

# **ANIMALS AND WILDLIFE (PENALTIES, PROTECTIONS AND POWERS) (SCOTLAND) ACT 2020**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Chapter 1 – Animal welfare, animal health and wildlife: offences and penalties***

##### **Animal welfare offences: penalties**

#### ***Section 2 – Fixed penalty notices for certain animal welfare offences***

8. This section inserts a new section 46A (fixed penalty notices for certain offences) into the 2006 Act.
9. The new section confers a power on the Scottish Ministers to make provision by regulations for, or in connection with, the issuing of fixed penalty notices (FPNs) in relation to certain offences (subsection (1)). For the purposes of this new section, an FPN is a notice specifying a sum of money that may or must be paid as an alternative to prosecution for an offence.
10. The offences in relation to which FPNs may be issued must be specified in or by virtue of the regulations (subsection (2)). The offences which may be specified are offences under Part 2 of the 2006 Act, under regulations made under section 26, 27 or 28 of that Part, or under another enactment that the Scottish Ministers consider relates to animal welfare. The offences that may be specified include offences under any such future regulations or enactments which are made or passed after section 2 of the Act comes into force (subsection (3)(a)). But the power may only be used to make provision for FPNs in relation to any such offence if the maximum penalty on conviction does not exceed imprisonment for a term of 6 months or a fine of level 5 of the standard scale, or both (subsection (3)(b)).
11. The new section makes it clear that the regulations may include provision for certain things (subsection (4)). In particular, the power may be used to create offences relating to obstruction of a person who is exercising functions in relation to FPNs, or to a failure to provide information requested in relation to FPNs. But for any such offence, the maximum penalty that may be provided for is, on summary conviction, a fine not exceeding level 5 on the standard scale (subsections (4)(t) and (5)).
12. Although the power cannot be used to create new animal welfare offences (except insofar as it may create offences relating to obstruction of a person or a failure to provide information), it may be used in combination with other powers such as section 26 (provision for securing welfare) of the 2006 Act. For example, regulations under section 26 could create a new offence and, if used in combination with the new power, the same regulations could provide for FPNs in relation to that new offence.

13. Where the new power is used to make regulations for the issuing of FPNs in relation to an offence, any FPN to be issued in pursuance of those regulations must identify the offence to which it relates and specify the reasonable particulars of the circumstances alleged to constitute the offence (subsection (6)). Any such FPN must also state: the date on which it is issued, the amount of the fixed penalty, the person to whom payment may be made, the payment period, the method of payment, the effect of paying the fixed penalty within the payment period and the consequences of not doing so, and details of any procedure for challenging or appealing the fixed penalty notice (subsection (7)).
14. By virtue of section 51(3) of the 2006 Act, regulations under new section 46A are subject to the affirmative procedure. Accordingly, any such regulations cannot be made unless a draft of the instrument containing them is laid before, and approved by resolution of, the Scottish Parliament.