

Sentencing Council meeting:	17 November 2023
Paper number:	SC(23)NOV05 – Wildlife offences
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1 ISSUE

- 1.1 Scoping the project on guidelines for wildlife offences.

2 RECOMMENDATIONS

- 2.1 That Council agrees to undertake pre-consultation stakeholder work to determine the problems (if any) to resolve in relation to sentencing wildlife offences.

3 CONSIDERATION

Wildlife crime - background

- 3.1 In its [2015 report on wildlife offences](#) (Law Com 362), the Law Commission observed:

“In the last two centuries wildlife legislation has developed in a piecemeal fashion, often in reaction to specific pressures on domestic legislation, whether local or international. The result is that the current legislation governing the control, exploitation, welfare and conservation of wild animals and plants in England and Wales has become unnecessarily complex and inconsistent...

We accept that a certain level of complexity is, in part, an inevitable consequence of the breadth of wildlife law. The natural environment is a complex system and the law concerning it needs to apply in a range of different situations and reflect a range of (potentially competing) interests. In many cases, however, there appears to be little obvious rationale for the existing complexity.” (paras 1.7-1.9)

- 3.2 The Law Commission recommended, among other things, the creation of a single statute to replace (at least) 12 existing pieces of primary legislation. However, as of today, there are no plans to consolidate the law in this way and the landscape across wildlife law

remains vast and overlapping. Indeed, Parliament continues to legislate for wildlife offences, prohibitions and penalties: see for example the Ivory Act 2018, the Glue Traps (Offences) Act 2022, and the Shark Fins Act 2023.

3.3 The United Nations Office on Drugs and Crime produced a [Wildlife and Forest Crime Analytic Toolkit Report](#) in 2021. Whilst acknowledging the UK's good record on wildlife protection, the report also picked up on the disparate nature of the criminal law on wildlife, and specifically mentioned sentencing:

“the absence of any sentencing guidelines across the entire country means that sentencing practice does not appear to present any sort of deterrent. Generally speaking, most sentencing was greeted with disappointment by the stakeholders interviewed during this assessment... there may be difficulty in creating guidelines given the absence of any discernible practice in the courts against which to calibrate and the fact that other areas of law are seen as requiring more urgent attention”

3.4 Indeed, there is limited case law on wildlife offences, with the majority of wildlife offending being tried summarily. [Noonan \[2010\] EWCA Crim 2917](#) upheld a sentence of 10 months for the export of elephant ivory and sperm whale teeth on the basis that:

“a serious deterrent sentence might stop the trade and prevent those who otherwise live law-abiding lives from committing these serious crimes...They are serious because they contribute to the illegal market. Without an illegal market there would be no opportunity or need for the capture of these endangered species from the wild. It is the market which feeds the destruction of these species. It is for that reason that significant and serious sentences ought to be passed for this type of offence.” [38]

In two other Court of Appeal cases, *Sissen* [2001] 1 W.L.R. 902 and *Lendrum* [2011] EWCA Crim 228, sentences of 18 months were substituted for initial sentences of 30 months for live bird importation and egg exportation respectively.

Scope

3.5 Despite the relative lack of precedent and the unwieldy nature of the criminal law framework, the National Wildlife Crime Unit (NWCU, which covers all of the UK) and the CPS do have clear priorities for tackling wildlife crime, which may provide a useful starting point for scoping a project on wildlife guidelines.

3.6 Purely for my own purposes, I split these under the three overall headings of 1) hunting/poaching; 2) cruelty; 3) conservation. In reality, these categories are porous, which will be something to consider later in the project in looking at harm. For now, a longlist of possible offences to consider in scope of wildlife guidelines might be:

1. Hunting/poaching

- Night Poaching Act 1828 (section 1)
- Game Act 1831 (section 30)
- Police, Crime, Sentencing and Courts Act 2022 (sections 63-64)
- Deer Act 1991 (sections 1-4 and 10)
- Hunting Act 2004 (section 1, section 5)

2. Cruelty

- Protection of Badgers Act 1992 (sections 1 to 5)
- Wild Mammals (Protection) Act 1996 (section 1)
- Glue Traps (Offences) Act 2022 (section 1) [subject to coming into force]

3. Conservation

- Wildlife and Countryside Act 1981
 - Sections 1 to 8 = birds
 - Section 9 = wild animals (see Schedule 5 for list)
 - Section 13 = plants
- The Conservation of Habitats and Species Regulations 2017
 - regulation 43 (animals),
 - regulation 47 (plants),
 - regulations 59-60 (licence related)
 - regulation 123-125 (obstruction of enforcement)
- The Control of Trade in Endangered Species Regulations 2018 (Schedule 1)
- Import/export offences under Customs and Excise Management Act 1979 (sections 50, 67-68)
- Ivory Act 2018 (section 12)

3.7 Hare coursing is worthy of particular mention. Depending on the circumstances of the offending, it can be charged under two offences in the Hunting Act 2004, under the Night Poaching Act 1828, the Game Act 1831, and two new offences of trespass and going equipped in the Police Crime Sentencing and Courts (PCSC) Act 2022. The maximum

penalty under the Hunting Act is a fine, but the other offences have had a maximum penalty of six months (or, rather, the current summary limit) since 2022.

3.8 The longstanding complaint had been that those convicted of hare coursing were subject only to a fine, inevitably low as they could claim limited means, and this was not a sufficient deterrent. This was said not to reflect the full harms of hare coursing which, in addition to the cruelty to the hare and impact on its population, will often involve criminal damage for farmers and landowners and threatening and abusive behaviour.

3.9 Alongside the increase in maximum penalties, the PCSC Act provided for recovery orders in hare coursing, requiring an offender to pay the costs of seizure and detention of dogs involved in the offence. Under section 66, offenders may also be subject to orders disqualifying them from owning and/or keeping dogs, breach of which is an offence, with a maximum penalty of a level 3 fine.

3.10 On cruelty, the maximum penalty under the Wild Mammals (Protection) Act 1996 remains at six months' imprisonment. By contrast, the maximum penalty for equivalent offending towards domesticated animals committed under the Animal Welfare Act 2006 was increased to five years in 2021, resulting in the Council revising the animal cruelty guidelines. That revision came into force earlier this year. New guidelines on non-domestic animal cruelty would highlight this significant disparity in the courts' sentencing powers.

3.11 The maximum penalties for import, export and trading in endangered species are higher, and (as seen from the case law) may well result in a prison sentence of at least several months. For example, the maximum penalty for an offence of buying or selling a specimen of a protected species under the Control of Trade in Endangered Species Regulations 2018, and for trading in ivory in breach of the Ivory Act 2018 is five years' imprisonment.

3.12 However, volumes for all these offences are generally low. **Annex A** sets out the volumes for adult offenders for relevant offences (where that is the primary offence), but excludes offences which cannot be distinguished from the offence codes, or where there have been no sentences imposed since 2010 (the latter of which includes offences under the Ivory Act, offences related to plants under the Wildlife and Countryside Act).

3.13 For many of the offences in scope there will be several years without a single sentence being imposed (at least as a principal offence). Hare coursing constitutes the most consistently sentenced of these offences: although declining over the past decade there are still at least 50 sentences imposed each year (and if assault or criminal damage is charged as the primary offence, there may be more). These have, of course, historically resulted in fines, although we may now start to see custody and community orders imposed.

3.14 The Scottish Sentencing Council is also embarking on a project related to environmental and wildlife guidelines. This has been delayed for some years due to its prioritising other projects, but it published a [literature review](#) in 2020 on the subject. Without definitive conclusions, this review did suggest there was some uncertainty and inconsistency in sentencing (at least in Scotland), with the hint that some sentencers did not take wildlife offending very seriously. Scotland does have some fields of interest less relevant to England and Wales (such as salmon poaching and conservation of freshwater pearl mussels), but there may be areas where the two councils can share intelligence where relevant.

Possible approaches

3.15 Given all the above, there are various ways in which we might approach a project on wildlife offences. One option would be to produce guidelines only for some offences: perhaps hare coursing, given the attention it has historically received and the new maximum penalties, and the import/export offences given their high maximum penalties, the relative lack of case law and the international interest.

3.16 Another option is to aim for wider coverage across the offences listed above: it may well be efficient for one guideline to cover a large number of offences where the harms and nature of the offending are similar. More radically, it may be that a guideline for, say, hare coursing does not focus on one or two particular offences, or even provide the usual stepped approach establishing categories of offending and starting points, but rather provide general guidance on the approach for the courts to take, and guidance on a typical totality exercise in such cases, highlighting the various ancillary orders available. There may even be a case for an overarching guideline on wildlife/rural offending.

3.17 In any case, given how complex the landscape is, I believe it would be best informed by more open discussion with groups with firsthand experience of investigating, charging, sentencing and being victims of these offences. The shape of the project so far has benefitted from early discussions with the CPS and Defra, but the options set out above should really be informed by more evidence from the National Wildlife Crime Unit, the Partnership for Action Against Wildlife Crime (PAW), the NPCC as well as rural police and sentencers.

3.18 Those conversations would risk expectations being raised that guidelines would inevitably increase sentence levels, and resolve all issues in relation to enforcement and detection. So whatever format they take, we would need to be clear that the increased consistency, transparency and clarity that should come from guidelines, does not necessarily result in more severe sentences and an associated deterrent effect.

Question 1: do you agree to conduct further, structured engagement with the agencies mentioned above and rural-based magistrates and district judges?

Question 2: subject to those discussions, are there any particular areas/offences that you would like to rule in or out of scope at this stage?

4 IMPACT AND RISKS

4.1 As set out above, volumes for these offences are low and we would not envisage a significant impact on prison and probation resources. However, we will want to be careful about the possibility of increasing numbers of even short custodial sentences, particularly in relation to hare coursing offences.

4.2 The risks of early discussions with stakeholders set out above hold for the project in general. Consultation could raise expectations from pressure groups that sentences should be increased across the board. The offences are also wide-ranging and relatively rare, so there is a risk that we do not (and cannot) fully understand the nature of the potential offending within scope. That should be mitigated to some extent by those early stakeholder discussions recommended above.

4.3 It is perfectly open to you and to the Scottish Sentencing Council to come to different conclusions about what offences should have guidelines, for the design of those guidelines to be different (with different culpability and harm factors, for example) and for sentence levels to be different. This is the case with the motoring guidelines which both councils have recently published. But stakeholders may scrutinise points of difference closely and flag the risk of “forum shopping” should one set be perceived to be more lenient.

5 EQUALITIES

5.1 Demographic data on these offences will be examined in due course. However, as most of these offences are dealt with summarily, data on ethnicity will likely be limited. Furthermore, due to the very low volumes of the offences examined, it may not be possible to draw any conclusions on differences between groups. We can ask the agencies if they have observed any particular trends in the demographics of offenders. From some reports, hare coursing is an activity connected with the traveller community, but certainly not exclusively so.

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Data has not been provided for offences where no offenders were sentenced.

Data could not be provided for some sections in legislation due to way offence codes are grouped in the published data.

Table 1: Number of adult offenders sentenced for specified hunting/poaching offences, 2012 to 2022

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Night Poaching Act 1828 (section 1)	33	26	34	55	54	28	36	14	17	4	8	16	10
Game Act 1831 (section 30 and 31)	129	195	187	167	145	72	72	76	78	32	51	72	31
Deer Act 1991 (sections 1-5, 10)	3	4	7	8	0	10	18	5	3	0	6	0	4
Hunting Act 2004	33	52	45	55	34	41	31	21	20	14	17	41	19

Table 2: Number of adult offenders sentenced for specified wildlife cruelty offences, 2012 to 2022

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Protection of Badgers Act 1992	23	23	29	25	11	14	13	6	8	14	9	5	12
Wild Mammals (Protection) Act 1996	0	1	0	0	0	1	4	1	0	0	1	0	0

Table 3: Number of adult offenders sentenced for specified conservation offences, 2012 to 2022

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Wildlife and Countryside Act 1981 sections 1-8 (birds)	17	23	27	17	12	19	12	14	19	16	14	9	13
Wildlife and Countryside Act 1981 section 9 (wild animals)	2	0	0	1	1	0	0	1	0	0	0	1	2
The Conservation of Habitats and Species Regulations 2017	0	0	3	3	2	3	3	6	4	5	1	2	2
The Control of Trade in Endangered Species Regulations 2018 (Schedule 1)	-	-	-	-	-	-	-	-	0	0	0	1	0

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