



# Animal Health and Welfare (Scotland) Act 2006 2006 asp 11

## PART 2

### ANIMAL WELFARE

#### *Introductory*

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

- (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,
  - (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—

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*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

“vertebrate” means any creature of the Sub-phylum Vertebrata of the Phylum Chordata,

“invertebrate” means any creature not of that Sub-phylum.

**Commencement Information**

**11** [S. 16](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

**17 Protected animals**

- (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).

**Commencement Information**

**12** [S. 17](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

**18 Responsibility for animals**

- (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.

**Commencement Information**

**13** [S. 18](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

*Prevention of harm*

**19 Unnecessary suffering**

- (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.
- [<sup>F1</sup>(4A) In determining for the purposes of subsection (1) whether suffering is unnecessary in a case where it was caused by conduct for a purpose mentioned in subsection (4)(c) (ii), the fact that the conduct was for that purpose is to be disregarded if—
- (a) the animal was under the control of a relevant officer at the time of the conduct,
  - (b) it was being used by that officer at that time, in the course of the officer's duties, in a way that was reasonable in all the circumstances, and
  - (c) that officer is not the person accused of committing the offence under subsection (1).
- (4B) In subsection (4A), “relevant officer” means—
- (a) a constable,
  - (b) a special constable within the meaning of section 9 of the Police and Fire Reform (Scotland) Act 2012,
  - (c) a person (other than a constable or a special constable) who has the powers of a constable or is otherwise employed or engaged to carry out, or assist in the carrying out of, police functions (within the meaning of section 99(1) of that Act),
  - (d) a prisoner custody officer within the meaning of section 114 of the Criminal Justice and Public Order Act 1994.

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- (4C) The Scottish Ministers may by regulations modify subsection (4B) to—
- (a) add to the categories of person specified in subsection (4B) other categories of person in the public service of the Crown,
  - (b) vary any category of person for the time being specified in subsection (4B),
  - (c) remove any category of person for the time being so specified.]
- (5) This section does not apply to the destruction of an animal in an appropriate and humane manner.

#### Textual Amendments

- F1** S. 19(4A)-(4C) inserted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 3, 22\(2\); S.S.I. 2020/379, reg. 2\(1\), sch. \(with reg. 3\)](#)

#### Commencement Information

- I4** S. 19 in force at 6.10.2006 by [S.S.I. 2006/482, art. 2](#)

## 20 Mutilation

- (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.
- (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—

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- (a) such persons appearing to them to represent relevant interests, and
  - (b) such other persons,
- as they consider appropriate.

**Modifications etc. (not altering text)**

- C1** S. 20 excluded (21.3.2007) by [The Prohibited Procedures on Protected Animals \(Exemptions\) \(Scotland\) Regulations 2007 \(S.S.I. 2007/256\)](#), regs. 1, 3

**Commencement Information**

- I5** S. 20(1)-(3) in force at 30.4.2007 by [S.S.I. 2007/257](#), **art. 2**
- I6** S. 20(4)-(6) in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2**

## 21 Cruel operations

- (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).

**Commencement Information**

- I7** S. 21 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2**

## 22 Administration of poisons etc.

- (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—
    - (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

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- (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.

#### Commencement Information

**I8** S. 22 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

## 23 Animal fights

- (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.

#### **Commencement Information**

**19** S. 23 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

### *Promotion of welfare*

## **24 Ensuring welfare of animals**

- (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.

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- (4) This section does not apply to the destruction of an animal in an appropriate and humane manner.

#### Commencement Information

**I10** S. 24 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

## 25 Care notices

- (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.



*Status: Point in time view as at 01/09/2021.*

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### Commencement Information

III S. 25 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

## 26 Provision for securing welfare

- (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,
  - (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.

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- (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.

#### Commencement Information

**I12** S. 26 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

## 27 Licensing etc. of activities involving animals

- (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.
- (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—

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- (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—
    - (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.

#### **Commencement Information**

**I13** S. 27 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

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

- (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,

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- (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,
  - (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.

#### Commencement Information

**I14** S. 28 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

## 29 Abandonment

- (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.

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- (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.

**Commencement Information**

**I15** S. 29 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

**30 Sale of animals to children**

- (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.

**Commencement Information**

**I16** S. 30 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

**31 Offering animals as prizes**

- (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.

**Commencement Information**

**I17** S. 31 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

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*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

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### *Animals in distress*

## **32 Taking possession of animals**

- (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).
- (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—

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (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.

**Commencement Information**

**I18** S. 32 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

**33 Release orders where animals taken**

- (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.

**Commencement Information**

**I19** S. 33 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

**34 Disposal orders where animals taken**

- (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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*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

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



*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

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.

**Commencement Information**

**I20** S. 34 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

**35 Resort to destruction of animals**

- (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.

**Commencement Information**

**I21** S. 35 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

*Welfare bodies, codes and guidance*

**36 Animal welfare bodies**

- (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.

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

#### Commencement Information

**I22** S. 36 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

### 37 Animal welfare codes

- (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.
- (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.

#### Commencement Information

**I23** S. 37 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

### 38 Animal welfare guidance

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

#### Commencement Information

I24 S. 38 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

#### *Post-conviction orders*

### 39 Deprivation orders

- (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
  - (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,

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (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.

**Modifications etc. (not altering text)**

**C2** Ss. 39, 40 applied (1.9.2021) by [The Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/84\)](#), regs. 1, **25(1)**

**Commencement Information**

**I25** S. 39 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2** (with art. 4(1)(b))

**40 Disqualification orders**

- (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,

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*Status: Point in time view as at 01/09/2021.*

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- (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.
- (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.

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

#### Modifications etc. (not altering text)

**C2** Ss. 39, 40 applied (1.9.2021) by [The Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/84\)](#), regs. 1, **25(1)**

#### Commencement Information

**I26** S. 40 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2** (with [art. 4\(1\)\(a\)](#))

## 41 Seizure orders where disqualification breached

- (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,
 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.

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (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.

**Modifications etc. (not altering text)**

**C3** Ss. 41, 42 applied (1.9.2021) by [The Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/84\)](#), regs. 1, **25(2)**

**Commencement Information**

**I27** S. 41 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2** (with [art. 4\(1\)\(c\)](#))

## 42 Termination or variation of disqualification

- (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.
- (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.

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (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.

**Modifications etc. (not altering text)**

**C3** Ss. 41, 42 applied (1.9.2021) by [The Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/84\)](#), regs. 1, **25(2)**

**Commencement Information**

**I28** S. 42 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2** (with art. 4(1)(d))

**43 Appeals against orders**

- (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 [F<sup>2</sup>Sheriff Appeal Court] 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,



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*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (c) for reimbursement of any expenses reasonably incurred in carrying out the order.
- (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.

**Textual Amendments**

**F2** Words in s. 43(2) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), art. 1, **Sch. 2 para. 10** (with art. 4)

**Modifications etc. (not altering text)**

**C4** S. 43 applied (1.9.2021) by [The Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/84\)](#), regs. 1, **25(2)**

**Commencement Information**

**I29** S. 43 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2**

*Offences and penalties*

**F3 44 Proceedings for animal fighting offences**

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**Textual Amendments**

**F3** S. 44 repealed (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 1(3), 22(2)**; [S.S.I. 2020/379](#), reg. 2(1), sch. (with reg. 3)

**45 Offences by bodies corporate etc.**

- (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.

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (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.

#### Commencement Information

**I30** S. 45 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2**

## 46 Penalties for offences

- [<sup>F4</sup>(1) A person who commits an offence under section 19 or 23 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or 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 [<sup>F5</sup>(other than under regulations made under section 46A)] is liable on summary conviction to such penalties, not exceeding the penalties [<sup>F6</sup>mentioned in subsection (4)], as are provided for in the regulations.

[<sup>F7</sup>(4) The penalties referred to in subsection (4) are imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both).]

#### Textual Amendments

- F4** S. 46(1) substituted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 1(2)(a)**, 22(2); [S.S.I. 2020/379](#), reg. 2(1), sch. (with reg. 3)
- F5** Words in s. 46(3) inserted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 1(2)(b)(i)**, 22(2); [S.S.I. 2020/379](#), reg. 2(1), sch.
- F6** Words in s. 46(3) substituted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 1(2)(b)(ii)**, 22(2); [S.S.I. 2020/379](#), reg. 2(1), sch.
- F7** S. 46(4) inserted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 1(2)(c)**, 22(2); [S.S.I. 2020/379](#), reg. 2(1), sch.

#### Commencement Information

**I31** S. 46 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2**

## [<sup>F8</sup>46A Fixed penalty notices for certain offences

- (1) The Scottish Ministers may by regulations make provision for or in connection with the issuing of fixed penalty notices in relation to certain offences.
- (2) The offences in relation to which fixed penalty notices may be issued must be specified in or by virtue of regulations under subsection (1).

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*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

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- (3) The offences which may be specified are offences—
- (a) under—
    - (i) this Part,
    - (ii) regulations made under section 26, 27 or 28 (whether made before, on or after the coming into force of this section), or
    - (iii) another enactment (whether made or, as the case may be, passed before, on or after the coming into force of this section) which the Scottish Ministers consider relates to animal welfare, and
  - (b) in relation to which the maximum penalty on conviction does not exceed imprisonment for a term of 6 months or a fine of level 5 on the standard scale (or both).
- (4) Regulations under subsection (1) may in particular include provision—
- (a) subject to subsections (6) and (7), prescribing the form of a fixed penalty notice,
  - (b) prescribing the persons or categories of persons who are authorised to issue fixed penalty notices,
  - (c) conferring on the Scottish Ministers the power to authorise a person to issue fixed penalty notices,
  - (d) conferring powers to enter premises (other than dwelling-houses) in connection with the issuing of fixed penalty notices,
  - (e) about the circumstances in which fixed penalty notices may be issued (including the test which must be satisfied before a person authorised to issue such notices may do so),
  - (f) about the circumstances in which fixed penalty notices may not be issued,
  - (g) about the circumstances in which fixed penalty notices may be withdrawn (including the effects of such withdrawal),
  - (h) prescribing the amount of the fixed penalty which is to apply to an offence, being not more than level 5 on the standard scale,
  - (i) prescribing the person to whom payment may be made (who need not be the person who issued the fixed penalty notice),
  - (j) prescribing the period of time within which a fixed penalty may be paid (in this section, the “payment period”),
  - (k) about the circumstances in which a person to whom a fixed penalty notice is issued may decline the notice or otherwise object to or challenge it (including the period within which the person may do so),
  - (l) about the effects of failing to decline or otherwise object to or challenge a fixed penalty notice before the end of the period prescribed for doing so (including that such failure is deemed to be acceptance of the notice),
  - (m) conferring on the person who issued the fixed penalty notice or the person to whom payment may be made the power to extend the payment period in any particular case if the person considers it appropriate to do so,
  - (n) about the methods by which fixed penalties may be paid,
  - (o) for the amount of a fixed penalty to be discounted or increased by an amount or percentage in circumstances prescribed by the regulations (but not so as to make the amount payable more than level 5 on the standard scale),
  - (p) prescribing the effect of paying a fixed penalty within the payment period (for example, that no proceedings may be brought in respect of the offence to which the fixed penalty notice relates),

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*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (q) about the consequences of not paying a fixed penalty within the payment period (including how liability to pay the penalty may be enforced),
  - (r) for additional procedure relating to fixed penalty notices (for example to make provision for hearings or appeals),
  - (s) for the destination of funds, the keeping of accounts and the preparation and publication of statements of account relating to fixed penalties provided for under the regulations,
  - (t) creating offences relating to—
    - (i) obstruction of a person who is exercising functions in relation to fixed penalty notices,
    - (ii) a failure to provide information requested in connection with a fixed penalty notice.
- (5) The maximum penalty that may be provided for in regulations under subsection (1) creating an offence is, on summary conviction, a fine not exceeding level 5 on the standard scale.
- (6) A fixed penalty notice provided for in regulations under subsection (1) must—
- (a) identify the offence to which it relates, and
  - (b) specify reasonable particulars of the circumstances alleged to constitute the offence.
- (7) A fixed penalty notice provided for in regulations under subsection (1) must also state—
- (a) the date on which the fixed penalty notice is issued,
  - (b) the amount of the fixed penalty,
  - (c) the person to whom payment may be made and the person's address,
  - (d) the payment period,
  - (e) the method by which payment may be made,
  - (f) the effect of paying the fixed penalty within the payment period and the consequences of not paying the fixed penalty within that period,
  - (g) details of any procedure for challenging or appealing the fixed penalty notice.
- (8) Regulations under subsection (1) may modify any enactment (including this Act).
- (9) In this section, “fixed penalty notice” means a notice specifying a sum of money that may or must be paid as an alternative to prosecution for an offence.]

#### Textual Amendments

- F8** S. 46A inserted (30.11.2020) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 2, 22(2); S.S.I. 2020/379, reg. 2(1), sch.

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

#### 47 Exclusions

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),

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*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

- (b) in relation to anything which occurs in the normal course of fishing.

**Commencement Information**

**I32** S. 47 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

*Miscellaneous*

**48 Suffering**

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

**Commencement Information**

**I33** S. 48 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

**49 Vets, inspectors and constables**

- (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 [<sup>F9</sup>the Police Service of Scotland ].
- (7) Schedule 1 makes provision in relation to powers of inspectors and constables for the purposes of and in connection with this Part.

**Textual Amendments**

**F9** Words in s. 49(6) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 34](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

**Commencement Information**

**I34** S. 49 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

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*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2. (See end of Document for details)*

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## 50 Premises

- (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.

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### Commencement Information

**I35** S. 50 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

## 51 Regulations

- (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.

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### Commencement Information

**I36** S. 51 in force at 6.10.2006 by S.S.I. 2006/482, art. 2

**Status:**

Point in time view as at 01/09/2021.

**Changes to legislation:**

There are currently no known outstanding effects for the Animal Health and Welfare (Scotland) Act 2006, Part 2.