



Animal Health and Welfare (Scotland) Act 2006

2006 asp 11

PART 2

ANIMAL WELFARE

Post-conviction orders

40 Disqualification orders

(1) Where a person is convicted of a relevant offence, the convicting court [^{F1}must consider whether it is necessary, to protect animal welfare, to] make an order (in this Part referred to as a “disqualification order”) which imposes on the person one or more of the disqualifications specified in subsection (2).

[^{F2}(1A) The purpose of a disqualification order is for the future protection of animals and not in substitution for a penalty for a relevant offence.]

(2) Those are disqualification from—

- (a) owning or keeping animals (or both),
- (b) dealing in animals,
- (c) transporting animals,
- (d) working with or using animals,
- (e) riding or driving animals,
- (f) providing any service relating to animals (including, in particular, for their care) which involves taking possession of animals,
- (g) taking possession of animals for the purpose of an activity in respect of which a disqualification mentioned in paragraphs (a) to (f) is imposed,
- (h) taking charge of animals for any, or any other, purpose.

(3) For the purposes of subsections (1) and (2), disqualification in respect of an activity includes disqualification from any participation in the activity including, in particular—

- (a) making arrangements in connection with the activity,

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- (b) being party to arrangements under which the activity may be controlled or influenced,
 - (c) being concerned (so far as relating to the activity) in the management or control of a body whose business involves the activity.
- (4) However, disqualification by reference to subsection (2)(h) does not include disqualification from taking charge of an animal for so long as is necessary in the circumstances—
- (a) with the consent of the owner or keeper of the animal, for the purpose of caring for it,
 - (b) for the purpose of alleviating any suffering of the animal,
- if no alternative arrangements for its care are reasonably available.
- [^{F3}(5) The court must state its reasons—
- (a) for deciding to make or, as the case may be, not make a disqualification order,
 - (b) where it decides to make such an order—
 - (i) for including in the order the particular disqualifications imposed by it,
 - (ii) for specifying, under subsection (9)(a), the period for which the order is to have effect, and
 - (iii) for specifying, under subsection (9)(b), a period within which no application under section 42(1) may be made.]
- (6) A disqualification order may be made in addition to ^{F4}... any other penalty or order which may be imposed in relation to a relevant offence.
- (7) A disqualification order may apply to animals generally or to animals of any particular kind.
- (8) A disqualification order which imposes disqualification from owning or keeping animals of a particular kind may in any appropriate case be framed so as to provide that the disqualification is from owning or keeping more than a specified maximum number of animals of that kind.
- (9) A disqualification order—
- (a) has effect for such period as may be specified in the order,
 - (b) may specify a period within which an application under section 42(1) for termination or variation of the order may not be made.
- (10) The court may suspend the operation of a disqualification order—
- (a) for such period as it considers necessary for enabling arrangements to be made for the keeping of any animals to which the order applies,
 - (b) pending an appeal.
- (11) A person who breaches a disqualification order commits an offence.
- (12) If a disqualification order framed as described in subsection (8) is breached, the breach is to be regarded, for the purpose of—
- (a) any proceedings for an offence under subsection (11),
 - (b) the making of—
 - (i) a deprivation order,
 - (ii) a seizure order,

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as having occurred in relation to all the animals of the particular kind concerned (that is, without restriction by reference to the maximum number specified).

- (13) In this section, a “relevant offence” is—
- (a) an offence under subsection (11),
 - (b) an offence under sections 19 to 23,
 - (c) an offence under section 24 or 25(7),
 - (d) an offence under section 29.

Textual Amendments

- F1** Words in s. 40(1) substituted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 4\(2\)\(a\), 22\(2\)](#); S.S.I. 2021/303, reg. 2(a)
- F2** S. 40(1A) inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 5\(2\)\(a\), 22\(2\)](#); S.S.I. 2021/303, reg. 2(b)
- F3** S. 40(5) substituted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 4\(2\)\(b\), 22\(2\)](#); S.S.I. 2021/303, reg. 2(a)
- F4** Words in s. 40(6) repealed (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 5\(2\)\(b\), 22\(2\)](#); S.S.I. 2021/303, reg. 2(b)

Modifications etc. (not altering text)

- C1** Ss. 39, 40 applied (1.9.2021) by [The Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/84\), regs. 1, 25\(1\)](#)

Commencement Information

- I1** S. 40 in force at 6.10.2006 by [S.S.I. 2006/482, art. 2](#) (with art. 4(1)(a))

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