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Convener of the Environment, Climate Change
and Land Reform Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Sth December 2019

Dear Gillian,

CONSULTATION ON FIXED PENALTY NOTICES FOR WILDLIFE OFFENCES

On 29 October 2019, the Committee took evidence from policy officials on the Animals and Wildlife (Penalties, Protections and Powers) Bill. In response to an enquiry about alternative penalties for wildlife crimes, policy officials informed you that the Scottish Government is considering the possibility of introducing fixed penalty notices (FPNs) for certain wildlife offences, as an alternative to custodial sentences.

I am writing to advise you that a consultation on the introduction of FPNs for wildlife offences has been sent to relevant stakeholders today. This is a targeted and focused stakeholder consultation, which will provide us with in-depth views from those directly involved in wildlife management and conservation.

The consultation is seeking advice on potential suitable FPN schemes and applicable offences within wildlife legislation which could be subject to FPNs. Officials will also be meeting directly with key stakeholders, including Police Scotland and the Crown Office and Procurator Fiscals Service to seek their views on the introduction of an FPN scheme.

We have asked that responses be submitted by 19 January 2020 and I will provide you with a copy of the analysis of the responses by the end of January 2020. I have attached a copy of the consultation for your records.

I hope that you find this information helpful.

MAIRI GOUGEON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
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Fixed penalty notice consultation: Wildlife

Background

1. 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.
2. 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.
3. There is currently no provision in the six pieces of wildlife legislation¹, 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.
4. 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.
5. 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.
6. 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.
7. 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:

¹ [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](#)

- 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.

8. Under the regime 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.

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

10. Further information about the scheme can be found at:
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: wildlifepenalitiesconsultation2019@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

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 offences?

[Comment]