

Consultation Stage Resource Assessment

Animal Cruelty Offences

Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

A single magistrates' courts sentencing guideline currently exists for animal cruelty offences, which covers offences contrary to sections 4, 8 and 9 of the Animal Welfare Act 2006. This existing Animal cruelty guideline² first came into force in 2008 but was revised in 2017 following concern that it was not nuanced enough, particularly for those cases falling between the lowest and highest levels of seriousness.

On 29 June 2021, the Animal Welfare (Sentencing) Act 2021 came into force, which increased the statutory maximum penalty for sections 4, 5, 6, 7 and 8 of the Animal Welfare Act 2006 from 6 months' (summary only) to 5 years' custody. There was no change to the maximum penalty for the section 9 offence.

The Council is consulting on two new draft sentencing guidelines for use in England and Wales to cover these animal cruelty offences. One is an Animal cruelty guideline for use in all courts, to cover offences contrary to sections 4-8, where the offences have changed from being summary only to triable either way and the statutory maximum penalty has increased. The other is a Failure to ensure animal welfare magistrates' courts sentencing guideline, which retains much of the existing magistrates' courts sentencing guideline for animal cruelty offences, but with changes to reflect the scope of the guideline no longer covering sections 4 and 8 and now simply covering the section 9 offence, which has an unchanged statutory maximum.

The Council's aim in developing these guidelines is to reflect the will of Parliament and provide sentencers with a structured approach to sentencing animal cruelty offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. They should also promote a consistent approach to

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/animal-cruelty-revised-2017/>

sentencing and provide guidance to sentencers, especially where the maximum sentence has recently increased from 6 months to 5 years' custody.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences under the Animal Welfare Act 2006, which will be covered by two guidelines:

- Causing unnecessary suffering (section 4);
- Carrying out a non-exempted mutilation (section 5);
- Docking the tail of a dog except where permitted (section 6);
- Administering poison to an animal (section 7);
- Involvement in an animal fight (section 8); and
- Breach of duty of person responsible for animal to ensure welfare (section 9).

These guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the guidelines will encourage consistency of sentencing, especially regarding the increase in statutory maximum penalties for sections 4 to 8, and ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences, whilst incorporating the change in legislation.

In order to develop effective guidelines for these offences, knowledge of recent sentencing practice was required. Sources of evidence have included examples of cases from the RSPCA, case studies from the passage of the Animal Welfare (Sentencing) Act 2021 Bill, analysis of transcripts of judges' sentencing remarks

relating to the very small number of offenders who have been sentenced in the Crown Court and sentencing data from the MoJ Court Proceedings Database.^{3,4}

During the consultation stage, we intend to hold discussions with sentencers to invite feedback and gauge whether the new guidelines will work as anticipated. This should provide some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the draft guidelines have been published on the Sentencing Council website at the following link:
<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

Causing unnecessary suffering (section 4)

In 2020, around 300 adult offenders were sentenced for this offence, although this was a decrease compared to the recent trend of around 600 offenders sentenced in each year. The most common outcome was a community order (39 per cent), followed by a fine (22 per cent) and a suspended sentence order (21 per cent). A further 12 per cent received immediate custody.^{5,6}

For those that were sentenced to immediate custody in 2020, the average (mean) custodial sentence length (ACSL) was 4 months, after any reductions for guilty plea, whilst the statutory maximum sentence was still 6 months' custody.⁷

Carrying out a non-exempted mutilation (section 5); Docking the tail of a dog except where permitted (section 6); Administering poison to an animal (section 7); and Involvement in an animal fight (section 8)

Due to low volumes, sentencing data for these four sections of the Animal Welfare Act 2006 are presented together and it has not been possible to provide an average custodial sentence length (ACSL). In total, in 2020, there were only 3 adult offenders sentenced for these offences, and around 30 offenders sentenced between 2016 and

³ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here:
<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

⁴ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

⁵ A further 4 per cent received a discharge and 1 per cent were 'Otherwise dealt with', which covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

⁶ Percentages may not appear to sum to 100 per cent due to rounding.

⁷ The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. The statutory maximum sentence for this offence increased from 6 months to 5 years' custody in April 2021 however the latest full year of data available at the time of publication was 2020 so there are no cases exceeding 6 months' custody included in these figures.

2020. These offences are almost exclusively sentenced in magistrates' courts, and the majority of the offenders receiving immediate custody are sentenced for the offence of involvement in an animal fight (section 8).

Breach of duty of person responsible for animal to ensure welfare (section 9)

In 2020, around 50 adult offenders were sentenced for this offence, which is a decrease compared to the recent trend of around 150 offenders sentenced per year. In 2020, almost half of offenders sentenced received a fine (44 per cent), one third received a community order (31 per cent) and 17 per cent received a suspended sentence order. A further 4 per cent were sentenced to immediate custody⁸ and the statutory maximum sentence for this offence remains at 6 months' custody.⁶

Key assumptions

To estimate the resource effect of a guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the draft guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the draft guidelines are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed draft guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the draft guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the guideline are therefore not included in the estimates.

In developing sentence levels for the draft guidelines, data on current sentence levels have been considered, although this does cover the period before the increase in statutory maximum sentence for sections 4-8. Existing guidance and case studies, as well as limited transcripts of judges' sentencing remarks have also been reviewed.

While data exist on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the detailed sentencing factors for current cases. Additionally, given that offences contrary to sections 4-8 were summary only until very recently, past sentencing data may not be representative of how sentencing will

⁸ Owing to low volumes, an average custodial sentence length (ACSL) for this offence has not been calculated.

look in the future for this guideline. As a consequence, it is difficult to ascertain how sentence levels may change under the new animal cruelty guideline.

It remains difficult to estimate with any precision the impact the new draft guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of them having an unintended impact, discussions with sentencers will be undertaken during the consultation stage to provide more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/>.

The two draft guidelines cover animal cruelty offences contrary to sections 4-8 and section 9 of the Animal Welfare Act 2006 separately. Due to the shared statutory maximum penalty of offences contrary to sections 4-8, and because they are covered by the same guideline, the resource impacts have been assessed and presented for these offences collectively. The resource impacts for the new draft section 9 offence guideline have been considered separately.

In relation to the rationale for the increases to the statutory maximum under the Animal Welfare (Sentencing) Act 2021, discussions in Parliament focussed on a particular desire to increase penalties for offences involving particularly sadistic behaviour, and/ or the involvement of organised criminality. As such, the expectation of the new draft guideline is that it will increase sentences for these most serious cases and provide consistency of approach to sentencing a wider range of animal cruelty offences than the current guideline offers, whilst ensuring that sentences are proportionate to the offence committed and in relation to other offences.

Overall, it is likely that the increase in statutory maximum reflected in the new animal cruelty guideline may increase sentencing severity for a very small subset of offences at the highest end of severity, for offending contrary to sections 4-8. It is unlikely that this will lead to a substantial impact on prison and probation resources, owing to the small volumes involved. For the section 9 offence, it is not anticipated that the new draft guideline will lead to a change in sentencing practice, since the guideline has been developed with current sentencing practice in mind and the statutory maximum remains unchanged, so this is not expected to have a notable resource impact either.

Animal cruelty guideline (sections 4-8, Animal Welfare Act 2006)

Offences contrary to sections 4, 8 and 9 of the Animal Welfare Act 2006 are currently covered in the existing Animal cruelty guideline, which has only two categories of harm and a six-point sentencing table.

The new draft Animal cruelty guideline additionally covers sections 5, 6 and 7 but no longer covers section 9. The draft guideline has three levels of culpability and three

levels of harm, leading to a nine-point sentencing table with a sentencing range from a Band A fine⁹ up to 3 years' custody.

The statutory maximum penalty for sections 4-8 increased from 6 months' custody (summary only offence), to 5 years' custody (triable either way offence) in June 2021. This increase is reflected in the sentence ranges for the new draft guideline and, as such, it is possible there may be an impact on the proportion of cases being sentenced in Crown Court in the future, compared with now. However, since the ACSL is currently 4 months' custody and the starting point sentence for all offences except those falling into the highest harm and culpability category (A1) is no greater than 6 months' custody before any reductions for a guilty plea, the majority of cases are likely to remain within the threshold of magistrates' courts sentencing powers.

The rationale for these increases to the statutory maximum under the Animal Welfare (Sentencing) Act 2021 set out that sentences above the previous 6-month statutory maximum sentence should be reserved for those offences involving particularly sadistic behaviour, and/ or the involvement of organised criminality. As such, the draft guideline includes a number of updates to the way culpability is assessed, primarily to clearly separate out more extreme cases. High culpability factors within the existing magistrates' court Animal cruelty guideline have been moved into medium culpability, and a new set of factors covered the most severe types of offending have been added to high culpability, to reflect the significant increase in maximum sentence for these offences.

Nevertheless, the starting point pre-guilty plea for even the highest harm and culpability category (1A) under the new draft animal cruelty guideline is 18 months' custody, so it is likely that a high proportion of custodial sentence outcomes will remain within the eligible threshold for suspension, for which the anticipated resource impacts are less, especially with regard to prison places. Furthermore, the majority of offenders do not currently receive a custodial sentence for these offences, which further reduces the estimated impacts on prison resources.

Analysis of a small number¹⁰ of transcripts of Crown Court judges' sentencing remarks¹¹ was conducted to assess how sentences might change under the new guideline. This also suggests that there are unlikely to be substantial increases in custody length or changes in sentence outcome type for the majority of cases. There may be some increases in the length of custody received in individual cases, particularly those at the highest levels of culpability and harm, for example involving the death of the animal/ animals. However, due to the data limitations, the likely resource impact cannot be quantified.

In addition, it should be noted that only 2 per cent of offenders sentenced in 2020 for these offences were sentenced at Crown Court, therefore, it is likely that this subset

⁹ The starting point for a Band A fine is 50% of the offender's relevant weekly income.

¹⁰ Sentencing remarks are only available at the Crown Court, and there were only 11 offenders sentenced for animal cruelty offences at the Crown Court in 2019 and 2020, all for causing unnecessary suffering (section 4).

¹¹ Of the 11 possible transcripts which were ordered, only 8 transcripts covering 9 offenders sentenced in 2019 and 2020 for causing unnecessary suffering (section 4) as either a principal or secondary offence contained enough detail to be analysed. In all cases, multiple offences were being sentenced; in one transcript, the secondary offences included offending contrary to section 9.

of cases represents some of the most severe types of offending and/ or cases involving multiple offences.

Furthermore, the latest full year of data available to analyse for this resource assessment is for 2020: before the increase in statutory maximum sentence. This means that the current sentencing practice for this offence is not fully representative of expected future sentencing using the draft guideline, which limits how reliably we can estimate the resource impacts for this guideline.

Overall, due to a lack of available data, the very recent change in offence category from summary only to triable either way and the very small number of offenders sentenced for the majority of these offences, it is not possible to say whether the guideline for these offences will have a significant impact on prison and probation resources overall. Nevertheless, the intention of the guideline, in line with the rationale behind Parliament's decision to increase the statutory maximum sentence¹² is not to increase the volume of offenders receiving a custodial sentence, only the length of time for the small subset of offences at the highest end of severity. Therefore, it is anticipated that any impact on prison and probation resources should be small.

Further work during the consultation should hopefully provide further evidence on which to base the final resource assessment.

Failure to ensure animal welfare guideline (section 9, Animal Welfare Act 2006)

The existing magistrates' courts sentencing guideline which covers section 9 of Animal Welfare Act 2006 also covers the animal cruelty offences under sections 4 and 8.

The new draft Failure to ensure animal welfare guideline, to cover purely the section 9 offence (breach of duty of person responsible for animal to ensure welfare), retains three levels of culpability and two levels of harm from the existing Animal cruelty guideline, leading to a six-point sentencing table, with a sentencing range from a Band A fine⁷ up to 26 weeks' custody to reflect the summary only nature of the offence.

Compared to the existing guideline, certain factors have been removed to ensure that all the factors are relevant, and that sentencing is proportionate for the narrower scope of the new draft guideline.

Due to a lack of available data and the small number of offenders sentenced for this offence, it is not possible to confidently anticipate the impact the new draft guideline will have on prison and probation resources overall. However, it is anticipated that any impact would be minimal, given the low volume of offenders sentenced for this offence currently and the low proportion of these offenders who are currently receiving a custodial outcome.

Further work and discussion with sentencers during the consultation should provide further evidence on which to base the final resource assessment.

¹² Explanatory notes of the Animal Welfare (Sentencing) Bill, 'Financial implications of the Bill', page 5: <https://publications.parliament.uk/pa/bills/cbill/58-01/0014/en/200014en.pdf>

Risks

In attempting to estimate the likely resource impacts of these guidelines, there are two main risks to consider:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the consultation phase. This includes interviews and discussions with sentencers, to test whether the guidelines have the intended effect. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated. The Council has also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals. This information will provide further information on which to base the final resource assessment.

Risk 2: Sentencers do not interpret the new guideline as intended

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Limited transcripts of Crown Court sentencing remarks and case studies of animal cruelty offences have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research carried out with sentencers should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.