

Annex A – background to the increase in the maximum sentence for animal cruelty offences

The text of the [Animal Welfare \(Sentencing\) Act 2021](#) is as follows:

1 Mode of trial and maximum penalty for certain animal welfare offences

(1) [Section 32](#) of the [Animal Welfare Act 2006](#) (post-conviction powers: imprisonment or fine) is amended as follows.

(2) In [subsection \(1\)](#) (penalty for offence under any of [sections 4, 5, 6\(1\) and \(2\), 7 and 8](#) of the [Animal Welfare Act 2006](#)), for the words from "on summary conviction" to the end substitute

"—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both."

(3) After [subsection \(4\)](#) insert—

"(4A) In relation to an offence committed before the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, the reference in subsection (1)(a) to 12 months is to be read as a reference to 6 months."

(4) In [subsection \(5\)](#), omit "(1)(a)".

A [Commons Library Briefing of 10 March 2021](#) sets out the background to and the history of the legislation. It gives the following information on sentencing trends:

In 2018, 633 people were sentenced for offences under sections 4 to 8 of the Animal Welfare Act 2006 in England and Wales. Of these, 65(10%) were sentenced to immediate custody. In each of the past 10 years, between 6% and 11% of people convicted of these offences were sentenced to immediate custody.

Sentencing guidelines for animal cruelty were reviewed in April 2017 with the aim of ensuring "that the most serious cases of animal cruelty receive appropriate severe sentences, within the available maximum penalty".

Custodial Sentences for Offences Under Sections 4-8 of the Animal Welfare Act 2006

England and Wales

	2010	2011	2012	2013	2014
Proceeded against	1,095	1,306	1,429	1,295	1,039
Found guilty	874	1,028	1,132	1,022	814
Sentenced	875	1,027	1,132	1,021	815
<i>of which:</i>					
Total Immediate Custody	52	87	108	84	82
% of total sentenced	6%	8%	10%	8%	10%
<i>of which:</i>					
Less than 3 months	29	47	39	32	33
3 months to less than 6 months	22	38	66	47	48
6 months	1	2	3	5	1
Continued...	2015	2016	2017	2018	2019
Proceeded against	800	768	744	799	717
Found guilty	622	585	607	635	567
Sentenced	624	585	608	634	570
<i>of which:</i>					
Total Immediate Custody	58	63	50	65	63
% of total sentenced	9%	11%	8%	10%	11%
<i>of which:</i>					
Less than 3 months	22	27	18	21	23
3 months to less than 6 months	33	33	30	43	36
6 months	3	3	2	1	3

Source: Ministry of Justice, Outcomes by Offence Data Tool, May 2020

Second Reading took place on 23 October 2020. Introducing the Bill, its sponsor, Chris Loder MP (Con), set out how it would amend the sentencing currently available to courts under the under the Animal Welfare Act 2006.

I am pleased to say that the Bill introduces one of the toughest punishments in the world and will bring us into line with the maximum penalties available in other Commonwealth countries, including those in Australia, Canada, New Zealand and India, which are all at five years' imprisonment. With this Bill, we will lead the way in Europe on animal sentencing, where the average custodial sentence for animal welfare offences is currently just two years. It is a simple, yet vital measure that will ensure perpetrators who harm an animal by, for example, causing unnecessary suffering, mutilation or poisoning, face the full force of the law. That includes cases of systematic cruelty, such as the deliberate, calculating and callous behaviour of ruthless gangs who use dog fighting to fuel organised crime. The Bill will mean that the courts will have sentences at their disposal commensurate with the most serious cases, so that the punishment fits the crime. This will send a clear signal.

Shadow Secretary of State, Luke Pollard (Lab), moved amendment 1 in clause 127 which would require the seriousness of an offence to be increased in cases where a person found guilty had also filmed the offence or posted a video online of themselves committing the offence. He explained that the reason was to stop encouraging others from repeating similar acts. This simple amendment would make it a more serious animal cruelty offence for the

purpose of sentencing if the guilty person had filmed themselves committing the abuse. In a digital age, we see more and more cases of people filming abuse of animals, partly for their own perverse enjoyment, partly because they want to share the film on social media, and partly because they fail to recognise that in so doing they encourage others to do the same.

Luke Pollard went on to give examples of specific cases of animal cruelty that had been posted online and highlighted research from the RSPCA that showed “at least 46% of young people have witnessed animal cruelty: 28% have seen it on TV or in a film, and 18% have witnessed it on social media.”

In response, Victoria Prentis (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs) commented that the sentencing guidelines, drawn up by the Sentencing Council had been reviewed in 2017 after public consultation. She went on to say that they include guidelines on the “the use of technology to publicise or promote cruelty” which is already considered to be an aggravating factor. She also highlighted Section 127(1) of the Communications Act 2003 which, “creates a specific offence of sending grossly offensive, indecent, obscene or menacing messages over a public electronic communications network.” In her concluding remarks the Minister stated that:

...there are existing options to ensure that the offenders who film and upload or distribute footage of their animal cruelty are met with an appropriate response. This is a horrific crime, and filming it to share with others is beyond comprehension. We will discuss this matter further with the Sentencing Council, and when it reviews the guidelines we will ensure that this point is raised during the public consultation. On that basis, I ask the hon. Gentleman not to press the amendment.

Luke Pollard withdrew the amendment explaining that the opposition would be seeking to explore it further on Report.

The Explanatory Notes state as follows:

Overview of the Bill

1. The Bill increases the maximum penalty for specific offences related to animal welfare in England and Wales. It does so by extending the current maximum penalty, specified under the Animal Welfare Act 2006, of six months and/or an unlimited fine to a penalty of five years and/or an unlimited fine. These offences therefore become triable either way, and may be heard in a magistrates' court or the Crown Court.

Policy background

2. This Bill amends the Animal Welfare Act 2006 (“the Act”). The Act sets out a maximum penalty of six months imprisonment and/or an unlimited fine for the more serious 'prevention of harm' offences. There are five such offences under section 32(1) of the Animal Welfare Act 2006:
 - a. causing unnecessary suffering (section 4, Animal Welfare Act 2006);
 - b. carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
 - c. docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);
 - d. administering a poison to an animal (section 7, Animal Welfare Act 2006); and
 - e. involvement in an animal fight (section 8, Animal Welfare Act 2006).
3. There have been a number of recent cases related to these offences in which judges have expressed a desire to impose a higher penalty than that currently provided for under the Animal Welfare Act 2006. There is a particular desire to increase the

penalties available in the case of crimes that relate to deliberate, calculating and sadistic behaviour.

4. Members of Parliament, wider stakeholders and the public have also sought to increase maximum penalties for animal welfare offences so that they exceed the current European average of 2.04 years. The Bill meets both of these needs by increasing the maximum penalties for the most serious offences under the Animal Welfare Act 2006 to five years and/or an unlimited fine.
5. The increase in maximum penalties will not apply to those offences listed in section 32(2) of the Animal Welfare Act 2006: not taking reasonable steps to ensure welfare (section 9); breach of a licence condition (section 13(6)); and breach of a disqualification order (section 34(9)). These offences are generally considered less serious, and rarely receive the existing maximum penalty. Moreover, the level of fine applied to these offences has recently been increased since the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which converted existing level 5 fines into unlimited fines.
6. The draft sentencing clauses were published for public consultation and pre-legislative scrutiny on 12 December 2017 as part of the Government's Animal Welfare (Sentencing and Recognition of Sentience) Bill. The consultation closed on 31 January 2018 and the summary of responses document published on 7 August 2018. Defra received 9,084 direct responses to the consultation. 70% of respondents agreed with the new maximum penalties. In the summary of responses document, Government committed to bring forward the sentencing clauses in a separate Bill as recommended by the EFRA Committee's scrutiny report on the Bill.
7. On 26 June 2019, the Animal Welfare (Sentencing) Bill was introduced to Parliament in the House of Commons. Passage of the Bill beyond Committee Stage was disrupted due to Parliamentary activity at this time where it fell following prorogation and then later dissolution of Parliament.
8. Chris Loder MP introduced the Animal Welfare (Sentencing) Bill as a Private Member's Bill on 5th February 2020.

Legal background

9. The majority of the relevant legal background is explained in the policy background section of these Notes. Two additional legal issues are raised below, one in relation to the current drafting of section 32(1) of the Animal Welfare Act 2006, and the second in relation to the requirement to change the mode of trial.
10. The current drafting of section 32(1) of the Animal Welfare Act 2006 lists the maximum penalty as imprisonment for a term not exceeding 51 weeks or a fine, as opposed to the maximum imprisonment for a term not exceeding six months as discussed above. This is explained by section 32(5) of the Animal Welfare Act 2006. Section 32(5) provides that in relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in section 32(1)(a) to 51 weeks is to be read as a reference to six months. As at the date of the publication of the Bill, section 281(5) of the Criminal Justice Act 2003 has not been commenced. The maximum imprisonment term for offences under section 32(1) of the Animal Welfare Act 2006 therefore remains six months.
11. Magistrates' courts do not have the power to impose penalties greater than six months.¹ As a result of increasing the maximum penalty available for the offences under section 32(1) of the Animal Welfare Act 2006 to a period of five years it is necessary for the Bill to make these offences triable either way.

Territorial extent and application.

12. Clause 2 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. This Bill both extends and applies to England and Wales. The commentary on individual provisions (or groups of provisions) of the Bill includes a paragraph explaining their extent and application.
13. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. Issues concerning animal welfare in Wales are considered to be within the legislative competence of the National Assembly for Wales. The Bill requires a Legislative Consent Motion from the National Assembly for Wales. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Mode of trial and maximum penalty for certain animal welfare offences

14. Section 32(1) of the Animal Welfare Act 2006 provides that particular offences should carry a maximum penalty of 51 weeks imprisonment and/or a level 5 fine.
15. In practice, this is as a maximum penalty of 6 months and an unlimited fine. This is because section 32(5) specifies a maximum penalty of 6 months for offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003. To date, this section has not been commenced.
16. This clause changes the maximum penalty available for the following offences only:
 - a. Causing unnecessary suffering (section 4, Animal Welfare Act 2006);
 - b. Carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
 - c. Docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);
 - d. Administering a poison to an animal (section 7, Animal Welfare Act 2006);
 - and
 - e. Involvement in an animal fight (section 8, Animal Welfare Act 2006).
17. The existing maximum penalty, outlined above, is retained if the offender is summarily convicted. However offenders may now receive a higher penalty of up to 5 years imprisonment and/or an unlimited fine if they are convicted on trial by indictment.
18. Magistrates' courts do not have the power to impose penalties greater than six months. Section 154(1) of the Criminal Justice Act 2003 was to increase the maximum custodial sentence imposable by a magistrate's court to 12 months. Section 154(1) will be repealed by the Sentencing Act 2020 but an equivalent provision is contained in paragraph 24(2) of Schedule 22 to the 2020 Act. Section 32(4A) of the Animal Welfare Act 2006 inserted by this clause ensures that the appropriate penalties are available to magistrate's courts until the relevant provisions are commenced.

Clause 2: Extent, Commencement and Short Title

19. This clause provides for the Bill to extend to England and Wales; that the Bill will come into force two months after Royal Assent; and that the application of revised

maximum penalties is not retrospective and does not apply to offences committed before the Bill comes into force. The clause also specifies the short title of the Bill.

Commencement

20. The Bill is due to commence two months after Royal Assent.