

# Animal Health and Welfare (Scotland) Act 2006

2006 asp 11

## PART 2

### ANIMAL WELFARE

#### *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.

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*Status: This is the original version (as it was originally enacted).*

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- (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—
  - (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**

- (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**

- (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,
  - (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

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- (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),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**

- (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.