



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

2020 asp 14

## CHAPTER 1

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

#### *Animal welfare offences: penalties*

#### **1 Prevention of harm to animals: penalties for offences**

- (1) The Animal Health and Welfare (Scotland) Act 2006 (in this Act, “the 2006 Act”) is amended as follows.
- (2) In section 46 (penalties for offences)—
  - (a) for subsection (1) substitute—

“(1) A person who commits an offence under section 19 or 23 is liable—

    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 (or both),
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”
  - (b) in subsection (3)—
    - (i) after “Part” insert “(other than under regulations made under section 46A)”,
    - (ii) for “referred to in subsection (2)” substitute “mentioned in subsection (4)”,
  - (c) after subsection (3) insert—

“(4) The penalties referred to in subsection (4) are imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).”

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(3) Section 44 is repealed.

## 2 Fixed penalty notices for certain animal welfare offences

In the 2006 Act, after section 46 insert—

### “46A Fixed penalty notices for certain 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.
- (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) this Part,
    - (ii) regulations made under section 26, 27 or 28 (whether made before, on or after the coming into force of this section), or
    - (iii) 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 animal welfare, and
  - (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 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 notices 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”),

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- (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,
  - (t) 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,

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- (g) details of any procedure for challenging or appealing the fixed penalty notice.
- (8) Regulations under subsection (1) may modify any enactment (including this Act).
- (9) 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.”.

*Protecting police dogs etc. from unnecessary suffering*

### 3 **Harming a service animal**

In section 19 (unnecessary suffering) of the 2006 Act, after subsection (4) insert—

“(4A) In determining for the purposes of subsection (1) whether suffering is unnecessary in a case where it was caused by conduct for a purpose mentioned in subsection (4)(c)(ii), the fact that the conduct was for that purpose is to be disregarded if—

- (a) the animal was under the control of a relevant officer at the time of the conduct,
- (b) it was being used by that officer at that time, in the course of the officer’s duties, in a way that was reasonable in all the circumstances, and
- (c) that officer is not the person accused of committing the offence under subsection (1).

(4B) In subsection (4A), “relevant officer” means—

- (a) a constable,
- (b) a special constable within the meaning of section 9 of the Police and Fire Reform (Scotland) Act 2012,
- (c) a person (other than a constable or a special constable) who has the powers of a constable or is otherwise employed or engaged to carry out, or assist in the carrying out of, police functions (within the meaning of section 99(1) of that Act),
- (d) a prisoner custody officer within the meaning of section 114 of the Criminal Justice and Public Order Act 1994.

(4C) The Scottish Ministers may by regulations modify subsection (4B) to—

- (a) add to the categories of person specified in subsection (4B) other categories of person in the public service of the Crown,
- (b) vary any category of person for the time being specified in subsection (4B),
- (c) remove any category of person for the time being so specified.”.

*Animal welfare offences: disqualification orders*

### 4 **Disqualification orders**

- (1) The 2006 Act is amended as follows.
- (2) In section 40 (disqualification orders)—

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- (a) in subsection (1), for “may” substitute “must consider whether it is necessary, to protect animal welfare, to”,
- (b) for subsection (5) substitute—

“(5) The court must state its reasons—

- (a) for deciding to make or, as the case may be, not make a disqualification order,
- (b) where it decides to make such an order—
  - (i) for including in the order the particular disqualifications imposed by it,
  - (ii) for specifying, under subsection (9)(a), the period for which the order is to have effect, and
  - (iii) for specifying, under subsection (9)(b), a period within which no application under section 42(1) may be made.”.

- (3) In section 42 (termination or variation of disqualification orders), after subsection (5) insert—

“(6) The court must state its reasons—

- (a) for granting or, as the case may be, refusing the application under subsection (1),
- (b) where it grants the application in whole or in part, for varying or, as the case may be, terminating the disqualification order.”.

- (4) After that section insert—

**“42A Disqualification orders: record of reasons**

The Scottish Courts and Tribunals Service must establish and maintain a record of reasons relating to disqualification orders stated by the court under sections 40(5) and 42(6).”.

**5 Disqualification orders: further provision**

- (1) The 2006 Act is amended as follows.
- (2) In section 40 (disqualification orders) —
  - (a) after subsection (1) insert—

“(1A) The purpose of a disqualification order is for the future protection of animals and not in substitution for a penalty for a relevant offence.”,

- (b) in subsection (6), the words “, or instead of,” are repealed.

*Animal health offences: penalties*

**6 Fixed penalty notices for offences relating to animal health**

In the Animal Health Act 1981, after section 76 insert—

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#### **“76A Fixed penalty notices**

- (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.
- (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) this Act,
    - (ii) orders or regulations made under this Act (whether made before, on or after the coming into force of this section),
    - (iii) the Bees Act 1980,
    - (iv) orders made under the Bees Act 1980 (whether made before, on or after the coming into force of this section), or
    - (v) 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 animal health, and
  - (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 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 notices 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),

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- (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,
  - (t) 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—

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“animal” includes bees in any stage of their life cycle,  
“enactment” includes an Act of the Scottish Parliament and an instrument under such an Act,  
“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 (including this Act).”.

*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”.
- (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—

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- (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—
- (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.

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(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—
    - “(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.

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- (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—

    - (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—

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- (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).”.

## 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

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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
  - (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,

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- (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,
  - (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.

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- (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.

#### *Conservation of seals*

### **14 Killing, injuring or taking seals: offences, penalties etc.**

- (1) The Marine (Scotland) Act 2010 is amended as follows.
- (2) In section 110 (seal licences)—
  - (a) in subsection (1), paragraphs (f) and (g) are repealed,
  - (b) subsections (2) and (3) are repealed.
- (3) Section 121 (power to enter land to protect fisheries or fish farms from seals) is repealed.
- (4) In section 122(1) (duty to notify occupier), the words “or 121(2)(a)” are repealed.
- (5) In section 123 (duty to produce authority), the words “or 121” are repealed.
- (6) In section 124 (obstructing an authorised person), the words “or 121” are repealed.
- (7) In section 128 (penalties)—
  - (a) before subsection (1) insert—

“(A1) A person guilty of an offence under section 107 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).”,
- (b) in subsection (1), the words “107 or” are repealed.

*Acoustic deterrent devices: requirement to report*

**15 Acoustic deterrent devices: requirement to report**

- (1) The Scottish Ministers must, as soon as practicable and no later than 1 March 2021, lay a report before the Scottish Parliament on the use of acoustic deterrent devices on land constituting a fish farm.
- (2) A report under subsection (1) must include—
  - (a) information on the use made of acoustic deterrent devices on Scottish fish farms,
  - (b) any known impacts that the use of acoustic deterrent devices has on marine mammals,
  - (c) consideration of whether the use of acoustic deterrent devices on Scottish fish farms is sufficiently monitored,
  - (d) consideration of whether existing provision on protection of animals and wildlife in relation to the use of acoustic deterrent devices on Scottish fish farms is sufficient, and
  - (e) any future plans for regulation of the use of acoustic deterrent devices.

*Review of requirements for additional animal welfare, animal health and wildlife offences*

**16 Review of requirements for additional animal welfare, animal health and wildlife offences**

- (1) The Scottish Ministers must conduct a review of whether the provisions of this Act are sufficient to ensure appropriate standards of animal welfare, animal health and protection of wildlife.
- (2) Without prejudice to the generality of subsection (1), the review must in particular consider whether provision should be made—
  - (a) for a specific offence of theft of a pet,
  - (b) to prohibit the attaching, or causing or permitting the attaching, to a dog or other animal of a collar or other wearable device designed to administer an electric shock,
  - (c) about the appropriate penalties to be available for any such offences.
- (3) The review must be completed as soon as practicable and no later than 1 April 2025.
- (4) On completing the review, the Scottish Ministers must—
  - (a) lay a report on the review before the Scottish Parliament,
  - (b) publish the report in such manner as they consider appropriate.
- (5) The report under subsection (4) must include a statement of—

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- (a) the action, if any, the Scottish Ministers intend to take as a result of the review,
- (b) where the Scottish Ministers do not intend to take steps to make provision for the matters in paragraphs (a) and (b) of subsection (2), their reasons for this.

### *Information sharing report*

## **17 Information sharing report**

- (1) Before the end of the period of 5 years beginning with the day after this section comes into force, the Scottish Ministers must publish and lay before the Scottish Parliament a report setting out—
  - (a) an assessment of the steps that have been taken to ensure information sharing in relation to persons to whom subsection (3) applies, and
  - (b) the steps the Scottish Ministers are taking to further progress such information sharing.
- (2) A report under subsection (1) may include such other information as the Scottish Ministers consider appropriate.
- (3) This subsection applies to a person who has, in relation to an offence listed in subsection (4), been—
  - (a) issued with a fixed penalty notice, or
  - (b) convicted and whose sentence includes—
    - (i) a fine,
    - (ii) a period of imprisonment,
    - (iii) a disqualification order (within the meaning given in section 40 of the 2006 Act), or
    - (iv) a community payback order (within the meaning given in section 227A of the Criminal Justice and Licensing (Scotland) Act 2010).
- (4) The offences and convictions are offences and convictions under—
  - (a) the Animal Health Act 1981,
  - (b) the Wildlife and Countryside Act 1981,
  - (c) the Protection of Badgers Act 1992,
  - (d) the Conservation (Natural Habitats, etc.) Regulations 1994,
  - (e) the Deer (Scotland) Act 1996,
  - (f) the Wild Mammals (Protection) Act 1996,
  - (g) the Protection of Wild Mammals (Scotland) Act 2002,
  - (h) the 2006 Act.
- (5) In preparing the report, the Scottish Ministers may consult such persons as they consider appropriate.

### *Protection of certain wild animals*

## **18 Protection of certain wild animals**

- (1) The Wildlife and Countryside Act 1981 is amended as follows.

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- (2) In section 10A (protection of wild hares etc.), in subsection (2), paragraph (a) is repealed.
- (3) In schedule 5—
- (a) after the entry in the first column for “Grasshopper, Wart-biter” insert—
- 
- “Hare, mountain”,
- 
- (b) at the corresponding place in the second column insert—
- 
- “Lepus timidus”.
- 
- (4) In schedule 5A—
- (a) in the first column, the entry for “Hare, mountain” is repealed,
- (b) in the second column, the entry for “Lepus timidus” is repealed.