



# Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020

2020 asp 14

## CHAPTER 1

### ANIMAL WELFARE, ANIMAL HEALTH AND WILDLIFE: OFFENCES AND PENALTIES

#### *Wildlife offences: penalties*

#### **7 Wildlife and Countryside Act 1981: penalties for offences**

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) In section 15A (possession of pesticides), in subsection (2)—
  - (a) “or” immediately after paragraph (a) is repealed,
  - (b) after that paragraph insert—
    - “(aa) Regulation (EC) 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market, as amended, extended or applied from time to time,”
  - (c) at the end of paragraph (b) insert “of 22 May 2012 concerning the making available on the market and use of biocidal products, as amended, extended or applied from time to time.”.
- (3) In section 18A (vicarious liability for certain offences by employee or agent), in subsection (6)(a)—
  - (a) “or” immediately after sub-paragraph (ii) is repealed,
  - (b) after that sub-paragraph insert—
    - “(ia) section 11(1)(a) or (aa), (2)(a) or (b)(ii); or”.
- (4) In section 20(2) (summary prosecutions), for “Summary proceedings for an offence under this Part” substitute “Proceedings for an offence under this Part which is triable only summarily”.

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(5) The section title of section 20 becomes “**Proceedings for summary offences**”.

(6) In section 21 (penalties)—

(a) for subsections (1), (1A) and (1B) substitute—

“(1) Subject to subsection (5), a person guilty of an offence under a provision mentioned in subsection (1A) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(1A) The provisions referred to in subsection (1) are—

- (a) section 5(1)(e) and (f) (in relation to an act made unlawful by section 5(1)(e)),
- (b) section 6(2) and (2A) (in relation to an act made unlawful by section 6(2)(a)),
- (c) section 7 (other than section 7(1) and (5A) (in relation to an act made unlawful by section 7(1))),
- (d) section 9(5)(b),
- (e) section 11A,
- (f) section 11C,
- (g) section 11E,
- (h) section 13,
- (i) section 14B,
- (j) section 17,
- (k) section 19ZC (other than an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by section 19ZC(3)(d)),
- (l) section 19ZD.

(1B) Subject to subsection (5), a person guilty of an offence under a provision mentioned in subsection (1C) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).

(1C) The provisions referred to in subsection (1B) are—

- (a) section 6(3),
  - (b) section 7(1) and (5A) (in relation to an act made unlawful by section 7(1)),
  - (c) section 8,
  - (d) section 9(2), (4A), (5)(a) and (5A) (in relation to an act made unlawful by section 9(2), (4A) or (5)(a)),
  - (e) section 11B,
  - (f) section 11G,
  - (g) section 11I.”
- (b) subsections (4), (4ZZA) and (4ZA) are repealed,
- (c) after subsection (4A) insert—

“(4B) A person guilty of an offence under a provision mentioned in subsection (4C) is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (4C) The provisions referred to in subsection (4B) are—
- (a) section 14ZC,
  - (b) section 14A,
  - (c) section 14AA,
  - (d) section 14K.
- (4D) A person guilty of an offence under a provision mentioned in subsection (4E) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (4E) The provisions referred to in subsection (4D) are—
- (a) section 1,
  - (b) section 5(1)(a) to (d) and (f) (in relation to an act made unlawful by section 5(1)(a) to (d)),
  - (c) section 6(1) and (2A) (in relation to an act made unlawful by section 6(1)(a)),
  - (d) section 9(1), (4) and (5A) (in relation to an act made unlawful by section 9(1) or (4)),
  - (e) section 10A,
  - (f) section 11,
  - (g) section 14,
  - (h) section 15A.”,
- (d) in subsection (5)—
- (i) after “(1),” insert “or (1B)”,
  - (ii) for “that subsection” substitute “the subsection in question”.

## **8 Protection of Badgers Act 1992: penalties for offences**

- (1) The Protection of Badgers Act 1992 is amended as follows.
- (2) In section 12 (penalties)—
- (a) in subsection (1)—
    - (i) for “six” substitute “twelve”,
    - (ii) for “level 5 on the standard scale” substitute “£40,000”,
    - (iii) for “that level” substitute “level 5 on the standard scale”,
  - (b) in subsection (1ZA), paragraph (b) (together with “and” immediately preceding it) are repealed,
  - (c) in subsection (1B)—
    - (i) for paragraph (a) substitute—

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- “(a) section 1(3) and (6) (in relation to an act made unlawful by section 1(3)),”,
- (ii) paragraphs (b) and (c) are repealed,
- (d) after subsection (1B) insert—
- “(1C) A person guilty of an offence under a provision mentioned in subsection (1D) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or both.
- (1D) The provisions referred to in subsection (1C) are—
- (a) section 1(1) and (6) (in relation to an act made unlawful by section 1(1)),
- (b) section 2(1)(a) to (c) and (3) (in relation to an act made unlawful by section 2(1)(a) to (c)),
- (c) section 3.”,
- (e) in subsection (2), for “or (1A)(a)” substitute “, (1A)(a) or (1C)(a)”.
- (3) In section 12A (time limit for bringing summary proceedings)—
- (a) in subsection (1), for “any of sections 1 to 5 or 10(8) of this Act” substitute “a provision mentioned in subsection (1A)”,
- (b) after that subsection insert—
- “(1A) The provisions referred to in subsection (1) are—
- (a) section 1(3), (5) and (6) (in relation to an act made unlawful by section 1(3)),
- (b) section 2(1)(d) and (3) (in relation to an act made unlawful by section 2(1)(d)),
- (c) section 3,
- (d) section 4,
- (e) section 5,
- (f) section 10(8).”.

## 9 Conservation (Natural Habitats, etc.) Regulations 1994: penalties for offences

- (1) The Conservation (Natural Habitats, etc.) Regulations 1994 ([SI 1994/2716](#)) are amended as follows.
- (2) In regulation 39 (protection of certain wild animals), for paragraph (12) substitute—
- “(12) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.
- (3) In regulation 41 (prohibition of certain methods of taking or killing wild animals), for paragraph (6) substitute—
- “(6) A person guilty of an offence under this regulation is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.
- (4) In regulation 102 (proceedings for offences: venue, time limits), in paragraph (2), after first “offence” insert “(other than for an offence under regulation 39 or 41)”.

## 10 Deer (Scotland) Act 1996: penalties for offences

In schedule 3 (penalties) of the Deer (Scotland) Act 1996—

- (a) in the entry relating to section 17(3)—
  - (i) in column 3(a), for “a fine of level 4 on the standard scale for each deer in respect of which the offence is committed or 3 months imprisonment or both” substitute “a fine of £40,000 for each deer in respect of which the offence is committed or 12 months imprisonment or both”,
  - (ii) in column 3(b) insert “a fine or imprisonment for a term of 5 years or both”,
- (b) in the entry relating to section 21(3) and (5)—
  - (i) in column 1, “, (5)” is repealed,
  - (ii) in column 2, for “Offences relating to firearms and ammunition” substitute “Breach of firearms order”,
- (c) after the entry relating to section 21(3), insert—

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| “21(5) | Firearms and ammunition: wilfully injuring deer | a fine of £40,000 for each deer in respect of which the offence is committed or 12 months imprisonment or both | a fine or imprisonment for a term of 5 years or both”, |
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- (d) in the entry relating to section 22—
  - (i) in column 3(a), for “a fine of the statutory maximum in respect of each deer killed, taken or injured or 6 months imprisonment or both” substitute “a fine of £40,000 in respect of each deer killed, taken or injured or 12 months imprisonment or both”,
  - (ii) in column 3(b), for “not exceeding 2” substitute “of 5”.

## 11 Wild Mammals (Protection) Act 1996: penalties for offences

In section 5 (penalties) of the Wild Mammals (Protection) Act 1996, for subsection (1) substitute—

- “(1) A person guilty of an offence under this Act is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.

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## **12 Protection of Wild Mammals (Scotland) Act 2002: penalties for offences**

- (1) The Protection of Wild Mammals (Scotland) Act 2002 is amended as follows.  
 (2) After section 7 insert—

### **“7A Time limit for summary proceedings**

- (1) Proceedings for an offence under section 1(2) or 1(3) may be brought within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor’s knowledge.
- (2) But no such proceedings may be brought more than 3 years—
- (a) after the commission of the offence, or
  - (b) in the case of an offence involving a continuous contravention, after the last date on which the offence was committed.
- (3) A certificate signed by or on behalf of the prosecutor which states the date on which evidence referred to in subsection (1) came to the prosecutor’s knowledge is conclusive evidence of that fact, and such a certificate which purports to be so signed is to be treated as being so signed unless the contrary is proved.”.
- (3) In section 8 (proceedings and penalties), for subsection (1) substitute—
- “(1) A person guilty of an offence under section 1(1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (1A) A person guilty of an offence under section 1(2) or (3) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).”.

## **13 Fixed penalty notices for certain wildlife offences**

- (1) The Scottish Ministers may by regulations make provision for or in connection with the issuing of fixed penalty notices in relation to certain offences relating to wildlife.
- (2) The offences in relation to which fixed penalty notices may be issued must be specified in or by virtue of regulations under subsection (1).
- (3) The offences which may be specified are offences—
- (a) under—
    - (i) Part 1 of the Wildlife and Countryside Act 1981,
    - (ii) the Protection of Badgers Act 1992,
    - (iii) the Deer (Scotland) Act 1996, or
    - (iv) another enactment (whether made or, as the case may be, passed before, on or after the coming into force of this section) which the Scottish Ministers consider relates to wildlife, and

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- (b) in relation to which the maximum penalty on conviction does not exceed imprisonment for a term of 6 months or a fine of level 5 on the standard scale (or both).
- (4) Regulations made under subsection (1) may in particular include provision—
- (a) subject to subsections (6) and (7), prescribing the form of a fixed penalty notice,
  - (b) prescribing the persons or categories of persons who are authorised to issue fixed penalty notices,
  - (c) conferring on the Scottish Ministers the power to authorise a person to issue fixed penalty notices,
  - (d) conferring powers to enter premises (other than dwelling-houses) in connection with the issuing of fixed penalty notices,
  - (e) about the circumstances in which fixed penalty notices may be issued (including the test which must be satisfied before a person authorised to issue such notice may do so),
  - (f) about the circumstances in which fixed penalty notices may not be issued,
  - (g) about the circumstances in which fixed penalty notices may be withdrawn (including the effects of such withdrawal),
  - (h) prescribing the amount of the fixed penalty which is to apply to an offence, being not more than level 5 on the standard scale,
  - (i) prescribing the person to whom payment may be made (who need not be the person who issued the fixed penalty notice),
  - (j) prescribing the period of time within which a fixed penalty may be paid (in this section, the “payment period”),
  - (k) about the circumstances in which a person to whom a fixed penalty notice is issued may decline the notice or otherwise object to or challenge it (including the period within which the person may do so),
  - (l) about the effects of failing to decline or otherwise object to or challenge a fixed penalty notice before the end of the period prescribed for doing so (including that such failure is deemed to be acceptance of the notice),
  - (m) conferring on the person who issued the fixed penalty notice or the person to whom payment may be made the power to extend the payment period in any particular case if the person considers it appropriate to do so,
  - (n) about the methods by which fixed penalties may be paid,
  - (o) for the amount of a fixed penalty to be discounted or increased by an amount or percentage in circumstances prescribed by the regulations (but not so as to make the amount payable more than level 5 on the standard scale),
  - (p) prescribing the effect of paying a fixed penalty within the payment period (for example, that no proceedings may be brought in respect of the offence to which the fixed penalty notice relates),
  - (q) about the consequences of not paying a fixed penalty within the payment period (including how liability to pay the penalty may be enforced),
  - (r) for additional procedure relating to fixed penalty notices (for example, to make provision for hearings or appeals),
  - (s) for the destination of funds, the keeping of accounts and the preparation and publication of statements of account relating to fixed penalties provided for under the regulations,

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- (t) disapplying Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007 where and to the extent that the regulations provide for fixed penalty notices in relation to a relevant offence (within the meaning of section 25(2) of that Act),
  - (u) creating offences relating to—
    - (i) obstruction of a person who is exercising functions in relation to fixed penalty notices,
    - (ii) a failure to provide information requested in connection with a fixed penalty notice.
- (5) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale.
- (6) A fixed penalty notice provided for in regulations under subsection (1) must—
- (a) identify the offence to which it relates, and
  - (b) specify reasonable particulars of the circumstances alleged to constitute the offence.
- (7) A fixed penalty notice provided for in regulations under subsection (1) must also state—
- (a) the date on which the fixed penalty notice is issued,
  - (b) the amount of the fixed penalty,
  - (c) the person to whom payment may be made and the person’s address,
  - (d) the payment period,
  - (e) the method by which payment may be made,
  - (f) the effect of paying the fixed penalty within the payment period and the consequences of not paying the fixed penalty within that period,
  - (g) details of any procedure for challenging or appealing the fixed penalty notice.
- (8) In this section, “fixed penalty notice” means a notice specifying a sum of money that may or must be paid as an alternative to prosecution for an offence.
- (9) Regulations under this section—
- (a) are subject to the affirmative procedure,
  - (b) may make—
    - (i) incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (ii) different provision for different purposes,
  - (c) may modify any enactment.