

ANIMAL WELFARE (SENTENCING) ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Animal Welfare (Sentencing) Act 2021 which received Royal Assent on 29 April 2021 (c. 21).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	3
Policy background	3
Legal background	4
Territorial extent and application	5
Commentary on provisions of Act	6
Section 1: Mode of trial and maximum penalty for certain animal welfare offences	6
Section 2: Extent, Commencement and Short Title	6
Commencement	7
Annex A – Territorial extent and application in the United Kingdom	8
Annex B – Hansard References	9

Overview of the Act

- 1 The Act increases the maximum penalty for specific offences related to animal welfare in England and Wales from 29 June 2021. It does so by extending the maximum penalty, specified under the Animal Welfare Act 2006, of six months and/or an unlimited fine to a penalty of five years and/or an unlimited fine. These offences therefore become triable either way, and may be heard in the Magistrates Court or the Crown Court.

Policy background

- 2 This Act amends the Animal Welfare Act 2006 ("the 2006 Act"). Ahead of the Act coming into force on 29 June 2021, the 2006 Act set out a maximum penalty of six months imprisonment and/or an unlimited fine for the more serious 'prevention of harm' offences. There are five such offences under section 32(1) of the Animal Welfare Act 2006:
 - a. causing unnecessary suffering (section 4, Animal Welfare Act 2006);
 - b. carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
 - c. docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);
 - d. administering a poison to an animal (section 7, Animal Welfare Act 2006); and
 - e. involvement in an animal fight (section 8, Animal Welfare Act 2006).
- 3 There were a number of cases related to these offences in which judges expressed a desire to impose a higher penalty than that which the 2006 Act provided for, prior to this Act passing. There was a particular desire to increase the penalties available in the case of crimes that relate to deliberate, calculating and sadistic behaviour.
- 4 Members of Parliament, wider stakeholders and the public also sought to increase maximum penalties for animal welfare offences so that they exceeded the European average at the time of 2.04 years. The Act meets both of these aims by increasing the maximum penalties for the most serious offences under the Animal Welfare Act 2006 to five years and/or an unlimited fine.
- 5 The increase in maximum penalties does not apply to those offences listed in section 32(2) of the Animal Welfare Act 2006: not taking reasonable steps to ensure welfare (section 9); breach of a licence condition (section 13(6)); and breach of a disqualification order (section 34(9)). These offences are generally considered less serious, and rarely receive the existing maximum penalty. Moreover, the level of fine applied to these offences increased since the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which converted existing level 5 fines into unlimited fines.
- 6 The draft sentencing sections were published for public consultation and pre-legislative scrutiny on 12 December 2017 as part of the Animal Welfare (Sentencing and Recognition of Sentience) Bill. The consultation closed on 31 January 2018 and the summary of responses document published on 7 August 2018. The Department for Environment, Food and Rural Affairs (Defra) received 9,084 direct responses to the consultation. 70% of respondents agreed with the new maximum penalties. In the summary of responses document, Government committed to bring forward the sentencing sections in a separate Bill as recommended by the EFRA Committee's scrutiny report on the Bill.

Legal background

- 7 The majority of the relevant legal background is explained in the policy background section of these Notes. Two additional legal issues are raised below, one in relation to the current drafting of section 32(1) of the Animal Welfare Act 2006, and the second in relation to the requirement to change the mode of trial.
- 8 The current drafting of section 32(1) of the Animal Welfare Act 2006 lists the maximum penalty as imprisonment for a term not exceeding 51 weeks or a fine, as opposed to the maximum imprisonment for a term not exceeding six months as discussed above. This discrepancy is explained by section 32(5) of the Animal Welfare Act 2006. Section 32(5) provides that in relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in section 32(1)(a) to 51 weeks is to be read as a reference to six months. As at the date of the publication of the Act, section 281(5) of the Criminal Justice Act 2003 has not been commenced. The maximum imprisonment term for offences under section 32(1) of the Animal Welfare Act 2006 therefore remains six months.
- 9 Under section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 magistrates' courts do not have the power to impose penalties greater than six months. As a result of increasing the maximum penalty available for the offences under section 32(1) of the Animal Welfare Act 2006 to a period of five years it is necessary for the Act to make these offences triable either way.

Territorial extent and application

- 10 Section 2 sets out the territorial extent of the Act. This Act both extends and applies to England and Wales.
- 11 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Section 1: Mode of trial and maximum penalty for certain animal welfare offences

- 12 Section 32(1) of the Animal Welfare Act 2006 provides that particular offences should carry a maximum penalty of 51 weeks imprisonment and/or a level 5 fine.
- 13 In practice, this results in a maximum penalty of 6 months and an unlimited fine. This is because section 32(5) specifies a maximum penalty of 6 months for offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003. To date, this section has not been commenced.
- 14 This section changes the maximum penalty available for the following offences only:
 - a. causing unnecessary suffering (section 4, Animal Welfare Act 2006);
 - b. carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
 - c. docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);
 - d. administering a poison to an animal (section 7, Animal Welfare Act 2006); and
 - e. involvement in an animal fight (section 8, Animal Welfare Act 2006).
- 15 The existing maximum penalty, outlined above, is retained if the offender is summarily convicted. However offenders may now receive a higher penalty of up to 5 years imprisonment and/or an unlimited fine if they are convicted on trial by indictment.
- 16 Under section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 magistrates' courts do not have the power to impose penalties greater than six months. Section 154(1) of the Criminal Justice Act 2003 increased the maximum custodial sentence imposable by a magistrate's court to 12 months. However, to date this section has not been commenced and the new section 32(4A) of the Animal Welfare Act 2006 inserted by this section reflects this position.

Section 2: Extent, Commencement and Short Title

- 17 This section provides that the Act extends to England and Wales; that the Act comes into force two months after Royal Assent; and that the application of revised maximum penalties is not retrospective and does not apply to offences committed before the Act comes into force. This section also specifies the short title of the Act.

Commencement

18 The Act comes into force on 29 June 2021.

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Yes	Yes	No	No
Section 2	Yes	Yes	No	No

Annex B – Hansard References

19 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	5 February 2020	https://bills.parliament.uk/bills/2622/stages/11841
Second Reading	23 October 2020	Vol. 682 Col. 1348
Public Bill Committee	5 February 2021	Col. 1
Report and Third Reading	12 March 2021	Vol. 690
<i>House of Lords</i>		
Introduction	12 March 2021	Vol. 810
Second Reading	16 April 2021	Vol. 811 Col. 1582
Order of Commitment discharged	22 April 2021	Vol. 811
Third Reading	28 April 2021	Vol. 811 Col. 2250
Royal Assent	29 April 2021	Vol. 811

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