

FUR FARMING (PROHIBITION) (SCOTLAND) ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act's purpose is to prohibit the keeping of animals solely or primarily for slaughter for the value of their fur or for breeding progeny for such slaughter. It provides for the making of a forfeiture order following a conviction so as to allow the forfeiture and destruction or other disposal of the animals. It enables persons authorised by the court to carry out a forfeiture order to enter any premises where such animals are being kept for the purpose of implementing the order. The Scottish Ministers may also authorise persons to enter and inspect premises where it is suspected that an offence under the Act has been or is being committed. It enables the Scottish Ministers to establish by order a scheme for paying compensation to persons who incur specified losses as a result of the prohibition of fur farming. Finally, it allows for disputes as regards a person's entitlement to such compensation or the amount thereof to be adjudicated by the Lands Tribunal for Scotland.

Section 1: Offences relating to fur farming

4. Section 1 creates the offence of keeping animals solely or primarily for slaughter for the value of their fur or for breeding progeny for such slaughter (sections 1(1)(a) and (b) respectively).
5. By applying the "solely or primarily" test, anyone who keeps animals partly for slaughter for the value of their fur and partly for another purpose will be guilty of the offence only if the primary purpose for which they keep the animals is for the value of their fur. This principally means commercial value, but the term is sufficiently wide to include the value of the fur to an individual who has no intention of selling it.

6. Section 1(2) also makes it an offence for a person to knowingly cause or permit another person to keep animals where the purpose is to keep animals solely or primarily for the value of their fur (section 1(2)). It is anticipated that there will be relatively few cases where an offence would arise under section 1(2). Notably a person might knowingly cause or permit the keeping of animals for the prohibited purpose without there being any clear relationship of agency with the person who physically keeps the animals. An example of this could be a person who grants a tenancy of land for the purpose of enabling the tenant to carry on a fur farming business.

7. Section 1(3) makes it clear that the reference in the offence provision to keeping animals for slaughter and to breeding progeny for slaughter includes keeping or breeding such animals with the intention of selling them on for slaughter, as well as the slaughter of them while they are in the ownership or possession of such a person.

8. The offence provisions apply to any person, whether an individual or a legal person. They also apply to the officers of a company (section 1(4)) and to partners of a Scottish partnership (section 1(5)).

9. Section 1(6) provides that the maximum penalty is £20,000 for offences committed under section 1.

Section 2: Forfeiture orders

10. Section 2(1) allows the court to make a forfeiture order in respect of any animals, following conviction under section 1(1), of the same type to which the offence related.

11. Section 2(2) allows a forfeiture order to be made in respect of any animals kept by a person where another person is convicted of an offence under section 1(2), provided the animals are of the same type to which the offence related.

12. Section 2(3) defines the relevant period for the purposes of section 2(1) and 2(2). A forfeiture order may apply in respect of any animals of the same type to which the offence related which are kept by a person at the time the forfeiture order is made or which come into that person's keeping pending the carrying out of the order.

13. Section 2(4) explains that a forfeiture order is an order for the destruction or other disposal of the animals to which the order applies. Its effect is to deprive any person of their rights in those animals (section 2(5)).

14. Section 2(6) allows the court to make a forfeiture order irrespective of whether it also deals with the offender. So, where a person is convicted but there is no dealing such as a fine, the court may still make a forfeiture order.

15. Section 2(7) requires the court to take into account any representations made to it by any person who has a legal interest in the ownership of the animals which could be the subject of a forfeiture order. It is expected that procedural provision in this regard could be made by Act of Adjournment under section 305 of the Criminal Procedure (Scotland) Act 1995.

16. Section 2(8) sets out the timescale within which an interested person may lodge an appeal against the making of forfeiture order.

Section 3: Enforcement of forfeiture orders

17. Section 3(1) gives the court certain powers in relation to the enforcement of a forfeiture order. It may appoint a person to implement the order (subsection (1)(a)), impose requirements on any person as regards the keeping of the animals pending implementation of the order (subsection (1)(b)), make the offender pay the reasonable expenses of implementing the order and, where the offender does not keep the animals, of keeping them pending their destruction or other disposal (subsection (1)(c)).

18. Section 3(1)(d) allows the court to make provision in relation to the operation of a forfeiture order pending the making or determination of any appeal or application.

19. Section 3(2) allows any sums ordered to be paid under section 3(1)(c) to be recovered by civil diligence.

20. Section 3(3) prevents a forfeiture order from being carried out before the end of the period within which an appeal against the making of the order may be made, finally determined or abandoned.

Section 4: Powers of entry and enforcement

21. Section 4(1) enable persons authorised in writing by the Scottish Ministers to enter and inspect premises where it is suspected that an offence under section 1(1) has been or is being committed. Anyone appointed by the court under section 3(1)(a) to carry out a forfeiture order may also enter any premises on which that person has reasonable grounds for suspecting that animals to which the order applies are being kept and carry out the order (subsection 4(2)). Under section 4(3), evidence of identity, authority or appointment (as the case may be) and the reason for seeking entry must be given. Neither of these powers of entry may be exercised in respect of a house (section 4(5)).

22. Section 4(4) creates an offence of intentionally obstructing or delaying any person in the exercise of their power of entry and the maximum penalty is a fine not exceeding level 3 on the standard scale (currently £1,000).

Section 5: Compensation for affected businesses

23. Section 5(1) enables the Scottish Ministers to establish by order made by statutory instrument a scheme for paying compensation to fur farmers who incur specified losses as a result of the prohibition of fur farming.

24. Section 5(2) specifies what must be covered within any compensation scheme (if made). For example, any scheme must specify the businesses and losses in respect of which payments are to be made, the basis of valuation for determining losses and the procedure to be followed.

25. Section 5(3) allows the order establishing the scheme to provide for any dispute as regards a person's entitlement to compensation or the amount thereof to be determined by the Lands Tribunal for Scotland, on such basis and subject to such procedure as may be specified in the order.

26. Section 5(4) provides that the Scottish Ministers must consult any persons that they consider may be entitled to payment under the scheme and such organisations as appear to them to represent those persons before making the scheme.

27. Section 5(5) provides that any order making the scheme shall be subject to negative resolution procedure, that is annulment in pursuance of a resolution of the Scottish Parliament.

Section 6: Commencement and short title

28. Section 6(1) provides that the foregoing provisions will come into force on a day to be appointed by an order made by the Scottish Ministers.

PARLIAMENTARY HISTORY OF FUR FARMING (PROHIBITION) (SCOTLAND) ACT 2002

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references in the Official Report of those proceedings and the dates on which Committee Reports were published and the references to those Reports.

Proceedings and Reports

Reference

Introduction

SP Bill 39 (Session 1)

5 October 2001

Stage 1

(a) Rural Development Committee

23rd Meeting, 2001

30th October 2001, cols. 2271-2272

27th Meeting, 2001

27th November 2001, cols. 2464-2483

28th Meeting, 2001

4th December 2001, cols. 2523-2527

30th Meeting, 2001

18th December, 2001, col. 2684

1st Report 2002 (18th January 2002): Stage 1 Report on the Fur Farming (Prohibition)(Scotland) Bill SP Paper 492

*These notes refer to the Fur Farming (Prohibition) (Scotland) Act 2002 (asp 10)
which received Royal Assent on 11 April 2002*

(b) Subordinate Legislation Committee

30th Meeting, 2001

6th November, 2001 col. 646

31st Meeting, 2001

13th November, 2001 col. 656

(c) Consideration by the Parliament

30th January 2002

cols. 5847-5901

Stage 2

Committee of the whole Parliament

6th March, 2002

cols. 9948-9953

Stage 3

Consideration by the Parliament

6th March 2002

cols. 9954-9956

Royal Assent – 11th April, 2002