

ANIMALS (PENALTY NOTICES) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Animals (Penalty Notices) Bill as brought from the House of Commons on 7 February 2022 (HL Bill 108).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs with the consent of Lord Randall of Uxbridge, the Peer in Charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Animals (Penalty Notices) Bill (“the Bill”) will make provision for and in connection with the giving of fixed penalty notices for offences in relation to animals, animal products and animal by-products.
- 2 This will introduce a new system of proportionate, consistent, and targeted financial penalties for breaches of animal health, biosecurity, and welfare regulations.

Policy background

- 3 This Bill creates new financial penalties for animal health and welfare offences that will add to and complement the current enforcement regime to support early redirection through behavior change to promote compliance.
- 4 This will reform the way the Government enforces animal health and welfare across all farmed animals (e.g. on farm, in transport, at market and at time of killing) and kept animals (e.g. zoos and companion animals) in England with offences under the Dangerous Dogs Act 1991 applying also in Wales as Dangerous dogs are a reserved matter under the Government of Wales Act 2006.
- 5 It will safeguard and strengthen animal health and welfare, building on the existing domestic enforcement framework which has few options beyond prosecution, by widening the suite of available enforcement tools.
- 6 The new system will use a mix of sanctions, advice, and guidance to deliver high domestic animal health and welfare standards, enhancing productivity and giving confidence to consumers and international trading partners.
- 7 For over 40 years, agricultural strategy and public policy have largely been shaped by the Common Agricultural Policy (CAP). Cross compliance, a system linking CAP payments to regulatory compliance, became the major vehicle for enforcement of standards on farms, and its application of payment deductions is widely regarded as disproportionate.
- 8 As CAP payments wind down, and with cross compliance being phased out, this will leave a wide enforcement gap between issuing advice and pursuing criminal prosecution, allowing many offences to slip through the net without appropriate recourse. This gives the Government the opportunity to improve the enforcement of standards on farms and provide a transparent enforcement journey.
- 9 The framework for penalty notices in this Bill will apply across all animal health, welfare and biosecurity legislation, meaning financial penalties could be used across companion animal, zoo animal and animal by-product enforcement in addition to livestock.
- 10 This Bill forms part of a broader approach to maintaining and enhancing high domestic animal health and welfare standards, enhancing productivity and giving confidence to consumers and international trading partners. The Government published an Action Plan for Animal Welfare in May 2021, which sets out a range of legislative and non-legislative reforms to ensure that the welfare of all animals, whether farm, companion, or wild animals, builds on the UK’s high standards for animal welfare.

Relevant Offences

- 11 Clause 1(2) states that the Secretary of State may, by regulations, prescribe offences as relevant offences for the purposes of this Act. This clause requires the Secretary of State to make regulations to ‘switch on’ the penalty notices option through regulations, for relevant offences

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under the primary legislation listed in the Bill itself and all secondary legislation made under that primary legislation.

- 12 The Secretary of State may prescribe an offence only if it is:
 - a. an offence under regulations which were previously made under section 2(2) of the European Communities Act 1972 which the Secretary of State considers relates to animals or animal products;
 - b. an offence under the Dangerous Wild Animals Act 1976;
 - c. an offence under section 19 of the Zoo Licensing Act 1981;
 - d. an offence under the Animal Health Act 1981 or an order made under that Act;
 - e. an offence under the Animal Welfare Act 2006 or under regulations made under section 12 or 13 of that Act;
 - f. an offence under the Wild Animals in Circuses Act 2019, or
 - g. an offence under section 1, 3 or 4(8) of the Dangerous Dogs Act 1991.

Legal background

Animal Welfare Act 2006

- 13 The aim of the Animal Welfare Act 2006 (“the 2006 Act”) is to promote the welfare of “protected animals”, except animals used in scientific procedures which are subject to the Animals (Scientific Procedures) Act 1986. Vertebrate animals of a kind commonly domesticated in the British Islands are deemed to be “protected animals”, whether they can be said to be under the control of man or not. This ensures that, for example, stray dogs and feral cats are covered. Animals of a kind not commonly domesticated, such as wildlife, in the UK are only protected animals to the extent that they are under the control of man or are not living independently in the wild.
- 14 The 2006 Act makes it an offence for any person who is responsible for a kept animal to cause the animal unnecessary suffering or to fail to provide for the animal’s welfare needs. It also provides for additional specific animal welfare protections to be introduced under secondary legislation and provides for the publication of statutory welfare codes that enable practical guidance to be provided to keepers on how to care for their animals. These codes can be used to inform prosecutions (although the codes themselves are not all legally enforceable).
- 15 Section 12 and 13 of ‘the 2006 Act’ makes provision for secondary legislation to be made under ‘the 2006 Act’.

Animal Health Act 1981

- 16 The 1981 Animal Health Act provides the basis of powers for our current animal disease controls. It is a consolidation of the Diseases of Animals Act 1935, the Diseases of Animals Act 1950, the Ponies Act 1969, the Rabies Act 1974, the Diseases of Animals Act 1975, and certain related enactments.
- 17 The 2002 amendments to the Animal Health Act 1981 have two main purposes. The first is to provide additional powers to tackle Foot and Mouth Disease (FMD) and for these powers to be extendable to other animal diseases by order. The second is to provide additional powers to deal with transmissible spongiform encephalopathies (TSEs) in sheep. The Animal Health Act 2002 makes a number of amendments to the enforcement provisions of the Animal Health Act 1981.

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European Communities Act 1972

- 18 Secondary legislation enacted under the now revoked ECA 1972 holds the status of ‘retained EU Law’ under the provisions of the EUWA 2018 and 2020. Offences which the Secretary of State considers relate to animals or animal by products contained in these regulations and orders are therefore included within the scope of Penalty Notices Bill.

Dangerous Wild Animals Act 1976

- 19 Certain species of wild animals kept in Great Britain, which are considered to be dangerous should they escape, fall under the Dangerous Wild Animals Act 1976. This legislation, which provides for the keeping of some dangerous primates, is primarily concerned with public safety rather than animal welfare and requires keepers of dangerous wild animals to be licensed and inspected by the local authority.

Zoo Licensing Act 1981

- 20 The Zoo Licensing Act 1981 (the ‘Act’) requires the inspection and licensing of all zoos in Great Britain. The Act aims to ensure that, where animals are kept in enclosures, they are provided with a suitable environment to provide an opportunity to express most normal behaviour. The Act was amended by the 2002 Regulations to give effect to the provisions of Council Directive 1999/22/EC which were not already covered by it.

Dangerous Dogs Act 1991

- 21 This Act outlines restrictions on keeping dog breeds bred for fighting and dogs presenting a serious public danger, in addition to outlining provisions for the proper control of dogs. This is a UK wide Act and a reserved matter in Wales. Only a constable can issue a penalty notice under section 1, 3 or 4(8) of the Dangerous Dogs Act 1991.

Wild Animals in Circuses Act 2019

- 22 This Act bans the use of wild animals in travelling circuses.

Territorial extent and application

- 23 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarizes the position regarding legislative consent motions.
- 24 This Bill extends to England and Wales but applies to England only, except for the offences under the Dangerous Dogs Act 1991, which also applies to Wales Commentary on provisions of Bill.

Chapter 1: Fixed penalty notices

Section 1: Powers of enforcement authorities

- 25 Section 1 defines the relevant offences and the role of enforcement authorities in issuing a fixed penalty notice.
- 26 Subsection (1) sets out the condition that an enforcement authority may issue a fixed penalty notice if they are satisfied beyond reasonable doubt that a person has committed a relevant offence in England.
- 27 Subsection (2) defines a ‘relevant offence’ as an offence within subsection (4) that is prescribed by regulations made by the Secretary of State.

- 28 Subsection (3)(a) to (f) lists the relevant legislation to which fixed penalty notices may be applied. By listing all legislation, it allows for both the parent act and any secondary legislation made under it to be considered for penalty notices. However, the act of inclusion does not mean that a penalty notice will necessarily be applied to any or all offences under that legislation. Through the mechanism detailed in clause 7(2), they will first be required to be considered and then ‘turned on’ via secondary legislation.
- 29 Subsection (4) defines ‘enforcement authority’ for a relevant offence as a person who is specified by regulations made by the Secretary of State. The regulations made by the Secretary of State may specify more than one person in relation to any relevant offence.
- 30 Subsection (5) states that the persons who may be specified by regulations in relation to subsection (4) include the Secretary of State, a local authority, or any other person considered appropriate by the Secretary of State.
- 31 Subsection (6) states that the authority who issued the fixed penalty notice may at any time withdraw it.

Section 2: Power of constables

- 32 Section 2 outlines the role of constables in issuing fixed penalty notices for offences relating to dangerous dogs.
- 33 Subsection (1) sets out the condition that a constable may issue a fixed penalty notice if they are satisfied beyond reasonable doubt that a specified dangerous dogs offence has been committed in England or Wales.
- 34 Subsection (2) describes a ‘prescribed dangerous dogs offence’ as an offence under subsection (3) that is specified by regulations made by the Secretary of State.
- 35 Subsection (3) states that the offences within this subsection are offences under section 1, 3 or 4(8) of the Dangerous Dogs Act 1991.
- 36 Subsection (4) states that the constable, or a constable from the same police force as the constable who issued the fixed penalty notice under this section, may at any time withdraw it.

Section 3: Content and effect of notices

- 37 Section 3 outlines the structure of fixed penalty notices.
- 38 Subsection (1) determines that this section applies to a fixed penalty notice under section 1 or 2.
- 39 Subsection (2) explains that a ‘fixed penalty notice’ is a notice issued to a person to give them an opportunity to pay a specified financial penalty in order to discharge any liability to conviction for that offence within the relevant period.
- 40 Subsection (3) states that the maximum fixed penalty notice will be £5,000, or the maximum fine the offender could be liable to pay if convicted for the same offence.
- 41 Subsection (4) defines ‘relevant period’ as used in this Act as 28 days starting on the date the fixed penalty notice was issued.
- 42 Subsection (5) outlines the information that will be included in the fixed penalty notice. This includes a statement that the enforcement authority or constable is satisfied beyond reasonable doubt that the person committed a relevant offence; the effect of subsection (6) of this clause; when payment may be made; and how.
- 43 Subsection (6) applies when a fixed penalty notice is issued to a person and not withdrawn. Subsection (6)(a) states that proceedings will not be instituted until after the relevant period

has expired for the person who committed the offence to pay the fixed penalty notice and thus discharge liability. Subsection (5)(b) details that the person who committed the offence may not be convicted of the offence if the person pays the fixed penalty notice in full within the relevant period, or they pay 50% of the fixed penalty notice within 14 days of the start of the relevant period.

- 44 Subsection (7) specifies that when prosecution is pursued, the window in which to pursue this will start from the day that the fixed penalty notice relevant period lapsed, as outlined in section 127(1) of the Magistrates' Court Act 1980.

Section 4: Matters to be taken into account

- 45 Section 4 details the considerations enforcement authorities or constables will have to apply before issuing fixed penalty notices.
- 46 Subsection (1) states that an enforcement authority or constable must take into account the factors mentioned in subsection (2) in deciding (a) whether to issue a fixed penalty notice to a person under section 1 or 2, and (b) the amount to be specified in the notice.
- 47 Subsection (2) lists the factors to be considered by an enforcement authority or constable. These are: (a) the seriousness of the relevant conduct; (b) the duration of the relevant conduct; (c) any evidence of intention behind the relevant conduct; (d) any evidence of previous acts or omissions by the relevant person similar to the relevant conduct; (e) any action taken by the relevant person to eliminate or reduce any risk of harm resulting from the relevant conduct; (f) any action taken by the relevant person to remedy or mitigate any harm resulting from the relevant conduct; (g) whether the relevant person reported the relevant conduct to an enforcement authority or constable; (h) the conduct of the relevant person after the relevant conduct is drawn to their attention by an enforcement authority or constable.
- 48 Subsection (3) details that the Secretary of State must give guidance about (a) additional matters to be taken into account in deciding whether to issue a fixed penalty notice; (b) additional matters to be taken into account in deciding the amount to be specified in the notice; and (c) how the factors listed in subsection (2) and any additional matters detailed in paragraphs (a) or (b) need to be taken into account.
- 49 Subsection (4) establishes that the guidance will be laid before Parliament and thus be subject to scrutiny before it is introduced.
- 50 Subsection (5) clarifies that enforcement authorities or constables will need to have regard to the guidance.

Section 5: Use of proceeds

- 51 Section 5 states where the proceeds from fixed penalty notices will be paid.
- 52 Subsection (1) states that funds received by enforcement authorities or chief officers of police from the receipt of paid fixed penalty notices issued under section 1 or 2 will be paid into the Consolidated Fund.
- 53 Subsection (2) defines the costs that may be deducted by enforcement authorities or chief officers of police before paying the remaining funds received into the Consolidated Fund. These are the costs of investigating the offence relevant to the fixed penalty notice issued and the cost incurred by the enforcement authority or constable to issue the fixed penalty notice.

Section 6: Reports

- 54 Section 6 specifies the reporting required on the use of fixed penalty notices.

- 55 Subsection (1) specifies the responsibility on enforcement authorities or chief officers of police to submit an annual report to the Secretary of State after the end of each financial year. The report must include
(a) the number of fixed penalty notices issued; (b) the financial amounts of the penalties issued; and (c) the reason each fixed penalty notice was issued, i.e. the offence committed.
- 56 Subsection (2)(a) states that the Secretary of State must publish a report containing the information provided under subsection (1) for each financial year. Subsection (2)(b) details that a report must also be issued for penalty notices issued by the Secretary of State during that year, including (i) the number of fixed penalty notices issued; (ii) the financial amounts of the penalties issued; and (iii) the reason each fixed penalty notice was issued, i.e. the offence committed.
- 57 Subsection (3) clarifies the meaning of ‘financial year’ as used in this Act as the period from 01 April until the following 31 March, on a 12-month rolling basis. The first relevant financial year will run from the day this section of the Act comes into force until the following 31 March.

Section 7: Regulations

- 58 Section 7 states the requirements that must be met when introducing regulations in relation to this Act.
- 59 Subsection (1) states that regulations made under section 1 or 2 may contain transitional provision, which means that an enforcement authority may not start issuing fixed penalty notices for relevant offences until a statutory instrument names the enforcement authority in relation to those offences.
- 60 Subsection (2) states that regulations made under section 1 or 2 are to be made by statutory instrument.
- 61 Subsection (3) establishes that any such statutory instrument would be subject to the negative procedure, which means that the statutory instrument will become law on the date stated unless it is annulled by either House within a 40-day period.

Section 8: Interpretation

- 62 Section 8 defines key meanings as they are intended in the Act.
- 63 Section 8 defines the meaning of ‘enforcement authority’; ‘local authority’; and ‘relevant offence’.

Section 9: Extent, commencement and short title

- 64 Section 9 defines the extent that the Act applies, commencement date and the short title.
- 65 Subsection (1) states that the Act extends only to England and Wales.
- 66 Subsection (2) states that section 1(2) to (5), 2(2) and (3), 4(3) and (4), 7 and 8 and this section of the Act come into force two months after the Act is passed.
- 67 Subsection (3) details that the other provisions of the Act will come into force when regulations made by statutory instrument are appointed by the Secretary of State.
- 68 Subsection (5) details that the Act may be cited as Animals (Penalty Notices) Act 2021.

Commencement

- 69 Two months after Royal Assent.

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Financial implications of the Bill

- 70 The Bill will have minimal financial impact on the justice system. Defra and Ministry of Justice analysts have agreed, through a 'Justice Impact Test', that the proposed financial penalties could potentially result in fewer cases being taken to court.
- 71 The Department for Environment, Food and Rural Affairs will work with the Department for Levelling Up, Housing and Communities to determine an agreed approach to any burdens on local authorities associated with administering these penalty notices and – in agreement with Her Majesty's Treasury – a suitable approach to ensure local authorities can retain their costs from issuing penalties without making a profit. Any income above reasonable costs incurred must be surrendered to the Consolidated Fund; and Defra must meet all other costs to government associated with implementing these measures within their baseline.

Parliamentary approval for financial costs or for charges imposed

- 72 The Bill requires a "ways and means" resolution but does not require a money resolution. The "ways and means" resolution was passed by the House of Commons on 28 October 2021.

Compatibility with the European Convention on Human Rights

- 73 This is a Private Member's Bill and the Government is not required to give a statement of compatibility with the European Convention on Human Rights (ECHR) in accordance with section 19(1)(a) of the Human Rights Act 1998. Defra has, nevertheless, considered the question of compatibility and does not consider that the provisions of the Bill interfere with Convention rights.

Related documents

- 74 The following documents are relevant to the Bill and can be read at the stated locations:
- [Our Action Plan for Animal Welfare](#), May 2021.
 - [Agricultural Transition Plan 2021 to 2024](#), November 2020.

Annex A – Territorial extent and application in the United Kingdom

- 75 The table below details the territorial extent and the application of the clauses in the Bill as relevant to the United Kingdom. The Act extends to England and Wales, extending to England only except for the offences under the Dangerous dogs are a reserved matter under the Government of Wales Act 2006.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	No	N/A	No	N/A	No	N/A
Clause 2	Yes	Yes	N/A	No	N/A	No	N/A
Clause 3	Yes	Yes	N/A	No	N/A	No	N/A
Clause 4	Yes	Yes	N/A	No	N/A	No	N/A
Clause 5	Yes	Yes	N/A	No	N/A	No	N/A
Clause 6	Yes	Yes	N/A	No	N/A	No	N/A
Clause 7	Yes	No	N/A	No	N/A	No	N/A
Clause 8	Yes	Yes	N/A	No	N/A	No	N/A
Clause 9	Yes	Yes	N/A	No	N/A	No	N/A

Subject matter and legislative competence of devolved legislatures

- 76 In the opinion of Her Majesty's Government, the subject matters of this Bill are within the devolved legislative competence of the Scottish Parliament because they do not relate to reserved matters under Schedule 5 of the Scotland Act 1998. Those provisions are also within the competence of Senedd Cymru because they do not relate to reserved matters under Schedule 7A of the Government of Wales Act 2006, except in relation to the provisions in the Dangerous Dogs Act 1991 which are reserved in accordance with Schedule 7A to the Government of Wales Act 2006. The Northern Ireland devolution settlement gives legislative control over certain matters (known as 'transferred matters') to the Assembly this includes Agriculture and Animal Health and Welfare related matters.

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