

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 5 February 2020 (Bill 14).

- These Explanatory Notes have been provided by the Department of Environment, Food and Rural Affairs, with the consent of Chris Loder MP, the member in charge of the Bill, 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.
- As the Bill is a Private Member's Bill, the

English votes provisions in the Standing Orders of the House of Commons relating to Public Business do not apply to 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 a 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 Government's 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.
- 7 On 26 June 2019, the Animal Welfare (Sentencing) Bill was introduced to Parliament in the House of Commons. Passage of the Bill beyond Committee Stage was disrupted due to Parliamentary

activity at this time where it fell following prorogation and then later dissolution of Parliament.

8 Chris Loder MP introduced the Animal Welfare (Sentencing) Bill as a Private Member's Bill on 5th February 2020.

Legal background

9 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.

10 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 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.

11 Magistrates' courts do not have the power to impose penalties greater than six months.¹ 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

12 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

¹ See section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 which is soon to be replaced by section 224 of the Sentencing Act 2020.

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.

13 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.

Commentary on provisions of Bill

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

14 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.

15 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.

- 16 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).
- 17 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.

18 Magistrates' courts do not have the power to impose penalties greater than six months.² Section 154(1) of the Criminal Justice Act 2003 was to increase the maximum custodial sentence imposable by a magistrate's court to 12 months. Section 154(1) will be repealed by the Sentencing Act 2020 but an equivalent provision is contained in paragraph 24(2) of Schedule 22 to the 2020 Act.³ Section 32(4A) of the Animal Welfare Act 2006 inserted by this clause ensures that the appropriate penalties are available to magistrate's courts until the relevant provisions are commenced.

Clause 2: Extent, Commencement and Short Title

19 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

² See section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 which is soon to be replaced by section 224 of the Sentencing Act 2020.

³ The Sentencing Bill has passed all its parliamentary stages and is waiting for Royal Assent at which point it will become the Sentencing Act 2020.

specifies the short title of the Bill.

Commencement

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

Financial implications of the Bill

21 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 per annum.

Parliamentary approval for financial costs or for charges imposed

22 This Bill does not require a Money resolution.

Annex A - Territorial extent and application in the United Kingdom

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?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	Yes (W)
Clause 2	Yes	Yes	No	No	Yes (W)

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