

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

Wildlife offences: penalties

Section 8 – Protection of Badgers Act 1992: penalties for offences

61. This section amends sections 12 (penalties) and 12A (time limit for bringing summary proceedings) of the Protection of Badgers Act 1992 (“the 1992 Act”).
62. Section 8(2)(a) of the Act amends section 12(1) to revise the maximum penalties available for the offences listed in section 12(1ZA), to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).
63. Section 8(2)(b) of the Act removes reference to the offences under section 3(1)(a) to (c) or (e) or section 3(2) (in relation to an act made unlawful under section 3(1)(a) to (c) or (e)) (interfering with badger setts) from section 12(1ZA) of the 1992 Act.
64. The effect of this is that the offences under section 2(1)(d) or section 2(3) (in relation to an act made unlawful by section 2(1)(d)) remain triable summarily only but are subject to the higher maximum penalties, and offences under section 3(1)(a) to (c) or (e) or section 3(2) (in relation to an act made unlawful under section 3(1)(a) to (c) or (e)) (interfering with badger setts) are now dealt with separately, attracting the same penalties as other section 3 offences.
65. Section 12(1A) of the 1992 Act previously provided that a person was liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both, and on conviction on indictment to imprisonment for a term not exceeding 3 years or to a fine or both, for offences under the following sections, listed in section 12(1B) of the 1992 Act:
 - section 1(1), (3) and (6) (injuring or killing badgers);
 - section 2(1)(a) to (c) (cruelty) and (3) (knowingly causing or permitting an act made unlawful by section 2(1)(a) to (c));
 - section 3(1)(d) (interfering with badger setts) and section 3(2) (knowingly causing or permitting an act made unlawful by section 3(1)(d)); and
 - section 4(1) and (2) (selling and possession of live badgers).

*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*

66. Section 8(2)(c) of the Act removes reference to section 1(1), section 2(1)(a) to (c), section 2(3) (in relation to an act made unlawful by section 2(1)(a) to (c)), section 3(1) (d) and section 3(2) (in relation to an act made unlawful by section 3(1)(d)) from section 12(1B) of the 1992 Act, and section 8(2)(d) of the Act inserts new subsections (1C) and (1D) .
67. New subsections (1C) and (1D) provide that a person is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both and on conviction on indictment to imprisonment for a term not exceeding 5 years, or to a fine or both, for offences under:
- section 1(1) (taking, injuring or killing badgers) and (6) (knowingly causing or permitting an act made unlawful by section 1(1));
 - section 2(1)(a) to (c) (cruelty) and (3) (knowingly causing or permitting an act made unlawful by section 2(1)(a) to (c));
 - section 3 (interfering with badger setts).
68. The effect of this is that the offences under the above sections are triable under summary or solemn procedure and are subject to the higher maximum penalties.
69. Section 12A of the 1992 Act makes provision regarding the time limits for commencing all summary prosecutions for offences under sections 1 to 5 and 10(8) of the 1992 Act. The time limit in section 12A provides that proceedings may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge but no such proceedings may be brought more than 3 years after the commission of the offence, or in the case of a continuous contravention, after the last date on which the offence was committed.
70. Section 8(3) of the Act inserts new subsection (1A) into section 12A to list the provisions to which the time limit set out at section 12A applies.
71. The effect of this is to disapply section 12A(1) from summary proceedings for offences under section 1(1) and (6) (taking, injuring or killing badgers), section 2(1)(a) to (c) (cruelty) and section (3) (knowingly causing or permitting to an act made unlawful by section 2(1)(a) to (c)) so that there is no time limit for prosecution of these offences which are triable either way.