

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

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Introduction

Proposals to increase maximum penalties for cruelty to animals in England were stymied last year by the prorogation and subsequent dissolution of Parliament.¹ A government-supported private member's bill² has now revived these proposals 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 Union³ has been postponed until after the transition period and 'when Parliamentary time allows'.⁴ Meanwhile, the Scottish Government and the 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.

New Animals and Wildlife Bill

The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill (the bill) was introduced to the Scottish Parliament on 30 September 2019 and completed its parliamentary progress on 17 June 2020.⁵ The original bill amended the Animal Health and Welfare (Scotland) Act 2006 (the 2006 Act) and six wildlife-related acts and regulations,⁶ increasing penalties for offences involving cruelty to animals and breaches of conservation regulations.⁷ It introduced fixed penalty notices (FPN) for certain animal welfare and animal health offences,⁸ with provision for FPN for wildlife offences added at Stage 2.^{9, 10} The bill also removed obstacles to the conviction of offenders who harm service animals¹¹ and created essential measures for the care and disposal of seized animals without the need for a court order.¹²

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) Com-

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

2 Department for Environment, Food & Rural Affairs and The Right Honourable Theresa Villiers MP, 'Press release: Government announces support for Animal Welfare (Sentencing) Bill in Parliament' (UK Government, 2020) <<https://www.gov.uk/government/news/government-announces-support-for-animal-welfare-sentencing-bill-in-parliament>> accessed 7 July 2020.

3 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.

4 Response by Victoria Prentis MP to Written Question 33445, 21 April 2020 < <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-03-23/33445/>>

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

6 Animal Health and Welfare (Scotland) Act 2006 (asp 11); Wildlife and Countryside Act 1981; Protection of Badgers Act 1992; Conservation (Natural Habitats, etc) Regulations SI 2716/1994; Deer (Scotland) Act 1996; Wild Mammals (Protection) Act 1996; Protection of Wild Mammals (Scotland) Act 2002 (asp 6).

7 SP Bill as introduced (n 5), ss 1-2 and 4-10.

8 Ibid, ss 2 and 4.

9 Stage 2 of the Scottish Parliament's legislative procedure is broadly equivalent to committee stage at Westminster

10 SP Bill 56 Animals and Wildlife (Penalties, Protections and Powers) (Scotland) SP Bill [as amended at Stage 2] Session 5 (2020) s 10A.

11 Ibid, s 3.

12 Ibid, ss 11-13.

mittee 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.'¹³ The primary aims of the 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.¹⁴

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.¹⁵ As a consequence, the Scottish Government has now committed to carrying out research into such programmes.¹⁶

Amendments to the Animal Health and Welfare (Scotland) Act 2006

The 2006 Act is the main legislation protecting

13 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> accessed 8 November 2019.

14 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) 1-2 <<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12328&mode=pdf>> accessed 8 November 2019.

15 Scottish Parliament, 'Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: 1st Marshalled List of Amendments for Stage 2' (2020) 14-15 (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>> accessed 10 July 2020; Scottish Parliament, 'Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: Marshalled List of Amendments for Stage 3' (2020) 9 (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>>.

16 See, for example, Eve Massie, 'Scottish Government announces plans to explore the value of empathy training for offenders against animals' (OneKind, 2020) <<https://www.onekind.scot/scottish-government-announces-plans-to-explore-the-value-of-empathy-training-for-offenders-against-animals/>> accessed 10 July 2020.

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.¹⁷ These resulted in 41 custodial and 147 community sentences.¹⁸ The remaining convictions resulted in fines.¹⁹ It has been noted by the Scottish Government that all but the most serious animal welfare offences are a low priority when scheduling court cases.²⁰ Public and media criticism has also tended to question whether the length of sentence in serious cases matches the severity of the crime.²¹ The community payback order often used by the courts for animal cases has been described by Scottish opposition parties as 'soft touch justice', although this may be a misunderstanding regarding the status of such disposals.²²

Campaigners across the UK have called repeatedly in recent years for custodial sentences to be increased.²³ 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 pris-

17 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.

18 Ibid (Official Report).

19 Ibid (Official Report).

20 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

21 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.

22 "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.

23 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.

on sentence²⁴ as emblematic of the inadequacy of the current sentencing options. The policy memorandum attached to the bill 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'.²⁵

Accordingly, section 1 of the bill increases the penalties for offences under section 19 (unnecessary suffering) and section 23 (animal fights) of the 2006 Act. Procurators Fiscal (Scottish public prosecutors) are given discretion as to whether to prosecute under solemn procedure, which may lead to a trial on indictment before a jury; 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.

Fixed penalties for animal welfare, animal health and wildlife offences

Sections 2, 4 and 10A of the bill as passed provide for the introduction of FPN for minor offences under the 2006 Act, the Animal Health Act 1981, parts of the Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, and the Deer (Scotland) Act 1996. Other enactments may be added where Scottish Ministers consider these relevant. The 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.'²⁶

24 2006 Act consultation (n 20).

25 Scottish Parliament, 'Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: Policy Memorandum' (2019) <https://www.parliament.scot/S5_Bills/Animals%20and%20Wildlife%20Bill/SPBill56PMS052019.pdf> accessed 10 July 2020.

26 Ibid.

The bill 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.²⁷ Much will depend, therefore, on the detail of the regulations.

"Finn's Law"

Section 19(4)(c)(ii) of the 2006 Act allows 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 therefore the attack does 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.²⁸ 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.²⁹

Public concern regarding claims of self-defence has been heightened by the English case of Finn, a police dog who was stabbed while defending his handler.³⁰ 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 coverage³¹ and resulted in a successful Private Member's Bill at Westminster.³² In Scotland too, the campaign attracted public and political sup-

27 Ibid.

28 Ibid.

29 Ibid, 8.

30 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).

31 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

32 Animal Welfare (Service Animals) Act 2019.

port³³, even though 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.³⁴ Nonetheless, the Scottish Government saw fit to follow Westminster's lead by including additional protections for service animals in the bill. Section 3 of the bill introduces sections to the 2006 Act providing that arguments for self-defence are to be disregarded in the case of service animals. Service animals are defined as those under the control of a constable or prison officer on duty at the time of the attack.

This limited definition 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.³⁵ The government responded that it was not aware of any such cases. They 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.'³⁶

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.³⁷

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.³⁸ Nonetheless, most such groups agree that consistent and appropriate penalties for what can be severe insults to welfare or conservation are to be supported. Accordingly, animal welfare and conservation groups widely welcomed the introduction 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.'³⁹

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.⁴⁰ The Poustie Review recommended, among other things, that: 'an appropriate range of penalties should be available to the courts to ensure maximum deterrent impact to deal with the range of offenders, from corporate entities to individuals with few or no resources'.⁴¹

Addressing this, sections 5 to 10B provide increased maximum penalties for around 60 dif-

33 See, for example, Scottish Government press release 7 September 2019, <<https://www.gov.scot/news/animal-welfare-bill-will-protect-service-animals/#:~:text=Minister%20meets%20Finn%20the%20police,otherwise%20known%20as%20Finns%20Law.>> accessed 13 July 2020.

34 Policy Memorandum (n 25).

35 ECCLR Committee Official Report (n 17).

36 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> accessed 7 July 2020.

37 Policy Memorandum (n 25) s 16.

38 Wild Animal Welfare Committee, 'Activity Review 2016–2018' <http://www.wawcommittee.org/images/resources/WAWC_activity_review_2018-final_print.pdf> accessed 10 July 2020.

39 Policy Memorandum (n 25).

40 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).

41 Ibid 65.



ferent offences.⁴² 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 sum-

⁴² These offences are found in: Wildlife and Countryside Act 1981, sections 1, 5-11 and 14; Protection of Badgers Act 1992, ss 1-3; Conservation Regulations SI 2716/1994, ss 39 and 41; Deer (Scotland) Act 1996, ss 17, 21 and 22; Wild Mammals (Protection) Act 1996 s 1; Protection of Wild Mammals (Scotland) Act 2002 (asp 6) s 1; and Marine (Scotland) Act 2010 (asp 5) s 104.

mary 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. There are only ten mounted fox hunts in Scotland but their activities remain controversial. Meanwhile, defects in the Protection of Wild Mammals (Scotland) Act 2002 have rendered it almost impossible to enforce.⁴³ Maximum penalties will now increase

⁴³ 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.

and solemn procedure (see II.A above) becomes 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 Bony in his Scottish Government-commissioned review of the 2002 Act.⁴⁴ 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'.⁴⁵

New wildlife offences: seals, mountain hares and vicarious liability

A surprising development occurred at Stage 3 of the bill. Stage 3 is broadly equivalent to third reading at Westminster, although it provides rather greater opportunity for significant late amendments. In this case, the Scottish Government introduced substantive amendments to change the seal licensing regime, effectively banning the shooting of seals. Currently, under part 6 of the Marine (Scotland) Act 2010, it is an offence to kill, take or injure a seal, unless to relieve its suffering or by virtue of a seal licence.⁴⁶ Grounds for granting licences include protecting the health and welfare of farmed fish and the prevention of serious damage to fisheries or fish farms.⁴⁷ Both of these grounds will now be repealed.

These changes were made so that Scotland can comply with the US Marine Mammal Protection Act 1972.⁴⁸ This act requires fish exporting countries to ensure that their regulations are comparable to US marine mammal protection standards. The deadline for a 'comparability finding' falls in March 2021 and, without this, Scotland could lose access to a lucrative market for its

salmon.⁴⁹ 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'.⁵⁰

Animal welfare and conservation organisations welcomed the new measures, but pointed to a recent rise in reported licensed shooting and the danger of further increases prior to implementation of the legislation.

The extension of the scope of the bill at Stage 3 opened the floodgates 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. This amendment 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 support⁵¹.

By contrast, throughout the course of the bill, MSPs had been discussing vicarious liability, introduced under the Wildlife and Natural Environment (Scotland) Act 2011⁵² for the killing or taking of wild birds.⁵³ Amendments were lodged seeking to extend this provision for offences against birds, cruelty to wild mammals and the destruction of badger setts.⁵⁴ The only one of

44 Ibid (Bonomy review), 79.

45 Ibid.

46 Marine (Scotland) Act 2010 (asp 5) ss 104-109.

47 Ibid, s 110 (f) and (g).

48 16 USC 1361 (US).

49 Rural Economy and Connectivity Committee, 'Salmon farming in Scotland' (2018) paragraph 302 <<https://digitalpublications.parliament.scot/Committees/Report/REC/2018/11/27/Salmon-farming-in-Scotland#Deterring-marine-predators>>

50 Letter from Mairi Gougeon (n 36).

51 See comments by Mairi Gougeon MSP, Stage 3 Amendment 30, Scottish Parliament, 'Official Report: Chamber Wednesday 17 June', session 5 <<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12700&i=114899>> accessed 13 July 2020

52 Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) s 24.

53 For example, see question from Mark Ruskell MSP to Leila Fitzgerald, Scottish Government in ECCLR Committee Report (n 19), 6-7 and 14-15.

54 Scottish Parliament, 'Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: Marshalled List of Amendments for Stage 3' (2020) n 15 (amendments 1, 36 to 40, 53, 54) .

these to succeed 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.

Additional powers for taking possession of animals

Section 11 is the most complex part of the bill. It may also be the part with the greatest direct impact on animal welfare in Scotland.

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. Section 34 requires a court order before they can be re-homed, sold or destroyed. Thus, if an animal was taken into possession and the owner refused voluntarily to sign over ownership, the only way in which enforcement authorities could dispose of the animal, for example by re-homing it, was by seeking an appropriate court order.

The bill adds twelve new sections (32A to 32L) to the 2006 Act. These additions enable 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. In other words, the disposal will take effect administratively, unless the owner decides to challenge it, in which case it will go to court. Under the previous arrangement, the onus was on the enforcement agency to demonstrate why an order should be made; now the onus will be on the owner to demonstrate why the disposal should not happen.

If there is no appeal against notice of the intended measures, the relevant agency will be able to transfer the animal appropriately. Provision is made for compensation, but this is unlikely to be available if the owner is found guilty of a welfare offence.

The new powers are intended to protect animals 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.⁵⁵

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 throughout the bill's progress. These included protection for cephalopods and crustaceans,⁵⁶ Scottish SPCA powers to investigate wildlife offences,⁵⁷ electronic training collars and pet theft,⁵⁸ the use of acoustic deterrence devices to discourage the presence of seals,⁵⁹ and the need to protect beavers from persecution.⁶⁰ 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. Nonetheless, other commitments have been made, including new regulations under the 2006 Act to cover animal sanctuaries and re-homing activities, breeders of dogs, cats and rabbits, and pet sales.⁶¹ A Scottish version of "Lucy's Law" will aim to prevent the third-party sale of young cats and dogs.⁶² Members' Bills have also been

55 For comments by Michael Flynn of the Scottish SPCA, see 'Response 1004594659 to the Animal Health & Welfare Act Amendment Consultation 2019' (Scottish Government) <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.

56 For example, see comments by Libby Anderson in 'Response 153112057 to Animal Health and Welfare (Scotland) Act Amendment Consultation 2019' (Scottish Government) <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=OneKind&uuld=153112057> accessed 8 November 2019.

57 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> accessed 8 November 2019.

58 Stage 3 amendments (n 17), amendment 59.

59 Ibid, amendment 55A.

60 Ibid, amendment 56.

61 Scottish Government, 'Protecting Scotland's Future: the Government's Programme for Scotland 2019-2020' (3 September 2019) 88-89 <<https://www.gov.scot/publications/protecting-scotland-s-future-governments-programme-scotland-2019-20/>> accessed 8 November 2019.

62 Ibid. <https://beta.parliament.scot/bills/dogs-protection-of-livestock-amendment-scotland-bill>>

lodged covering the sale and transfer of dogs⁶³ and livestock worrying.⁶⁴ Implementation of the Bonomy recommendations on foxhunting is expected before the end of the session.⁶⁵ A Member's Bill offering more comprehensive protection for foxes and hares is also in the pipeline.⁶⁶

Scottish Animal Welfare Commission

The creation of the Scottish Animal Welfare Commission is potentially the most significant of all the developments currently taking place in Scotland.⁶⁷ This commission is an independent expert group chaired by Professor Cathy Dwyer to advise the Scottish Government on companion and wild animal welfare issues.⁶⁸ The commission was established under section 36 of the 2006 Act to consider and provide advice on the welfare of protected animals, defined in section 17(1)(b) as 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'⁶⁹ of sentience in the years following Brexit. It will formulate some of its own work plan but it must provide an annual report on how the welfare needs of sentient animals are considered in legislation and policy development in Scotland.⁷⁰

Conclusion

This is an exciting time to be working on animal welfare policy in Scotland. Through its Scottish steering committee, A-law responded to the public consultation on the bill,⁷¹ 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.

63 Welfare of Dogs (Scotland) Bill, Christine Grahame MSP <<https://beta.parliament.scot/bills/welfare-of-dogs-scotland-bill>>

64 Dogs (Protection of Livestock) (Amendment) (Scotland) Bill, Emma Harper MSP <<https://beta.parliament.scot/bills/dogs-protection-of-livestock-amendment-scotland-bill>>

65 Bonomy review (n 43).

66 For further information, see 'Proposed Protection and Conservation of Wild Mammals (Scotland) Bill (Scottish Parliament, 2019) <<https://www.parliament.scot/parliamentarybusiness/Bills/112079.aspx>> accessed 10 July 2020.

67 Protecting Scotland's Future (n 64) 88.

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

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

70 SP Deb g (n 68).

71 The responses to the call for submissions can be found at 'Animals and Wildlife (Scotland) Bill: Published Responses' (Scottish Parliament) <<https://yourviews.parliament.scot/ecclr/animal-welfare/>> accessed 10 July 2020.