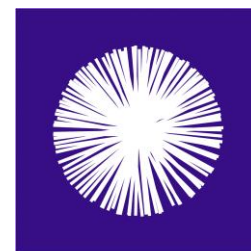


## Response to Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill: Stage 1 Call for Evidence

by Scottish Environment LINK's Wildlife Crime Subgroup

Date: 12<sup>th</sup> November 2019



Scottish  
Environment

**LINK**

### Summary

Scottish Environment LINK welcomes the opportunity to contribute to the Environment Climate Change and Land Reform Committee's call for evidence on Stage 1 of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. Consistent with the recommendations made by the Wildlife Crime Penalties Review Group, LINK members support the provision of more stringent sentencing, including unlimited financial penalties for more serious wildlife offences, within the Bill. LINK notes there have been concerns regarding the assessment and subsequent adoption of the recommendations made by the Wildlife Crime Penalties Review, which were made in 2015, and the Bill should set a duty on Ministers with regards to timeframe for implementation of the recommendations set out in the Review.

- **LINK welcomes the Scottish Government commitment within the Bill, of awarding higher penalties for wildlife offences involving destruction or damage to protected places.**
- **LINK recommends the increase in penalty should also include animals' resting places and breeding sites such as badger setts and bat roosts.**
- **LINK recommends fines should have the potential to be unlimited as recommended by the Poustie Review<sup>1</sup>.**
- **LINK recommends custodial penalties should be made available in relation to wildlife offences against animals' resting sites and breeding spaces, such as badger setts.**

### Introduction

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 contribute to Environment, Climate Change and Land Reform Committee (ECCLR) call for evidence for Stage 1 of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, hereby referred to as the Bill. LINK comments on the Bill are noted below.

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<sup>1</sup> Wildlife Crime Penalties Review Group Report (2015)  
[https://strathprints.strath.ac.uk/59764/1/Poustie\\_2015\\_Wildlife\\_Crime\\_Penalties\\_Review\\_Group\\_Report.pdf](https://strathprints.strath.ac.uk/59764/1/Poustie_2015_Wildlife_Crime_Penalties_Review_Group_Report.pdf)

## Penalties (for animal and wildlife offences)

### 1. Are the proposed maximum penalties for animal welfare offences set at the right level to act as a deterrent?

LINK members agree that the penalties for animal welfare offences, prison sentence of five years, an unlimited fine or both represent an appropriate level of penalty for serious animal welfare offences. We recommend offences against wildlife, within the context of animal welfare should not only consider injuring/killing or taking of animals but also damage to an animal's resting places and breeding sites. Our reasons for doing so are noted in the responses below.

### 2. Are the proposed maximum penalties set at the right level to act as a deterrent?

- LINK have previously<sup>2</sup> indicated that penalties should be increased to act as dissuasive instruments, reflecting the seriousness of the offence. As indicated in response to Question 1, wildlife offences against habitats should be considered as seriously as offences against animals, due to the impact on the animals' wellbeing or survival. Current levels of penalties have not been dissuasive. In certain cases, even if the perpetrators are caught and prosecuted (such as illegal persecution of birds of prey on grouse moors or poaching of pearl mussels) the profits gained from these crimes outweigh the financial penalties. Wildlife offences such as damage to badger setts or bat roosts largely relate to development of land and buildings and in these situations the suggested maximum penalty of £40,000 to be made available to the lower courts can be insignificant in relation to the overall profits generated. In the case of grouse moors even £40,000 is not an effective deterrent when viewed across multiple land holdings. As such we welcome the suggestion that offences relating to European Protected Species should be triable either way with unlimited fines being available where they are tried on indictment. We do however, feel that other wildlife crime offences, such as those relating to raptor or badger persecution should similarly be triable either way. The £40,000 and/or unlimited penalties should be considered for more serious wildlife offences. Additionally, we note that maximum level of penalties is considered in relation to the nature of the wildlife offence. While custodial sentences may not be of relevance to offending against bats due to the corporate nature of the crimes, in the case of badger baiting financial penalties or custodial sentences may seem more suitable as most of the badger crimes reported are of disturbed and destroyed setts. Sentences against such offences therefore should be dissuasive and strengthened. With regards to level of maximum penalties set within the Bill, LINK makes the following recommendations:

- **LINK recommends fines should have the potential to be unlimited.**
- **LINK recommends custodial penalties should be available in relation to wildlife offences which damage/harm animals' resting places and breeding sites, such as badger setts.**

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### 3. Are there specific examples where existing maximum penalties have been insufficient?

- LINK has previously noted<sup>2</sup> that the criteria for establishing penalties against wildlife offences should go beyond ‘injuring or un-licensed killing or taking of wild animals’<sup>3</sup> where the penalty criteria should also include offences, which disturb/damage/destroy a species’ resting site and breeding place. LINK welcomes Scottish Government commitment<sup>4</sup> to amend maximum penalties for wildlife offences involving harm to animal or habitats within the Bill. Further comments are noted below:
  - LINK member organisation Scottish Badgers annually receive data on several incidents around sett interference<sup>5</sup>. Many of these incidents concern wilful or intended damage of badger setts. Current levels of fines against disturbance or destruction of badger setts are not in proportion to the economic gains that can be made in relation to the removal of badger setts. Badger setts are integral to badgers’ social groups, whereby any interference with setts can have an impact on badger populations<sup>6</sup> in local areas. Existing penalties on damage to a species habitat also does not consider the relationship between habitat disturbance/destruction and an animals’ life. Damage to badger setts can result in death of badgers under inhumane conditions such as crushing or drowning.
  - Additionally, wildlife offences against bats also include interference against bat roost sites. LINK have previously<sup>Error! Bookmark not defined.</sup> highlighted that disturbance and destruction of bat roost sites have a direct impact on bat populations and currently there is an absence of appropriate penalties in relation to this wildlife offence. For wildlife offences against bats, currently under the Conservation (Natural Habitats) Regulations 1994 penalties are set at level 5 at the standard scale<sup>7</sup>. Evidence suggests that offender’s benefit financially more from not following the law, as opposed to financial penalties imposed by courts. Therefore, with regards to sufficiency of existing legislation on maximum penalties our recommendation is:
    - **LINK recommends the increase in penalty conviction should also include animals’ resting places and breeding sites, such as badger setts and bat roosts.**

### 4. Do the proposals on wildlife penalties fully address the recommendations of the Poustie review on penalties?

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<sup>2</sup> LINK Response to Scottish Government Wildlife Crime Penalties Consultation (August 2019):

<http://www.scotlink.org/wp/files/documents/LINK-Response-to-wildlife-crime-penalties-consultation.pdf>

<sup>3</sup> Wildlife Crime Penalties Consultation (2019): <https://www.gov.scot/publications/wildlife-crime-penalties-consultation/>

<sup>4</sup> Scottish Government letter to ECCLR (2019):

[https://www.parliament.scot/S5\\_Environment/General%20Documents/ECCLR\\_AWB\\_2019.10.02\\_IN\\_Min\\_M.Gougeon\\_Further\\_info\\_on\\_Bill.pdf](https://www.parliament.scot/S5_Environment/General%20Documents/ECCLR_AWB_2019.10.02_IN_Min_M.Gougeon_Further_info_on_Bill.pdf)

<sup>5</sup> Scottish Badger Annual Review Report (2017) [https://www.scottishbadgers.org.uk/userfiles/file/annual\\_reports/2016-2017/SB-Annual-Review-2017.pdf](https://www.scottishbadgers.org.uk/userfiles/file/annual_reports/2016-2017/SB-Annual-Review-2017.pdf)

<sup>6</sup> Roper, T.J. (2010) Badger. The New Naturalist Library, Collins, London.

<sup>7</sup> The Conservation (Natural Habitats, &c) Regulations 1994 <http://www.legislation.gov.uk/ukxi/1994/2716/made>

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## LINK Consultation Response

- The Poustie review<sup>1</sup> recommended fines of at least £40,000 and up to 12 months imprisonment on summary conviction for serious wildlife offences. LINK members feel that for some wildlife offences covered by the Bill, the proposals do not sufficiently reflect their seriousness. In particular, in respect of the Wildlife and Countryside Act, certain additional offences relating to prohibited methods of killing wild birds, to snares, and to the protection of wild plants - sections 5(1)(e), 11A(5), 11A(6), 13(1), 13(2) and 13(3A) - should be punishable on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both). (From this it follows that some offences against 5(1)(f) should also be punishable likewise.) For the same reason certain additional offences relating to the protection of wild birds and their nests, the protection of certain (non-avian) wild animals, to snares, wild hares, and the possession of banned pesticides - 1(1)(b), 1(1)(ba), 1(1)(c), 1(2)(a) & 1(2)(b), 9(2), 9(4)(a), 11B(3)(a), 11B(3)(b), 11(1)(a) – but only in respect of section 10A, 15A(1) and 15A(2A) - should be punishable on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both) or, on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both). (From this it follows that some offences against s.1(5C), 9(5A) should also be punishable likewise.)

### **5. Are the proposals for treatment of service animals necessary and appropriate?**

LINK member organisations have no remit in this area but support the measures set out in the Bill.

### **6. Will the proposals have implications for how evidence is gathered and treated?**

Wildlife crimes such as badger crime are linked with other forms of serious crime, where badger offence investigations may well lead to resolving other crimes to do with drugs, theft and violence<sup>8</sup>. LINK member organisations extend support to conservation organisations that call for maximum sentences to be stringent enough to allow some types of wildlife offences to be identified as serious crime, enabling access to investigations teams.

## **New powers for enforcement agencies without a Court Order**

### **7. Are the proposals to allow enforcement agencies to intervene without a need for a court order necessary and appropriate?**

LINK member organisations have no view on this matter.

### **8. What impact will the proposals have on: local authorities; animal welfare agencies, sanctuaries and rehoming centres; commercial businesses, individuals and the welfare of different types of animal?**

These proposals have no impact on stakeholders working with LINK organisations.

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<sup>8</sup> Murray 2017 News item in evening telegraph: <https://www.eveningtelegraph.co.uk/fp/badger-baiting-father-son-banned-keeping-animals-five-lurchers-seized/?sso-c=MC4xNzk5MzZMwMCAxNTcyMjcyMDc4>

## Compensation

### 9. Are the proposals to pay compensation to an owner necessary and appropriate?

LINK member organisations have no view on this matter.

## Fixed Penalty Notices

### 10. Will Fixed Penalty Notices act as a deterrent and how should they be used to maximise their positive impact on animal welfare?

LINK agree in principle with the notion of fixed penalty notices. However, further clarification is sought on guidelines on when the notices can be issued and who might be authorised to issue notices. The guidelines should also set clear limits on the applicability of fixed penalty notices as a measure, in relation to severity of offences. For example, fixed penalty notices should not be applied in circumstances where prosecution and a court appearance are the most appropriate course of action.

### 11. Any further issues or views not falling under the above areas?

- LINK members note that increasing powers of SSPCA should be considered within the scope of the Bill.
- Based on anecdotal data and LINK member organisations experience there have been cases where even if there is a strong link through a chain of command vicarious liability is not applied. There is potential for widening the application of vicarious liability to non-avian wildlife species.

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

Bat Conservation Trust

Scottish Badgers

Scottish Wildlife Trust

RSPB Scotland

### **For more information contact:**

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