

**Sentencing Council: General sentencing guideline for use
when there is no offence specific guideline**

Consultation response from Wildlife and Countryside Link
August 2018

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 48 organisations to use their strong joint voice for the protection of nature. Our members campaign to conserve, enhance and access our landscapes, animals, plants, habitats, rivers and seas. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline.

This response is supported by the following organisations:

- Angling Trust
- Bat Conservation Trust
- Born Free Foundation
- Environmental Investigation Agency
- International Fund for Animal Welfare
- Naturewatch Foundation
- RSPB
- RSPCA
- WWF-UK

Q4: Which (if any) criminal offences are of particular interest to you in the context of this guideline?

Wildlife crime.

Q5: Have you been able to access the digital guideline to respond to this consultation?

Yes

Q6: What are your views on the general guidance given at step one

We agree with the principles set out in step one, noting that harm includes both environmental harm and harm caused to wildlife. It is important that consideration is given to environmental and conservation impacts along with any impact on the welfare of affected animals which are sentient beings.

We will argue later that the conservation impact and cruelty aspects of many wildlife offences should be identified as aggravating features of offending. But wildlife crime is also known to impact heavily on some rural communities. The National Wildlife Crime Unit has identified wildlife crime policing priorities because of their prevalence in some areas. Badger persecution and poaching, in particular poaching of deer, hare and fish can have significant community impacts and can result in public outrage. It is noteworthy that poaching has been identified as a priority in both the National Police Chiefs Council's (NPCC) [wildlife](#) and [rural crime](#) strategies.

Q7: What are your views on the additional information on harm and culpability?

A number of wildlife offences use the term wilfully, instead of using the terms intentional, reckless or deliberate. We would like to see the culpability spectrum include reference to such a term.

Q8: What are your views on the additional information on fixed penalty notices (if relevant to you)?

There are no wildlife offences at present for which fixed penalty notices can be applied. A number of offences can however be dealt with through civil sanctioning. Such sanctioning is undertaken by regulatory authorities and cannot be applied by the police. Legislation permitting the use of civil sanctioning provides that such measures can be used for less serious matters with more serious cases being dealt with through the criminal courts. The Law Commission in their 2012 report [Wildlife Law](#) supported the extension of civil sanctioning for wildlife offences. No guidance has been issued as to the factors that might determine serious from less serious offending.

Guidance from the Sentencing Council on this issue, having regard to the NPCC's wildlife crime strategy, would be very welcome.

Q9: What are your views on the additional information provided for the statutory aggravating factors?

We have no comment to make in response to this question.

Q10: What are your views on the above four factors and the additional information provided in the guideline?

1. Undoubtedly some wildlife offences are committed whilst under the influence of drink or drugs. We welcome the suggestion that when this occurs it should be considered to be an aggravating feature.
2. There are a number of wildlife offences where groups or gangs of offenders acting informally or as organised crime groups are a feature of offending. Where this occurs the impact on affected wildlife is generally more severe than when offending is undertaken by individuals. Examples of groups or gangs of offenders committing wildlife crime include persecution of badgers, illegal hunting with dogs (including hare coursing and deer poaching), raptor persecution and the illegal trade in endangered species. Often such groups are also implicated in other types of criminal offending.
3. Weapons are commonly used for the purposes of committing wildlife crime. We welcome the fact that the use of such weapons is considered to be an aggravating feature of the offence. We would suggest that dogs, when used in the commission of wildlife crime, should be considered to be weapons. We expand on this in our response to question 17.
4. Planned or organised offending is a very common feature of many wildlife offences. In fact, it is quite difficult to identify ones that do not include such features. We welcome the suggestion that such activity be considered to be an aggravating feature.

Q11: What are your views on the above two factors relating to financial gain and the additional information provided in the guideline?

We particularly welcome the suggestion that the commission of offending for financial gain or for high levels of profit should be considered to be aggravating features of offending. As is pointed out in the consultation document these are matters that are of particular relevance to wildlife crime.

Some offending, in particular that relating to the illegal trade in endangered species, is known to produce substantial profit. Poaching can be driven by, or is influenced by, the potential for financial gain. A further example is the illegal trade in badgers destined for baiting that are trapped and sold for such purposes. There is evidence to demonstrate that substantial funds generated by this trade along with the gambling associated with organised baiting is then used in the illegal drug trade.

We believe that guidance relating to financial gain can be widened to include two other factors.

- Where offending is masked by legal trade. For example, where a pet shop trades, for the most part legally, but in part illegally by selling endangered species.
- Where financial gain accrues by not following lawful process. For instance, property developers who fail to follow lawful licensing procedures and whose activities impact on protected species and habitats. Such behaviour can produce substantial savings. Not only in relation to the costs of employing relevant experts (ecologists) to undertake licensed mitigation processes, but potentially allowing for projects to be undertaken in a shorter period of time that would otherwise be the case.

Q12: What are your views on the above six factors relating to victims and the additional information provided in the guideline?

The factors listed in this section can apply to wildlife crime. In most cases they reflect the needs of victims and the greater anti-social behaviour involved in the commission of the offence. Clarification here as to what is meant by victim would be useful, i.e. that animals affected by crime are victims ensuring that these factors can be taken into consideration. We also agree with the statement that information about how vulnerability should be interpreted would be useful, including in the context of the victim being an animal.

Q13: What are your views on the above two factors relating to behaviour after the offence and the additional information provided in the guideline?

Again, these factors are sometimes identified in wildlife crime prosecutions. Their inclusion is welcomed. In relation to badger persecution offenders will sometimes back fill setts to conceal the fact that they have been dug, dead badgers killed during the course of baiting may be left at the side of roads with the intention that death will be attributed to road traffic collisions. There are examples of developers concealing the presence of protected species by using forged, false or duplicate ecological reports.

Q14: What are your views on the above four factors and the additional information provided in the guideline?

On occasion wildlife offences are committed despite advice or regulatory requirements having been provided or imposed, e.g. failing to apply for licence having been told that one would be necessary for the work to proceed. We therefore agree that such a factor can be applied to wildlife offences. Ignoring such advice will evidence a guilty state of mind for offences that are of strict liability, for instance the destruction of breeding or resting places of bats or great crested newts.

Q15: What are your views on the above three factors and in particular the additional information on timing and location provided in the guideline?

We have no observations to make.

Q16: What are your views on the above two factors and the additional information provided in the guideline?

Undoubtedly there are occasions where wildlife crime can have significant impact on public and community safety, and indeed be the cause of public outrage. For instance, the laying of poisons in areas used by businesses (e.g. agricultural activities), by members of the public for recreation, or other activities such as illegal trapping and snaring that might endanger people, livestock, other domestic animals or wildlife. Poaching, in particular hare coursing, is evidenced as having significant community impact. Other wildlife offences such as raptor persecution or illegal egg collecting may have an impact on areas where the economy is tourism based. The additional information contained in the draft guidance adequately addresses those concerns.

Q17: Are there any other aggravating factors that you think should be included in the general guideline?

We feel that there are other aggravating features that are relevant to wildlife offences.

- Conservation/Environmental impact. Wildlife crime can have significant impacts on the conservation status of some species. Such impact cannot, and should not, be measured in financial terms. The government's conservation agency the Joint Nature Conservation Committee has identified four areas of offending where crime is known to impact on conservation status: bats, freshwater pearl mussels, the illegal trade in endangered species and raptors (<http://jncc.defra.gov.uk/page-6452>). These are also reflected within the NPCC's wildlife crime policing strategy.

We suggest that where offending relates to one of the UK wildlife crime conservation priorities this should be considered to be an aggravating feature of particular consequence. Nonetheless offending against flora or fauna not identified as a wildlife crime priority species may still have conservation impact. Where this can be demonstrated it should be considered to be an aggravating feature of an offence.

A conservation impact statement from an expert witness may be available to advise those who undertake sentencing on the seriousness and impact of offending.

- Element of additional cruelty/welfare impacts. Some wildlife crime can involve great cruelty both towards wildlife and to dogs used in the commission of offences, badger baiting or fighting being notable examples. Whilst cruelty to dogs and other domestic animals has already been addressed by the Sentencing Council's guidance on cruelty offences covered by the Animal Welfare Act 2006, this does not extend to wildlife that, in some circumstances, does not come under the scope of the act. The Crown Prosecution Service identify cruelty as an aggravating factor in their guidance on hare coursing. (<https://www.cps.gov.uk/legal-guidance/hare-coursing>).

We suggest that where offending involves cruelty to wildlife this should be considered to be an aggravating feature. The guidance within the Sentencing Councils Cruelty to Animals guideline should be applied to wildlife whether or not under human control at the time of offending. Similarly, such guidance may also be applied to offences under the Wild Mammals (Protection) Act 1996.

Those who commit offences involving cruelty to animals are often engaged in a pattern of such behaviour. Previous convictions will, clearly, always be an aggravating feature of offending as will breaches of any court orders disqualifying possession of dogs. Those who are disqualified from possessing animals do however continue to commit wildlife offences, but will suggest that they do not themselves have possession or control of the dogs involved. As such, it is unlikely that they will face proceedings for breaching disqualification orders. In such cases the fact that defendants are disqualified from possessing animals should, in itself, be an aggravating feature of any offence.

Dogs are commonly used in order to commit some wildlife offences. Poaching and badger persecution being good examples. In poaching cases, simply being in possession of a dog for the purposes of taking game can be an offence. Where a dog is used to fight badgers, offences under both the Protection of Badgers Act and the Animal Welfare Act will be committed. However, all too often offenders will be found with dogs in circumstances where it is clearly intended to use them to fight badgers but there is insufficient evidence to prove additional offences. In such cases possession of dogs in circumstances where it is likely that they would be used to inflict cruelty should be an aggravating feature of any offences.

- Use of images. There is substantial evidence to demonstrate that those who engage in animal cruelty take graphic photographs or videos of their offending. Such images are often stored on phones or computers and shared with others. Examination of devices regularly reveals multiple images of offending involving a range of both wild and domestic animals. It is usually the case that mere possession of such images is insufficient to form the basis of further charges, or may be months or years old, so can no longer be prosecuted. It is suggested that possession of images of animal cruelty should be an aggravating feature of offending. Where it can be evidenced that the offender has shared such images, this should further aggravate matters.

Q18: What are your views on separating personal mitigation from offence mitigation in guidelines?

We have no views on this point.

Q19: What are your views on the additional information on the mitigating factors relating to no previous convictions and good character?

We would agree that, in relation to wildlife crime, these are matters that might mitigate against offending.

Q20: What are your views on the above three factors and the additional information provided in the guideline?

We would agree that, in relation to wildlife crime, these are matters that might mitigate against offending.

Q21: What are your views on the above four factors and the additional information provided in the guideline?

We would agree that, in relation to wildlife crime, these are matters that might mitigate against offending. We have nothing further to add.

Q22: What are your views on the above three factors and the additional information provided in the guideline?

We would agree that, in relation to wildlife crime, these are matters that might mitigate against offending. But we would caveat this response by suggesting that where there was an intention to financially gain then that intention is not mitigated simply because the gain failed to materialise. For instance, a developer may clear land with a view to removing evidence of protected species but evidence of offences is nevertheless available. The land will have been cleared with a view to saving the cost of undertaking surveys and licences but in the event, they may still be required by planning authorities.

Q23: What are your views on the above five factors and the additional information provided in the guideline?

We would agree that, in relation to wildlife crime, these are matters that might mitigate against offending. We have nothing further to add.

Q24: Are there any other mitigating factors that you think should be included in the general guideline?

We have suggested additional aggravating features in response to question 17. The same features might also be used in mitigation.

- Wildlife crime conservation offences may be mitigated, where there is no evidence of unnecessary suffering, by evidence that
 - the conservation status of the victim species has not been impacted at local, regional or national scale
 - that offences have been committed due to error and every effort has been made to lessen the impact of offending
- Where offences feature cruelty to wildlife the mitigating features identified in the Sentencing Councils guidance on sentencing offences under the Animal Welfare Act may be applied.