

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

Animal health offences: penalties

Section 6 – Fixed penalty notices for offences relating to animal health

32. This section inserts a new section 76A (fixed penalty notices) into the Animal Health Act 1981 (“the 1981 Act”).
33. 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 (subsection (4)).
34. 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 the Animal Health Act 1981, the Bees Act 1980, orders or regulations made under those Acts, or another enactment which the Scottish Ministers consider relates to animal health.
35. The offences that may be specified include offences contained in any future orders, regulations or enactments which are made or passed after section 4 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)).
36. The new section makes it clear that the regulations may include provision for certain things (subsection (3A)). 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 (3A)(t) and (3B)).
37. Although the power cannot be used to create new animal health 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 conjunction with other powers which may create such offences. For example, the 1981 Act confers various powers on the Scottish Ministers to, by order, make provision to prevent infection and the spread of disease in connection

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

with animal health. In consequence of such an order, new offences may be created by virtue of section 73 of that Act. If the power in new section 76A were used in conjunction with any such order, provision could be made for FPNs in relation to any such new offence.

38. 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 (3C)). 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 (3D)).
39. Regulations made under new section 76A are subject to the affirmative procedure (subsection (5)). 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.