

CONSULTATION ON PROPOSALS TO INCREASE WILDLIFE PENALTIES IN SCOTLAND

Analysis of Responses
September 2019

The Scottish Government



**The Scottish
Government**
Riaghaltas na h-Alba

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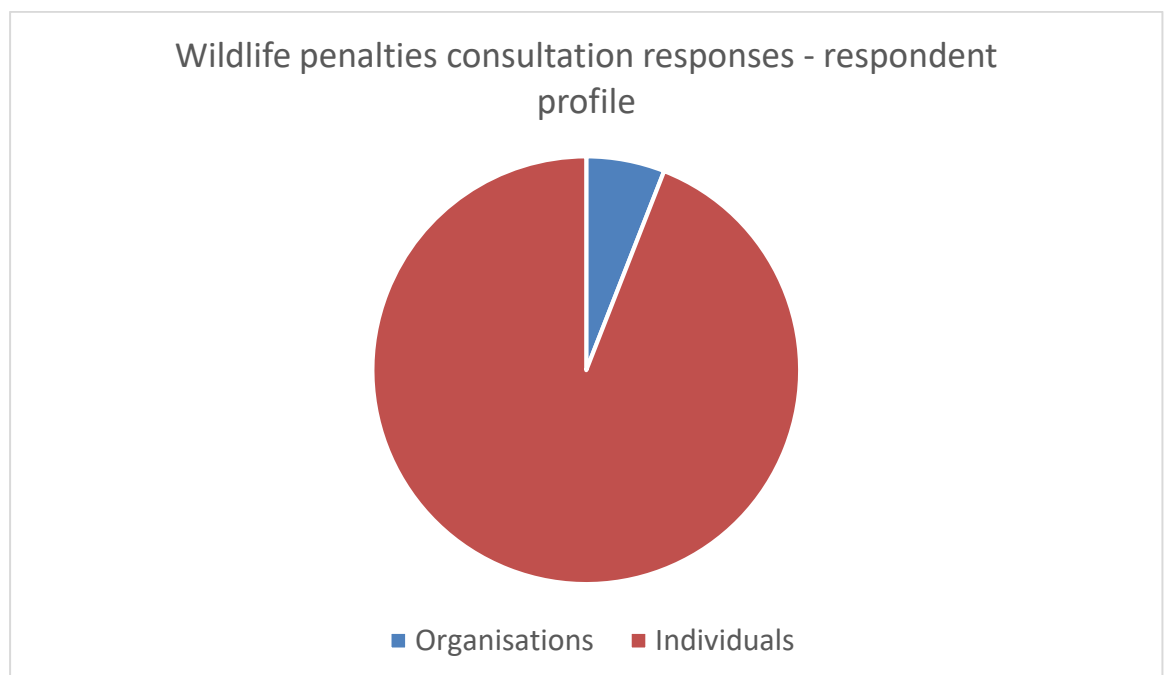
Chapter One – Executive Summary

This summary presents the key findings from the analysis of responses to the Scottish Government’s consultation ‘Wildlife Crime Penalties’, which ran from 11 July 2019 to 16 August 2019.

In the consultation the Scottish Government sought to explore views on amending several pieces of legislation protecting Scotland’s wildlife to:

- Increase the maximum available penalties for the worst type of wildlife offences to a prison sentence of five years, an unlimited fine or both.
- Extend the time allowed for prosecution under summary conviction to six months from which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence.

Profile of respondents



- A total of 556 responses were received.
- Of these, 33 were from organisations, which included wildlife charities, conservation groups and field sport associations, and the remaining 523 from individual members.

- A list of organisations who responded to this consultation has been provided at Annex A.

Overview of Responses and Key Themes

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

- Nearly all (97%) respondents agreed.
- The majority of organisations and individuals agreed.
- Key themes included; the view that the current maximum penalties available are too low; that increasing the maximum penalties would ultimately provide a stronger deterrent and that an increased focus on enforcement of penalties would be welcome.

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

- A majority (94%) of respondents agreed.
- The vast majority of organisations and individuals agreed.
- Key themes included; increasing the maximum prison sentence available would act as a deterrent; the current maximum prison sentence available was too low and that increased sentences would indicate the seriousness of wildlife crime offences.
- Additional comments included the desire to increase the current maximum prison sentence to beyond 5 years.

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

- A majority (89%) of respondents agreed.
- Separating responses by respondent type showed that the majority of organisations and individuals agreed.
- Key themes included; that the fines given should reflect the nature and severity of the crime; sizeable fines would be appropriate where the perpetrator has profited from the crime and that fines should reflect and be proportionate to the wealth or income of the individual.
- Concerns were raised about individuals who may not be able to pay the fine or the methods of enforcing an unlimited fine.

Question 4: Do you agree that the maximum prison sentence available for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to twelve months imprisonment?

- A majority (87%) of respondents were agreed.
- The majority of organisations and individuals who answered agreed.
- Key themes included; a prison sentence would reflect the serious impact disturbance/damage of this kind could have; disturbance/damage of nests/shelters could have as serious an impact as unlicensed killing on a species in the long term.
- Across those both in support and not supporting this proposal were comments reflecting that whilst an increase to 12 months was welcome, an increase beyond 12 months would be a better reflection of the seriousness of the crime and act as a stronger deterrent.
- Concerns were raised about individuals who may accidentally disturb a nest/shelter.

Question 5: Do you agree that the upper limit on fines for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to £40,000?

- A majority (85%) of respondents agreed.
- The vast majority of organisations and individuals agreed.
- Key themes included; this increase reflects the serious nature of the act and its effect on biodiversity; suggestions for fines to be reinvested in wildlife conservation; and increasing penalties for repeat offenders.
- Whilst the increase is viewed positive by the majority, a further increase/unlimited fine would be welcomed as a stronger deterrent in situations where this limit may still be affordable.

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

- A majority (69%) of respondents agreed.
- The majority of both organisations and individuals agreed.

- Key themes included; crimes should be followed up regardless of the length of time elapsed since the offence; it can take considerable time to gather evidence and that time constraints would be detrimental with regards to obtaining successful prosecutions; eliminating the statutory time limit would act as a deterrent and that perhaps each case should be treated individually.
- Concerns were raised that there may be a strain placed on enforcement activity by a statutory time limit.

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

- A majority (78%) of respondents agreed.
- Key themes included; solemn proceedings would provide a higher level of public awareness which would act as a deterrent; this would reflect the seriousness of the crime; some commenters felt this would provide additional assurances around the resulting penalty; this would be welcomed across all wildlife crimes, including disturbance/destruction of nests.
- Some concerns were raised by individuals who felt they lacked the depth of knowledge of the court system to be able to provide support or opposition to this proposal.

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

- Comments included; suggestions for increased use of vicarious liability; stronger penalties for repeat offenders such as loss of license/land; increased penalties are long overdue; an increase in resourcing/enforcement is also required; inclusion of all species (Atlantic Salmon and Trout, Bats for instance); and reflection on the importance of wildlife as part of Scotland's natural heritage and their sentience.

Chapter Two – Introduction

The aim of this report is to summarise the responses to the Scottish Government's consultation on the proposals for increasing penalties in relation to Wildlife Crime in Scotland and explore and identify the views and concerns of the people of Scotland.

The consultation opened on 11 July 2019 and closed on 16 August.

Chapter Three – Background

Proposals relating to wildlife crime penalties

The Scottish Government is committed to ensuring the welfare of all domestic and wild animals in Scotland. A key aspect of ensuring animal welfare and protecting biodiversity is tackling and preventing wildlife crime. With this in mind, the Scottish Government commissioned an independent review of the current penalties available to punish perpetrators of wildlife crime. The Wildlife Crime Penalties Review Group, chaired by Professor Mark Poustie, found that the current penalties may not be serving as a sufficient deterrent or reflect the serious nature of some of the crimes that are being committed. The group's report was published in November 2015 and can be read at: <https://www.gov.scot/Publications/2015/11/2196>.

The group made ten recommendations including increases to maximum available penalties, use of impact statements, alternative penalties, legislative coherence and sentencing guidelines. The Scottish Government published response broadly accepted the recommendations made by the review group <https://www2.gov.scot/Resource/0049/00494565.pdf> and in our 2017-2018 Programme for Government we committed to improving the protection available for all animals in Scotland including:

“We will also progress ... Professor Poustie’s recommendations to increase penalties for wildlife crime.”

Following Professor Poustie’s report, Lord Bonomy published his ‘Report of the Review of the Protection of Wild Mammals (Scotland) Act 2002’, <https://www.gov.scot/publications/report-review-protection-wild-mammals-scotland-act-2002/> in November 2016. In this report, Lord Bonomy recommended that the time limit for summary convictions made under this act be extended in this way to enable Police Scotland to have sufficient time to undertaken their investigations. The Scottish Government is now seeking to explore possible amendments to several pieces of legislation protecting Scotland’s wildlife.

In response to these findings, the Scottish Government is exploring possible amendments to several pieces of legislation protecting Scotland’s wildlife by:

- Increasing the maximum available penalties for the worst type of wildlife offences to a prison sentence of five years, an unlimited fine or both.
- Increasing the maximum available penalties for some other wildlife offences to a prison sentence of 12 months, or a fine up to £40,000 or both
- Extending the time allowed for prosecution under summary conviction to six months from which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence.

Current Situation

The maximum available penalties for wildlife offences are set at different levels depending on the offence and are laid out in the following legislation:

- Conservation (Natural Habitats &c) Regulations 1994
- Protection of Badgers Act 1992
- Protection of Wild Mammals (Scotland) Act 2002
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act 1981
- Deer (Scotland) Act 1996

Currently most wildlife offences can only be tried summarily, that is, conviction by a sheriff sitting alone without a jury. At present, only a few offences have the option to be tried under summary or solemn procedure, that is, conviction by a jury. Where both options are available, it is up to the Crown whether a case is brought under summary or solemn procedure and the choice will normally be determined by factors including the seriousness of the offence.

Consultation

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 and the majority of respondents submitted their responses via this portal.

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

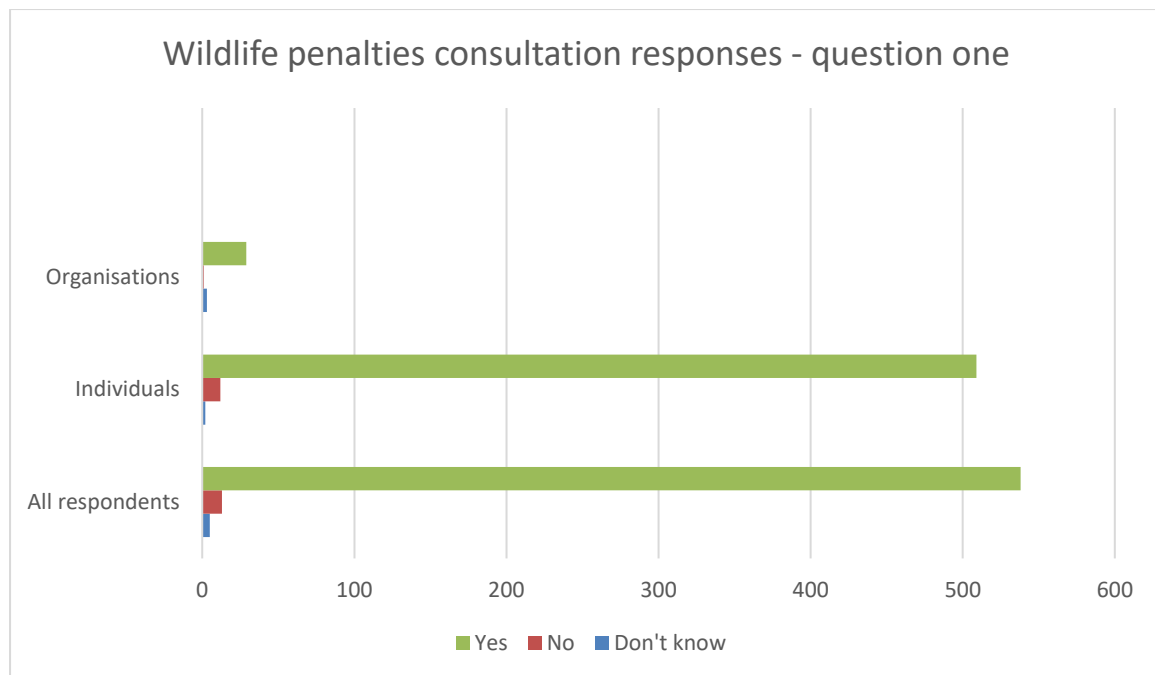
The proposals were formulated into 8 specific questions for those responding to the consultation. The responses received to each of these 8 questions are presented in the following section of the report.

Chapter Four – Analysis of responses

Question 1

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

Number of Responses to this Question – 556 (100%)



Option	Total Responses	Percentage of All
Yes	538	97%
No	13	2%
Don't know	5	1%
Not Answered	0	0

Overview

There were 556 responses, with 97% of respondents agreeing that the penalties for serious wildlife offences should be increased. 88% of organisations and 97% of individuals who responded to this question agreed with the proposal. 457 respondents provided additional comments in support of their answer and a summary of these comments is provide below.

Summary of comments

Those that agreed

The key themes in the individual responses, of those who answered positively to the proposal, were; it was believed that the current maximum penalties are too low; the current sentencing does not act as a deterrent; there is a link between violent crime such as domestic abuse and violence towards animals; that animal sentience should be given more consideration in legislation protecting wildlife; and that Scotland's reputation and tourism industry could potentially suffer from perceived increases in wildlife crime.

“Wildlife is an important resource for the Scottish tourist industry bring many jobs to rural areas. Wildlife crime reduces these resources and depletes our natural heritage. Stronger deterrents are required to alter the criminals thought possesses before they consider illegal acts.” (Anon.)

Of the organisations in favour of the proposal, the most common theme was that tougher sentencing and harsher penalties would act as a deterrent.

“The Scottish SPCA strongly welcomes the government’s proposals to increase penalties available to the court to deal with wildlife crime matters” (Scottish Society for the Prevention of Cruelty to Animals (SSPCA)).

There were also 9 responses from organisations (alongside 6 from individuals), reflecting concerns over the species included under the proposals for increased wildlife crime penalties with specific references predominately focusing on Atlantic Salmon and Sea Trout but also including Freshwater Pearl Mussels and Bats.

“there is equal need to increase penalties for offences that impact on the conservation status of some of Scotland’s rarest and cherished species ... To suggest that one offence is more serious than another would be a retrograde step” (Bat Conservation Trust)

Amongst those in support of the proposal, concerns were raised about the resources available to enforce both current penalties and the proposed new penalties.

Those that disagreed

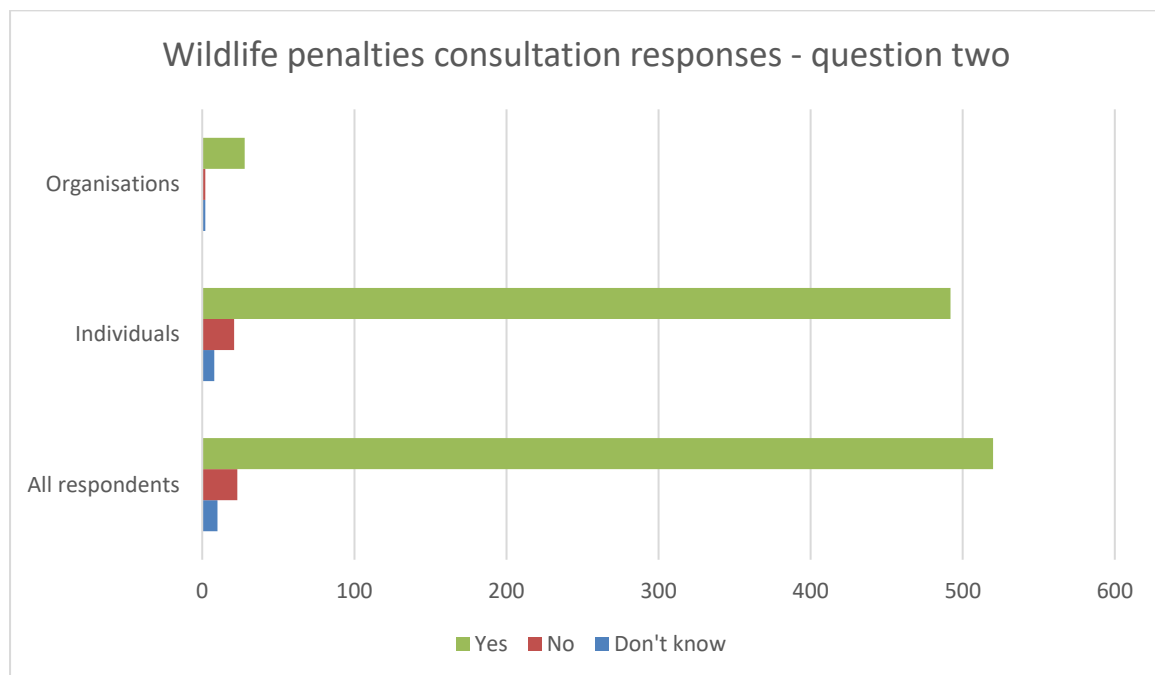
Of the small number of people who disagreed with the proposal the main concern was that there was no evidence to suggest that tougher penalties would indeed act as an effective deterrent and that there has been a reduction in wildlife crime.

“We believe greater education, enforcement, and robust sentencing guidance would do more to reduce wildlife crime further” (The Countryside Alliance)

Question 2

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

Number of Responses to this Question – 553 (99%)



Option	All Responses	Percentage of All
Yes	520	93.5%
No	23	4%
Don't know	10	1.8%
Not answered	3	0.5%

Overview

There were 553 responses, with 96% of respondents agreeing that the maximum sentence for serious wildlife offences should be increased. 88% of organisations and 94% of individuals who responded to this question agreed with the proposal. 417 respondents provided additional comments in support of their answer and a summary of these comments is provide below.

Summary of comments

Those that agreed

The key themes in the individual responses, of those who answered positively to the proposal, were; that an increase in maximum sentencing would increase police powers under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) to include the use of covert cameras¹; increased sentencing would reflect the serious nature of the crime and the cost of life; suggestions for alternative punitive measures depending on the severity and motivation behind the crime. A number of comments remarked that an increase beyond a five year maximum would also be worth consideration.

“It is too often the case that serious wildlife crime prosecution results in a light sentence or a small fine, which the perpetrator can easily write off. Longer sentences should be a real deterrent.” (Anon.)

Of those organisations in favour of the proposed increased maximum prison sentences the belief that strengthening the sentencing would act as a deterrent was again highlighted, an increase would reflect the serious impact of the crime and the current length of maximum sentencing was criticised.

“We believe that the current range of penalties available to the courts have no deterrent effect.” (Royal Society for the Protection of Birds (RSPB))

Those that disagreed

Of those not in support of the proposed increased maximum prison sentence the concern was that tougher penalties would impose additional strain on prison services and would demand increased public funding alongside concerns that an increase in wildlife crime penalties would be disproportionate to other crimes.

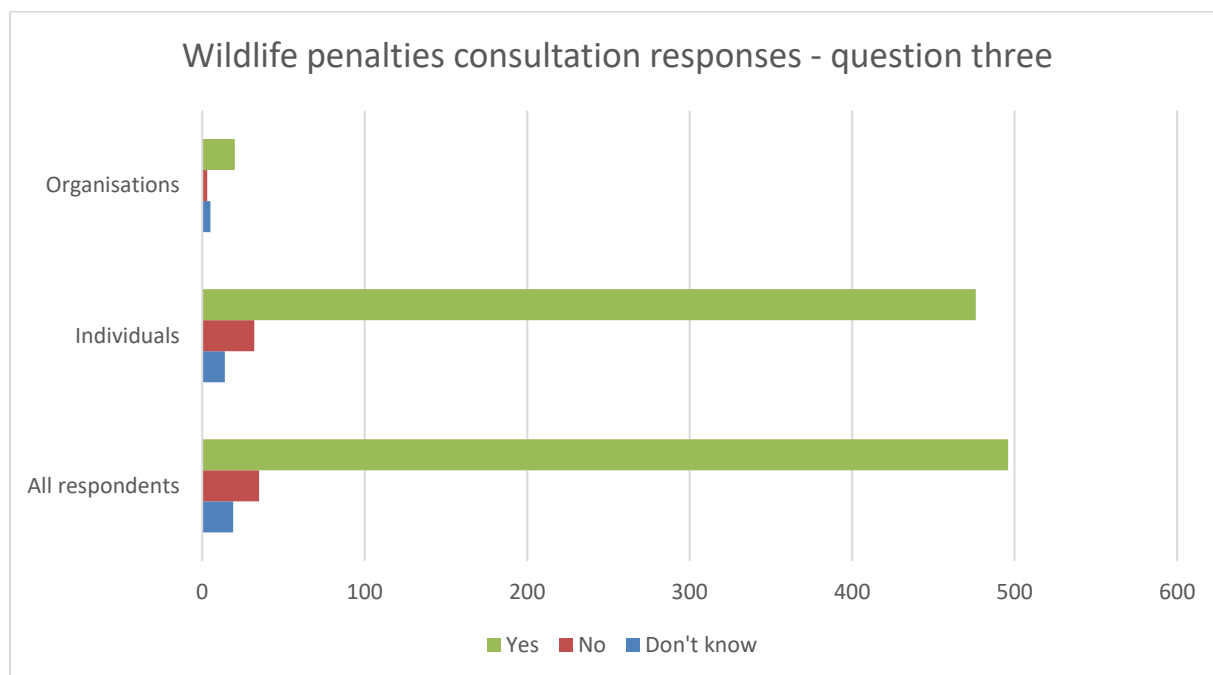
“It is inconceivable that we should be valuing animal lives more than human lives” (Loch Lomond Fisheries Trust)

¹ The increase in maximum penalties allows Police Scotland to seek approval to use investigatory powers utilised in the most serious of offences, including those under RIP(S)A. However, very strict and stringent procedures are in place to balance the needs of the police investigation against the privacy of an individual. Consideration to utilise police tactics such as this lies with the police and would be permissible in practice under these proposals. However, surveillance will only be authorised when there is sufficient intelligence available to meet the information threshold required for approval of such an intrusive policing operation. All police investigations are dealt with on case by case basis and policing techniques and tactics are chosen to best fit the investigatory need.

Question 3

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

Number of Responses to this Question – 550 (99%)



Option	Responses	Percentage of All
Yes	496	89%
No	35	6%
Don't know	19	3%
Not answered	6	1%

Overview

There were 550 responses, with 92% of respondents agreeing that the maximum sentence for serious wildlife offences should be increased. 67% of organisations and 91% of individuals who responded to this question agreed with the proposal. 408 respondents provided additional comments in support of their answer and a summary of these comments is provide below.

Summary of comments

Some respondents that agreed expressed concern as to why some fines currently awarded were low in comparison to the perceived wealth and profit often involved in wildlife crime. The belief was expressed that by eliminating an upper limit there would be more option for the courts to award a larger fine which could be proportional to profit or income of the guilty party.

“The perpetrators of many wildlife crimes have enormous wealth and the penalties should be proportionate. How about 1% of their annual income, or accumulated wealth, whichever is the greater” (Anon.)

A number of respondents also commented on the use of vicarious liability and that unlimited fines would bring Scotland in line with other European countries.

“Examples from other European countries has shown that unlimited fines do act as a deterrent” (Heart of Argyll Wildlife Organisation)

However, organisations in favour also expressed concerns in their response around the approach and use of vicarious liability which they view as providing an additional layer of deterrence.

“OneKind also sees a role for significantly increased fines for landowners and others convicted under the vicarious liability provision” (OneKind)

Another common theme was that the proposal would not only be a deterrent but would also again give the courts more options in terms of sentencing. It would allow the courts to award penalties appropriate to the magnitude of the crime.

Those that disagreed

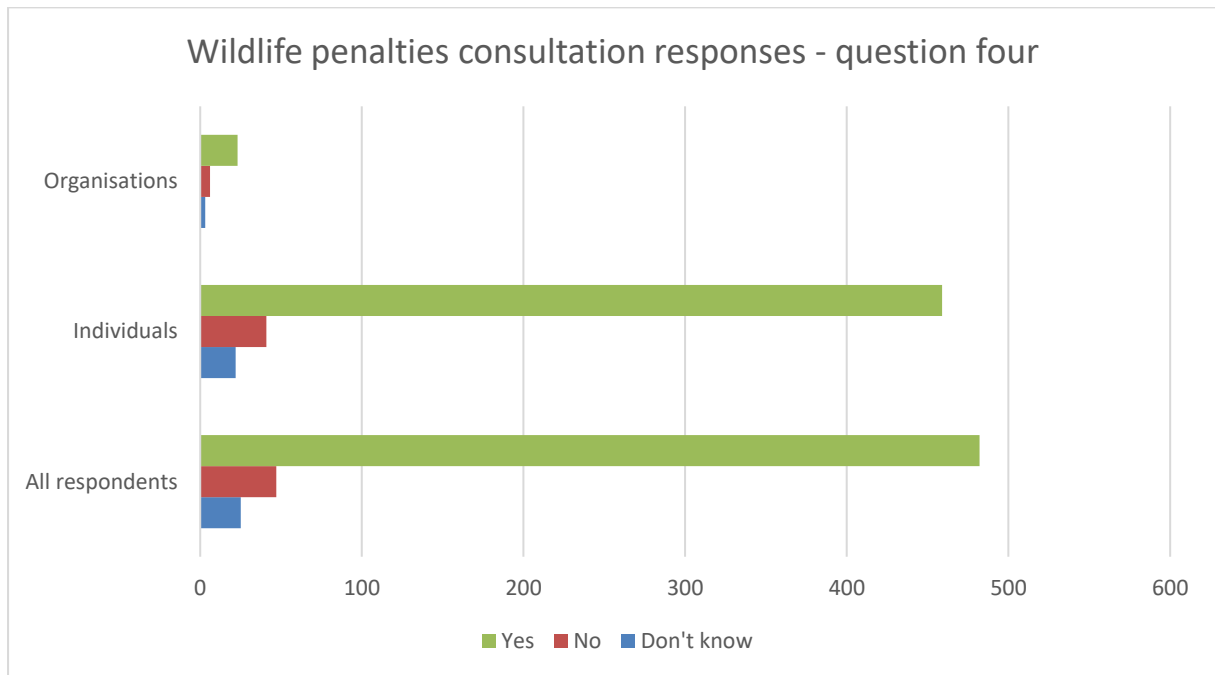
Of those not in support of unlimited fines there was concern that unlimited fines may be inconsistent in practise or prove to be less of a deterrent as it's less tangible, and that the law should protect even guilty parties from excessive punishment.

“... actually having an “unlimited” penalty is arguably no greater a deterrent than a numerical fixed cap which is more tangible” (Scottish Land and Estates)

Question 4

Do you agree that the maximum prison sentence available for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to twelve months imprisonment?

Number of Responses to this Question – 554 (99%)



Option	Responses	Percentage of All
Yes	482	87%
No	47	8%
Don't know	25	4.5%
Not answered	2	0.5%

Overview

There were 554 responses, with 89% of respondents agreeing that the maximum sentence for disturbance or destruction of wildlife nests or habitat should be increased. 72% of organisations and 88% of individuals who responded to this question agreed with the proposal. 385 respondents provided additional comments in support of their answer and a summary of these comments is provide below.

Summary of comments

Those that agreed

The key themes in the individual responses, of those who answered positively to the proposal, were; it was believed that the current maximum sentence is too low;

disturbance or destruction of nests or habitat can have a long term impact on a species on a similar or greater scale than unlicensed killing; an increase in maximum sentencing would provide a stronger deterrent.

Of the organisations in favour of the proposal, the most common theme was that tougher sentencing would act as a much stronger deterrent. The respondents hoped that an increased deterrent may result in a reduction in the number of offences relating to disturbance and destruction of habitat.

“This may act as a more effective deterrent for disturbance and damage ... most offences relating to raptors are declining – however, disturbance offences are not” (The British Association for Shooting and Conservation (BASC)).

However, both individuals and organisations shared that an increase to 12 months may not be enough of an increase to adequately represent the magnitude of the crime.

“... sentences for these offences should be the same as for killing or taking, because this type of disturbance or destruction also threatens whole badger setts and clans ... Sentences of up to five years’ imprisonment should be made available” (Scottish Badgers).

Those that disagreed

Of the small number of people who disagreed with the proposal the main concern was that an increase to twelve months may not be a high enough increase to reflect the serious and long term affects alongside suggestions that licensed disturbances could be as harmful as unlicensed disturbances.

“It would appear that an assumption is being made that disturbance of animals or damage of nests/shelters will always be less serious ... than other forms of wildlife crime ...” (The Scottish Gamekeepers Association)

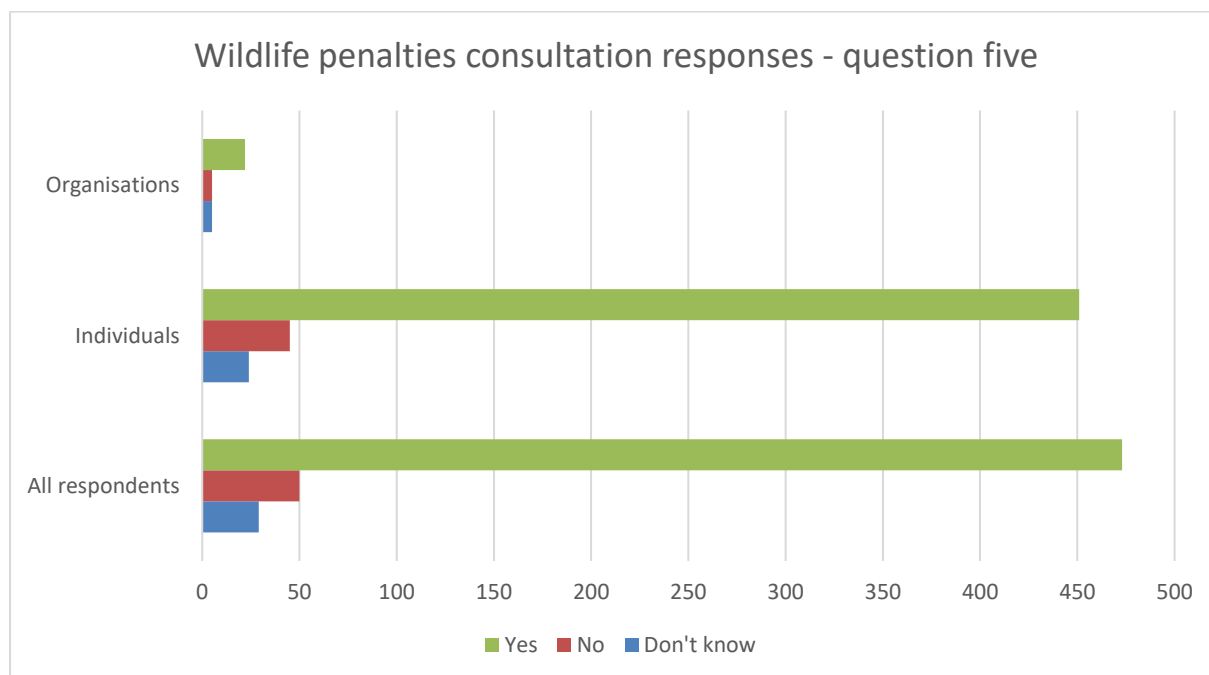
Comments from both organisations and individuals reflected this theme.

“Sentences for these sort of offences needs to be the same as for killing or taking because this type of disturbance or destruction can also result in the displacement and subsequent death of the animal ... sentences of up to 5 years should be available.” (Anon.)

Question 5

Do you agree that the upper limit on fines for other wildlife offences including the disturbance of animals or damage of nests/shelters should be increased to £40,000?

Number of respondents to this question – 552 (99%)



Option	Responses	Percentage of All
Yes	473	85%
No	50	9%
Don't know	29	5%
Not answered	4	1%

Overview

There were 552 responses, with 85% of all respondents agreeing that the maximum sentence for disturbance or destruction of wildlife nests or habitat should be increased. 69% of organisations and 87% of individuals who responded to this question agreed with the proposal. 382 respondents provided additional comments in support of their answer and a summary of these comments is provide below.

Summary of comments

Those that agreed

A large number of comments reflected views that an increase in the maximum fine would act as a much stronger deterrent and commented on the difficulty in putting a price on the level of crime committed.

“How can you put a price on a sentient beings life. If the fine is high enough and implemented, it would make an abuser think twice.” (Anon.)

Respondents also commented that this proposal would reflect the serious impact these crimes can have and increase options for judicial sentencing.

“This brings the penalties for the disturbance of animals or damage of nests and shelters up to the same level as that of other environmental damage, thereby recognising the serious consequences for animals” (OneKind)

A number of respondents, both individual and organisations, in agreement with the proposal did outline their concerns that an increased maximum penalty of £40,000 was a move they supported but that a higher penalty would be welcome.

“LINK members disagree ... damage or disturbance to an animals’ place of shelter has significant impact on the population and is as serious as injuring or un-licensed killing ... strongly recommends that sentences of five years imprisonment should be made available.” (Scottish Environment LINK).

Individual respondents also commented on the affordability of the maximum fine for some groups of people, including corporations and wealthy businesses.

“The upper fine should be increased above this limit. A limit of £40000 would set a one size fits all that I feel is insufficient ... large businesses that have much more income and assets could take a maximum fine such as this, therefore no deterrent.” (Anon.)

Those that disagreed

Of the respondents that disagreed, a number felt that an unlimited fine or prison sentence would be more reflective of the crime, and that this should be very much considered on a case by case basis but the judge or sheriff should have a full range of options available.

“The seriousness of wildlife crime should not be underestimated and the fine should fit the severity of the offence” (Anon.)

By contrast, a smaller number of comments also felt this level of fine was too high for what may be considered a ‘minor offence’ by some, and that it would disproportionate in comparison to other serious offences.

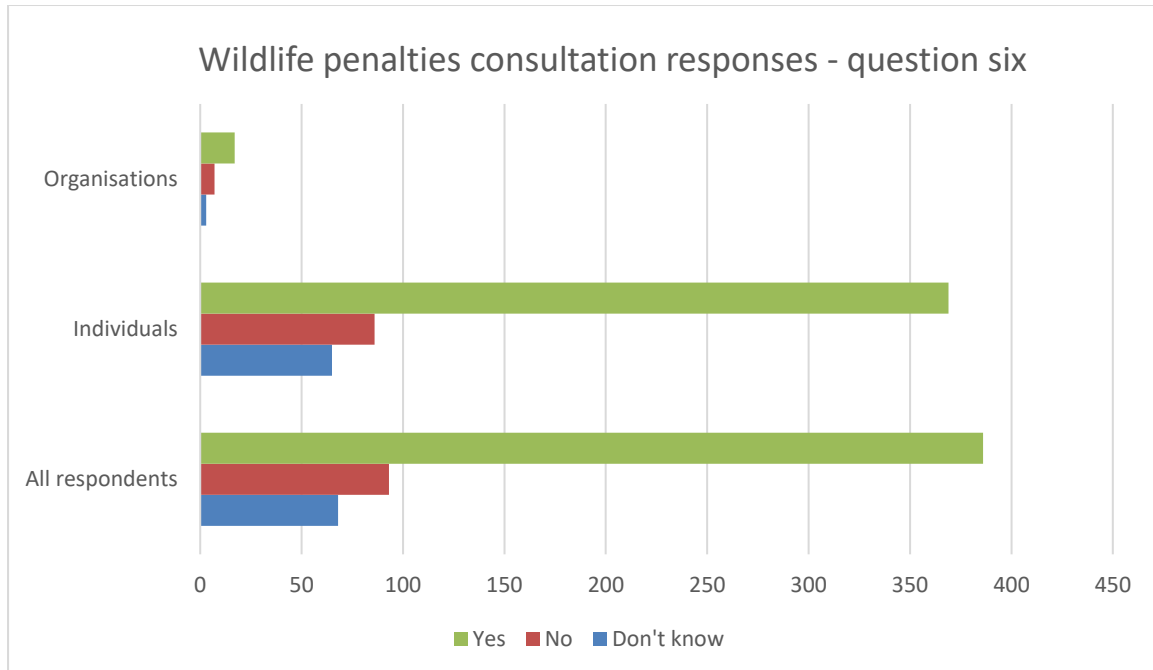
A number of comments within the respondents who selected ‘don’t know’ reflected concerns that this maximum penalty may not be a deterrent when it comes to corporations committing wildlife crime and should reflect the conservation status of the species.

“We believe penalties need to recognise the corporate nature of some wildlife crime offending, therefore unlimited fines should be available” (RSPB Scotland).

Question 6

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

Number of Responses to this Question – 547 (98%)



Option	Responses	Percentage of All
Yes	386	69%
No	93	17%
Don't know	68	12%
Not answered	9	2%

Overview

There were 547 responses, with 69% of all respondents agreeing that the maximum sentence for disturbance or destruction of wildlife nests or habitat should be increased. 63% of organisations and 71% of individuals who responded to this question agreed with the proposal. 335 respondents provided additional comments in support of their answer and a summary of these comments is provide below.

Summary of comments

Those that agreed

The key theme from those in agreement with this proposal reflected respondents belief that an increase in the time limit for prosecution would remove some of the barriers to prosecution by allowing more time for police and other enforcement agencies to carry out their investigations which was viewed very much as a necessity.

“The collection of evidence for wildlife crime appears to be complex and time-consuming ... the greater time allowed the greater the chance of a conviction.” (Heart of Argyll Wildlife Organisation).

Individual respondents also commented on the positive impact of the timeframe as a deterrent during the investigative process.

“This allows a more realistic timeframe to ensure that the illegal activity does not continue in the interim” (Anon.)

Those that disagreed

Those that disagreed with the proposal reflected concerns that an increase to three years may have a negative effect on an innocent person under investigation and commented on the impact of ‘trials by media’.

“three years is a long period of time for an innocent individual to endure the threat of prosecution due to what may well prove to be an unfounded allegation” (Scottish Association for Country Sports).

Respondents also felt that investigations are able to proceed to prosecution in less time than three years and, therefore, an increase is unnecessary.

“These offences are no different to any other and require no special measures, especially as the number of reported offences and convictions are so low.” (Anon.)

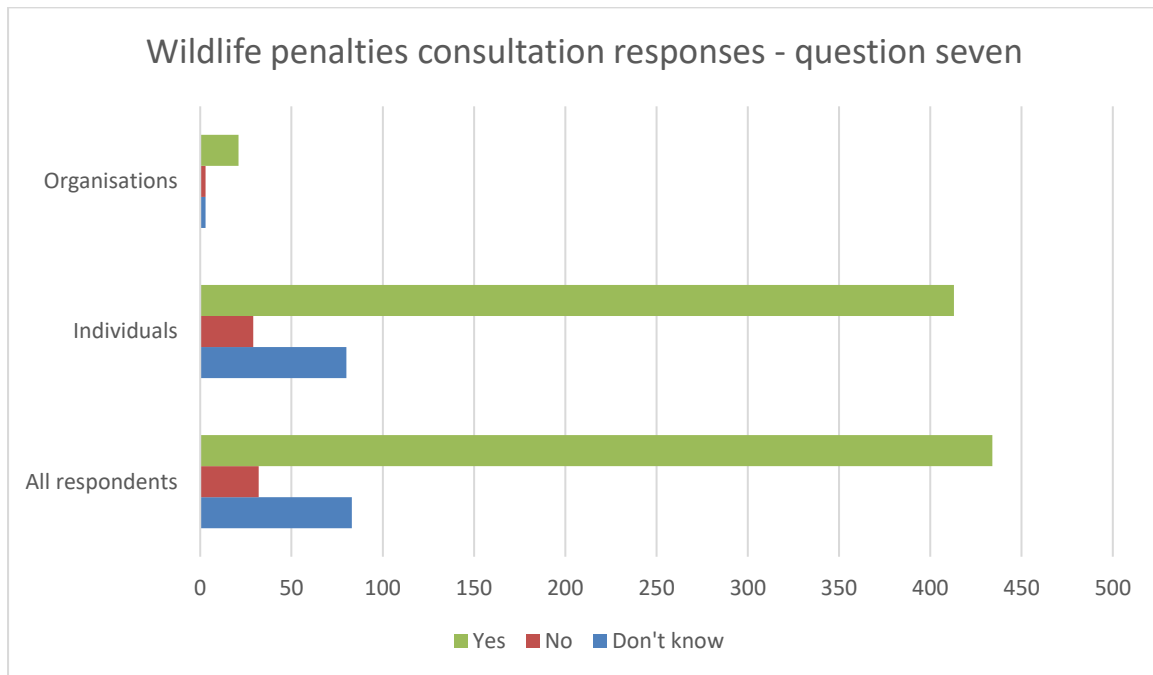
Some individual respondents who disagreed with this proposal did so as they felt the time limit should be extended, or abolished.

“If sufficient evidence is available then a prosecution should be enabled whatever the timeframe, as long as the appropriate legislation was in place at the time of the offence.” (Anon.)

Question 7

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

Number of Responses to this Question – 549 (99%)



Option	Responses	Percentage of All
Yes	434	78%
No	32	6%
Don't know	83	15%
Not answered	7	1%

Overview

There were 549 responses, with 78% of respondents agreeing that wildlife offences should be tried under solemn proceedings. 77% of organisations and 79% of individuals who responded to this question agreed with the proposal. 305 respondents provided additional comments in support of their answer and a summary of these comments is provide below.

Summary of comments

Those that agreed

Key themes in response to this question include; the type of procedure should depend on the severity of the crime; specific references to parties committing crime for profit, repeat offenders or most serious criminal acts tried before jury; solemn proceedings increase public awareness of wildlife crime and outcomes.

“It emphasises the seriousness of the offence, and involves members of the public. Both of these measures will help to heighten awareness of the vital importance of wildlife.” (Anon.)

Increased public awareness was viewed as a much stronger deterrent and respondents felt this would provide additional assurances on the enforcement, prosecution and penalties relating to wildlife crime.

“Again, some wildlife offences are far more serious than others, so the prosecution service should have a greater range of options available in terms of how to prosecute them.” (Anon.)

Some respondents in support of this proposal felt that all wildlife crime should be tried under solemn procedure, including disturbance offences.

“Scottish Badgers supports the policy that all wildlife offences, that is, of killing, injuring, taking, and disturbing the places protected for animals, could be tried under solemn proceedings, and not be restricted to summary procedure.” (Scottish Badgers)

Those in disagreement

Of the small number of respondents who disagreed with the proposal, the most frequent reason given through commentary reflected beliefs that summary proceedings are adequate and a change to solemn proceedings would have little positive effect and may cause additional use of resources.

“We believe Sheriffs are able to consider the evidence presented to them and to pass appropriate sentences without the need for a jury.” (Kenneth Stephen, The Scottish Gamekeepers Association).

Respondents in disagreement also raised concerns that summary proceedings may be overly emotive for the jury.

“Emotion tends to override fact.” (Anon)

Of those who responded to the proposal with ‘Don’t know’, a large number of comments reflected respondents discomfort with answering as they felt unequipped to answer or unsure about the differences between summary and solemn procedures.

Question 8

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

Separating responses by respondent type showed that 22 organisations responded with comments and 316 individuals responded with comments.

Key themes from individual responses included further reform; a form of registration for wildlife offences that is available to local authorities and investigative bodies; further penalties for severe or repeat offenders such as forfeiture of land, loss of license for shooting/snaring etc.; stronger penalties for corporations; increased resources for enforcement and investigation of wildlife crimes.

Individual respondents reflected heavily on the impact of wildlife crime on Scotland's reputation as a progressive country supporting welfare of all animals and the subsequent impact this could have on Scotland as a tourist destination.

"Our wildlife is precious ecologically, and for tourism, and on humane grounds. Those that continually kill animals (legally or otherwise) to boost their own revenue are criminals" (Anon.)

"Scotland has an opportunity to demonstrate its progressive and modern agenda around wildlife conservation. Clearly Scotland is a nation that promotes it's wildlife to encourage the tourist industry" (Anon.)

"Scotland has a significant tourist industry based on wildlife ... It is difficult to promote our country as a destination for wildlife tourism if we have the unchecked and unpunished crimes against wildlife, many of which are cruel and horrific" (Anon.)

Respondent's comments also reflected the importance of Scotland's natural heritage and growing recognition of sentience in animals, including wildlife, raising their concerns about the suffering inflicted on wildlife as a result of criminal acts.

"We need to stop the cruel and unnecessary suffering of animals now ... Education and condemnation of all killing of animals or committing wildlife crimes should be part of the national curriculum." (Anon.)

Individual respondents and organisations also commented on the desire to see an increased use of vicarious liability relating to wildlife crime offences, this was a recurring theme throughout the consultation responses.

"BASC assume that for the relevant wild bird offences the increased penalties suggested in this consultation will also apply to those found vicariously liable in court. As such, the deterrent element of the suggested increased penalties should have even greater effect." (British Association for Shooting and Conservation (BASC)).

“We have to have vicarious liability. Wildlife crime is so easy to hide the evidence in huge tracts of moorland.” (Anon.)

A very small number of comments were concerned about the influence of those with little experience or knowledge of the countryside influencing such matters.

“In order to ensure fairness then people from the countryside with relevant knowledge should be making recommendations. Not pet owners from cities”
(Anon.)

Of the organisations offering comments, common suggestions were; better use of powers by courts in sentencing; a more collaborative approach to tackling wildlife crime; inclusion of fishery offences; consistency in penalties across all crime against animals, regardless of domesticity; and a centralised database of convictions in line with other crimes.

“More could be done to harness penalties to effect behavioural change and provide long term protection for animals. We would support orders to forfeit firearms ... and dogs used in the commission of offences” (OneKind).

Comments reiterated respondents' desire to see all species covered under increases to wildlife crime penalties, 8 comments from organisations and 4 from individuals included references to Atlantic Salmon, Sea Trout, Fresh Water Pearl Mussels and Bats.

“Crimes within Fisheries things are often over looked and the fact that Salmon and Sea Trout are in decline and Fresh Water Pearl Mussels are extremely vulnerable”

(River Naver Fisheries)

Suggestions from organisations also included Fixed Penalty Notices for crimes deemed to be less serious or small in scale.

“Consideration should be given to the possibility of fixed penalty fines for low level technical breaches of the law, not in any instance where and animal or bird has suffered.” (SSPCA)

Respondents also acknowledged a need for greater flexibility in sentencing, to be assessed by those making judgements, to reflect the seriousness of any wildlife crime and to be proportionate to the situation of the guilty party.

“As part of a broadly-supported drive toward enhanced penalties for wildlife crimes, SACS is mindful that as well as having a breadth of reasonable sentencing options, there should be clear sentencing guidelines within appropriate scales based on criminal wilfulness and impact of the crime”
(Scottish Association for Country Sports).

Chapter Five: 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;

- Strengthening the maximum penalties for the most serious wildlife crime offences.
- Eliminating the upper limit on fines in relation to unlicensed killing, or taking, of wild animals.
- Increasing the upper limit on fines in relation to deliberate disturbance or destruction of nests or habitats of wild animals.
- Increasing the statutory time limit for prosecuting criminal acts in relation to wildlife prosecuted under summary procedure.
- Inclusion of the opportunity to try the most serious wildlife offences under solemn proceedings, before a jury in court.

Future legislation will take into account the views expressed in the consultation.

Appendix One – List of Organisations

- Argaty Red Kites
- Bat Conservation Trust
- Beaully District Salmon Fishery Board
- British Association for Shooting and Conservation
- Dee District Salmon Fishery Board
- Fisheries Management Scotland
- Heart of Argyll Wildlife Organisation
- Law Society of Scotland
- Loch Lomond Fisheries Trust
- Lochaber District Salmon Fishery Board
- Motherwell Wildlife District Protection
- Ness District Salmon Fishery Board
- Northern District Salmon Fishery Board
- OneKind
- River Ayr Salmon Fishery Board.
- River Naver Fisheries
- River Tweed Commission
- RSPB Scotland
- Scottish Association for Country Sports
- Scottish Badgers
- Scottish Countryside Alliance
- Scottish Environment LINK
- Scottish Gamekeepers Association
- Scottish Land and Estates
- Scottish Raptor Study Group
- Scottish SPCA
- South of Scotland wildlife hospital
- Spey Fishery Board
- Sunnyside Primary School Wildlife Warriors
- Tay District Salmon Fisheries Board
- Western Isles District Salmon Fisheries Board