

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

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## 1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### Meaning of animal

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#### Animal welfare: licensed activities involving animals: penalties for offences

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#### Disqualification orders

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#### Wildlife offences: vicarious liability

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**Amendments in debating order**

**Meaning of animal**

**Colin Smyth**

65 Before section 1, insert—

*<Animal welfare: meaning of animal*

**Meaning of animal**

- (1) In the Animal Health and Welfare (Scotland) Act 2006, section 1 is amended as follows.
- (2) In subsection (1)—
  - (a) after “means” insert “—  
(a)”,
  - (b) after “man” insert “, and  
(b) cephalopods and decapods.”.>

**Animal welfare: licensed activities involving animals: penalties for offences**

**Colin Smyth**

66 In section 1, page 1, line 13, at end insert—

<( ) In section 27 (licensing etc. of activities involving animals) subsections (4)(b)(ii) and (c)(ii) and (7)(b)(ii) are repealed.>

**Colin Smyth**

73 In section 1, page 1, line 19, at end insert—

<( ) In section 46 (penalties for offences)—

(a) after subsection (2) insert—

“(2A) A person who commits an offence under regulations made under section 27 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”
- (b) in subsection (3) leave out “an” and insert “any other”.>

**Disqualification orders**

**Colin Smyth**

67 In section 1, page 1, line 13, at end insert—

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- <( ) In section 40 (disqualification orders)—
- (a) after subsection (6) insert—
    - “(6A) A disqualification order must be made where a person convicted of a relevant offence is sentenced to the maximum penalty.
    - (6B) Where a disqualification order is made under subsection (6A), the order is to have effect for the lifetime of the person convicted of a relevant offence.
    - (6C) The Scottish Ministers must by regulations specify—
      - (a) other circumstances in which a disqualification order must be made,
      - (b) the period of time for which the order is to have effect in each specified circumstance,
      - (c) that the period of time under paragraph (b) must be determined based on the severity of the offence in relation to which the order would be required to be made.
    - (6D) Regulations under subsection (6C) may include provision on circumstances in which a disqualification order can be waived.
    - (6E) If regulations under subsection (6C) make provision as described in subsection (6D), those regulations must specify that the convicting court must state its reasons for waiving the disqualification order.”,
  - (b) in subsection (1), after “may” insert “, subject to subsection (6A) and regulations under subsection (6C),”,
  - (c) in subsection (9)(a), after “effect” insert “, subject to subsection (6B) and regulations under subsection (6C),”.>

### Maurice Golden

- 99 After section 10, insert—

#### *<Duty on courts to consider disqualification*

#### **Animal welfare, animal health and wildlife offences: duty on courts to consider disqualification**

- (1) Where a court has sentenced a person to whom subsection (2) applies, the court must consider whether also to impose on the person a lifetime disqualification from being the owner of an animal.
- (2) This subsection applies to a person who has been—
  - (a) convicted of an offence listed in subsection (3), and
  - (b) sentenced to the maximum penalty available for that offence.
- (3) The offences are offences 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,

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- (g) the Protection of Wild Mammals (Scotland) Act 2002,
  - (h) the Animal Health and Welfare (Scotland) Act 2006.
- (4) Where the court does not impose on the person a lifetime disqualification from being the owner of an animal, it must state the reasons for its decision.>

### **Animal welfare offences: penalties**

#### **Colin Smyth**

- 68 In section 1, page 1, line 15, after <19> insert <, 20>

#### **Colin Smyth**

- 69 In section 1, page 1, line 15, after <19> insert <, 21>

#### **Colin Smyth**

- 70 In section 1, page 1, line 15, after <19> insert <, 22>

#### **Colin Smyth**

- 71 In section 1, page 1, line 15, leave out <or 23> and insert <, 23 or 24>

#### **Colin Smyth**

- 72 In section 1, page 1, line 15, leave out <or 23> and insert <, 23 or 29>

### **Animal health offences: fixed penalty notices**

#### **Mairi Gougeon**

- 3 In section 4, page 5, line 7, leave out the second <or> and insert—
- <(ia) the Bees Act 1980,
  - (iib) orders made under the Bees Act 1980 (whether made before, on or after the coming into force of this section), or>

#### **Mairi Gougeon**

- 4 In section 4, page 5, line 13, at end insert—
- <(3A) Regulations under subsection (1) may in particular include provision—
    - (a) subject to subsections (3C) and (3D), prescribing the form of a fixed penalty notice,
    - (b) prescribing the persons or categories of persons who are authorised to issue fixed penalty notices,
    - (c) conferring on the Scottish Ministers the power to authorise a person to issue fixed penalty notices,
    - (d) conferring powers to enter premises (other than dwelling-houses) in connection with the issuing of fixed penalty notices,

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- (e) about the circumstances in which fixed penalty notices may be issued (including the test which must be satisfied before a person authorised to issue such notices may do so),
  - (f) about the circumstances in which fixed penalty notices may not be issued,
  - (g) about the circumstances in which fixed penalty notices may be withdrawn (including the effects of such withdrawal),
  - (h) prescribing the amount of the fixed penalty which is to apply to an offence, being not more than level 5 on the standard scale,
  - (i) prescribing the person to whom payment may be made (who need not be the person who issued the fixed penalty notice),
  - (j) prescribing the period of time within which a fixed penalty may be paid (in this section, the “payment period”),
  - (k) about the circumstances in which a person to whom a fixed penalty notice is issued may decline the notice or otherwise object to or challenge it (including the period within which the person may do so),
  - (l) about the effects of failing to decline or otherwise object to or challenge a fixed penalty notice before the end of the period prescribed for doing so (including that such failure is deemed to be acceptance of the notice),
  - (m) conferring on the person who issued the fixed penalty notice or the person to whom payment may be made the power to extend the payment period in any particular case if the person considers it appropriate to do so,
  - (n) about the methods by which fixed penalties may be paid,
  - (o) for the amount of a fixed penalty to be discounted or increased by an amount or percentage in circumstances prescribed by the regulations (but not so as to make the amount payable more than level 5 on the standard scale),
  - (p) prescribing the effect of paying a fixed penalty within the payment period (for example, that no proceedings may be brought in respect of the offence to which the fixed penalty notice relates),
  - (q) about the consequences of not paying a fixed penalty within the payment period (including how liability to pay the penalty may be enforced),
  - (r) for additional procedure relating to fixed penalty notices (for example to make provision for hearings or appeals),
  - (s) for the destination of funds, the keeping of accounts and the preparation and publication of statements of account relating to fixed penalties provided for under the regulations,
  - (t) creating offences relating to—
    - (i) obstruction of a person who is exercising functions in relation to fixed penalty notices,
    - (ii) a failure to provide information requested in connection with a fixed penalty notice.
- (3B) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale.

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- (3C) A fixed penalty notice provided for in regulations under subsection (1) must—
- (a) identify the offence to which it relates, and
  - (b) specify reasonable particulars of the circumstances alleged to constitute the offence.
- (3D) A fixed penalty notice provided for in regulations under subsection (1) must also state—
- (a) the date on which the fixed penalty notice is issued,
  - (b) the amount of the fixed penalty,
  - (c) the person to whom payment may be made and the person’s address,
  - (d) the payment period,
  - (e) the method by which payment may be made,
  - (f) the effect of paying the fixed penalty within the payment period and the consequences of not paying the fixed penalty within that period,
  - (g) details of any procedure for challenging or appealing the fixed penalty notice.>

### **Mairi Gougeon**

- 5 In section 4, page 5, line 14, after <section> insert <—
- “animal” includes bees in any stage of their life cycle,
  - “enactment” includes an Act of the Scottish Parliament and an instrument under such an Act,>

### **Possession of pesticides: defences**

#### **Mairi Gougeon**

- 6 In section 5, page 5, line 25, at end insert—
- <( ) In section 15A (possession of pesticides), in subsection (2)—
- (a) “or” immediately after paragraph (a) is repealed,
  - (b) after that paragraph insert—
    - “(aa) Regulation (EC) 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market, as amended, extended or applied from time to time,”,
  - (c) at the end of paragraph (b) insert “of 22 May 2012 concerning the making available on the market and use of biocidal products, as amended, extended or applied from time to time.”.>

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**Wildlife offences: vicarious liability**

**Claudia Beamish**

- 74 In section 5, page 5, line 25, at end insert—
- <( ) In section 18A (vicarious liability for certain offences by employee or agent)—
- (a) the “or” in subsection (6)(a)(ii) is repealed,
  - (b) after that subsection insert—  
“(iia) section 6(1), (2) and (3),”.>

**Claudia Beamish**

- 75 In section 5, page 5, line 25, at end insert—
- <( ) In section 18A (vicarious liability for certain offences by employee or agent)—
- (a) the “or” in subsection (6)(a)(ii) is repealed,
  - (b) after that subsection insert—  
“(iia) section 7(1) or (3),”.>

**Claudia Beamish**

- 76 In section 5, page 5, line 25, at end insert—
- <( ) In section 18A (vicarious liability for certain offences by employee or agent)—
- (a) the “or” in subsection (6)(a)(ii) is repealed,
  - (b) after that subsection insert—  
“(iia) section 8(1) or (3),”.>

**Claudia Beamish**

- 77 In section 5, page 5, line 25, at end insert—
- <( ) In section 18A (vicarious liability for certain offences by employee or agent)—
- (a) the “or” in subsection (6)(a)(ii) is repealed,
  - (b) after that subsection insert—  
“(iia) section 9(1), (2), (4), (4A), (5) or (5A),”.>

**Claudia Beamish**

- 78 In section 5, page 5, line 25, at end insert—
- <( ) After section 18B (liability where securing services through another), insert—
- “18BA Vicarious liability by employee or agent: other offences**
- (1) Sections 18A and 18B apply so long as conditions in subsection (2) apply for an offence under—
    - (a) section 10A,
    - (b) section 11,
    - (c) section 11G,
    - (d) section 13,



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- (e) section 14ZC,
- (f) section 14A.
- (2) Subsection (1) applies where, a person (A) commits an offence under subsection (1) while acting as the employee or agent of a person (B) who—
  - (a) is the owner or occupier of that land, and
  - (b) has a legal right to carry out management activities on that land.
- (3) For the purposes of this section “management activities” includes under any enactment the management or control to any of the following—
  - (a) the management of the natural environment and habitats on that land,
  - (b) the management of the built environment on that land,
  - (c) any licencing granted.”.>

### Mark Ruskell

95 In section 6, page 8, line 20, at end insert—

<( ) After section 12B (offences by bodies corporate etc.) insert—

#### “12C Vicarious liability for certain offences by employee or agent

- (1) This subsection applies where, on or in relation to any land, a person (A) commits a relevant offence while acting as the employee or agent of a person (B) who—
  - (a) has a legal right to carry out activities on that land, and
  - (b) manages or controls the exercise of any such right.
- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceeding under subsection (2), 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.
- (5) For the purposes of subsection (1)(b), management or control of the exercise of a right to carry out activities on land includes in particular management or control of any of the following—
  - (a) the management of the natural environment and habitats on that land,
  - (b) the management of the built environment on that land,
  - (c) any licence granted under section 10.
- (6) In this section and section 12D, “a relevant offence” is an offence under —
  - (a) section 1,
  - (b) section 2,
  - (c) section 3,
  - (d) section 4.

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### 12D Liability where securing services through another

- (1) This subsection applies where, on or in relation to any land—
  - (a) a person (A) commits a relevant offence,
  - (b) at the time the offence is committed, A is providing relevant services for a person (B), and
  - (c) B—
    - (i) has a legal right to carry out management activities on that land, and
    - (ii) manages or controls the exercise of any such right.
- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings under subsection (2), 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.
- (5) For the purpose of subsection (1)(b), A is providing “relevant services” for B—
  - (a) if A manages or controls any of the following—
    - (i) the management of the natural environment and habitats on that land,
    - (ii) the management of the built environment on that land,
    - (iii) any licence granted under section 10, and
  - (b) whether A is providing the services—
    - (i) by arrangement between A and B, or
    - (ii) by arrangement with or as employee or agent of any other person (C) who is providing or securing the provision of relevant services for B.
- (6) For the purposes of subsection (5)(b)(ii), C is providing or securing the provision of relevant services for B if C manages or controls any of the things mentioned in sub-paragraph (i) to (iv) of subsection (5)(a).”>

### Claudia Beamish

96 In section 9, page 9, line 26, at end insert—

<( ) After section 4 (powers of constable) of the Wild Mammals (Protection) Act 1996, insert—

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

- (1) This section applies where, on or in relation to any land, a person (A) commits an offence under section 1 while acting as the employee or agent of a person (B) who—
  - (a) is the owner or occupier of that land, and
  - (b) has a legal right to carry out management activities on that land.

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- (2) Where subsection (1) applies, B is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In any proceedings under subsection (2), 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.
- (5) For the purposes of this section “management activities” includes but is not limited the management or control to any of the following—
  - (a) the management of the natural environment and habitats on that land,
  - (b) the management of the built environment on that land,
  - (c) any licencing granted under any enactment.”.>

### **Invasive alien species: penalties**

#### **Mairi Gougeon**

- 7 In section 5, page 5, line 31, leave out <subsection (1)> and insert <subsections (1), (1A) and (1B)>

#### **Mairi Gougeon**

- 9 In section 5, page 7, line 1, at end insert—  
<( ) section 14AA,>

### **Wildlife offences: penalties**

#### **Claudia Beamish**

- 8 In section 5, page 6, leave out line 9

#### **Claudia Beamish**

- 10 In section 5, page 7, line 2, at end insert—  
<( ) section 15A.>

#### **Claudia Beamish**

- 79 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (b)>

#### **Claudia Beamish**

- 80 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (ba)>

#### **Claudia Beamish**

- 81 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (bb)>

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**Claudia Beamish**

82 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (c)>

**Claudia Beamish**

83 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (2)(a)>

**Claudia Beamish**

84 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (2)(b)>

**Claudia Beamish**

85 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (5)(a)>

**Claudia Beamish**

86 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (5)(b)>

**Claudia Beamish**

87 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (5A)>

**Claudia Beamish**

88 In section 5, page 7, line 10, after <section 1(1)(a)> insert <, (5B)>

**Claudia Beamish**

89 In section 5, page 7, line 14, after <section 9(1)> insert <, (4)(a)>

**Claudia Beamish**

90 In section 5, page 7, line 14, after <section 9(1)> insert <, (4)(b)>

**Claudia Beamish**

11 In section 5, page 7, line 18, at end insert—  
<( ) section 15A.”,>

**Claudia Beamish**

91 In section 5, page 7, line 18, at end insert—  
<( ) section 15A(2A).”,>

**Protection of badger setts: penalties**

**Colin Smyth**

92 In section 6, page 7, line 28, at end insert—  
<( ) in subsection (1ZA) paragraph (b) is repealed,>

**Colin Smyth**

93 In section 6, page 7, line 33, leave out <paragraph (b) is> and insert <paragraphs (b) and (c) are>

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### Colin Smyth

- 94 In section 6, page 8, line 6, at end insert—  
<(c) section 3(1) and (2).”>

### Wildlife offences: fixed penalty notices

#### Mairi Gougeon

- 12 After section 10, insert—
- <Fixed penalty notices for certain wildlife offences**
- (1) The Scottish Ministers may by regulations make provision for or in connection with the issuing of fixed penalty notices in relation to certain offences relating to wildlife.
  - (2) The offences in relation to which fixed penalty notices may be issued must be specified in or by virtue of regulations under subsection (1).
  - (3) The offences which may be specified are offences—
    - (a) under—
      - (i) Part 1 of the Wildlife and Countryside Act 1981,
      - (ii) the Protection of Badgers Act 1992,
      - (iii) the Deer (Scotland) Act 1996, or
      - (iv) another enactment (whether made or, as the case may be, passed before, on or after the coming into force of this section) which the Scottish Ministers consider relates to wildlife, and
    - (b) in relation to which the maximum penalty on conviction does not exceed imprisonment for a term of 6 months or a fine of level 5 on the standard scale (or both).
  - (4) Regulations made under subsection (1) may in particular include provision—
    - (a) subject to subsections (6) and (7), prescribing the form of a fixed penalty notice,
    - (b) prescribing the persons or categories of persons who are authorised to issue fixed penalty notices,
    - (c) conferring on the Scottish Ministers the power to authorise a person to issue fixed penalty notices,
    - (d) conferring powers to enter premises (other than dwelling-houses) in connection with the issuing of fixed penalty notices,
    - (e) about the circumstances in which fixed penalty notices may be issued (including the test which must be satisfied before a person authorised to issue such notice may do so),
    - (f) about the circumstances in which fixed penalty notices may not be issued,
    - (g) about the circumstances in which fixed penalty notices may be withdrawn (including the effects of such withdrawal),
    - (h) prescribing the amount of the fixed penalty which is to apply to an offence, being not more than level 5 on the standard scale,

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- (i) prescribing the person to whom payment may be made (who need not be the person who issued the fixed penalty notice),
  - (j) prescribing the period of time within which a fixed penalty may be paid (in this section, the “payment period”),
  - (k) about the circumstances in which a person to whom a fixed penalty notice is issued may decline the notice or otherwise object to or challenge it (including the period within which the person may do so),
  - (l) about the effects of failing to decline or otherwise object to or challenge a fixed penalty notice before the end of the period prescribed for doing so (including that such failure is deemed to be acceptance of the notice),
  - (m) conferring on the person who issued the fixed penalty notice or the person to whom payment may be made the power to extend the payment period in any particular case if the person considers it appropriate to do so,
  - (n) about the methods by which fixed penalties may be paid,
  - (o) for the amount of a fixed penalty to be discounted or increased by an amount or percentage in circumstances prescribed by the regulations (but not so as to make the amount payable more than level 5 on the standard scale),
  - (p) prescribing the effect of paying a fixed penalty within the payment period (for example, that no proceedings may be brought in respect of the offence to which the fixed penalty notice relates),
  - (q) about the consequences of not paying a fixed penalty within the payment period (including how liability to pay the penalty may be enforced),
  - (r) for additional procedure relating to fixed penalty notices (for example, to make provision for hearings or appeals),
  - (s) for the destination of funds, the keeping of accounts and the preparation and publication of statements of account relating to fixed penalties provided for under the regulations,
  - (t) disapplying Part 4 of the Aquaculture and Fisheries (Scotland) Act 2007 where and to the extent that the regulations provide for fixed penalty notices in relation to a relevant offence (within the meaning of section 25(2) of that Act),
  - (u) creating offences relating to—
    - (i) obstruction of a person who is exercising functions in relation to fixed penalty notices,
    - (ii) a failure to provide information requested in connection with a fixed penalty notice.
- (5) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale.
- (6) A fixed penalty notice provided for in regulations under subsection (1) must—
- (a) identify the offence to which it relates, and
  - (b) specify reasonable particulars of the circumstances alleged to constitute the offence.
- (7) A fixed penalty notice provided for in regulations under subsection (1) must also state—
- (a) the date on which the fixed penalty notice is issued,

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- (b) the amount of the fixed penalty,
  - (c) the person to whom payment may be made and the person's address,
  - (d) the payment period,
  - (e) the method by which payment may be made,
  - (f) the effect of paying the fixed penalty within the payment period and the consequences of not paying the fixed penalty within that period,
  - (g) details of any procedure for challenging or appealing the fixed penalty notice.
- (8) In this section, "fixed penalty notice" means a notice specifying a sum of money that may or must be paid as an alternative to prosecution for an offence.
- (9) Regulations under this section—
- (a) are subject to the affirmative procedure,
  - (b) may make—
    - (i) incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (ii) different provision for different purposes,
  - (c) may modify any enactment.>

### **Mairi Gougeon**

- 64 In the long title, page 1, line 5, after <offences> insert <, to provide for fixed penalties in relation to wildlife offences>

### **Programme requirements**

#### **Mark Ruskell**

- 1 After section 10, insert—
- <Animal welfare, animal health and wildlife: duty to ensure availability of appropriate facilities for programme requirements**
- (1) The Scottish Ministers must take such steps as appear to them to be required to ensure the availability of a sufficient quantity and quality of appropriate programmes and activities to enable a programme requirement to be imposed on a person to whom subsection (2) applies.
  - (2) This subsection applies to a person who has been convicted of 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,

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- (h) the Animal Health and Welfare (Scotland) Act 2006.
- (3) In subsection (1), “programme requirement” has the meaning given by section 227P of the Criminal Procedure (Scotland) Act 1995.
- (4) For the purposes of this section, a programme or activity is “appropriate” where it provides a person mentioned in subsection (2) with an opportunity, for the purpose of addressing offending behaviour, to—
  - (a) understand the effects of the person’s behaviour that constituted the offence,
  - (b) understand links between animal welfare, animal health or wildlife offences and interpersonal violence,
  - (c) develop empathy and anger management skills,
  - (d) co-operate with persons who have knowledge and experience of the care and welfare of animals,
  - (e) undertake activities designed to further the care and welfare of animals.>

### **Claudia Beamish**

98 After section 10, insert—

#### **<Animal welfare, animal health and wildlife: guidance and funding on programme requirements**

- (1) The Scottish Ministers must—
  - (a) issue guidance to courts on the imposition on a person to whom subsection (2) applies of a programme requirement such as is described in subsection (3)(b), and
  - (b) provide sufficient funding to ensure the availability of programmes and activities sufficient to enable guidance issued under paragraph (a) to be complied with.
- (2) This subsection applies to a person who has been convicted of 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.
- (3) In subsection (1)—
  - (a) “programme requirement” has the meaning given by section 227P of the Criminal Procedure (Scotland) Act 1995,
  - (b) a programme requirement that is to be the subject of the guidance is one that provides a person mentioned in subsection (2) with an opportunity, for the purpose of addressing offending behaviour—
    - (i) to be referred to restorative justice service,
    - (ii) to attend a rehabilitation programme to develop empathy skills in connection with the care and welfare of animals.



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- (4) In preparing guidance under subsection (1), the Scottish Ministers must consult—
  - (a) persons who appear to them to have knowledge and experience of—
    - (i) offences under the enactments listed in paragraphs (a) to (h) of subsection (2),
    - (ii) the matters described in subsection (3)(b), and
  - (b) such other persons as they consider appropriate.
- (5) On issuing guidance under subsection (1), the Scottish Ministers must—
  - (a) publish it in such manner as they consider appropriate,
  - (b) lay a copy of it before the Scottish Parliament.
- (6) Guidance issued under subsection (1) may be revised from time to time.
- (7) Subsections (4) and (5) apply to revised guidance under subsection (6) as they apply to guidance under subsection (1).>

### **Information sharing**

#### **Colin Smyth**

97\* After section 10, insert—

#### *<Information sharing*

#### **Animal welfare, animal health and wildlife offences: information sharing by enforcement authorities**

- (1) The Scottish Ministers must issue guidance to enforcement authorities on the sharing among those authorities of information relating to a person to whom subsection (2) applies.
- (2) This subsection applies to a person who has, in relation to an offence listed in subsection (3), 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 Procedure (Scotland) Act 1995).
- (3) The offences are offences 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,

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- (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.
- (4) For the purposes of—
- (a) preventing the commission, and
  - (b) assisting the detection and prosecution of,
- the offences listed in subsection (3), an enforcement authority must comply with guidance issued under subsection (1).
- (5) In preparing guidance under subsection (1), the Scottish Ministers must consult—
- (a) enforcement authorities,
  - (b) such other persons as they consider appropriate.
- (6) On issuing guidance under subsection (1), the Scottish Ministers must—
- (a) publish it in such manner as they consider appropriate,
  - (b) lay a copy of it before the Scottish Parliament.
- (7) Guidance issued under subsection (1) may be revised from time to time.
- (8) Subsections (4) to (6) apply to revised guidance under subsection (7) as they apply to guidance under subsection (1).
- (9) In this section, “enforcement authority” means—
- (a) the Police Service of Scotland,
  - (b) a local authority,
  - (c) a person authorised by the Scottish Ministers under section 19ZC of the Wildlife and Countryside Act 1981,
  - (d) a person authorised by the Scottish Ministers under section 49(2) of the Animal Health and Welfare (Scotland) Act 2006.>

### **Powers of wildlife inspectors**

#### **Mark Ruskell**

- 2 After section 10, insert—

*<Wildlife offences: wildlife inspectors*

#### **Wildlife and Countryside Act 1981: wildlife inspectors**

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) In section 19ZC (wildlife inspectors: Scotland), after subsection (5) insert—
  - “(5A) The Scottish Ministers may, by regulations, amend this section to confer further functions on wildlife inspectors.”.
- (3) In section 26 (regulations, orders, notices etc.)—
  - (a) in subsection (2), before paragraph (a) insert—
    - “(za) regulations under section 19ZC(5A),”.

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(b) after subsection (3) insert—

“(3A) Regulations under section 19ZC(5A) are subject to the affirmative procedure.”>

### **Review of impact of Act**

#### **Maurice Golden**

100\* After section 10, insert—

*<Review of requirements for additional offences*

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

- (1) The Scottish Ministers must as soon as practicable after Royal Assent 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.
- (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.>

### **Powers on possession: appeals against decision notices**

#### **Mairi Gougeon**

13 In section 11, page 11, line 19, leave out <32D(6)(a) permitting the step specified in the notice under section 32B> and insert <32D(6)(a) or (ba) permitting the relevant step>

#### **Mairi Gougeon**

14 In section 11, page 11, line 22, leave out <step specified in that notice> and insert <relevant step>

#### **Mairi Gougeon**

18 In section 11, page 12, line 24, leave out <step> and insert <decision notice>

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### **Mairi Gougeon**

- 20 In section 11, page 13, line 34, leave out from <take> to <on> in line 35 and insert <serve a decision notice or to specify any relevant step in it—  
(a) is materially affected by>

### **Mairi Gougeon**

- 21 In section 11, page 14, line 2, at end insert—  
<(ba) make an order varying the decision notice to permit a different relevant step to be taken in relation to the animal (including by varying a relevant step specified in the notice or by substituting for it another relevant step),>

### **Mairi Gougeon**

- 22 In section 11, page 14, leave out lines 6 and 7

### **Mairi Gougeon**

- 32 In section 11, page 15, line 13, after <32D(6)(a)> insert <or (ba) which results in a step mentioned in section 32A(2)(b) or (c) being permitted>

### **Mairi Gougeon**

- 37 In section 11, page 15, line 37, leave out from <prevents> to <taken,> in line 38 and insert <results in no relevant step being permitted (other than a step mentioned in section 32A(2)(a)),>

### **Mairi Gougeon**

- 40 In section 11, page 16, line 15, after <32D(6)(a)> insert <or (ba) which results in a step mentioned in section 32A(2)(b) or (c) being permitted>

## **Powers on possession: interaction with existing court procedures**

### **Mairi Gougeon**

- 15 In section 11, page 11, line 22, at end insert—  
<( ) Subsection (5) is subject to section 32E(7).>

### **Mairi Gougeon**

- 19 In section 11, page 12, line 31, at end insert—  
<( ) But see sections 32E(6) and 32F(5) which make further provision for when a decision notice may and may not be served.>

### **Mairi Gougeon**

- 23 In section 11, page 14, line 20, leave out <The following provisions of this section> and insert <Subsections (2) to (5) and (7)>

### **Mairi Gougeon**

- 25 In section 11, page 14, line 22, after <animal> insert <(whether or not a step mentioned in section 32A(2)(a) is also specified)>

**THIS IS NOT THE MARSHALLED LIST**

**Mairi Gougeon**

- 26 In section 11, page 14, line 23, leave out <Subject to subsection (3), an> and insert <An>

**Mairi Gougeon**

- 27 In section 11, page 14, line 24, leave out <may not be made after> and insert <—  
(a) may be made before>

**Mairi Gougeon**

- 28 In section 11, page 14, line 26, leave out from beginning to <application> in line 27 and insert—  
<(b)>

**Mairi Gougeon**

- 29 In section 11, page 14, line 32, leave out from <prevents> to <taken,> in line 33 and insert <results in no relevant step being permitted (other than a step mentioned in section 32A(2)(a)),>

**Mairi Gougeon**

- 30 In section 11, page 15, line 4, leave out <(2)> and insert <(2)(a)>

**Mairi Gougeon**

- 31 In section 11, page 15, line 8, leave out <(2)> and insert <(2)(a)>

**Mairi Gougeon**

- 33 In section 11, page 15, line 16, leave out <the relevant step specified in the decision notice> and insert <a relevant step (other than a step mentioned in section 32A(2)(a))>

**Mairi Gougeon**

- 34 In section 11, page 15, line 29, leave out <The following provisions of this section> and insert <Subsections (2) to (4)>

**Mairi Gougeon**

- 36 In section 11, page 15, line 31, after <animal> insert <(whether or not a step mentioned in section 32A(2)(a) is also specified)>

**Mairi Gougeon**

- 38 In section 11, page 16, line 6, leave out <32E(2)> and insert <32E(2)(a)>

**Mairi Gougeon**

- 39 In section 11, page 16, line 10, leave out <32E(2)> and insert <32E(2)(a)>

**Mairi Gougeon**

- 41 In section 11, page 16, line 18, leave out <the relevant step specified in the decision notice> and insert <a relevant step (other than a step mentioned in section 32A(2)(a))>

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### **Powers on possession: treatment of proceeds of sale**

#### **Mairi Gougeon**

16 In section 11, page 11, line 24, after first <the> insert <rights and>

#### **Mairi Gougeon**

54 In section 11, page 18, line 24, after <section> insert <and in sections 32HA and 32K>

#### **Mairi Gougeon**

58 In section 11, page 18, line 31, at end insert—

#### **<32HA Application of proceeds of sale**

- (1) This section applies where—
  - (a) a relevant step specified in the decision notice is the step mentioned in section 32A(2)(b), and
  - (b) that step is taken.
- (2) Any proceeds of sale of the animal are to be applied by the authorised person in the following order—
  - (a) to meeting any liability of the relevant owner to reimburse any relevant expenses,
  - (b) to meeting any liability of the authorised person to pay any compensation amount to the relevant owner.
- (3) The relevant owner's entitlement to the compensation amount is instead of any entitlement any owner has to any proceeds of sale of the animal.>

#### **Mairi Gougeon**

62 In section 11, page 20, line 15, at end insert—

- <(3) An order under subsection (1) may include such other provision the court considers appropriate, including for the disposal of any proceeds of sale which would otherwise be applied under section 32HA(2)(b) to meet the authorised person's liability to pay the compensation amount to the relevant owner.
- (4) The Scottish Ministers may by regulations make provision for or in connection with the disposal of any proceeds of sale under subsection (3).
- (5) Regulations under subsection (4) may modify any enactment (including this Act).>

### **Powers on possession: minor and technical drafting changes**

#### **Mairi Gougeon**

17 In section 11, page 12, line 5, leave out <protected>

#### **Mairi Gougeon**

24 In section 11, page 14, line 22, leave out <an> and insert <a protected>

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### **Mairi Gougeon**

35 In section 11, page 15, line 31, leave out <an> and insert <a protected>

### **Mairi Gougeon**

46 In section 11, page 18, line 6, after second <the> insert <protected>

### **Mairi Gougeon**

51 In section 11, page 18, line 17, leave out <referred to> and insert <mentioned>

### **Mairi Gougeon**

56 In section 11, page 18, line 30, after <or> insert <, where the authorised person is an individual,>

### **Mairi Gougeon**

61 In section 11, page 20, line 13, after first <the> insert <protected>

## **Powers on possession: service of notices**

### **Mairi Gougeon**

42 In section 11, page 16, line 41, at end insert—

- <( ) Before serving a compensation notice, an authorised person must—
- (a) make reasonable enquiries to establish the whereabouts of the relevant owner of the animal, or
  - (b) be satisfied that such reasonable enquiries have been made by another person.>

### **Mairi Gougeon**

43 In section 11, page 17, line 8, at end insert—

- <(c) such other method as the court, on the application of the authorised person, determines.>

### **Mairi Gougeon**

44 In section 11, page 17, line 28, at end insert—

- <( ) In this section, “court” means the sheriff.>

### **Mairi Gougeon**

63 In section 11, page 20, line 22, after <effected> insert <(including how service may be effected other than in accordance with section 32C(2) or 32G(2))>

## **Powers on possession: calculation of compensation amount**

### **Mairi Gougeon**

45 In section 11, page 18, line 5, after <is> insert <an amount equivalent to>

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**Mairi Gougeon**

- 47 In section 11, page 18, line 6, leave out from <between> to <after> in line 8 and insert <caused by the>

**Mairi Gougeon**

- 48 In section 11, page 18, line 9, after <expenses> insert <mentioned in subsection (4)(b)>

**Mairi Gougeon**

- 49 In section 11, page 18, line 12, after <is> insert <an amount equivalent to>

**Mairi Gougeon**

- 50 In section 11, page 18, line 16, at end insert <, and  
( ) any proceeds of sale of the animal,>

**Mairi Gougeon**

- 52 In section 11, page 18, line 18, leave out <mentioned in subsection> and insert <referred to in subsections (2) and>

**Mairi Gougeon**

- 53 In section 11, page 18, line 21, leave out from <which> to <of> in line 22 and insert <to the extent they have not been—  
(i) reimbursed by or on behalf of the relevant owner, or  
(ii) deducted from any amount in accordance with subsection (2) or (3) in relation to>

**Mairi Gougeon**

- 55 In section 11, page 18, line 28, at end insert—  
<( ) the reasonable costs of taking a relevant step specified in a previous compensation notice in respect of the animal,>

**Mairi Gougeon**

- 57 In section 11, page 18, line 30, leave out from <and> to end of line 31

**Mairi Gougeon**

- 60 In section 11, page 20, line 6, at end insert—  
<(7) Where the authorised person is unable to pay the compensation amount in accordance with subsection (5) (because the relevant owner has not provided the bank account details mentioned in that subsection or for some other reason), the authorised person may apply to the court for an order as to the disposal of the compensation amount.  
(8) In subsections (6)(b)(iv) and (7), “court” means the sheriff.>



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**Powers on possession: rights to be heard on appeal**

**Mairi Gougeon**

**59** In section 11, page 18, line 42, at end insert—

<(3A) A person is entitled to be heard in relation to an appeal under subsection (1) if the person is—

- (a) an authorised person,
- (b) an inspector (if not an authorised person),
- (c) a constable who took the animal into possession under section 32 (if not an authorised person).>



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