

## Final 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.<sup>1</sup>

#### 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 guideline<sup>2</sup> 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' to 5 years' custody. Parliament discussions around the rationale behind this increase referenced a desire to increase penalties for offences involving particularly sadistic behaviour, and/or the involvement of organised criminality. There was no change to the maximum penalty for the section 9 offence, which remains at 6 months.

The Council has consulted on two new definitive 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 to 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. This 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.

The Council's aim in developing these guidelines is to 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 sentencing and provide

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

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

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 for those offences which have seen an increase in statutory maximum penalty, and will ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences.

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.<sup>3</sup>

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<sup>3</sup> 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 tables published here: <https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>

In addition to consultation responses covering both guidelines, discussions with sentencers held during the consultation stage to explore whether the new Animal cruelty guideline will work as anticipated have provided further understanding of the likely impact of this guideline on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>.

#### **Causing unnecessary suffering (section 4)**

In 2021, around 340 adult offenders were sentenced for this offence, which is a slight increase on 2020 but still only around half of the volume of offenders sentenced in each year prior to 2020. The most common outcome was a community order (37 per cent), followed by a suspended sentence order (31 per cent). A further 18 per cent received a fine and 10 per cent received immediate custody.<sup>4</sup>

For those that were sentenced to immediate custody in 2021, the average (mean) custodial sentence length (ACSL)<sup>5</sup> was 4 months, after any reductions for guilty plea. The statutory maximum sentence for this offence increased from 6 months to 5 years' custody on 29 June 2021, for offences committed on or after this date, so these figures do include the period before and after this change in statutory maximum, although no sentences exceeded 6 months' custody. However, owing to the time taken for cases to progress through the courts, the volume of offenders sentenced in this period who committed their offence on or after 29 June 2021 are likely to only represent a small proportion of cases sentenced in 2021 and these outcomes may not be representative of future sentencing outcomes for this offence.

#### **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). These offences are almost exclusively sentenced in magistrates' courts. In total, in 2021, there were around 10 adult offenders sentenced for these offences, of which almost all were sentenced for an offence of carrying out a non-exempted mutilation (section 5). Of these, almost half (45 per cent) received a community order, around one quarter received a fine (27 per cent) and the remainder received a custodial sentence (18 per cent immediate custody and 9 per cent a suspended sentence order).<sup>6</sup>

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<sup>4</sup> A further 3 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.

<sup>5</sup> 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.

<sup>6</sup> Percentages may not appear to sum to 100 per cent due to rounding.

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

In 2021, around 80 adult offenders were sentenced for this offence, which is almost double the volume sentenced in 2020, but still lower than volumes seen in previous years. The majority are sentenced in magistrates' courts, although 2021 saw the highest proportion of offenders sentenced at the Crown Court (10 per cent, compared to an average of 1 per cent across 2011 to 2020 inclusive). In 2021, around one third of offenders sentenced received a community order (31 per cent, same as 2020), 26 per cent received a fine and 20 per cent received a suspended sentence order. The proportion of offenders receiving a discharge for this offence in 2021 is high compared to the other animal cruelty offences, at 14 per cent. A further 9 per cent were sentenced to immediate custody, for which the ACSL was 4 months (against a statutory maximum sentence for this offence of 6 months' custody).<sup>6</sup>

### **Key assumptions**

To estimate the resource effect of new guidelines, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the 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 new 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 new guidelines, 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 new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the guidelines are therefore not included in the estimates.

In developing sentence levels for the guidelines, the latest available data on current sentence levels have been considered. While this now includes the period since the increase in statutory maximum sentence for sections 4 to 8, owing to the time taken for cases to progress through the courts, any offenders sentenced who committed their offence on or after 29 June 2021 are likely to only represent a small proportion of cases sentenced in 2021 and are unlikely to be wholly representative of future sentencing practice for this offence. Existing guidance and case studies, as well as limited transcripts of judges' sentencing remarks (only available for Crown Court cases) 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 to 8 were summary only until halfway through 2021, past sentencing data is unlikely to be fully representative of how sentencing will 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 guidelines.

This also means that it remains difficult to estimate with any precision the impact the new 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 were undertaken during the consultation stage which have supported this final resource assessment.

## Resource impacts

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

The two guidelines cover animal cruelty offences contrary to sections 4 to 8 and section 9 of the Animal Welfare Act 2006 separately. Due to the shared statutory maximum penalty of offences contrary to sections 4 to 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 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 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 to 8. It is not expected that this will lead to a substantial impact on prison and probation resources, owing to the small volumes involved for these relevant cases. For the section 9 offence, since the guideline has been developed with current sentencing practice in mind and the statutory maximum remains unchanged, this is also not anticipated to lead to a change in sentencing practice or have a notable resource impact.

### **Animal cruelty guideline (sections 4 to 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 Animal cruelty guideline additionally covers sections 5, 6 and 7 but no longer covers section 9. This 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 fine<sup>7</sup> up to 3 years' 6 months custody.

The statutory maximum penalty for sections 4 to 8 increased from 6 months' custody (summary only offence), to 5 years' custody (triable either way offence) in June 2021. This increase has influenced the increased sentence range within the new guideline (now going beyond magistrates' current powers) 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 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 expected to remain within the threshold of magistrates' courts sentencing powers. This expectation was supported by research discussions with sentencers during the consultation stage. When asked, sentencers did not think that there would be a large increase in the number of cases committed to the Crown Court for sentencing.

In relation to the rationale for the increases to the statutory maximum under the Animal Welfare (Sentencing) Act 2021, the Act 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 guideline includes a number of updates to the way culpability is assessed, primarily to clearly separate out these more extreme cases and ensure they are appropriately categorised. Most high culpability factors within the existing magistrates' court Animal cruelty guideline have been moved into medium culpability, and a new set of factors covering the most severe types of offending have been added to high culpability, to reflect the substantial increase in maximum sentence for these offences. As such, the majority of cases that were previously categorised into the highest culpability level in the old guideline might be expected to sit within B medium culpability under the new guideline, which has a range of starting points from a medium level community order for harm category 3, up to 26 weeks' custody for harm category 1, which was the previous statutory maximum sentence.

For those cases for which the highest harm and culpability level (A1) are deemed appropriate, it is expected that there might be an increase in sentencing severity under the new guideline. The starting point and top of the category range have been increased by 6 months since the draft stage in response to feedback received at the consultation stage. Nevertheless, given that the starting point (before any reductions for a guilty plea) for A1 is 2 years' custody, a large proportion of cases receiving a custodial sentence under the new guideline remain within the eligible threshold for suspension, for which the anticipated resource impacts are less, especially with regard to prison places. Furthermore, given that the majority of offenders do not currently receive a custodial sentence for these offences, and the guideline is not expected to substantially change sentencing outcomes in general, this further reduces the estimated impacts on prison resources.

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<sup>7</sup> The starting point for a Band A fine is 50% of the offender's relevant weekly income.

Analysis of a small number<sup>8</sup> of transcripts of Crown Court judges' sentencing remarks<sup>9</sup> was conducted to assess how sentencing might change under the new guideline. Although it was found that there may be some increases in the length of immediate custody received in individual cases, these were particularly those cases at the highest levels of culpability and harm, for example involving the death of the animal/animals. Due to the data limitations (only 1 per cent of offenders sentenced in 2019 and 2020 were sentenced at Crown Court, so it is unlikely that this sample of cases is representative of typical sentencing for this offence), the likely resource impact cannot be quantified, but the analysis did not provide any evidence of substantial increases for the majority of cases, or changes in sentence outcome.

The expectation that the guideline is unlikely to lead to substantial changes in sentencing outcomes for these offences was mostly supported by research with magistrates and district judges conducted during the consultation stage, using sentencing scenarios. While there was a tendency for some sentencers to categorise the level of culpability and harm slightly higher than anticipated for the two scenarios, the sample was small and feedback from sentencers overall was that sentencing severity may increase for the most serious cases under the guideline, which could be justified in light of the increase in statutory maximum sentence. This is in line with the guideline intention.

It should be noted that the latest full year of data available to analyse for this resource assessment is 2021. Given the increase in statutory maximum sentence applies for offences committed on or after 29 June 2021, the figures are likely to only contain a small proportion of offenders for whom the increase in statutory maximum sentence applied. This means that current sentencing practice for this offence will not be fully representative of expected future sentencing using the 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 quantify with any confidence the impact of the guideline 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 sentence<sup>10</sup> 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, which has been supported by the available evidence. Therefore, it is anticipated that any impact on prison and probation resources should be small, and would be driven by the change in legislation.

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<sup>8</sup> 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).

<sup>9</sup> 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.

<sup>10</sup> 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>

## **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 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 fine<sup>7</sup> 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 guideline.

Due to a lack of available data and the small number of offenders sentenced for this offence (only around 80 in 2021), it is not possible to confidently anticipate the impact the new 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.

## **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 was gathered by the Council as part of the consultation phase. This included inviting views on the guidelines through the consultation exercise and research with sentencers using case scenarios to explore whether the guidelines could have any unintended effects. However, given there were limitations on the number of scenarios which could be explored, the risk cannot be fully eliminated. The Council also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals, and these views have been considered for this final resource assessment.

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

If sentencers do not interpret the guidelines 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. Additionally, research with sentencers which was carried out during the consultation period has hopefully enabled any issues with implementation to be identified and addressed.

Consultees have also had the opportunity to provide their opinion 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.

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