

# Animal welfare measures in Scotland: penalties, protections, powers and a Commission

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## I. Introduction

Proposals to increase maximum penalties for cruelty to animals in England were stymied last year by the prorogation and subsequent dissolution of Parliament,<sup>1</sup> although a government-supported Private Member's Bill<sup>3</sup> has now revived these and is scheduled for Second Reading in October. Domestic legislation to recognise the sentience of animals due to the loss of the explicit reference to sentience in article 13 of the Treaty on the Functioning of the European Union<sup>4</sup> has been postponed until after the transition period and 'when Parliamentary time allows'.<sup>5</sup> Meanwhile, the Scottish Government and Scottish Parliament are progressing a swathe of new animal welfare measures. These include new primary and secondary legislation and the creation of a Scottish Animal Welfare Commission.

## II. New Animals and Wildlife Act

The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (the bill) was introduced to the Scottish Parliament on 30 September 2019<sup>6</sup> and completed its progress on 17 June 2020. The original bill amended the Animal Health and Welfare (Scotland) Act 2006 (the 2006 Act) and six wildlife-related acts<sup>8</sup> or regulations by, among other things, increasing penalties for offences involving cruelty to animals and breaches of conservation regulations.<sup>10</sup> It introduced fixed penalty notices (FPN) for certain animal welfare and animal health offences,<sup>11</sup> with provision for FPN for wildlife offences added at Stage 2.<sup>12</sup> Obstacles to

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<sup>1</sup> See 'Animal Welfare (Sentencing) Bill 2019-2020: Progress of the Bill ([www.parliament.uk](http://www.parliament.uk)) < <https://services.parliament.uk/bills/2019-20/animalwelfare-sentencing.html>> accessed 7 July 2020.

<sup>3</sup> See DEFRA press release (5 February 2020) < > accessed 7 July 2020

<sup>4</sup> Wildlife and Countryside Link and the UK Centre for Animal Law (A-Law), 'Brexit: Getting the best deal for animals' (ALAW, January 2018) < <https://www.alaw.org.uk/wp-content/uploads/Brexit-Getting-the-Best-Deal-for-Animals-Full-Report.pdf>> accessed 8 November 2019, 10.

<sup>5</sup> HC Deb, 21 April 2020, cW.

<sup>6</sup> SP Bill 56 Animals and Wildlife (Penalties, Protections and Powers) (Scotland) SP Bill [as introduced] Session 5 (2019).

<sup>8</sup> Animal Health and Welfare (Scotland) Act 2006 (asp 11); Wildlife and Countryside Act 1981; Protection of Badgers Act 1992; Conservation (Natural Habitats, etc.) Regulations 1994; Deer (Scotland) Act 1996; Wild Mammals (Protection) Act 1996; Protection of Wild Mammals (Scotland) Act 2002 (asp 6);

<sup>10</sup> SP Bill (n 2), ss 1-2 and 4-10.

<sup>11</sup> Ibid, ss 2 and 4.

<sup>12</sup> SP Bill 56 Animals and Wildlife (Penalties, Protections and Powers) (Scotland) SP Bill [as amended at Stage 2] Session 5 (2020) s10A.

convictions for harming a service animal were removed<sup>13</sup> and essential measures created for the care and disposal of seized animals without the need for a court order.<sup>14</sup>

Initially, the scope of the bill was limited. As the Minister for Rural Affairs and Environment Mairi Gougeon MSP informed the Environment, Climate Change and Land Reform (ECCLR) Committee in October: '[t]he Bill will not create any new offences or responsibilities, or do things that can be more suitably taken forward by secondary legislation or by other means, such as guidance or industry initiatives.'<sup>15</sup> The primary aims of Scottish Government were to address the most sadistic acts of animal cruelty as well as the ever-growing puppy trade and its connection with organised crime.<sup>16</sup>

However, as will be seen, major and unforeseen amendments were made during the final stages, greatly increasing the protection of wild animals in Scotland. Amendments also introduced greater consistency in the use of disqualification orders and the prospect of improved information-sharing between enforcement agencies. MSPs showed considerable interest in the possibility of alternative disposals, such as an adaptation of restorative justice programmes to help offenders develop greater empathy for animals.<sup>17</sup> As a consequence, the Scottish Government has now committed to carrying out research into such programmes.<sup>18</sup>

#### *A. Amendments to the Animal Health and Welfare (Scotland) Act 2006*

The 2006 Act is the main legislation protecting animals under human control in Scotland. In the 10 years prior to the introduction of the bill, there were 773 convictions under the act for animal cruelty or animal fighting offences.<sup>19</sup> These resulted in 41 custodial and 147 community sentences.<sup>20</sup> The remaining convictions resulted in fines.<sup>21</sup> It has been noted by the Scottish Government that all but the most serious of animal welfare offences are likely to

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<sup>13</sup> Ibid, s 3.

<sup>14</sup> Ibid, ss 11-13.

<sup>15</sup> Letter from Mairi Gougeon MSP to Gillian Martin MSP (2 October 2019) <[https://www.parliament.scot/S5\\_Environment/General%20Documents/ECCLR\\_AWB\\_2019.10.02\\_IN\\_Min\\_M\\_Gougeon\\_Further\\_info\\_on\\_Bill.pdf](https://www.parliament.scot/S5_Environment/General%20Documents/ECCLR_AWB_2019.10.02_IN_Min_M_Gougeon_Further_info_on_Bill.pdf)> accessed 8 November 2019.

<sup>16</sup> See remarks by Andrew Voas in Scottish Parliament, 'Official Report (Draft): Environment, Climate Change and Land Reform Committee 29 October 2019' (Tuesday 29 October 2019, session 5) <<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12328&mode=pdf>> accessed 8 November 2019, 1-2.

<sup>17</sup> For example, Stage 2 amendments 1 and 98 <<https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/animals-and-wildlife-penalties-protections-and-powers-bill/stage-2/marshalled-list-of-amendments-at-stage-2.pdf>>, Stage 3 amendment 58 <<https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/animals-and-wildlife-penalties-protections-and-powers-bill/stage-3/marshalled-list-of-amendments-at-stage-3-animals-and-wildlife-penalties-protections-and-powers.pdf>>.

<sup>18</sup> See, for example, <<https://www.onekind.scot/scottish-government-announces-plans-to-explore-the-value-of-empathy-training-for-offenders-against-animals/>>

<sup>19</sup> SP Bill 56 FM Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill [as introduced] Session 5 (2019), 4. For discussion, see Scottish Parliament, 'Official Report (Draft): Environment, Climate Change and Land Reform Committee 29 October 2019' (Tuesday 29 October 2019, session 5) <<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12328&mode=pdf>> accessed 8 November 2019, 1.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

be a low priority when scheduling court cases.<sup>22</sup> Public and media criticism has also tended to question whether the length of sentence in serious cases matches the severity of the crime.<sup>23</sup> The community payback order often used by the courts for animal cases has been described by Scottish opposition parties as ‘soft touch justice’<sup>24</sup> although this may be a misunderstanding of the status of such disposals.

Campaigners across the UK have called repeatedly in recent years for custodial sentences to be increased.<sup>26</sup> The Scottish Government consultation on its proposals in early 2019 cited a particularly horrific case where the burning to death of a dog resulted in a nine-month prison sentence.<sup>27</sup> This was said to be emblematic of the inadequacy of the current sentencing options. The policy memorandum attached to the bill<sup>28</sup> stated that the current maximum penalties available ‘to punish the perpetrators of the most severe animal cruelty offences (currently a prison sentence of one year or a £20,000 fine, or both) are considered insufficient to allow the court, when sentencing, to impose a sentence that reflects the public revulsion towards the extreme nature of some of these cases’.<sup>30</sup>

Accordingly, section 1 of the act increases the penalties for offences under section 19 (unnecessary suffering) and section 23 (animal fights) of the 2006 Act. Procurators Fiscal are given discretion as to whether to prosecute under solemn procedure; up to now offences have been triable summarily only. Conviction on indictment will now attract imprisonment for up to five years, a fine, or both. The penalties for summary conviction remain unchanged: imprisonment for up to 12 months, a fine of up to £20,000, or both. The current six-month time bar for prosecution is also removed.

#### *B. Fixed penalties for animal welfare, animal health and wildlife offences*

Sections 2, 4 and 10A of the act as passed provide for the introduction of FPN for minor offences under the 2006 Act, the Animal Health Act 1981, and parts of the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, the Deer (Scotland) Act 1996. Other enactments may be added where the Scottish Ministers consider these relevant. The

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<sup>22</sup> Scottish Government, ‘Animal Health and Welfare (Scotland) Act 2006: consultation on proposed amendments’ (1 February 2019) <<https://www.gov.scot/publications/consultation-amend-animal-health-welfare-scotland-act-2006/pages/4/>> accessed 8 November 2019

<sup>23</sup> See, for example, Robert James, ‘Scotland too soft on animal abuse, claim Battersea Dog Home campaigners’ (Sunday Express, 27 August 2017) <<https://www.express.co.uk/news/uk/846548/animal-abuse-Scotland-Battersea-Dog-Home-campaigners-too-soft>> accessed 8 November 2019.

<sup>24</sup> ‘“More needs to be done” to explain sentencing’ (BBC, 2 September 2019) <<https://www.bbc.co.uk/news/uk-scotland-49543662>> accessed 8 November 2019.

<sup>26</sup> See, for example: Libby Anderson, ‘Why we need tougher sentencing and prevention programmes for animal cruelty’ (OneKind, 20 September 2017) <<https://www.onekind.scot/why-we-need-tougher-sentencing-and-prevention-programmes-for-animal-cruelty/>> accessed 8 November 2019; ‘A-Law Joins Calls for Longer Prison Sentences for Animal Abusers’ (UK Centre for Animal Law, 24 June 2019) <<https://www.alaw.org.uk/2019/06/a-law-joins-calls-for-longer-prison-sentences-for-animal-abusers/>> accessed 8 November 2019; and ‘Battersea calls for five-year prison sentences for animal cruelty in Scotland’ (Battersea, 27 August 2017) <<https://www.battersea.org.uk/battersea-calls-five-year-sentences-animal-cruelty-scotland>> accessed 8 November 2019.

<sup>27</sup> 2006 Act consultation (n 21).

<sup>28</sup> [SP Bill 56 PM Animals and Wildlife \(Penalties, protection and Powers\) \(Scotland\) Bill \[as introduced\] Session 5 \(2019\)](#).

<sup>30</sup> Ibid.

Scottish Government sees FPN as ‘an effective additional enforcement tool to improve general compliance with legal requirements where this is important to safeguard animal welfare overall, but where the time and expense of taking individual court cases could be seen as disproportionate considering the likely penalties available.’<sup>31</sup>

The act provides that FPN under all three headings may be introduced through regulations and sets out the kinds of provision that may be included. It does not specify the offences in relation to which FPN could be issued, only that the offence should be one that would attract the lower level of penalties if tried in court. The intention is to ensure there is a means to address ‘paperwork offences’ rather than creating a weaker penalty for any offence that involves harm to an animal.<sup>32</sup> Much will depend, therefore, on the detail of the regulations.

### C. “Finn’s Law”

Section 19(4)(c)(ii) of the 2006 Act has allowed an accused person to argue that an attack on an animal was motivated by self-defence (or the desire to protect another person or property) and did not constitute an offence. This was intended to protect people defending themselves from what the policy memorandum describes as an ‘unwarranted’ attack by an animal.<sup>33</sup> However, as the memorandum points out, this is at odds with the wider public view that service animals should be primarily regarded as sentient animals, rather than simply as police property.<sup>34</sup>

Public concern has been heightened by the English case of Finn, a police dog who was stabbed while defending his handler.<sup>35</sup> Finn’s attacker was prosecuted for criminal damage rather than for causing unnecessary suffering to Finn. The campaign for Finn’s Law touched many, attracted widespread media coverage<sup>36</sup> and resulted in a successful Private Member’s Bill at Westminster.<sup>37</sup>

In Scotland, attacks on service animals are rare: Police Scotland is cited in the policy memorandum as saying that attacks on police dogs occur approximately once a year, although there is concern that such offences might increase.<sup>39</sup>

Section 3 of the new act introduces sections 4A, 4B and 4C to the 2006 Act, providing that arguments for self-defence are to be disregarded if the animal is under the control of a constable or prison officer on duty at the time of the attack.

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<sup>31</sup> Bill 56 Policy Memorandum (n 27).

<sup>32</sup> Ibid.

<sup>33</sup> Bill 56 Policy Memorandum (n 27).

<sup>34</sup> Ibid, 8.

<sup>35</sup> For a full account of this story, see Dave Wardell and Lynne Barrett-Lee, *Fabulous Finn: The Brave Police Dog Who Came Back from the Brink* (Quercus 2018).

<sup>36</sup> See, for example, Alina Polianskaya, ‘Police officer describes moment dog fought to protect him despite being stabbed with “10-inch knife”’ (Independent, 28 January 2018) <<https://www.independent.co.uk/news/uk/police-dog-hertfordshire-finn-pc-dave-wardell-finns-law-a8182116.html>> accessed 8 November 2019; and ‘Finn’s Law: Stabbed police dog law passed by Lords’ (BBC, 2 April 2019) <<https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-47791214>> accessed 8 November 2019

<sup>37</sup> Animal Welfare (Service Animals) Act 2019

<sup>39</sup> Bill 56 Policy Memorandum (n 27).

The limited definition of a service animal within the provision prompted the ECCLR Committee to ask the Scottish Government whether it was aware of the defence being used in other instances of attacks on working animals, such as assistance animals.<sup>40</sup> The government responded that it was not aware of any such cases, and thought it unlikely that the issue would arise in relation to assistance animals as, ‘unlike police service animals, they are not routinely used in situations where an attacker could reasonably claim to have been defending themselves’.<sup>41</sup>

#### *D. New penalties for offences against wild animals and habitats*

As in other UK administrations, wild animals in Scotland are protected by several different pieces of legislation. The Scottish Government maintains: ‘this allows us to meet national and international obligations to conserve rare and vulnerable species by:

- making sure they are protected and managed in a fair and humane way,
- addressing wildlife crime through co-ordinated enforcement,
- managing conflicts between mankind and wildlife where they arise,
- protecting wildlife from cruel or inappropriate management activities.’<sup>42</sup>

Animal welfare and conservation groups, including independent commentators such as the Wild Animal Welfare Committee, may question the extent to which current wildlife legislation meets these goals.<sup>43</sup> Nonetheless, most agree that consistent and appropriate penalties for what can be severe insults to welfare or conservation are to be supported, and welcome the introduction under the act of equivalent maximum penalties for offences against wild and domestic animals. No other UK administration has made such provision.

The policy memorandum states: ‘[c]rimes in recent years include those involving deliberate and sadistic behaviour such as badger baiting and hare coursing. There have been a number of instances of the deliberate targeting of birds of prey, resulting in death or serious injury. Some of these crimes have involved the use of banned pesticides which not only pose a serious health risk to wildlife but to any animals or people who come into contact with it.’<sup>44</sup>

In 2015, an independent review chaired by Professor Mark Poustie found that the current maximum penalties might not serve as a sufficient deterrent or reflect the serious nature of some of the crimes committed.<sup>45</sup> The Poustie Review recommended, among other things, that: ‘an appropriate range of penalties should be available to the courts to ensure maximum

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<sup>40</sup> ECCLR Committee Report (n 18).

<sup>41</sup> Scottish Government, Response to Stage 1 report (9 March 2020)

<[https://www.parliament.scot/S5\\_Environment/General%20Documents/ECCLR\\_2020.03.09\\_AB\\_IN\\_Min\\_on\\_S tage\\_1\\_report\\_response.pdf](https://www.parliament.scot/S5_Environment/General%20Documents/ECCLR_2020.03.09_AB_IN_Min_on_S tage_1_report_response.pdf)> accessed 7 July 2020

<sup>42</sup> Bill 56 Policy Memorandum (n 27).

<sup>43</sup> Wild Animal Welfare Committee, ‘Activity Review 2016–2018’ <<http://www.wawcommittee.org/news/35-wawc-activity-review-now-online>> accessed 8 November 2019.

<sup>44</sup> Bill 56 Policy Memorandum (n 27).

<sup>45</sup> Scottish Government, ‘Wildlife Crime Penalties Review Group: report’ (19 November 2015) <<https://www.gov.scot/publications/wildlife-crime-penalties-review-group-report/>> accessed 8 November 2019 (Poustie Review).

deterrent impact to deal with the range of offenders, from corporate entities to individuals with few or no resources'.<sup>46</sup>

Addressing this, sections 5 – 10B provide increased maximum penalties for around 60 different offences.<sup>47</sup> The original bill placed offences such as killing wild birds, keeping or selling invasive species, harming protected species, killing mountain hares and brown hares in the close season, and using prohibited trapping and killing methods in the most serious category. Amendments at Stages 2 and 3 ensured that other offences, such as the possession of pesticides and disturbance of nests and shelters were moved into this category. Such offences will now be triable either on indictment or by summary procedure, with maximum penalties for conviction on indictment increasing to a prison sentence of up to five years, an unlimited fine or both. Maximum penalties on summary conviction become a prison sentence of 12 months, a fine of up to £40,000, or both. A small number of offences relating to invasive species and species control are subject to a maximum prison sentence of two years. The time bar for summary offences against wild animals is amended to six months from the date on which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence. There will be no time bar for offences capable of being tried either way.

Also of note are the new penalties and procedures for fox hunting offences at section 10. There are only ten mounted fox hunts in Scotland, but their activities remain controversial, while defects in the Protection of Wild Mammals (Scotland) Act 2002 have rendered it almost impossible to enforce.<sup>48</sup> Maximum penalties have now increased and solemn procedure is made available for hunting a wild mammal with a dog. This is significant and signals that breaches of the 2002 Act are not seen as minor offences.

Enforcement agencies will welcome the extended time limits for hunting prosecutions, in line with other serious wildlife offences. The difficulty of bringing cases within the existing six-month time limit was highlighted by Lord Bonomy in his Scottish Government-commissioned review of the 2002 Act.<sup>49</sup> He noted that '[t]he time limit for completing an investigation into an alleged offence and instituting the prosecution has given rise to problems for both the police and the Crown', and that the reporting of one case, two weeks before the expiry of the time limit, had made proper investigation 'impossible'.<sup>50</sup>

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<sup>46</sup> Ibid, 65.

<sup>47</sup> These offences are found in: the Wildlife and Countryside Act 1981, sections 1, 5-11 and 14; the Protection of Badgers Act 1992, sections 1-3; the Conservation (Natural Habitats, etc) Regulations 1994, regulations 39 and 41; the Deer (Scotland) Act 1996, sections 17, 21 and 22; the Wild Mammals (Protection) Act 1996, section 1; the Protection of Wild Mammals (Scotland) Act 2002, section 1, and the Marine (Scotland) Act 2010, section 104.

<sup>48</sup> For conclusion regarding difficulties with 'detection, investigation and prosecution of alleged offences', see Scottish Government, 'Report of the Review of the Protection of Wild Mammals (Scotland) Act 2002', <<https://www.gov.scot/publications/report-review-protection-wild-mammals-scotland-act-2002/>> accessed 8 November 2019, 9 (Bonomy review). On enforcement difficulties, see 'Fox Hunting' (OneKind) <<https://www.onekind.scot/campaigns/a-real-hunting-ban/>> accessed 8 November 2019. For a summary of the Police Scotland response to the Bonomy Review, see 'Police say Scottish foxhunting review "unworkable"' (BBC, 24 October 2016) <<https://www.bbc.co.uk/news/uk-scotland-37751158>> accessed 8 November 2019.

<sup>49</sup> Bonomy review (n 49), 79.

<sup>50</sup> Ibid.

*E. New wildlife offences: seals, mountain hares and vicarious liability*

A surprising development, late in the progress of the bill, was the introduction of substantive Scottish Government amendments to change the seal licensing regime and effectively ban the shooting of seals by fish farms and fisheries. Currently, under Part 6 of the Marine (Scotland) Act 2010<sup>51</sup>, it is an offence to kill, take or injure a seal, unless to relieve its suffering or by virtue of a seal licence. Grounds for granting licences include protecting the health and welfare of farmed fish and the prevention of serious damage to fisheries or fish farms<sup>53</sup>. Both of these grounds will now be repealed.

The background to this change is the need for Scotland (and the rest of the UK) to achieve a comparability finding under the US Marine Mammal Protection Act 1972, which prohibits the import to the United States of fish or fish products from countries where the killing of marine mammals is permitted. The deadline for the comparability finding falls in March 2021 and the Scottish Government argued that its amendments were lodged at such a late stage due to ‘a lack of clarity from the US on the interpretation of these rules and what specific action needs to be taken by nations in order to comply.’<sup>55</sup>

Animal welfare and conservation organisations have welcomed the new measures while pointing to a recent rise in reported licensed shooting, and the danger that this may increase further, prior to implementation of the legislation.

The widening of the bill at Stage 3 opened the way to a suite of new amendments on issues which had previously been considered outwith its scope. Of these, the most notable was lodged by Alison Johnstone MSP and provided full protection for mountain hares, an iconic species that is regularly culled and shot for sport on Scotland’s uplands. Some MSPs took exception to the lack of prior debate on this matter but the issue prompted a strikingly effective short-term campaign and the amendment ultimately received Scottish Government support.

Throughout the course of the bill, by contrast, MSPs had discussed extending vicarious liability – introduced under the Wildlife and Natural Environment (Scotland) Act 2011<sup>56</sup> for the killing or taking of wild birds – to other wildlife offences.<sup>57</sup> Amendments were lodged seeking vicarious liability for offences against birds, cruelty to wild mammals and the destruction of badger setts. The sole successful amendment concerned vicarious liability for the illegal setting of traps and snares. Given the widespread use of these devices in the Scottish countryside, and the difficulties of enforcement, this may well be significant.

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<sup>51</sup> Marine (Scotland) Act 2010 (asp 5) ss 104-109

<sup>53</sup> *Ibid*, s 110 (f) and (g).

<sup>55</sup> Letter from Mairi Gougeon MSP (Minister for Rural Affairs and Natural Environment) to Gillian Martin MSP (ECCLR Committee Convener) (18 March 2020) <[https://www.parliament.scot/S5\\_Environment/General%20Documents/ECCLR\\_2020.05.18\\_AWB\\_IN\\_MIN\\_Stage\\_3\\_seal\\_licensing.pdf](https://www.parliament.scot/S5_Environment/General%20Documents/ECCLR_2020.05.18_AWB_IN_MIN_Stage_3_seal_licensing.pdf)> accessed 7 July 2020.

<sup>56</sup> Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), s 24.

<sup>57</sup> For example, see question from Mark Ruskell MSP to Leia Fitzgerald, Scottish Government in ECCLR Committee Report (n 8), 6-7 and 14-15.

### *F. Additional powers for taking possession of animals*

Section 11 of the act is the most complex part and possibly the one with the greatest direct impact on animal welfare in Scotland, although it passed without controversy.

The original section 32 of the 2006 Act allows inspectors (including Scottish SPCA inspectors) and constables to take possession of animals that appear to be suffering, while section 34 requires a court order before they can be re-homed, sold or destroyed. Twelve new sections (32A to 32L) are added to the 2006 Act, enabling authorised persons to provide treatment, transfer ownership and, in limited circumstances, destroy an animal without undue delay and without the need to obtain a court order. Owners will be served with a notice which they can appeal within 21 days, but if they do not do so the relevant agency will be able to dispose of the animal appropriately. Provision is made for compensation, but this is unlikely to be available if the owner is subsequently found guilty of a welfare offence.

The new powers are intended to protect animals seized in welfare cases by limiting the time they have to remain in shelters, and to reduce costs to agencies such as local authorities and the Scottish SPCA. Indeed, that charity lobbied for the proposed changes, highlighting the welfare and financial challenges posed by taking possession of large numbers of vulnerable animals, particularly in connection with the fight against puppy trafficking.<sup>58</sup>

### *III. Looking beyond the new Act*

The initial aim of keeping the bill within tight parameters did not deter MSPs and stakeholders from raising many more animal welfare issues. These included protection for cephalopods and crustaceans,<sup>59</sup> Scottish SPCA powers to investigate wildlife offences,<sup>60</sup> electronic training collars and pet theft<sup>61</sup>, the use of acoustic deterrence devices to discourage seals<sup>62</sup> and the need to protect beavers from persecution<sup>63</sup>. All of these are expected to return to the Parliament for consideration.

Inevitably, the pace of the legislative programme has been affected by COVID-19 but there are other commitments, including new regulations under the 2006 Act to cover animal

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<sup>58</sup> For comments by Michael Flynn of the Scottish SPCA, see 'Response 1004594659 to the Animal Health & Welfare Act Amendment Consultation 2019' <[https://consult.gov.scot/animal-welfare/animal-health-welfare-act-amendment-2019/consultation/view\\_respondent?show\\_all\\_questions=0&q\\_text=SPCA&sort=excerpt&order=descending&b\\_index=180&uuld=1004594659](https://consult.gov.scot/animal-welfare/animal-health-welfare-act-amendment-2019/consultation/view_respondent?show_all_questions=0&q_text=SPCA&sort=excerpt&order=descending&b_index=180&uuld=1004594659)> accessed 8 November 2019.

<sup>59</sup> For example, see comments by Libby Anderson in Scottish Government, 'Response 153112057 to Animal Health and Welfare (Scotland) Act Amendment Consultation 2019' <[https://consult.gov.scot/animal-welfare/animal-health-welfare-act-amendment-2019/consultation/view\\_respondent?show\\_all\\_questions=0&sort=excerpt&order=descending&q\\_text=One Kind&uuld=153112057](https://consult.gov.scot/animal-welfare/animal-health-welfare-act-amendment-2019/consultation/view_respondent?show_all_questions=0&sort=excerpt&order=descending&q_text=One Kind&uuld=153112057)> accessed 8 November 2019.

<sup>60</sup> Letter from Gillian Martin MSP (ECCLR Committee convener) to Roseanna Cunningham MSP (10 October 2019) <[https://www.parliament.scot/S5\\_Environment/General%20Documents/ECCLR\\_AWB\\_2019.10.10\\_OUT\\_CS\\_Bill\\_Questions.pdf](https://www.parliament.scot/S5_Environment/General%20Documents/ECCLR_AWB_2019.10.10_OUT_CS_Bill_Questions.pdf)> accessed 8 November 2019.

<sup>61</sup> Stage 3 amendments, 59 <<https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/animals-and-wildlife-penalties-protections-and-powers-bill/stage-3/marshalled-list-of-amendments-at-stage-3-animals-and-wildlife-penalties-protections-and-powers.pdf>>

<sup>62</sup> Ibid, 55A

<sup>63</sup> Ibid, 56



sanctuaries and re-homing activities, breeders of dogs, cats and rabbits, and pet sales.<sup>64</sup> Stringent breeder licensing requirements will prevent the third-party sale of young cats and dogs in a Scottish version of “Lucy’s Law” and discourage breeding for extreme traits.<sup>65</sup> Members’ Bills have also been lodged covering the sale and transfer of dogs and livestock worrying.

Implementation of the Bonomy recommendations<sup>66</sup> is expected before the end of the session, rendering the legislation more enforceable, limiting to two the number of dogs permitted for flushing foxes from cover and discouraging the development of trail hunting.<sup>68</sup> A Member’s Bill offering more comprehensive protection for foxes and hares is also in the pipeline.<sup>69</sup>

#### IV. Scottish Animal Welfare Commission

Potentially the most significant of all the developments currently taking place in Scotland is the creation of the Scottish Animal Welfare Commission,<sup>70</sup> an independent expert group chaired by Professor Cathy Dwyer,<sup>72</sup> to advise the Scottish Government on companion and wild animal welfare issues. The commission was established under section 36 of the 2006 Act to consider and provide advice on the welfare of protected animals (animals under the control of man on a permanent or temporary basis), with the function of providing advice on the protection of wildlife under section 23 of the Wildlife and Countryside Act 1981 assigned by Ministerial declaration.

A crucial role for this commission will be to act as the ‘guardian’<sup>74</sup> of sentience in the years following Brexit. It will formulate some of its own workplan but must provide an annual report on how the welfare needs of sentient animals are considered in legislation and policy development in Scotland.<sup>75</sup>

#### V. Conclusion

This is an exciting time to be working on animal welfare policy in Scotland. Through its Scottish steering committee, ALAW responded to the public consultation on the bill,<sup>76</sup> gave evidence to the ECCLR Committee and ran a successful seminar for stakeholders. The committee has plans for continued engagement with politicians and officials, as well as further awareness-raising events and initiatives.

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<sup>64</sup> Scottish Government, ‘Protecting Scotland’s Future: the Government’s Programme for Scotland 2019-2020’ (3 September 2019) accessed 8 November 2019, 88-89.

<sup>65</sup> Ibid.

<sup>66</sup> Bonomy review (n 49).

<sup>68</sup> Statement on Scottish Government work to improve animal welfare, Mairi Gougeon MSP, 9 January 2019 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11873&i=107388>

<sup>69</sup> For further information, see: <https://www.parliament.scot/parliamentarybusiness/Bills/112079.aspx>.

<sup>70</sup> Protecting Scotland’s Future (n 65), 88.

<sup>72</sup> Scottish Government, ‘Animal Welfare Commission’ (24 September 2019) <<https://www.gov.scot/news/animal-welfare-commission/>> accessed 8 November 2019.

<sup>74</sup> OneKind, ‘Animal Welfare Commission for Scotland’ (February 2019) <<https://www.onekind.scot/resources/animal-welfare-commission-for-scotland-february-2019/>> accessed 8 November 2019.

<sup>75</sup> Gougeon (n 68).

<sup>76</sup> The call for submissions can be found at: .

