

Response ID ANON-JPQR-SGK4-P

Submitted to Introducing penalty notices for animal health and welfare offences in England
Submitted on 2023-07-11 14:00:34

Introduction

About you

1 Would you like your response to be confidential? (Select one option only)

No

If you answered yes, state clearly below what information you would like to be kept as confidential and explain your reasons for confidentiality::

2 Who are you responding as? (Select one option only)

Individual:

If selected other, please specify:

Organisation:

Member organisation (Describe your organisation)

Member organisation (describe your organisation):

Chartered Trading Standards Institute - Not-for-profit membership body for Trading Standards

Other organisation, please specify:

3 Please select where you/your organisation is based (select all that apply)

England, Northern Ireland, Scotland, Wales

Executive Summary

The role of penalty notices

How will penalty notices work?

When a penalty notice is issued

Conclusion

Part 1 - Scope of the penalty notice regime

Animal welfare related offences

4 Should penalty notices be an available enforcement tool to deal with current and potential promotion of animal welfare related offences?

No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not

Explain why:

With due consideration to the drafting of the legislation, it is considered those matters of strict liability are best suited to penalty notices. This would include the regulations made under the provisions of the Animal Welfare Act 2006, including the Welfare of Farmed Animals Regulations 2007 and the Licensing of Activities involving Animals Regulations 2018 (LAIA). It would also include the Welfare of Animals at Markets Order 1990 and the Welfare of Animals in Transport Order 2006, both of which are made under the Animal Health Act 1981. The issuing of penalty notices will generate as much work for the enforcement authority as a prosecution, this is because the burden of proof remains the same, and should a person fail to pay the penalty notice offered, whilst it is recognised that you could withdraw the notice, this would set a bad precedent. Section 4 and Section 9 offences under the Animal Welfare Act 2006 would not be appropriate for penalty notices as both are considered in law to be of such significance that a failure to comply with the rules could lead to a disqualification. There is provision for non-compliance with S9 to issue an improvement notice under S10, however given that if you issue an improvement notice under S10, is it acceptable for the enforcement authority to issue a penalty notice at the same time? The legislation is clear that no proceedings for an offence under S9 may be instituted before the end of the period specified in the notice. Is the issuing of a penalty notice deemed to be a proceeding? With regards to the LAIA Regulations and penalty notices, the concern is that a number of LA's do not follow their own procedural guidance and audit to current expected standards, it would therefore be open for challenge with regards any penalty notice that may be issued.

Animal licensing related offences

5 Should penalty notices be an available enforcement tool to deal with current and potential animal licensing related offences?

No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not

Explain why:

As per Q4 response, with regards to the LAIA Regulations and penalty notices, the concern is that a number of LA's do not follow their own procedural guidance and audit to current expected standards, it would therefore be open for challenge with regards any penalty notice that may be issued. For some failures with licensed conditions, a penalty notice may be appropriate, for example no comfortable bed, dirty water, overgrown nails etc. It is a difficult call between what is suitable for an improvement notice and what is suitable for a penalty notice and the concerns raised of service of these notices in tandem remain, the same as per Q4. For a number of LA's, the inspector who is undertaking the licensing inspection is not employed by the licensing LA but contracted to undertake the work on their behalf. This may prevent the take up of penalty notices being used. Consideration must be given to when a penalty notice is issued and by who as this will have implications for time limits on who is the prosecutor. If service is given at the time of the inspection, it is the officer who is making the determination that beyond reasonable doubt there is sufficient evidence to support prosecution should a person fail to pay the penalty notice.

Animal Identification related offences

6 Should penalty notices be an available enforcement tool to deal with current and potential pet identification related offences?

No, none, explain why

Explain why:

It is preferred that rather than pay a penalty notice for not having the animal micro-chipped, the money is spent by the individual getting the animal identified correctly. There is A LOT of problems with UK databases for microchip registrations which are shockingly poor in the way in which they are operated. It is important that before you look at any penalty notice against a person for not micro-chipping their pet or failing to register, you address the issues with regards the microchipping databases. Local authority access is inconsistent, several of these databases are known as the puppy farmers chip company of choice for a reason. LAIA inspectors are not all checking dogs' registrations, a number of dogs are imported and this is difficult to establish. There is a bigger issue herewith micro-chipping databases which needs addressing first before considering penalty notices. It is also considered that with the cost of living, there will be a lot of backlash with regards this given the poor / non-existent standards to which some microchip companies operate. tradingstandards.uk/news-policy/news-room/2021/warning-about-unauthorised-pet-microchip-registry

7 Should penalty notices be an available enforcement tool to deal with current and potential livestock identification related offences?

Yes

Explain why:

There is a high level of non-compliance with livestock ID , some of which can be attributed to the fraudulent trading of an individual. Penalty notices would be good to use for those keepers who know the law with regards livestock ID and registration / movement details, however they choose not to comply with the rules. It must not be seen as the only sanction for non-compliance regarding livestock ID. There is concern that even with a penalty notice, some farmers won't produce or keep records , it is in their business interest to be vague on the whereabouts of livestock and traceability particularly if they are breaching movement rules. If you issue a penalty notice, it is a cheaper option for the farmer to pay within 14 days than stop the illegal practice they are committing. How many times are you in a position then to keep playing a game of cat & mouse with the producer in order to get compliance? With missing eartags, given that the law gives an individual opportunity to replace within 28 days , a penalty notice could only really be issued after this time for repeated non-compliance. Where you have older calves / cattle and it is quite clear that they have never been ear-tagged then yes, penalty notices would suit this type of offending. There needs to be penalty not only against the farmer for not having animals identified correctly but also against livestock market operators who are prepared to accept incorrectly identified animals for sale and who actively promote that a single tag is acceptable if the animal is going to slaughter. Failures with livestock ID is normally not an isolated incident on farm and with the high level of non-compliance it may lead to greater inconsistency in the use of penalty notices across local authorities. Will the RPA also be an enforcement authority for livestock ID and the issuing of penalty notices? How will this information be shared with local authorities? If the RPA are deemed to be an enforcement authority, will they be undertaking their own prosecution for non-payment? There will not be resource in local government to pick up this additional work without consideration to the resource physically / financially that would be required and compliance with the rules of evidence.

8 Should penalty notices be an available enforcement tool to deal with current and potential equine identification related offences?

Yes

Explain why:

Equine ID is so inconsistently enforced however this may improve with the Animal Penalty Notices Act 2022. It could be a useful tool at events such as Appleby, however the cost of following up the non-compliance and the resource needed for enforcement at this type of event would likely out-weigh any benefit of using Penalty Notices, particularly with the travelling community where it will be extremely difficult to follow up with action for non-payment of the penalty notice. You can't pick and choose who you then apply penalty notices to, this leads to an unfair practices with some sectors of the community targeted and others not. There are number of micro-chip failures and again, whilst there is the national equine database, this is not accessed or used as it should be. A further delve into the suitability of the regulations and the challenges in enforcement may be more appropriate in the first instance before deciding if penalty notices are a suitable sanction.

Animal health related offences

9 Should penalty notices be an available enforcement tool to deal with current and potential animal health related offences?

Yes

Explain why:

There are some good strict liability offences under animal health law that would be suited to penalty notices, this includes a failure to house birds in any protection or prevention zone, the failure to dispose of animal by products or hold them correctly pending disposal and a failure to cleanse and disinfect a vehicle if attempting to load at a livestock market. With TB, these offences would be better dealt with by APHA as they hold the information. There is concern that with the burden of proof being required beyond reasonable doubt, sometimes the evidence relied upon supplied by APHA / RPA may not meet this required standard and therefore the needs to be clear management of expectations on what offending the LA may issue a penalty notice for based upon the evidence of a third party. It is acknowledged that it is one penalty notice per offence, typically offending is not in isolation and this may lead to multiple penalty notices being issued. How will this work in practice?

Imports of live animals, product of animal origin (POAO) and animal by products (ABP) related offences

10 Should penalty notices be an available enforcement tool to deal with current and potential import of live animals, POAO and ABP related offences?

No, only some. Please explain why and please state which offences/types of offences you think would be appropriate and which would not

Explain why:

For live animals, this is well suited at the ports, particularly if, where there is a definite breach of the rules the port authorities can issue the notice at the time of the incident. This will not work as well inland as the present legislation for the importation of live animals is weak. The offence is to land an animal, at the time the enforcing authority is in receipt of the information, the animal has landed and the person responsible is no longer around to face any consequence for their actions. A penalty notice will not change this. Penalty notices will work well for the transportation of pregnant bitches being imported into the UK which this is an issue of concern. However, as the legislation stands at present, frequently these bitches are transported just outside the 10% of gestation and often no offence is therefore being committed.

Part 2 - Receiving a penalty notice

11 To what extent do you agree or disagree with the following statement: Where an individual has already been issued advice and guidance, an improvement notice or similar and they have failed to comply, it would be reasonable to escalate enforcement action of which, a penalty notice could be a suitable next step.

Agree, explain why?

Explain why:

There is concern that if a person has already been issued with an improvement notice or similar, if a penalty notice appropriate as it will not improve compliance. We should not be serving multiple improvement notices and it needs to be made expressly clear that there is no expectation that the escalation process is Penalty notice first, followed by prosecution. If prosecution is the most appropriate option, that is the first option not the next sanction following a penalty notice. Frequently with animal welfare offences, where a S10 improvement notice has been served, it is because there has been a failure to comply with S9 and the duty of care in the Animal Welfare Act 2006. It is a difficult call between what is suitable for an improvement notice and what is suitable for a penalty notice and the concerns raised of service of these notices in tandem remain, the same as per the response to Q4. Where an improvement notice is served you need to give opportunity for a person to comply with the notice and no proceedings can take place during this time, as such you can't issue a penalty notice at the same time. Frequently an improvement notice will be complied with to a minimum standard or in part. It is very rare that a person will fully comply with the improvement notice, how does a penalty notice work in this instance? Where there is significant non-compliance, we would seek to look at prosecution, often for disqualification rather than any other sanction to prevent continued or repeat offending. The issuing of a penalty notice will not stop the behaviours of the individual.

12 To what extent do you agree or disagree that an individual should be allowed to receive a maximum number of penalty notices for committing the same or similar offence within a three-year period (similar to speeding) before an alternate enforcement action is taken?

Disagree, explain why?

How many?:

Explain why:

This is too subjective to put a number of times a person can be issued a penalty notice before you take alternate enforcement action. It depends on the level and type of offending that determines what type of action is taken and for it to meet the threshold for prosecution you must meet both the public interest test and the evidential threshold.

Part 3 , Penalty notice amount

13 Guidance could be given on additional matters that could be taken into account when deciding an amount to be specified in the penalty notice. We have identified examples which could be considered. Please rate each of the below examples of additional matters between 1 to 5 (with 5 being the most important) on whether they should be taken into account when deciding a penalty notice amount for an individual who has committed an offence and a penalty notice has been deemed an appropriate enforcement action.

Q13 - Additional matters - Financial gain from the offence:

5

Q13 - Additional matters - Ability to pay:

1

Q13 - Additional matters - Number of previous penalty notices issues:

5

Q13 - Additional matters - Duration of time since a previous penalty notice was issued:

3

Q13 - Additional matters - If the offence is the same or similar for which a previous penalty notice was issued:

5

Q13 - Additional matters - If other offences have been committed at the same time:

5

Q13 - Additional matters - Number of animals involved:

1

If there are other matters that should be taken in account, please specify:

Any aggravating or mitigating factors, this will be for the enforcement authority to consider on a case-by-case basis.

Consultee Feedback on the Online Survey

14 Overall, how satisfied are you with our online consultation tool?

Satisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it. :