

Status: Point in time view as at 11/07/2011.

Changes to legislation: There are currently no known outstanding effects for the Welfare of Animals Act (Northern Ireland) 2011, Cross Heading: Post-conviction powers. (See end of Document for details)



2011 CHAPTER 16

PART 4

ENFORCEMENT

Post-conviction powers

Penalties

31.—(1) A person guilty of an offence under any of sections 6(10) and (12), 8(3), 9, 10(6), 12(6), 14, 15, 17(12), 19(7), 33(9), 40(7) and 50(3) or paragraph 17 of Schedule 3 or any regulations made under section 11, 12(7) or 13, where breach of those regulations is an offence, shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

(2) A person guilty of an offence under any of sections 4, 5, 6(1), (2), (11) and (15), 7 and 8(1) and (2) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or both.

Deprivation

32.—(1) If the person convicted of an offence under any of sections 4, 5, 6(1), (2), (11) and (15), 7, 8(1) and (2), 9, 10(6), 12(6) and 14 is the owner of an animal in relation to which the offence was committed, the court by or before which that person is convicted may, instead of or in addition to dealing with that

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person in any other way, make an order depriving that person of ownership of the animal and for its disposal.

(2) Where the owner of an animal is convicted of an offence under section 33(9) because ownership of the animal is in breach of a disqualification under section 33(2), the court by or before which that person is convicted may, instead of or in addition to dealing with that person in any other way, make an order depriving that person of ownership of the animal and for its disposal.

(3) Where the animal in respect of which an order under subsection (1) or (2) is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal.

(4) Where a court makes an order under subsection (1) or (2), it may—

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender to reimburse the expenses of carrying out the order.

(5) Directions under subsection (4)(c) may—

- (a) specify the manner in which an animal is to be disposed of; or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (4)(a).

(6) Where a court decides not to make an order under subsection (1) or (2) in relation to an offender, it must state its reasons for the decision.

(7) Subsection (6) does not apply where the court makes an order under section 33(1) in relation to the offender.

(8) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 8, an animal which took part in an animal fight in relation to which the offence was committed.

(9) In this section, references to disposing of an animal include destroying it.

Disqualification

33.—(1) If a person is convicted of an offence to which this section applies, the court by or before which that person is convicted may, instead of or in addition to dealing with that person in any other way, make an order disqualifying that person under any one or more of subsections (2) to (4) for such period as it thinks fit.

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- (2) Disqualification under this subsection disqualifies a person—
- (a) from owning animals,
 - (b) from keeping animals,
 - (c) from participating in the keeping of animals, and
 - (d) from being party to an arrangement under which that person is entitled to control or influence the way in which animals are kept.
- (3) Disqualification under this subsection disqualifies a person from dealing in animals.
- (4) Disqualification under this subsection disqualifies a person—
- (a) from transporting animals, and
 - (b) from arranging for the transport of animals.
- (5) Disqualification under subsection (2), (3) or (4) may be imposed in relation to animals generally, or in relation to animals of one or more kinds.
- (6) The court by which an order under subsection (1) is made may specify a period during which the offender may not make an application under section 42(1) for termination of the order.
- (7) The court by which an order under subsection (1) is made may—
- (a) suspend the operation of the order pending an appeal; or
 - (b) where it appears to the court that the offender owns or keeps an animal to which the order applies, suspend the operation of the order, and of any order made under section 34 in connection with the disqualification, for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal.
- (8) Where a court decides not to make an order under subsection (1) in relation to an offender, it must state its reasons for the decision.
- (9) A person who breaches a disqualification imposed by an order under subsection (1) commits an offence.
- (10) This section applies to an offence under any of sections 4, 5, 6(1), (2), (11) and (15), 7, 8(1) and (2), 9, 10(6), 12(6) and 14 and subsection (9) of this section.

Seizure of animals in connection with disqualification

- 34.—**(1) Where—
- (a) a court makes an order under section 33(1), and
 - (b) it appears to the court that the person to whom the order applies owns or keeps any animal contrary to the disqualification imposed by the order,
- it may order that all animals that person owns or keeps contrary to the disqualification be taken into possession.

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(2) Where a person is convicted of an offence under section 33(9) because of owning or keeping an animal in breach of disqualification under section 33(2), the court by or before which that person is convicted may order that all animals that that person owns or keeps in breach of the disqualification be taken into possession.

(3) An order under subsection (1) or (2), so far as relating to any animal owned by the person subject to disqualification, shall have effect as an order for the disposal of the animal.

(4) Any animal taken into possession in pursuance of an order under subsection (1) or (2) that is not owned by the person subject to disqualification shall be dealt with in such manner as the court may order.

(5) A court may not make an order for disposal under subsection (4) unless—

- (a) it has given the owner of the animal an opportunity to be heard, or
- (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(6) Where a court makes an order under subsection (4) for the disposal of an animal, the owner may—

- (a) in the case of an order made by a magistrates' court, appeal against the order to the county court;
- (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.

(7) In this section, references to disposing of an animal include destroying it.

Section 34: supplementary

35.—(1) The court by which an order under section 34 is made may—

- (a) appoint a person to carry out, or arrange for the carrying out of the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order.

(2) Directions under subsection (1)(c) may—

- (a) specify the manner in which an animal is to be disposed of; or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (1)(a).

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(3) In determining how to exercise its powers under section 34 and this section, the court must have regard, amongst other things, to—

- (a) the desirability of protecting the value of any animal to which the order applies, and
- (b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse.

(4) In determining how to exercise a power delegated under subsection (2) (b), a person must have regard, amongst other things, to the things mentioned in subsection (3)(a) and (b).

(5) If the owner of an animal ordered to be disposed of under section 34 is subject to a liability by virtue of subsection (1)(e), any amount to which the owner is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

Destruction in the interests of an animal

36.—(1) The court by or before which a person is convicted of an offence under any of sections 4, 5, 6(1), (2), (11) and (15), 7, 8(1) and (2), 9, 10(6) and 14 may order the destruction of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by a veterinary surgeon, that it is appropriate to do so in the interests of the animal.

(2) A court may not make an order under subsection (1) unless—

- (a) it has given the owner of the animal an opportunity to be heard; or
- (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(3) Where a court makes an order under subsection (1), it may—

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
- (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) Where a court makes an order under subsection (1), each of the offender and, if different, the owner of the animal may—

- (a) in the case of an order made by a magistrates' court, appeal against the order to the county court;

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(b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.

(5) Subsection (4) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed.

(6) In subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 8(1) or (2), an animal which took part in an animal fight in relation to which the offence was committed.

Destruction of animals involved in fighting offences

37.—(1) The court by or before which a person is convicted of an offence under section 8(1) or (2) may order the destruction of an animal in relation to which the offence was committed on grounds other than the interests of the animal.

(2) A court may not make an order under subsection (1) unless—

- (a) it has given the owner of the animal an opportunity to be heard; or
- (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(3) Where a court makes an order under subsection (1), it may—

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
- (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the offender or another person to reimburse the expenses of carrying out the order.

(4) Where a court makes an order under subsection (1) in relation to an animal which is owned by a person other than the offender, that person may—

- (a) in the case of an order made by a magistrates' court, appeal against the order to the county court;
- (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.

(5) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in an animal fight in relation to which the offence was committed.

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Reimbursement of expenses relating to animals involved in fighting offences

38.—(1) The court by or before which a person is convicted of an offence under section 8(1) or (2) may order the offender or another person to reimburse any expenses incurred by the police in connection with the keeping of an animal in relation to which the offence was committed.

(2) In subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in a fight in relation to which the offence was committed.

Forfeiture of equipment used in offences

39.—(1) Where a person is convicted of an offence under any of sections 4, 5, 6(1) and (2), 7 and 8, the court by or before which that person is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be—

- (a) forfeited, and
- (b) destroyed or dealt with in such manner as may be specified in the order.

(2) The reference in subsection (1) to any qualifying item is—

- (a) in the case of a conviction for an offence under section 4, to anything designed or adapted for causing suffering to an animal;
- (b) in the case of a conviction for an offence under section 5, to anything designed or adapted for carrying out a prohibited procedure on an animal;
- (c) in the case of a conviction for an offence under section 6(1) or (2), to anything designed or adapted for removing the whole or any part of a dog's tail;
- (d) in the case of a conviction for an offence under section 7, to anything designed or adapted for administering any drug or substance to an animal;
- (e) in the case of a conviction for an offence under section 8(1) or (2), to anything designed or adapted for use in connection with an animal fight;
- (f) in the case of a conviction for an offence under section 8(3), to a photograph, image or video recording of an animal fight, including anything on or in which the photograph, image or recording is kept.

(3) The court shall not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless the person has been given an opportunity to show cause why the order should not be made.

(4) An expression used in any of paragraphs (a) to (f) of subsection (2) has the same meaning as in the provision referred to in that paragraph.

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Orders under section 32, 34, 36, 37 or 39: pending appeals

40.—(1) Nothing may be done under an order under section 32, 34, 36 or 37 with respect to an animal or an order under section 39 unless—

- (a) the period for giving notice of appeal against the order has expired,
- (b) the period for giving notice of appeal against the conviction on which the order was made has expired, and
- (c) if the order or conviction is the subject of an appeal, the appeal has been determined or withdrawn.

(2) Subsection (1) does not apply to an order under section 36(1) if the order is the subject of a direction under subsection (5) of that section.

(3) Where the effect of an order is suspended under subsection (1)—

- (a) no requirement imposed or directions given in connection with the order shall have effect, but
- (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(4) Directions under subsection (3)(b) may, in particular—

- (a) authorise the animal to be taken into possession;
- (b) authorise the removal of the animal to a place of safety;
- (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
- (d) appoint a person to carry out, or arrange for the carrying out, of the directions;
- (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
- (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
- (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

(5) Any expenses a person is directed to pay under subsection (4)(g) shall be recoverable summarily as a civil debt.

(6) Where the effect of an order under section 32 is suspended under subsection (1) the person to whom the order relates may not sell or part with any animal to which the order applies.

(7) Failure to comply with subsection (6) is an offence.

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Orders with respect to licences

41.—(1) If a person is convicted of an offence under any of sections 4, 5, 6(1), (2), (11) and (15), 7 to 9, 10(6), 12(6), 14 and 15, the court by or before which that person is convicted may, instead of or in addition to dealing with that person in any other way—

- (a) make an order cancelling any licence held by that person; and
- (b) make an order disqualifying that person, for such period as it thinks fit, from holding a licence.

(2) Disqualification under subsection (1)(b) may be imposed in relation to licences generally or in relation to licences of one or more kinds.

(3) The court by which an order under subsection (1)(b) is made may specify a period during which the offender may not make an application under section 42(1) for termination of the order.

(4) The court by which an order under subsection (1) is made may suspend the operation of the order pending an appeal.

Termination of disqualification under section 33 or 41

42.—(1) A person who is disqualified by virtue of an order under section 33 or 41 may apply to the court which made the order for the termination of the order.

(2) No application under subsection (1) may be made—

- (a) before the end of the period of one year beginning with the date on which the order is made,
- (b) where a previous application under that subsection has been made in relation to the same order, before the end of the period of one year beginning with the date on which the previous application was determined, or
- (c) before the end of any period specified under section 33(6), 41(3) or subsection (5) of this section in relation to the order.

(3) On an application under subsection (1), the court may—

- (a) terminate the disqualification,
- (b) vary the disqualification so as to make it less onerous, or
- (c) refuse the application.

(4) When determining an application under subsection (1), the court must have regard to the character of the applicant, the conduct of the applicant since the imposition of the disqualification and any other circumstances of the case.

(5) Where the court refuses an application under subsection (1), it may specify a period during which the applicant may not make a further application under that subsection in relation to the order concerned.

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(6) The court may order an applicant under subsection (1) to pay all or part of the costs of the application.

Orders made on conviction for reimbursement of expenses

43 Where an order is made under section 32(4)(e), 35(1)(e), 36(3)(e), 37(3)(e) or 38(1), the expenses that are required by the order to be reimbursed shall not be regarded for the purposes of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) as a sum adjudged to be paid by a summary conviction, but shall be recoverable summarily as a civil debt.

Orders for reimbursement of expenses: right of appeal for non-offenders

44.—(1) Where a court makes an order to which this section applies, the person against whom the order is made may—

- (a) in the case of an order made by a magistrates' court, appeal against the order to the county court;
- (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.

(2) This section applies to—

- (a) an order under section 35(1)(e) against a person other than the person subject to disqualification, and
- (b) an order under section 36(3)(e), 37(3)(e) or 38(1) against a person other than the offender.

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