

# Animals and Wildlife (Penalties, Protection and Powers) (Scotland) Bill

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## Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 15

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 1

#### Colin Smyth

32 In section 1, page 1, line 20, at end insert—

<( ) in subsection (3)—

(i) after “Part” insert “(other than under regulations made under section 46A)”,

(ii) for “referred to in subsection (2)” substitute “mentioned in subsection (4)”,

( ) after subsection (3) insert—

“(4) The penalties referred to in subsection (4) are imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).”.>

### After section 3

#### Mark Ruskell

33 After section 3, insert—

*<Protecting dogs from unnecessary suffering: docking*

#### **Protecting dogs from unnecessary suffering: docking**

In schedule 9 of the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 (SSI 2010/387), in the first column of the table, the whole of the entry relating to docking of any dog aged 5 days or less is revoked.>

**Maurice Golden**  
**Supported by: Colin Smyth**

**34** After section 3, insert—

*<Animal welfare offences: disqualification orders*

**Disqualification orders**

- (1) The 2006 Act is amended as follows.
- (2) In section 40 (disqualification orders)—
  - (a) in subsection (1), for “may” substitute “must consider whether it is necessary, to protect animal welfare, to”,
  - (b) for subsection (5) substitute—
    - “(5) The court must state its reasons—
      - (a) for deciding to make or, as the case may be, not make a disqualification order,
      - (b) where it decides to make such an order—
        - (i) for including in the order the particular disqualifications imposed by it,
        - (ii) for specifying, under subsection (9)(a), the period for which the order is to have effect, and
        - (iii) for specifying, under subsection (9)(b), a period within which no application under section 42(1) may be made.”.
- (3) In section 42 (termination or variation of disqualification orders), after subsection (5) insert—
  - “(6) The court must state its reasons—
    - (a) for granting or, as the case may be, refusing the application under subsection (1),
    - (b) where it grants the application in whole or in part, for varying or, as the case may be, terminating the disqualification order.”.
- (4) After that section insert—

**“42A Disqualification orders: record of reasons**

The Scottish Courts and Tribunals Service must establish and maintain a record of reasons relating to disqualification orders stated by the court under sections 40(5) and 42(6).”.>

**Colin Smyth**

**35** After section 3, insert—

*<Animal welfare offences: disqualification orders*

**Disqualification orders**

- (1) The 2006 Act is amended as follows.
- (2) In section 40 (disqualification orders) —
  - (a) after subsection (1), insert—

- “(1A) The purpose of a disqualification order is for the future protection of animals and not in substitution for a penalty for a relevant offence.”,  
(b) in subsection (6), the words “, or instead of” are repealed.>

## Section 5

### **Claudia Beamish**

- 36 In section 5, page 7, line 30, at end insert—  
<( ) In section 18A (vicarious liability for certain offences by employee or agent), in subsection (6)(a)—  
(a) the “or” immediately after sub-paragraph (ii) is repealed,  
(b) after that sub-paragraph, insert—  
“(iia) section 6(1), (2) and (3);”.>

### **Claudia Beamish**

- 37 In section 5, page 7, line 30, at end insert—  
<( ) In section 18A (vicarious liability for certain offences by employee or agent), in subsection (6)(a)—  
(a) the “or” immediately after sub-paragraph (ii) is repealed,  
(b) after that sub-paragraph, insert—  
“(iia) section 7(1) or (3);”.>

### **Claudia Beamish**

- 38 In section 5, page 7, line 30, at end insert—  
<( ) In section 18A (vicarious liability for certain offences by employee or agent), in subsection (6)(a)—  
(a) the “or” immediately after sub-paragraph (ii) is repealed,  
(b) after that sub-paragraph, insert—  
“(iia) section 8(1) or (3);”.>

### **Claudia Beamish**

- 39 In section 5, page 7, line 30, at end insert—  
<( ) In section 18A (vicarious liability for certain offences by employee or agent), in subsection (6)(a)—  
(a) the “or” immediately after sub-paragraph (ii) is repealed,  
(b) after that sub-paragraph, insert—  
“(iia) section 11(1)(a) or (aa), (2)(a) or (b)(ii); or”.>

**Claudia Beamish**

40 In section 5, page 7, line 30, at end insert—

<( ) After section 18B (liability where securing services through another), insert—

**“18BA Vicarious liability by employee or agent: other offences**

- (1) Subsection (2) applies to an offence under—
  - (a) section 10A,
  - (b) section 13,
  - (c) section 14ZC,
  - (d) section 14A.
- (2) Where a person (A) commits an offence to which this subsection applies on any land to which subsection (3) applies while acting as the employee or agent of the owner or manager (B) of that land, then B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) This subsection applies to land on which any of the following is found—
  - (a) any wild animal included in schedule 5A,
  - (b) any wild plant included in schedule 8,
  - (c) any seed or spore attached to any such wild plant included in schedule 8,
  - (d) any invasive animal of a type specified by the Scottish Ministers under section 14ZC or 14A.”.>

**Angus MacDonald**

41 In section 5, page 8, line 4, leave out <6(1)(b), (2)> and insert <6(2)>

**Claudia Beamish**

42 In section 5, page 8, leave out lines 23 and 24

**Angus MacDonald**

43 In section 5, page 8, leave out lines 25 and 26 and insert—

<(b) section 6(3),>

**Claudia Beamish**

44 In section 5, page 8, leave out lines 30 and 31 and insert—

<(e) section 9(2), (4A), (5)(a) and (5A) (in relation to an act made unlawful by section 9(2), (4A) or (5)(a)),>

**Mairi Gougeon**

14 In section 5, page 8, line 35, after <(4)> insert <, (4ZZA)>

**Claudia Beamish**

- 45 In section 5, page 9, leave out lines 15 and 16 and insert—  
<( ) section 1,>

**Angus MacDonald**

- 46 In section 5, page 9, line 18, at end insert—  
<( ) section 6(1) and (2A) (in relation to an act made unlawful by section 6(1)(a)),>

**Claudia Beamish**

- 47 In section 5, page 9, line 19, after <9(1)> insert <, (4)>

**Claudia Beamish**

- 48 In section 5, page 9, line 20, after <9(1)> insert <or (4)>

**Mairi Gougeon**

- 27 In section 5, page 9, leave out line 25

**After section 5**

**Claudia Beamish**

- 28 After section 5, insert—  
*<Food and Environment Protection Act 1985: penalties for offences*

**Food and Environment Protection Act 1985: penalties for offences**

- (1) The Food and Environment Protection Act 1985 is amended as follows.
- (2) In section 21 (offences-penalties etc.)—
  - (a) in subsection (4), after “and” insert “, subject to subsection (4A),”;
  - (b) after subsection (4), insert—

“(4A) A person guilty of an offence under regulations made in relation to any of paragraphs (a), (b), or (c) of section 16(3) shall be liable—

    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both);
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”>

**Section 6**

**Mark Ruskell**

- 1 In section 6, page 9, line 30, at end insert—  
<( ) In section 1, after subsection (6) insert—

- “(7) Where a person (A) commits an offence under subsection (1) or (3) above on any land on which badgers are found, while acting as an employee or agent of the owner or manager of that land (B), then B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (8) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.
- (9) In any proceedings under this section, it is a defence for B to show—
  - (a) that B did not know that the offence was being committed by A, and
  - (b) B took all reasonable steps and exercised all due diligence to prevent the offence being committed.”.>

**Colin Smyth**

49 In section 6, page 9, line 35, at end insert—

<( ) in subsection (1ZA), paragraph (b) (together with “and” immediately preceding it) are repealed,>

**Colin Smyth**

50 In section 6, page 10, leave out line 3 and insert—

<( ) paragraphs (b) and (c) are repealed,>

**Colin Smyth**

51 In section 6, page 10, line 14, at end insert—

<(c) section 3.”,>

**Colin Smyth**

52 In section 6, page 10, line 28, at end insert—

<( ) After section 14 (interpretation) insert—

**“14A Review of interpretation**

- (1) The Scottish Ministers must undertake a review of definitions under section 14 of this Act.
- (2) The review must—
  - (a) consider—
    - (i) whether definitions are fit for the purposes of this Act,
    - (ii) whether different definitions are required for different purposes, in particular in relation to—
      - (A) offences and penalties,
      - (B) scientific, research or educational purposes,
  - (b) include any actions the Scottish Ministers plan to take as a result of the review.
- (3) The Scottish Ministers may consult such persons as they consider appropriate before publishing the review.

- (4) The Scottish Ministers must publish the review in such a manner as they consider appropriate.
- (5) The Scottish Ministers must undertake the review no later than one year after section 6 of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 comes into force.”.>

## Section 9

### Claudia Beamish

53 In section 9, page 11, line 33, at end insert—

<( ) The Wild Mammals (Protection) Act 1996 is amended as follows.

( ) After section 4 (powers of constable), insert—

#### “4A Vicarious liability by employee or agent

- (1) This section applies where, on any land where wild mammals are found, a person (A) commits an offence under section 1 while acting as the employee or agent of the owner or manager (B) of that land.
- (2) Where this section applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings in relation to this section, it is a defence for B to show—
  - (a) that B did not know that the offence was being committed by A, and
  - (b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against B in respect of the offence whether or not proceedings are also taken against A.”.>

### Claudia Beamish

54 In section 9, page 11, line 34, leave out <of the Wild Mammals (Protection) Act 1996>

## After section 10A

### Mairi Gougeon

29 After section 10A insert—

#### *<Conservation of seals*

#### **Killing, injuring or taking seals: offences, penalties etc.**

- (1) The Marine (Scotland) Act 2010 is amended as follows.
- 5 (2) In section 110 (seal licences)—
  - (a) in subsection (1), paragraphs (f) and (g) are repealed,
  - (b) subsections (2) and (3) are repealed.
- (3) Section 121 (power to enter land to protect fisheries or fish farms from seals) is repealed.
- (4) In section 122(1) (duty to notify occupier), the words “or 121(2)(a)” are repealed.

- 10 (5) In section 123 (duty to produce authority), the words “or 121” are repealed.
- (6) In section 124 (obstructing an authorised person), the words “or 121” are repealed.
- (7) In section 128 (penalties)—
- (a) before subsection (1) insert—
- “(A1) A person guilty of an offence under section 107 is liable—
- 15 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”,
- (b) in subsection (1), the words “107 or” are repealed.>

### **Mark Ruskell**

- 29A** As an amendment to amendment 29, line 4, at end insert—
- <( ) In section 107 (offence: killing, injuring or taking seals)—
- (a) the existing text becomes subsection (1), and
- (b) after that subsection so formed, insert—
- “(2) In subsection (1), “injuring” includes exposing to an acoustic deterrent device.”>

### **Mark Ruskell**

- 55** After section 10A, insert—

*<Acoustic deterrent devices: requirement to report*

#### **Acoustic deterrent devices: requirement to report**

- (1) The Scottish Ministers must as soon as practicable, and no later than 1 March 2021, lay a report before the Scottish Parliament on whether existing provision in relation to animals and wildlife is sufficient to manage the use of acoustic deterrent devices on land constituting a fish farm.
- (2) A report under subsection (1) must include—
- (a) information on the use made of acoustic deterrent devices on Scottish fish farms,
- (b) any known impacts that the use of acoustic deterrent devices has on marine mammals,
- (c) consideration of whether the use of acoustic deterrent devices on Scottish fish farms is sufficiently monitored,
- (d) consideration of the circumstances in which Scottish fish farm operators using acoustic deterrent devices may commit an offence under regulation 39 of the Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716), and
- (e) any future plans for regulation of the use of acoustic deterrent devices.>



**Claudia Beamish**

61 After section 10A, insert—

*<Marine (Scotland) Act 2010: penalties for offences*

**Marine (Scotland) Act 2010: penalties for offences**

- (1) The Marine (Scotland) Act 2010 is amended as follows.
- (2) In section 94 (offences: contravening a marine conservation order), for subsection (2) substitute—
  - “(2) A person who is guilty of an offence under this section is liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 (or both),
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.
- (3) In section 95 (offences relating to protected features of a Nature Conservation MPA), for subsection (4) substitute—
  - “(4) A person who is guilty of an offence under this section is liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 (or both),
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.>

**Claudia Beamish**

58 After section 10A, insert—

*<Programme requirements*

**Programme requirements**

- (1) Where, in respect of a conviction for an offence to which subsection (2) applies, a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 is imposed on a person, the court may also impose a relevant programme requirement.
- (2) This subsection applies to an offence under—
  - (a) the Animal Health Act 1981,
  - (b) the Wildlife and Countryside Act 1981,
  - (c) the Protection of Badgers Act 1992,
  - (d) the Conservation (Natural Habitats, etc.) Regulations 1994,
  - (e) the Deer (Scotland) Act 1996,
  - (f) the Wild Mammals (Protection) Act 1996,
  - (g) the Protection of Wild Mammals (Scotland) Act 2002,
  - (h) the Animal Health and Welfare (Scotland) Act 2006,
  - (i) the Marine (Scotland) Act 2010.
- (3) In subsection (1)—

- (a) “programme requirement” has the meaning given by section 227P of the Criminal Procedure (Scotland) Act 1995, and
- (b) a programme requirement is a “relevant programme requirement” where it provides a person mentioned in subsection (1) with an opportunity, for the purpose of addressing offending behaviour—
  - (i) to be referred to restorative justice service, or
  - (ii) to attend a rehabilitation programme to develop empathy skills in connection with the care and welfare of animals.>

**Maurice Golden**

**59** After section 10A, insert—

*<Review of requirements for additional animal welfare, animal health and wildlife offences*

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

- (1) The Scottish Ministers must conduct a review of whether the provisions of this Act are sufficient to ensure appropriate standards of animal welfare, animal health and protection of wildlife.
- (2) Without prejudice to the generality of subsection (1), the review must in particular consider whether provision should be made—
  - (a) for a specific offence of theft of a pet,
  - (b) to prohibit attaching, or causing or permitting the attaching, to a dog or other animal of a collar or other wearable device designed to administer an electric shock,
  - (c) the appropriate penalties to be available for any such offences.
- (3) The review must be completed as soon as practicable and no later than 1 April 2025.
- (4) On completing the review, the Scottish Ministers must—
  - (a) lay a report on the review before the Scottish Parliament,
  - (b) publish the report in such manner as they consider appropriate.
- (5) The report under subsection (4) must include a statement of—
  - (a) the action, if any, the Scottish Ministers intend to take as a result of the review,
  - (b) where the Scottish Ministers do not intend to take steps to make provision for the matters in paragraphs (a) and (b) of subsection (2), their reasons for this.>

**Colin Smyth**

**60** After section 10A, insert—

*<Information sharing report*

**Information sharing report**

- (1) Before the end of the period of 5 years beginning with the day after this section comes into force, the Scottish Ministers must publish and lay before the Scottish Parliament a report setting out—

- (a) an assessment of the steps that have been taken to ensure information sharing in relation to persons to whom subsection (3) applies, and
  - (b) the steps the Scottish Ministers are taking to further progress such information sharing.
- (2) A report under subsection (1) may include such other information as the Scottish Ministers consider appropriate.
- (3) This subsection applies to a person who has, in relation to an offence listed in subsection (4), been—
- (a) issued with a fixed penalty notice, or
  - (b) convicted and whose sentence includes—
    - (i) a fine,
    - (ii) a period of imprisonment,
    - (iii) a disqualification order (within the meaning given in section 40 of the Animal Health and Welfare (Scotland) Act 2006), or
    - (iv) a community payback order (within the meaning given in section 227A of the Criminal Justice and Licensing (Scotland) Act 2010).
- (4) The offences and convictions are offences and convictions under—
- (a) the Animal Health Act 1981,
  - (b) the Wildlife and Countryside Act 1981,
  - (c) the Protection of Badgers Act 1992,
  - (d) the Conservation (Natural Habitats, etc.) Regulations 1994,
  - (e) the Deer (Scotland) Act 1996,
  - (f) the Wild Mammals (Protection) Act 1996,
  - (g) the Protection of Wild Mammals (Scotland) Act 2002,
  - (h) the Animal Health and Welfare (Scotland) Act 2006.
- (5) In preparing the report, the Scottish Ministers may consult such persons as they consider appropriate.>

**Alison Johnstone**

**30** After section 10A, insert—

*<Protection of certain wild animals*

**Protection of certain wild animals**

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) In section 10A (protection of wild hares etc.), in subsection (2), paragraph (a) is repealed.
- (3) In schedule 5—
  - (a) after the entry in the first column for “Grasshopper, Wart-biter” insert—
    - “Hare, mountain”,
  - (b) at the corresponding place in the second column insert—
    - “Lepus timidus”.

- (4) In schedule 5A—
- (a) in the first column, the entry for “Hare, mountain” is repealed,
  - (b) in the second column, the entry for “Lepus timidus” is repealed.>

**Mark Ruskell**

- 56 After section 10A, insert—

*<Licensing of control of beavers: restriction*

**Licensing of control of beavers: restriction**

In regulation 44 of the Conservation (Natural Habitats, etc.) Regulations 1994 (SI 1994/2716), after paragraph (2) insert—

“(2ZA)The Scottish Ministers may not grant a licence under paragraph (2) in relation to the beaver (Eurasian or European) unless they are satisfied that, at the time of the licence application, the population of beavers (Eurasian or European) in Scotland is at a favourable conservation status (within the meaning given by paragraph (i) of Article 1 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora).”>

**Section 14**

**Colin Smyth**

- 62 In section 14, page 27, line 20, at end insert—

*<( ) section (Information sharing report),>*

**Long Title**

**Maurice Golden**

- 63 In the long title, page 1, line 3, after <suffering,> insert <to require courts to consider making disqualification orders following convictions for animal welfare offences,>

**Mairi Gougeon**

- 31 In the long title, page 1, line 5, after second <offences> insert <, to increase the protection for seals from being killed, injured or taken>

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