

# Review of the Animal Health and Welfare (Scotland) Act 2006



## Comments for Scottish Government Animal Welfare Team

OneKind welcomes the proposed review of the Animal Health and Welfare (Scotland) Act 2006 (“the Act”) and we are grateful for the opportunity to make suggestions at an early stage. The proposed approach is consistent with one of the recommendations in the OneKind Manifesto for elections to the Scottish Parliament in 2016, where we said:

*The Scottish Parliament should review implementation of the Act over the last ten years, with a focus on ensuring that the disposals available to the courts – penalties, disqualifications and therapeutic/educational programmes – reflect the seriousness of the crime and are consistently applied.*

We note that the review is intended to focus on a limited number of areas, and (subject to further detail becoming available) we support the proposals for:

- fixed penalty notices
- increased maximum penalties
- extension of the 6-month time-bar
- strengthening the status of compliance with relevant Guidance as evidence in some prosecutions.

We will comment on these proposals and add a few further suggestions at the end of this paper.

### **Fixed penalty notices**

OneKind would like to see local authorities resourced, empowered and legally obliged to enforce the main provisions of the Act. We therefore welcome the proposal for provisions for fixed penalty notices to aid local authority enforcement of lesser offences.

We are in no doubt that fixed penalty notices would be useful for local authorities, saving the time and resources that would otherwise be required for framing charges and taking cases to court. If the use of fixed penalty notices resulted in an overall increase in enforcement, that can only be a good thing.

We have three issues to raise for consideration in this area.

Firstly, local authorities already have a non-judicial mechanism available to them in the shape of statutory care notices, as provided by s.25 of the Act. However, as far as we know, local authorities do not make significant use of these. In the OneKind report *Animal Welfare in Scotland*, we noted:

*The use of s.25 care notices appears to vary widely across local authorities. Out of those local authorities that responded to our survey, most had not issued any notices in 2012, while others had issued dozens. The highest number reported was 58, resulting in one prosecution for breach of a care notice.*

These are figures from 2012 and we accept that things may have changed. We simply raise it as an example of the difficulty that local authorities appear to have had in making full use of the powers already allocated to them.

Secondly, we wonder whether there would be a risk that local authorities would start to see it as their role only to carry out enforcement in lesser offences. There is a possibility of a two-tier system developing, which would be a pity in view of the animal health and welfare expertise that exists among councils.

Thirdly, and most importantly, we feel that the potential benefits of this change will not materialise unless the legislation contains a mechanism to ensure that local authorities enforce the main provisions of the Act. We have recently discussed the lack of an obligation on local authorities to enforce with the Animal Welfare Team and made clear our view that councils need to be resourced if the Act is ever to function as it was intended.

Local authorities were intended to have a primary role in enforcing new and revised licensing provisions – most of which have still to be introduced - but they have no statutory obligation with regard to enforcement of the Act in general. Their use of the Act appears to be more in connection with farm animal cases (where they have other statutory obligations), with little involvement in cases involving domestic pets.

Currently, as the attached table of prosecutions broken down by reporting agency clearly shows, the 32 local authorities combined have been involved in far fewer prosecutions than either the police or the Scottish SPCA. The numbers of cases for the two main offences in the last five years (since 2010/11 judicial year) break down by reporting agency as follows:

**s.19(2)**

Local authorities – 21

Police – 26

Scottish SPCA – 151

**s.24**

Local authorities – 26

Police – 81

Scottish SPCA – 563

We accept that this is a slightly simplistic comparison, since a number of cases are carried over from year to year and many cases involve more than one agency. Quite often the Scottish SPCA, with its specialist knowledge of animal welfare legislation, reports cases that have been worked on by police and council officials as well.

It is also fair to say that prosecution is not the only indicator of effective enforcement. Nonetheless, we think it is important to be aware which agencies are the most, and least, active when it comes to reporting cases to the Crown Office and Procurator Fiscal Service (COPFS). The low number of local authority cases seems to be at odds with the original intention of the Act.

In Northern Ireland, prior to 2011, no single organisation in Northern Ireland was wholly responsible for the enforcement of non-farmed animal welfare legislation. The introduction of the Welfare of Animals Act (Northern Ireland) 2011 gave councils statutory powers to appoint inspectors to enforce animal welfare in respect of non-farmed animals and crucially, funding for the councils' animal welfare service was provided by the Department of Agriculture and Rural Development (DARD). We understand from the Review of the Implementation of the Welfare of Animals Act (Northern Ireland) 2011 Interim Report in February 2015 that there are no plans to change this.

We appreciate that there are difficulties surrounding the provision of Scottish Government funds for councils to enforce animal welfare legislation in Scotland, but we hope that these can be resolved. It is worth noting that the number of reports in relation to animal welfare received by the Police Service of Northern Ireland has reduced since councils took on their enforcement role in April 2012. There must therefore be an element of saving and, one would hope, greater efficiency in devolving responsibility further onto councils where there is already specialist knowledge of animal health and welfare.

We also wonder whether councils could increase their income from their licensing of animal establishments, and allocate some of these funds towards their general welfare enforcement function.

### **Increased maximum penalties**

The maximum penalties for offences involving cruelty or fighting are up to 12 months' imprisonment, a £20,000 fine, or both; while other offences attract up to 6 months' imprisonment, a Level 5 fine (currently £5,000), or both (s.46).

The available maximum penalties may be adequate for a straightforward case involving few victims or low level consequences, and where the summary process is appropriate. However, the penalty level and the summary process quickly fall short when a case involves multiple victims, extreme behaviour or repeat offending. In other areas of the justice system, such as offences against the person or property, these factors will justify a more severe penalty.

In addition, it needs to be noted that courts do not impose maximum penalties, for reasons that are outwith their control.

Courts are constrained by legislation and procedural rules, or by an individual's ability to pay a fine. Other factors that regularly reduce the penalties imposed in summary cases include a automatic 50% discount on short prison sentences, the possibility of a one-third discount for

an early guilty plea, and the possibility that 50% of the time may be spent on home detention with a tag. A maximum sentence of one year can therefore reduce to two months in prison.

Taking these factors into account makes it impossible for the sanction experienced by the individual actually to reflect the seriousness of the offence and the public abhorrence of cruelty to animals. The current average fine for animal abuse of just £139 and the average community service period of 3.2 days simply do not meet public expectations.

OneKind therefore strongly agrees that the penalties should be increased and would recommend raising them to the same level as the penalties recently agreed in Northern Ireland, following the Review of the Implementation of the Welfare of Animals Act (Northern Ireland) 2011 Interim Report. The maximum penalty for the most serious animal cruelty offences in Northern Ireland has now been raised from two years' imprisonment to five years.

A five-year prison sentence may appear draconian but the issues described above would continue to apply; and in any case the Scottish courts have not yet used the maximum penalties available to them.

It is widely accepted that a strict punishment regime, on its own, does not necessarily reduce the level of certain crimes. OneKind would therefore like to see more effort put into developing community-based disposals, with supervision directed at changing the offending behaviour. Therapeutic, educational and anger management programmes on a similar model to domestic violence initiatives would, we believe, make a positive difference and would also address the known implications of animal abuse for the safety of humans.

### **Post-conviction orders**

As part of the review of sentencing and penalties, we would like to recommend review of the post-conviction orders provided at ss. 39 – 41 of the Act. Given the vagaries of the sentencing process and the fact that it is not necessarily good social or judicial policy to send people to prison for short periods, such orders can be both practical and beneficial. We have already mentioned the potential use of supervision associated with behaviour management and treatment. The use of disqualification orders is even more important as it provides direct protection for animals.

It does appear that Scottish courts are considering disqualifications on a more regular basis than before, but we believe that this is inconsistent. The Scottish SPCA reported that it had seen 63 disqualification orders, including 12 life bans, arising from its cases during 2014. However, this number still represented less than half of the individual animal cruelty convictions in Scottish courts.

This seems at odds with the requirement at s.40(5) that “Where the court decides not to make a disqualification order in relation to a relevant offence, it must state its reasons.”

We are not sure that this is happening. We think it would be useful for the Scottish Government to examine whether the power to disqualify owners is fully understood by prosecutors and Sheriffs, and ascertain the frequency and length of disqualifications.

The requirement to consider a ban in relevant cases should be more clearly stated in the Act, and the provision could be further strengthened by requiring the statement of reasons to be given in open court.

### **Strengthened evidential status of compliance with statutory guidance**

OneKind does not have specific knowledge of the extent to which compliance or otherwise with statutory Codes of Practice and Guidance is relied on by either prosecution or defence in court. It does, however, seem sensible to increase the status of compliance as it is an objective measure which should be capable of proof, either way. We would like to see more Codes of Practice issued, covering more species of animals, and it goes without saying that we wish to see the Scottish Government retain ownership of such codes.

### **Further issues for consideration**

#### **Protected animals**

OneKind would suggest extending the scope of the Act to include decapod crustaceans and cephalopods within the definition of “animals”.

Scientific evidence strongly suggests that cephalopods (octopus, squid, cuttlefish and nautilus) and decapod crustaceans (lobster, crab, crayfish) have the capacity to experience pain and suffering.

A number of other jurisdictions including New Zealand, Queensland and the Australian Capital Territory have included all or some cephalopods and crustaceans in their basic animal welfare legislation. When the New Zealand Bill was being considered, the (then) Animal Welfare Advisory Committee and National Animal Ethics Advisory Committee considered evidence relating to the behavioural and physiological responses of various invertebrates to painful stimuli and the complexity of their nervous organisation, and concluded these were sufficient to recommend the inclusion of cephalopods and crustacea in the Act.

#### **Re-emphasise duty of care**

When it comes to enforcement, the “old” cruelty offence still dominates court proceedings. In 2013-14, 79 people were convicted of causing unnecessary suffering to animals, and only 16 of failing to ensure an animal’s welfare. We suggest that the reasons for this should be examined, and that if necessary the role of enforcers in promoting positive welfare should be re-emphasised and strengthened.

#### **Essential secondary legislation**

The Animal Health and Welfare (Scotland) Act 2006 gives powers to Scottish Ministers to introduce a wide range of secondary legislation to give full effect to the measures in the Act. A commitment was given in 2006 for new or updated regulations on pet shops, pet fairs and pet dealing, animal boarding kennels, dog breeding, riding establishments, animal sanctuaries and livery stables. Travelling circuses and electric shock collars were other potential subjects for secondary legislation.

Unless and until a meaningful suite of secondary legislation is delivered, the Act cannot fulfil its purpose of preventing animal suffering. In particular, the growth in internet trading of pets, the increased trade in exotics and the intensification of the breeding industry (whether it be cats, dogs, rabbits, hamsters, guinea pigs or reptiles) add up to a compelling case for an urgent review of pet vending legislation.

A central, transparent system to allow consumers to verify the origin of animals and minimum standards prior to purchase is urgently required.

OneKind appreciates that these matters are currently beyond the intended scope of review, but we raise them here in order to emphasise their continued importance.

### **Evidence gathering**

When we collected information for the OneKind report *Animal Welfare in Scotland*, a specific issue regarding evidence-gathering was raised by one local authority in response to our survey: “The Animal Health and Welfare (Scotland) Act 2006 powers section is overly convoluted and at odds with most other legislation enforced by local authorities. In the powers section, whilst allowing officers to inspect agricultural premises it requires that a warrant is obtained once evidence of an offence has been found. This is at odds with most other legislation that allows officers legally on a premises to gather evidence once an offence has been identified.”

We have no first hand knowledge of this issue but thought it worth raising in the context of the review, particularly if this procedural issue is proving an impediment to local authority enforcement.

### **Central register of convictions**

When the Act was originally drafted, there was an expectation that convictions under the legislation would be recorded on a central register – at the time, it was expected to use the Animal Health and Welfare Management and Enforcement System (AMES) database. We are aware that some local authorities engaged in a pilot scheme to implement this in 2011 but are not sure of its current status, nor whether other enforcement agencies are able to access the system.

Whether through AMES or a dedicated animal welfare offence register involving all enforcement agencies, we think it would be very valuable for authorities and other

appropriate relevant bodies to be able to access details of convictions, and even more importantly, to ascertain quickly whether individuals are banned from keeping animals.

We understand that the Northern Ireland review has considered access to conviction data for re-homing charities as well as enforcement bodies so that they can take appropriate steps to safeguard animals being re-homed. This has of course raised issues regarding freedom of information, data protection and human rights. We appreciate these difficulties and would stress that we are not recommending a publicly available register or any mechanism that could risk fuelling vigilantism. Nonetheless the appropriate sharing of information between authorities could expedite enforcement and prevent animals falling into the hands of people with a history of cruelty or negligence.

### **Animal welfare advisory body**

We would like Scottish Ministers to invoke the power at s.36 to create an animal welfare advisory body for Scotland. This would not cost a great deal for the Scottish Government to run and could make a real contribution to animal welfare policy development and legislation in terms of expertise, influence and energy.

**OneKind  
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