

Question 1:

The Scottish Government proposes that the maximum penalties for the most serious animal welfare offences should be strengthened. Do you agree?

Yes

No

Don't Know

Please explain the reasons for your answer

Longer maximum prison sentences and higher maximum fines need to be available as a benchmark of the seriousness of animal abuse and to reflect public condemnation of cruelty to animals.

OneKind supports an increase in both the maximum prison sentences and fines. At present, the maximum custodial sentences for offences under sections 19 and 23 of the Act are lower than a number of other jurisdictions in Europe. The maximum prison sentence in France is two years, in Germany three years, and in both Ireland and Northern Ireland it is now five years. Fines in other countries vary, but higher maximum levels can be found.

The consultation document cites the case of a Staffordshire terrier found tied to a tree and burnt to death in Fife. In this case, the perpetrator pled guilty at Kirkcaldy Sheriff Court to causing the dog unnecessary suffering and was banned for life from keeping animals but jailed for just nine months. This was effectively the maximum sentence due to the automatic discount for an early guilty plea.

OneKind is not focussed solely on prison as a means of dealing with offences of cruelty, as will be discussed below. We understand that sentences are required to meet a number of different purposes:

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and
- (e) the making of reparation by offenders to persons affected by their offences.

<https://www.scottishsentencingcouncil.org.uk/media/1102/paper-31d-principles-and-purposes-of-sentencing.pdf>

Cases such as the one described above support the widely-held view that the maximum prison sentence available does not in any way meet the first of these purposes, and may well not offer the opportunity to meet the others, either. Providing maximum sentences of up to five years will address some of these difficulties.

Shocking as such cases are, the most common cause of unnecessary suffering to animals is neglect, and the available penalties must also address this. The impact of severe neglect on an animal is not to be underestimated and is compounded by the fact that the suffering lasts for a considerable time. The Scottish SPCA regularly reports on cases involving failure

to provide food and water, or veterinary care, with appalling consequences including prolonged suffering and death, and frequently states: "This did not happen overnight."

It is reasonable to assume that the circumstances and origins of neglect are different from those of outright, sadistic cruelty, and are often associated with a chaotic lifestyle. We think it likely that, even with a five-year maximum sentence and unlimited fines, the courts will continue to take these factors into account and sentence at the lower end.

This is partly due to current sentencing rules. The court is not permitted to imprison a first offender unless it considers that no other method of dealing with him is appropriate; and may not pass a sentence of imprisonment of 3 months or less unless it considers that no other method is appropriate - and if it does so, the reasons must be stated and recorded. (Criminal Procedure (Scotland) Act 1995 s.204)

OneKind therefore believes that more could be done to harness penalties to effect behavioural change and provide long term protection for animals.

We suggest that, both now and in future, there could be more targeted use of Community Payback Orders (CPOs). A CPO is a direct alternative to a custodial sentence and comes with specific requirements attached. Monetary penalties such as fines or compensation orders and deferred sentences remain available to the court as separate disposals. Supervision by a criminal justice social worker (working to change offending behaviour) and unpaid work in the community are the two most common requirements placed on CPOs, but there is also the option of a requirement to attend a special programme, such as those dealing with domestic abuse or sexual offences.

According to the Scottish SPCA, which is responsible for the majority of reports to the Crown for animal offences, 17 out of 90 successful cases in 2018 resulted in a CPO.

What is lacking at present is any type of specialist supervision or diversionary programme that is directly relevant to animal cruelty offences. OneKind believes that criminal justice social workers would be interested in this area of work and urges the Scottish Government to invest in developing this specialism and an appropriate diversionary programme. Scotland has many NGOs and professionals who could assist with this, and there are well-established examples from around the world to draw on, such as the AniCare counselling programme <https://www.animalsandsociety.org/helping-animals-and-people/anicare/> and the Scottish SPCA's Animal Guardians scheme.

We note a case from Jedburgh Sheriff Court in March 2019 where two women convicted of causing and permitting prohibited procedures on dogs (ear-docking) were given a CPO and required to complete an RSPCA education programme. This was possible because they had moved to England, where the programme was available.

Given the relatively low number of animal cruelty cases that reach the Scottish courts, we do not think that Scottish criminal justice social workers would be overloaded by the creating of a requirement for supervision and animal welfare therapy. Indeed, appropriate

supervision is likely to help to address more than one problem of violence at the same time, given the known link between animal abuse and inter-personal violence.

We suggest that the Act should be amended to ensure that the courts consider disqualification (a ban on keeping animals) in all cases, following conviction. At present, section 40 states:

(1) Where a person is convicted of a relevant offence, the convicting court may make an order (in this Part referred to as a “disqualification order”) which imposes on the person one or more of the disqualifications specified in subsection (2).

[...]

(5) Where the court decides not to make a disqualification order in relation to a relevant offence, it must state its reasons.

It would appear from this that courts should consider disqualification in every case that results in conviction, but we do not believe that to be the case. While there do appear to have been more bans in the last six months, their use does not appear consistent. Out of 90 successful prosecutions reported in the Scottish SPCA Annual Review for 2018, 45 bans were issued including three life bans. This was a reduction on previous years and indeed the number of jail sentences had also reduced.

OneKind suggests that the requirement to consider a ban in relevant cases should be more clearly stated in the Act, and the provision could be further strengthened by requiring the statement of reasons to be given in open court.

Finally, OneKind would like to suggest a number of other changes, beyond the area of penalties, that could usefully be included in the review of the Act, and would reflect the importance of good animal welfare to Scottish society.

Protected animals: We recommend extending the scope of the Act to include decapod crustaceans and cephalopods as protected animals.

Scientific evidence strongly suggests that cephalopods (octopus, squid, cuttlefish and nautilus) and decapod crustaceans (lobster, crab, crayfish) have the capacity to experience pain and suffering.

A number of other jurisdictions including New Zealand, Queensland and the Australian Capital Territory have included all or some cephalopods and crustaceans in their basic animal welfare legislation. When the New Zealand Bill was being considered, the (then) Animal Welfare Advisory Committee and National Animal Ethics Advisory Committee considered evidence relating to the behavioural and physiological responses of various invertebrates to painful stimuli and the complexity of their nervous organisation, and concluded these were sufficient to recommend the inclusion of cephalopods and crustaceans in the Act.

Central register of convictions: It would be valuable for authorities and other appropriate relevant bodies to be able to access details of convictions, and even more importantly, to ascertain quickly whether individuals are banned from keeping animals.

We stress that we are not recommending a publicly available register or any mechanism that could risk fuelling vigilantism. Nonetheless the appropriate sharing of information between authorities could expedite enforcement and prevent animals falling into the hands of people with a history of cruelty or negligence.

Support for local authorities: Scottish councils are empowered, but not obliged, to enforce the Act. Their role appears to be more in connection with farm animal cases (where they have other statutory obligations), with less involvement in cases involving domestic pets. In Northern Ireland, local authority enforcement for non-farmed animal cases has increased since amendments to the Welfare of Animals Act (Northern Ireland) 2011 gave councils funding for animal welfare services. OneKind believes that councils need to be resourced if the Act is to function as it was intended.

Secondary legislation: Having previously been critical of the length of time it has taken to work towards bringing in such secondary legislation under the Act, OneKind welcomes recent progress in this area. We look forward to the introduction of measures which have been the subject of consultations in the past two years – the licensing of dog, cat and rabbit breeding, and the licensing or registration of sanctuaries and re-homing centres. In addition, we urge the Scottish Government to address the trade in non-traditional or “exotic” pets and to bring in legislation to regulate the use of animals used for performance or exhibition.

Question 2:

Do you agree that the maximum prison sentence available for offences under section 19 (unnecessary suffering) and section 23 (animal fighting) should be increased from twelve months to five years imprisonment?

Yes

No

Don't Know

Please explain the reasons for your answer

OneKind supports increasing the maximum prison sentence from twelve months to five years. As explained in our answer to Question 1, we also believe that stronger penalties must be accompanied by other mechanisms to improve the enforcement of justice for maltreated animals.

In addition to the constraints on imposing short prison sentences, there are also obstacles to imposing the maximum available period. In summary cases the duration of the sentence is regularly reduced by an automatic discount on short prison sentences, a one-third

discount for an early guilty plea, and the possibility that 50% of the sentence may be spent on home detention with a tag. A theoretical sentence of one year – the current maximum – is soon eroded to just a couple of months in prison – a sentence that neither reflects public abhorrence of cruelty to animals nor is likely to change the offender’s behaviour in any way.

Even allowing for discounting, the currently available maximum sentence might be adequate in a straightforward case involving few victims or with low level consequences. However, the penalty level and the current summary court process quickly fall short when a case involves multiple victims, extreme behaviour or repeat offending. In other areas of the justice system, such as offences against the person or property, all of these factors are held to justify a more severe penalty and there should be similar provisions to punish serious cruelty to animals.

Question 3:

Do you agree that there should be no upper limit on fines for offences under section 19 (unnecessary suffering) and section 23 (animal fighting)?

Yes

No

Don’t Know

Please explain the reasons for your answer

While we agree with the proposal, it is our impression that the fines actually being imposed by the Scottish courts are far less than the current maximum available (up to £20,000 for offences under section 19 (unnecessary suffering) and section 23 (animal fighting)). Actual fines are routinely more like a few hundred pounds. This level of sentencing does not reflect public expectations of justice for animals and the aim of increasing fines would be to encourage the courts to fine offenders more heavily.

The Scottish SPCA Annual Review for 2018 states that, out of 90 successful Scottish SPCA cases, 25 people were fined, making a total of £11,000. Some of these offences will have been charged under the welfare sections of the Act, which attract lower penalties, but even so an average £440 fine comes nowhere near the maximum, for either welfare or cruelty offences.

The question needs to be asked why the Scottish courts impose relatively low fines when these are not subject to the same restrictions as custodial sentences. We suspect this may be due to two factors: one, the financial circumstances of the offender and ability to pay – there is no point in imposing a meaningless fine that will never be paid; and two, a perception of proportionality which reflects the Sheriff’s experience of sentencing for other offences for which the same levels of penalties are provided. Allowing for an unlimited fine will emphasise the gravity of animal cruelty and the public’s expectation that it will be dealt with severely, thus encouraging the courts to sentence more appropriately.

Unlimited fines have been provided for indictable offences in Northern Ireland since 2011. Anecdotally, it appears that suspended sentences and disqualifications are more common in Northern Ireland cases, but we have seen one case from October 2018 where an owner was fined £5,000 for neglect <https://www.belfasttelegraph.co.uk/news/owner-fined-5000-for-neglecting-dog-with-satsumasized-tumour-37438961.html>

It is not always possible to see consistent patterns of sentencing in animal cruelty cases in Scotland, perhaps because these are relatively rare compared with other offences. OneKind suggests that the Judicial Institute for Scotland could offer training for Sheriffs on the nature of animal cruelty and the full range of available disposals under the Act. There are a number of NGOs, including OneKind, that could assist with such training.

Question 4:

Other than increasing the maximum penalties for unnecessary suffering; should we amend legislation in any other ways, in regard to attacks on service animals?

Please explain the reasons for your answer and what you would propose.

Every animal deserves equal access to justice and, in terms of the impact on the individual there is no difference between the suffering of a police dog or other service animal and that of any other dog or animal. Higher penalties are appropriate for harming a service animal, but OneKind does not think it is necessary to create a separate specific offence.

OneKind does believe that society owes an enhanced duty of care to the many animals whose lives revolve around helping humans. Consideration should be given to reviewing the sentencing requirements to ensure that the penalties reflect society's abhorrence of attacks on service animals. Therefore, while the courts should always impose the most meaningful penalty for every offence – regardless of the status of the animal – we suggest that there should be a statutory aggravation for harming a service animal.

Statutory aggravations already exist for offences that involve, for example, prejudice on the grounds of race, religion, disability or sexual orientation. In these cases, it is necessary to prove that the prejudice was part of the motive for the crime. The Domestic Abuse (Scotland) Act 2018 provides for an aggravation in relation to any behaviour directed at, or witnessed by, a child in the course of domestic abuse and makes no reference to motivation. As long as the aggravation is specified in the complaint or libelled in the indictment and then proven, it must be taken into account by the court when sentencing. OneKind believes that such a provision for service animals is both feasible and appropriate. It would require definitions of relevant animals to be placed either on the face of the Act or in guidance, and OneKind would expect these to include "civilian" animals such as guide dogs in addition to police or military dogs and horses.

Question 5:

Do you agree that there should be no statutory time limit for prosecuting offences under section 19 (unnecessary suffering) and section 23 (animal fighting)?

Yes

No

Don't Know

Please explain the reasons for your answer

The six-month time limit for prosecution of summary offences can act against justice for animals. OneKind has experience of advising a complainer in a case that took place in 2017. A man suffering from mental health difficulties killed a neighbour's cat and stuffed the body into a rubbish bin, where it was later found. Due to the perpetrator's mental condition, the police officers who attended decided not to report the offence to the Crown Office and Procurator Fiscal Service (COPFS). This was an error and the Police Investigations and Review Commissioner (PIRC) upheld a complaint regarding this. However, by the time the complaints procedure had been exhausted and a police report was submitted to the COPFS, the six-month time bar had elapsed and there was no further possibility of proceedings. The case was complicated by difficulties communicating with the COPFS, which contributed to the delay. The end result was that a referral to the Crown, which should have been made, was not accepted due to the time bar.

We therefore welcome the proposal to amend the Act to permit prosecution of offences under section 19 and 23 using either summary or solemn procedure, thereby removing the current statutory time limits.

We also welcome the proposal to remove altogether the specific statutory time limits, currently provided at section 44, for bringing prosecutions of the offence of animal fighting under section 23. Animal fighting is a secretive activity, often associated with other forms of organised crime, and it is appropriate to recognise these factors when challenging such harmful and anti-social behaviours.

Question 6:

Do you agree the introduction of proportionate fixed penalty notices would improve the enforcement of animal welfare offences?

Yes

No

Don't Know

Please explain the reasons for your answer

The ability to issue a fixed penalty as an alternative to prosecution is an appropriate means of penalising a limited number of minor offences under both the main Act and secondary legislation. The key word in the question, for us, is "proportionate". The examples given in the consultation are breaches of identification and licensing rules. These are areas where regulations ought to be observed but where non-compliance is not generally the source of a serious animal welfare breach, and on that basis, OneKind supports the proposal.

This does not mean that we think the use of statutory care notices under section 25 should reduce. Statutory care notices are known to achieve a high rate of compliance, which is essential for animal welfare. Fixed penalty notices should be an addition to, and not a substitute for, statutory care notices or other proceedings under the Act, and should be aimed at increasing enforcement levels.

We acknowledge that it is time-consuming and expensive to have to use prosecution as the sanction when animal keepers do not comply with care notices. We note the comment in the consultation document that “Animal welfare offences other than those committed under section 19 (unnecessary suffering) and section 23 (animal fighting) of the Act are not always a priority when scheduling court cases given the pressures on court time.” While this is regrettable it is the reality and it is sensible to provide an additional power that can be exercised in appropriate, less serious cases.

It is not entirely clear to us which inspectors appointed under the Act will be empowered to issue fixed penalty notices. The consultation refers to the advantage of giving “more flexibility to local authorities by providing them with an enforcement option as an alternative to issuing care notices or prosecution in the criminal courts.” OneKind recommends that this power be made available to all authorised inspectors, including Scottish SPCA Inspectors who investigate and report the majority of animal welfare cases.

Question 7:

Do you agree that there is a need to speed up the process of making permanent arrangements for animals taken into possession under section 32 of the Act?

Yes

No

Don't Know

Please explain the reasons for your answer

OneKind regularly collaborates with other animal charities that are service providers and along with these groups, we recently made representations to the Scottish Government on the need for this measure. We continue to support the views expressed in that joint letter:

“As animal welfare charities, we also have experience of the need proactively to protect and provide for victims of cruelty arising from business activities such as dog breeding operations, bogus re-homing organisations and sanctuaries, or badly-run pet-vending activities and businesses. These animals need to be re-homed, and not to spend months in limbo while a court case runs its course. Our members will therefore be supporting the proposal to give relevant authorised persons and bodies the power to make appropriate arrangements for the sale or re-homing of animals, exercisable by serving a notice on the owner. This will provide significant benefits for the welfare of the animals involved, in addition to saving unnecessary costs for rescue centres and freeing up space for other animals in need. As far as we are aware, no other administration in the UK is currently considering this innovative approach.”

Question 8:

Do you agree that the ability to make suitable permanent arrangements for animals taken into possession (using a court disposal order) after service of a notice and after lapse of a specified period will benefit the welfare of animals?

Yes

No

Don't Know

Please explain the reasons for your answer

Animals can spend months or even years in shelters pending the outcome of a court case. If an owner is prepared to sign animals over, this can be avoided, but this is not always the case.

It is difficult for any shelter to provide consistently for all animals' five basic welfare needs over a prolonged period. For welfare to be "good" it requires the provision of positive experiences, such as companionship, play and exercise, but the opportunities for these are limited in a shelter. Animals may also be stressed by unfamiliar surroundings, missing familiar people and the noise and activity of other animals nearby.

The most obvious victims of this problem are dogs and the consultation understandably focuses on the issue of puppies seized from the illegal trade. At their early stage in life, prolonged time in a shelter can deprive them of essential opportunities to develop socially and behaviourally, with long term consequences.

In its guide *The welfare of seized dogs in kennels* the RSPCA states:

"Research using dogs kennelled for a variety of reasons has shown that many find kennel life challenging and experience poor or compromised welfare as a result. Studies have also shown that there are specific aspects within the kennel environment that, if inadequate or inappropriate, make it difficult for dogs to cope. For example, small kennel sizes and restricted exercise may influence dogs' behaviour patterns and can limit their ability to explore and investigate, while limited contact with people and other dogs can impact upon social interactions. Based on these findings, it is likely that dogs seized and kennelled by enforcement bodies, even for short periods of time, may find it difficult to cope with kennel life and, for some, this means that their welfare will be compromised. In addition, research using working dogs has found that for those neither bred nor raised in kennels the transition is especially stressful. It is probable that many of the pet dogs seized by enforcement bodies will have had limited experience of a kennel environment and so may find the transition particularly stressful."

<http://politicalanimal.org.uk/wp-content/uploads/2015/04/RSPCA-Guide-The-welfare-of-seized-dogs-in-kennels.compressed.pdf>

Other animals will experience and manifest stress in different ways, but it would be very

surprising if they were not similarly affected. Animal charity shelters are intended as short-term resources and should not be keeping pets in an “institutional” setting for extended periods, nor would they wish to. Pets are meant to live with people and the proposal to allow charities and other agencies to make permanent arrangements after the lapse of a specified period is welcomed.

Question 9:

Do you agree that the ability to make suitable arrangements for these seized animals after a short period will free up resources of the relevant enforcement authorities and animal welfare charities; allowing them to help a greater number of animals?

Yes

No

Don't Know

Please explain the reasons for your answer

According to the Scottish SPCA (Annual Review 2018) it costs the charity £15 per dog per day to provide care in one of its shelters. Given that a seizure of illegally traded puppies can amount to 100 dogs or more, and even allowing for economies of scale, it is clear that no charity would find it easy to meet these costs on an open-ended basis.

Animal welfare charities are placed under additional strain by the costs of maintaining animals for extended periods, and sometimes in large numbers. In addition, when animals occupy kennels for an extended period, these spaces become unavailable for other needy animals. Reputable shelters cannot overcrowd their kennels or overwork their staff.

Question 10:

Should such a new power to make permanent arrangements for animals that have been taken into possession apply to all animals, or only to commercially kept animals; such as puppies in breeding facilities, puppies for sale and livestock?

Yes (all animals)

No (only commercial animals)

Don't Know

Please explain the reasons for your answer

Purely from the animal welfare perspective, it would make sense to apply this power to all animals taken into possession. However, the power would be exercised in advance of a court case and there is always the possibility that the case will not proceed or the accused

person will be found not guilty. It would be draconian permanently to deprive a private owner of a domestic pet prior to any charge being proven.

In the domestic setting there is a two-way relationship between owner and animal in which both parties have an emotional investment or dependence. Even negligent owners can feel a strong attachment to their pets. The situation is different for animals kept commercially. The primary reason for keeping them is to make money and the owner is expecting to part with them at some point.

In the somewhat grey area of “back room breeding”, OneKind believes that the provision should apply to anyone who offers the offspring of a domestic pet for sale, as this is trade: again, the owner has placed a monetary value on the animal and is prepared to part with it.

Question 11:

Do you agree that the owner or previous keeper should have an opportunity to appeal against permanent arrangements being made within a short time period?

Yes

No

Don't Know

Please provide views and supporting evidence on other considerations that might apply

Even in the case of commercial livestock, it would be unreasonable to make permanent arrangements for owned animals on the basis of a notice, without the opportunity to appeal. That said, welfare would tend to dictate the making of permanent arrangements as soon as possible. As previously noted speed is essential in the re-homing of puppies, who require to be settled and socialised in their new home to minimise the development of behavioural problems and stress-related behaviours. The same would apply to kittens and other young animals. Appeals should be lodged within the anticipated three-week timeframe and should be heard at short notice by the courts.

Question 12:

Do you agree that three weeks is a reasonable period of notice before making suitable permanent arrangements for animals taken into possession?

Yes

No

Don't Know

Please explain the reasons for your answer

Three weeks is sufficient time for a keeper to make arrangements to appeal the notice. We assume that an appeal would trigger extension of the period but this should be kept to a minimum.

Question 13:

Do you agree that the previous keeper should be able to apply for compensation based on the commercial value of these animals, less reasonable costs?

Yes

No

Don't Know

Please explain the reasons for your answer

We agree that the keeper should be able to apply for compensation, and there should be a presumption that this would be reduced or refused if the keeper's conduct had caused the removal of the animals in the first place. There should be no compensation if the keeper is found guilty of an offence under the Act. It would therefore be necessary for monies to be held in a suspense account until court proceedings have completed.

Question 14:

Do you have any practical suggestions about how to value commercially kept animals other than farm livestock?

We appreciate that this will be a complicated process. The approximate monetary value of most types of animal may be estimated by comparison with records or offers similar animals for sale. At the same time, the value of seized animals may be lower because of their condition or behavioural difficulties and compensation will obviously be reduced to cover costs ranging from kennelling and feeding to veterinary care or behavioural therapy, depending on the case. We suggest that a short-life working group could be convened by the Scottish Government to produce guidelines for the courts and other authorities.

Question 15:

Please provide any further comments or suggestions on the proposed new system for making permanent arrangements for animals.

None

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published).

Question 16:

How satisfied were you with this consultation?

Very dissatisfied

Slightly dissatisfied

Neither satisfied nor dissatisfied

Slightly satisfied

Very satisfied

Please enter comments here

Question 17:

How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

Very dissatisfied

Slightly dissatisfied

Neither satisfied nor dissatisfied

Slightly satisfied

Very satisfied

Not applicable

Please enter comments here