



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

## PART 2

### ANIMAL WELFARE

#### *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,

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- (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,
  - (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)**

**C1** 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**

**II** 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 [<sup>F1</sup>must consider whether it is necessary, to protect animal welfare, to] 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).
- [<sup>F2</sup>(1A) The purpose of a disqualification order is for the future protection of animals and not in substitution for a penalty for a relevant offence.]
- (2) Those are disqualification from—
- (a) owning or keeping animals (or both),

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- (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,
  - (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.
- [<sup>F3</sup>(5) The court must state its reasons—
- (a) for deciding to make or, as the case may be, not make a disqualification order,
  - (b) where it decides to make such an order—
    - (i) for including in the order the particular disqualifications imposed by it,
    - (ii) for specifying, under subsection (9)(a), the period for which the order is to have effect, and
    - (iii) for specifying, under subsection (9)(b), a period within which no application under section 42(1) may be made.]
- (6) A disqualification order may be made in addition to <sup>F4</sup>... 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.

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- (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.

#### Textual Amendments

- F1** Words in s. 40(1) substituted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 4\(2\)\(a\), 22\(2\); S.S.I. 2021/303, reg. 2\(a\)](#)
- F2** S. 40(1A) inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 5\(2\)\(a\), 22\(2\); S.S.I. 2021/303, reg. 2\(b\)](#)
- F3** S. 40(5) substituted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 4\(2\)\(b\), 22\(2\); S.S.I. 2021/303, reg. 2\(a\)](#)
- F4** Words in s. 40(6) repealed (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\), ss. 5\(2\)\(b\), 22\(2\); S.S.I. 2021/303, reg. 2\(b\)](#)

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

- C1** 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

- I2** 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,

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- (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.
- (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.

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

**C2** 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**

**I3** 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.
- (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.
- [<sup>F5</sup>(6) The court must state its reasons—
  - (a) for granting or, as the case may be, refusing the application under subsection (1),
  - (b) where it grants the application in whole or in part, for varying or, as the case may be, terminating the disqualification order.]

**Textual Amendments**

**F5** S. 42(6) inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 4(3), 22(2)**; [S.S.I. 2021/303](#), reg. 2(a)

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

- C2** 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**

- I4** S. 42 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2** (with [art. 4\(1\)\(d\)](#))

### **[<sup>F6</sup>42A Disqualification orders: record of reasons**

The Scottish Courts and Tribunals Service must establish and maintain a record of reasons relating to disqualification orders stated by the court under sections 40(5) and 42(6).]

#### **Textual Amendments**

- F6** S. 42A inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 4(4), 22(2)**; [S.S.I. 2021/303](#), reg. 2(a)

### **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 [<sup>F7</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),

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- (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,
  - (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

- F7** 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)

- C3** 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

- I5** S. 43 in force at 6.10.2006 by [S.S.I. 2006/482](#), **art. 2**



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