

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Protecting police dogs etc. from unnecessary suffering

Section 3 – Harming a service animal

15. This section inserts new subsections (4A), (4B) and (4C) into section 19 (unnecessary suffering) of the 2006 Act.
16. Section 19(1) makes it an offence for a person to cause a protected animal unnecessary suffering where that person knew, or ought reasonably to have known, that the act would have caused the suffering or be likely to do so. “Protected animal” is defined by section 17 of the 2006 Act.
17. When reaching a decision about whether a person has committed the offence of causing unnecessary suffering under section 19(1), the court is required to have regard to whether the conduct was for a legitimate purpose, including the purpose in section 19(4)(c)(ii) of protecting a person, property or another animal.
18. New section 19(4A) of the 2006 Act requires the court to disregard whether the conduct was for the purpose in section 19(4)(c)(ii) when reaching a decision about whether a person has committed the offence of unnecessary suffering under section 19(1), where:
(i) the animal concerned was under the control of a relevant officer at the time of the conduct; (ii) the animal concerned was being used by the relevant officer at that time, in the course of that officer’s duties, in a way that was reasonable in all the circumstances; and (iii) that relevant officer is not the person accused of committing the offence under section 19(1).
19. In this context, “relevant officer” means a constable or a special constable (or any other person 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, such as persons who are employed by the police to use dogs for drug detection purposes), or a prison custody officer (new subsection (4B)).
20. The Scottish Ministers may, by regulations, add any category of person in the public service of the Crown to the list of persons who are relevant officers, or vary or remove any category of person for the time being included in that list (new subsection (4C)). By virtue of section 51(3) of the 2006 Act, regulations under this new subsection are subject to the affirmative procedure. Accordingly, any such regulations cannot be made unless

*These notes relate to the Animals and Wildlife (Penalties, Protections and Powers)
(Scotland) Act 2020 (asp 14) which received Royal Assent on 21 July 2020*

a draft of the instrument containing them is laid before, and approved by resolution of, the Scottish Parliament.

21. This enhanced protection for animals being used by relevant officers is known as “Finn’s Law”, in reference to Finn, a police dog attacked whilst on duty.