

Amendments to the Animal Health Act 1981

Analysis of Consultation Responses

March 2020

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Executive Summary

This summary presents the key themes to emerge from the Scottish Government's consultation on amendments to the Animal Health Act 1981. The focus of the consultation was to gather views on proposals to give Scottish Ministers a power to make regulations allowing fixed penalty notices to be used in relation to animal health offences; and whether any further changes may be required to the Animal Health Act 1981 to ensure it remains fit for purpose.

Profile of Respondents

In total, 36 responses were available for analysis. Of these, 27 were from groups or organisations and 9 were from individuals.

Overview of Responses and Key Themes

- **Question 1 – Do you agree that the introduction of proportionate fixed penalty notices would improve enforcement of animal health offences?**
 - A majority (83.3%) of respondents agreed.
 - Key themes included: fixed penalty notices would be a quick and effective method for dealing with offences; it would give enforcement bodies more options; fixed penalty notices would improve compliance; and they should be proportionate and be used for lesser offences only.

- **Question 2 – Different fixed penalty notice regimes exist. Which fixed penalty notice regime do you think should be used for animal health offences?**
 - A number of respondents identified fixed penalty notice regimes that have been successful in other areas and could be applied to animal health offences. Examples included: Anti-social Behaviour; Sale of Tobacco and Nicotine Vapour Products; Littering; and Dog Fouling
 - Additional comments included: fixed penalty notices should be a direct alternative to prosecution; the financial penalty should be proportionate to the seriousness of the offence; and unpaid penalties should be referred for prosecution.

- **Question 3 – Are there any other amendments that could be made to the Act that you think will help to improve animal health? For example, amendments that may improve disease control, disease preparedness, biosecurity or animal movements.**
 - Suggestions included: improving biosecurity provisions; increased regulation of hobby farmers and pet owners; improving traceability; and monitoring of animal movements.
 - Further comments suggested animal health could be improved through education, training and support.

Introduction

This report presents an analysis to the Scottish Government's consultation on amendments to the Animal Health Act 1981. The focus of the consultation was to gather views on strengthening animal health legislation by enabling secondary legislation to be made that would allow fixed penalty notices to be used in relation to appropriate animal health offences. The Scottish Government also sought to explore views and opinions on the Animal Health Act 1981 and what might need to be done to ensure primary legislation used to protect the health and welfare of animals from disease remains fit for purpose.

The consultation was launched on 3rd October, ran for 12 weeks, and closed on the 23rd December 2019. The consultation can be found at:
<https://consult.gov.scot/animal-welfare/animal-health-act-1981>

The consultation provided an opportunity for all interested parties to scrutinise and comment on the proposals. The consultation was hosted on the Scottish Government Citizen Space consultation hub and the vast majority of respondents submitted their response via this portal.

The proposals were formulated into 3 specific questions and a summary of the responses are provided in this report.

The evidence gathered from this consultation will inform the legislation we will introduce to the Scottish Parliament for its approval.

Section 1: Background

The Scottish Government committed to a review of animal health legislation to ensure it remains fit for purpose as part of the Programme for Government 2019-2020.

The Animal Health Act 1981 was introduced to protect public health and the health of animals through reducing the risks of disease entering the animal population. It is the primary legislation that provides Scottish Ministers with the powers to make secondary legislation for the prevention, control and eradication of animal diseases. The Animal Health Act 1981 is now almost 40 years old. It is therefore time to review this legislation to ensure it continues to be fit for purpose and is able to maintain Scotland's proud strong track record and commitment to the highest animal health and welfare standards.

It is also appropriate to consider the need to update enforcement provisions, to ensure that all tools to deter but also punish maltreatment of animals are available. Organisations responsible for the enforcement of animal health legislation have raised concerns around some technical aspects. Enforcement bodies have suggested that there is a need for a level of enforcement that could be delivered without the intervention of the Scottish courts, whilst still providing a meaningful penalty for those breaching animal health rules.

The Scottish Government considers that the ability to issue a fixed penalty notice as an alternative to prosecution in court may be a more proportionate means of penalising less serious animal health offences.

Fixed penalty notices are already widely used by enforcement authorities in relation to other kinds of offences, and can be a valuable additional enforcement tool. It is expected that the new powers for fixed penalty notices would:

- allow minor and technical offences to be dealt with quickly and proportionately,
- promote compliance with legislative requirements, and
- reduce the number of lesser offences being dealt with by courts.

Section 2: Analysis of Responses

Summary of Respondents

In total, 38 responses were received. Of these, 2 responses were removed as they were duplicate responses¹. The remaining 36 responses were available for analysis.

Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Most responses (27) were submitted by groups or organisations. The remaining 9 responses were submitted by individual members of the public.

All respondents were asked to identify which sector they most aligned to. A breakdown of the number of responses received by respondent type is set out in Table 1 below.

Sector	Number of Respondents
Local Authority	11
Non-Government Organisation	10
Agricultural Business / Organisation	9
Veterinary Profession	2
Enforcement Agency / Officer	2
Member of the General Public	1
Not Answered	1
Total	36

Table 1: Respondents by type

¹ A response was taken to be a duplicate if both the respondent name and email address matched. If the answers at the closed questions matched across duplicate responses, the comments at the open questions were merged. If the answers at the closed questions differed, the most recently submitted response was included within the analysis.

Question 1 – Do you agree that the introduction of proportionate fixed penalty notices would improve enforcement of animal health offences?

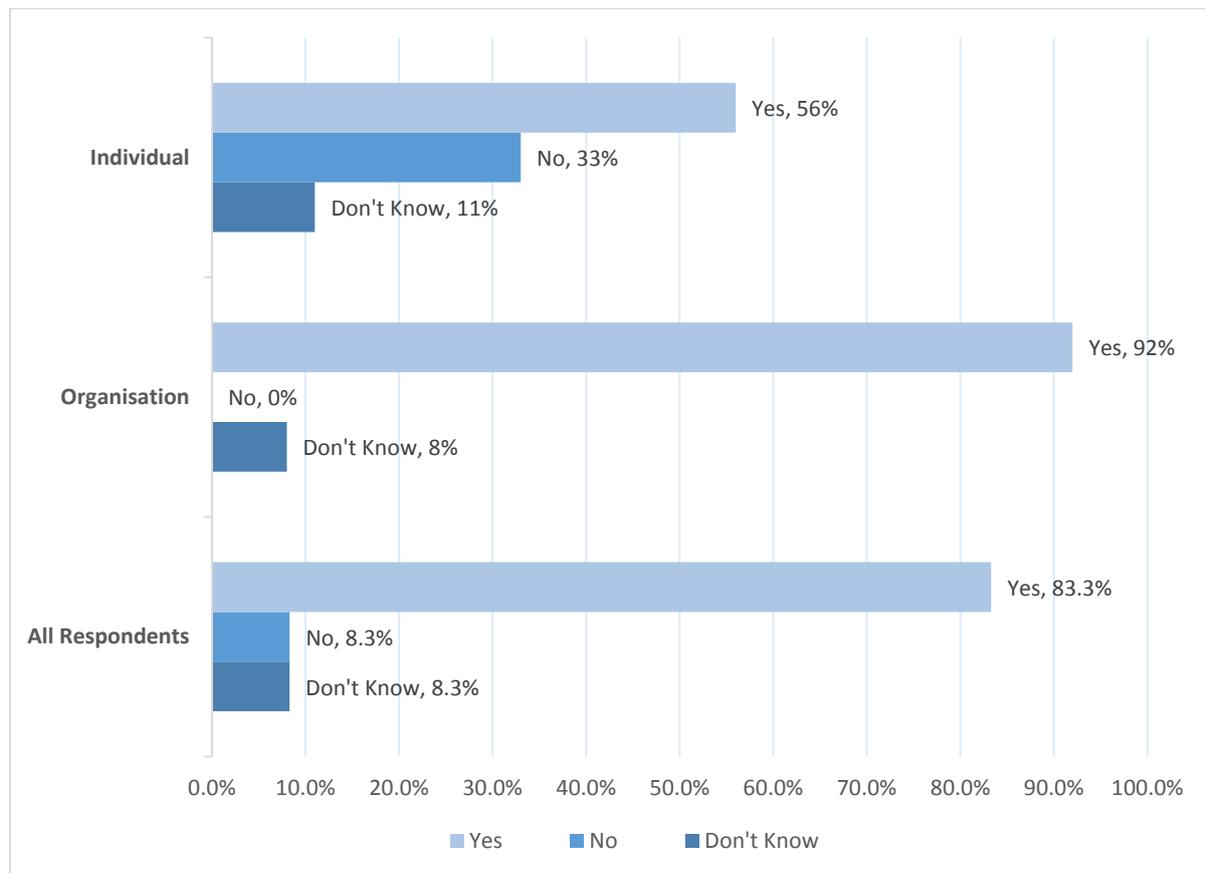


Figure 1: Question 1 – Do you agree that the introduction of proportionate fixed penalty notices would improve enforcement of animal health offences?

A total of 36 responses were received for this question and of these 83.3% of respondents agreed that the introduction of proportionate fixed penalty notices would improve the enforcement of animal health offences. Meanwhile, 8.3% of respondents disagreed and the remaining 8.3% answered 'don't know'.

Separating responses by respondent type showed that the majority of organisations (92%) and individuals (56%) agreed with the proposal. Of those that disagreed with proposals, all were individuals.

33 respondents went on to provide further comments.

Those that agreed

Of those in favour of the proposals, it was most commonly suggested that fixed penalty notices would be a quick and effective method for dealing with offences. Frequently, responses also anticipated that the introduction of fixed penalty notices

would improve the rate of compliance, with some respondents also noting the success of fixed penalty notices in other areas.

Support was also raised on the basis of providing an additional enforcement tool that would allow for corrective intervention. It was suggested that fixed penalty notices would offer an additional means of educating and reinforcing best practice.

“There is a need to introduce an additional level of enforcement in the form of a fixed penalty; not only to reduce the need to involve the Procurator Fiscal or the Scottish courts but also to use the opportunity to reinforce best practise and educate offenders” (The British Horse Society)

Comparisons were often made in relation to a court case, with some respondents noting that fixed penalty notices would be a more proportionate alternative. There were, however, concerns that any fixed penalty notice should be proportionate to the offence and that they should only be available for lesser offences.

“In principle, introducing the FPN regime seems appropriate but we would endorse that it should only be available to be used in respect of minor or lower level offences.” (Law Society of Scotland)

Some comments highlighted the resource savings that could be made through the use of fixed penalty notices in comparison to a court case. In particular, respondents stressed that time and cost savings could be made.

“The cost for the enforcer, for the Crown and particularly for the accused of fighting a court case can often be significant and often out of proportion to any fine given to an accused found guilty of an offence.” (South Ayrshire Council)

One respondent, although supportive of the proposal, suggested that further information was required in relation to cross compliance and stressed that a national enforcement database would be necessary to assist with monitoring for repeat offending.

“On balance we support the introduction of fixed penalty notices, however would like to see proposals for links to cross compliance issues, and a database, including outcomes and penalties for repeat offenders.” (Food Standards Scotland)

A common theme in responses from those that agreed with the proposal and those that responded with ‘Don’t know’, was that clarity was required on the type of offences that fixed penalty notices may be issued for. It was also suggested that further consultation would be necessary.

“...It is important however, that although ability to introduce fixed penalty notices for offences is in place, any plans to introduce fixed penalty notices for offences must be subject to consultation with industry before introduction, and subject to sufficient scrutiny from appropriate Scottish parliamentary committees.” (NFU Scotland)

Those that disagreed

Of the respondents that disagreed, concerns were raised that fixed penalty notices may encourage dishonesty amongst farmers and animal keepers. Responses also suggested that financial penalties would be inappropriate in the current economic climate.

“With the possibility of leaving the EU without a deal, farmers are even more concerned about the future of farming in the UK. At such an uncertain time, introducing fixed penalty notices would be inflammatory and counterproductive. Education and support would be better received.”
(Individual)

Question 2 – Different fixed penalty notice regimes exist. Which fixed penalty notice regime do you think should be used for animal health offences?

In total, 32 responses were received for this question. Separating responses by respondent type showed that 26 organisations and 6 individuals provided comments.

Within the comments from organisations, there was support for fixed penalty notice regimes that were considered to be successful in other areas. There were specific references to:

- Anti-social Behaviour
- Marine offences in Scotland
- Motoring offences such as speeding
- Sale of Tobacco and Nicotine Vapour Products
- Littering
- Dog Fouling
- Environmental Protection

In addition to suggestions of fixed penalty notice regimes that are currently in place, individuals and organisations also proposed specific characteristics of regimes that could be used. Responses included suggestions for the ability to issue on the spot fines, and the option to appeal any fixed penalty notice that is issued.

Further comments were received suggesting that the fixed penalty notice should be a time limited offer to make payment as a direct alternative to prosecution. It was also recommended that civil penalties would be inappropriate for animal health offences, with organisations preferring a regime that had the option of referring unpaid penalties for prosecution.

“...The mitigated penalty scheme which retains the right to follow traditional enforcement procedures such as prosecution is appropriate and proportionate in these circumstances.” (North Lanarkshire Council)

There were suggestions regarding the amount of financial penalty that should be imposed. Some respondents proposed that multiple levels of fine should be available, whilst others suggested that the penalty should increase for multiple offences. Most frequently, respondents considered that the financial penalty should be proportionate to the seriousness of the offence.

“...the introduction of a proportionality test on the degree of non-compliance, number of animals affected, and the impact of the penalty on the applicant should be considered before the fixed penalty notice is issued. Where there is clear attempt to achieve significant financial gain by non-compliance, the penalty should be proportionate to that gain.” (Food Standards Scotland)

Some responses were also received from respondents that disagreed with proposals to introduce fixed penalty notices. These responses reiterated their disagreement and some provided alternative suggestions such as education or restrictions on imports.

Question 3 – Are there any other amendments that could be made to the Act that you think will help to improve animal health? For example, amendments that may improve disease control, disease preparedness, biosecurity or animal movements.

Separating responses by respondent type showed that 25 organisations and 6 individuals provided comments.

Comments on biosecurity

Most frequently, respondents reflected on the importance of biosecurity and suggested that improvements could be made. Particular references were made to improving biosecurity within the equine industry.

“...the opportunity to become pro-active rather than re-active in terms of biosecurity could prevent a significant impact to horse health and welfare, industry-wide. Not only that but could reduce the potential economic impact these diseases can have. Therefore, it is suggested that the Act be used as a platform for implementing good biosecurity practices across contagious equine diseases, not just as a reaction to an outbreak.” (The British Horse Society)

Specific suggestions for improving biosecurity provisions included: improving on-farm biosecurity by requiring a register of visitors deemed to be high risk (this could include vets, enforcement officers or contractors); and requiring appropriate protective clothing to be used.

Comments on other amendments to the Act

There were also suggestions that there should be more regulation of hobby farmers and pet owners to prevent the spread of disease. Suggestions were made to improving animal feed regulations; updating pet travel legislation; and to monitor private sales of animals.

“Is there any way that private sales of livestock from small holders/pet pigs etc. can be more stringently monitored i.e. if advertised in the press or social media these need to be looked at by Animal Health to prevent unauthorised movements and potential spread of disease.” (Individual)

A variety of other suggestions were made by respondents. These included: improvements to traceability databases; monitoring animal movements or imports from areas where disease is present; updating powers of inspectors; and to introduce British Standards for animal health.

Wider Comments

A number of responses from individuals and organisations stated education, training and support as being crucial to improving animal health. This was noted throughout the consultation from respondents that both agreed and disagreed with proposals to introduce proportionate fixed penalty notices.

Section 3: Next Steps

The Scottish Government is very grateful to all those who took the time to respond to this consultation. Overall the responses were positive about proposals to give Scottish Ministers a power to make regulations allowing fixed penalty notices to be used in relation to animal health offences.

The responses have provided valuable insight from those involved in enforcement as to the type of fixed penalty notice regime that would be appropriate for animal health offences. The Scottish Government will consider the views expressed in this consultation when developing the power to make regulations allowing for fixed penalty notices within the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill.

In addition, a number of practical suggestions have been made as to further amendments that may be necessary to improve animal health legislation. These responses are now being considered as we determine the next steps of our review of animal health legislation.



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