

ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Animal Welfare

Section 24 – Ensuring welfare of animals

127. The welfare offence in this section and the regulation-making power in section 26 of the Act replace provisions in the Agriculture (Miscellaneous Provisions) Act 1968 and extend a similar level of protection to both farmed and non-farmed animals. Where someone is responsible for an animal, they have a duty to take such steps as are reasonable in all the circumstances to ensure its needs are met to the extent required by good practice (subsection (1)).
128. In considering whether a person has complied with section 24, the court is required to take into account all relevant circumstances. However, for the avoidance of doubt, subsection (2) specifies certain matters which the court is to take into consideration when deciding whether a person has committed an offence, namely, “any lawful purpose for which the animal is kept” and “any lawful activity undertaken in relation to the animal”. This provision recognises that some lawful practices may prevent or hinder a person from ensuring that certain welfare needs are met, and requires the court to take that into account when considering what is reasonable in the circumstances of each case. For example, a dog used for search and rescue purposes may be placed in a dangerous situation and such an activity would not give rise to an offence under subsection (2).
129. Subsection (3) lists examples of the needs of an animal for the purpose of this section. This list is not exhaustive.
130. Subsection (4) makes clear that the killing of an animal is not in itself inconsistent with the duty to ensure its welfare if it is done in an appropriate and humane manner.