

Response to the Wildlife Crime Penalties consultation from Scottish Environment LINK's Wildlife Crime Subgroup

Date: 16th August 2019



Summary

Consistent with recommendations made by the Wildlife Crime Penalties Review Group¹, LINK members acknowledge more stringent sentencing should be made available in addressing wildlife crime offences. However, there are concerns regarding the delay in assessment and subsequent adoption of the recommendations made by the Wildlife Crime Penalties Review, which were made in 2015. LINK also notes that the Wildlife Crime Penalties consultation does not deliberate on all the recommendations made by the Wildlife Crime Penalties Review, and it is unclear why only certain measures have been considered. In addition, there is no clarity on whether other recommendations made by the Wildlife Crime Penalties Review Group will be adopted by the Government.

LINK members make the following recommendations in response to the Wildlife Crime Penalties consultation:

- Establish timeframe for implementation of recommendations.
- Include a suite of measures in addition to increasing penalties.
- Increase penalties so that they may act as a dissuasive instrument.
- Widen scope of penalties to include wildlife crimes which disturb/destroy a species' place of shelter.
- Offences related to protected places should receive the same statutory footing as offences related to injuring / un-licensed killing / taking of wild animals.
- Further consideration should be given to proceeds of crime.
- Employ an evidence-based approach to develop impact statements.
- Further consideration should be given to re-training courses for wildlife crime offenders.

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society. LINK members welcome the opportunity to comment on this consultation.

¹ Wildlife Crime Penalties Review Group Report (2015)
strathprints.strath.ac.uk/59764/1/Poustie_2015_Wildlife_Crime_Penalties_Review_Group_Report.pdf

1. The Scottish Government proposes that the maximum penalties for some wildlife offences, for example the injuring or un-licensed killing or taking of wild animals should be strengthened. Do you agree?

LINK welcomes the opportunity to contribute to the consultation and agree in principle that the maximum penalty for some wildlife offences should be strengthened. However, increasing penalties should not be considered as the only effective measure to reduce wildlife crime. Listed below are LINK recommendations on measures that can be incorporated in addition to the proposal of maximum penalties for some wildlife offences.

- **Include a suite of measures in addition to increasing penalties:** Increase in penalties under wildlife legislation is not effective if the enforcement at early stages is unable to address problems such as under-resourcing, evidence gathering, and the way cases are investigated². LINK has previously³ highlighted the wildlife crime caveat of crime prevention and reduction: several wildlife crimes take place in remote areas, this makes it easy for perpetrators to get rid of the evidence and lowers their chances of being caught. Even if perpetrators are caught and prosecuted, in some cases (such as illegal persecution of birds of prey on grouse moors or poaching of pearl mussels) profit gained from these crimes exceed the financial penalties. Such crimes should carry deterrent sentences and should be strengthened. Additionally, funds gained through increased penalties should be used to provide resources to mitigate wildlife crime. Resources such as cameras will help identify more criminality and offer enhanced monitoring and identification of potential suspicious incidents.
- **Increase scope of penalty criteria:** LINK members are of the view that the consultation only addresses increasing sentences for offences related to the welfare of wild animals, such as ‘injuring or un-licensed killing or taking of wild animals’. In addition to welfare, the issue of conservation of wild animals’ habitats, along with offences which impact on the conservation status of some Scotland’s rarest and iconic species should also be focused on. For example, crimes against badgers include sett disturbance, and a majority of offences in Scotland (over 50%) are reportedly linked to unlicensed sett disturbance during agricultural, forestry and development work². The ‘maximum penalties for wildlife offences’ recommendation within the consultation does not address crimes related to badgers or sett disturbances. Similarly, crimes against bats also include damage, disturbance, obstruction, destruction of roost sites. One of the main causes of decline in bat populations is the loss of breeding and resting places. Most offences (over 90%) recorded by the Bat Conservation Trust (BCT) are reportedly related to unlicensed building development and maintenance work². While evidence in relation to killing and injuring of bats may be insufficient at times, damage to bat roosts on most occasions can be established. The conservation status of wild animals can be very reliant on the conditions of the land they live in, it is therefore important that increasing penalties should not only address killing protected species but also damage or destruction inflicted on species’ habitats.

²Scottish Environment LINK (2015): Natural Injustice: *Paper one* -A review of enforcement of wildlife protection legislation in Scotland
www.scotlink.org/wp/files/documents/Natural-Injustice-paper1-FINAL.pdf

³ LINK response to Government Wildlife Crime report and ECCLR evidence session (Feb 2018): www.scotlink.org/wp/files/documents/LINK-Wildlife-Crime-Subgroup_responsetoSGreport.pdf

2. Do you agree that the maximum prison sentence available for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be increased to five years imprisonment?

While LINK agrees that prison sentences should be increased to five years imprisonment, it is observed that custodial sentencing may not always be applicable on crimes against animals such as bats or badgers. As indicated in Q1 the nature of crimes against bats and badgers include crimes such as roost destruction and sett damage. This consultation question should also consider crimes, which affect the conservation status of species, through the destruction or damage to their places of shelter. Offenders charged for similar crimes under the control of trade in endangered species (COTES) regulation can receive sentences of up to five years imprisonment. As the Wildlife Crime Penalties review⁴ notes ‘reducing wildlife crime is not simply a question of raising penalty levels’. This must be part of a comprehensive approach, where the ‘key issue has to be that the type of crime and the level of penalty has to be appropriate’. This means penalties, which may act as a deterrent for some crimes may not have any impact on other offences. For example, crimes against bats are, in most cases are of a corporate nature, where custodial sentencing is not effective. While in the case of badger baiting financial penalties or custodial sentences may seem more suitable most of the badger crimes reported are of disturbed and destroyed setts¹. Crimes which result in badger deaths should receive tough financial or custodial penalties, however, as previously³ highlighted by LINK there is discrepancy on how badger crimes are recorded by law enforcement agencies, where an absence of badger bodies at the site are recorded as a ‘non-incident’, while there is clear evidence of the sett being disturbed. As there is a marked difference in what is recorded as an offence, these data impact establishing criminality and sentencing. This means other measures such as standardizing data recording practices³ and strengthening law enforcement need to be implemented at par with increasing penalties.

3. Do you agree that the upper limit on fines for some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, should be unlimited?

- **Increase penalties so that they may act as a dissuasive instrument:** As indicated in Q1 and Q2, enforcing reduction of wildlife crime through fines in some instances is insufficient and may not be the most effective deterrent. For example, there are several cases where badger setts have been destroyed during housing development projects. In some instances, the developers have been prosecuted and fined, however the value of these fines (£800-£1200) in relation to the profits made have been negligible. Anecdotal evidence suggests that such decisions are made knowingly. Developers are aware of the implications of their actions and this knowledge doesn’t prevent them with going ahead with development around badger setts, subsequently destroying them. Increasing the value of penalties to unlimited may have a detrimental effect on decisions which impact, and further dissuade individuals who may be aware of existing legislation.
- **Widen scope of penalties to include wildlife crimes which disturb/destroy a species’ place of shelter:** Furthermore, as mentioned in Q1 and Q2, the scope of penalties for wildlife crime offences should also include disturbance and destruction of species’ habitats. Increase in the

⁴ Wildlife Crime Penalties Review Group Report (2015)
strathprints.strath.ac.uk/59764/1/Poustie_2015_Wildlife_Crime_Penalties_Review_Group_Report.pdf

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upper limit on wildlife fines can also be applied in this context. For example, following an increase in the upper limit of wildlife crime penalties, recently a developer in London was fined £18,000 for destroying a small bat roost⁵. Imposing high penalties on wildlife crimes, which include ruining habitats, could discourage further crimes.

- **Increase penalties to reflect impact and scale of wildlife crime:** Another argument in favour of imposing stiffer penalties, is that they can be applied on a sliding scale, where the offence is in relation to the impact and scale of the crime. For instance, wildlife crime committed in a pheasant shoot run, would not be the same as one committed by a factor managing a grouse moor. While the crimes may be of similar nature the penalties applied to both these crimes would be different where a higher fine is applied to the appropriately serious case. The lowland pheasant shoot run would be at lower end of the scale and the grouse moor operated by a factor would receive a stronger penalty, due to the comprehensive plan set in place and capability of paying for the latter. The added complexity of accountability in the latter scenario would make it difficult to account for who is ultimately held ‘responsible’ for the shooting activity, and in this instance imposing a steep fine instead of a custodial sentence may be a more appropriate penalty.
- 4. Do you agree that the maximum prison sentence available for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to twelve months imprisonment?**
- LINK members disagree that the maximum prison sentence available for offences which cause harm to species places of shelter should be increased to twelve months imprisonment. LINK views crimes which damage or destroy protected places as serious offences as injuring, un-licensed killing or taking of wild animals as these crimes affect the animal’s ability to survive, and in cases of species such as bats and badgers threaten populations. Another example is that of eagle eyries, where their places of shelter have been burnt to prevent breeding, and these sites may be the only viable site within range, thus making the site uninhabitable for several years. Offences such as these have a direct impact on an animals’ ability to live and breed in a certain area making these offences as damaging as other fatal wildlife crimes and have a detrimental effect on biodiversity and ecosystem services. LINK members strongly recommend that sentencing of up to five years imprisonment should be available.

- 5. Do you agree that the upper limit on fines for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to £40,000?**
- LINK members disagree that the upper limit on fines for wildlife offences, which include disturbance of animals’ places of shelter should be increased to £40,000. While members welcome more stringent sentencing, our view as stated in previous (Q1 to Q4) sections, is that the damage or disturbance to an animals’ place of shelter has significant impact on the population and is as serious as injuring or un-licensed killing or taking of wild animals. LINK strongly recommends that sentences of five years imprisonment should be made available.

In addition, the Wildlife Crime Penalties Review⁴ indicates that protected sites tend to receive higher fines, these are however not consistent. ‘Intentional or reckless damage to Sites of Special Scientific

⁵BBC News (2019): Developer fined for destroying bat home in London <https://www.bbc.co.uk/news/uk-england-london-47811545>

Interest (SSSI) attracts a maximum of £40,000 on summary conviction' however an unlimited fine can be imposed on indictment. The Wildlife Crime Penalties Review⁴ further recommends that while increasing in the maximum fine on a summary conviction for principal environmental offences in Scotland to £40,000, the 'Scottish Government should consider a move to unlimited fines as has just occurred in England and Wales'. In the case of grouse moors even £40,000 is not an effective deterrent when viewed across multiple land holdings. The £40,000 and/or unlimited penalties should be considered for more serious crimes.

6. Do you agree that the statutory time limit for wildlife crime offences that may be prosecuted under summary procedure only, e.g. the intentional or reckless taking, damage or destruction of nests under section 1(1)(b) of the Wildlife and Countryside Act 1981, should be increased to six months from which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence?

LINK members note that the statutory limit for wildlife crime for offences for damage or destruction of nests under section 1(1)(b) of the Wildlife and Countryside Act 1981 should not be limited to the time limit set under summary procedure for the following reasons:

- Offences related to protected places should not remain to be dealt with only summary procedure, if the offences related to unlawful killing, reckless taking are to be allowed trial under indictable offences. Following our earlier arguments (Q1 to Q4), offences related to disturbance/destruction of protected places should be as serious as offences related to unlawful killing, reckless taking. In line with considerations made by the Wildlife Crime Penalties Review⁴, 'conviction on indictment should be more widely available across a range of wildlife offences', LINK argue for this reason serious offences such as destruction of an animals place of shelter should also be tried under indictable offence in the upper courts, where the trial is not subject to time limits.
- In addition, establishing criminality for some offences may require more time to gather evidence, such as DNA testing or take time in gathering evidence from different sites. Setting a short statutory limit would inhibit the detection of potential crime.

7. Do you agree that we should allow some wildlife offences, for example the injuring or un-licensed killing, or taking of wild animals, to be tried under solemn proceedings before a jury in court?

LINK supports the notion that wildlife offences whether injuring or un-licensed killing or taking of wild animals are serious offences, and therefore should be tried under solemn proceedings. However, as noted in response to previous questions (Q1 to Q4, Q6), we do not support the suggestion that this is restricted to offences that related to injuring or un-licensed killing, or taking of wild animals, this policy should also include disturbing the places protected for animals and not be restricted to summary procedure.

8. Please use this question to provide any other commentary or observations you have on the proposal to increase the available penalties for wildlife crimes.

LINK notes that additional recommendations made by the Wildlife Crime Penalties Review Group have not been considered in the consultation. As stated in the review report 'reducing wildlife crime is not simply a question of raising penalty levels', while penalties may act as a deterrent for some crimes a comprehensive approach is required in addressing crime, from identifying the type of

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crime, the level of penalty, along with bringing consistency and transparency in sentencing. In addition to the above it is also noted the consultation does not indicate any time frames on when the recommendations will be implemented. Based on the recommendations made by the Wildlife Crime Penalties Review Group, LINK notes the following measures should be also be included:

- **Establish timeframe:** for implementation of Wildlife Crime Penalties Review recommendations.
- **Include a wide package of penalties:** for example, in crimes related to badger baiting, forfeiture penalties might serve as a deterrent.
- **Further consideration should be given to proceeds of crime:** for example, gains made by large estates by illegal killing of mammals and birds to increase numbers of game birds for profit-making shooting.
- **Employ an evidence-based approach to develop impact statements:** LINK welcomes the recommendation of overhauling impact statements and making the process more systematic. To ensure that impact statement is informed by evidence and not just the conservation status, and this acts as an effective preventative measure, it is strongly recommended that input from environmental and wildlife NGO's that work with the concerned species forms the basis of the impact statement.
- **Further consideration should be given to re-training courses:** LINK welcomes the recommendation of wildlife crime offenders attending re-training courses. Environmental NGO's engage with wider community through a range of citizen science initiatives, opportunities to develop such courses in partnership with Community Payback Orders should be considered further.

This response was compiled on behalf of LINK Wildlife Crime Subgroup and is supported by:

Bat Conservation Trust
Scottish Badgers
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