are those under the Animal Health Act 1981, the Bees Act 1980, orders or regulations made under those Acts, or other enactments which the Scottish Ministers consider relate to animal health.

The power may only be used to make provision for FPNs in relation to offences for which the maximum penalty on conviction does not exceed a term of imprisonment of 6 months or a fine of level 5 on the standard scale (or both).

Objective

We are launching a consultation to gather views on specific proposals for an animal health FPN scheme.

The consultation will set out Scottish Government proposals for an animal health FPN scheme. It will consider the general characteristics of the scheme which includes considerations for who should be empowered to issue FPNs and how they will be issued, how FPNs will be paid and the effect of doing so, and how FPNs can be appealed or withdrawn. The consultation also proposes the penalty levels and amounts that are considered to be applicable for the animal health FPN scheme, and the circumstances where the penalty amount could be increased or decreased.

Consideration is also given to the offences that meet the FPN criteria and our proposals for the offences that should be included in the scheme when it launches.

The consultation will help to gauge attitudes towards these proposals and make informed decisions on the development of an animal health FPN scheme. It will also help account for any unforeseen impacts that the proposals could have.

Rationale for Government Intervention

The proposed consultation, and subsequent legislation, is in step with the Scottish Government's vision of a society which treats all with kindness, dignity and compassion, respects the rule of the law, and acts in an open and transparent way.

The proposed changes to the legislation are in step with the Scottish Government's vision of a society which treats all with kindness, dignity and compassion, respects the rule of law, and acts in an open and transparent way. This will help to provide the respect and protection given to all of the animals, captive or wild, in Scotland. The introduction of powers to provide for fixed penalty notice regimes in relation to minor and technical animal health offences links into a number of outcomes of the National Performance Framework, Communities, Economy, Environment and Health.

In developing the strategy, it was suggested that allowing local authorities to issue FPNs to deal with less serious offences such as these, would allow offences to be dealt with quickly and would be more appropriate than referral to COPFS for possible prosecution in court, whilst also improving standards and encouraging compliance during disease outbreaks. In subsequent outbreaks the need for a quick and proportionate enforcement response, and the suggestion of using FPNs, has been repeated.

It is expected that FPNs will promote compliance with legislative requirements which will be beneficial for the overall health and welfare of animals whilst 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. These disease outbreaks can also have an impact on public health if they are zoonotic. Introduction of FPN's will reduce the impact of these to public health and also the cost implications to the public purse.

FPN will have set limits that are uniform throughout the country, these will be on a sliding scale dependant on the circumstances in which they are being issued. Local authorities will only be able to decide the amount of penalty issued within these strict boundaries.

Consultation

This partial BRIA has been prepared in advance of a public consultation seeking views on a proposed FPN scheme for animal health offences. We have engaged with a number of key stakeholder groups during the preparation of the consultation.

Within Government

The following government agencies and departments have been consulted in the preparation of the proposed consultation.

- Scottish Government Animal Health and Welfare Division
- Scottish Government Legal Directorate
- Scottish Government Justice Directorate
- Crown Office & Procurator Fiscal Service (COPFS)
- Scottish Government Rural Payments and Inspections Directorate (SGRPID)
- Marine Scotland
- Nature Scot

Cross Government

- Department for Environment, Food and Rural Affairs (DEFRA)
- Department of Agriculture, Environment and Rural Affairs (DAERA)
- Welsh Government

Enforcement Agencies

The Scottish Government's animal health and welfare division have close working relationships with those that enforce the legislation, and have consulted the following enforcement agencies.

- Local Authorities (LAs)
- The Animal and Plant Health Agency (APHA)
- Food Standards Scotland (FSS)

Business

We have consulted with the following animal health and welfare stakeholder groups.

- Scottish Animal Health and Welfare General Stakeholders Group
- The Scottish Animal Health and Welfare Strategy Group
- Scottish Bee Health Improvement Partnership (BHIP)
- Scottish Sheep Scab Industry Working Group

Members of these groups include (but are not limited to):

- National Farmers Union Scotland (NFUS)
- British Veterinary Association (BVA) Scotland
- Scottish Association of Meat Wholesalers (SAMW)
- Scottish Dairy Cattle Association (SCDA)
- Institute of Auctioneers and Appraisers Scotland (IAAS)
- Scottish Beef Association (SBA)
- Quality Meat Scotland (QMS)
- National Sheep Association (NSA)
- Scottish Beekeepers Association
- Bee Farmers Association
- British Horse Society Scotland

Public Consultation

In 2019, a public consultation was held to seek view on proposals to give Scottish Ministers the power to make regulations allowing FPNs to be used in relation to appropriate animal health offences.

83.3% of respondents agreed that the introduction of proportionate fixed penalty notices would improve the enforcement of animal health offences. The responses informed the amendment to the Act and will inform the proposals contained within the proposed consultation. Of those that disagreed, the argument was that the introduction of an FPN scheme could cause farmers to be dishonest, it was also felt that in the current economic climate FPNs were not appropriate.

A full [analysis of the responses to the 2019 consultation](#) is available on the Scottish Government website.

3. Options

Option One: Do nothing

Currently non-compliance with animal health legislation is dealt with using a variety of methods.

- “Education” via oral or written advice: the majority of infringements are currently dealt with in this way. Advice, guidance and support will be provided in order to achieve compliance as quickly as possible with a view to avoiding the need for further enforcement action; it may be followed by a warning letter.
- Warning letters: this may state what should be done to rectify non-compliance and to prevent re-occurrence;
- Formal notice: this may be served if there has been a significant contravention of the legislation, a failure to comply with previous oral or written advice or a licence issued by an inspector, or if the consequence of non-compliance could pose a serious risk to animal or public health. It may require action to be taken or that certain operations/activities be stopped immediately. Service of a notice may be followed by an investigation and further enforcement action; and Report to COPFS: 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 COPFS for potential prosecution through the Scottish courts. COPFS also has non-court options available where appropriate including warning letters or fiscal fines.

However following an Avian Influenza (AI) outbreak in 2016/2017 it was found that these methods were not working with a small group of livestock keepers; the hobby/back garden farmers. They were found to be repeatedly failing to comply with either the education method or warning letter methods and where referral to the COPFS was not warranted there was no method of compliance from this group.

Option Two: Introduce a FPN scheme for animal health offences

FPNs are considered to be a quicker and more proportionate means of dealing with the relevant behaviour of those not complying with the law but still provide a meaningful and dissuasive penalty.

The introduction of a FPN scheme would not replace any of the existing methods but rather complement them and be an additional tool for the inspector to use. It inserts a new method of enforcement into the existing portfolio of enforcement measures and negates the uncertainty of a criminal prosecution by providing a costed solution that is efficient thus reducing any uncertainty around legal costs. However during the course of the offence investigation the evidence that will be gathered to issue the FPN will be the same evidence that would be gathered in a fiscal case. Therefore, should the case escalated and require fiscal prosecution the evidence required will already be available.

FPNs are considered to be a quicker and more proportionate means of dealing with the relevant behaviour, but still provide a meaningful and dissuasive penalty. They are already widely used by enforcement authorities in relation to other kinds of offences and can be a valuable additional enforcement tool.

Sectors and groups affected

The introduction of an animal health FPN scheme would only impact those that breach animal health legislation, such as:

- Animal keepers (livestock, bees, equine and pets)
- Livestock Markets
- Agricultural Show organisers

There would also be an impact on those enforcing animal health legislation, specifically inspectors appointed by the following enforcement agencies to set up and maintain the animal health :

- Local Authorities
- Scottish Government Rural Payments and Inspections Division (RPID)
- Animal and Plant Health Agency (APHA) enforcement and veterinary staff
- Food Standards Scotland (FSS)

4. Options: positives/negatives and cost analysis

Option One: Do nothing

Benefits

- Less resource implications regarding policy change

Negatives

- No benefits are realised following the implementation of the changes made to the 1981 Act.
- Findings of the previous consultation are not addressed. 83.3% of all respondents agreed that the introduction of proportionate fixed penalty notices would improve enforcement of animal health offences.

Option Two: Introduce a FPN scheme for animal health offences

Benefits

The changes proposed within the consultation will benefit animal health by complimenting the processes for enforcement authorities, introducing more proportionate penalties and improving compliance.

Introducing FPNs for certain animal health offences would complement the existing enforcement options that are available, and these additional tools are expected to:

- Improve animal health and welfare standards and encourage compliance, improving enforcement.
- Allow minor and technical offences to be dealt with quickly and proportionality.
- Reduce the likelihood of re-offending, whilst providing a timely and proportionate deterrent when prosecution in court and resulting criminal record may be excessive.
- Speed up the process of dealing with offences as persons issued with a fixed penalty notice would not have to wait to appear in court.
- Give more flexibility to enforcing authorities by providing them with an additional enforcement option as an alternative to issuing guidance, warning letters, care notices or prosecution in the criminal courts.
- A scale of harm means that the FPN is more proportionate to the risk caused by the activity.

Negatives

- There would be cost implications associated with introducing a FPN scheme to enforcement agencies.
- There would be financial penalties for those who do not comply with animal health legislation which previously would have been dealt with via non-financial routes.
- There is a perception that FPNs could be perceived as an income revenue generator for local authorities. Whilst any FPN money would be repatriated to the issuing authority, the set amounts for FPNs are negligible when compared to the cost incurred by the local authority whilst carrying out the enforcement action. Fixed penalties would be set, by regulations, at an amount that provides a proportionate but effective deterrent.
- Potential Reputational damage to the those issued an FPN.

- The proposed Introduction of a scale of harm could be perceived as disadvantaging larger farming enterprises through a higher level of penalty for the same offence as a hobby farmers.

5. Costs

Option One: Do nothing

There would be no additional costs from retaining existing provisions. FPNs are a cheaper and more proportionate way of enforcement than allowing a misdemeanour to escalate to the requirement of prosecution. However, by not adding an incentive to increase the compliance of those involved there is the risk of disease outbreak which has a cost implication to the local authorities and the tax payer, there would also be a cost to industry. The implication to public health, animal health and animal welfare would also have to be taken into consideration as by doing nothing there is the possible negative impact to these.

Option Two: Introduce a FPN scheme for animal health offences

The introduction of the FPN scheme would have some establishment costs for enforcement agencies including:

- Training and guidance for new procedures and any changes in processes.
- Staff costs and resources involved in issuing the FPNs; a greater number of FPNs may be issued compared to referrals to the courts, due to the ease of a new FPN process.

These costs and the level of the fixed penalties will be determined by the enforcement regime, the appropriate regulations and the type of offence committed. Therefore it is anticipated that the fines will help offset part of the associated costs to implement the regime. We have spoken directly to the animal health and welfare strategy group who oversee enforcement of animal health (trading standards and environmental health) and they have not identified any additional costs beyond those listed above.

6. Regulatory and EU Alignment Impacts

Intra-UK Trade

Officials do not consider that an animal FPN regime within Scotland will have any impact on current international trade or export agreements, including any future cross border movements of animals across GB.

England introduced fixed penalty notices under, the Animals (Penalty Notices) Act 2022 and The Animals (Penalty Notices)(England) Regulations 2023 which created a framework of penalty notices (PNs) for Animal Health and Welfare offences. This forms part of a wider enforcement approach including advice, education, and improvement notices, giving regulators a range of tools for different situations.

Full Impact will be assessed under a full BRIA following consultation.

International Trade

Officials do not consider that an animal FPN regime within Scotland will have any impact on current international trade or export agreements, including any future cross border movements of animals across GB.

Full Impact will be assessed under a full BRIA following consultation.

EU Alignment

There are no know implications in this policy regarding EU alignment.

Scottish Firms Impact Test

This will be completed once the data from the consultation is collected and analysed.

Competition Assessment

There are no market effects considered to result from the proposed consultation. Therefore there is considered to be no competition concern to suppliers and consumers; including those providing and using public services.

Consumer Assessment

These proposals are not thought to have an impact on consumers as the amendment to the existing law will only impact on those committing these existing offences and those enforcing the rules

Test run of business forms

No new business forms are proposed at this time, although new FPN notices will required in the future.

This will be assessed during the legislative process and in discussion with SG legal colleagues, COPFS and enforcement agencies.

Digital Impact Test

There are no digital impacts considered to result from these proposals, as those who have committed the offences will either be served with a fixed penalty notice. It may be that the local authorities have a variety of methods of payment for fixed penalty notices (e.g. Telephone hotline, online facility, drop in) however these arrangements will evolve over time, and are the responsibility of each authority and are out with the scope of this assessment.

Legal Aid Impact Test

This will be assessed during the legislative process and in discussion with SG legal and policy colleagues.

Enforcement, sanctions and monitoring

Introducing FPNs for lesser and technical animal health offences will make enforcement of animal health laws more effective. They are intended to strengthen and simplify the enforcement of various pieces of legislation, however much of the enforcement role of the various enforcement agencies will remain unchanged, with only the outcome of the investigation changing, i.e. the issuing of a FPN.

Implementation and delivery plan

Following consultation and assuming the responses are favourable we envisage enactment of domestic legislation to implement the necessary reforms.

Post-implementation review

Commitment to review within 10 years however we will continue to monitor the use of FPNs on an ongoing basis and if we have evidence that it is effective then we will consider introducing FPNs for other in scope legislation.

7. Summary and recommendation

Recommendation

Option 2 is preferred at this stage. The introduction of a FPN scheme would:

- Provide local authorities with more flexibility with a proportionate and effective additional enforcement option for less serious offences.
- Allow for minor and technical offences to be dealt with quickly and effectively, reduce the likelihood of re-offending.
- Improve animal health standards and encourage compliance
- Deal with rule breaches more quickly (person issued with a fixed penalty notice need not attend court).
- Reduce the number of cases being dealt with by the court system.

Summary costs and benefits table – subject to the outcomes of the consultation and in discussion with stakeholders, the financial impact of the implementation of a FPN scheme for animal health offences will be published alongside future measures to implement the final policy.

**Animal Health and Welfare Division
Disease Control Branch
Scottish Government
Saughton House
Edinburgh
EH11 3XD**



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