

Response to the Scottish Animal Welfare Commission

Review of the Animal Health and Welfare (Scotland) Act 2006

Submitted by A-Law (UK Centre for Animal Law), April 2026

1. Summary

The Animal Health and Welfare (Scotland) Act 2006 ("**the Act**") was a landmark piece of legislation that introduced, for the first time, a positive duty of care for animals under human control and a welfare-based framework that went beyond the purely reactive cruelty model it replaced.

Since its enactment, Scotland has progressively developed this framework through a series of reforms that, taken together, represent one of the most comprehensive and ambitious approaches to animal welfare and wildlife protection within the UK.¹ This legislative record is one of genuine ambition and demonstrates that Scotland is willing to act where others have not.

Despite these progressive additions, the Act's foundational framework has not kept pace, its reach still depends on how an animal is classified or used, as kept or wild, vertebrate or invertebrate, rather than on its capacity to suffer. The Animal Welfare (Sentience) Act 2022 has removed the moral basis for this approach. Parliament has recognised that all vertebrate animals, and certain invertebrates, are sentient, regardless of whether they are kept or free-living. The case for treating wild, free-living, or commercially fished sentient animals as outside the scope of animal welfare law has been undermined by Parliament itself.

A-law's position is that the Act should be reformed to reflect this, protection should follow sentience, not classification. The recommendations below give effect to this principle.

The principal areas for reform are:

1. **Standards:** The Five Freedoms model in the Act must be updated to incorporate the Five Domains, which reflects a modern scientific understanding of animal welfare.
2. **Sentience:** The Act must formally recognise animal sentience and provide for a duty on Scottish Ministers and public bodies to have regard to animal welfare and sentience when formulating and implementing policy.
3. **Scope:** The Act must be extended to protect free-living wild animals, and to all animals recognised as sentient, including decapod crustaceans and cephalopod molluscs.

¹ Key measures include: the Wildlife and Natural Environment (Scotland) Act 2011 (introducing vicarious liability for wildlife offences); the Wild Animals in Travelling Circuses (Scotland) Act 2018 (banning wild animals in travelling circuses); the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (increasing penalties and enhancing protections); the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 (expanding licensing requirements); the Hunting with Dogs (Scotland) Act 2023 (strengthening restrictions on hunting with dogs); the Wildlife Management and Muirburn (Scotland) Act 2024 (introducing grouse moor licensing and banning snares); and the Welfare of Dogs (Scotland) Act 2025 (enhancing protections relating to the breeding and sale of puppies).

4. **Fishing:** The blanket exclusion of fishing from the Act's protections under section 47 should be replaced with a framework that provides a genuine legal floor of welfare protection.
5. **Farmed animals:** The "unnecessary suffering" standard must be disentangled from industry norms and given real content through enforceable minimum standards.
6. **Enforcement:** The Act's enforcement model places responsibility on bodies without adequate resourcing or specialist capacity, producing inconsistent outcomes; structural reform is needed.
7. **Online cruelty:** A significant gap exists in the treatment of pre-recorded animal cruelty content online which the Act does not address and which the Online Safety Act 2023 has not closed.

2. A Move to the Five Domains Model

2.1 The Problem

The Act is based on an outdated understanding of animal welfare needs. Section 24(3) of the Act, which provides for the offence of failing to ensure the welfare of a kept animal, sets out a non-exclusive list of an animal's needs, namely: a suitable environment, suitable diet, the ability to exhibit normal behaviour patterns, to be housed with or apart from other animals, and protection from suffering, injury and disease. This is based on the Five Freedoms model of animal welfare, which was developed following the Brambell Committee report in the 1960s. The Five Freedoms are based on negative welfare states (freedom from suffering).

Since the Act was passed, animal welfare standards have evolved and it is now more generally accepted that those responsible for animals should aim to fulfil the Five Domains (a framework developed in the mid-1990s). As explained by the Royal (Dick) Vet School of Veterinary Studies at the University of Edinburgh,² The Five Domains “*allow us to extend our thinking beyond the Five Freedoms and put greater importance on offering opportunities for animals to be exposed to and engage in activities that will provide positive experiences, rather than only avoiding negative ones.*” The Five Domains are nutrition, environment, health, behaviour, and mental state. Crucially, the Five Domains recognises mental state and positive mental welfare as a key aspect of animal wellbeing. This aligns with increasing recognition of animal sentience across a wide range of species, have a wide range of capacities and the ability to experience a range of mental states. Legislative recognition of the Five Domains model is essential if Scotland wishes to be a leader in animal welfare, reflect current scientific knowledge and promote a life worth living for all animals.

2.2 Recommendation

The Five Freedoms approach set out in section 24(3) of the Act should be amended to a Five Domains approach, by the recognition of positive affective states for animals as forming part of minimum welfare standards along with promotion of the positive mental wellbeing of animals.

² The Royal (Dick) School of Veterinary Studies, *Understanding The Five Domains Model of Animal Welfare*, <https://vet.ed.ac.uk/sites/default/files/2024-09/5%20Domains%20Model.pdf> (accessed 29 March 2026)

2.3 Desired Outcomes

- The Five Domains are incorporated into the Act to reflect the modern scientific understanding of animal welfare.

3. Sentience

3.1 The Problem

The Act does not contain a legislative acknowledgment that animals are sentient beings. This is a significant gap in the protection of animals in Scotland, and does not reflect modern understanding of animal sentience and the value of animals to Scottish society. Various models from around the world provide helpful guidance on the recognition of animal sentience, for example Article 13 of the Treaty on the Functioning of the EU, section 4 of the New Zealand Animal Welfare Amendment Act (No 2) 2015, and Article 333 bis of the Spanish Civil Code. Including a new provision in the Act to formally recognise animals as sentient beings would accord with widely accepted scientific evidence and the views of the public.

Secondly, whilst the Animal Welfare (Sentience) Act 2022 requires the UK government to have all due regard to the ways in which its policy might affect the welfare of animals as sentient beings, in the context of the work of the Animal Sentience Committee, this duty does not apply to devolved governments. Animal welfare is a devolved matter in Scotland. The Scottish government should take the opportunity as part of modernisation of the Act to establish a duty on Scottish Ministers and public bodies to take animal welfare and sentience into account in policy development and decision-making. This would ensure that the legislative recognition of animal sentience has practical effect.

3.2 Recommendation

A new section should be introduced into the Act to formally recognise animals as sentient beings.

In tandem with formal recognition of animal sentience, the Act should also introduce a duty on Scottish Ministers and public bodies to take animal sentience and welfare into account in policy development and decision-making.

3.3 Desired Outcomes

- Animal sentience is formally recognised in Scotland's principal piece of animal welfare legislation, providing symbolic and declaratory value and reflecting broad scientific and public consensus.
- The recognition of animal sentience has a positive practical effect in that a formal duty is established on the part of the Scottish Ministers and public bodies to ensure that animal welfare is taken into account in policy and public sector decision-making.

4. Free-Living Wild Animals

4.1 The Problem

Section 19 of the Act confines the offence of causing unnecessary suffering to "protected animals", broadly those under human control or commonly domesticated. Free-living wild animals are excluded unless a person is physically in control of them at the moment the harm is caused.

The consequences are stark. A person who causes deliberate, severe suffering to a wild animal commits no offence under the Act. The Wildlife and Countryside Act 1981 and the Protection of Wild Mammals (Scotland) Act 2002 provide some protections, but these are narrowly drawn, species- or act-specific, and carry lower penalties. The result is that wild animals, who are equally sentient and equally capable of suffering, are substantially less protected in law than their domesticated counterparts.

This produces concrete enforcement anomalies. For example, in badger persecution cases, because the dogs involved in baiting incidents are protected animals under the Act while badgers fall primarily under the Protection of Badgers Act 1992, charges are more frequently brought in relation to harm to the dogs rather than to the badger, the primary victim and the animal suffering more severely, because the statutory footing is clearer and the penalties higher. According to the Scottish Government's Wildlife Crime in Scotland 2024 report, badger persecution accounted for 87 recorded offences across the six-year period 2019-20 to 2024-25, with 20 offences recorded in 2024-25 alone, the highest in the period.³ This anomaly means that in a substantial proportion of such cases, serious welfare harm goes legally unaddressed.

Similarly, raptor persecution, a designated wildlife crime priority area in Scotland, resulted in 117 recorded offences over the same six-year period, with 14 offences in 2023-24 and 21 in 2024-25.⁴ These crimes are difficult to prosecute under existing law because the wildlife protection framework is fragmented, penalties are historically low, and the Act's protections do not extend to the animals directly harmed.

This misalignment between legal structure and enforcement practice reflects wider concerns identified in the SSPCA powers review, which highlights the operational difficulties arising from fragmented statutory frameworks and uneven powers across animal welfare regimes.⁵

4.2 Recommendation

Section 19 of the Act should be amended so that the offence of causing unnecessary suffering applies to all vertebrate animals regardless of whether they are under human control.

³ Scottish Government, *Wildlife Crime in Scotland 2024* (Scottish Government 2025) Badger Persecution section <https://www.gov.scot/publications/wildlife-crime-in-scotland-2024/> 20 March 2026.

⁴ *ibid*, Raptor Persecution section.

⁵ Scottish Society for the Prevention of Cruelty to Animals, *Scottish Society for the Prevention of Cruelty to Animals (SSPCA) Powers Review: Report to the Minister for Environment and Land Reform* (Scottish Government 2023) <https://www.gov.scot/publications/scottish-society-prevention-cruelty-animals-powers-review-report-minister-environment-land-reform/> 24 March 2026.

Practically, this is a targeted and achievable amendment. The existing offence structure is retained; what changes is the removal of the "protected animal" qualifier from section 19. To ensure proportionality, the amendment should make clear, as the Act already does for kept animals, that omissions liability applies only where a person has responsibility for the animal concerned. No duty to intervene would arise in respect of wild animals suffering from natural causes or the actions of other animals.

4.3 Desired Outcomes

- Deliberately causing suffering to a wild animal, through poisoning, wounding, illegal trapping, or targeted harm, would constitute an offence under the Act with the full range of penalties available under the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 applying.
- The anomaly in badger and raptor persecution cases would be closed; charges could be brought in relation to the primary victim, not merely the incidentally involved kept animal.
- A clear signal would be given that legal protection for sentient animals does not depend on their classification as wild or kept, reducing the scope for exploitation of definitional gaps.

5. Sentient Invertebrates: Decapods and Cephalopods

5.1 The Problem

The Act extends no protection to invertebrates. Decapod crustaceans, including crabs, lobsters, langoustines, and prawns, and cephalopod molluscs, including octopus, squid, and cuttlefish, are recognised as sentient under the Animal Welfare (Sentience) Act 2022, following an independent review by the London School of Economics commissioned by the UK Government. Despite this legislative recognition, they can lawfully be boiled alive without prior stunning, de-clawed, decapitated, or used in tearing competitions and races. No legal standard governs how they are handled, stored, transported, or killed.

The scale of this gap in Scotland is significant. According to the Scottish Government's Scottish Sea Fisheries Statistics 2024, Scottish vessels landed approximately 21,500 tonnes of Nephrops (langoustine) in 2024, comprising 20,000 tonnes trawled (worth £66 million) and 1,485 tonnes crealed (worth £17 million), a total commercial value of approximately £83 million from that species alone.⁶ Shellfish, including crabs and lobsters, represented a major component of the catch of Scotland's inshore fleet, with the 10 metre-and-under fleet landing 85% of its catch by value as shellfish in 2024.⁷ These are not marginal cases. Scotland is the dominant shellfish landing nation in the UK, and sentient crustaceans are at the heart of that industry, entirely unprotected by animal welfare law.

⁶ Scottish Government, *Scottish Sea Fisheries Statistics 2024* (Scottish Government 2025) landings by species: trawled Nephrops 20,000 tonnes (£66 million) and crealed Nephrops 1,485 tonnes (£17 million) <https://www.gov.scot/publications/scottish-sea-fisheries-statistics-2024/> accessed 20 March 2026.

⁷ *ibid*, s 4 (The Scottish Fishing Fleet).

The Act already contains enabling powers allowing the definition of "animal" to be extended to invertebrates by regulation where scientific evidence of sentience supports it. These powers have not been used, creating a gap that is irreconcilable with the moral position the Westminster Parliament has taken in the Sentience Act 2022. The Scottish Animal Welfare Commission has itself noted the significance of this gap in its report on ascribing sentience to fish.⁸

5.2 Recommendation

A-Law recommends that the Scottish Government should:

- Immediately exercise existing enabling powers to extend the definition of "animal" under the Act to include decapod crustaceans and cephalopod molluscs, requiring no new primary legislation;
- Amend secondary legislation on welfare at the time of killing to cover these animals, with an explicit prohibition on live boiling without prior stunning as a minimum first step, accompanied by a commitment to ban additional inhumane methods as evidence develops;
- Issue guidance that killing a decapod crustacean by an untrained person, including in a domestic setting, may constitute an offence of causing unnecessary suffering under section 19 of the Act;
- Amend the current enabling power to extend the definition of "animal" into a statutory duty to review the definition every five years, to enable developing scientific evidence to be taken into account. A requirement to apply the precautionary principle where evidence is uncertain should also be included. This will ensure legislation reflects future scientific advances rather than being left to ministerial discretion.

5.3 Desired Outcomes

- The hundreds of millions of decapod crustaceans landed by Scottish vessels annually would receive basic legal welfare protection for the first time.
- The cruellest killing methods, in particular live boiling without prior stunning, would be prohibited, with an enforceable basis for action in cases of deliberate cruelty or gross neglect.
- Scotland would be brought into alignment with Parliament's own recognition of the sentience of these animals in the Sentience Act 2022 and lead the rest of the UK in translating that recognition into enforceable protection.
- Future scientific advances in understanding animal sentience would automatically engage a legislative response, rather than being left to ministerial discretion.

⁸ Scottish Animal Welfare Commission, *Ascribing Sentience to Fish: Potential Policy Implications* (Scottish Animal Welfare Commission 2023) s 6 <https://www.gov.scot/publications/ascribing-sentience-fish-potential-policy-implications-scottish-animal-welfare-commission/pages/7/> 2026.

6. Fishing

6.1 The Problem

Section 47 of the Act excludes anything done in the normal course of fishing from its protections. This exclusion is absolute. Regardless of the severity or how avoidable the suffering caused is, no offence is committed under the Act if it occurs in the course of fishing.

The scale of this exclusion in Scotland is greater than anywhere else in the UK. According to the Scottish Government's Scottish Sea Fisheries Statistics 2024, Scottish vessels landed 561,000 tonnes of sea fish and shellfish in 2024, the greatest tonnage recorded in the last ten years, with a gross value of £756 million, the highest value, adjusted to 2024 prices, of the last ten years.⁹ Scottish vessels accounted for 63% of the total value and 58% of the weight of all UK fish landings in 2024.¹⁰ The welfare implications of the fishing exclusion therefore fall disproportionately on Scotland.

These fish are sentient vertebrates. Peer-reviewed research published in the journal *Animals*, drawing on interviews with 18 expert stakeholders across the fishing, scientific and regulatory sectors, found widespread agreement among those experts that fish are sentient and that they suffer during capture.¹¹ During commercial fishing, fish are routinely chased to exhaustion in nets, crushed by the weight of catches, asphyxiated on deck, subjected to decompression injuries as they are brought rapidly to the surface, and, if they survive the capture process, are commonly gutted alive without prior stunning. Stunning before slaughter is standard practice for farmed land animals and is required by law in most slaughterhouse contexts, but it is rare or absent in wild capture fisheries.¹²

The contrast with Scottish aquaculture practice is instructive. Scotland has developed detailed guidance on welfare at the time of killing for farmed Atlantic salmon, issued by Scottish Ministers under section 38 of the Act itself, requiring pre-slaughter stunning and setting out specific operational requirements.¹³ No equivalent applies to wild-caught fish, whose welfare in capture and killing is wholly unregulated. The Scottish Animal Welfare Commission has itself documented this gap in its report on ascribing sentience to fish, which identified that while farmed fish attract some welfare provision in Scotland, wild-caught fish are entirely excluded.¹⁴ A wild-caught salmon's capacity to suffer is not diminished by the circumstances of its capture.

For shellfish, the position is equally indefensible. Nephrops and other commercially landed decapod crustaceans, also recognised as sentient in law, are subject to practices including live boiling, de-

⁹ Scottish Government, *Scottish Sea Fisheries Statistics 2024* (Scottish Government 2025) Key Points <https://www.gov.scot/publications/scottish-sea-fisheries-statistics-2024/pages/key-points/> accessed 20 March 2026.

¹⁰ *ibid.*

¹¹ JK Garratt and SP McCulloch, 'Wild Fish Welfare in UK Commercial Sea Fisheries: Qualitative Analysis of Stakeholder Views' (2022) 12 *Animals* 2756 <https://www.mdpi.com/2076-2615/12/20/2756> accessed 23 March 2026.

¹² *ibid.*

¹³ Scottish Government, *Guidance: Welfare at the Time of Killing in Salmon Farming* (Scottish Government 2023) issued under s 38 of the Animal Health and Welfare (Scotland) Act 2006 <https://www.gov.scot/publications/scottish-government-guidance-welfare-time-killing-salmon-farming/> accessed 20 March 2026.

¹⁴ Scottish Animal Welfare Commission, *Ascribing Sentience to Fish: Potential Policy Implications* (Scottish Animal Welfare Commission 2023) s 6 <https://www.gov.scot/publications/ascribing-sentience-fish-potential-policy-implications-scottish-animal-welfare-commission/> accessed 23 March 2026.

clawing, and tailing without prior stunning. A 2010 study concluded that electrical stunning was the most effective and therefore the most humane method for stunning edible crabs, compared with commonly used commercial techniques such as boiling, chilling, freezing, CO₂ gassing, and immersion in salt solutions.¹⁵ Despite the availability of proven technologies such as the Crustastun, which renders the central nervous system inactive within one second without recovery¹⁶, such practices remain widespread. These practices would constitute offences under the Act if applied to any other sentient animal it covers.

The fishing exclusion was included because of the practical difficulty of applying welfare standards to industrial-scale fishing. Those difficulties are real, but they cannot justify a complete absence of any legal protection whatsoever for sentient animals at every stage of the fishing process. Scotland, as the dominant fishing jurisdiction in the UK and a jurisdiction with existing, detailed welfare guidance for farmed fish issued under the Act itself, is uniquely placed to lead reform.

6.2 Recommendation

A-Law recommends that the absolute exclusion at section 47 of the Act should be replaced by primary legislation with a qualified provision that:

- Prohibits the most severe and avoidable welfare harms in the course of fishing, including inhumane killing methods for shellfish and practices such as de-clawing and tailing of live crustaceans, while retaining necessary operational flexibility for the commercial sector;
- Provides for statutory Codes of Practice, developed with industry and carrying genuine legal force, addressing key welfare risks across fishing operations;
- Establishes a mechanism for progressive strengthening of minimum welfare standards as practicable alternatives become established, building on the model Scotland has already developed for farmed salmon under the Act.

Scotland's salmon aquaculture sector demonstrates that high welfare standards and commercial viability are not incompatible. That experience provides a practical foundation from which reform can be built.

6.3 Desired Outcomes

- Legal recognition, for the first time, that fish and shellfish in a commercial fishing context have welfare interests that the law must protect.
- An end to the most inhumane practices in Scotland's fishing industry, including live boiling of crustaceans without prior stunning and the mutilation of live decapods.
- The regulatory infrastructure for progressive welfare improvement as industry practice and technology develop.

¹⁵ B Roth and S Øines, 'Stunning and Killing of Edible Crabs' (2010) 19 Animal Welfare 49 <https://pmc.ncbi.nlm.nih.gov/articles/PMC5028027/#sec022> accessed 24 March 2026.

¹⁶ Neil D and Thompson J, *The stress induced by the Crustastun™ process in two commercially important decapod crustaceans: the edible brown Cancer pagurus and the European lobster Homarus gammarus* (Scientific Report, Institute of Biodiversity, Animal Health and Comparative Medicine, University of Glasgow 2012) <http://eprints.gla.ac.uk/81433/1/81433.pdf> accessed 24 March 2026.

- Scotland would lead the UK in demonstrating that a dominant fishing nation can provide meaningful legal welfare protection for the sentient animals at the centre of its industry.

7. Farmed Animals: The "Necessity" Test

7.1 The Problem

A fundamental difficulty with the unnecessary suffering standard in section 19 of the Act is that, in practice, what counts as "necessary" is heavily shaped by what is considered normal or standard within a given industry. Where a harmful practice is widespread, courts and enforcement bodies tend to treat it as necessary even where it causes significant and avoidable suffering to individual animals. The result is a circularity; practices are treated as lawful because they are common, and common because they are treated as lawful. This problem is particularly relevant at a time of rapid development of the use of artificial intelligence in farming practices which will likely change industry norms at scale at a rapid pace.

Where enforceable minimum standards are set in secondary legislation, as they are for laying hens, for example, there is a clear legal benchmark, breach of which is an offence in itself. Where they do not exist, the Act's protections collapse into an assessment of whether conduct falls outside industry norms, a standard that is both difficult to apply and systematically conservative in its effect. The Act's promise of protection for farmed animals is substantially weakened wherever secondary legislation has not given it specific content.

7.2 Recommendation

The Scottish Government should:

- Legislate through secondary legislation under the Act to establish enforceable minimum welfare standards for all sectors in which animals are kept for production, sport, or commercial use, with breach of those standards constituting a specific offence in its own right rather than merely evidence relevant to a section 19 charge;
- Provide in statutory guidance that industry normalcy is not determinative of necessity, and that the primary benchmark is scientific evidence of welfare harm;
- Establish routine, risk-based inspection arrangements across all relevant sectors, rather than relying on targeted inspection driven by complaints, a reactive model that structurally favours producers over animals.

7.3 Desired Outcomes

- Enforceable minimum welfare standards for all sectors, giving enforcement bodies an objective and clearly defined basis for prosecution rather than requiring a judgment about industry norms.
- Removal of the incentive for industries to normalise harmful practices as a means of placing them beyond legal challenge.

- A ratchet mechanism by which standards can be reviewed and progressively raised over time, rather than leaving welfare levels to be implicitly defined by prevailing industry practice.
- Improved welfare for the millions of farmed animals in Scotland whose protection currently depends on whether their treatment departs from what is standard in their sector.

8. Enforcement

8.1 The Problem

The Act's enforcement model places responsibility on inspectors employed by local authorities, Food Standards Scotland, the Animal and Plant Health Agency (APHA) in Scotland, Police Scotland and the SSPCA. However, there are various problems with this enforcement model. A significant issue is that whilst the Act confers extensive enforcement powers on local authorities, it does not impose a corresponding statutory duty to carry out inspections or enforce its provisions. The absence of any mandatory inspection requirement, minimum enforcement standard, or ring-fenced funding has resulted in a discretionary enforcement model that is highly vulnerable to under-resourcing and inconsistency of application. The effect is that enforcement varies significantly across Scotland, is very low in terms of the number of animals covered, and is chronically under-resourced, particularly in the area of farmed animals. The majority of instances of non-compliance with farmed animal welfare standards therefore go undetected. This is evidenced by the recent reports from the Animal Law Foundation on the “Enforcement Problem”, which highlights enforcement as a UK-wide issue. These reports include data from Scotland as all local authorities in Scotland were approached for enforcement statistics via Freedom of Information (Scotland) Act 2002 requests. The data is illuminating. It shows that, for example:

- only 2.88% of farm premises in Scotland were inspected in 2024;
- Scotland has the lowest coverage of local authority inspectors in the UK, with one inspector for every 1,327 farms; and
- only 21% of cases of non-compliance with animal welfare standards on Scottish farms resulted in enforcement action by local authorities in 2024.¹⁷

Where enforcement of animal law is discretionary, and not mandatory, many local authorities choose to spend their budget elsewhere. It is essential that consistent resourcing and structural support is provided to local authorities, and other enforcement bodies under the Act, to enable them to carry out their functions effectively.

For the reasons given at 4.1, wildlife is currently not the primary focus of protection under the Act.¹⁸ We understand that responsibility for investigating wildlife offences lies with Police Scotland and the

¹⁷ The Animal Law Foundation, *The Enforcement Problem 2024 Data*, accessible at <https://animallawfoundation.org/reports> (accessed 29 March 2026)

¹⁸ Most wildlife offences are dealt with under Wildlife and Countryside Act 1981, Protection of Badgers Act 1992, Conservation (Natural Habitats etc) Regulations 1994, Deer (Scotland) Act 1996, Wild Mammals Protection (Scotland) Act 1996, Protection of Wild Animals (Scotland) Act 2002. Penalties have been reformed under the Animals and Wildlife (Penalties, Protections and Powers)(Scotland) Act 2020.

SSPCA. According to the Scottish Government's Wildlife Crime in Scotland 2024 report, COPFS received 72 wildlife crime cases in 2023-24. Of these, 42% received an alternative to prosecution and only 35% were prosecuted.¹⁹ This points to a significant gap between the volume of suspected offending and the volume of cases reaching prosecution. More research is needed to understand why this is the case.

The data gap is itself a problem. The Scottish Government's own scoping report on animal welfare prosecutions, published in 2020, identified that "no official crime statistics in Scotland are routinely published at a level that would enable this to be established", referring to the extent and nature of prosecutions under the Act.²⁰ Without reliable data, it is not possible to assess how consistently the Act is being applied, where enforcement is failing, or how resources should be directed. Section 20 of the Wildlife and Natural Environment (Scotland) Act 2011 prescribes that Scottish Ministers must lay a report following the end of every calendar year on offences which relate to wildlife. A corresponding statutory provision should be introduced into the Act to require a similar report to be prepared on crimes against animals more generally, to include offences against companion and farmed animals.

8.2 Recommendation

The Scottish Government should:

- Establish a requirement for centralised collection and annual publication of comprehensive data on all animal welfare prosecutions, outcomes, and disposals under the Act, which the Scottish Government's own research has identified as currently absent;
- Introduce a legal duty on local authorities to carry out inspections of farm premises within their catchment area, to address the lack of detection of non-compliance with farmed animal welfare standards and improve enforcement. This will need to be supported by increased resources to facilitate enforcement;
- Develop regional support structures for local authority enforcement, pooling specialist expertise across authority boundaries to ensure that specialist knowledge, particularly for non-standard and exotic species, is consistently accessible;

8.3 Desired Outcomes

- A complete, reliable dataset on animal welfare prosecutions published annually, enabling accountability and strategic resource allocation for the first time. This will also promote better identification of offending patterns, enabling resources to be directed where they are most needed and early intervention to prevent escalation.
- Effective detection and enforcement of farmed animal welfare standards.

¹⁹ Scottish Government, *Wildlife Crime in Scotland 2024* (Scottish Government 2025) Crown Office and Procurator Fiscal Service section <https://www.gov.scot/publications/wildlife-crime-in-scotland-2024/pages/crown-office-and-procurator-fiscal-service/> accessed 20 March 2026.

²⁰ Scottish Government, *Animal Welfare Prosecutions Reported by the Scottish SPCA: 2011–2019* (Scottish Government 2020) Introduction <https://www.gov.scot/publications/animal-welfare-prosecutions-reported-scottish-sPCA-2011-2019/pages/2/> accessed 20 March 2026.

- Effective detection and investigation of wildlife crime, ensuring that cases can be referred to COPFS for prosecution when appropriate and there is a sufficiency of evidence to do so.

9. Online Animal Cruelty

9.1 The Problem

The recording and distribution of animal cruelty content online is a serious and growing problem that the Act does not address and a gap that existing online safety legislation has failed to close. The Act criminalises the act of causing unnecessary suffering. It does not separately criminalise the creation, possession, or distribution of recordings of such acts. In other areas of law, the Westminster Parliament has recognised that the recording and circulation of harmful material is itself a distinct and serious wrong requiring specific prohibition. The relevant Scottish comparator is section 51A of the Civic Government (Scotland) Act 1982, inserted by section 42 of the Criminal Justice and Licensing (Scotland) Act 2010, which creates an offence of possessing extreme pornographic images. No equivalent exists in the animal welfare context.

The Online Safety Act 2023 ("**OSA 2023**") was intended to address online animal cruelty as a priority harm. However, as reflected in Ofcom's guidance published in December 2024, the OSA 2023 framework creates stronger obligations on online platforms in relation to live broadcasts than in relation to pre-recorded content.²¹ Pre-recorded material, which constitutes the vast majority of circulating animal cruelty footage, is treated differently and with less stringency. Because the OSA 2023 defines illegal content principally by reference to existing criminal offences, and because those existing offences focus on the act of cruelty rather than the making or distribution of recordings of it, platforms may not be required to treat pre-recorded animal cruelty videos as priority harmful content requiring removal. This is unlikely to have been Parliament's intention in passing the OSA 2023.

9.2 Recommendation

The Scottish Government should introduce, through amendment to the Act, a specific offence covering:

- Recording material that depicts an act of animal cruelty;
- Possessing such material; and
- Distributing or sharing such material;

where the person knows or ought reasonably to know that the act depicted constitutes an offence under the Act.

This would achieve two things simultaneously. It would provide a direct criminal basis for prosecuting those who record and circulate animal cruelty content independently of whether the underlying act of

²¹ Ofcom, 'Statement: Protecting People from Illegal Harms Online' (Ofcom 16 December 2024) <https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/statement-protecting-people-from-illegal-harms-online> accessed 24 March 2026.

cruelty can be separately proved. And, because the OSA 2023 defines illegal content by reference to existing offences, creating this offence would make pre-recorded cruelty content unambiguously illegal under the OSA 2023, requiring platforms to treat it as a priority for removal. The Scottish Government should also engage with Ofcom and the UK Government to seek revision of Ofcom's regulatory documents and guidance to ensure that pre-recorded cruelty content receives equivalent treatment to live broadcasts.

9.3 Desired Outcomes

- A direct criminal basis for prosecuting those who profit from and circulate animal cruelty content, independently of whether the underlying act of cruelty can be separately proven.
- Pre-recorded animal cruelty content treated as unambiguously illegal under the OSA 2023, requiring online platforms to proactively remove it, as the Westminster Parliament intended.
- Scotland brought into alignment with the approach the Westminster Parliament has taken to other categories of harmful recorded material, including extreme pornographic images.

10. Conclusion

The Act provides a solid foundation. But the principle it embodies, that those responsible for animals must provide for their welfare, must now be extended to its logical conclusion: all sentient animals, wherever they are and however they are used, deserve legal protection from unnecessary suffering.

The reforms proposed in this response are required by Scotland's own recognition of animal sentience and are achievable within Scotland's existing legislative competence. Extending protection to free-living wild animals and to sentient invertebrates requires targeted primary legislation; the fishing exclusion at section 47 requires replacement; enforceable minimum standards for farmed animals require secondary legislation; the enforcement gap requires resourcing and data; and the online cruelty gap requires a new specific offence.

Scotland has shown that it can and does lead on animal welfare law. The only remaining question is whether the law will be reformed to reflect that fact. A-Law urges the Commission to use this review to recommend the programme of reform that Scotland's obligations to sentient animals demand.