

ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Animal Welfare

Section 39 – Deprivation orders

181. This section enables a court on convicting a person of a relevant offence to make an order, in addition to or instead of any other penalty, depriving an animal owner of possession or ownership (or both) of an animal. Section 39(9) requires the court, where practicable, to allow the owner an opportunity to make representations before the court makes an order. The animal in respect of which the order can be made is the animal in relation to which the offence was committed. In the case of animal fights, section 23(8) provides that this is the animal involved in the animal fight concerned. Section 39(8) requires the court to be satisfied, before ordering the destruction of an animal, that the making of such an order is in the interests of the animal to which it applies except in the case of an offence under section 23 (animal fights).
182. The relevant offences, conviction of which can give rise to the making of such an order are: causing unnecessary suffering, (section 19); mutilation (section 20); cruel operations (section 21); administration of poisons etc. (section 22); animal fights (section 23); failing to ensure the welfare of an animal (section 24); failure to comply with a care notice (section 25(7)); abandonment (section 29) and owning or keeping an animal in breach of a disqualification order (section 40(11)).
183. Subsection (2) provides as to the order which the court has power to make in terms of subsection (1). It is an order which deprives the offender of ownership or possession (or both) of the animal to which it relates and also orders the destruction, sale or other disposal of the animal. Subsection (5) allows the order also to make provision in respect of the dependent offspring of the animal.
184. Subsection (3) provides that the court has to explain its reasons for not making a deprivation order except where it has imposed a disqualification order under section 40.
185. Subsection (6) makes further provision as to what can be included in a deprivation order. This includes the provision for appointing someone to carry out the deprivation order, requiring delivery of relevant animals, conferring powers of entry on the person appointed to carry out the order and such other provision as the court considers appropriate.
186. Subsection (8) requires (except in the case of animal fights) that a veterinary surgeon provides evidence in relation to the destruction of an animal, either orally or in writing, before a deprivation order involving the destruction of an animal is made by a court. A veterinary surgeon does not necessarily require to attend the court in person but can provide evidence via alternative methods (such as video link, teleconferencing or in writing).