



# 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*

#### **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,
- (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- (g) about the circumstances in which fixed penalty notices may be withdrawn (including the effects of such withdrawal),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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.