

# **Consultation on Proposals for the Use of Fixed Penalty Notices for Wildlife Offences in Scotland**

## **Analysis of Responses**

**March 2020**

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## **Introduction**

The aim of this report is to summarise the responses to the Scottish Government's targeted stakeholder consultation on Fixed Penalty Notices (FPN) for wildlife offences, which ran from 5 December 2019 to 19 January 2020.

In the consultation the Scottish Government sought to explore views on amending Scottish wildlife legislation to give Police Scotland the power to issue FPNs for wildlife offences which attract a maximum term (or less) of imprisonment of six months or a fine not exceeding level five (presently £5,000) on the standard scale or both.

A total of seven responses were received, two individual responses, and five from organisations (listed below):

- Law Society of Scotland
- OneKind
- Scottish Association for Country Sports (SACS)
- Scottish Land and Estates (SLE)
- Scottish Society for the Prevention of Cruelty to Animals (SSPCA)

## **Background**

The Animals and Wildlife (Penalties, Protections and Powers) Bill was introduced to Parliament in September 2019. It proposes to increase penalties for the most serious animal welfare and wildlife offences, as well as making various procedural changes.

In addition to increasing penalties, the Bill would also create flexible powers to allow various FPN regimes to effectively deal with a wide range of animal welfare offences.

Following introduction of the Bill the Scottish Government ran a targeted stakeholder consultation seeking views on extending these powers to allow FPNs for wildlife offences.

The consultation on proposals for FPN powers to be added to the Bill for wildlife offences can be found at ANNEX A.

The Scottish Government also undertook separate consultations on FPNs for animal welfare and health offences.

The Animal Health & Welfare Act Amendment Consultation 2019 ran from 1 February 2019 to 26 April 2019. 61.4% of respondents agreed with the proposal to allow FPNs for animal welfare offences, the consultation and analysis can be found below;

<https://consult.gov.scot/animal-welfare/animal-health-welfare-act-amendment-2019/>

The Animal Health Act 1981 Amendment Consultation ran from 3 October 2019 to 23 December 2019. The consultation asked the public if they agree that FPNs should be considered for animal health offences. The analysis of the animal health consultation will be published shortly.

## ***Consultation***

The consultation provided an opportunity for selected stakeholders to scrutinise and comment on the proposals. The consultation was emailed directly to each organisation/individual and the majority of respondents submitted their responses via email.

The evidence gathered from the consultation will inform any amendments we will introduce to the Animals and Wildlife (Penalties, Powers and Protections) (Scotland) Bill, as it progresses through the Scottish Parliament.

The proposals were formulated into seven specific questions for those responding to the consultation. The responses received to each of these seven questions are presented in the following section of the report.

## Analysis of responses

### Question 1

**Do you agree that the introduction of proportionate fixed penalty notices help with the enforcement of wildlife offences?**

- Nearly all (71.4%) respondents agreed.
- Number of Responses to this Question – 7 (100%)

Option	Total Responses	Percentage of All
Yes	5	71.4%
No	2	28.6%
Not Answered	0	0

#### Those that agreed

The key themes of those who answered positively to the proposal, were; it was believed that they could provide a rapid response to, prevent and reduce low level wildlife crime. Respondents added that they should only be used for technical offences and should be used as a part of a wider enforcement strategy.

*“We believe there is potential for such notices to permit a rapid and proportionate response to less serious wildlife crime offences if such a system is adequately resourced.” (SLE)*

#### Those that disagreed

Of the two responses who disagreed with the proposal the main concern was that the use of FPNs for wildlife offences would not act as an effective deterrent.

### Question 2

**Do you agree that FPNs would provide a useful and effective alternative to prosecution for wildlife offences which carry a maximum penalty of 6 months imprisonment? For example publishing an advert to sell a live wild bird (Section 6 of the Wildlife and Countryside Act 1981) or specified licensing infringements under section 17 of the Wildlife and Countryside Act).**

- 42.9% of respondents agreed.
- Number of Responses to this Question – 4 (57.1%)

Option	All Responses	Percentage of All
Yes	3	42.9%
No	1	14.3%
Not answered	3	42.9%

#### Those that agreed

The key themes of those who answered positively to the proposal, were; that the suitability of FPNs would depend on the level of the fine and whether this is high enough to be a deterrent against future breaches. Several respondents commented that FPNs would only be appropriate for first-time minor or technical offences. All who responded positively to this question stated that FPNs should not be used where an animal has suffered.

#### Those that disagreed

The main concern of the respondent not in favour of the proposals was that the evidence of an offence should be fully tested in court before imposing a penalty.

*“Due to the technical nature in law and practice of many potential wildlife offences, the evidence should be tested fully in court.” (SACS)*

#### **Question 3**

**Please provide examples of any other existing wildlife offences you feel may be suitable for fixed penalty notices.**

- Number of Responses to this Question – 4 (57.1%)

#### **Summary of comments**

Of the respondents to answer this question, half stated that FPNs should apply to wildlife offences that are technical/administrative in nature and did not involve the suffering of an animal. Examples given were; a person forgetting to tag a snare, failure to complete or supply accurate records, and failure to comply with all the conditions of a General Licence.

#### **Question 4**

**Please provide examples of existing wildlife offences you feel would be unsuitable for fixed penalty notices.**

- Number of Responses to this Question – 4 (57.1%)

#### **Summary of comments**

Again, of those who responded to this question, there was consensus that FPNs should not be used where an animal has suffered. One respondent felt that FPNs were unsuitable for wildlife offences in general, giving several examples; snaring offences, poaching offences and wildlife killing offences, Pearl mussel offences, environmental contamination offences, General Licence and wild bird-related offences.

*“The Scottish SPCA would not recommend the use of a FPN where a person is proven to be in possession of any illegal pesticide or poison. FPNs should not be an option for serious or intentional habitat destruction.” (SSPCA)*

### **Question 5**

**Question 5: If you do not think that FPNs would be a suitable or effective means of enforcement for any wildlife offences please provide your reasons here.**

- Number of respondents to this question – 2 (28.6%)

#### **Summary of comments**

The majority of respondents did not answer this question. Both responses stated that FPNs may be accepted in cases where there is not enough evidence to prove an offence occurred in court and that the evidence would more fairly be handled and heard in a court of law. It was also put forward that FPNs should only be issued for a first offence and not used as a continual sanction.

*“a wildlife crime FPN regime would weaken the narrative that wildlife crime is taken seriously in Scotland” (SACS)*

### **Question 6**

**A number of different fixed penalty notice regimes exist in Scotland covering a range of offences, for example;**

- **Marine (Scotland) Act 2010 allows Marine Enforcement Officers to issue FPNs for a variety of sea fisheries or marine conservation offences**
- **The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 allows SEPA to issue FPNs for waste crime**

**Are there any FPN schemes in Scotland you feel are particularly effective and provide a good example of an enforcement regime?**

- Number of Responses to this Question – 3 (42.9%)

#### **Summary of comments**

Respondents noted the success of the FPNs schemes used for driving, including speeding and failure to insure a vehicle and other traffic offences. The Anti-Social Behaviour etc (Scotland) Act 2004 was also cited, giving police officers the power to issue FPN for a number of offences under licensing and civic government legislation, as well as for common law offences such as breach of the peace and malicious mischief.

*“There are advantages to the prosecution system as it reduces the time in court as relatively few will opt into court process to go to trial.*

*The stress should be on FPNs being available for minor or low-level offending but for any FPN to be issued, there should be adherence to the basic principles of criminal law as to requiring sufficiency of evidence and being in the public interest to prosecute.” (Law Society of Scotland)*

## **Question 7**

### **Do you have any other comments on the use of fixed penalty notices for wildlife offences?**

- Number of Responses to this Question – 6 (85.7%)

#### **Summary of comments**

Half of the responses to this question expressed a positive view of the proposals, that introduction of fixed penalty notices would provide proportionate and effective responses to a variety of illegal behaviours, that FPNs would increase consistency of enforcement across environmental crime and that FPNs could also help reduce the burden on the court system by providing an alternative disposal of minor offences.

Concerns expressed were that there should be clear guidelines outlining the system to deal with those who either refuse to accept or fail to pay FPNs. Subsequent similar offences by the same person should always be subject to a report to the Procurator Fiscal Service.

One response added that it is important that the law in relation to FPNs is clear, consistent and easily understood, that proportionality is key and it is important that the persons issuing FPNs are competent and trained and are adequately resourced.

“The Regulatory Reform (Scotland) Act 2014 provides SEPA with a wide range of enforcement options. Wider use of these enforcement options should be considered by other regulators (such as SNH) enabling them to operate in a more flexible and proportionate manner to a wide range of breaches of the law.” (Prof Werritty)

#### **Next Steps**

The Scottish Government is very grateful to all those who took the time to respond to this consultation. Overall the responses were positive that;

- FPNs are a useful tool when used as part of a wider enforcement strategy.
- FPNs would be appropriate for minor or technical wildlife offences.

Future legislation will take into account the views expressed in the consultation.



## Fixed penalty notice consultation: Wildlife

### Background

Following the Scottish Government's announcement that it will legislate to increase penalties for the most serious [wildlife offences](#), it is considering whether there is now a need for an additional level of enforcement that does not require referral to the procurator fiscal nor involvement of the Scottish courts, but provides a meaningful and dissuasive penalty for those who are considered to have committed a relevant wildlife offence, and which will thereby promote future compliance with legislative requirements.

The Government is considering whether Police Scotland should be empowered to issue fixed penalty notices (FPN) in relation to relevant less serious wildlife offences (e.g. those arising in relation to non-compliance of snaring registration). It proposes that such FPNs would be set, by regulations, at an amount that provides a proportionate but effective deterrent.

There is currently no provision in the six pieces of wildlife legislation<sup>1</sup>, to be amended by the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill which specifically gives the Scottish Ministers the power to make regulations providing for the use of FPNs.

An amendment to the legislation to provide for such a power would be in step with proposals for a similar power in relation to animal welfare and animal health offences. The Government recently consulted on proposals to amend the Animal Health and Welfare (Scotland) Act 2006 to make provision for FPNs in relation to less serious animal welfare offences such as identification and licensing rules (e.g. microchipping of dogs). It is also in the process of consulting on proposals to amend the Animal Health Act 1981 to make similar provisions for FPNs in relation to less serious animal health offences such as those arising in relation to non-compliance of biosecurity codes.

It is anticipated FPNs would, for example, be made available as an alternative to prosecution for relatively common minor offences such as failure to comply with record keeping requirements or certain poaching offences. The particular approach to be adopted for different kinds of wildlife offence would be set out in the regulations, including the amount of the FPN which may be imposed for each offence. It would be helpful at this stage to receive views on what these offences should be. The alternative of pursuing a prosecution instead of offering a FPN would continue to be available.

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<sup>1</sup> [Deer \(Scotland\) Act 1996](#)  
[Protection of Badgers Act 1992](#)  
[Protection of Wild Mammals \(Scotland\) Act 2002](#)  
[The Conservation \(Natural Habitats, &c.\) Regulations 1994](#)  
[Wild Mammals \(Protection\) Act 1996](#)  
[Wildlife and Countryside Act 1981](#)

We would not be seeking to introduce FPNs for any of the offences that will be increased through the Animals and Wildlife (Penalties, Protections and Powers) Bill. It is anticipated that FPNs will only be capable of being issued for wildlife offences which attract a maximum term of imprisonment of 6 months or a fine not exceeding level 5 (presently £5,000) on the standard scale or both.

FPNs are widely used by local authorities in circumstances out-with the context of wildlife legislation and can be a valuable enforcement tool. It is expected that FPNs would achieve the following:

- allow minor and technical offences to be dealt with quickly and proportionately;
- reduce the likelihood of re-offending, whilst providing a proportionate deterrent when prosecution in court and any resulting criminal record may be excessive;
- improve standards and encourage compliance;
- speed up the process of dealing with offences (persons issued with a fixed penalty notice would not have to wait to appear in court);
- reduce the number of cases being dealt with by the Crown Office and Procurator Fiscal Service, the court system, welfare enforcers and animal keepers; and
- give more flexibility to enforcement authorities by providing them with an enforcement option as an alternative to prosecution in the criminal courts.

#### Existing FPN regimes

There are a number of FPN regimes currently operating in Scotland.

For example The Aquaculture and Fisheries (Scotland) Act 2007 allows Marine Enforcement Officers (MEOs) to issue FPNs for the fishing industry. It was introduced in April 2008, and extended to include other marine and aquatic offences in 2013. Between 2008 and 2015, Marine Scotland issued 117 FPNs, 88% of which have been paid.

Under the regime FPNs MEOs can issue FPNs up to £10,000. The FPN regime covers four broad policy areas:

- sea fisheries;
- marine protection and nature conservation;
- aquatic animal health; and
- marine licensing.

The specific offences to which FPNs can be applied are laid out in various pieces of legislation.

Further information about the scheme can be found at:

<https://www2.gov.scot/Resource/0054/00548071.pdf>

## **Responding to this consultation**

Please send your completed consultation response and your Respondent Information Form to our dedicated mailbox:

[wildlifepenaltiesconsultation2019@gov.scot](mailto:wildlifepenaltiesconsultation2019@gov.scot)

Alternatively you can post your response to;  
Fixed penalty notice consultation: Wildlife  
Scottish Government Wildlife Management Team,  
Area 3G South  
Victoria Quay,  
Edinburgh,  
EH6 6QQ

**Please ensure that responses are submitted before midnight  
19 January 2020**

## RESPONDENT INFORMATION FORM

### Consultation on Proposals for the Use of Fixed Penalty Notices for Wildlife Offences in Scotland

**Please Note** this form **must** be completed and returned with your consultation response.

To find out how we handle your personal data, please see our privacy policy:  
<https://beta.gov.scot/privacy/>

Full name (optional)

Organisation

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

## CONSULTATION QUESTIONS

1. Do you agree that the introduction of proportionate fixed penalty notices help with the enforcement of wildlife offences?

[Comment]

2. Do you agree that FPNs would provide a useful and effective alternative to prosecution for wildlife offences which carry a maximum penalty of 6 months imprisonment? For example publishing an advert to sell a live wild bird (Section 6 of the Wildlife and Countryside Act 1981) or specified licensing infringements under section 17 of the Wildlife and Countryside Act).

[Comment]

3. Please provide examples of any other existing wildlife offences you feel may be suitable for fixed penalty notices.

[Comment]

4. Please provide examples of existing wildlife offences you feel would be unsuitable for fixed penalty notices.

[Comment]

5. If you do not think that FPNs would be a suitable or effective means of enforcement for any wildlife offences please provide your reasons here.

[Comment]

6. A number of different fixed penalty notice regimes exist in Scotland covering a range of offences, for example;
- Marine (Scotland) Act 2010 allows Marine Enforcement Officers to issue FPNs for a variety of sea fisheries or marine conservation offences
  - The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 allows SEPA to issue FPNs for waste crime
- Are there any FPN schemes in Scotland you feel are particularly effective and provide a good example of an enforcement regime?

[Comment]

7. Do you have any other comments on the use of fixed penalty notices for wildlife

[Comment]



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