

# Animal Cruelty Guidelines Consultation

10 May 2022

# **Animal Cruelty Guidelines**

## **Consultation**

# About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 10 May 2022 to 1 August 2022
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Email: [consultation@sentencingcouncil.gov.uk](mailto:consultation@sentencingcouncil.gov.uk)
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, statistics bulletin and an online questionnaire which can be found at:  
[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.  
In addition, responses may be shared with the Justice Committee of the House of Commons.  
Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.



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# Introduction

## What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on its proposed guidelines before they come into force and on revisions to existing guidelines.

## What is this consultation about?

The current sentencing guideline for animal cruelty, which can be found [here](#), encompasses offences contrary to the following sections of the Animal Welfare Act 2006: section 4 (unnecessary suffering), section 8 (fighting, etc.) and section 9 (breach of duty of person responsible for animal to ensure welfare). The guideline was last revised in 2017 and, until 2021, the offences it covered were summary only, triable in magistrates' courts and subject to a maximum penalty of six months' custody.

In 2021, Parliament passed the Animal Welfare (Sentencing) Bill, which increased the maximum sentence for specific offences under the 2006 Act from six months' to five years' custody and made these either way offences, meaning they could be heard in magistrates' courts or the Crown Court. The following offences were impacted by the change:

- Causing unnecessary suffering (section 4, Animal Welfare Act 2006);
- Carrying out a non-exempted mutilation (section 5, Animal Welfare Act 2006);
- Docking the tail of a dog except where permitted (section 6(1) and 6(2), Animal Welfare Act 2006);
- Administering a poison to an animal (section 7, Animal Welfare Act 2006); and
- Involvement in an animal fight (section 8, Animal Welfare Act 2006).

In light of this legislative change, the Council is seeking to revise and update the sentencing guideline for animal cruelty, to provide fuller guidance to sentencers. This will also replace the interim guidance that was issued when the statutory maximum penalty was increased, pending the revisions being consulted on in this paper. Through this consultation process, the Council is seeking views on:

- The principal factors that make any of the offences included within the draft guidelines more or less serious;
- The additional factors that should influence the sentence;
- The types and lengths of sentence that should be passed;
- Whether there are any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address; and
- Anything else you think should be considered.

In developing these revised guidelines, we have liaised with stakeholders to consider their views. We have also examined case studies covering a range of animal cruelty offences and have analysed transcripts of sentencing remarks relating to the very small number of offenders who have been sentenced in the Crown Court.

As part of the 12-week consultation process, the Council will also be holding a number of exercises with sentencers and other criminal justice professionals to explore how the proposed guidelines might work in practice, to collate their views and feedback on the proposals.

Once the consultation period ends, all responses will be analysed carefully before the Council publishes a formal response and the final revised guidelines for courts to use.

To accompany this consultation paper, a resource assessment has been put together, which considers the likely impact of proposals on the wider criminal justice system, along with a statistics bulletin. These documents, together with the **draft guidelines**, can be viewed on the Council's website: <https://www.sentencingcouncil.org.uk/>.

We would like to hear from anyone who uses sentencing guidelines in their work or who has an interest in sentencing. We would also like to hear from individuals and organisations representing anyone who could be affected by the proposals including:

- Pet owners and those who look after animals;
- Defendants and their families;
- Those under probation supervision or youth offending teams/supervision; and
- Those with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It is important to note that the Council is consulting on sentencing these offences and **not on the legislation upon which such offences are based**. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

### **How to give your views**

You can provide your views to the consultation questions (which can be found at **Annex A**) either by email or via the online questionnaire on the Sentencing Council's website.

### **Age applicability**

When issued as definitive guidelines, these will only apply to offenders aged 18 or older. General principles to be considered in the sentencing of children and young people are included in the Council's definitive guideline:

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>.

# Overarching issues

The current sentencing guideline covers sections 4, 8 and 9 of the Animal Welfare Act only. However, with the changes to maximum sentence, there is now a difference between sections 4-8, which have been made either way offences (with a maximum sentence of five years' custody) and section 9, which remains summary only and so can be dealt with in the magistrates' courts (with a maximum sentence of six months' custody).

The data available on previous offences shows that:

- In 2020, around 350 adults were sentenced under sections 4-9 of the Act;<sup>1</sup> and
- In 2019, 690 adults were sentenced for these same offences, while in 2018, this stood at around 780 adults sentenced.<sup>2</sup>

Existing data also suggests that there is a marked difference in the volume of various offences being sentenced, with the greatest volume falling under section 4 of the Act. In 2020, around 300 adults were sentenced under section 4. By contrast, around 50 adults were sentenced under section 9, and fewer than 10 were sentenced under sections 5 and 6 together. This trend also applies to previous years.

As such, the Council believes it would be most sensible to split the sentencing guidelines into two, with one covering all the either way offences with the same maximum sentence, and one which covers section 9, with the existing maximum sentence of six months' custody.

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<sup>1</sup> 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.

<sup>2</sup> More recent data is not yet available, so these figures do not include cases following the change in maximum penalty.



# Animal cruelty

[This guideline](#) is intended to capture cases of violence or cruelty towards animals, including where physical suffering or emotional distress has been caused, the poisoning and mutilation of an animal, or where animals have been used for fighting.

The vast majority of animal cruelty cases fall under section 4. Data for the section 4 offence prior to the change in legislation shows that offenders are more likely to receive a community sentence than any other type of outcome. In 2020, for example, nearly 2 in 5 adults sentenced for a section 4 offence received a community sentence, while 22 per cent received a fine. A further 21 per cent received a suspended sentence, while only 12 per cent received an immediate custodial sentence.

The mean average custodial sentence length (ACSL) for immediate custody outcomes has tended towards the upper end of the offence range, previously capped at six months' custody. In 2020, the ACSL (after any reduction for a guilty plea) was four months.

As set out in the explanatory notes accompanying the legislative change to the maximum penalty, the intention was to increase sentences for the most serious offending, rather than to increase the proportion of offenders receiving custodial sentences for animal cruelty offences overall. This principle has also been considered when drafting revisions to the guideline, and so the Council does not anticipate a notable increase in the proportion of offenders receiving custodial sentences under the new guideline.

## Culpability factors

The first step in the guideline is to determine the offence category by considering the culpability level of the offender and the level of the harm caused (or intended to be caused).

To reflect the intention in raising the maximum penalty for animal cruelty offences for the most serious offences, the Council proposes amending the culpability table for the new animal cruelty guideline as set out below, with revisions in red.

Following discussions with stakeholders, the Council believes it is important to separate out particularly sadistic or extreme cases, or those carried out in the context of commercial or organised criminal activity. As such, it is proposed that these factors are placed in the highest culpability category. Also included is the option for sentencers to elevate cases which would otherwise sit in the medium culpability category due to their severity. Comparator guidelines have been considered in framing these factors, to ensure that they are proportionate, and they have been adapted to animal cruelty as appropriate.

The Council also proposes to move a number of factors which sit in the high culpability category on the current guideline down to medium culpability, to reflect the change in maximum penalty, and to allow a graduated approach up to the most serious cases. Under the current guideline, medium culpability is simply defined as anything falling between high and lower culpability. While this wording has been retained to capture the many different circumstances that may arise in animal cruelty offending, further factors have also been added, including consideration of whether multiple incidents took place, or whether significant force was used.

More detail has been added to the factors in lower culpability, in line with other similar guidelines, including consideration of whether the offending occurred as a result of a momentary or brief lapse in judgement.

Culpability demonstrated by one or more of the following
<b>A High culpability</b>
<ul style="list-style-type: none"> <li>● Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour</li> <li>● Use of very significant force</li> <li>● Leading role in illegal activity</li> <li>● Category B offence may be elevated to category A by:               <ul style="list-style-type: none"> <li>○ the extreme nature of one or more medium culpability factors</li> <li>○ the extreme impact caused by a combination of medium culpability factors</li> </ul> </li> </ul>
<b>B Medium culpability</b>
<ul style="list-style-type: none"> <li>● Deliberate or gratuitous attempt to cause suffering</li> <li>● Prolonged and/or repeated incidents of cruelty or neglect</li> <li>● Use of significant force</li> <li>● Ill treatment in a commercial context</li> <li>● Deliberate disregard for the welfare of the animal (including failure to seek treatment)</li> <li>● Other cases that fall between categories A or C because:               <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out, and/or,</li> <li>○ The offender's culpability falls between the factors as described in A and C</li> </ul> </li> </ul>
<b>C Lower culpability</b>
<ul style="list-style-type: none"> <li>● Well-intentioned but incompetent care</li> <li>● Momentary or brief lapse in judgement</li> <li>● Involved through coercion, intimidation or exploitation</li> <li>● Mental disorder or learning disability, where linked to the commission of the offence</li> </ul>

**Question 1. Do you agree with the proposed changes to the culpability factors? If not, please tell us why.**

## Harm factors

The Council proposes moving from two levels of harm, as under the current guideline, to three levels of harm. While the existing table has the benefit of being simpler, adding another level of harm would allow for more nuanced consideration of the suffering caused by these offences, particularly necessary as the maximum penalty has increased markedly. In the proposed table set out below, category 1 has had more detail added to reflect the harm suffered in the most extreme cases more clearly, including those necessitating euthanasia or resulting in life-threatening injuries.

In the new category 2, explicit reference has been added to tail docking, ear clipping and other forms of mutilation, in reflection of the fact that the 2021 legislative change also applied to sections 5 and 6 of the Act, resulting in a five year penalty for those offences. The Council believes that these offences represent deliberate and calculated injury and, as such, require explicit reflection in the harm levels.

To allow for more subtle distinctions between categories, further detail has been added to category 3, to account for cases where there is little or no physical or developmental harm or distress.

Harm demonstrated by one or more of the following
<b>Category 1</b>
<ul style="list-style-type: none"> <li>• Death (including injury necessitating euthanasia)</li> <li>• Particularly grave or life-threatening injury or condition caused</li> <li>• Very high level of pain and/or suffering caused</li> </ul>
<b>Category 2</b>
<ul style="list-style-type: none"> <li>• Offence results in an injury or condition which has a substantial and/or lasting effect (including cases of tail docking, ear clipping and similar forms of mutilation)</li> <li>• Substantial level of pain and/or suffering caused</li> </ul>
<b>Category 3</b>
<ul style="list-style-type: none"> <li>• Little or no physical/developmental harm or distress</li> <li>• All other levels of pain and/or suffering</li> </ul>

**Question 2. Do you agree with the proposed changes to the harm factors? If not, please tell us why.**

## Sentence levels

Once the category is determined, sentencers will use the sentencing table at step 2 of the guideline to determine the starting point and the category range for the sentence. The table includes boxes with different starting points for sentencing an offence according to the level of culpability and harm involved. Each box also contains a category range which sits either side of the starting point.

The Council is proposing a number of changes across the sentencing table to take account of the change in maximum penalty. It proposes that the upper end of the category range for the most serious offending be three years' custody. In making this choice, the Council was mindful of other offences involving violence or cruelty. After careful consideration, the Council took the view that a higher category range would be disproportionate when seen alongside the sentence ranges for serious child cruelty offences or other offences of violence where victims may have sustained life-changing injuries. It is quite often the case that the upper limit of the offence range in a particular guideline is lower than the maximum penalty set out in legislation or under the Common Law. This is in order to allow headroom for sentencers dealing with cases of exceptional seriousness. In such cases, statute permits a sentencer to step outside of the offence range and to pass any sentence up to the maximum if they are satisfied that it would be contrary to the interests of justice to follow the guideline in the particular circumstances of the case.

In the sentencing table, the Council proposes to uplift the starting points and category ranges for all offences aside from those involving category 3 harm—lower culpability (3C) and category 2 harm—lower culpability (2C). Uplifting these in this way allows for a

graduated approach to the increase in maximum penalty, while ensuring that the revisions have the intended effect of increasing sentences for serious offending, rather than inflating sentences as a whole. On the revised sentencing table, the starting point (prior to any reduction for a guilty plea) even for category 1 harm–high culpability (1A) is 18 months' custody. It is therefore likely that a significant proportion of custodial sentences will remain within the eligible threshold for suspension.

It should be noted that currently only a very small proportion of adults are sentenced in the Crown Court each year. This is, however, expected to increase with the change in statutory maximum penalty, though not significantly so. Only 2 per cent of adult offenders sentenced in 2020 for animal cruelty offences were sentenced at the Crown Court. This small proportion of cases represents the most serious types of offending, and is therefore most likely to be impacted by the change in maximum penalty.

Within the proposed sentencing table, cases involving lower culpability retain the starting points and category ranges as on the current guideline, or close to these. The Council believes existing sentence levels are most appropriate for these cases as they will often involve offenders who may have a misguided or mistaken approach to animal welfare, in contrast to cases involving medium and high culpability, where acts of violence or cruelty will be more deliberate and / or prolonged.

<b>STEP 2 – STARTING POINT AND CATEGORY RANGE</b>			
	<b>High culpability</b>	<b>Medium culpability</b>	<b>Lower culpability</b>
<b>Category 1</b>	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Low level community order
	<b>Category range</b> 26 weeks' custody – 3 years' custody	<b>Category range</b> 18 weeks' – 1 year's custody	<b>Category range</b> Band B fine – Medium level community order
<b>Category 2</b>	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Band C fine
	<b>Category range</b> 18 weeks' – 1 year's custody	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band B fine – Low level community order
<b>Category 3</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b>	<b>Category range</b>	<b>Category range</b>

	Medium level community order – 26 weeks' custody	Low level community order – High level community order	Band A fine – Band C fine
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**Question 3. Do you agree with the proposed changes to the sentencing table? If not, please tell us why.**

## Aggravating and mitigating factors

Sentencers will then consider a number of possible aggravating and mitigating factors, deciding which are relevant to the case, and adjust the sentence above or below the starting point according to the impact of these factors.

While the aggravating factors included in the current animal cruelty guideline have been retained, there are a number of additions to reflect the new maximum penalty and to ensure consistency with other similar guidelines. An aggravating factor has been added which considers whether a significant number of animals were involved, and the existing factor of an “offender in position of responsibility” has been clarified to read “offender in position of professional responsibility for animals”. Both of these revisions are intended to capture farmers, vets, pet shop owners, animal breeders and similar, who are likely to have responsibility for a great number of animals.

When passing legislation to increase the maximum penalty, parliamentarians specifically referred to the circulation of images or videos of animal cruelty to publicise or promote offending, risking copycat incidents or normalising such abuse. To reflect the seriousness of this behaviour, the Council proposes expanding the existing aggravating factor of “the use of technology to publicise or promote cruelty” to specifically refer to instances where the offender has circulated photographs, videos and similar of the offending on social media.

In line with other similar guidelines, an additional aggravating factor has been included which takes into consideration whether the offence was committed in the presence of others, especially children.

In addition, in order to align the proposed animal cruelty guideline with other current guidelines, the mitigating factor of age and / or lack of maturity has been amended to remove the wording “where it affects the responsibility of the offender”.

### Factors increasing seriousness

#### **Statutory aggravating factors**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

#### **Other aggravating factors**

- Failure to comply with current court orders

- Offence committed on licence or post sentence supervision
- Significant number of animals involved
- Use of a weapon
- Allowing person of insufficient experience or training to have care of animal(s)
- Use of technology, including circulating details/photographs/videos etc of the offence on social media, to record, publicise or promote cruelty
- Ignores warning/professional advice/declines to obtain professional advice
- Use of another animal to inflict death or injury
- Offender in position of professional responsibility for animals
- Offence committed in the presence of other(s), especially children
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog
- Distress caused to owner where not responsible for the offence

#### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

**Question 4. Do you agree with the proposed changes to the aggravating and mitigating factors? If not, please tell us why.**

# Failure to ensure animal welfare

Section 9 of the Animal Welfare Act covers instances where there is a failure to ensure animals' needs are met and it is currently included in the wider animal cruelty guideline. Following the change in maximum penalty for other animal cruelty offences, section 9 is the sole offence which remains summary only, so these cases will continue to be dealt with in magistrates' courts, with a maximum penalty of six months' custody.

Currently, cases of offending under section 9 of the Act are low in volume and available data shows that offenders are more likely to receive a fine or community sentence, rather than a custodial sentence, for this offence. In 2020, around 50 adult offenders were sentenced under section 9 and, of these:

- 75 per cent received a fine or community sentence;
- 17 per cent a suspended sentence; and
- 4 per cent received an immediate custodial sentence (an ACSL for this offence has not been calculated for 2020 as the number of offenders sentenced to immediate custody was fewer than five).<sup>3</sup>

As the maximum penalty for this offence has not changed, it is anticipated that these trends will continue, even with the proposed revisions to the guidelines.

The Council has focused [the proposed guideline](#) for the section 9 offence on neglect and ill-treatment, with the aim of distinguishing the circumstances likely in this type of offending from offences contrary to sections 4-8.

In order to allow sentencers to find this guideline more easily when searching online, this guideline has been given the specific title of 'Failure to ensure animal welfare', to distinguish it from the proposed guideline on animal cruelty outlined earlier in this consultation paper.

The bulk of the section 9 guideline retains the wording and layout of the current animal cruelty guideline. The Council has, however, proposed some minor revisions to ensure the guideline is specific to the circumstances of offending likely to fall under section 9 of the Act.

## Culpability factors

In the culpability table, the wording of a "deliberate or gratuitous attempt to cause suffering" has been removed from the list of high culpability factors as the Council does not believe it is relevant to the section 9 offence and would instead be more appropriate in the proposed guideline for section 4-8 offences.

The high culpability factor of "ill treatment in a commercial context" has also been amended to include mention of neglect, to ensure this factor is broad enough to capture

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<sup>3</sup> An additional 2 per cent were given a discharge and 2 per cent were otherwise dealt with.



the range of offending likely to fall under section 9. This would align more closely with other factors in the guideline overall and the Council recognises it can be challenging to distinguish between ill treatment and neglect in practice, with significant crossover between the two in many cases.

In order to align with the changes proposed to the new guideline for section 4-8 offences, the lower culpability category has been updated to add two further factors, of a “brief lapse in judgement” and where the offender was “involved through coercion, intimidation or exploitation”. Lower culpability cases involving “well-intentioned but incompetent care” are retained, covering instances where owners, handlers or other people in charge of an animal’s welfare make decisions which they think are in the animal’s best interests, but which actually result in harm. Similarly, the current lower culpability wording outlining instances where the offender has a “mental disorder or learning disability where linked to the commission of the offence” is retained.

The wording for medium culpability has been revised, to capture cases where there may be more ambiguity or contrasting harm and culpability factors, such as where the offender should be better informed but is not deliberately or wilfully neglectful.

Culpability demonstrated by one or more of the following
<b>A High culpability</b>
<ul style="list-style-type: none"> <li>• Prolonged or deliberate ill treatment or neglect</li> <li>• Ill treatment <b>or neglect</b> in a commercial context</li> <li>• A leading role in illegal activity</li> </ul>
<b>B Medium culpability</b>
<ul style="list-style-type: none"> <li>• <b>Cases that fall between categories A or C because:</b> <ul style="list-style-type: none"> <li>○ <b>Factors are present in A and C which balance each other out, and/or,</b></li> <li>○ <b>The offender’s culpability falls between the factors as described in A and C</b></li> </ul> </li> </ul>
<b>C Lower culpability</b>
<ul style="list-style-type: none"> <li>• Well-intentioned but incompetent care</li> <li>• <b>Brief lapse in judgement</b></li> <li>• <b>Involved through coercion, intimidation or exploitation</b></li> <li>• Mental disorder or learning disability, where linked to the commission of the offence</li> </ul>

***Question 5. Do you agree with the proposed changes to the culpability factors for the section 9 guideline? If not, please tell us why.***

## Harm factors and sentencing levels

The harm table is retained in its current form, with two categories of greater and lesser harm and the associated factors. The Council believes that retaining this simple table will be beneficial for this summary-only offence.

Similarly, the sentencing table has been retained as it is under the current guideline, with the offence range running from a Band A fine to 26 weeks’ custody (the statutory maximum for a section 9 offence). As the legislative changes passed by Parliament do not apply to this offence, the Council does not see a compelling reason for making any other changes to the sentencing table. The Council continues to believe that the worst cases



which fall under section 9, where offenders have wilfully ignored their responsibility and failed to ensure animal welfare, and the worst cases of neglect, justify the highest sentence available under this offence.

## Aggravating and mitigating factors

To bring this guideline into line with the proposed animal cruelty guideline, additions have been made to the list of ‘other’ aggravating factors. The Council proposes to add consideration of the number of animals involved, where this is significant, and to amend the wording of the factor where the offender is in a position of responsibility to focus specifically on instances where this is a position of professional responsibility for animals.

A number of other aggravating factors have been removed, primarily to tailor factors to the likely circumstances of cases that will fall under section 9: the use of a weapon, use of technology to publicise or promote cruelty, and the use of another animal to inflict death or injury. These factors are retained in the proposed guideline for sections 4-8 where they will be more relevant to the offences in question.

As with the proposed guideline for sections 4-8, and in order to align the proposed section 9 guideline with other current guidelines, the mitigating factor of age and / or lack of maturity has been amended to remove the wording “where it affects the responsibility of the offender”.

### Factors increasing seriousness

#### **Statutory aggravating factors**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

#### **Other aggravating factors**

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- **Significant number of animals involved**
- Allowing person of insufficient experience or training to have care of animal(s)
- Ignores warning/professional advice/declines to obtain professional advice
- Offender in position of **professional** responsibility **for animals**
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog
- Distress caused to owner where not responsible for the offence

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment

- **Age and/or lack of maturity**
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

***Question 6. Do you agree with the proposed approach to aggravating and mitigating factors in the section 9 guideline? If not, please tell us why.***

# Equalities and other comments

## Public Sector Equality Duty

The Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that the guidelines have different outcomes for different groups. The Council has had regard to its duty<sup>4</sup> under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics. There may be many causes for disparities in sentencing, some of which the Council is not able to do anything about.

The Council has also commissioned an independent external contractor to undertake a project to review its work for any potential to cause disparity in sentencing across demographic groups. Aspects to be examined will include those such as the language used, factors, offence context, expanded explanations and structure of sentencing guidelines. The work will also consider whether any aspects of the processes of guideline development and revision have any implications for equalities and disparity in sentencing and how the Council can best engage with underrepresented groups to increase awareness and understanding of sentencing guidelines.

The available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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<sup>4</sup> The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act. The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not. The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations

Where the data has shown evidence of disparity in sentence outcomes for some groups of offenders, the Council has placed wording in the relevant guidelines, to draw sentencers' attention to these disparities and to signpost courts to important information within the Equal Treatment Bench Book. Once the Council has considered the data for this offence and responses received to this consultation, the Council will consider before publishing a definitive guideline whether similar wording is necessary.

The Council has considered the data available in relation to adult offenders sentenced for animal cruelty offences, though this does not yet include cases which have occurred since the change in maximum penalty in 2021. The available data is limited in its reliability given the low volume of animal cruelty cases sentenced and the large proportion of offenders for whom their ethnicity or sex was unknown or not recorded.<sup>5</sup> Any trends should, therefore, be treated as indicative only.

When looking at sentencing outcomes and average custodial sentence lengths for animal cruelty offences, there was no clear indication of disparities in impact on offenders according to age, sex or ethnicity. The data available for sex and age is broadly in line with demographic breakdowns across all summary non-motoring offences. In 2020, where the sex of offenders was known, just over a third of those sentenced under the Act were female, while 63 per cent were male. In addition, three quarters of adult offenders sentenced were aged between 22-49 years. The revised guidelines are intended to apply equally to all adult offenders, regardless of protected characteristics, and due consideration has been given to this issue in the drafting of these guidelines to minimise any unintended impacts.

Given the limited data available, the potential for disparities in sentencing to arise from aspects of sentencing guidelines may not be obvious and we are therefore seeking views widely on any such potential impacts. We would like to hear from those reading this document on these matters.

We would like to know whether there is anything in the draft guidelines we are consulting on which could cause, or contribute to, such disparities across different groups, and / or whether any changes to the draft guidelines could be made to address any disparities. These could relate to:

- the language used;
- culpability and harm factors;
- mitigating and aggravating factors;
- the context in which the offending takes place;
- the structure of the guidelines.

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<sup>5</sup> In 2020, ethnicity information was unknown or not recorded for 86 per cent of offenders sentenced for animal cruelty offences; similarly, sex was unknown or not recorded for 16 per cent of offenders. The availability of demographic information is constrained by data coverage. For offenders sentenced for less serious offences which are mostly sentenced at magistrates' courts, ethnicity data in particular is less readily available. For more information, please see the Notes tab of the published data tables.

***Question 7. Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?***

***Question 8. Are there any existing disparities in sentencing of the offences covered in these guidelines that you are aware of, which the draft guidelines could and should address?***

***Question 9. Are there any other matters relating to equality and diversity that you consider we ought to be aware of and / or that we could and should address in the guidelines?***

## **Other comments**

***Question 10. Do you have any further comments on the proposed changes to the animal cruelty guidelines?***

# Annex A: Consultation questions

***Question 1. Do you agree with the proposed changes to the culpability factors? If not, please tell us why.***

***Question 2. Do you agree with the proposed changes to the harm factors? If not, please tell us why.***

***Question 3. Do you agree with the proposed changes to the sentencing table? If not, please tell us why.***

***Question 4. Do you agree with the proposed changes to the aggravating and mitigating factors? If not, please tell us why.***

***Question 5. Do you agree with the proposed changes to the culpability factors for the section 9 guideline? If not, please tell us why.***

***Question 6. Do you agree with the proposed approach to aggravating and mitigating factors in the section 9 guideline? If not, please tell us why.***

***Question 7. Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?***

***Question 8. Are there any existing disparities in sentencing of the offences covered in these guidelines that you are aware of, which the draft guidelines could and should address?***

***Question 9. Are there any other matters relating to equality and diversity that you consider we ought to be aware of and / or that we could and should address in the guidelines?***

***Question 10. Do you have any further comments on the proposed changes to the animal cruelty guidelines?***

