

Consultation Title	Wildlife crime penalties
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Scottish Land & Estates (SLE) is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. SLE is a key partner in the Partnership for Action Against Wildlife Crime in Scotland (PAW Scotland). Our members play their part in helping to prevent wildlife crime and assisting those that enforce wildlife law. They are committed to helping with the detection and prosecution of those responsible. We have regular dialogue with Police Scotland and other stakeholders and contributed to the Scottish Government's Wildlife Crime Penalties Review Group 2013 -15 chaired by Professor Poustie.

We recognise that in dealing with wildlife crime, preventative work, education and awareness are important factors, as well as a just and proportionate legal system backed by sanctions and with consistent and clear enforcement. We broadly agree with the need to update the schedule for maximum penalties for some wildlife offences which are clearly outdated but have concerns regarding extending time limits for prosecution.

Question 1: The Scottish Government proposes that the maximum penalties for some wildlife offences, for example the injuring or un-licensed killing or taking of wild animals should be strengthened. Do you agree?

SLE considers wildlife crime of any kind as absolutely unacceptable and we believe that those who undertake such reckless acts with deliberate intent should feel the full force of the law.

Wildlife crime covers a huge spectrum of criminal activity and there are currently six specific wildlife crime priorities in Scotland and in the UK. We are especially keen that there is a focus on poaching/coursing of fish, deer and hares which are the largest volume of wildlife crime. Poaching at night is usually more dangerous and potentially more threatening, so we consider that this should be dealt with more harshly.

Sentencing environmental and wildlife offences can be quite different from most criminal offences, particularly with regard to the assessment of culpability and harm. For example, there may be a public policy aspect to some cases, where the harm or the risk of harm is to the public at large rather than to an identifiable victim. In addition, the offender may be a company rather than an individual.

Penalties require to be set at a level that will form an effective deterrent and it is important that fines levied on offenders are proportionate. It is also vital that penalty and enforcement measures are robust and support one another. Increasing the tariffs available to the judiciary will count for little if

any problems of early-stage enforcement are not also addressed. In other words, regardless of the punitive value of a sentence, the deterrent effect will be limited if an offender concludes that the chances of being caught and receiving the punishment are minimal due to resourcing or other issues.

The threat of penalties alone will not prevent offenders, but we appreciate that increasing awareness of sentences and knowledge of offences and their impacts also assists in deterring illegal activity. There is certainly an awareness in the land management sector that the courts take wildlife crime offences increasingly seriously and are more prepared than ever to impose heavy sentences where that is appropriate given the nature and scale of the offence.

We are fully supportive of the Wildlife Crime Penalties Review Group findings that penalties for conviction should be updated, although we do note that reported wildlife crime offences have continued to decrease over the past three years during the period of existing penalties. SLE is also supportive of more imaginative and targeted penalties, which the Review recommended, other than simply penalty fine or imprisonment.

The impact assessment of any wildlife offence is important to ensure proportionality. We feel it is important the court has full information presented by the prosecution of the wider impact of the offence on the species or eco-system affected. Impact statements ought to be used more systematically. Any wildlife crime ought to be wholly condemned. The killing of a common predator with no further impact on the species is obviously different from the sizeable impact in some other wildlife crimes.

It is right that there should be a wide range of appropriate penalties available which offer necessary flexibility to the courts to be lenient where it is needed but also offer the opportunity to impose significant fines and/or imprisonment to those offenders at the more serious end of the scale. Clear guidelines are also essential.

Question 2: Do you agree that the maximum prison sentence available for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be increased to five years imprisonment?

Yes.

On the basis that the maximum penalties will only ever be imposed in the most serious cases and that the courts must take into account the circumstances of the offender including whether he or she is a first offender, is of otherwise good character and his or her income when considering any penalty we agree with this increase to five years maximum. The degree of criminal intention, negligence, recklessness, repetition of offending and so on all have an impact on how serious the offence should be considered. We believe that judicial discretion in sentencing is important - all cases turn on their own facts and circumstances and the courts must be allowed flexibility to deal with each case appropriately within a range of possible outcomes. Without access to court transcripts it is, unwise to compare penalties imposed in different cases as they will have been influenced by the individual circumstances of each case, including variables such as an early guilty plea, mitigation etc.

We would add that the commission of wildlife offences invariably attracts media and political attention, some of which can be skewed in its reporting. Those involved in the process, from all perspectives, have at times expressed suspicion of the authorities and the criminal justice system.

Justice must not only be done but be seen to be done. Sentencing of a particular offence may be a highly technical matter and it would therefore be helpful in some cases to provide an explanation of the reasoning behind a particular sentence – particularly where it may appear unduly lenient or unduly harsh. A court will not be able to satisfy all concerns because those are often dependent on the particular viewpoint of the observer, but it should be transparent in how it reaches decisions so that accusations of bias or undue influence can be ruled out.

Question 3: Do you agree that the upper limit on fines for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be unlimited?

No.

SLE does not agree that the upper limit should be “unlimited” which by its very nature would mean no limit. It is of course appropriate to review and uptake penalties after a period of time, but actually having an “unlimited” penalty is arguably no greater a deterrent than a numerical fixed cap which is more tangible. We also have concerns about an “unlimited” fine being subject to external pressures.

Question 4: Do you agree that the maximum prison sentence available for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to twelve months imprisonment?

Yes.

Following the reasoning of our response to question 2 we also agree with twelve months maximum in this case.

Question 5: Do you agree that the upper limit on fines for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to £40,000?

Yes. We agree with this increase.

Question 6: Do you agree that the statutory time limit for wildlife crime offences that may be prosecuted under summary procedure only, e.g. the intentional or reckless taking, damage or destruction of nests under section 1(1)(b) of the Wildlife and Countryside Act 1981, should be increased to six months from which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence?

No.

We have concerns about this extension to the time limit for prosecution. We are unaware that the current time limit for prosecution has resulted in an inability of the police to prosecute offences under the legislation. The proposed change would mean that an allegation dating back three years can be brought so long as it is brought within six months from the date on which sufficient evidence came to the knowledge of the prosecutor.

If there is evidence of illegal activity, then it requires to be given to the police and we are not clear why such a period of time would elapse between the commission of an offence and the evidence being presented to the police. Also, why in the instance where it has been handed over and the police and prosecuting authorities have found this ‘evidence’ insufficient to support a prosecution, would this evidential problem of a lack of evidence be improved by extending the time limit. Indeed, could such a change be justified given the impact this could have on any defendant’s right to a fair trial. We are

concerned that the longer the lapse of time between the events in question and the prosecution, the harder it will be to ensure a fair trial to which defendants are entitled under Article 6(2) of ECHR. There is also the stress and emotional impact for an accused and their family which would be heightened by lengthening this period.

If there are internal issues such as resourcing or communication in terms of those prosecuting a case then these should be resolved without recourse to extending the prosecution time limit.

Question 7: Do you agree that we should allow some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, to be tried under solemn proceedings before a jury in court?

No.

We disagree with the proposal to allow prosecution using solemn procedure. It is inappropriate that there would be no statutory time limit for bringing prosecutions for the most serious offences.

Presently, if the defendant pleads not guilty, the sheriff's role is to assess the evidence put forward by the prosecution and defence and to decide whether there is sufficient evidence to prove beyond reasonable doubt that the defendant is guilty of the charge(s). If the sheriff finds the defendant guilty, or if the defendant has entered a guilty plea, the sheriff is responsible for determining the sentence after consideration of the fiscal's narration and the defence agent's mitigation plea. We do not believe there is a need to change this to trial by jury.

Question 8: Please use this question to provide any other commentary or observations you have on the proposal to increase the available penalties for wildlife crimes.

We are concerned that there is a risk of oversimplifying the issues involved and while the occurrence of any deliberate wildlife offences is the cause of extreme frustration and disappointment for those closely involved in the land management sector, crime is still at a relatively low level when the whole sector is looked at objectively. The fact that this is the case even when maximum penalties are rarely imposed may suggest that the penalties available are generally (along with other factors) successful as deterrents, but more needs to be done to educate and influence. However, we do recognise that key penalties have not been updated for years and are therefore as stated happy to support an increase, not least bearing in mind inflation over the period.

As we have sought to outline, the reality is that there will be a host of facts and circumstances which will make each offence different from another. It is necessary that there is enough flexibility within parameters for each offence so that each case can be treated individually, taking all of the circumstances into account. This flexibility is required for the system to be fair in terms of adequately punishing the offender but doing so in a just and cost-effective way for society as a whole.

Another point for consideration is that there should be proportionality in any sentence passed down by a criminal court, whether it is for a wildlife offence or otherwise. If the offender is a business entity, then the impact on the business should be a factor in reaching a proportionate sentence. The impact will vary according to the nature of the offences as well as the size and resources of the business. Where there are repeated and very serious offences then it may be right for the impact to be significant even if the business is small and not well resourced. Equally if there are minor or technical

offences then it may be disproportionate to impose a large financial penalty if job losses may result or the viability of the overall business may be jeopardised.

Question 9: How satisfied were you with this consultation?

We are pleased that this important area is being considered by the Scottish Government and would be pleased to be involved in any future consideration. This consultation does cover an extremely broad area as mentioned at the outset of our response and we are hopeful that this breadth will be considered in reviewing responses and taking forward any aspects.

Question 10: How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

N/A