



# Animal Health and Welfare (Scotland) Act 2006

2006 asp 11

**S**

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 31st May 2006 and received Royal Assent on 11th July 2006**

An Act of the Scottish Parliament to amend the Animal Health Act 1981, including by making provision for preventing the spread of disease; to make provision for the welfare of animals, including for prevention of harm; and for connected purposes.

VALID FROM 06/10/2006

## **PART 1** **S**

### ANIMAL HEALTH

#### *Powers of slaughter*

#### **1 Slaughter for preventing spread of disease** **S**

(1) In the Animal Health Act 1981 (c. 22) (in this Part referred to as the “1981 Act”), after section 32D there is inserted—

##### **“32E Slaughter for preventing spread of disease: Scotland**

Schedule 3A to this Act has effect as to slaughter in relation to—

- (a) cattle plague;
- (b) pleuro-pneumonia;
- (c) foot-and-mouth disease;
- (d) swine-fever;
- (e) diseases of poultry; and

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(f) such other diseases as are specified under paragraph 6 of that Schedule.”.

(2) After Schedule 3 to that Act there is inserted—

“SCHEDULE 3A **S**  
(introduced by section 32E)

POWER OF SLAUGHTER FOR PREVENTING SPREAD OF DISEASE: SCOTLAND

*Cattle plague*

1 With a view to preventing the spread of cattle plague, the Scottish Ministers may, if they think fit, cause any animals to be slaughtered.

*Pleuro-pneumonia*

2 With a view to preventing the spread of pleuro-pneumonia, the Scottish Ministers may, if they think fit, cause any cattle to be slaughtered.

*Foot-and-mouth disease*

3 With a view to preventing the spread of foot-and-mouth disease, the Scottish Ministers may, if they think fit, cause any animals to be slaughtered.

*Swine-fever*

4 With a view to preventing the spread of swine-fever, the Scottish Ministers may, if they think fit, cause any swine to be slaughtered.

*Diseases of poultry*

5 With a view to preventing the spread of diseases of poultry, the Scottish Ministers may, if they think fit, cause any animals or birds to be slaughtered.

*Additional power of slaughter*

6 (1) With a view to preventing the spread of such disease of animals as the Scottish Ministers may by order specify, the Scottish Ministers may, if they think fit, cause to be slaughtered any animals, birds or amphibians of such description as they may so specify.

(2) A specification of animals under sub-paragraph (1) may include any kind of mammal (except man).

(3) In sub-paragraph (1), “disease” is not restricted by its definition in this Act.

*Exercise of powers of slaughter*

7 The Scottish Ministers may, in relation to a disease, exercise a power of slaughter conferred by paragraphs 1 to 6 whether or not the animals, birds or amphibians concerned—

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- (a) are affected with the disease or suspected of being affected with the disease;
- (b) are or have been in contact with animals, birds or amphibians affected with the disease;
- (c) have been in any way exposed to the disease; or
- (d) have been treated with serum or vaccine (or both) against the disease.

#### *Compensation*

- 8 (1) The Scottish Ministers must pay compensation, of such amount as they may prescribe by order, in respect of—
- (a) any animals slaughtered under paragraphs 1 to 5; and
  - (b) any animals—
    - (i) of any kind to which a power of slaughter under those paragraphs relates; and
    - (ii) which are slaughtered by virtue of paragraph 6.
- (2) An order under sub-paragraph (1) may make different provision for different cases or classes of case.
- (3) An order under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### *Orders*

- 9 (1) No order is made under paragraph 6 unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.
- (2) But where the Scottish Ministers are of the opinion that there exists—
- (a) an outbreak of a disease of animals not specified in or by virtue of paragraphs 1 to 6; or
  - (b) some other emergency relating to a disease of animals,
- sub-paragraph (1) does not apply in relation to the making of an order under paragraph 6.
- (3) Where sub-paragraph (2) applies, an order made accordingly (an “emergency order”)—
- (a) is to be laid before the Scottish Parliament; and
  - (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by a resolution of the Parliament.
- (4) However, paragraph (b) of sub-paragraph (3) does not apply in relation to an order which—
- (a) revokes (wholly or partly) an emergency order; and
  - (b) does nothing else, or nothing else except make provision incidental or supplementary to the revocation.
- (5) In reckoning for the purposes of sub-paragraph (3)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—

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- (a) dissolved; or
- (b) in recess for more than 4 days.

(6) Sub-paragraph (3)(b) is without prejudice to anything previously done by reference to an emergency order or to the making of a new emergency order.

(7) An emergency order must include a description of the emergency in relation to which the order is made.

(8) In sub-paragraph (2), “disease” is not restricted by its definition in this Act.”.

## 2 Slaughter of treated animals **S**

After section 16A of the 1981 Act there is inserted—

### “16B Slaughter of treated animals: Scotland

(1) Subsection (4) applies to any animal or bird which has been treated with serum or vaccine (or both) for the purpose of preventing the spread of—

- (a) cattle plague;
- (b) pleuro-pneumonia;
- (c) foot-and-mouth disease;
- (d) swine-fever; or
- (e) diseases of poultry.

(2) Subsection (4) also applies to any animal or bird which has been treated with serum or vaccine (or both) for the purpose of preventing the spread of such other disease of animals as the Scottish Ministers may by order specify.

(3) The references in subsections (1) and (2) to any animal which has been treated mean any kind of mammal (except man); and the power conferred by subsection (4) is exercisable accordingly.

(4) The Scottish Ministers may, for the purpose of securing (or contributing to the securing of) disease-free status, cause to be slaughtered any animal or bird to which this subsection applies.

(5) The Scottish Ministers must pay compensation, of such amount as they may prescribe by order, in respect of any animals—

- (a) slaughtered under subsection (4); and
- (b) of a kind to which the power of slaughter under that subsection would relate if subsection (3) were omitted.

(6) An order under subsection (5) may make different provision for different cases or classes of case.

(7) An order under subsection (5) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(8) An order made under subsection (2)—

- (a) is to be laid before the Scottish Parliament; and
- (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of

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that period, the order has been approved by a resolution of the Parliament.

- (9) However, paragraph (b) of subsection (8) does not apply in relation to an order which—
- (a) revokes (wholly or partly) a previous order; and
  - (b) does nothing else, or nothing else except make provision incidental or supplementary to the revocation.
- (10) In reckoning for the purposes of subsection (8)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved; or
  - (b) in recess for more than 4 days.
- (11) Subsection (8)(b) is without prejudice to anything previously done by reference to an order made under subsection (2) or to the making of a new order under that subsection.
- (12) An order under subsection (2) must refer to the circumstances in relation to which the order is made.
- (13) In subsection (2), “disease” is not restricted by its definition in this Act.
- (14) In subsection (4), “disease-free status” means recognition in accordance with any rule of the European Community or any other international rule that in a particular area no animals or birds of a particular class are infected by a particular disease or class of disease.”.

### 3 **Disease control (slaughter) statement** **S**

After section 32E (inserted by section 1 of this Act) of the 1981 Act there is inserted—

#### **“32F Disease control (slaughter) statement: Scotland**

- (1) Before exercising, in relation to a particular event or state of affairs (regardless of its geographical extent), a power of slaughter conferred by or under—
- (a) section 16B of this Act; or
  - (b) Schedule 3A to this Act,
- the Scottish Ministers must make a statement under this subsection.
- (2) The statement—
- (a) must—
    - (i) describe the event or state of affairs concerned; and
    - (ii) express the reason why there is (in addition to, or as an alternative to, other courses of action) to be resort to exercise of that particular power for the relevant purpose;
  - (b) may include further information, for example—
    - (i) about factors that have been taken into account (including types of advice to which regard has been had);
    - (ii) as to procedures that are to be followed.

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- (3) The Scottish Ministers are to—
- (a) make the statement in such manner; and
  - (b) publicise the statement to such extent, as they consider appropriate.”.

*Prevention of the spread of disease*

**4 Biosecurity codes S**

After section 6B of the 1981 Act there is inserted—

**“6C Biosecurity codes: Scotland**

- (1) The Scottish Ministers may make an order containing a code (referred to in this section and section 6D as a “biosecurity code”) which makes provision for the taking of, and in relation to, the measures specified in subsection (2).
- (2) Those are measures (“biosecurity measures”) for preventing—
  - (a) diseases of animals;
  - (b) the spread of causative agents of diseases of animals—
    - (i) among animals, birds or amphibians;
    - (ii) between any of those categories of creature and another of those categories; or
    - (iii) from any of those categories of creature to humans.
- (3) In subsection (2)(b), “causative agent”, in relation to a disease, includes any virus, bacterium and any other organism or infectious substance which may cause or transmit the disease.
- (4) A biosecurity code may relate solely to one, or more than one—
  - (a) kind of creature; or
  - (b) disease.
- (5) A biosecurity code may include guidance as to the best practicable means of taking biosecurity measures.
- (6) A biosecurity code may—
  - (a) prescribe general requirements to which persons to whom the code applies are subject;
  - (b) prescribe particular requirements to which such persons are, in such circumstances as are specified in the code, subject; and
  - (c) specify circumstances in which any person is to be regarded for the purposes of this section as complying with, or (as the case may be) not complying with, any requirements prescribed under paragraphs (a) or (b).
- (7) A biosecurity code may make different provision for different cases or classes of case.

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- (8) A biosecurity code applies, to the extent provided for in the code, to any person who owns, keeps or is in charge of any creature of a kind to which the code relates.
- (9) A person must, to the extent to which a biosecurity code applies to the person, comply with the code.
- (10) A person who is subject to a requirement prescribed under subsection (6)(a) or (b) commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person fails to comply with the requirement.
- (11) Before making an order under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate about the proposed biosecurity code.
- (12) A statutory instrument containing an order under subsection (1) is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.
- (13) In sub-paragraph (i) of paragraph (b) of subsection (2), the reference to animals means any kind of mammal (except man).
- (14) In this section and section 6D(1)(b), “disease” is not restricted by its definition in this Act.

#### **6D Emergency biosecurity orders: Scotland**

- (1) Where the Scottish Ministers are of the opinion that there exists—
  - (a) an outbreak of a disease specified in Schedule 2B to this Act; or
  - (b) some other emergency relating to a disease of animals,subsections (11) and (12) of section 6C do not apply in relation to the making of an order under subsection (1) of that section containing a biosecurity code relating to the outbreak or, as the case may be, the other emergency.
- (2) Where subsection (1) applies, an order made accordingly (an “emergency order”)—
  - (a) is to be laid before the Scottish Parliament; and
  - (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by a resolution of the Parliament.
- (3) However, paragraph (b) of subsection (2) does not apply in relation to an order which—
  - (a) revokes (wholly or partly) an emergency order; and
  - (b) does nothing else, or nothing else except make provision incidental or supplementary to the revocation.
- (4) In reckoning for the purposes of subsection (2)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
  - (a) dissolved; or
  - (b) in recess for more than 4 days.

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- (5) Subsection (2)(b) is without prejudice to anything previously done by reference to an emergency order or to the making of a new emergency order.
- (6) An emergency order must include a description of the emergency in relation to which the order is made.”.

## 5 Tests and samples **S**

After section 6D (inserted by section 4 of this Act) of the 1981 Act there is inserted—

### “6E Tests and samples: Scotland

- (1) An inspector may at any time enter any premises in Scotland for the purpose of ascertaining (any or all)—
  - (a) whether—
    - (i) biological indicators of any disease of animals;
    - (ii) biological indicators of any causative agent of a disease of animals,
 exist in animals, birds or amphibians on the premises;
  - (b) whether any animals, birds or amphibians on the premises or which were kept there at any time are, or were at the time they were so kept, infected with a disease of animals;
  - (c) whether any causative agent of a disease of animals is present on the premises.
- (2) The inspector may take such samples (including samples from any animals, birds or amphibians on the premises) and carry out such tests as the inspector thinks are necessary for a purpose mentioned in subsection (1).
- (3) In subsections (1) and (2), the references to animals in which biological indicators exist, infected with a disease or from which samples may be taken means any kind of mammal (except man).
- (4) In this section—
  - “biological indicator”—
    - (a) in relation to a disease, includes evidence of any form of reaction to the disease;
    - (b) in relation to a causative agent, includes—
      - (i) anti-bodies in reaction to the causative agent;
      - (ii) evidence of any other form of reaction to the causative agent;
  - “causative agent”, in relation to a disease, includes any virus, bacterium and any other organism or infectious substance which may cause or transmit the disease;
  - “disease” is not restricted by its definition in this Act;
  - “inspector” means—
    - (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or



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(b) a person authorised by the Scottish Ministers for those purposes;

“premises” includes—

- (a) any land or building; or
- (b) any other place, in particular—
  - (i) a vehicle or vessel; or
  - (ii) a tent or moveable structure.

### **6F Samples: further testing**

- (1) Where a sample from any animal, bird or amphibian has been taken—
  - (a) under any enactment; and
  - (b) in relation to the monitoring, control or prevention of any disease of animals,  
the Scottish Ministers (or a person authorised by them) may carry out such tests using the sample as they think are necessary or expedient for the purposes of the monitoring, control or prevention of any other disease of animals.
- (2) Except in the circumstances described in subsection (3), the power conferred by subsection (1) is not exercisable unless the sample has previously been used for a test authorised under the relevant enactment.
- (3) Those circumstances are—
  - (a) where the Scottish Ministers are of the opinion that there exists an emergency in relation to a disease of animals; and
  - (b) the tests to be carried out under subsection (1) are in connection with the emergency.
- (4) A person who possesses a sample required for the carrying out of a test under subsection (1) must give the sample to the Scottish Ministers (or a person authorised by them) by such time as they may direct.
- (5) In subsection (1), the first reference to an animal means any kind of mammal (except man).
- (6) In this section—
  - “disease” is not restricted by its definition in this Act;
  - “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

## **6 Animal gatherings** **S**

After section 8 of the 1981 Act there is inserted—

### **“8A Animal gatherings: Scotland**

- (1) The Scottish Ministers may by order make provision for or in connection with the licensing (by them or by other persons on their behalf) of the holding of animal gatherings.

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- (2) An order under subsection (1) must be with a view to the prevention of the spread of disease.
- (3) In this section, an “animal gathering” means an occasion at which animals or birds (or both) are brought together for any purpose.
- (4) But, for the purposes of subsection (3), an occasion is not an animal gathering if—
  - (a) all the animals or birds involved are owned by the same person; or
  - (b) the occasion—
    - (i) takes place on land in respect of which more than one person has a right of use; and
    - (ii) involves animals or birds all of which are owned by persons who have a right of use of the land.
- (5) An order under subsection (1) may, in particular, include provision as to—
  - (a) the procedure to be followed in relation to an application for a licence;
  - (b) any considerations to be taken into account in determining an application;
  - (c) the duration and renewal of a licence;
  - (d) conditions that must or may be imposed on granting or renewing a licence;
  - (e) circumstances in which a licence (or any of the conditions imposed in relation to the licence) must or may be revoked or suspended;
  - (f) requirements for notification of any granting, renewal, revocation, suspension or variation of a licence;
  - (g) appeals in connection with licences.
- (6) An order under subsection (1) may, in particular, also include provision as to the inspection, for the purpose of ensuring compliance with any condition of a licence, of premises where animal gatherings may take, or are taking or have taken, place.
- (7) Conditions under subsection (5)(d) may, in particular, relate to measures for the prevention of the spread of disease.
- (8) A person who holds a licence in accordance with an order made under subsection (1) commits an offence if, without excuse (proof of which lies on the person), that person contravenes any condition of the licence.
- (9) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10) An order under subsection (1) may make different provision for different cases or classes of case.
- (11) Before making an order under subsection (1), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent relevant interests; and
  - (b) such other persons,as they consider appropriate.

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- (12) In this section, “premises” includes—
- (a) any land or building; or
  - (b) any other place, in particular—
    - (i) a vehicle or vessel; or
    - (ii) a tent or moveable structure.”.

## 7 Treatment **S**

(1) In section 16 (treatment after exposure to infection) of the 1981 Act—

- (a) subsection (1) is repealed,
- (b) after that subsection there is inserted—

“(1A) For the purpose of preventing the spread of diseases of animals, the Scottish Ministers may, if they think fit, cause to be treated with serum or vaccine, or with both serum and vaccine, any animal or bird.

(1B) The animals which may be treated under subsection (1A) are any kind of mammal (except man).

(1C) In subsection (1A), “disease” is not restricted by its definition in this Act.”.

(2) In subsection (2) of that section—

- (a) for the words “officer of the Minister” there is substituted “ inspector ”, and
- (b) for the words from “land” to the end there is substituted “ premises ”.

(3) After that subsection there is added—

“(3) In this section—

“inspector” means—

- (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
- (b) a person authorised by the Scottish Ministers for those purposes;

“premises” includes—

- (a) any land or building; or
- (b) any other place, in particular—
  - (i) a vehicle or vessel; or
  - (ii) a tent or moveable structure.”.

## 8 Seizure of carcasses etc. **S**

After section 36 of the 1981 Act there is inserted—

### “36ZA Seizure of carcasses etc.: further provision for Scotland

(1) The Scottish Ministers may by order make provision for—

- (a) the seizure of anything (whether animate or inanimate) which appears to them might be capable of carrying or transmitting any disease to which this subsection applies;

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- (b) the destruction, burial, disposal or treatment of anything seized under the order; and
  - (c) regulating the matters mentioned in paragraphs (a) and (b).
- (2) Subsection (1) does not authorise provision for the seizure of a live animal, bird or amphibian; but an order under that subsection may provide for the seizure of carcases and of anything obtained from or produced by an animal, bird or amphibian.
- (3) Subsection (1) applies to the diseases in the case of which any power of slaughter is exercisable under or by virtue of section 16B, Part 2B or Schedule 3A.
- (4) A person commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person throws or places, or causes or suffers to be thrown or placed, into—
- (a) any river, stream, canal, navigation or other water; or
  - (b) the sea within 4.8 kilometres of the shore,
- the carcase of, or anything obtained from or produced by, an animal, bird or amphibian which has been slaughtered in the exercise of any power conferred by or under section 16B, Part 2B or Schedule 3A.
- (5) In this section, the references to an animal mean any kind of mammal (except man).

### **36ZB Compensation for seizure**

- (1) The Scottish Ministers must pay compensation for anything seized under an order made under section 36ZA(1).
- (2) But subsection (1) does not apply to—
- (a) carcases seized; or
  - (b) other things seized which are obtained from or produced by creatures.
- (3) The Scottish Ministers may pay compensation for—
- (a) carcases seized under an order made under section 36ZA(1);
  - (b) other things seized under such an order which are obtained from or produced by creatures,
- of such description as the Scottish Ministers may specify by order.
- (4) The compensation payable under subsection (1) or (3) for anything seized shall be its value at the time of seizure.
- (5) Where anything destroyed, buried or disposed of under an order made under paragraph (e) of section 23 could have been seized under an order made under section 36ZA(1), compensation (if any) is payable under subsections (1) or (3) as if the thing had been so seized at the time of destruction, burial or disposal.
- (6) The Scottish Ministers may make such orders as they think fit for—
- (a) prescribing how the value of anything seized under section 36ZA(1) is to be ascertained;

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- (b) regulating applications for, and the mode of payment of, any compensation payable by virtue of this section.”.

## 9 Specified diseases **S**

- (1) After section 28H (inserted by section 10 of this Act) of the 1981 Act there is inserted—

### “28I Specified diseases: Scotland

- (1) Schedule 2B to this Act has effect as to the specification of certain diseases of animals.
  - (2) The Scottish Ministers may by order modify Schedule 2B.
  - (3) An order made under subsection (2)—
    - (a) is to be laid before the Scottish Parliament; and
    - (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by a resolution of the Parliament.
  - (4) However, paragraph (b) of subsection (3) does not apply in relation to an order which—
    - (a) revokes (wholly or partly) a previous order; and
    - (b) does nothing else, or nothing else except make provision incidental or supplementary to the revocation.
  - (5) In reckoning for the purposes of subsection (3)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
    - (a) dissolved; or
    - (b) in recess for more than 4 days.
  - (6) Subsection (3)(b) is without prejudice to anything previously done by reference to a modification made by an order under subsection (2) or to the making of a new order under that subsection.
  - (7) An order under subsection (2) must include a statement of the reasons for making the order.”.
- (2) After Schedule 2A of that Act there is inserted—

### “SCHEDULE 2B **S** (introduced by section 28I)

#### SPECIFIED DISEASES: SCOTLAND

African horse sickness  
African swine fever  
Bluetongue  
Bovine brucellosis

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Classical swine fever  
Contagious bovine pleuropneumonia  
Foot-and-mouth disease  
Highly pathogenic avian influenza  
Lumpy skin disease  
Newcastle disease  
Peste des petits ruminants  
Rift Valley fever  
Rinderpest  
Sheep pox and goat pox  
Swine vesicular disease  
Vesicular stomatitis.”.

*Deliberate infection of animals*

**10 Deliberate infection of animals S**

After section 28B of the 1981 Act there is inserted—

**“28C Deliberate infection: Scotland**

- (1) A person commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person—
  - (a) knowingly does anything which causes or is intended to cause; or
  - (b) recklessly causes,
 an animal or bird to be infected with a disease specified in Schedule 2B to this Act.
- (2) A person commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person acquires or retains—
  - (a) an animal or bird; or
  - (b) the carcase of an animal or bird,
 which the person knows, or ought reasonably to know, to be infected with a disease specified in Schedule 2B to this Act.
- (3) A person commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person acquires or retains anything obtained from, produced by or used in connection with—
  - (a) an animal or bird; or
  - (b) the carcase of an animal or bird,
 which the person knows, or ought reasonably to know, to be infected with a disease specified in Schedule 2B to this Act.
- (4) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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- (5) In this section and sections 28D to 28H, the references to an animal mean any kind of mammal (except man).

#### **28D Deliberate infection: deprivation of entitlement to compensation**

- (1) Where a person is convicted of an offence under section 28C, any provision of this Act by virtue of which compensation is payable to the person does not apply in respect of anything to which this subsection applies.
- (2) Subsection (1) applies to animals to which that offence relates.
- (3) Subsection (1) also applies to any other animals which were kept on the same premises as the animals referred to in subsection (2)—
- (a) at the same time (or any part of the time) as those animals; and
  - (b) at or after the time when the offence was committed,
- and in relation to which compensation would be payable but for this section.
- (4) Subsection (1) also applies to—
- (a) any carcasses seized under an order made under section 35(1) or 36ZA(1)—
    - (i) which are of the animals referred to in subsection (2) or of the other animals referred to in subsection (3); and
    - (ii) in relation to which compensation would be payable but for this section;
  - (b) other things seized under such an order—
    - (i) which were obtained from or produced by those animals; and
    - (ii) in relation to which compensation would be payable but for this section; and
  - (c) anything else—
    - (i) seized under such an order; and
    - (ii) which was present on the same premises as those animals, or those carcasses or other things, at the time described by paragraphs (a) and (b) of subsection (3),and in relation to which compensation would be payable but for this section.
- (5) Any compensation paid to a person in respect of anything to which subsection (1) applies may be recovered by the Scottish Ministers.
- (6) In subsection (3), “premises” includes—
- (a) any land or building; or
  - (b) any other place, in particular—
    - (i) a vehicle or vessel; or
    - (ii) a tent or moveable structure.

#### **28E Deliberate infection: deprivation orders**

- (1) Where a person is convicted of—
- (a) an offence under section 28C; or

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- (b) an offence under section 28F(16) by reason of owning or keeping an animal,
- the convicting court may make an order (in this section and section 28H referred to as a “deprivation order”) in respect of any animal in relation to which the offence was committed.
- (2) A deprivation order is an order—
- (a) depriving a person of possession or ownership (or both) of an animal; and
- (b) for—
- (i) the destruction;
- (ii) the sale; or
- (iii) another disposal,
- of the animal.
- (3) Where the court decides not to make a deprivation order in relation to an offence referred to in subsection (1), it must state its reasons except where it makes a disqualification order in relation to the offence.
- (4) A deprivation order may be made in addition to, or instead of, any other penalty or order which may be imposed in relation to a relevant offence.
- (5) A deprivation order may make provision in respect of any dependent offspring of an animal to which it applies.
- (6) A deprivation order may include—
- (a) provision—
- (i) appointing a person who is to secure that the order is carried out;
- (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under subparagraph (i);
- (b) provision authorising—
- (i) a person appointed under paragraph (a)(i); and
- (ii) any person acting on that person's behalf,
- to enter, for the purposes of securing that the order is carried out, any premises where an animal to which the order applies is kept;
- (c) such other provision as the court considers appropriate in connection with the order.
- (7) Provision under subsection (6)(c) may, in particular—
- (a) require reimbursement of any expenses reasonably incurred in carrying out the order;
- (b) relate to the retention of any proceeds of the disposal.
- (8) The court may not make a deprivation order involving the destruction of an animal unless it is satisfied, on evidence provided (orally or in writing) by a veterinary surgeon, that destruction would be in the interests of the animal.
- (9) Before making a deprivation order, the court must give the owner of the animal concerned an opportunity to make representations unless it is not practicable for it to do so.



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- (10) A deprivation order is, for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995 (c. 46), to be treated as a sentence.
- (11) Where a deprivation order is made, any person (apart from a person who may appeal against the order by virtue of subsection (10)) who has an interest in any animal to which the order applies may appeal to the High Court of Justiciary against the order by the same procedure as applies under subsection (10).
- (12) In this section and section 28G, “premises” includes—
  - (a) any land or building; or
  - (b) any other place, in particular—
    - (i) a vehicle or vessel; or
    - (ii) a tent or moveable structure.
- (13) In this section and section 28G, “veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (c. 36).

#### **28F Deliberate infection: disqualification orders**

- (1) Where a person is convicted of an offence under section 28C or subsection (16), the convicting court may make an order (in section 28E, this section and section 28G referred to as a “disqualification order”) disqualifying that person, for such period as it thinks fit, from one or more of the activities specified in subsection (2).
- (2) Those activities are—
  - (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 subsection (1), disqualification in respect of an activity specified in subsection (2) includes disqualification from any participation in the activity including, in particular—
  - (a) making arrangements in connection with the activity;
  - (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.

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- (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.
- (5) Where the court decides not to make a disqualification order in relation to an offence under section 28C or subsection (16), it must state its reasons.
- (6) A disqualification order may be made in addition to, or instead of, any other penalty or order which may be imposed in relation to an offence under that section.
- (7) A disqualification order may apply to animals generally or to animals of any particular kind.
- (8) A disqualification order may specify a period within which an application under subsection (11) may not be made.
- (9) The court may suspend the operation of a disqualification order—
  - (a) for such period as it thinks necessary to enable arrangements to be made for the keeping of any animals to which the disqualification applies;
  - (b) pending an appeal.
- (10) A disqualification order is, for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995, to be treated as a sentence.
- (11) A person who is subject to a disqualification order may apply to the court which imposed the order to terminate or vary it.
- (12) An application under subsection (11) may not be made—
  - (a) before the expiry of the period of one year beginning with the date on which the order was made;
  - (b) where there has been a previous application under that subsection in relation to the same order, before the expiry of the period of one year beginning with the date on which the previous application was determined; or
  - (c) within any period specified under subsection (8) or (15).
- (13) On an application under subsection (11), the court may—
  - (a) refuse the application;
  - (b) terminate the disqualification order; or
  - (c) vary the disqualification order so as to relax any disqualification imposed by it.
- (14) In considering an application under subsection (11), the court must have particular regard to—
  - (a) the nature of the offence in relation to which the disqualification order was made;
  - (b) the character of the applicant;

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(c) the conduct of the applicant since the order was made.

(15) Where the court refuses an application made under subsection (11), the court may specify a period within which the applicant may not make a further application under that subsection in relation to that order.

(16) A person who breaches a disqualification order commits an offence.

### **28G Seizure orders where disqualification breached**

(1) Where the court is satisfied that a person who is subject to a disqualification order owns or keeps any animal in breach of the order, the court may make an order (in this section and section 28H referred to as a “seizure order”) in respect of all animals which the person owns or keeps in breach of the disqualification order.

(2) A seizure order may be made—

- (a) on summary application by an inspector;
- (b) even if proceedings have not been, or are not likely to be, taken against the person for an offence under section 28F(16).

(3) In subsection (2)(a), “inspector” means—

- (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
- (b) a person authorised by the Scottish Ministers for those purposes.

(4) A seizure order is an order—

- (a) depriving a person of possession or ownership (or both) of an animal; and
- (b) for—
  - (i) the destruction;
  - (ii) the sale; or
  - (iii) another disposal,of the animal.

(5) A seizure order may include—

- (a) provision—
  - (i) appointing a person who is to secure that the order is carried out;
  - (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under subparagraph (i);
- (b) provision authorising—
  - (i) a person appointed under paragraph (a)(i); and
  - (ii) any person acting on that person's behalf,to enter, for the purposes of securing that the order is carried out, any premises where an animal to which the order applies is kept;
- (c) such other provision as the court considers appropriate in connection with the order.

(6) Provision under subsection (5)(c) may, in particular—

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- (a) require reimbursement of any expenses reasonably incurred in carrying out the order;
  - (b) relate to the retention of any proceeds of the disposal.
- (7) The court may not make a seizure order which involves the destruction of an animal unless it is satisfied, on evidence provided (orally or in writing) by a veterinary surgeon, that destruction would be in the interests of the animal.
- (8) Before making a seizure order, the court must give the owner of the animals concerned an opportunity to make representations unless it is not practicable for it to do so.
- (9) In determining whether or how to make a seizure order, the court must have regard to the desirability of—
- (a) protecting the value of any animal to which the order applies; and
  - (b) avoiding increasing any expenses which a person may be required to reimburse.
- (10) Where an application is made under subsection (2)(a), the court may make an order under this subsection (an “interim order”) containing such provision as the court considers appropriate in relation to the keeping of an animal until the application is finally determined.
- (11) Subsections (5), (6)(a) and (9) apply in relation to an interim order as they apply in relation to a seizure order.
- (12) The disqualified person by reference to whom a seizure order is made, or any person (apart from that disqualified person) who entered the process prior to the making of the order, may appeal to the Sheriff Principal against the order.

### **28H Suspension of orders pending appeal**

- (1) The operation of any deprivation order or seizure order is suspended until—
- (a) any period for an appeal against the order has expired;
  - (b) the period for an appeal against the conviction on which the order depends has expired; and
  - (c) any appeal against the order or that conviction has been withdrawn or finally determined.
- (2) Where the operation of a deprivation order or seizure order is suspended under subsection (1), or such an order is not executable because decree has not been extracted, the court may make an order under this subsection (an “interim order”) containing such provision as the court considers appropriate in relation to the keeping of an animal for so long as the first-mentioned order remains suspended or inexecutable.
- (3) An interim order may, in particular, make provision of the sort described in—
- (a) paragraphs (a) and (b) of subsection (5) of section 28G;
  - (b) paragraph (a) of subsection (6) of that section.
- (4) In determining whether or how to make an interim order, the court must have regard to the desirability of—
- (a) protecting the value of any animal to which the order applies; and

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- (b) avoiding increasing any expenses which a person may be required to reimburse.”.

*Particular provision for TSE*

**11 Livestock genotypes: specification, breeding and slaughter** **S**

After Part 2A of the 1981 Act there is inserted—

**“PART 2B** **S**

TSE: SCOTLAND

*Livestock genotypes*

**36N Power to specify livestock genotypes and TSEs**

- (1) Where the Scottish Ministers are satisfied that an animal of a particular livestock genotype has (or has had) a form of TSE, they may by order specify for the purposes of this Part—
  - (a) that livestock genotype; and
  - (b) if they consider it appropriate, the form of TSE concerned.
- (2) In subsection (1), “satisfied” means satisfied on the basis of scientific evidence.
- (3) Subsection (1) does not apply in relation to any animal which has (or has had) a form of TSE solely as a consequence of scientific experimentation on the animal.
- (4) For the purposes of subsection (1), it is immaterial where (whether in Scotland or elsewhere)—
  - (a) an animal has (or has had) a form of TSE;
  - (b) evidence as to that fact is obtained.
- (5) For the purposes of subsection (1), it is immaterial—
  - (a) to what extent an animal has (or has had) a form of TSE;
  - (b) that an animal does not show (or has never shown) outward signs of being (or having been) affected by a form of TSE.

**36O Ascertaining genotypes and identifying livestock**

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision requiring the keeper of any livestock—
  - (a) to allow an inspector to take a sample from it, for the purpose of ascertaining its genotype;
  - (b) to allow an inspector to administer or otherwise attach to it an identification device;

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- (c) where the genotype of the livestock has been ascertained (whether or not as a result of the exercise of powers conferred by or under this Part), to keep a record of its genotype.
- (2) The regulations may include provision—
  - (a) with respect to the testing of samples;
  - (b) that only identification devices of a kind specified in the regulations may be administered or attached;
  - (c) requiring the issuing and keeping of certificates recording the genotypes of livestock.
- (3) The regulations may also include provision requiring the keeper of any livestock to give an inspector such assistance or information as the inspector may reasonably request in connection with the exercise of the inspector's functions under the regulations.

### 36P **Restrictions on breeding**

- (1) This section applies where it appears to the Scottish Ministers that livestock is of a genotype specified in an order under section 36N.
- (2) If it appears to the Scottish Ministers that there are no exceptional circumstances that justify allowing the livestock, or its semen, eggs or embryos, to be used for or in connection with breeding, they may give a notice (in this Part referred to as a “restriction notice”) to its keeper.
- (3) A restriction notice—
  - (a) may be made so as to apply to more than one creature;
  - (b) may describe the livestock to which it applies in such a way as the Scottish Ministers consider appropriate; and
  - (c) must specify the restrictions and requirements provided for in subsections (6) to (8) so far as applicable in the circumstances of the case.
- (4) If the keeper of the livestock is not the same person as its owner, the Scottish Ministers may give a separate restriction notice to the owner.
- (5) If the keeper of the livestock is not the same person as the person in possession of the semen, eggs or embryos of the livestock, the Scottish Ministers may give a separate restriction notice to the person in possession of the semen, eggs or embryos.
- (6) A person to whom a restriction notice is given must not—
  - (a) use livestock to which the notice applies, or its semen, eggs or embryos, for the purposes of or in connection with breeding; or
  - (b) cause or permit such livestock or such semen, eggs or embryos to be used by another person for those purposes.
- (7) A person to whom a restriction notice is given must arrange for any semen, egg or embryo which—
  - (a) has at any time been taken from livestock to which the notice applies; and
  - (b) is in the person's possession or under the person's control,

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to be destroyed within such period, of not less than 21 days, as may be specified in the notice.

- (8) A person to whom a restriction notice is given must arrange for each creature to which the notice applies and which is owned by the person—
- (a) to be castrated or (as appropriate) sterilised within such period, of not less than 21 days, as may be specified in the notice; or
  - (b) to be slaughtered within such period, of not less than 21 days, as may be specified in the notice,
- whichever the person considers appropriate.
- (9) But where a request for a review is made under section 36Q(1), the operation of the restriction notice is, so far as relating to the matters subject to review, suspended until the review is determined.
- (10) For the purposes of subsection (2), exceptional circumstances include circumstances in which the imposition in relation to the livestock of the restrictions and requirements mentioned in subsections (6) to (8) is likely to—
- (a) cause the extinction of the breed or type of which the livestock is a member; or
  - (b) jeopardise the sustainability of a common or well-established breed.
- (11) For the purposes of this Part, “slaughter” includes the killing of a fish.

### 36Q Review

- (1) A person to whom a restriction notice is given may, within the period referred to in subsection (2)—
- (a) make a written request to the Scottish Ministers for a review of the restriction notice or any part of it;
  - (b) make written representations to the Scottish Ministers; and
  - (c) request—
    - (i) an appearance, for the purposes of the review, before the assessment panel;
    - (ii) that the appearance be in public.
- (2) The period is—
- (a) 21 days beginning with the day on which the notice is given; or
  - (b) in exceptional circumstances, such longer period as the Scottish Ministers may agree to.
- (3) The Scottish Ministers must arrange for an assessment panel to consider a review as requested under subsection (1).
- (4) The proceedings of an assessment panel are to be conducted in such form and manner as the panel considers fit.
- (5) The assessment panel must prepare and send a report to the Scottish Ministers which—
- (a) states its findings in relation to the representations and information before it; and
  - (b) makes a recommendation as to how to determine the review.

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- (6) The Scottish Ministers, having regard to any representations made under subsection (1)(b) and the report sent to them under subsection (5), must—
  - (a) determine the review; and
  - (b) give to the person who requested the review—
    - (i) written notification of their determination and their reasons for it; and
    - (ii) if the person so requests, a copy of the report sent to them under subsection (5).
- (7) The Scottish Ministers may, in so far as a review upholds a restriction notice, recover from the person who requested the review such reasonable expenses as arise from any sampling or testing carried out in connection with the review.
- (8) In this section, an assessment panel—
  - (a) consists of one or more persons appointed by the Scottish Ministers for the purposes of this section; and
  - (b) must not, except with the consent of the person who requested the review, include members of the staff of the Scottish Administration.

### *Enforcement*

#### **36R Scottish Ministers' powers of enforcement**

- (1) This section applies if the Scottish Ministers are satisfied that a person has failed to comply with one or more of the restrictions or requirements imposed on that person by a restriction notice.
- (2) But this section does not apply in relation to any livestock—
  - (a) which is the subject of a review under section 36Q which has not been determined; or
  - (b) which, as the result of a successful review, is no longer subject to the restriction notice.
- (3) The Scottish Ministers may take such reasonable steps as they consider appropriate to secure that effect is given to any restriction or requirement.
- (4) In particular, the Scottish Ministers may—
  - (a) cause to be destroyed any semen, egg or embryo which has not been destroyed as required under section 36P(7);
  - (b) cause to be castrated (or as appropriate sterilised) or slaughtered any livestock—
    - (i) which is the subject of the notice; but
    - (ii) which has neither been castrated (or as appropriate sterilised) nor slaughtered as required under section 36P(8).
- (5) The Scottish Ministers may recover from the person to whom a restriction notice has been given such reasonable expenses as arise from any steps taken under subsection (3) in relation to that notice.



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### 36S Offences

- (1) A person to whom a restriction notice is given commits an offence (whether or not the notice is the subject of a review under section 36Q) if that person—
  - (a) sells (or otherwise transfers to another person) livestock to which the notice applies, or any of its semen, eggs or embryos;
  - (b) fails, without excuse (proof of which lies on the person) to comply with any of the restrictions or requirements specified in the notice.
- (2) Any other person commits an offence if that person uses any semen, egg or embryo which the person knows, or ought reasonably to know, has been taken from livestock which is the subject of a restriction notice.
- (3) A person commits an offence if, without excuse (proof of which lies on the person), that person fails to comply with any provision of regulations made under section 36O.
- (4) A keeper of livestock commits an offence if the keeper fails to give an inspector such assistance or information as the inspector may reasonably request in connection with the exercise by the inspector of a function under this Part.

#### *Powers of slaughter*

### 36T Powers of slaughter: TSE

- (1) With a view to preventing the spread of any form of TSE, the Scottish Ministers may, if they think fit, cause any livestock to which this subsection applies to be slaughtered.
- (2) Subsection (1) applies to livestock—
  - (a) whose genotype is specified by virtue of section 36N; and
  - (b) in relation to whose genotype the form of TSE concerned is so specified.
- (3) Subsection (1) also applies to livestock whose genotype is not ascertained because—
  - (a) it is not reasonable in the circumstances, by reason of urgency or otherwise, to seek to ascertain the genotype; or
  - (b) the genotype cannot, in the absence for the time being of scientific knowledge, established method or otherwise, reasonably be ascertained.

#### *Powers of entry*

### 36U Powers of entry

- (1) An inspector may enter any premises in Scotland for the purpose of—
  - (a) ascertaining whether a function of the Scottish Ministers or inspectors under this Part should be exercised; or

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(b) doing anything in pursuance of or in connection with the exercise of that function.

(2) An inspector acting under subsection (1) must, if required, produce evidence of the inspector's authority.

### *Compensation*

#### 36V **Compensation**

(1) The Scottish Ministers must pay compensation, of such amount as they may prescribe by order, in respect of—

- (a) any livestock slaughtered, or other thing destroyed, in accordance with a restriction notice;
- (b) any livestock slaughtered, or other thing destroyed, by virtue of section 36R;
- (c) any livestock slaughtered by virtue of section 36T(1).

(2) An order under subsection (1) may make different provision for different cases or classes of case.

### *General*

#### 36W **Orders and regulations**

A statutory instrument containing an order or regulations under this Part is subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### 36X **Interpretation**

In this Part—

“keeper” includes an owner;

“inspector” means—

- (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
- (b) a person authorised by the Scottish Ministers for those purposes;

“livestock” means—

- (a) any creature, including a fish, which is kept, fattened or bred for the production of food, wool, skin or fur;
- (b) any creature, other than a dog, which is kept for use in the farming of land; and
- (c) any equine animal;

“premises” includes—

- (a) any land or building; or
- (b) any other place, in particular—
  - (i) a vehicle or vessel; or
  - (ii) a tent or moveable structure;

“TSE” means transmissible spongiform encephalopathy.”

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### Miscellaneous

#### 12 Powers of entry etc. **S**

After section 62F of the 1981 Act there is inserted—

##### “62G Powers of entry etc.: Scotland

- (1) An inspector may enter any premises in Scotland for the purpose of—
  - (a) ascertaining whether a power of slaughter conferred by or under any provision mentioned in subsection (3) should be exercised; or
  - (b) doing anything in pursuance of or in connection with the exercise of such a power.
- (2) A power of slaughter conferred by or under any provision mentioned in subsection (3) extends to the taking of any action for the purposes of or in connection with the exercise of the power.
- (3) The provisions are—
  - (a) section 16B of;
  - (b) section 32 of;
  - (c) Schedule 3 to;
  - (d) Schedule 3A to,this Act.
- (4) An inspector acting under subsection (1) must, if required, produce evidence of the inspector's authority.
- (5) Where any power of entry conferred on an inspector by this Act is exercised in relation to premises used exclusively as a dwelling-house, 24 hours' notice of the intended entry is to be given to the occupier unless the inspector thinks the case is one of urgency.
- (6) Any power of entry conferred on an inspector by this Act must be exercised at a reasonable hour unless the inspector thinks the case is one of urgency.
- (7) In this section and sections 62H and 62I, an “inspector” means—
  - (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
  - (b) a person authorised by the Scottish Ministers for those purposes.
- (8) In this section and sections 62H and 62I, “premises” includes—
  - (a) any land or building; or
  - (b) any other place, in particular—
    - (i) a vehicle or vessel; or
    - (ii) a tent or moveable structure.

##### 62H Warrants

- (1) A sheriff or justice of the peace may issue a warrant authorising an inspector to enter (if necessary using reasonable force) any premises in Scotland for

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the purpose mentioned in subsection (2), if satisfied by evidence on oath that—

- (a) the first condition is satisfied; and
  - (b) either the second or the third condition is satisfied.
- (2) The purpose is that of—
- (a) ascertaining whether a function of the Scottish Ministers or inspectors under this Act should be exercised; or
  - (b) doing anything in pursuance of or in connection with the exercise of such a function.
- (3) The evidence must include—
- (a) a statement as to whether any representations have been made by the occupier of the premises to an inspector concerning the purpose for which the warrant is sought;
  - (b) a summary of any such representations.
- (4) The first condition is that there are reasonable grounds for an inspector to enter the premises for that purpose.
- (5) The second condition is that each of the following applies—
- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision;
  - (b) the occupier has failed to allow entry to the premises on being requested to do so by an inspector; and
  - (c) the occupier has been informed of the intention to apply for the warrant.
- (6) The third condition is that—
- (a) the premises are unoccupied or the occupier appears to be absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or
  - (b) the object of entering would be defeated if the occupier were requested to allow entry or informed of an intention to apply for a warrant.
- (7) A warrant issued under this section must be executed at a reasonable hour unless the inspector thinks the case is one of urgency.
- (8) A warrant issued under this section remains in force for one month starting with the date of its grant.

### **62I Entry and warrants: supplementary**

- (1) This section applies to an inspector who enters any premises by virtue of a power conferred on the inspector by or under this Act or under a warrant under section 62H.
- (2) The inspector may take on to the premises—
- (a) such other persons as the inspector thinks necessary to give the inspector such assistance as the inspector thinks necessary;
  - (b) such equipment as the inspector thinks necessary.

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- (3) The inspector may require any person on the premises who falls within subsection (4) to give the inspector such assistance as the inspector may reasonably require.
- (4) The following persons fall within this subsection—
  - (a) the occupier of the premises;
  - (b) a person appearing to the inspector to have charge of animals on the premises;
  - (c) a person appearing to the inspector to be under the direction or control of a person mentioned in paragraph (a) or (b).
- (5) If the inspector enters any premises by virtue of a warrant issued under section 62H the inspector must at the time of entry—
  - (a) serve a copy of the warrant on the occupier of the premises; or
  - (b) if the occupier is not on the premises, leave a copy of the warrant in a conspicuous place on the premises.
- (6) If the inspector enters any unoccupied premises the inspector must leave them as effectively secured against entry as the inspector found them.”.

### 13 **Inspection of vehicles** **S**

After section 65A of the 1981 Act there is inserted—

#### “65B Inspection of vehicles: Scotland

- (1) If each of the conditions in subsection (2) is satisfied, an inspector may stop, detain and inspect any vehicle to ascertain whether the provisions of any of the following are being complied with—
  - (a) this Act;
  - (b) an order under this Act;
  - (c) a regulation of a local authority made in pursuance of such an order;
  - (d) regulations made by the Scottish Ministers under this Act.
- (2) The conditions are—
  - (a) that the vehicle is in an infected place or area;
  - (b) that the inspector is accompanied by a constable in uniform.
- (3) In this section, a “vehicle” includes—
  - (a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
  - (b) anything on a vehicle;
  - (c) a detachable part of a vehicle;
  - (d) a container or other structure designed or adapted to be carried by or on a vehicle.”.

### 14 **Penalties and time limits** **S**

For section 75 (punishment of summary offences not otherwise provided for) of the 1981 Act there is substituted—

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#### **“75 Penalties and time limits for certain offences: Scotland**

- (1) This section applies to any offence under this Act for which no penalty is specified by any other provision of this Act.
- (2) A person guilty of an offence to which this section applies is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (3) Proceedings for an offence to which this section applies may be brought within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.
- (4) No such proceedings may be brought more than 3 years—
  - (a) after the commission of the offence; or
  - (b) in the case of an offence involving a continuous contravention, after the last date on which the offence was committed.
- (5) It shall be competent in a prosecution of an offence involving a continuous contravention to include the entire period during which the contravention occurred.
- (6) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted provided that the warrant is executed without undue delay.
- (7) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved.”.

#### **15 Electronic communication S**

After section 83 of the 1981 Act there is inserted—

#### **“83A Electronic communication: Scotland**

- (1) Any requirement in the provisions mentioned in subsection (3) for something to be done in writing may be met by doing that thing as described in subsection (2).
- (2) That is, by using a document—
  - (a) transmitted by electronic means; and
  - (b) capable of being reproduced in legible form.
- (3) Those provisions are—
  - (a) sections 3(2), 30(1), 36Q(1) and (6), 40(1)(b), 41(1)(b), 47, 60(9), 63(4) and 65(1) of, and paragraph 2(4) of Schedule 3 to, this Act;
  - (b) sections 17(3), 22(7)(a), 62G(5) and 81 (each as read with section 83(1)) of this Act.

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- (4) But subsection (1) applies in relation to section 17(3), 22(7)(a), 30(1), 36Q(1) or (6) or 62G(5) only if—
- (a) the recipient has consented to receive electronic communication for the purpose; and
  - (b) transmission is to an email address provided by the recipient.
- (5) For the purposes of sections 17(3), 22(7)(a), 30(1) and 36Q(1), a document transmitted under subsection (1) shall be taken to be received on the day after the day of its transmission.
- (6) The Scottish Ministers may, for the purposes of this Act, by order make further provision for the purposes of or in connection with—
- (a) using electronic communication (including the use of electronic signatures);
  - (b) using documents in electronic form.
- (7) An order under subsection (6)—
- (a) may make provision by amending this Act or otherwise;
  - (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (8) In this section—
- “electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000 (c. 7);
  - “electronic signature” is to be construed in accordance with section 7(2) of that Act.”.

VALID FROM 06/10/2006

## PART 2 **S**

### ANIMAL WELFARE

#### *Introductory*

#### **16 Animals to which this Part applies **S****

- (1) In this Part, “animal” means a vertebrate other than man.
- (2) But this Part does not apply to an animal while it is in its foetal or embryonic form.
- (3) The Scottish Ministers may by regulations—
  - (a) make provision which—
    - (i) extends the definition of “animal” so as to include invertebrates of any description,
    - (ii) applies instead of subsection (2) as respects any invertebrate so included,

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- (b) amend subsection (2) so as to extend the application of such provisions of this Part as are specified in the regulations to an animal from such earlier stage of its development as is so specified.
- (4) Regulations under subsection (3) may be made only if the Scottish Ministers are satisfied, on the basis of scientific evidence, that creatures of the kind concerned are capable of experiencing pain or suffering.
- (5) Before making regulations under subsection (3), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent relevant interests, and
  - (b) such other persons,
 as they consider appropriate.
- (6) In this section—
  - “vertebrate” means any creature of the Sub-phylum Vertebrata of the Phylum Chordata,
  - “invertebrate” means any creature not of that Sub-phylum.

## 17 Protected animals **S**

- (1) In this Part, an animal is a “protected animal” if it is—
  - (a) of a kind which is commonly domesticated in the British Islands,
  - (b) under the control of man on a permanent or temporary basis, or
  - (c) not living in a wild state.
- (2) In subsection (1)(a), “British Islands” is to be construed in accordance with Schedule 1 to the Interpretation Act 1978 (c. 30).

## 18 Responsibility for animals **S**

- (1) In this Part, references to being responsible for an animal mean being responsible for it on a permanent or temporary basis.
- (2) In this Part, references to being responsible for an animal include being in charge of it.
- (3) For the purposes of this Part, a person who owns an animal is always to be regarded as being a person who is responsible for it.
- (4) For the purposes of this Part, a person (“person A”) is to be regarded as responsible for any animal for which a person who is under 16 years of age, of whom person A has actual care and control, is responsible.
- (5) For the purposes of this Part, a person does not relinquish responsibility for an animal by reason only of abandoning it.

### *Prevention of harm*

## 19 Unnecessary suffering **S**

- (1) A person commits an offence if—
  - (a) the person causes a protected animal unnecessary suffering by an act, and



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- (b) the person knew, or ought reasonably to have known, that the act would have caused the suffering or be likely to do so.
- (2) A person who is responsible for an animal commits an offence if—
- (a) the person causes the animal unnecessary suffering by an act or omission, and
  - (b) the person knew, or ought reasonably to have known, that the act or omission would have caused the suffering or be likely to do so.
- (3) A person (“person A”) who is responsible for an animal commits an offence if—
- (a) another person causes the animal unnecessary suffering by an act or omission, and
  - (b) person A—
    - (i) permits that to happen, or
    - (ii) fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.
- (4) The considerations to which regard is to be had in determining, for the purposes of subsections (1) to (3), whether suffering is unnecessary include—
- (a) whether the suffering could reasonably have been avoided or reduced,
  - (b) whether the conduct concerned was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment,
  - (c) whether the conduct concerned was for a legitimate purpose, for example—
    - (i) the purpose of benefiting the animal, or
    - (ii) the purpose of protecting a person, property or another animal,
  - (d) whether the suffering was proportionate to the purpose of the conduct concerned,
  - (e) whether the conduct concerned was in the circumstances that of a reasonably competent and humane person.
- (5) This section does not apply to the destruction of an animal in an appropriate and humane manner.

## 20 Mutilation **S**

- (1) A person commits an offence if the person—
- (a) carries out a prohibited procedure on a protected animal, or
  - (b) causes a prohibited procedure to be carried out on a protected animal.
- (2) A person (“person A”) who is responsible for an animal commits an offence if—
- (a) another person carries out a prohibited procedure on the animal, and
  - (b) person A—
    - (i) permits that to happen, or
    - (ii) fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.

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- (3) A person commits an offence if the person takes a protected animal, or causes a protected animal to be taken, from a place in Scotland for the purpose of having a prohibited procedure carried out on the animal at a place outwith Scotland.
- (4) In this section, references to the carrying out of a prohibited procedure on an animal are to the carrying out of a procedure which involves interference with the sensitive tissues or bone structure of the animal.
- (5) This section does not apply—
  - (a) in relation to a procedure which is carried out for the purpose of medical treatment of an animal,
  - (b) in relation to a procedure which is carried out—
    - (i) for a purpose which,
    - (ii) in such manner as, and
    - (iii) in accordance with such conditions as, the Scottish Ministers may by regulations specify, or
  - (c) in such circumstances as the Scottish Ministers may by regulations specify.
- (6) Before making regulations under subsection (5), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent relevant interests, and
  - (b) such other persons,
 as they consider appropriate.

## 21 Cruel operations **S**

- (1) A person commits an offence if the person performs an operation on a protected animal without due care and humanity.
- (2) A person (“person A”) who is responsible for an animal commits an offence if—
  - (a) another person performs an operation on the animal without due care and humanity, and
  - (b) person A—
    - (i) permits that to happen, or
    - (ii) fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.
- (3) This section is subject to the Protection of Animals (Anaesthetics) Act 1954 (c. 46).

## 22 Administration of poisons etc. **S**

- (1) A person commits an offence if, without lawful authority or reasonable excuse, the person—
  - (a) administers a poisonous or injurious drug or substance to a protected animal, or
  - (b) causes such a drug or substance to be taken by a protected animal, and the person knows the drug or substance to be poisonous or injurious.
- (2) A person (“person A”) who is responsible for an animal commits an offence if—
  - (a) without lawful authority or reasonable excuse, another person—

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- (i) administers a poisonous or injurious drug or substance to the animal, or
- (ii) causes such a drug or substance to be taken by the animal, and
- (b) person A—
  - (i) permits that to happen, or
  - (ii) knowing the drug or substance to be poisonous or injurious, fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.

(3) In this section, references to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance.

## 23 Animal fights **S**

- (1) A person commits an offence if the person—
  - (a) keeps or trains an animal for an animal fight, or
  - (b) possesses, without lawful authority or reasonable excuse, any equipment which is designed or adapted for use at an animal fight.
- (2) A person commits an offence if the person—
  - (a) causes an animal fight to take place,
  - (b) arranges an animal fight,
  - (c) participates in making, or carrying out, arrangements for an animal fight (including allowing premises to be used for, or charging admission to attend, an animal fight),
  - (d) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring (or not occurring) in the course of an animal fight, or
  - (e) takes part in an animal fight.
- (3) A person commits an offence if, without lawful authority or reasonable excuse, the person is present at an animal fight.
- (4) A person commits an offence if the person—
  - (a) supplies a video recording of an animal fight,
  - (b) publishes a video recording of an animal fight,
  - (c) shows a video recording of an animal fight to another person, or
  - (d) possesses a video recording of an animal fight with the intention of supplying it to another person.
- (5) Subsection (4) does not apply if the video recording is of an animal fight which took place—
  - (a) outwith Great Britain, or
  - (b) before the date on which this subsection comes into force.
- (6) Subsection (4) does not apply—
  - (a) in relation to anything done—
    - (i) for the purpose of, or
    - (ii) by means of,the inclusion of a video recording in a programme service,

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- (b) in relation to anything done for the purposes of or in connection with law enforcement (including for the education or training of persons involved in law enforcement), or
  - (c) in relation to anything done in the course of any other lawful activity in so far as the thing is done in the public interest or with a view to the public interest being served.
- (7) For the purposes of subsections (4) to (6)—
- (a) the expression “programme service” has the same meaning as in the Communications Act 2003 (c. 21),
  - (b) the expression “video recording” means a recording, in any form, from which a moving image may by any means be reproduced (and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image),
  - (c) references to supplying or publishing a video recording are to supplying or publishing a video recording in any manner (including, in relation to a video recording in the form of data recorded electronically, by means of transmitting such data),
  - (d) references to showing a video recording are to showing a moving image reproduced from a video recording by any means.
- (8) Any reference in this Part to an animal in relation to which an offence was committed includes, in the case of an offence under this section, an animal involved in the animal fight concerned.
- (9) In this section, an “animal fight” is an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting.

#### *Promotion of welfare*

### **24 Ensuring welfare of animals S**

- (1) A person commits an offence if the person does not take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which the person is responsible are met to the extent required by good practice.
- (2) The circumstances to which, for the purposes of subsection (1), regard is to be had include—
- (a) any lawful purpose for which the animal is kept,
  - (b) any lawful activity undertaken in relation to the animal.
- (3) For the purposes of subsection (1), an animal's needs include—
- (a) its need for a suitable environment,
  - (b) its need for a suitable diet,
  - (c) its need to be able to exhibit normal behaviour patterns,
  - (d) any need it has to be housed with, or apart from, other animals,
  - (e) its need to be protected from suffering, injury and disease.
- (4) This section does not apply to the destruction of an animal in an appropriate and humane manner.

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## 25 Care notices **S**

- (1) If—
- (a) it comes to an inspector's attention (including on information received from a constable) that a person is failing to secure the welfare of an animal for which the person is responsible, and
  - (b) it appears to the inspector that the failure constitutes an offence by the person under section 24,
- the inspector may serve on the person a notice (in this section referred to as a “care notice”).
- (2) A care notice must—
- (a) specify—
    - (i) the nature of the failure (including the reasons why it appears to the inspector that the failure constitutes an offence under section 24),
    - (ii) the date on which the failure came to the inspector's attention,
  - (b) describe the steps that the inspector considers need to be taken in order for the failure to be rectified,
  - (c) require that those steps be taken,
  - (d) fix a period (the “compliance period”) within which those steps are to be taken, and
  - (e) explain the effect of subsections (3) to (7).
- (3) Where a care notice is served, no proceedings for—
- (a) an offence under subsection (7),
  - (b) an offence under section 24 which is constituted by the failure specified (or any continuation of it),
- may be taken in respect of the default period before the compliance period expires.
- (4) Where a person complies with a care notice in every material regard, no proceedings for an offence under section 24 which is constituted by the failure specified (or any continuation of it) may be taken in respect of the default period.
- (5) In subsections (3) and (4), the “default period” is the period—
- (a) beginning on the date specified under subsection (2)(a)(ii), and
  - (b) ending on the date on which the compliance period expires.
- (6) An inspector may extend any compliance period.
- (7) A person on whom a care notice has been served commits an offence if, without reasonable excuse, the person fails in a material regard to comply with the notice.

## 26 Provision for securing welfare **S**

- (1) The Scottish Ministers may by regulations make provision for the purposes of, and in connection with, securing the welfare of—
- (a) animals for which a person is responsible,
  - (b) the progeny of such animals.
- (2) Regulations under subsection (1) may include, in particular—
- (a) provision prescribing general or specific requirements or prohibitions,

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- (b) provision for enforcement, other than by way of proceedings for an offence, of provisions of the regulations,
  - (c) provision—
    - (i) that breach of a provision of the regulations is an offence,
    - (ii) for penalties as respects the offence,
  - (d) provision for and in connection with post-conviction orders (whether by reference to sections 39 to 43 or otherwise) in relation to an offence under the regulations,
  - (e) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of provisions of the regulations,
  - (f) provision—
    - (i) that obstructing a person in the exercise of a power conferred by the regulations is an offence,
    - (ii) for penalties as respects the offence,
  - (g) provision (whether or not subject to specified conditions) for exemptions from, or qualification to, any requirements, prohibitions or offences provided for in the regulations.
- (3) For the purpose of subsection (2), requirements and prohibitions may, in particular, relate to—
- (a) the prevention of suffering,
  - (b) the way in which animals are looked after and the conditions in which they are kept,
  - (c) the identification of animals (whether by use of marks, microchips or otherwise),
  - (d) the breeding and rearing of animals,
  - (e) how animals are transported,
  - (f) how animals are prepared for killing and are killed,
  - (g) hygiene,
  - (h) the prevention of disease and of the spread of disease,
  - (i) the keeping of records.
- (4) Regulations under subsection (1) may also make provision for fees or other charges in relation to the exercise of functions under the regulations.
- (5) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) such persons appearing to them to represent relevant interests, and
  - (b) such other persons,
- as they consider appropriate.

## 27 Licensing etc. of activities involving animals **S**

- (1) The Scottish Ministers may by regulations prohibit the carrying on, without the authority of a licence for the purpose, of an activity which—
- (a) involves animals for which a person is responsible, and
  - (b) is specified in the regulations.

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- (2) The Scottish Ministers may by regulations prohibit the carrying on, without the authority of registration for the purpose, of an activity which—
  - (a) involves animals for which a person is responsible, and
  - (b) is specified in the regulations.
- (3) Regulations under subsection (1) or (2) must be for the purposes of securing the welfare of animals for which a person is responsible.
- (4) Regulations under subsection (1) or (2) may include, in particular—
  - (a) provision for enforcement, other than by way of proceedings for an offence, of provisions of the regulations,
  - (b) provision—
    - (i) that breach of a provision of the regulations is an offence,
    - (ii) for penalties as respects the offence,
  - (c) provision for and in connection with post-conviction orders (whether by reference to sections 39 to 43 or otherwise) in relation to an offence under the regulations,
  - (d) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of provisions of the regulations,
  - (e) provision—
    - (i) that obstructing a person in the exercise of a power conferred by the regulations is an offence,
    - (ii) for penalties as respects the offence,
  - (f) provision (whether or not subject to specified conditions) for exemptions from, or qualification to, an offence under the regulations.
- (5) The Scottish Ministers may by regulations make provision about—
  - (a) licences for the purposes of subsection (1),
  - (b) registration for the purposes of subsection (2).
- (6) Such provision may, in particular, relate to—
  - (a) procedures for—
    - (i) applying for licences or (as the case may be) registration,
    - (ii) granting and refusing applications,
  - (b) any—
    - (i) qualifications required to be held by applicants for licences or (as the case may be) registration,
    - (ii) other matters to be taken into account when considering applications for licences or (as the case may be) registration,
  - (c) conditions of licences or (as the case may be) registration,
  - (d) suspension and revocation of licences or (as the case may be) registration in specified circumstances,
  - (e) appeals in connection with the matters mentioned in paragraphs (a) to (d).
- (7) Regulations under subsection (5)(a) may include, in particular—
  - (a) provision for enforcement, other than by way of proceedings for an offence, of provisions of licences,
  - (b) provision—

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- (i) that contravention of a condition of a licence is an offence,
  - (ii) for penalties as respects the offence,
  - (c) provision for and in connection with post-conviction orders (whether by reference to sections 39 to 43 or otherwise) in relation to an offence under the regulations,
  - (d) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with contraventions (and suspected contraventions) of provisions of licences.
- (8) Regulations under subsection (1), (2) or (5) may also make provision for fees or other charges in relation to the exercise of functions under the regulations.
- (9) Before making regulations under subsection (1), (2) or (5), the Scottish Ministers must consult—
- (a) such persons appearing to them to represent relevant interests, and
  - (b) such other persons,
- as they consider appropriate.

## **28 Prohibition on keeping certain animals** S

- (1) The Scottish Ministers may by regulations prohibit the keeping at—
- (a) domestic premises,
  - (b) other premises,
- of any animals of a kind specified in the regulations.
- (2) For the purposes of subsection (1)(b), “other premises”—
- (a) does not include the premises of a zoo—
    - (i) to which the Zoo Licensing Act 1981 (c. 37) applies, and
    - (ii) which is licensed under that Act,
  - (b) otherwise, means premises of such type as are described in the regulations.
- (3) Regulations under subsection (1) must be for the purposes of securing the welfare of animals.
- (4) Regulations under subsection (1) may include, in particular—
- (a) provision for enforcement, other than by way of proceedings for an offence, of provisions of the regulations,
  - (b) provision—
    - (i) that breach of a provision of the regulations is an offence,
    - (ii) for penalties as respects the offence,
  - (c) provision for and in connection with post-conviction orders (whether by reference to sections 39 to 43 or otherwise) in relation to an offence under the regulations,
  - (d) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of provisions of the regulations,
  - (e) provision—
    - (i) that obstructing a person in the exercise of a power conferred by the regulations is an offence,
    - (ii) for penalties as respects the offence,



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- (f) provision (whether or not subject to specified conditions) for exemptions from, or qualification to, an offence under the regulations.
- (5) In determining whether to make regulations under subsection (1) in relation to a type of premises, the Scottish Ministers must have regard to whether (and the extent to which) adequate provision for the welfare of animals of the kind in question—
  - (a) is capable of being made, and
  - (b) is likely to be made,at that type of premises.
- (6) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent relevant interests, and
  - (b) such other persons,as they consider appropriate.

## 29 Abandonment **S**

- (1) A person commits an offence if, without reasonable excuse, the person—
  - (a) abandons an animal for which the person is responsible, and
  - (b) does so in circumstances likely to cause it unnecessary suffering.
- (2) A person commits an offence if, without reasonable excuse, the person—
  - (a) leaves unattended an animal for which the person is responsible, and
  - (b) fails to make adequate provision for its welfare.
- (3) The considerations to which regard is to be had in determining, for the purposes of subsection (2), whether such provision has been made include—
  - (a) the kind of animal concerned and its age and state of health,
  - (b) the length of time for which it is, or has been, left,
  - (c) what it reasonably requires by way of—
    - (i) food and water,
    - (ii) shelter and warmth.

## 30 Sale of animals to children **S**

- (1) A person (“person A”) commits an offence if person A sells an animal to a person (“person B”) who is under 16 years of age.
- (2) It is a defence to a charge of an offence under subsection (1) for person A to demonstrate that person A—
  - (a) having been shown convincing evidence (for example, a passport or a photocard driving licence) of person B's identity and age, or
  - (b) having no reasonable cause to suspect from person B's appearance that person B was under 16 years of age,believed that person B was aged 16 years or over.
- (3) For the purposes of subsection (1), selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction.

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### **31 Offering animals as prizes** **S**

- (1) A person commits an offence if the person offers or gives an animal to another person as a prize.
- (2) Subsection (1) does not apply where the prize is offered or given in a family context.

#### *Animals in distress*

### **32 Taking possession of animals** **S**

- (1) An inspector or a constable may, if it appears that a protected animal is suffering—
  - (a) take, or
  - (b) arrange for the taking of,such steps as appear to be immediately necessary to alleviate the animal's suffering.
- (2) However, subsection (1) does not authorise the destruction of a protected animal (for which section 35 makes provision).
- (3) If a veterinary surgeon certifies that a protected animal is—
  - (a) suffering, or
  - (b) likely to suffer if its circumstances do not change,an inspector or a constable may take possession of the animal.
- (4) But an inspector or a constable may take that step, or arrange for the taking of that step, without the certification of a veterinary surgeon if—
  - (a) it appears that the animal is—
    - (i) suffering, or
    - (ii) likely to suffer if its circumstances do not change, and
  - (b) it is reasonable in the circumstances not to seek the assistance of, or wait for, a veterinary surgeon.
- (5) Where possession is taken of an animal under subsection (3) or (4), an inspector or constable may also take possession of any dependent offspring of the animal.
- (6) Where possession is taken of an animal under subsection (3), (4) or (5), an inspector or a constable may—
  - (a) remove the animal, or arrange for it to be removed, to a place of safety,
  - (b) care for the animal, or arrange for it to be cared for—
    - (i) at the place where it was found,
    - (ii) at such other place as the inspector or constable considers appropriate.
- (7) An inspector or a constable may use (or arrange to have used) a mark, microchip or another method for identifying any animal so taken.
- (8) An inspector or a constable may, in acting under subsection (6)(b)(i), make use of any equipment found at the place.
- (9) A veterinary surgeon may examine, and take samples from, an animal for the purpose of determining its condition for the purposes of subsection (3).

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- (10) In considering, for the purposes of subsection (3) or (4), whether an animal is likely to suffer if its circumstances do not change, account may be taken of any suffering of other animals that are (or were recently) subject to similar circumstances at the same place.
- (11) Any expenses reasonably incurred by an inspector or a constable in consequence of acting under this section are to be reimbursed by the owner or any other person responsible for the animal concerned.
- (12) This section is without prejudice to—
  - (a) the ability of an inspector or a constable to take possession of an animal with the consent of its owner or of any other person who is responsible for it, and
  - (b) any other authority for taking possession of an animal.

### **33 Release orders where animals taken** S

- (1) The court may order that any animal taken into possession under section 32 be given up to a person specified in the order.
- (2) An order under subsection (1) may be made on summary application by—
  - (a) the owner of the animal, or
  - (b) any other person appearing to the court to have a sufficient concern for the animal.
- (3) A person is entitled to be heard in relation to an application for an order under subsection (1) if (despite not being the applicant) the person is—
  - (a) the owner of the animal,
  - (b) an inspector,
  - (c) a constable who—
    - (i) took the animal into possession under section 32,
    - (ii) is caring for, or has arranged for the care of, the animal under that section,
  - (d) a person—
    - (i) with whom an arrangement for the care of the animal has been made under that section, and
    - (ii) who is authorised by the Scottish Ministers to be heard in relation to the application, or
  - (e) any other person appearing to the court to have a sufficient concern for the animal.
- (4) In determining whether to make an order under subsection (1), the court must have regard to the desirability of—
  - (a) protecting the value of any animal to which the order applies, and
  - (b) avoiding increasing any expenses which a person may be required to reimburse.

### **34 Disposal orders where animals taken** S

- (1) The court may, in relation to any animal taken into possession under section 32, order—
  - (a) that specified treatment be administered to the animal,

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- (b) that the animal be—
  - (i) destroyed,
  - (ii) sold, or
  - (iii) disposed of in another manner.
- (2) An order under subsection (1) may include—
  - (a) provision appointing a person who is to secure that the order is carried out,
  - (b) such other provision as the court considers appropriate in connection with the order.
- (3) Provision under subsection (2)(b) may, in particular, require reimbursement of any expenses reasonably incurred in carrying out the order.
- (4) An order under subsection (1) may be made on summary application by—
  - (a) the owner of the animal,
  - (b) an inspector,
  - (c) a constable who—
    - (i) took the animal into possession under section 32,
    - (ii) is caring for, or has arranged for the care of, the animal under that section,
  - (d) a person—
    - (i) with whom an arrangement for the care of the animal has been made under that section, and
    - (ii) who is authorised by the Scottish Ministers to make the application, or
  - (e) any other person appearing to the court to have a sufficient concern for the animal.
- (5) A person is entitled to be heard in relation to an application for an order under subsection (1) if (despite not being the applicant) the person is—
  - (a) a person mentioned in paragraph (a) to (c) or (e) of subsection (4), or
  - (b) a person—
    - (i) with whom an arrangement for the care of the animal has been made under section 32, and
    - (ii) who is authorised by the Scottish Ministers to be heard in relation to the application.
- (6) The court may not make an order under subsection (1) which involves the destruction of an animal unless it is satisfied, on evidence provided (orally or in writing) by a veterinary surgeon, that destruction would be in the interests of the animal.
- (7) Before making an order under subsection (1), the court must give the owner of the animal an opportunity to make representations unless it is not practicable for it to do so.
- (8) In determining whether or how to make an order under subsection (1), the court must have regard to the desirability of—
  - (a) protecting the value of any animal to which the order applies, and
  - (b) avoiding increasing any expenses which a person may be required to reimburse.
- (9) If an owner of an animal is subject to any liability by virtue of—

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- (a) section 32(11),
- (b) subsection (3),

any sum which the owner is due from any proceeds of sale of the animal under this section may be used to offset the liability.

### **35**      **Resort to destruction of animals** **S**

- (1) If a veterinary surgeon certifies that the condition of a protected animal is such that it is appropriate that it be destroyed, an inspector or a constable may—
  - (a) destroy the animal where it is or take it elsewhere and destroy it there, or
  - (b) arrange for the taking of any of those steps.
- (2) But an inspector or a constable may take, or arrange for the taking of, any of those steps without the certification of a veterinary surgeon if—
  - (a) it appears the condition of the animal is such that there is no reasonable alternative to destroying it, and
  - (b) it is reasonable in the circumstances not to seek the assistance of, or wait for, a veterinary surgeon.
- (3) A veterinary surgeon may examine, and take samples from, an animal for the purpose of determining its condition for the purposes of subsection (1).
- (4) Any expenses reasonably incurred by an inspector or a constable in consequence of acting under this section are to be reimbursed by the owner or any other person responsible for the animal concerned.

#### *Welfare bodies, codes and guidance*

### **36**      **Animal welfare bodies** **S**

- (1) The Scottish Ministers may by regulations—
  - (a) establish a body with the function of providing advice to—
    - (i) the Scottish Ministers, and
    - (ii) such other persons as the Scottish Ministers may direct,on such matters concerning the welfare of protected animals as may be specified in the regulations,
  - (b) make such provision for the purposes of and in connection with the establishment and operation of the body as the Scottish Ministers consider appropriate.
- (2) The Scottish Ministers may by regulations make provision for facilitating or improving co-ordination among bodies which have functions relating to the welfare of protected animals.

### **37**      **Animal welfare codes** **S**

- (1) The Scottish Ministers may make codes of practice for the purpose of providing practical guidance in respect of any provision made by this Part or by regulations under this Part.

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- (2) Before making a code of practice under subsection (1) (in this section referred to as an “animal welfare code”), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent relevant interests, and
  - (b) such other persons,
 as they consider appropriate.
- (3) An animal welfare code may—
  - (a) make different provision for different cases or class of case,
  - (b) revise a previous code.
- (4) The Scottish Ministers may by notice revoke, with such transitional or saving provision as they consider to be necessary or expedient, any animal welfare code.
- (5) The Scottish Ministers must, in such manner and to such extent as they consider appropriate, publicise any animal welfare code.
- (6) An animal welfare code—
  - (a) requires to be laid before, and approved by resolution of, the Scottish Parliament, and
  - (b) comes into effect on such date after approval under paragraph (a) as is specified in the code.
- (7) A notice revoking an animal welfare code—
  - (a) requires to be laid before, and approved by resolution of, the Parliament, and
  - (b) revokes the code on such date after approval under paragraph (a) as is specified in the notice.
- (8) A person's failure to comply with a provision of an animal welfare code does not of itself render the person liable to proceedings of any sort.
- (9) In any proceedings for an offence under this Part, or under regulations made under section 26 or 27—
  - (a) failure to comply with a relevant provision of an animal welfare code may be relied upon as tending to establish liability,
  - (b) compliance with a relevant provision of an animal welfare code may be relied upon as tending to negative liability.

### **38 Animal welfare guidance** **S**

The Scottish Ministers may, with a view to securing the welfare of protected animals, issue guidance on such matters as they consider appropriate.

#### *Post-conviction orders*

### **39 Deprivation orders** **S**

- (1) Where a person is convicted of a relevant offence, the convicting court may make an order (in this Part referred to as a “deprivation order”) in respect of any animal in relation to which the offence was committed.
- (2) A deprivation order is an order—
  - (a) depriving a person of possession or ownership (or both) of an animal, and

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- (b) for—
  - (i) the destruction,
  - (ii) the sale, or
  - (iii) another disposal,of the animal.
- (3) Where the court decides not to make a deprivation order in relation to a relevant offence, it must state its reasons except where it makes a disqualification order in relation to the offence.
- (4) A deprivation order may be made in addition to, or instead of, any other penalty or order which may be imposed in relation to a relevant offence.
- (5) A deprivation order may make provision in respect of any dependent offspring of an animal to which it applies.
- (6) A deprivation order may include—
  - (a) provision—
    - (i) appointing a person who is to secure that the order is carried out,
    - (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under sub-paragraph (i),
  - (b) provision authorising—
    - (i) a person appointed under paragraph (a)(i), and
    - (ii) any person acting on that person's behalf,to enter, for the purposes of securing that the order is carried out, any premises where an animal to which the order applies is kept,
  - (c) such other provision as the court considers appropriate in connection with the order.
- (7) Provision under subsection (6)(c) may, in particular—
  - (a) require reimbursement of any expenses reasonably incurred in carrying out the order,
  - (b) relate to the retention of any proceeds of the disposal.
- (8) Except in the case of an offence under section 23, the court may not make a deprivation order which involves the destruction of an animal unless it is satisfied, on evidence provided (orally or in writing) by a veterinary surgeon, that destruction would be in the interests of the animal.
- (9) Before making a deprivation order, the court must give the owner of the animal concerned an opportunity to make representations unless it is not practicable for it to do so.
- (10) In this section, a “relevant offence” is—
  - (a) an offence under sections 19 to 23,
  - (b) an offence under section 24 or 25(7),
  - (c) an offence under section 29,
  - (d) an offence under section 40(11) committed by reason of owning or keeping an animal.

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#### 40 Disqualification orders **S**

- (1) Where a person is convicted of a relevant offence, the convicting court may 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).
- (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,
  - (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.
- (5) Where the court decides not to make a disqualification order in relation to a relevant offence, it must state its reasons.
- (6) A disqualification order may be made in addition to, or instead of, 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.



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- (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,
- 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.

#### **41 Seizure orders where disqualification breached** S

- (1) Where the court is satisfied that a person who is subject to a disqualification order owns or keeps an animal in breach of the order, the court may make an order (in this Part referred to as a “seizure order”) in respect of all animals which the person owns or keeps in breach of the disqualification order.
- (2) A seizure order may be made—
- (a) on summary application by an inspector,
  - (b) even if proceedings have not been, or are not likely to be, taken against the person for an offence under section 40(11).
- (3) A seizure order is an order—
- (a) depriving a person of possession or ownership (or both) of an animal, and
  - (b) for—
    - (i) the destruction,
    - (ii) the sale, or
    - (iii) another disposal,of the animal.
- (4) A seizure order may include—
- (a) provision—
    - (i) appointing a person who is to secure that the order is carried out,
    - (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under sub-paragraph (i),
  - (b) provision authorising—
    - (i) a person appointed under paragraph (a)(i), and
    - (ii) any person acting on that person's behalf,

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- to enter, for the purposes of securing that the order is carried out, any premises where an animal to which the order applies is kept,
- (c) such other provision as the court considers appropriate in connection with the order.
- (5) Provision under subsection (4)(c) may, in particular—
- (a) require reimbursement of any expenses reasonably incurred in carrying out the order,
- (b) relate to the retention of any proceeds of the disposal.
- (6) The court may not make a seizure order which involves the destruction of an animal unless it is satisfied, on evidence provided (orally or in writing) by a veterinary surgeon, that destruction would be in the interests of the animal.
- (7) Before making a seizure order, the court must give the owner of the animals concerned an opportunity to make representations unless it is not practicable for it to do so.
- (8) In determining whether or how to make a seizure order, the court must have regard to the desirability of—
- (a) protecting the value of any animal to which the order applies, and
- (b) avoiding increasing any expenses which a person may be required to reimburse.
- (9) When an application is made under subsection (2)(a), the court may make an order under this subsection (an “interim order”) containing such provision as the court considers appropriate in relation to the keeping of an animal until the application is finally determined.
- (10) Subsections (4), (5)(a) and (8) apply in relation to an interim order as they apply in relation to a seizure order.

#### **42 Termination or variation of disqualification S**

- (1) A person who is subject to a disqualification order may request the court which made the order to terminate or vary the order.
- (2) An application under subsection (1) may not be made—
- (a) before the expiry of the period of one year beginning with the date on which the order was made,
- (b) where there has been a previous application under that subsection in relation to the same order, before the expiry of the period of one year beginning with the date on which the previous application was determined, or
- (c) within any period specified under—
- (i) section 40(9)(b), or
- (ii) subsection (5).
- (3) On an application under subsection (1), the court may—
- (a) refuse the application,
- (b) terminate the disqualification order, or
- (c) vary the disqualification order so as to relax any disqualification imposed by it.

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- (4) In considering the application, the court must have particular regard to—
  - (a) the nature of the offence in relation to which the disqualification order was made,
  - (b) the character of the applicant, and
  - (c) the applicant's conduct since the order was made.
- (5) Where the court refuses an application made under subsection (1), the court may specify a period within which the applicant may not make a further application under that subsection in relation to the same order.

### 43 Appeals against orders **S**

- (1) Any deprivation order or disqualification order is, for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995 (c. 46), to be treated as a sentence.
- (2) Where a deprivation order is made, any person (apart from a person who may appeal against the order by virtue of subsection (1)) who has an interest in any animal to which the order applies may appeal to the High Court of Justiciary against the order by the same procedure as applies under subsection (1) in relation to a deprivation order.
- (3) The disqualified person by reference to whom a seizure order is made, or any person (apart from that disqualified person) who entered the process prior to the making of the order, may appeal to the Sheriff Principal against the order.
- (4) The operation of any deprivation order or seizure order is suspended until—
  - (a) any period for an appeal against the order has expired,
  - (b) the period for an appeal against the conviction on which the order depends has expired, and
  - (c) any appeal against the order or that conviction has been withdrawn or finally determined.
- (5) Where the operation of a deprivation order or seizure order is suspended under subsection (4), or such an order is not executable because decree has not been extracted, the court which made the order may make an order under this subsection (an “interim order”) containing such provision as the court considers appropriate in relation to the keeping of an animal for so long as the first-mentioned order remains suspended or inexecutable.
- (6) An interim order may, in particular—
  - (a) make provision—
    - (i) appointing a person who is to secure that the order is carried out,
    - (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under sub-paragraph (i),
  - (b) make provision authorising—
    - (i) a person appointed under paragraph (a)(i), and
    - (ii) any person acting on that person's behalf,to enter, for the purposes of securing that the order is carried out, any premises where an animal to which the order applies is kept,
  - (c) for reimbursement of any expenses reasonably incurred in carrying out the order.

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- (7) In determining whether or how to make an interim order, the court must have regard to the desirability of—
- (a) protecting the value of any animal to which the order applies, and
  - (b) avoiding increasing any expenses which a person may be required to reimburse.
- (8) Where the operation of a deprivation order is suspended under subsection (4), a person commits an offence if the person sells or otherwise parts with an animal to which the order applies.

### *Offences and penalties*

#### **44 Proceedings for animal fighting offences** S

- (1) Proceedings for an offence under section 23 may be brought within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge.
- (2) But no such proceedings may be brought more than 3 years—
  - (a) after the commission of the offence, or
  - (b) in the case of an offence involving a continuous contravention, after the last date on which the offence was committed.
- (3) In a prosecution of an offence involving a continuous contravention, the entire period during which the contravention occurred may be included.
- (4) A certificate signed by or on behalf of the prosecutor which states the date on which evidence referred to in subsection (1) came to the prosecutor's knowledge is conclusive evidence of that fact; and such a certificate which purports to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) For the purposes of this section, proceedings are deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted provided that the warrant is executed without undue delay.

#### **45 Offences by bodies corporate etc.** S

- (1) Where an offence under this Part, or under regulations made under this Part, is committed by a body corporate and is committed with the consent or connivance of, or is attributable to the neglect of—
  - (a) a director, manager, secretary or other similar officer of the body, or
  - (b) a person purporting to act in any such capacity,
 that person (as well as the body corporate) commits the offence.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to acts and omissions by members in exercising functions of management as if they were directors of the body corporate.
- (3) Where an offence under this Part, or under regulations made under this Part, is committed by a Scottish partnership and is committed with the consent or connivance of, or is attributable to the neglect of a partner, that partner (as well as the partnership) commits the offence.

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*Changes to legislation:* There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006. (See end of Document for details)

#### 46 Penalties for offences **S**

- (1) A person who commits an offence under section 19 or 23 is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both.
- (2) A person who commits any other offence under this Part is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.
- (3) A person who commits an offence under regulations made under this Part is liable on summary conviction to such penalties, not exceeding the penalties referred to in subsection (2), as are provided for in the regulations.

#### *Exclusions from application of this Part*

#### 47 Exclusions **S**

This Part does not apply—

- (a) in relation to anything which occurs by virtue of, or in accordance with, a provision of the Animals (Scientific Procedures) Act 1986 (c. 14),
- (b) in relation to anything which occurs in the normal course of fishing.

#### *Miscellaneous*

#### 48 Suffering **S**

In this Part, references to suffering include physical or mental suffering.

#### 49 Vets, inspectors and constables **S**

- (1) In this Part, “veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (c. 36).
- (2) In this Part, an “inspector” is, in the context of any particular provision, a person—
  - (a) appointed as an inspector by the Scottish Ministers, or authorised by them, for the purposes of the provision, or
  - (b) appointed as an inspector by a local authority for the purposes of the provision.
- (3) In subsection (2)(b), a “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).
- (4) An inspector incurs no civil or criminal liability for anything which the inspector does in purported exercise of any functions conferred on the inspector by a provision of this Part, or by regulations made under this Part, where the inspector acts on reasonable grounds and in good faith.
- (5) Subsection (4) does not affect any liability of any other person in respect of the thing done.
- (6) In this Part, a “constable” means a constable of a police force.

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(7) Schedule 1 makes provision in relation to powers of inspectors and constables for the purposes of and in connection with this Part.

#### **50 Premises** **S**

(1) In this Part, “premises” includes—

- (a) any land or building,
- (b) any other place, in particular—
  - (i) a vehicle or vessel,
  - (ii) a tent or moveable structure.

(2) In this Part, “domestic premises”—

- (a) means premises, or a part of premises, used (or used for the time being) exclusively as a dwelling-house, and
- (b) includes any land or structure belonging to or usually enjoyed with, or adjacent to and for the time being enjoyed with, the house.

#### **51 Regulations** **S**

(1) The powers of the Scottish Ministers to make regulations under this Part are exercisable by statutory instrument.

(2) And they include power to—

- (a) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of or in connection with the regulations,
- (b) make different provision for different purposes or for different cases or classes of case.

(3) But a statutory instrument containing regulations under this Part is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

### **PART 3** **S**

#### GENERAL

VALID FROM 06/10/2006

#### **52 Modification of enactments** **S**

Schedule 2 modifies enactments for the purposes of and in consequence of this Act.

#### **53 Ancillary provision** **S**

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.

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(2) The power to make orders under subsection (1) is exercisable by statutory instrument.

(3) But—

- (a) a statutory instrument containing an order under subsection (1) which modifies an Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament,
- (b) a statutory instrument containing any other order under that subsection is subject to annulment in pursuance of a resolution of the Parliament.

#### **54 Crown application** **S**

(1) This Act binds the Crown.

(2) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.

(3) However, the provisions made by this Act and any provisions made under it apply to persons in the service of the Crown as they apply to other persons.

(4) The Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes a contravention of a provision made by or under this Act.

#### **55 Commencement and short title** **S**

(1) The provisions of this Act, except sections 53 and 54 and this section, come into force on such day as the Scottish Ministers may by order appoint.

(2) The power to make orders under subsection (1) is exercisable by statutory instrument.

(3) And it includes power—

- (a) to appoint different days for different provisions,
- (b) to make such transitional or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of or in connection with this Act,
- (c) to make different provision for different purposes.

(4) This Act may be cited as the Animal Health and Welfare (Scotland) Act 2006.

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**Changes to legislation:** There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006. (See end of Document for details)

VALID FROM 06/10/2006

SCHEDULE 1 **S**

(introduced by section 49(7))

POWERS OF INSPECTORS AND CONSTABLES FOR PART 2

.....

SCHEDULE 2 **S**

(introduced by section 52)

MODIFICATION OF ENACTMENTS

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**Status:**

Point in time view as at 11/07/2006. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006.