

ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Animal Health

Section 11 – Livestock genotypes: specification, breeding and slaughter

69. Section 11 of the Act (inserting Part 2B into the 1981 Act) deals with Transmissible Spongiform Encephalopathies (TSEs). A TSE is a disease which causes changes to the brain and nervous system of an animal leading to death. Whilst scientific knowledge in relation to genetic control of TSEs is limited to sheep at the present time, section 11 provides power to deal with TSEs in other species of livestock (a definition is given in section 36X of Part 2B) if necessary and where scientifically possible.
70. There is presently no vaccine or cure for TSEs. It is currently possible to identify whether sheep are naturally resistant or susceptible to Scrapie (a TSE of sheep and goats) by testing a blood sample or tissue containing the animal's DNA and thereby discovering its genotype which is the genetic constitution of an organism. Control of TSEs in sheep is possible by selective breeding to increase the levels of natural genetic resistance. The provisions of Part 2B will enable similar steps to be taken for other livestock species as scientific knowledge increases.
71. The new Part 2B of the 1981 Act provides powers to: specify TSE susceptible livestock genotypes; ascertain, by sampling, genotypes and identify livestock; place restrictions on breeding; review the above restrictions; enforce the restrictions if not complied with; slaughter livestock susceptible to TSEs; gain entry to premises; and to pay compensation compulsorily in certain circumstances. It also makes it an offence to fail to comply with restrictions or requirements without reasonable excuse, or to do certain other things.
72. Section 36N allows the Scottish Ministers by order to specify livestock genotypes if they are satisfied that an animal of a particular livestock genotype has (or has had) a form of TSE (whether in Scotland or elsewhere). If it is appropriate they may also specify the form of TSE concerned. It is envisaged that this power would be used where an outbreak of TSE had occurred and it was known that a particular livestock genotype was susceptible to that TSE.
73. Section 36O provides Scottish Ministers with regulation making powers, by statutory instrument, to make provision requiring keepers of livestock to allow an inspector to obtain a sample from an animal to enable its genotype to be identified, to administer or otherwise attach an identification device to a livestock species and to make record keeping requirements.
74. Section 36P applies to livestock whose genotype has been specified under section 36N. Restriction notices, applicable to the circumstances of the case, may be issued to prevent the using of livestock, its semen, eggs or embryos in connection with breeding.

The semen, eggs or embryos must be destroyed. The owner must arrange for the creature to which the notice applies to be castrated, sterilised or slaughtered. This will enable a breeding programme to be set up where livestock would be used to produce offspring which are resistant to TSEs. The Scottish Ministers, under certain exceptional circumstances, may allow breeding with more susceptible genotypes if for example the breed is in danger of extinction.

75. Section 36Q makes provision for persons in receipt of a restriction notice to request a review of the restriction notice.
76. Section 36R applies if the Scottish Ministers are satisfied that an owner has not complied either entirely or in part with a restriction notice except where a review under section 36Q is still ongoing or has been successful. The Scottish Ministers may take such reasonable steps as they consider appropriate to secure compliance. In particular they may cause to be destroyed eggs, semen or embryos and may also have livestock castrated, sterilised or slaughtered.
77. Section 36S makes it an offence for a person to: sell or transfer livestock, semen, eggs or embryos to which a notice applies; fail without reasonable excuse to comply with a restriction notice; use any semen, eggs or embryos which the person knows, or ought reasonably to know, to have been taken from livestock to which a restriction notice applies; fail, without reasonable excuse, to comply with any provision of regulations made under section 36O; or fail to give an inspector such assistance or information as the inspector may reasonably request in connection with the exercise by the inspector of any of the inspector's functions under this Part. Where the person seeks to rely on the defence of excuse the onus is put on that person to prove - on balance of probabilities - the facts which underpin that defence.
78. Section 36T provides that the Scottish Ministers may cause to be slaughtered, with a view to preventing the spread of any form of TSE, livestock whose genotype has been specified by virtue of section 36N in relation to the form of TSE concerned. The Scottish Ministers may also cause to be slaughtered, to prevent the spread of any form of any TSE, livestock whose genotype has not been ascertained either due to matters of urgency or that the science does not enable the genotype to be identified.
79. Section 36U provides for an inspector to enter premises to ascertain whether a function of the Scottish Ministers or inspectors, conferred under Part 2B, should be exercised or to do anything in pursuance of or in connection with the exercise of that function. Inspectors must if required produce evidence of their authority to do this. Any power of entry must be exercised at a reasonable hour unless the inspector thinks the case is one of urgency (see section 62G(6)) and in relation to the power to enter premises used exclusively as a dwelling house, 24 hours' notice of the intended entry is to be given unless the case is one of urgency (see section 62G(5)). The provisions of section 62H (warrants) and section 62I (entry and warrants: supplementary) (see below) also apply to this power of entry.
80. Section 36V provides for the paying of compensation (by order, subject to negative resolution of the Scottish Parliament) for livestock slaughtered and property which has been destroyed by virtue of the restriction notice or by virtue of section 36R or livestock slaughtered by virtue of section 36T(1). The order may make different provision for different cases or classes of case.