



Department
for Environment
Food & Rural Affairs

Enforcement of animal health and welfare offences

A public consultation

Date: 25 May 2023

We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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ahwenforcement@defra.gov.uk

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Introduction

We are seeking your views on the government's proposed implementation of penalty notices for animal health and welfare offences in England only.

In April 2022, the Animals (Penalty Notices) Act "the Act" was passed in Parliament. The Act provides the powers to introduce penalty notices in England for relevant animal health and welfare offences (and in Wales for offences under the Dangerous Dogs Act 1991).

The Act states that the Secretary of State may through regulations, prescribe offences as relevant offences for the purposes of this Act. The Act requires the Secretary of State to make regulations to 'switch on' the penalty notices option for relevant offences under the primary legislation listed in the Act itself and all secondary legislation made under those primary legislation.

We are consulting on two elements:

1. Which range of offences could be "switched on" and be under the scope of the penalty notices regime
2. How penalty notices will work in practice.

We believe that these new and proportionate financial penalties for animal health and welfare offences could add to, and complement, the current enforcement regime to support early behaviour change to promote compliance and better protect the nation's animals.

How to respond

Our preferred way of receiving responses is through the Citizen Space platform.

If you are unable to use Citizen Space, you can download the consultation documents and return your response via email to ahwenforcement@defra.gov.uk

Confidentiality and data protection

A summary of responses to this consultation will be published on the government website at: www.gov.uk/defra. An annex to the consultation summary will list all organisations that responded but will not include personal names, addresses or other contact details.

Defra may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (for example home address, email address).

If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept confidential and explain your reasons for confidentiality. The reason for this is that information in responses to this consultation may be subject to

release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

There may be occasions when Defra will share the information you provide in response to the consultation, including any personal data, with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only.

This consultation is being conducted in line with the Cabinet Office "Consultation Principles" which can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>.

Please find our latest privacy notice uploaded as a related document alongside our consultation documents.

If you have any comments or complaints about the consultation process, please address them to: consultation.coordinator@defra.gov.uk.

Duration

This consultation will run for 8 weeks. The consultation opened on 25 May 2023 and closes on 20 July 2023. Unfortunately, any responses received after this date will not be analysed. To ensure your response is included in the analysis, please consider responding online via Citizen Space.

For further information on how Defra collects, processes and stores our data, please see the consultation privacy notice, saved on Citizen Space.

About you

Q1. Would you like your response to be confidential? (Select one option only)

- Yes
- No

If you answered yes, state clearly below what information you would like to be kept as confidential and explain your reasons for confidentiality:

Q2. Who are you responding as? (Select one option only)

Individual

- Member of the public
- Pet owner
- Equine/ Livestock/poultry Keeper
- Academic
- Veterinarian
- Transporter
- Business owner
- Other (please specify)
- Organisation
 - Central government organisation
 - County Council
 - Unitary Council
 - District Council
 - Animal welfare group
 - Veterinary
 - University
 - Membership organisation (describe your organisation)
 - Other (Please specify)

Q3. Please select where you/your organisation is based (select all that apply):

- England
- Northern Ireland
- Scotland
- Wales
- Other

Executive Summary

Background

The UK has a world leading record on animal health and welfare, and over the last decade progress have been made in ensuring animals receive the care, respect, and protection they deserve.

Animal health laws are in place to ensure the protection of both human and animal health, whilst protecting the country from the threat of diseases which impact our nation's productivity and ability to trade freely. Our animal welfare laws aim to recognise animal sentience, impose duties of care on keepers and protect animals from unnecessary suffering and cruelty.

The vast majority of owners and keepers comply with their duty of care when it comes to the legislation to protect the health and welfare of our animals. However, there are occasions when sometimes they fail to do so, and it is the responsibility of enforcement bodies to use appropriate enforcement tools to make sure the law is upheld.

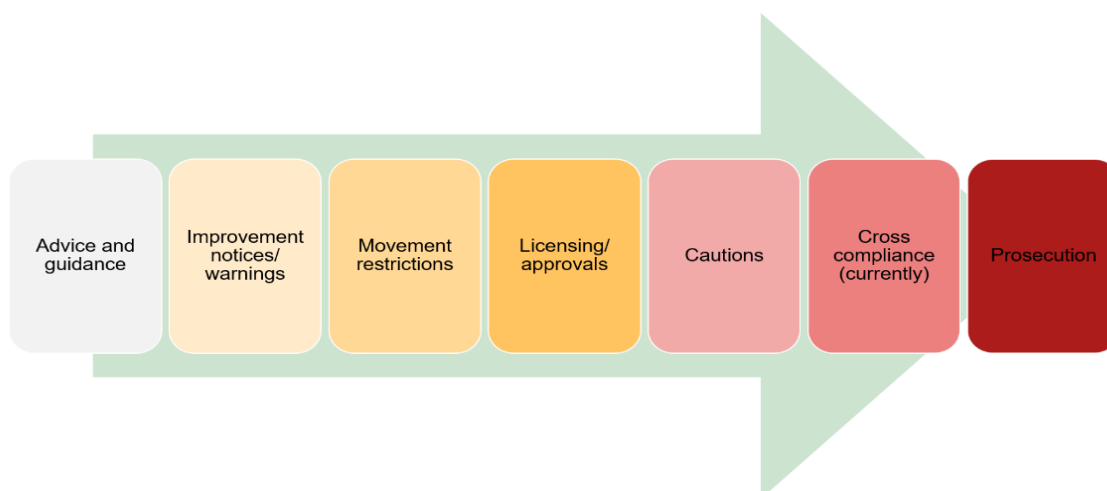
In 2021, the government published an Action Plan for Animal Welfare setting out further ambition to provide regulators and enforcers with more flexible and proportionate tools to promote compliance by introducing a new system of penalty notices.

What are penalty notices?

A penalty notice is a notice giving an individual the opportunity to discharge liability from prosecution for an alleged criminal offence in exchange for a fee and correcting the issue. Penalty notices are used in other circumstances such as environmental offences for example littering, spitting or dog fouling.

Current issues and policy position

In England, the enforcement options available to deal with breaches of animal health, biosecurity, and welfare regulations are varied with options ranging from: advice and guidance; warning letters/ statutory notices; regulatory actions; and prosecution.



Non-compliance with regulations is initially discovered and identified by inspections or investigations. Inspectors appointed by a local authority or government may issue improvement notices when an offence has been identified. An improvement notice can be issued when an inspector has evidence that a person is failing to secure the welfare of an animal for which that person is responsible. These improvement notices allow inspectors to require that those responsible for animals deal with health or welfare problems by following specific advice. It is an offence not to comply with an improvement notice without a reasonable excuse.

Improvement notices generally conclude positively with required action being taken. However, in the rare cases where a notice is not complied with, those responsible may be prosecuted for the offence of failing to comply with a statutory notice in addition to the original welfare breach.

For cases of a more serious nature, or cases where an improvement notice has not been complied with, inspectors would normally gather evidence and put a case forward to a court for prosecution. Preparing and prosecuting cases for animal health and welfare offences is time consuming, costly for both the enforcement authorities and the courts, and takes time to reach a conclusion. Nevertheless, action needs to be taken in relation to offences of this type and as such, offences may not always, depending on the circumstances, be considered appropriate for enforcement by way of prosecution.

Cross compliance is a system that currently link certain farm support payments to regulatory compliance and has been used as the major vehicle for enforcement of animal health and welfare standards on farms. The current support payments that link to cross compliance are winding down and are due to end by the start of 2024.

The role of penalty notices

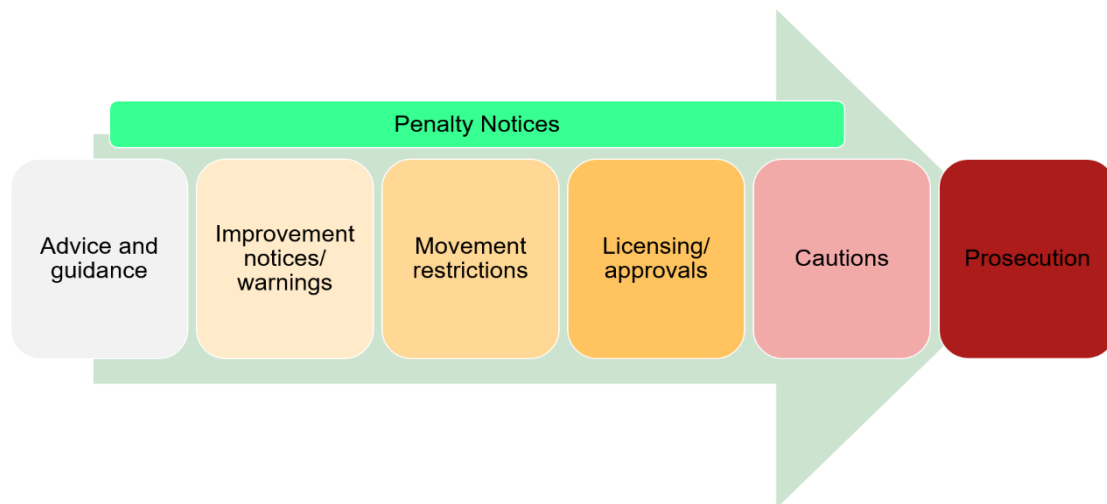
The government's Action Plan for Animal Welfare sets out a range of legislative and non-legislative reforms to ensure that the future health and welfare standards for all animals, whether farmed, companion, or wild, builds on the UK's already high standards.

There is an opportunity to introduce proportionality and consistency to enforcement across legislation dealing with all kept animals. We recognise that regulation and enforcement has become overly complicated and limited, and that a new and transparent approach is needed for the regulator, enforcer, pet owners, responsible keepers and business owners.

The Animals (Penalty Notices) Act ("the Act") was adopted in April 2022 providing powers to introduce penalty notices with a maximum penalty of £5,000, for animal health and welfare offences that have been made under legislation set out in s1(3) of the Act and 'switched on' in regulations made by the Secretary of State. These legislative powers are limited to England only as animal health and welfare policy is a devolved area though extends to offences under Dangerous Dogs Act in Wales as this

is reserved. Penalty notices are intended to provide a proportionate and middle ground enforcement tool where individuals could be fined for not acting in accordance with the law as an alternative to court proceedings where, if found guilty, they would receive a criminal conviction.

The goal is for this new enforcement tool to sit alongside the existing portfolio of enforcement measures and provide an additional option for enforcers to redirect behaviour. Advice and guidance should remain as our primary enforcement tool for early redirection to protect our animals from harm. There is plenty of advice and guidance available to everyone who may be responsible for an animal ranging from statutory guidance, codes of practice and the recently launched animal health and welfare pathway. However, a financial penalty could be used to highlight the importance of complying with rules and rectifying the issue if advice and guidance is ignored or proves an insufficient incentive for change.



A penalty notice is a notice giving an individual the opportunity to discharge liability from prosecution for an alleged criminal offence in exchange for a fee and correcting the issue. Additionally, penalty notices will allow the person who has committed the offence to know, with certainty, the outcome of an enforcement action in a timely manner without admitting guilt and receiving a criminal record. Penalty notices provide a quick and cost-effective solution, with potentially reduced uncertainty around legal costs. Penalty notices also allow regulators and enforcers to support individuals in rectifying the issue.

The aim of penalty notices is not to replace the option of going to prosecution for the most serious of offences. The ability to issue a penalty notice as an alternative to prosecution in court may therefore be an appropriate means of penalising various offences made under the Acts and secondary legislation set out in s1(3) of the Act. It is the government's view that there are certain offences which relate to animals and animal products where there should be the provision to issue penalty notices.

How will penalty notices work?

A penalty notice is a notice giving an individual the opportunity to discharge liability from prosecution for an alleged criminal offence in exchange for a fee and correcting the issue. Penalty notices will add to and complement the current enforcement regime to support early redirection through behaviour change to promote compliance.

Advice and guidance would be the primary enforcement action to promote compliance in most cases, however penalty notices could supplement this action if guidance is insufficient in redirecting behaviour towards compliance. Penalty notices are not designed to act as a strong punishment for serious offences. They are intended to be used as a proportionate deterrent, to provide early redirection towards behaviour that is in line with our laws. For the most serious cases, where a fine would not be a sufficient deterrent, prosecution will always be the most appropriate course of action.

Penalty notices will give the person who is issued the notice the opportunity to discharge any liability to conviction for the relevant offence by payment of the amount specified in the notice. The penalty amount that can apply to an offence is set to no more than £5,000 or the maximum fine for which a person convicted of the offence is liable on summary conviction, whichever is less. The penalty notice must be paid within 28 days of being issued however the amount may be reduced by 50% if the fine is paid within 14 days.¹

Penalty notices can only be issued if the person responsible for issuing the penalty notice is satisfied beyond reasonable doubt that the relevant offence has been committed by the person to whom the penalty notice is being issued.²

Penalty notices will be issued by enforcement authorities. Under the Act, an “enforcement authority”, for a relevant offence, is a person who is specified in relation to the offence by regulations made by the Secretary of State³ (and the regulations may specify more than one person in relation to any relevant offence). Funds received by enforcement authorities, from the receipt of paid penalty notices, will be paid into the Consolidated Fund,⁴ the government’s general bank account at the Bank of England.

We will be publishing statutory guidance, in conjunction with regulations, to enforcement authorities on the matters to be considered in deciding (a) whether to issue a penalty notice and (b) the financial level of a penalty notice. Enforcement authorities must have regard to the guidance before issuing a penalty notice.⁵

¹ S3 of the Act

² S1(1) of the Act

³ S1(4) of the Act

⁴ As set out in s5 of the Act

⁵ As set out in s4 of the Act

When a penalty notice is issued

As previously stated, a penalty notice is an invitation to discharge a person's liability to prosecution by payment of the full amount of the penalty. In essence this means that whilst this is not an admission of guilt; it is an agreement that an offence has been committed and that payment of the fine specified and if the behaviour is corrected will negate further action.

Criminal proceedings cannot be issued in respect of a failure to pay a penalty notice, rather, any proceedings would arise from the commission of the underlying offence. If a person disagrees with the penalty notice issued, then they can choose to not pay the penalty fine. It will be up to the enforcer to decide whether to proceed to prosecution in relation to the original offence and let an appropriate court judge decide whether the penalty notice is merited or was given correctly.

Individuals who are issued a penalty notice will have a 28-day window to pay the penalty, referred to in the Act as the 'relevant period'.⁶ If an individual chooses not to pay the penalty, there is a period of six months for the enforcement authority to present the case to court. This six-month period starts when the offence was committed, or when the matter of complaint arose.⁷ S3(7) of the Act expressly provides that the 'relevant period' is to be disregarded for the purposes of calculating the six-month period in which to institute proceedings.

We expect individuals who have received a penalty notice will be more aware of the importance of complying with rules and understand the offence committed could have been prosecuted. As such the likelihood of committing a future offence would be reduced thus ensuring the health and welfare of our animals.

Reporting

Enforcement authorities will be required to report annually on their use of penalty notices. The report must include: the number of penalty notices issued; the amounts specified in the penalty notices issued; and the reason each penalty notice was issued, i.e., the offence committed.⁸ This will provide us with good oversight of use across the various enforcement bodies.

Conclusion

In this consultation, we are asking respondents questions about the scope of animal health and welfare offences that could be covered by penalty notices and elements on how the penalty notice regime might work in practice to ensure the guidance is clear and transparent to enforcers and the general public.

⁶ S3(4) of the Act

⁷ S127 Magistrates' Courts Act 1980

⁸ S6 of the Act

Next Steps

We plan to publish a report on GOV.UK summarising the feedback we have received once the consultation closes. The findings of the consultation will help us determine the areas of offences across animal health and welfare could a penalty notice be an appropriate enforcement option.

As previously stated, the Act states that the Secretary of State may through regulations, prescribe offences as relevant offences for the purposes of this Act. The Act requires the Secretary of State to make regulations to 'switch on' the penalty notices option for relevant offences.

We expect regulations 'switching on' relevant offences will be introduced in phases with the first set being introduced later this year. Depending on the outcome of this consultation we propose that specific offences across all the animal health and welfare themes will be 'switched on' in each set of regulation introduced rather than certain themes subsequently. The specific offences to be 'switch on; will be determined by a number of factors such as the responses from this consultation, ongoing policy development (for example cat microchipping, live exports, veterinary medicines reforms etc), pressing enforcement gaps and readiness of stakeholders and enforcers.

Along with regulations 'switching on' relevant offences, we will be preparing statutory guidance to be published along with the first set of regulations which will provide guidance on how enforcers will use penalty notices.

Part 1 - Scope of the penalty notice regime

The Animals (Penalty Notices) Act 2022 is primary legislation that enables the use of penalty notices for animal health and welfare offences as set out via secondary legislation and statutory guidance. For an offence to be capable of being subject to a penalty notice under the Act, it must be made under the relevant parts of one of the Acts of Parliament set out in s1(3) of the Act or secondary legislation made under those Acts. Future legislation amending or made under these Acts, or which is added to s1(3) by way of amendment, will also be within scope of the penalty notice regime.

At present, seven Acts are set out in s1(3) of the Act, there are offences within those Acts and some Acts themselves that is not included in this consultation as we believe introducing penalty notice for these offences is not appropriate at this time. For the purposes of this consultation, the following Acts and secondary legislation made under these Acts are being considered and are as follows:

1. Animal Welfare Act 2006

This Act makes it an offence to cause unnecessary suffering to an animal and creates a 'duty of care' between individuals and the animals they are responsible for. It also highlights particularly cruel practices and makes them offences, such as dog fighting, mutilations and docking of dog's tails. Secondary legislation made under this Act includes the microchipping of cats and dogs, the welfare of farmed animal's regulations and the licensing of specified activities involving animals.

2. Animal Health Act 1981

This Act provides the necessary legal powers to promote animal health and to control animal disease, including when there is an animal disease outbreak, such as foot and mouth or avian influenza. It extends to provisions for cleansing and disinfecting, regulating the movement of animals and products both domestically and internationally and extends to welfare at market and in transport. Much of the secondary legislation made under this Act covers farm species but does also extend to equines and pet travel.

3. Dangerous Wild Animals Act 1976

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 although primarily concerned with public safety does also require that keepers must meet some welfare requirements (provision of suitable accommodation, food and drink, for example) and requires keepers of dangerous wild animals to be licensed and inspected by the local authority.

4. Zoo Licensing Act 1981

The Zoo Licensing Act 1981 requires the inspection and licensing of all zoos in Great Britain. The Act aims to ensure that, amongst other things, zoo animals are provided with a suitable environment to provide an opportunity to express normal behaviours, as well as requiring all zoos to undertake conservation, education and research work.

5. Wild Animals in Circuses Act 2019

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

6. Retained EU law

Secondary legislation enacted under the now revoked ECA 1972 holds the status of 'retained EU Law' under the provisions of the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020. Offences relating to animals or animal-by-products contained in these regulations and orders are therefore included within the scope of the Act. Secondary legislation made under this Act includes legislation such as livestock and equine identification, trade in animal related products and animal health offences.

For offences that are being considered, we will be discussing the use of penalty notices for these within the following five themes:

- Animal welfare
- Animal licensing
- Animal identification
- Animal health
- Import of live animals, products of animal origin (POAO) and animal by products (ABP)

Animal welfare related offences

The UK has a long history of leading the way on animal welfare. The Animal Welfare Act 2006 is the principal law relating to the welfare of animals under the control of man. The law aims to protect animals from harm from birth to death including, breeding, transportation, welfare at time of killing and prohibits certain activities such as mutilation⁹ and poisoning¹⁰ and requires anyone responsible for an animal to ensure that its needs are met to the extent required by good practice.¹¹ Supplementing legislation are codes of practice which provide owners and keepers with information relating to their duty of care on how to meet the welfare needs of their animals.

Currently for companion animal, domestic animals which we may refer to as a 'pet' including cats, dogs, horses, small furrries, ornamental fish and caged birds, welfare, the main enforcement tools are formal letters or prosecution. Existing legislation lists offences that are triable in a court and could result in prosecution and a criminal record. We know that in most instances prosecution is not the most proportionate course of action nor in the public interest in the first instance. Likewise, advice, guidance or formal letters may not always have the required impact to redirecting non-compliance with the law in a timely manner and further enforcement options may be needed.

For on farm animal welfare, there are additional enforcement options including suspensions or revocations of authorisations and cross compliance, a system linking support payments to regulatory compliance and, another vehicle for enforcement of standards of on farm animal health and welfare, and its application of payment deductions is widely regarded as inflexible and disproportionate. Cross Compliance is due to end by the start of 2024.

Penalty notices could provide an additional proportionate option for enforcement beyond advice and guidance and as an alternative to prosecution. Penalty notices could be used as a supplementary or alternative enforcement option if individuals fail to follow guidance and advice issued by enforcers and regulators to redirect behaviour to promote animal welfare and other tools have been deemed to be an insufficient deterrent.

Within the 2006 Act, animal welfare offences are divided into two broad categories – those addressing the prevention of harm to animals, and those concerned with the promotion of animal welfare.

⁹ S4 Animal Welfare Act 2006

¹⁰ S7 Animal Welfare Act 2006

¹¹ S9 Animal Welfare Act 2006

Prevention of harm are serious offences and include unnecessary suffering,¹² mutilation,¹³ docking of dogs' tails,¹⁴ administration of poisons¹⁵ and fighting.¹⁶ The government has bolstered sentencing powers for the most serious animal welfare offences through the Animal Welfare (Sentencing) Act 2021 by raising the maximum prison sentence from six months to five years for offences under sections 4-9 of the Animal Welfare Act 2006. We do not consider that penalty notices would be an appropriate tool to replace or supplement prosecution these offences.

The promotion of animal welfare relates to those responsible for animals having a duty to ensure their welfare needs are met.¹⁷ Promotion of animal welfare offences under section 9 of the Animal Welfare Act 2006 are committed when reasonable steps have not been taken to ensure the needs of an animal have been met. These needs are set out in the Act in a non-exclusive framework and include:

- The need for a suitable environment
- The need for a suitable diet
- The need to be able to exhibit normal behaviour patterns (such as exercise)
- The need to be housed with, or apart from, other animals
- The need to be protected from pain, suffering, injury and disease

In addition, regulations may be made under the Animal Welfare Act to promote the welfare of animals.¹⁸ A number of these regulations, for example the Welfare of Farmed Animals (England) Regulations 2007, create additional promotion of welfare offences that are informed by the needs framework set out in the Act.

Promotion of animal welfare offences therefore cover a broad array of potential scenarios and levels of seriousness. We propose that prosecution would remain the primary enforcement option for serious offences. The seriousness of an offence is a matter that would be determined by the enforcement authority in each case. This will be informed by statutory guidance and factors including whether there was deliberate or gratuitous attempt to cause suffering, prolonged or deliberate ill treatment or neglect, ill treatment in a commercial context, and whether the offender played a leading role in the illegal activity.¹⁹

¹² S4 Animal Welfare Act 2006

¹³ S5 Animal Welfare Act 2006

¹⁴ S6 Animal Welfare Act 2006

¹⁵ S7 Animal Welfare Act 2006

¹⁶ S8 Animal Welfare Act 2006

¹⁷ S9 Animal Welfare Act 2006

¹⁸ S12 Animal Welfare Act 2006

¹⁹ Sentencing Council, Animal Cruelty sentencing guidelines , 24 April 2017 <

<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/animal-cruelty-revised-2017/> >

We consider that penalty notices could play a role for less serious offences, examples of promotion of animal welfare related offences that could be in scope for a penalty notice to be issued are:

- An animal kept in poor living condition due to lack of appropriate bedding or shelter
- Attending to an animal without being familiar of the relevant codes of practice²⁰
- Commercially selling an animal to a person under 16 years old.²¹
- Transporting an animal unfit for the journey
- Failure to have back up stunning equipment when killing animals
- Using a wild animal in a travelling circus

Q4. Should penalty notices be an available enforcement tool to deal with current and potential promotion of animal welfare related offences?

- Yes
- No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not

- No, none, explain why

- Unsure, explain why

²⁰ S6(1a) Welfare of Farmed Animals (England) Regulations 2007

²¹ S11 Animal Welfare Act 2006

Animal licensing related offences

Local authorities are required by law to issue licences for specific animal-related establishments and activities including pet shops, animal boarding, riding establishments and dog breeding, with the aim of maintaining good standards of animal welfare. Licences are issued to holders to ensure high welfare standards and levels of care for animals are met by promoting and ensuring that the five key needs are met; suitable environment, suitable diet, ability to exhibit normal behaviour, suitable housing and protection from pain, suffering, injury or disease. A licence is needed to:

- Commercially sell animals as pets
- provide or organise boarding for cats or dogs (including day care)
- hire out horses
- breed dogs
- keep or train animals for exhibition
- operate a zoo
- keep a dangerous wild animal

Currently the main enforcement tools available to deal with offences in relation to licensing are formal letters/attaching conditions to a licence, suspending, varying or withdrawing a licence or prosecution. Penalty notices could provide a proportionate additional option for enforcement beyond advice and guidance and as an alternative to withdrawing a licence or prosecution. Penalty notices could also be used as a supplementary enforcement option if individuals fail to follow guidance and advice issued by enforcers and regulators, or meet conditions attached to a licence.

Some examples of animal licensing related offences that could be appropriate for a penalty notice

- An establishment not displaying their licence number
- Not abiding by or breaching licence conditions
- Not being licensed
- Not updating licence details
- Operating under an expired licence

Q5. Should penalty notices be an available enforcement tool to deal with current and potential animal licensing related offences?

- Yes
- No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not
- No, none, explain why
- Unsure, explain why

Animal Identification related offences

A key component of promoting public health, animal health and welfare is the ability to be able to identify individual animals and premises where they are kept so that animals and their contacts can be traced.

Penalty notices could provide a proportionate additional option for enforcement of identification related offences beyond advice and guidance, or enforcement notices and as an alternative to prosecution. Penalty notices could be used as a supplementary enforcement option if individuals fail to follow guidance and advice issued by enforcers and regulators to redirect behaviour towards compliance of identification rules where other tools have been deemed to be an insufficient deterrent.

Pet Identification

Microchipping a pet and ensuring contact details are up to date gives it the best opportunity of being reunited with its keeper if it is lost or strays. It also saves local authorities and charities kennelling costs.

In England, all keepers must ensure that their dog is microchipped, and their contact details are entered on a compliant database. Since mandatory microchipping for dogs was introduced in 2016, around 90% of dogs are microchipped and their details registered on a compliant database. The introduction of compulsory cat microchipping is key manifesto commitment and government intends to introduce legislation shortly to deliver this.

It is an offence for a keeper to fail to microchip their dog if it is older than eight weeks old unless it is a certified working dog or exempt from microchipping by a vet. If a dog is not microchipped outside these exemption categories, an enforcement authority may serve a notice on the keeper to microchip their dog within 21 days or face prosecution.

In March 2023, the government introduced legislation for compulsory cat microchipping. The new rules mean cats must be implanted with a microchip before they reach the age of 20 weeks and their contact details stored and kept up to date in a pet microchipping database. All owners must have their cat microchipped by 10 June 2024 and owners found not to have microchipped their cat will have 21 days to have one implanted or may face a fine of up to £500.

Q6. Should penalty notices be an available enforcement tool to deal with current and potential pet identification related offences?

- Yes
- No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not
- No, none, explain why
- Unsure, explain why

Livestock Identification

The UK has an effective and secure system of registering livestock keepers, a register of personal details of keepers of various species of livestock (cattle, sheep, goats, pigs, deer, poultry). Keepers must also register the details of the types of animal and production system and of the holdings they are kept at including the land they use to keep the livestock, unique identification of the certain livestock, and report livestock movements. Livestock identification was introduced to protect animal and public health and ensuring the safety of our meat products so that we are able to trace livestock products back to their origin. Its benefits include:

- Unique identification and ability to track animals and their movements for improved biosecurity measures
- Supporting the operation of disease control programmes
- Supporting proof of ownership
- Supporting identification in the case of any liability or damage caused by an animal to a third party
- Demonstrating farm to fork traceability and underpinning our ability to assure existing customers and secure new export markets

Examples of livestock identification related offences that could be appropriate for a penalty notice

- Not putting identification on livestock
- Refusing to allow an inspection to happen
- Failing to gather animals for inspection
- Failing to present holding register and passports at an inspection.

Q7. Should penalty notices be an available enforcement tool to deal with current and potential livestock identification related offences?

- Yes
- No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not
- No, none, explain why
- Unsure, explain why

Equine Identification

It is a legal requirement for horses to be microchipped and possess a valid passport. Identification of equines has numerous benefits, including effective disease control, meaningful checks on food chain status and the ability to identify lost, straying and stolen horses and reunite them with their keepers.

Examples of equine identification related offences that could be appropriate for a penalty notice

- Failure to apply for identification measures to an equine
- Failure to notify subsequent updates on equine identification

Q8. Should penalty notices be an available enforcement tool to deal with current and potential equine identification related offences?

- Yes
- No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not
- No, none, explain why
- Unsure, explain why

Animal health related offences

Livestock plays a key role in UK agriculture, helping to provide high quality food such as meat, milk and eggs, and contributing £16.3 billion in output to the UK's agricultural production in 2021.²² Safeguarding the health of our animals and preventing animal diseases serves to protect public health, future generations of animals, food security and food supply, rural economies, and the environment. Animal health is important because poor animal health and conditions can lead to a lot of adverse implications such as impacts on public health, global trade, agricultural stability and other sectors of the economy. Healthy animals contribute to the following:

- Achievement of 'High health status' of our animals which promotes international trade
- On farm productivity gains
- Safe food
- Reduced detrimental environmental impacts
- Antimicrobial resistance mitigations such as reductions in the unnecessary or irresponsible use of antibiotics
- Improvements in animal welfare standards

On-farm biosecurity refers to the measures that need to be taken in order to prevent the introduction and spread of diseases and pathogens throughout a farm and other sites an animal may visit. The more attention that is paid to optimal biosecurity practices, the more a farm will be able to increase its profits, maximise value, and enhance its overall health and safety standing. There is legislation in place to prevent and manage the risk of endemic and exotic diseases and promote the responsible use of animal medicines. Strict biosecurity is promoted however there are occasions when rules are not followed.

Currently for animal health related offences, the main enforcement tools are formal letters or prosecution. Generally, prosecution is not the most proportionate course of action nor in the public interest in the first instance. Likewise, advice, guidance and formal letters may not have the required impact to redirect non-compliance with the law in a timely manner and further enforcement options may be needed. Additionally, cross compliance, a system linking support payments to regulatory compliance, is another vehicle for enforcement of standards of on farm animal health and welfare, and its application of payment deductions is widely regarded as inflexible and disproportionate. Cross compliance is due to end by the start of 2024.

Penalty notices aim to be a tool that could provide a proportionate additional option for enforcement beyond advice and guidance and as an alternative to prosecution. Penalty notices could be used as a supplementary or alternative enforcement option if individuals fail to follow guidance and advice issued by enforcers and regulators to

²² [Agriculture in the UK Evidence Pack – September 2022 update](#)

redirect behaviour to promote animal health and enforce biosecurity measures and other tools have been an insufficient deterrent.

Some examples of animal health related offences that could be appropriate for a penalty notice

- Not complying with bovine TB testing requirements
- Breach of TB licensed establishments
- Moving certain animals without a required licence
- Some unauthorised animal movements
- Incorrect storage/ disposal of animal by-product material
- Incorrect administration of veterinary medicines to animals
- Insufficient cleansing and disinfection of holdings relating to exotic disease control
- Failure to house poultry when required in an Avian Influenza Prevention Zone (AIPZ)
- Feeding prohibited feeds to animals

Q9. Should penalty notices be an available enforcement tool to deal with current and potential animal health related offences?

- Yes
- No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not
- No, none, explain why
- Unsure, explain why

Imports of live animals, product of animal origin (POAO) and animal by products (ABP) related offences

The UK has a high level of food security built on diverse and robust supply chains, from strong domestic production and trade with a range of stable sources. Effective biosecurity measures are critical to protecting animal and human health. This, in turn, protects our environment, our economy, and our food supply chain. Our world-leading biosecurity status also underpins our agri-food export (of which POAO is worth around £10 billion). Government takes the threat to UK biosecurity very seriously so that trading partners, consumers, and industry can be confident in the high UK standards of food safety, animal and plant health. However, pests and disease do not respect borders. Therefore, as a trading nation, it is essential we remain vigilant to maintaining our strong biosecurity status.

The UK border is an important line of defence against pests and diseases and there are strict requirements regulating the import of live animals and products to the UK. The UK has robust systems in place to prevent the spread of pests and diseases if they are not detected at the border. For offences relating to the import of live animals, POAO and APB there is existing legislation which has offences listed that are triable in court and could result in prosecution and a criminal record. Generally prosecution is not the most proportionate course of action or in the public interest in the first instance. Likewise, advice, guidance and formal letters may not have the required impact to redirect non-compliance with the law in a timely manner and further enforcement options may be needed.

Penalty notices aim to be a proportionate tool that provides an option for enforcement beyond advice and guidance and as an alternative to prosecution. Penalty notices could be used as a supplementary or alternative enforcement option if individuals fail to follow guidance and advice issued by enforcers and regulators and other tools have been an insufficient deterrent.

Some examples of import of live animals, POAO and APB related offences that could be appropriate for a penalty notice

- Imports of products from banned countries
- Importing non-compliant products
- Imports of unauthorised veterinary medicines without a license
- Imports of products not matching with export health certificates
- Not completing pre importation tests prior to importation

Q10. Should penalty notices be an available enforcement tool to deal with current and potential import of live animals, POAO and ABP related offences?

- Yes

- No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not

- No, none, explain why

- Unsure, explain why

Part 2 - Receiving a penalty notice

Where an enforcement authority is satisfied beyond reasonable doubt that a person has committed an animal health and welfare offence within the penalty notice regime in England, the authority may issue a penalty notice to this person.²³ This is the criminal standard of proof and in practice this will mean the enforcement authority has evidence which satisfies them beyond reasonable doubt that the offence has been committed. An enforcement authority for a relevant offence must also take into account certain matters when deciding whether to issue a penalty notice.

The matters are:²⁴

- the seriousness of the conduct to which the proposed notice relates (the “relevant conduct”)
- the duration of the relevant conduct
- any evidence of intention behind the relevant conduct
- any evidence of previous acts or omissions by the person similar to the relevant conduct
- any action taken by the person to eliminate or reduce any risk of harm resulting from the relevant conduct
- any action taken by the person to remedy or mitigate any harm resulting from the relevant conduct
- whether the person reported the relevant conduct to the enforcement authority or constable
- the conduct of the person after the relevant conduct is drawn to their attention by the enforcement authority or constable

²³ S1(1) of the Act

²⁴ S4(2) of the Act

Q11. To what extent do you agree or disagree with the following statement: Where an individual has already been issued advice and guidance, an improvement notice or similar and they have failed to comply, it would be reasonable to escalate enforcement action of which, a penalty notice could be a suitable next step.

- Strongly agree, explain why?

- Agree, explain why?

- Disagree, explain why?

- Strong disagree, explain why?

- Unsure, explain why?

Q12. To what extent do you agree or disagree that an individual should be allowed to receive a maximum number of penalty notices for committing the same or similar offence within a three-year period (similar to speeding) before an alternate enforcement action is taken?

- Strongly agree, how many and explain why?

- Agree, how many and explain why?

- Disagree, explain why?

- Strong disagree, explain why?

- Unsure, explain why?

Part 3 – Penalty notice amount

Penalty notices should not be used by enforcement authorities as a method of raising revenue. Section 5 of the Act states where the proceeds from penalty notices will be paid.

Use of proceeds

- 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.
- 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.

The Act limits the penalty amount that can apply to an offence to no more than £5,000 or the maximum fine for which a person convicted of the offence is liable on summary conviction, whichever is less. When considering the appropriate penalty notice amount, we have looked at the financial penalties that are already in place elsewhere. For example, there are:

- Fines issued relating to dog microchipping which could equate to £500
- Penalty notices issued for dog fouling which is an on the spot fine up to £80
- Variable fines that can be given for offences on marketing standards relating to eggs for hatching and farmyard poultry with the maximum being £4,500
- Penalty notices for Littering up to £150
- The minimum penalty for speeding is £100 fine and three points added to your licence. Receiving 12 or more points within three years may disqualify you from driving.

Recognising that the statutory guidance which supports the use of penalty notices needs to provide a balance between providing enough information to drive consistency when a penalty notice is issued but also appropriately general to provide sufficient guidance for those offences that are nuanced in nature, we propose a framework in which the amount the penalty notice could be determined.

We propose that a penalty notice amount is calculated based on bands. Within those bands would be a range with a minimum and maximum amount. The selection of the relevant fine band, and the position of the individual offence within that band, is determined by the seriousness of the offence. Enforcement authorities may be able to move up or down bands as additional matters are taken into account.

Q13: Guidance could be given on additional matters that could be taken into account when deciding an amount to be specified in the penalty notice. We have identified examples which could be considered.

Please rate each of the below examples of additional matters between 1 to 5 (with 5 being the most important) on whether they should be taken into account when deciding a penalty notice amount for an individual who has committed an offence and a penalty notice has been deemed an appropriate enforcement action.

- Financial gain from the offence
1 2 3 4 5

- Ability to pay
1 2 3 4 5

- Number of previous penalty notices issued
1 2 3 4 5

- Duration of time since a previous penalty notice was issued
1 2 3 4 5

- If the offence is the same or similar for which a previous penalty notice was issued
1 2 3 4 5

- If other offences have been committed at the same time
1 2 3 4 5

- Number of animals involved
1 2 3 4 5

- If there are other matters that should be taken in account, please specify

Consultee Feedback on the Online Survey

Dear Consultee

Thank you for taking your time to participate in this online survey. It would be appreciated, if you can provide us with an insight into how you view the tool and the area(s) you feel is in need of improvement, by completing our feedback questionnaire.

Question: Overall, how satisfied are you with our online consultation tool?

- Very satisfied
- Satisfied
- Neither satisfied nor dissatisfied
- Dis-satisfied
- Very dissatisfied
- Don't know

Please give us any comments you have on the tool, including suggestions on how we could improve it.