

[ANIMAL WELFARE (SENTENCING) BILL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the *Animal Welfare (Sentencing) Bill* as introduced in the House of Commons on 15 October 2019 (Bill 1).

- These Explanatory Notes have been prepared by the Department of Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill increases the maximum penalty for specific offences related to animal welfare in England and Wales. It does so by extending the current maximum penalty, specified under the Animal Welfare Act 2006, of six months and/or an unlimited fine to a penalty of five years and/or an unlimited fine. These offences therefore become triable either way, and may be heard in the Magistrates Court or the Crown Court.

Policy background

- 2 This Bill amends the Animal Welfare Act 2006 ("the Act"). The Act sets out a maximum penalty of six months imprisonment and/or an unlimited fine for the more serious 'prevention of harm' offences. There are five such offences under section 32(1) of the Animal Welfare Act 2006:
 - a. causing unnecessary suffering (section 4, Animal Welfare Act 2006);
 - b. carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
 - c. docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);
 - d. administering a poison to an animal (section 7, Animal Welfare Act 2006); and
 - e. involvement in an animal fight (section 8, Animal Welfare Act 2006).
- 3 There have been a number of recent cases related to these offences in which judges have expressed a desire to impose a higher penalty than that currently provided for under the Animal Welfare Act 2006. There is a particular desire to increase the penalties available in the case of crimes that relate to deliberate, calculating and sadistic behaviour.
- 4 Members of Parliament, wider stakeholders and the public have also sought to increase maximum penalties for animal welfare offences so that they exceed the current European average of 2.04 years. The Bill meets both of these needs by increasing the maximum penalties for the most serious offences under the Animal Welfare Act 2006 to five years and/or an unlimited fine.
- 5 The increase in maximum penalties will not apply to those offences listed in section 32(2) of the Animal Welfare Act 2006: not taking reasonable steps to ensure welfare (section 9); breach of a licence condition (section 13(6)); and breach of a disqualification order (section 34(9)). These offences are generally considered less serious, and rarely receive the existing maximum penalty. Moreover, the level of fine applied to these offences has recently been increased since the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which converted existing level 5 fines into unlimited fines.
- 6 The draft sentencing clauses were published for public consultation and pre-legislative scrutiny on 12 December 2017 as part of the Animal Welfare (Sentencing and Recognition of Sentience) Bill. The consultation closed on 31 January 2018 and the summary of responses document published on 7 August 2018. Defra received 9,084 direct responses to the consultation. 70% of respondents agreed with the new maximum penalties. In the summary of responses document, Government committed to bring forward the sentencing clauses in a separate Bill as recommended by the EFRA Committee's scrutiny report on the Bill.

Legal background

- 7 The majority of the relevant legal background is explained in the policy background section of these Notes. Two additional legal issues are raised below, one in relation to the current drafting of section 32(1) of the Animal Welfare Act 2006, and the second in relation to the requirement to change the mode of trial.
- 8 The current drafting of section 32(1) of the Animal Welfare Act 2006 lists the maximum penalty as imprisonment for a term not exceeding 51 weeks or a fine, as opposed to the maximum imprisonment for a term not exceeding six months as discussed above. This discrepancy is explained by section 32(5) of the Animal Welfare Act 2006. Section 32(5) provides that in relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in section 32(1)(a) to 51 weeks is to be read as a reference to six months. As at the date of the publication of the Bill, section 281(5) of the Criminal Justice Act 2003 has not been commenced. The maximum imprisonment term for offences under section 32(1) of the Animal Welfare Act 2006 therefore remains six months.
- 9 Under section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 magistrates' courts do not have the power to impose penalties greater than six months. As a result of increasing the maximum penalty available for the offences under section 32(1) of the Animal Welfare Act 2006 to a period of five years it is necessary for the Bill to make these offences triable either way.

Territorial extent and application

- 10 Clause 2 sets out the territorial extent of the Bill that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. This Bill both extends and applies to England and Wales. The commentary on individual provisions (or groups of provisions) of the Bill includes a paragraph explaining their extent and application.
- 11 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. Issues concerning animal welfare in Wales are considered to be within the legislative competence of the National Assembly for Wales. The Bill requires a Legislative Consent Motion from the National Assembly for Wales. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Mode of trial and maximum penalty for certain animal welfare offences

- 12 Section 32(1) of the Animal Welfare Act 2006 provides that particular offences should carry a maximum penalty of 51 weeks imprisonment and/or a level 5 fine.
- 13 In practice, this is as a maximum penalty of 6 months and an unlimited fine. This is because section 32(5) specifies a maximum penalty of 6 months for offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003. To date, this section has not been commenced.
- 14 This clause changes the maximum penalty available for the following offences only:
 - a. Causing unnecessary suffering (section 4, Animal Welfare Act 2006);
 - b. Carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
 - c. Docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);
 - d. Administering a poison to an animal (section 7, Animal Welfare Act 2006); and
 - e. Involvement in an animal fight (section 8, Animal Welfare Act 2006).
- 15 The existing maximum penalty, outlined above, is retained if the offender is summarily convicted. However offenders may now receive a higher penalty of up to 5 years imprisonment and/or an unlimited fine if they are convicted on trial by indictment.
- 16 Under section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 magistrates' courts do not have the power to impose penalties greater than six months. Section 154(1) of the Criminal Justice Act 2003 increased the maximum custodial sentence imposable by a magistrate's court to 12 months. However, to date this section has not been commenced and the new section 32(4A) of the Animal Welfare Act 2006 inserted by this clause reflects this position.

Clause 2: Extent, Commencement and Short Title

- 17 This clause provides for the Bill to extend to England and Wales; that the Bill will come into force two months after Royal Assent; and that the application of revised maximum penalties is not retrospective and does not apply to offences committed before the Bill comes into force. The clause also specifies the short title of the Bill.

Commencement

- 18 The Bill is due to commence two months after Royal Assent.

Financial implications of the Bill

- 19 The Bill has a limited impact on costs to the criminal justice system. The increase in maximum penalties will not result in an increase in the number of offenders being sent to prison, but only in the potential length of time that might be served by the most serious offenders. The Government considers that this may lead to some marginal extra costs to the criminal justice system, but this is unlikely to be more than £500,000.

Parliamentary approval for financial costs or for charges imposed

- 20 This Bill does not require a Money resolution.

Compatibility with the European Convention on Human Rights

- 21 A statement has been made pursuant to section 19 of the Human Rights Act 1998. Defra does not consider that the provisions of the Bill interfere with convention rights. The underlying offences and provisions in the Animal Welfare Act 2006 were assessed by Defra in 2006 and found to be compatible with the provisions of the European Convention on Human Rights.
- 22 Defra considered that Articles 5 and 7(1) of the European Convention on Human Rights could potentially be engaged by the amendments made by the Bill, however Defra has assessed the amendments to be compatible with these rights.
- 23 Article 5 of the European Convention on Human Rights provides that no one shall be deprived of their liberty save in accordance with a procedure prescribed by law. Defra considers that, because the amendments made by the Bill are clear and are made to primary legislation, that these requirements are met.
- 24 Article 7(1) of the European Convention on Human Rights provides that "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed". The Bill does not have retrospective effect and the increased penalties will apply only to offences committed after the commencement of the Bill. Defra therefore considers that these requirements are met.

Annex A - Territorial extent and application in the United Kingdom

The Bill extends and applies to England and Wales only. It is the view of the UK government that the subject matter of the Bill is within the legislative competence of the Welsh Assembly. A Legislative Consent Motion is therefore required in order that it can extend and apply to Wales. It is also the UK government's view that subject matter of the Bill is also considered to be within the legislative competence of the Scottish Parliament and Northern Ireland Assembly.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Clause 2	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)

Minor or consequential effects²

It is considered that increasing the maximum available penalty for certain animal welfare offences will reduce the number of people committing such crimes. Judges are likely to use the new maximum penalty to penalise the most serious offences, and these high profile cases will deter other potential offenders. In particular, those who might consider committing the most heinous crimes will risk a longer prison sentence.

Subject matter and legislative competence of devolved legislatures

Clause 1: Mode of trial and maximum penalty for certain animal welfare offences

The Bill extends to both England and Wales. We consider this Bill to be within the legislative

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

² References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

competence of Wales because it is not a reserved matter listed under Schedule 7 of the Government of Wales Act 2006. This is consistent with previous legislation relating to animal welfare, for example the Welfare of Farmed Animals (England) Regulations 2007 and the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2015. Whilst criminal and civil proceedings are considered reserved under the Government of Wales Act 2006, we consider that this Bill does not constitute a fundamental change to these areas. The Bill only changes the maximum penalties that can be imposed for the specified offences, rather than amending the processes by which criminal justice is applied.

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