



Department
for Environment
Food & Rural Affairs



Foreign, Commonwealth
& Development Office

The Rt Hon the Lord Goldsmith of Richmond Park
Minister of State

23 March 2022

Dear Peers,

Animals (Penalty Notices) Bill: Follow-up correspondence

I would like to extend my sincere thanks for the valuable contributions during the Bill's Second Reading in the House. I would also like to thank Lord Trees for the queries directed to me via email. Many of the points raised were acknowledged in the speeches given by myself and the Rt Honourable Lord Randall of Uxbridge, but for absolute clarity I would like to follow up in writing.

Lord Carrington

Safeguards for Recipients of Penalty Notices

1. I thank the noble Lord, Lord Carrington, for highlighting an important point around the safeguards in place for an individual should they disagree with the penalty they have been issued.
2. Penalty notices have been designed with the safeguarding of farmers, animal keepers and animals themselves in mind. Officials have discussed this important issue in depth with organisations in the farming sector in particular, and I am happy to reaffirm the assurances given by the honourable Member for North Oxfordshire in the other place.
3. Firstly, if an individual wishes to **challenge a penalty notice** on the basis that they do not agree with the facts, the individual may not pay it. Where an offence has occurred and they consider it to be appropriate, the enforcement authority may choose to pursue a criminal prosecution. Once a prosecution is commenced, the conventional avenue of appeal that accompanies criminal proceedings is then engaged. Unlike a civil sanction, if someone does not pay a penalty notice, they will not be charged for the non-payment. Any criminal proceedings taken forward can only be for the original offence. This ensures article 6 ECHR rights – the right to a fair hearing – are protected, the appropriate burden of proof is attached to any resulting conviction and, crucially, a person may appeal his or her conviction should they wish to exercise this right.
4. Secondly, the Bill establishes that an enforcement authority can **withdraw** a penalty notice at any time before payment. This option allows for any misapplication, technical errors or misunderstandings to be rectified without undue burden being placed on the recipient.
5. Thirdly, a provision for a '**consideration period**' will be added into secondary legislation for the appropriate offences. The 'consideration period' occurs between the initial inspection at which the offence or deficiency is noted and the subsequent visit when the penalty notice is issued. This period would therefore not impact the 28-day window in which the individual is able to discharge the penalty at a lower sum. A 'consideration period' will not be appropriate for every offence and the appropriate offences will be determined when secondary legislation is developed with stakeholders.

Red Kite Attacks on Lambs

6. Though the point raised about bird attacks on lambs is an important issue, the Bill does not create new offences and therefore cannot address this.

The Earl of Shrewsbury

7. I thank my noble friend, Lord Shrewsbury, for raising **two examples of equine sickness** and for the resulting queries about the Bill.
8. The first example was of a pony who sadly contracted African Horse Sickness, and the question was whether the RSPCA would be able to issue penalty notices in such cases. The Government has several statutory bodies with the relevant enforcement capabilities, who are better equipped and already carry out this type of enforcement. There are currently no plans to include charities as enforcement authorities.
9. To address the second example given, of the horse on loan who was found to be kept in poor welfare conditions: this Bill does not propose any new offences, it simply establishes the powers and sets out the framework. The specific offences that penalty notices cover will be agreed when we engage further with stakeholder groups and will be set out in secondary legislation.

Baroness Bakewell of Hardington Mandeville

10. I thank the noble Baroness, Baroness Bakewell of Hardington Mandeville, for her questions, which focus on the detail of how the Bill will function in practice.

Dangerous Dogs Act 1991

11. I would like to clarify that the Dangerous Dogs Act 1991 is covered by this Bill in Clause 2. This means that offences under this Act will be considered during the formal engagement with stakeholders to determine whether they are appropriate for penalty notices.
12. The Government has no plans to reopen the Dangerous Dogs Act 1991. We consider that a lifting of the restrictions on these types of dogs would more likely result in an increase in dog attacks, rather than contributing to any reduction. We firmly believe that these restrictions play a very important part in our overall approach towards tackling dangerous dogs.
13. In December 2021, Defra published research in collaboration with Middlesex University, investigating measures to reduce dog attacks and promote responsible dog ownership across all breeds. The report will provide the basis for the consideration of reform in this area and the Government is already working with the police, local authorities, and animal welfare stakeholders to consider the recommendations further.

Enforcement Authorities

14. The noble Baroness asked which enforcement authorities are likely to issue penalty notices. This will be determined in secondary legislation once the enabling powers of the Bill have been established. Penalty notices cover a range of offences across animal health, welfare, animal by-products and biosecurity. Current enforcement authorities include local authorities, the Rural Payments Agency, the Food Standards Agency, the Animal and Plant Health Agency and the Police. We will explore this question further with stakeholders, including enforcers.

Clause 3(3)(a) and (b)

15. A question was raised around Clause 3(3)(a) and (b) of the Bill. The reason for including both subclauses (a) and (b) is that some offences under the primary legislation listed on the face of the Bill in Clauses 1 and 2 will have existing financial penalties attached to them, which a person convicted for that offence in Court would be liable to discharge. In the event of such an offence being committed, the penalty notice issued cannot exceed this amount. Where an enforcement authority considers a higher financial penalty to be appropriate, only in circumstances where this higher limit is available to them as a result of conviction for the offence in Court, would they need to pursue this option rather than a penalty notice.

£5,000 maximum and Consolidated Fund

16. I hope that the noble Baroness was reassured by my response during the debate regarding the level of penalties. Penalty notices will be fines of *up to* £5,000. Not every fine issued will be £5,000, many will be set at a lower amount. Clause 4 outlines the factors that enforcement authorities must consider when determining the appropriate level of penalty. Enforcers will also be required to follow the guidance we will lay and publish when deciding the level of the fine.

17. As I set out when I responded to this point on the floor of the House, any surplus of proceeds will be surrendered by enforcement authorities to HM Treasury. Before surrendering the surplus, enforcement authorities will be able to retain the costs incurred from issuing penalty notices. This Bill is not a revenue-raising exercise.

Baroness Jones of Whitchurch

18. I thank the noble Baroness, Baroness Jones of Whitchurch, for her questions, which are similar to those raised by animal welfare organisations in their conversations with Defra officials.

Serious Offences

19. As I said on the floor of the House, this Bill is not designed to water down the consequences of serious offences where criminal prosecution will always be the appropriate course of action. This legislation will support enforcement by enabling us to target less serious transgressions and prevent them from escalating.

20. Regarding the offences which will attract penalties, I wish to reiterate what I said in my speech. Penalty notices will not replace any of the existing tools available, nor will they be appropriate for use every time an offence is committed. Some examples of offences where penalty notices could be applied include 1) pet breeders who neglect to include their license number when advertising puppies or kittens for sale, 2) zookeepers who fail to comply with a condition imposed by a local authority, or 3) farmers who consistently fail to accurately record their livestock's movements. Officials will work with stakeholders, including enforcers, to ensure that penalty notices are used for the right offences and to support early redirection.

Availability of Prosecution

21. A key element of the framework of the Bill is that the individual can choose whether or not to pay the penalty. Opting not to pay the penalty does not limit the enforcement options. It would be down to the enforcement authority to decide whether to pursue criminal prosecution for the original offence (and not for the non-payment of the penalty – non-payment of the penalty is not an offence).

Grid on Scope of Offences Covered

22. As the noble Baroness highlighted, officials have produced a set of grids which give an overview of the primary and secondary legislation covered by penalty notices. This gives transparency on scope and has been shared with the Labour Shadow Minister in the other place. I will publish the grid alongside this letter in the libraries of the House.

Guidance and Determining the Level of Penalty

23. Clause 4 outlines the factors that enforcement authorities must consider when determining the appropriate level of penalty. Enforcers will also be required to follow the guidance we will lay and publish when deciding the level of the fine.

24. Government Intention

25. The intention of the Bill is to enable enforcement authorities to tailor their response to offences committed and make it easier to take effective and proportionate action against those who commit an offence. Penalty notices will help to highlight the importance of adhering to animal and animal by product laws and to deter individuals who may otherwise have gone on to commit more serious offences, directing them back to compliance. We intend to increase compliance with animal health and welfare laws by increasing the range of enforcement tools available.

Reporting Responsibilities for Enforcement Authorities

26. The noble Baroness raised the reporting responsibilities for enforcement authorities and asked whether this would be anonymised. The Bill is drafted to obligate enforcement authorities to report annually on their use of penalty notices. The report must include: the number, financial amounts and reason for fixed penalty notices issued, i.e. the offence committed. This will give Defra good oversight across the various enforcement bodies. On the point of sharing data, enforcement authorities will remain able to do this via their existing channels.

Burden of Proof

27. To issue a penalty notice for an offence, the issuer must be convinced that the offence has been committed beyond reasonable doubt, based on evidence collected or before them. As the Rt Honourable Lord Randall of Uxbridge said in his speech, this is to ensure that enforcers collect sufficient evidence to prove the guilt of the individual to take the case to court. This is a powerful safeguard to prevent penalty notices being applied over-zealously. This is also consistent with financial penalties used in other areas of legislation.
28. Under the Bill's provisions, the Secretary of State may authorise any of the officials under him, or the police, or local authorities, or anyone else, to issue penalty notices. The Government currently has several statutory bodies with the relevant enforcement capabilities who already carry out this type of enforcement. As penalty notices are introduced for specific offences, it will be important for them to be understood; used effectively; and applied consistently.

Lord Trees

29. I thank the noble Lord, Lord Trees, for writing to myself and the Rt Honourable Lord Randall of Uxbridge with several points which I can further clarify here.
30. The point raised around dedicated Animal Welfare Officers was also raised by the noble Baroness, Baroness Jones of Whitchurch, and is answered above.
31. The handling of non-payment is also outlined above, in the response to the question raised by Lord Carrington.

Legislation Covered

32. The noble Lord referred to several Acts that may be appropriate for penalty notices. The Acts listed on the face of the Bill have secondary legislation made under them. Penalty notices will also be considered for the secondary legislation made under the primary Acts. This means that any new secondary legislation made under any of the 7 primary Acts could also make use of penalty notices, if appropriate. Those mentioned (Welfare of Animals (Transport) (England) Order 2006, Equine Identification (England) Regulations 2018 and Microchipping of Dogs (England) Regulations 2015) are all included, as they are secondary legislation made under section 2(2) of the European Communities Act 1972 or the Animal Welfare Act 2006. The Bill covers a vast amount of legislation which is why it has not been possible to list the relevant offences on the face of the Bill.

Engagement with Stakeholders

33. Officials will engage further with key stakeholders and experts, including the Local Government Animal Welfare Group, when designing the required secondary legislation and also when drafting the official guidance. This will them the opportunity to shape how penalty notices are applied.

I hope that this letter answers the questions raised during the Second Reading debate. If any concerns remain, please do reach out to myself and the Rt Honourable Lord Randall of Uxbridge. We are both more than happy to provide reassurance on any aspect of the Bill and look forward to supporting it through its remaining stages.

I am copying this letter to all Peers who took part in the Second Reading debate, and I am arranging for copies to be placed in the libraries of the House.

With best wishes,



THE RT HON THE LORD GOLDSMITH OF RICHMOND PARK