



## EXPLANATORY NOTES

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### **Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14)**

£6.90



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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020. They do not form part of the Act and have not been endorsed by the Parliament.
2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The Act amends the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”), several pieces of wildlife legislation and the Animal Health Act 1981 to further protect health and welfare in connection with animals and wildlife in Scotland.
  - Section 1 increases the maximum available penalties for the most serious animal welfare offences, makes related procedural changes and increases the maximum penalties that may be specified in future regulations made under certain provisions of the 2006 Act.
  - Section 2 gives the Scottish Ministers power to make regulations for the issuing of fixed penalty notices in relation to less serious animal welfare offences.
  - Section 3 increases the protection for service animals by making it easier to convict people of causing them unnecessary suffering (also known as “Finn’s Law”).
  - Sections 4 and 5 place new requirements on the court in relation to disqualification orders under the 2006 Act, and require the Scottish Courts and Tribunals Service to establish and maintain a record about disqualification orders.
  - Section 6 gives the Scottish Ministers power to make regulations for the issuing of fixed penalty notices in relation to less serious animal health offences.
  - Sections 7 to 12 increase the maximum available penalties for various wildlife offences; make related procedural changes; make procedural changes to the offence of possession of prescribed pesticides; and extend the offence of vicarious liability to certain offences involving the illegal use of traps and snares.
  - Section 13 gives the Scottish Ministers power to make regulations for the issuing of fixed penalty notices in relation to less serious wildlife offences.

- Section 14 amends Part 6 of the Marine (Scotland) Act 2010 to remove two grounds upon which the Scottish Ministers can grant licences authorising the taking or killing of seals. This section also makes certain consequential amendments arising out of the removal of these seal licensing grounds, and increases the penalties associated with the offence of killing, injuring or taking seals (intentionally or recklessly) under section 107 of the Marine (Scotland) Act 2010.
- Section 15 requires the Scottish Ministers to lay a report before the Scottish Parliament by 1 March 2021 on the use of acoustic deterrent devices on land constituting a fish farm.
- Section 16 requires the Scottish Ministers to conduct a review of whether the provisions of the Act are sufficient to ensure appropriate standards of animal welfare, animal health and protection of wildlife.
- Section 17 requires the Scottish Ministers to publish and lay a report before the Scottish Parliament, before the end of the period of 5 years beginning with the day after the section comes into force, reporting on information sharing about persons issued with a fixed penalty notice or convicted of an animal health, animal welfare or wildlife offence.
- Section 18 reclassifies mountain hares as protected wild animals which may not be intentionally or recklessly killed, injured or taken at any time of the year under the Wildlife and Countryside Act 1981.
- Sections 19 to 21 give authorised persons (including certain inspectors and constables) new powers (as regards animals taken into possession to alleviate suffering) to transfer, sell, treat or, in limited circumstances, humanely destroy those animals.
- Sections 22 and 23 make provision regarding, respectively, commencement and the short title.

## **COMMENTARY ON SECTIONS**

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

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

##### *Section 1 – Prevention of harm to animals: penalties for offences*

4. This section amends section 46 (penalties for offences) of the 2006 Act, and repeals section 44 (proceedings for animal fighting offences) of the same Act in consequence of this amendment.

5. Section 46(1) of the 2006 Act previously provided that a person who commits an offence under section 19 (unnecessary suffering) or 23 (animal fighting) was liable, on summary conviction only, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both. The amendment made by section 1(2)(a) of the Act means that, for these offences, any such person may alternatively be liable, on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

6. Section 46(3) of the 2006 Act previously provided that a person who commits an offence under regulations made under Part 2 of the 2006 Act was liable to such penalties, not exceeding imprisonment for a term of 6 months or a fine of level 5 on the standard scale (or both), as provided for in the regulations. The amendment made by section 1(2)(b) and (c) of the Act means that regulations made under Part 2 of the 2006 Act (with the exception of regulations made under new section 46A for fixed penalty notices) may specify maximum penalties, for offences in such regulations, not exceeding imprisonment for a term 12 months or a fine of £40,000 (or both).

7. The time limits for bringing proceedings for an offence under section 19 were previously governed by section 136 (time limit for certain offences) of the Criminal Procedure (Scotland) Act 1995, which applies to statutory offences which are triable only summarily. As a result of the amendment to section 46 those time limits no longer apply because a section 19 offence is also triable on indictment. The time limits for bringing proceedings for an offence under section 23 were previously governed by section 44 (proceedings for animal fighting offences) of the 2006 Act, which displaced section 136 of the Criminal Procedure (Scotland) Act 1995. As a result of the amendment to section 46 the time limits in section 136 would no longer apply because a section 23 offence is also triable on indictment. Section 44 is therefore no longer necessary and is repealed.

#### *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.

### ***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 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.

### ***Animal welfare offences: disqualification orders***

#### *Section 4 – Disqualification orders*

22. This section amends sections 40 and 42 of the 2006 Act, and inserts a new section 42A into the 2006 Act.

23. Section 4(2)(a) amends section 40(1) of the 2006 Act to place a requirement on courts to consider whether it is necessary, to protect animal welfare, to impose a disqualification order on a person who has been convicted of a relevant offence. The relevant offences are defined by section 40(13) of the 2006 Act.

24. Previously, section 40(1) provided that where a person is convicted of a relevant offence, the convicting court may make a disqualification order, and did not specify when such an order should be made. The amendment therefore places a stronger requirement on courts to consider issuing a disqualification order in every case where a person is convicted of a relevant offence, and makes clear that such an order should be imposed for the purposes of protecting animal welfare.

25. Section 4(2)(b) replaces the previous section 40(5) of the 2006 Act with a new section 40(5). The new section 40(5) requires the court to state its reasons for deciding to make a disqualification order, or for deciding not to make a disqualification order. In addition, where the court decides to make such an order, it is required to explain its reasons for specifying the particular disqualifications imposed by the order, any period for which the order is to have effect and any period within which an application under section 42(1) of the 2006 Act for termination or variation of the order may not be made.

26. Previously, section 40(5) of the 2006 Act only required the court to state its reasons when it decided not to make a disqualification order. The amendments therefore place additional requirements on courts to explain their reasons when they issue a disqualification order, and to provide detail about why they think the specifics of the order they have issued are appropriate in the circumstances of the case.

27. Section 4(3) inserts a new section 42(6) into the 2006 Act to require the court to state its reasons for deciding to grant an application to terminate or vary a disqualification order, or to refuse an application to vary or terminate a disqualification order. An application to vary or terminate a disqualification order may be made under section 42(1) of the 2006 Act by a person who is subject to such an order.

28. Section 4(4) inserts a new section 42A into the 2006 Act to require the Scottish Courts and Tribunals Service to establish and maintain a record of the reasons relating to disqualification orders. The record needs to contain all such information which is required to be provided by the court under new sections 40(5) and 42(6).

*Section 5 – Disqualification orders: further provision*

29. Section 5 inserts a new section 40(1A) into the 2006 Act, and amends section 40(6) of the 2006 Act.

30. Section 5(2)(a) inserts new section 40(1A) into the 2006 Act. The new section 40(1A) provides that the purpose of a disqualification order is the future protection of animals and that it is not in substitution for a penalty for a relevant offence.

31. Section 5(2)(b) amends section 40(6) of the 2006 Act so that a disqualification order may be made in addition to any other penalty or order in relation to the offence, but not instead of such other penalty or order as was previously the case.

***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 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.

### ***Wildlife offences: penalties***

#### *Section 7 – Wildlife and Countryside Act 1981: penalties for offences*

40. This section amends sections 15A (possession of pesticides), 18A (vicarious liability for certain offences by employee or agent), 20(2) (summary prosecutions) and 21 (penalties) of the Wildlife and Countryside Act 1981 (“the Wildlife Act”).

41. Section 15A(1) of the Wildlife Act provides that any person who is in possession of any pesticide containing one or more prescribed active ingredients is guilty of an offence. However, section 15A(2) provides that person is not guilty of an offence if they can show that they had that substance for the purposes of acting in accordance with either:

- any regulations made under section 16(2) of the Food and Environment Protection Act 1985 (FEPA), or
- Regulation (EU) No 528/2012 of the European Parliament and of the Council (Regulation 528/2012).

42. The Control of Pesticides Regulations 1986 (“COPR”) are made under section 16(2) of FEPA. COPR sets out a regime for the sale, supply, storing, use and advertising of pesticides which are approved by Ministers. Regulation (EU) 528/2012 governs the use of and placing on the market of biocidal products. Certain biocidal products are necessary for the control of organisms that are harmful to human or animal health and for the control of organisms that cause damage to natural or manufactured materials.

43. Section 7(2) of the Act amends section 15A(2) of the Wildlife Act to include reference to EU Regulation (EC) 1107/2009, thereby extending the defence to products covered by that regulation. EU Regulation (EC) 1107/2009 governs the use of and placing on the market of plant protection products (“PPPs”). PPPs are used to protect plants and plant products from pests, diseases and weeds.

44. Section 18A of the Wildlife Act provides that where the employee or agent of a person with a right to take or kill a wild bird on or over land, or of a person who manages or controls such a right, is guilty of offences listed under section 18A(6) on or in relation to that land, then such a person is also guilty of an offence.

45. Section 7(3) of the Act amends section 18A(6) of the Wildlife Act to include reference to offences under section 11(1)(a) or (aa), (2)(a) or (b)(ii) relating to the illegal use of traps and snares, thereby extending the offence under section 18A to those offences.

46. Section 20(2) of the Wildlife Act previously provided that summary proceedings for an offence under Part 1 could 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 could be brought more than 3 years after the commission of the offence or, in the case of continuous contravention, after the last date on which the offence was committed.

47. This time limit applied to all offences which were tried summarily under Part 1 of the Wildlife Act, whether the offence was capable of being tried by summary procedure only or whether the offence could be tried on indictment (but with the time limit applying only where the offence was tried summarily).

48. Section 7(4) of the Act amends section 20(2) of the Wildlife Act to provide that this time limit applies exclusively to proceedings which are triable summarily only. Therefore, there is no time limit for prosecution of offences which are triable either way under Part 1 of the Wildlife Act, being offences under:

- section 1 (protection of wild birds);
- section 5(1)(a) to (d) (prohibition of certain methods of killing or taking wild birds) and (f) (knowingly causing or permitting an act made unlawful by section 5(1)(a) to (d));
- section 6(1) (sale etc. of live or dead wild birds, eggs etc.) and (2A) (knowingly causing or permitting an act made unlawful by section 6(1)(a));
- section 9(1), (4) (protection of certain wild animals) and (5A) (knowingly causing or permitting an Act made unlawful by section 9(1) or (4));
- section 10A (protection of wild hares etc.);
- section 11 (prohibition of certain methods of killing or taking wild animals);
- section 14 (introduction of new species etc.);
- section 14ZC (prohibition on keeping etc. of invasive animals or plants);
- section 14A (prohibition on sale etc. of invasive animals or plants);

- section 14AA (contravention of Invasive Alien Species Regulation);
- section 14K (offences in relation to species control orders);
- section 15A (possession of pesticides); and
- section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by subsection (3)(d) (the offence of intentionally obstructing a wildlife inspector entering and inspecting any premises for the purpose of ascertaining whether an offence under section 14, 14ZC, 14A, 14B or 14K is being or has been committed on premises).

49. Section 7(6) of the Act amends section 21 to make provision for two different penalty regimes for summary only offences and three different penalty regimes for offences which can be tried under summary or solemn procedure. It therefore substitutes new provisions for existing subsections (1), (1A) and (1B) and inserts new subsections (1C), (4B), (4C), (4D) and (4E) into section 21 of the Wildlife Act, to set out the new maximum penalties and the offences to which they apply. The previous subsections (4), (4ZZA) and (4ZA) are repealed.

50. New subsection (1) and (1A) of section 21 of the Wildlife Act provide that a person guilty of an offence under the following sections is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both):

- section 5(1)(e) (the offence of using any mechanically propelled vehicle in immediate pursuit of a wild bird for the purpose of killing or taking that bird);
- section 5(1)(f) (knowingly causing or permitting an act made unlawful by section 5(1)(e));
- section 6(2) (unregistered selling, offering or exposing for sale, or having in their possession, or transporting for sale, any dead wild bird or publishing or causing to be published any advertisement likely to be understood as conveying that they buy or sell, or intend to buy or sell, any of those things);
- section 6(2A) (knowingly causing or permitting an act made unlawful by section 6(2)(a));
- section 7 (registration etc. of certain captive birds) (other than section 7(1) (the offence of keeping or having possession of or under their control any bird listed in schedule 4 which has not been registered and ringed or marked in accordance with regulations) and section 7(5A) (knowingly causing or permitting an act made unlawful by section 7(1)));
- section 9(5)(b) (the offence of publishing or causing to be published any advertisement likely to be understood as conveying that they buy or sell, or intend to buy or sell, any live or dead wild animal listed in schedule 5);
- section 11A (snares: training, identification numbers, tags etc.);
- section 11C (snares: authorisation from landowners etc.);
- section 11E (snares: record keeping);
- section 13 (protection of wild plants);

*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*

- section 14B (notification of presence of invasive animals or plants etc.);
- section 17 (false statements made for obtaining registration, identification number or licence etc.);
- section 19ZC (wildlife inspectors: Scotland) (other than an offence under section 19ZC(7) in relation to a wildlife inspector acting in exercise of the power conferred by section 19ZC(3)(d) (the offence of intentionally obstructing a wildlife inspector entering and inspecting any premises for the purpose of ascertaining whether an offence under section 14, 14ZC, 14A, 14B or 14K is being or has been committed on premises)); and
- section 19ZD (power to take samples: Scotland).

51. The effect of this is that the offences under the above sections remain triable summarily only and subject to the same penalties as provided for in section 21(1) prior to amendment (a maximum term of imprisonment of 6 months, or a fine not exceeding level 5 on the standard scale or both).

52. New subsections (1B) and (1C) of section 21 of the Wildlife Act provide that a person guilty of an offence under the following sections is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both:

- section 6(3) (sale etc. of live or dead wild birds eggs etc.);
- section 7(1) (keeping or having possession of or under their control any bird listed in schedule 4 which has not been registered and ringed or marked in accordance with regulations) and (5A) (knowingly causing or permitting an act made unlawful by section 7(1));
- section 8 (protection of captive birds);
- section 9(2), (4A), (5)(a) (protection of certain wild animals) and (5A) (knowingly causing or permitting an act made unlawful by section 9(2), (4A) or (5)(a));
- section 11B (snares: duty to inspect etc.);
- section 11G (prevention of poaching: wild hares, rabbits etc.); and
- section 11I (possession etc., of wild hares, rabbits etc., killed or taken unlawfully).

53. The effect of this is that the offences under the above sections remain triable summarily only but are subject to the new maximum penalties.

54. New subsections (4B) and (4C) of section 21 of the Wildlife Act provide that a person guilty of an offence under sections 14ZC (prohibition on keeping etc. of invasive animals or plants), 14A (prohibition on sale etc. of invasive animals or plants), 14AA (contravention of Invasive Alien Species Regulation) and 14K (offences in relation to species control orders) 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 2 years or a fine or both.

55. The effect of this is that the offences under the above sections remain triable under summary or solemn procedure and are subject to the same penalties as prior to the Act, but with the penalties being contained in new section 21(4B) rather than in two different subsections of section 21 of the Wildlife Act.

56. New subsections (4D) and (4E) of section 21 of the Wildlife Act provide that a person guilty of an offence under the following sections 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 a fine or both:

- section 1 (protection of wild birds);
- section 5(1)(a) to (d) (prohibition of certain methods of killing or taking wild birds) and (f) (knowingly causing or permitting an act made unlawful by section 5(1)(a) to (d));
- section 6(1) (sale etc. of live or dead wild birds eggs etc.) and (2A) (knowingly causing or permitting an act made unlawful by section 6(1)(a));
- section 9(1), (4) (protection of certain wild animals) and (5A) (knowingly causing or permitting an act made unlawful by section 9(1) or (4));
- section 10A (protection of wild hares etc.);
- section 11 (prohibition of certain methods of killing or taking wild animals);
- section 14 (introduction of new species); and
- section 15A (possession of pesticides).

57. The effect of this is that the offences under the above sections are now triable under summary or solemn procedure and are subject to the higher maximum penalties.

58. Section 21(5) provides that the maximum fine imposed for any offence which is triable by summary procedure only, committed in respect of more than one bird, nest, egg, other animal, plant or other thing, is to be determined as if the person convicted had been convicted of a separate offence in respect of each bird, nest, egg, animal, plant or thing.

59. Section 7(6)(d) of the Act amends section 21(5) so that it continues to apply to offences triable by summary procedure only, which are those now listed under section 21(1A) and (1C).

60. The effect of this is that where the offence was committed in respect of more than one bird, nest, egg, other animal, plant or other thing, the maximum fine which may be imposed under subsection (1) and (1B) on summary conviction for an offence is to be determined as if the person convicted had been convicted of a separate offence in respect of each bird, nest, egg, animal, plant or thing.

#### *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).

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.

*Section 9 – Conservation (Natural Habitats, etc.) Regulations 1994: penalties for offences*

72. This section amends regulations 39 (protection of certain wild animals), 41 (prohibition of certain methods of taking or killing wild animals) and 102 (proceedings for offences: venue, time limits) of the Conservation (Natural Habitats, etc.) Regulations 1994 ("the 1994 Regulations").

73. Regulation 39(12) previously provided that a person who committed an offence under regulation 39 (protection of certain wild animals) was liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale.

74. Section 9(2) amends regulation 39(12) to provide that a person who commits an offence under this regulation 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 a fine or both.

75. The effect of this is that an offence under regulation 39 is now triable under solemn or summary procedure and subject to the higher maximum penalties.

76. Regulation 41(6) previously provided that a person who commits an offence under regulation 41 (prohibition of certain methods of taking or killing wild animals) was liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale.

77. Section 9(3) amends regulation 41(6) to provide that a person who commits an offence under this regulation 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 a fine or both.

78. The effect of this is that an offence under regulation 41 is now triable under solemn or summary procedure and subject to the higher maximum penalties.

79. Regulation 102 (proceedings for offences: venue, time limits) of the 1994 Regulations makes provision regarding the time limits for commencing summary prosecution of offences under Part III of the 1994 Regulations. The time limit in regulation 102 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 his or her knowledge. But no such proceedings may be brought more than 2 years after the commission of the offence.

80. Regulation 102 is amended by section 9(4) of the Act to provide that the time limit does not apply to offences under regulation 39 (protection of certain wild animals) and regulation 41 (prohibition of certain methods of killing or taking wild animals). The effect of this is that there is no time limit for prosecution of offences under regulations 39 and 41, which are now triable either way, but the time limit will continue to apply to all other summary proceedings under Part III of the 1994 Regulations.

*Section 10 – Deer (Scotland) Act 1996: penalties for offences*

81. This section amends schedule 3 (penalties) of the Deer (Scotland) Act 1996 (“the Deer Act”).

82. Schedule 3 (penalties) of the Deer Act sets out penalties for offences under sections 17(3), 21(5) and 22 of the Deer Act.

83. Section 10 of the Act amends schedule 3 of the Deer Act to provide that a person who commits an offence under sections 17(3), 21(5) and 22 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 a fine (or both).

84. The effect of this that the offences under sections 17(3), 21(5) and 22 are now triable under summary or solemn procedure and subject to the higher maximum penalties.

*Section 11 – Wild Mammals (Protection) Act 1996*

85. This section amends section 5 (penalties) of the Wild Mammals (Protection) Act 1996 (“the 1996 Act”). Section 5(1) (penalties) previously provided that a person who committed an offence (mutilating, kicking, beating, nailing or otherwise impaling, stabbing, burning, stoning, crushing, drowning, dragging or asphyxiating any wild mammal with intent to inflict unnecessary suffering) under the 1996 Act was liable on summary conviction to a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding 6 months or both.

86. Section 11 of the Act substitutes section 5(1) of the 1996 Act with a new section 5(1). The new subsection provides that a person who commits an offence under the 1996 Act is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both, or on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine or both.

87. The effect of this is that the offences under the 1996 Act are now triable under summary or solemn procedure and subject to the higher maximum penalties.



*Section 12– Protection of Wild Mammals (Scotland) Act 2002: penalties for offences*

88. This section introduces a new section 7A and amends section 8 of the Protection of Wild Mammals (Scotland) Act 2002 (“the 2002 Act”).

89. The statutory time bar (limit) for prosecution of offences imposed by section 136 of the Criminal Procedure (Scotland) Act 1995 previously applied to the offences under the 2002 Act. This meant that prosecutions for offences under the 2002 Act required to be brought within 6 months after the contravention occurred or in the case of a continuous contravention, within 6 months after the last date of such contravention.

90. Section 12(2) of the Act inserts a new section 7A into the 2002 Act to introduce a time limit for bringing summary proceedings for offences under section 1(2) (an owner or occupier of land knowingly permitting another person to enter or use it to commit an offence under subsection (1), being to deliberately hunt a wild mammal with a dog) and 1(3) (an owner of, or a person having responsibility for, a dog knowingly to permit another person to use it to commit an offence under subsection (1)). It 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. However, no such proceedings may be brought by virtue of this section 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.

91. Section 8 of the 2002 Act previously provided that a person who committed any offence under the 2002 Act was liable on summary conviction to imprisonment for up to 6 months or a fine of up to level 5 on the standard scale or both.

92. Section 12(3) of the Act amends section 8 of the 2002 Act to increase the maximum penalties available for offences under section 1(1) (deliberately hunting a wild mammal with a dog) by providing that a person who commits an offence under section 1(1) 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 a fine or both.

93. The effect of this is that an offence under section 1(1) (deliberately hunting a wild mammal with a dog) of the 2002 Act is now triable under summary or solemn procedure and subject to the higher maximum penalties.

94. Section 12(3) of the Act also amends section 8 of the 2002 Act to increase the maximum penalties available for offences under section 1(2) (an owner or occupier of land knowingly permitting another person to enter or use it to commit an offence under subsection (1), being to deliberately hunt a wild mammal with a dog) and (3) (an owner of, or a person having responsibility for, a dog knowingly to permit another person to use it to commit an offence under subsection (1)). It provides that a person who commits an offence under section 1(2) or (3) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 or both.

95. The effect of this is that an offence under section 1(2) or (3) remains triable summarily only but is subject to the higher maximum penalties.

*Section 13 – Fixed penalty notices for certain wildlife offences*

96. This 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 relating to wildlife (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.

97. 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 1 of the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, the Deer (Scotland) Act 1996, or under another enactment that the Scottish Ministers consider relates to wildlife, including under any such future enactment (subsection (3)(a)). But the power may be used only 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)).

98. Subsection (4) makes it clear that the regulations may include provision for certain things. 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 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)(u) and (5)).

99. Although the power cannot be used to create new wildlife offences (except insofar as it may create offences relating to obstruction of a person or failure to provide information), it may be used in conjunction with a power to create offences under another enactment which the Scottish Ministers consider relates to wildlife and where the maximum penalties for those offences do not exceed imprisonment for a term of 6 months or a fine of level 5 on the standard scale, or both. Where the 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)).

100. By virtue of subsection (9), regulations under section 13 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.

*Section 14 - Killing, injuring or taking seals: offences, penalties, etc.*

101. Section 14 amends Part 6 of the Marine (Scotland) Act 2010 (“the 2010 Act”), which regulates the conservation of seals. Section 14(2) amends section 110 of the 2010 Act to remove two licensing grounds upon which Scottish Ministers can grant licences authorising the taking or killing of seals, and makes associated amendments to this provision. The grounds being removed are contained in section 110(1)(f) and (g) of the 2010 Act and are for

the purposes of protecting the health and welfare of farmed fish or preventing serious damage to fisheries or fish farms, respectively. As a consequence of the repeal of section 110(1)(f) and (g), section 110(2) and (3) of the 2010 Act (which concern aspects of the licensing process in relation to section 110(1)(g)) are also repealed.

102. Section 14(3) to (6) make certain consequential amendments to sections 121, 122(1), 123 and 124 of the 2010 Act, arising out of the repeal of the seal licensing grounds contained in section 110(1)(f) and (g) of the 2010 Act. Section 121 previously allowed the Scottish Ministers to authorise a person to enter land in order to kill or take seals in accordance with a seal licence granted for the purpose of preventing serious damage to fisheries or fish farms under section 110(1)(g). With the removal of this purpose as a licensing ground, section 121 no longer has any application.

103. Section 14(7) amends section 128 of the 2010 Act to increase the penalties available to the court for the offence of killing, injuring or taking a live seal (intentionally or recklessly) under section 107 of the 2010 Act. It provides that a person who commits this offence 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 a fine or both.

*Section 15 - Acoustic deterrent devices: requirement to report*

104. Section 15(1) requires the Scottish Ministers to lay a report before the Scottish Parliament by 1 March 2021 on the use of acoustic deterrent devices on land constituting a fish farm.

105. Section 15(2) lists the matters which must be included in this report.

*Section 16 – Review of requirements for additional animal welfare, animal health and wildlife offences*

106. Section 16(1) requires the Scottish Ministers to conduct a review of whether the provisions of the Act are sufficient to ensure appropriate standards of animal welfare, animal health and protection of wildlife.

107. Section 16(2) provides that the review must in particular consider whether provision should be made (i) for a specific offence of theft of a pet; and (ii) to prohibit or otherwise regulate the use of collars or other wearable devices designed to administer an electronic shock (“the specified matters”). Section 16(2) also requires that the Scottish Ministers consider whether provision should be made for appropriate penalties for any such offences.

108. Section 16(3) requires that the Scottish Ministers complete the review as soon as reasonably practicable and no later than 1 April 2025.

109. Section 16(4) requires that the Scottish Ministers lay a report on the review before the Scottish Parliament and publish it in such manner as they consider appropriate.

110. Section 16(5) requires that the report must include a statement of the action, if any, the Scottish Ministers intend to take as a result of the review. In addition, it specifies that where the Scottish Ministers do not intend to take steps to make provision for the specified matters, the report must include a statement of their reasons for this.

*Section 17 – Information sharing report*

111. Section 17(1) places an obligation on the Scottish Ministers to publish and lay before the Scottish Parliament, within 5 years of this section coming into force, a report setting out an assessment of the steps that have been taken to ensure information sharing in relation to certain persons, and the steps the Scottish Ministers are taking to further progress such information sharing.

112. The persons that are to be the subject of the report are specified in section 17(3) as being persons issued with a fixed penalty notice in respect of an offence listed in section 17(4), or persons who have been convicted of an offence listed in section 17(4) and whose sentence includes a fine, a period of imprisonment, a disqualification order, or a community payback order.

113. Section 17(2) allows the Scottish Ministers to include such other information in the report as they consider appropriate.

114. Section 17(5) allows for the Scottish Ministers to consult such persons as they consider appropriate when preparing the report.

*Section 18 Protection of certain wild animals*

115. This section amends the protections for mountain hares under the Wildlife and Countryside Act 1981 (“the Wildlife Act”).

116. Section 10A of the Wildlife Act makes it an offence to intentionally or recklessly kill, injure or take animals specified under schedule 5A of the Wildlife Act at certain times of the year (close season). Mountain hares were previously listed in schedule 5A.

117. It was therefore an offence to intentionally or recklessly kill, injure or take a mountain hare between 1st March and 31st July, subject to the exceptions listed in section 10B of the Wildlife Act.

118. Section 18 of the Act removes reference to the close season for mountain hares in section 10A(2)(a) of the Wildlife Act and moves mountain hares from schedule 5A to schedule 5 (animals which are protected). Under section 9 of the Wildlife Act, it is an offence to intentionally or recklessly kill, injure or take any wild animal included in schedule 5.

119. The effect of this is to remove the open season, making it an offence to intentionally or recklessly kill, injure or take mountain hares throughout the year, subject to the exceptions listed in section 10 and the licensing provisions in section 16 of the Wildlife Act.

**Chapter 2 – Animal welfare: powers in relation to animals taken into possession**

*Section 19 – Taking possession of animals: additional powers*

120. This section inserts new sections 32A to 32M into the 2006 Act.

121. New section 32A (powers of authorised person where animal taken into possession) gives certain powers to “authorised persons” in relation to animals that have been taken into possession for welfare reasons under section 32 (taking possession of animals) of the 2006 Act. The new powers enable authorised persons to take “relevant steps” in relation to such an

animal, namely the giving of treatment, transferring ownership and, in limited circumstances, destruction of the animal. In this and the other new sections, an “authorised person” refers to certain inspectors and constables, and also certain other persons who are separately authorised by the Scottish Ministers to exercise the new powers (see definition of “authorised person” in new section 32A(10)). Such other persons could include bodies involved with enforcement of animal welfare matters, because the meaning of “person” includes a body of persons (see schedule 2 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379), which governs the interpretation of the 2006 Act).

122. The new powers under section 32A are subject to procedural requirements including the requirement that the authorised person must serve a notice (a “decision notice”) before taking any of the relevant steps (subsection (5)). Whether the authorised person may proceed with a relevant step depends on whether an appeal is made within a specified period and, if so, the outcome of that appeal.

123. New section 32B (decision notice for exercise of powers under section 32A: content) makes provision in relation to the content of decision notices, setting out the information which may and must be included in them.

124. New section 32C (decision notice: service) makes provision regarding the requirements for service of a decision notice. In particular, subsection (1) requires that the authorised person must either make reasonable enquiries to establish the identity of the owner or be satisfied that such enquiries have been made before serving a decision notice. Subsection (2) specifies the means by which a decision notice must be served on the owner of the animal. Subsection (3) provides that a single decision notice may be served in respect of multiple animals if certain conditions are met.

125. New section 32D (appeal to the court in respect of decision notice) provides for the availability of an appeal to the court in respect of a decision notice, by the owner of the animal to which the decision notice relates and any other person appearing to the court to have a sufficient concern for the animal. Subsection (3) provides that the appeal may only be made before the expiry of 3 weeks after service of the decision notice. Subsection (5) lists the available grounds of appeal. Subsections (6) and (7) make provision for the orders that the court may make in an appeal. Subsection (8) has the effect that there is no possibility of a further appeal against the decision of the court (although there may still be recourse to the court under section 33 or 34, in the circumstances set out in sections 32E and 32F respectively). Subsection (9) has the effect that, if the court makes an order that a relevant step specified in the decision notice must not be taken, an authorised person may nonetheless resort to the powers under section 32A with a view to taking a different step in relation to the animal.

126. New section 32E (effect of decision notice on application under section 33) provides for the effects of the service of a decision notice on the ability of persons to apply for a release order under section 33 (release orders where animals taken) of the 2006 Act. An application under section 33 is a request to the court seeking release of an animal that has been taken into possession under section 32 (taking possession of animals) of the 2006 Act. The owner of the animal and certain other persons are ordinarily able to make such an application at any time after the animal has been taken into possession. Subsections (1) and

(2) of section 32E provide that service of a decision notice in relation to an animal which specifies a relevant step or steps (other than treatment of the animal unless the treatment is accompanied with any other type of relevant step) will restrict the period for making an application to the court under section 33 in respect of the animal to the 3 weeks beginning with the date of service of the decision notice. Subsection (2)(b) provides that the ability to seek a section 33 order is restored upon the occurrence of one of the circumstances listed in subsection (3). Where the decision notice specifies only treatment of the animal as a relevant step, the ability of the owner of the animal and others to apply under section 33 is unaffected.

127. New section 32F (effect of decision notice on applications under section 34) provides for the effects of the service of a decision notice on the availability of applications under section 34 (disposal orders where animals taken) of the 2006 Act. An application under section 34 of the 2006 Act is a request to the court for a disposal order in relation to an animal that has been taken into possession under section 32 (taking possession of animals) of the 2006 Act. Such orders can authorise the treatment of the animal, its disposal (including by sale) or its destruction. Subsections (1) and (2) of section 32F provide that an application under section 34 cannot be made in relation to an animal after service of a decision notice which specifies a relevant step or steps (other than treatment of the animal when not combined with any other type of relevant step) in relation to that same animal until the occurrence of one of the circumstances listed in subsection (3). Where the decision notice specifies only treatment of the animal as a relevant step, the ability of the owner of the animal and others to apply under section 34 is unaffected (see related changes made by section 21 of the Act).

128. New section 32G (compensation notice for exercise of powers under section 32A) makes provision in relation to service of a “compensation notice”. Subsection (1) requires that the authorised person must serve a compensation notice following the taking of a relevant step under section 32A and specifies the information which it must include. Subsection (2) specifies steps that must be taken in relation to establishing the whereabouts of the owner before service of a compensation notice. Subsection (3) provides that the compensation notice must be served on the relevant owner of the animal and specifies the permitted means of service. Subsection (4) provides that a compensation notice must be served within 3 months of the taking of the step specified in the decision notice, subject to special provision in subsections (5) and (6) regarding circumstances in which the decision notice includes more than one step in relation to an animal. The “relevant owner” is the person who was the owner of the animal at the time it was taken into possession under section 32 (taking possession of animals) of the 2006 Act. Subsection (7) specifies when a single compensation notice may be served in relation to two or more animals.

129. New section 32H (compensation amount) makes provision regarding calculation of the compensation amount to be specified in the compensation notice. Where the only relevant step specified in a decision notice (for the exercise of powers under section 32A) is to give the animal treatment, the compensation amount is an amount equivalent to any decrease in the market value of the animal caused by the giving of the treatment, less any relevant expenses. The relevant expenses are the expenses of caring for the animal since it was taken into possession, and the expenses of taking any relevant step in relation to the animal (for example, the cost of the treatment administered to the animal). Where the relevant step or steps involve transfer of ownership or destruction, the compensation amount specified in the compensation notice is calculated by deducting the sums mentioned in subsection (4) from an amount equivalent to the greater of the following: the market value of the animal at the time

it was taken into possession under section 32; the market value of the animal at the time immediately before the last relevant step; and any proceeds of sale of the animal. The sums that may be deducted are any compensation specified in an earlier compensation notice and any relevant expenses to the extent that they are not excluded under section 32H(4)(b).

130. New section 32I (application of proceeds of sale) makes provision in relation to the proceeds of sale that may arise from taking the relevant step of transferring ownership of an animal. Subsection (2) specifies the way in which any proceeds of sale are to be applied to meet the relevant owner's liability to reimburse any relevant expenses and to meet any liability of the authorised person to pay any compensation amount to the relevant owner.

131. Subsection (3) clarifies that the owner's entitlement to the compensation amount is instead of any entitlement any owner has to any proceeds of sale of the animal. This clarification rules out the possibility that the owner would be entitled to the proceeds of sale in addition to the compensation amount.

132. New section 32J (appeal to court in respect of compensation amount) provides for appeals by the relevant owner of an animal in relation to the compensation amount specified in the compensation notice. Subsection (2) provides that such an appeal may normally only be made before the expiry of 3 months beginning with the date of service of the compensation notice, or the last compensation notice if more than one has been served by virtue of section 32G(5) or (6). Subsection (3) provides for an exception to the rule in subsection (2), where payment of compensation has been deferred under new section 32K(3). Subsection (4) provides that certain persons, in addition to the relevant owner, are entitled to be heard in relation to an appeal under subsection (1). Subsection (5) provides for the orders that the court may make in such an appeal in respect of the compensation amount. Subsection (6) has the effect that there is no possibility of appeal against the decision made by the court under new section 32J.

133. New section 32K (payment of compensation amount) determines when the compensation amount becomes payable, subject to any order of forfeiture under new section 32L. Subsection (2) provides for when the compensation amount normally becomes payable. If there is no appeal under section 32J, the compensation amount becomes payable when the period for making such an appeal has expired. If there is an appeal under section 32J, the compensation amount will become payable when the court decides the appeal and orders payment of compensation. Subsection (3) gives the authorised person the ability to defer payment of the compensation amount in either of two scenarios. The first scenario is where criminal proceedings for certain offences which arise from the circumstances which led to the protected animal being taken into possession under section 32 (taking possession of animals) of the 2006 Act have been commenced against the relevant owner and have yet to conclude. The second scenario is where the authorised person is of the opinion that the relevant owner is at risk of prosecution for such offences. Subsection (4) provides for the circumstances in which the compensation amount becomes payable after deferral of the compensation amount. Subsection (5) has the effect that, if it has become payable, the compensation amount must be paid within 3 weeks of the provision of bank account details by the relevant owner of the animal. Subsection (6) provides for the means by which the identity of the relevant owner of the animal is determined for the purposes of this section. Subsection (7) gives the authorised person the ability to apply to the court for an order as to the disposal of the compensation amount when the authorised person is unable to pay the compensation amount to the relevant owner of the animal.

134. New section 32L (forfeiture of compensation) makes provision for forfeiture, in whole or in part, of the relevant owner's right to payment of the compensation amount in certain circumstances. Subsection (1) provides that such forfeiture may be ordered by a criminal court upon conviction for certain offences provided that such conviction arises from the circumstances which led to the animal being taken into possession under section 32 (taking possession of animals) of the 2006 Act. Subsection (3) provides that an order of forfeiture under subsection (1) may include such other provision the court considers appropriate, including for the disposal of any proceeds of sale which would otherwise be disposed of in the manner required by section 32I(2)(b). Subsection (4) gives the Scottish Ministers the power to make provision by way of regulations for, or in connection with, the disposal of any proceeds of sale under subsection (3). Such regulations could, for example, provide that such proceeds of sale are to be paid to the authorised person or to an animal welfare charity. The power to make regulations is a permissive one and if no regulations are made, the court will retain the discretion to decide how the proceeds of sale are to be disposed of.

135. New section 32M gives the Scottish Ministers the power to, by regulations, make further or alternative provision about the content and service of decision notices and compensation notices, the calculation and payment of the compensation amount, and appeals in relation to such notices. By virtue of section 51(3) (regulations) of the 2006 Act, regulations under this new section 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.

*Section 20 - Taking possession of animals: amendment of existing powers*

136. This section amends section 32 (taking possession of animals) of the 2006 Act.

137. Paragraph (a) amends section 32(2) to make clear that the power to alleviate suffering of a protected animal conferred on inspectors and constables by section 32(1) of the 2006 Act does not extend to destruction of the animal, for which new section 32A and existing section 35 (resort to destruction of animals) make provision.

138. Paragraph (b) amends section 32(6) to give inspectors and constables the power to, in limited circumstances (and without service of any notice or obtaining any court order), administer or arrange treatment (as defined in new section 32A(9)) to animals taken into possession under that section.

*Section 21 - Disposal orders where animals taken: restriction of application*

139. This section amends section 34 (disposal orders where animal taken) of the 2006 Act.

140. Paragraph (a) amends section 34(4) so as to ensure that every authorised person (defined by new section 32A) is able to make a summary application to the court for a disposal order under section 34(1) (in relation to animals that have been taken into possession under section 32 of the 2006 Act).

141. Paragraph (b) inserts new subsection (4A) into section 34, the effect of which is to prevent any person mentioned in section 34(4) (apart from the owner of the animal, and any other person appearing to the court of have sufficient concern for the animal in question)



from seeking a disposal order under section 34 in relation to that animal unless a decision notice cannot be served under section 32C(2). Accordingly, an authorised person must pursue, where possible, the decision notice route under section 32A. But if this is not possible, the authorised person may apply for a disposal order under section 34.

142. Paragraph (c) amends section 34(5) to ensure that every authorised person (defined by new section 32A) is entitled to be heard in relation to an application for a disposal order under section 34.

### **Chapter 3 - General**

#### *Section 22 – Commencement*

143. This section brings sections 17 (information sharing report), 22 (commencement) and 23 (short title) of the Act into force on the day after Royal Assent. It also confers a power on the Scottish Ministers to bring the other provisions of the Act into force on such days as they may by regulations appoint. Any such regulations may include transitional, transitory or saving provision, and make different provision for different purposes.

144. By virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, any instrument containing such regulations would have to be laid before the Scottish Parliament as soon as possible after the legislation is made (and in any event before the legislation is due to come into force).

#### *Section 23 – Short title*

145. This section provides that the short title of the Act is the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.

### **PARLIAMENTARY HISTORY**

146. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill’s parliamentary passage.

<b><i>Proceedings and reports</i></b>	<b><i>Reference</i></b>
Bill As Introduced	<a href="#">Bill as Introduced - 30 September 2019</a>
Policy Memorandum	<a href="#">Policy Memorandum</a>
<b>Stage 1</b>	
Environment, Climate Change and Land Reform Committee (ECCLR)	<a href="#">ECCLR Meeting - 29 October 2019</a>
	<a href="#">ECCLR Meeting - 03 December 2019</a>
	<a href="#">ECCLR Meeting - 10 December 2019</a>
	<a href="#">ECCLR Meeting - 17 December 2019</a>

*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*

<b><i>Proceedings and reports</i></b>	<b><i>Reference</i></b>
	<a href="#">Stage 1 Report – 10 February 2020</a>
Consideration by the Parliament – stage 1	<a href="#">Stage 1 Debate – 12 March 2020</a>
<b>Stage 2</b>	
Amendments for Stage 2	<a href="#">Amendments for Stage 2 - 26 May 2020</a>
Environment, Climate Change and Land Reform Committee (ECCLR)	<a href="#">ECCLR Meeting on Tuesday - 26 May 2020</a>
Bill As Amended at Stage 2	<a href="#">Bill as Amended at Stage 2 - 26 May 2020</a>
Delegated Powers and Law Reform Committee's Stage 2 report	<a href="#">DPLRC Report at Stage 2</a>
Revised Explanatory notes	<a href="#">Revised Explanatory notes at Stage 2</a>
<b>Stage 3</b>	
Environment, Climate Change and Land Reform Committee (ECCLR)	<a href="#">ECCLR Meeting - 3 June 2020</a>
Consideration by the Parliament – stage 3	<a href="#">First Marshalled List of Amendments</a>
	<a href="#">Supplement to the First Marshalled List of Amendments</a>
	<a href="#">Second Supplement to the First Marshalled List of Amendments</a>
	<a href="#">Amendments for Stage 3</a>
Stage 3 Debate	<a href="#">Stage 3 Debate</a>
Bill As Passed	<a href="#">Bill as Passed - 17 June 2020</a>
Royal Assent - 21 July 2020	<a href="https://www.legislation.gov.uk/asp/2020/14/contents/enacted">https://www.legislation.gov.uk/asp/2020/14/contents/enacted</a>

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