



Animal Health and Welfare (Scotland) Act 2006

2006 asp 11

PART 2 **S**

ANIMAL WELFARE

Introductory

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

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

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

Commencement Information

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

17 Protected animals **S**

- (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

I2 [S. 17](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

18 Responsibility for animals **S**

- (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

I3 [S. 18](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

Prevention of harm

19 Unnecessary suffering **S**

- (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.
- [^{F1}(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.

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)

- (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 **S**

- (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—

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) 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 **S**

- (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. **S**

- (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

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)

- (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 **S**

- (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,

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 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 **S**

- (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.

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)

- (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 **S**

- (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.

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

III [S. 25](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

26 Provision for securing welfare **S**

- (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.

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) 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 **S**

- (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—

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)

- (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 **S**

- (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,

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) 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 **S**

- (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.

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) 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 S

- (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 S

- (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](#)

Animals in distress

32 Taking possession of animals S

- (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 ^[F2]sections 32A and 35 make 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.
 - ^[F3](c) administer treatment (as defined in section 32A) to the animal, or arrange for treatment to be administered, but only where the treatment is, in the opinion of the inspector or constable, consistent with the long-term welfare of the animal and is unlikely to significantly—
 - (i) reduce the value of the animal, or
 - (ii) otherwise affect the character of the animal.]
- (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

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)

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.

Textual Amendments

- F2** Words in s. 32(2) substituted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 20(a), 22(2); S.S.I. 2021/303, reg. 2(d)
- F3** S. 32(6)(c) inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 20(b), 22(2); S.S.I. 2021/303, reg. 2(d)

Commencement Information

- I18** S. 32 in force at 6.10.2006 by [S.S.I. 2006/482](#), art. 2

[^{F4}32A Powers of authorised person where animal taken into possession **S**

- (1) Where a protected animal has been taken into possession under section 32, an authorised person may—
- (a) without the consent of the owner of the animal or of any other person who is responsible for it, and
 - (b) without having applied for or obtained an order under section 34,
- take any of the steps mentioned in subsection (2) (in this section and in sections 32B to 32M, “relevant steps”).
- (2) The relevant steps are—
- (a) administering treatment to the animal,
 - (b) transferring ownership of the animal to another person,
 - (c) destroying the animal.
- (3) Subject to subsection (4), in deciding to take a relevant step, the authorised person must have regard to the desirability of—
- (a) protecting the long-term welfare of the animal so far as it is reasonable to do so,
 - (b) where the relevant step is administering treatment to the animal, protecting the value of the animal,
 - (c) avoiding increasing any expenses which a person may be required to reimburse.
- (4) An authorised person may decide to destroy the animal under subsection (1) only if a veterinary surgeon certifies that destruction of the animal is appropriate.
- (5) An authorised person may take a relevant step only if—
- (a) a notice has been served in accordance with sections 32B and 32C, and

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) either—
 - (i) the time period specified in section 32D(3) has expired without an appeal being made to the court under section 32D, or
 - (ii) such an appeal having been made, subsection (6) applies.
 - (6) This subsection applies where—
 - (a) the court has made an order under section 32D(6)(a) or (c) permitting the relevant step to be taken, or
 - (b) the appeal has been determined without any order being made which prevents the relevant step being taken.
 - (7) Subsection (5) is subject to section 32E(6).
 - (8) If a relevant step may be taken under this section, the authorised person has all of the rights and powers an owner of the animal would have in relation to the taking of that step.
 - (9) This section is without prejudice to—
 - (a) the powers of inspectors and constables under sections 32 and 35,
 - (b) any other power or authority of an authorised person to take any relevant step or other action in relation to the animal.
 - (10) In this section and in sections 32B to 32M—
 - “authorised person” means—
 - (a) an inspector or a constable who is caring for, or has arranged for the care of, the animal taken into possession under section 32,
 - (b) any other 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 exercise the power to take relevant steps under this section,
- references to the “taking” of relevant steps include references to arranging for those steps to be taken (and cognate expressions are to be construed accordingly),
- “treatment” means any treatment or procedure which has as its purpose—
- (a) the prevention, reduction or alleviation of a protected animal's illness, disease, pain or discomfort,
 - (b) the better management of the animal,
 - (c) the health, safety or well-being of any other animal or person.

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32B Decision notice for exercise of powers under section 32A: content **S**

- (1) Before taking a relevant step under section 32A(1), an authorised person must serve a notice (in this section and in sections 32C to 32M, a “decision notice”) specifying—
 - (a) a description of the protected animal,
 - (b) the date on which the animal was taken into possession under section 32,

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) the relevant step that the authorised person intends to take in relation to the animal,
 - (d) the reason for taking that step (including, if the step is to destroy the animal, confirmation that a certificate has been obtained from a veterinary surgeon in accordance with section 32A(4)),
 - (e) how any compensation will be assessed and the process by which it may become payable in accordance with sections 32G to 32K if the step is taken,
 - (f) the effect of section 32L,
 - (g) how service of the decision notice affects rights to apply for court orders under sections 33 and 34,
 - (h) the procedure for appealing to the court in respect of the decision notice and the period within which such an appeal may be made.
- (2) A decision notice which specifies a relevant step mentioned in section 32A(2)(b) need not include any details of the proposed transfer of ownership of the animal other than the fact that such a transfer is proposed.
- (3) The authorised person may choose to include in the decision notice the market value of the animal at the time the animal was taken into possession under section 32.
- (4) But see sections 32E(5) and 32F(5) which make further provision for when a decision notice may and may not be served.

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32C Decision notice: service **S**

- (1) Before serving a decision notice, an authorised person must—
- (a) make reasonable enquiries to establish the identity of the owner of the protected animal, or
 - (b) be satisfied that such reasonable enquiries have been made by another person.
- (2) A decision notice must be served on the owner of the animal by—
- (a) leaving it at the owner's home or business address, or
 - (b) sending it to such an address by—
 - (i) a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or
 - (ii) a postal service which provides for the delivery of the document to be recorded.
- (3) A single decision notice may be served in respect of two or more animals where—
- (a) those animals were taken into possession under section 32 under the same exercise of the power conferred by that section, and
 - (b) in the opinion of the authorised person, the animals have the same owner.
- (4) The date of service of a decision notice is the date on which it was served under subsection (2).

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) Evidence that a decision notice has been sent in accordance with subsection (2)(b)(i) or (ii) is sufficient evidence of service of it.

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32D Appeal to the court in respect of decision notice **S**

- (1) A person mentioned in subsection (2) may appeal to the court for an order in respect of a decision notice.
- (2) The person is—
 - (a) the owner of the protected animal to which the decision notice relates,
 - (b) any other person appearing to the court to have a sufficient concern for the animal.
- (3) An appeal to the court under this section may only be made before the expiry of the period of 3 weeks beginning with the date of service of the decision notice.
- (4) A person is entitled to be heard in relation to an appeal under subsection (1) if (despite not being the appellant) the person is—
 - (a) a person mentioned in subsection (2),
 - (b) an authorised person,
 - (c) an inspector (if not an authorised person),
 - (d) a constable who took the animal into possession under section 32 (if not an authorised person).
- (5) The grounds on which an appeal to the court may be made under this section are that the decision to serve a decision notice or to specify any relevant step in it—
 - (a) is materially affected by an error of fact,
 - (b) is wrong in law,
 - (c) is unreasonable.
- (6) The court may—
 - (a) make an order permitting the relevant step specified in the decision notice to be taken,
 - (b) make an order that the relevant step specified in the decision notice must not be taken,
 - (c) make an order varying the decision notice to permit a different relevant step to be taken in relation to the animal (including by varying a relevant step specified in the notice or by substituting for it another relevant step),
 - (d) make an order which would be available to the court on a valid application to it under subsection (1) of section 33 on the same terms as set out in that section,
 - (e) dispose of the proceedings in any other way it thinks fit.
- (7) An order under subsection (6) may include—
 - (a) provision appointing a person who is to secure that the order is carried out,

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) such other provision as the court considers appropriate in connection with the order.
- (8) The decision of the court on an appeal under this section is final.
- (9) If the court makes an order under subsection (6)(b), an authorised person may, subject to following the procedure in sections 32A to 32C, decide to take a different relevant step in relation to the animal.
- (10) In this section, “court” means the sheriff.

Textual Amendments

- F4** Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32E Effect of decision notice on applications under section 33 **S**

- (1) Subsections (2) to (4) and (6) set out how section 33 operates where a decision notice has been served specifying a relevant step mentioned in section 32A(2)(b) or (c) in respect of a protected animal (whether or not a step mentioned in section 32A(2)(a) is also specified).
- (2) An application to the court for an order under section 33 in respect of the animal—
 - (a) may be made before the expiry of the period of 3 weeks beginning with the date of service of the decision notice,
 - (b) may not then be made unless and until one of the circumstances mentioned in subsection (3) occurs.
- (3) Those circumstances are—
 - (a) the court makes an order under section 32D(6) which—
 - (i) results in no relevant step being permitted (other than a step mentioned in section 32A(2)(a)), and
 - (ii) does not result in the animal being returned to its owner or its ownership being transferred to another person,
 - (b) the relevant step specified in the decision notice is not taken within 1 year beginning with the date mentioned in subsection (4),
 - (c) an authorised person advises the owner in writing that the relevant step specified in the decision notice will not be taken.
- (4) The date referred to in subsection (3)(b) is—
 - (a) the date on which the decision notice was served, provided that—
 - (i) no application under section 33 is made in accordance with subsection (2)(a), and
 - (ii) no appeal under section 32D is made in accordance with section 32D(3),
 - (b) where an application under section 33 made in accordance with subsection (2)(a) is rejected by the court, the date it is so rejected, provided no appeal is made,
 - (c) where a decision mentioned at paragraph (b) is appealed, the date on which the appeal is rejected,

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)

- (d) where an appeal under section 32D is made in accordance with section 32D(3) and the court makes an order under section 32D(6)(a) or (c) which results in a step mentioned in section 32A(2)(b) or (c) being permitted, the date of that order, or
 - (e) where such an appeal is determined without any order being made which prevents a relevant step (other than a step mentioned in section 32A(2)(a)) being taken, the date of that determination.
- (5) If an application is made to the court under section 33 before a decision notice has been served—
- (a) an authorised person may not serve such a notice in respect of the animal to which the application relates until the proceedings under section 33 are finally disposed of or abandoned, and
 - (b) if such a notice is served, it is of no effect.
- (6) If an application is made to the court under section 33 in accordance with subsection (2), an authorised person may not take the relevant step specified in the decision notice in respect of the animal until the proceedings under section 33 are finally disposed of or abandoned.

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), **ss. 19, 22(2)**; S.S.I. 2021/303, reg. 2(c)

32F Effect of decision notice on applications under section 34 **S**

- (1) Subsections (2) to (4) set out how section 34 operates where a decision notice has been served specifying a relevant step mentioned in section 32A(2)(b) or (c) in respect of a protected animal (whether or not a step mentioned in section 32A(2)(a) is also specified).
- (2) An application to the court for an order under section 34 in respect of the animal may not be made unless and until one of the circumstances mentioned in subsection (3) occurs.
- (3) Those circumstances are—
 - (a) the court makes an order under section 32D(6) which—
 - (i) results in no relevant step being permitted (other than a step mentioned in section 32A(2)(a)), and
 - (ii) does not result in the animal being returned to its owner or its ownership being transferred to another person,
 - (b) the relevant step specified in the decision notice is not taken within 1 year beginning with the date mentioned in subsection (4),
 - (c) an authorised person advises the owner in writing that the relevant step specified in the decision notice will not be taken.
- (4) The date referred to in subsection (3)(b) is—
 - (a) the date on which the decision notice was served, provided that—
 - (i) no application under section 33 is made in accordance with section 32E(2)(a), and

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)

- (ii) no appeal under section 32D is made in accordance with section 32D(3),
 - (b) where an application under section 33 made in accordance with section 32E(2) (a) is rejected by the court, the date it is so rejected, provided that no appeal is made,
 - (c) where a decision mentioned at paragraph (b) is appealed, the date on which the appeal is rejected,
 - (d) where an appeal under section 32D is made in accordance with section 32D(3) and the court makes an order under section 32D(6)(a) or (c) which results in a step mentioned in section 32A(2)(b) or (c) being permitted, the date of that order, or
 - (e) where such an appeal is determined without any order being made which prevents a relevant step (other than a step mentioned in section 32A(2)(a)) being taken, the date of that determination.
- (5) If an application is made to the court under section 34 before a decision notice has been served—
- (a) an authorised person may not serve such a notice in respect of the animal to which the application relates until the proceedings under section 34 are finally disposed of or abandoned, and
 - (b) if such a notice is served, it is of no effect.

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32G Compensation notice for exercise of powers under section 32A **S**

- (1) If a relevant step specified in a decision notice is taken in relation to a protected animal, an authorised person must serve a notice (in this section and in sections 32H to 32M, a “compensation notice”) specifying—
- (a) a description of the animal,
 - (b) which relevant step has been taken,
 - (c) the date on which the relevant step was taken,
 - (d) the compensation amount (if any) and how this has been calculated in accordance with section 32H,
 - (e) the effect the existence or possibility of relevant criminal proceedings may have on the payment of the compensation amount,
 - (f) the process for payment of any compensation amount,
 - (g) whether the authorised person is electing to defer payment of the compensation amount under section 32K(3),
 - (h) the procedure for appealing to the court in respect of the compensation amount under section 32J.
- (2) Before serving a compensation notice, an authorised person must—
- (a) make reasonable enquiries to establish the whereabouts of the relevant owner of the animal, or
 - (b) be satisfied that such reasonable enquiries have been made by another person.

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) A compensation notice must be served on the relevant owner of the animal by—
- (a) leaving it at the relevant owner's home or business address,
 - (b) sending it to such an address by—
 - (i) a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or
 - (ii) sending it by a postal service which provides for the delivery of the document to be recorded, or
 - (c) such other method as the court, on the application of the authorised person, determines.
- (4) Subject to subsection (5), the authorised person must serve a compensation notice on the relevant owner of the animal within 3 months of a relevant step specified in the decision notice being taken.
- (5) Where the decision notice specified more than one relevant step, the authorised person must serve a compensation notice on the relevant owner of the animal within 3 months of the earlier of—
- (a) the last relevant step being taken,
 - (b) the expiry of the period of 1 year beginning with the date on which the first relevant step is taken.
- (6) Where subsection (5)(b) applies, the authorised person must serve a compensation notice in respect of any other relevant step specified in the decision notice within 3 months of it being taken.
- (7) A single compensation notice may be served in respect of two or more animals where—
- (a) a single decision notice was served in respect of those animals by virtue of section 32C(3), and
 - (b) relevant steps have been taken by virtue of that notice in relation to all of those animals.
- (8) Evidence that a compensation notice has been sent in accordance with subsection (3)(b)(i) or (ii) is sufficient evidence of service of it.
- (9) In this section, “court” means the sheriff.
- (10) In this section and in sections 32H to 32L—
- “relevant criminal proceedings” means proceedings in respect of a relevant offence which arise from the circumstances which led to the protected animal being taken into possession under section 32,
 - “relevant offence” means an offence under any of the following—
 - (a) sections 19 to 23,
 - (b) section 24 or 25(7),
 - (c) section 29,
 - (d) section 40(11),
 - “relevant owner” means the person who was the owner of the animal at the time it was taken into possession under section 32.

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)

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32H Compensation amount **S**

- (1) This section provides for the calculation of the compensation amount which is to be specified in the compensation notice.
- (2) Where the only relevant step specified in the decision notice is the step mentioned in section 32A(2)(a), the compensation amount is an amount equivalent to any decrease in the market value of the protected animal caused by the administration of the treatment, less any relevant expenses mentioned in subsection (4)(b).
- (3) Where the relevant step specified in the decision notice is the step mentioned in section 32A(2)(b) or (c), or the step mentioned in section 32A(2)(a) along with another relevant step, the compensation amount is an amount equivalent to the greater of—
 - (a) the market value of the animal at the time it was taken into possession under section 32,
 - (b) the market value of the animal at the time immediately before the last relevant step specified in the compensation notice was taken, and
 - (c) any proceeds of sale of the animal,less the amounts mentioned in subsection (4).
- (4) The amounts referred to in subsections (2) and (3) are—
 - (a) any compensation amount which has been the subject of a previous compensation notice in respect of that animal, and
 - (b) any relevant expenses to the extent they have not been—
 - (i) reimbursed by or on behalf of the relevant owner, or
 - (ii) deducted from any amount in accordance with subsection (2) or (3) in relation to a previous compensation notice in respect of that animal.
- (5) In this section and in sections 32I and 32L, “relevant expenses” means—
 - (a) any expenses reasonably incurred in relation to the animal after it was taken into possession under section 32,
 - (b) the reasonable costs of taking the relevant step specified in the compensation notice, and
 - (c) the reasonable costs of taking a relevant step specified in a previous compensation notice in respect of the animal,to the extent that they have been incurred by or on behalf of an authorised person or, where the authorised person is an individual, the authorised person's employer.

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

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)

32I Application of proceeds of sale **S**

- (1) This section applies where—
 - (a) a relevant step specified in the decision notice is the step mentioned in section 32A(2)(b), and
 - (b) that step is taken.
- (2) Any proceeds of sale of the animal are to be applied by the authorised person in the following order—
 - (a) to meeting any liability of the relevant owner to reimburse any relevant expenses,
 - (b) to meeting any liability of the authorised person to pay any compensation amount to the relevant owner.
- (3) The relevant owner's entitlement to the compensation amount is instead of any entitlement any owner has to any proceeds of sale of the animal.

Textual Amendments

- F4** Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32J Appeal to court in respect of compensation amount **S**

- (1) The relevant owner of a protected animal may appeal to the court for an order in respect of the compensation amount.
- (2) Subject to subsection (3), an appeal to the court under this section may only be made before the expiry of the period of 3 months beginning with the date of service of the compensation notice (or, if more than one notice has been served by virtue of section 32G(5) or (6), the last of those notices).
- (3) Where the authorised person has deferred payment of the compensation amount under section 32K(3), an appeal to the court under this section may only be made within the period of 1 month beginning with the date determined in accordance with section 32K(4).
- (4) A person is entitled to be heard in relation to an appeal under subsection (1) if the person is—
 - (a) an authorised person,
 - (b) an inspector (if not an authorised person),
 - (c) a constable who took the animal into possession under section 32 (if not an authorised person).
- (5) The court may—
 - (a) order payment of the compensation amount specified in the compensation notice,
 - (b) order payment of a different compensation amount,
 - (c) order that no compensation be paid.
- (6) The decision of the court on an appeal under this section is final.
- (7) In this section, “court” means the sheriff.

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)

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32K Payment of compensation amount **S**

- (1) Subject to any order of a convicting court under section 32L that the relevant owner's right to compensation is forfeited (in whole or in part), this section determines when the compensation amount becomes payable.
- (2) Unless the authorised person opts to defer payment of it under subsection (3), the compensation amount becomes payable to the relevant owner (determined in accordance with subsection (6)) when either—
 - (a) the period within which an appeal to the court may be made under section 32J has expired without an appeal being made, or
 - (b) such an appeal having been made, the court has made an order under section 32J(5)(a) or (b).
- (3) The authorised person may defer payment of the compensation amount where—
 - (a) relevant criminal proceedings have been commenced against the relevant owner and have not been concluded, or
 - (b) in the opinion of the authorised person, the relevant owner is at risk of having relevant criminal proceedings brought against them.
- (4) Where the authorised person has deferred payment of the compensation amount, the compensation amount becomes payable to the relevant owner (determined in accordance with subsection (6)) as follows—
 - (a) where relevant criminal proceedings had been commenced before the compensation notice was served or such proceedings were commenced within the period of 1 year beginning with the date that notice was served, on the conclusion of those relevant criminal proceedings,
 - (b) otherwise, on the expiry of the period of 1 year beginning with the date on which the compensation notice was served.
- (5) Once it has become payable, the compensation amount must be paid within 3 weeks of the relevant owner (determined in accordance with subsection (6)) providing details of the bank account to which payment may be made.
- (6) The person who is determined to be the relevant owner for the purposes of this section is—
 - (a) in a case where no appeal has been made under section 32J and the authorised person is satisfied as to who the relevant owner is, that person,
 - (b) otherwise, the person determined by the court to be the relevant owner—
 - (i) on an appeal under section 32D in relation to the decision notice,
 - (ii) on an appeal under section 32J in relation to the compensation amount,
 - (iii) on an application under section 33 or 34, or
 - (iv) on an application to the court for the purposes of this subsection.

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) Where the authorised person is unable to pay the compensation amount in accordance with subsection (5) (because the relevant owner has not provided the bank account details mentioned in that subsection or for some other reason), the authorised person may apply to the court for an order as to the disposal of the compensation amount.
- (8) In subsections (6)(b)(iv) and (7), “court” means the sheriff.

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32L Forfeiture of compensation **S**

- (1) Where—
- (a) a person is convicted of a relevant offence, and
 - (b) that conviction arises out of relevant criminal proceedings,
- the convicting court may order that the person forfeits (in whole or in part) any right to compensation which would otherwise be due under this Part in respect of the protected animal to which the offence relates.
- (2) Where the court makes an order under subsection (1), any compensation amount payable under section 32K is adjusted accordingly.
- (3) An order under subsection (1) may include such other provision the court considers appropriate, including for the disposal of any proceeds of sale which would otherwise be applied under section 32I(2)(b) to meet the authorised person's liability to pay the compensation amount to the relevant owner.
- (4) The Scottish Ministers may by regulations make provision for or in connection with the disposal of any proceeds of sale under subsection (3).
- (5) Regulations under subsection (4) may modify any enactment (including this Act).

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

32M Modification of powers over animals **S**

- (1) The Scottish Ministers may by regulations make provision—
- (a) about the content and service of decision notices and compensation notices, including, in particular, provision in relation to—
 - (i) the matters which must be specified in a notice,
 - (ii) the person on whom a notice must be served,
 - (iii) the method by which service of a notice may be effected (including how service may be effected other than in accordance with section 32C(2) or 32G(3)),

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)

- (iv) the date of service of a notice (including the evidence required to prove service has been effected),
 - (b) about the calculation and payment of the compensation amount, including, in particular—
 - (i) the person to whom the compensation amount may or must be paid,
 - (ii) the timing and procedure for payment of the compensation amount (including deferral of payment),
 - (iii) forfeiture of compensation,
 - (c) about appeals in relation to decision notices and compensation notices under sections 32D and 32J, including, in particular—
 - (i) the timing and procedure for an appeal,
 - (ii) the orders which a court may make on an appeal.
- (2) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.]

Textual Amendments

F4 Ss. 32A-32M inserted (30.9.2021) by [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020 \(asp 14\)](#), ss. 19, 22(2); S.S.I. 2021/303, reg. 2(c)

33 Release orders where animals taken **S**

- (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—

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) 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 **S**

- (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,
 - ^{F5}(da) an authorised person (as defined in section 32A) who does not fall within paragraphs (b) to (d),] or
 - (e) any other person appearing to the court to have a sufficient concern for the animal.
- ^{F6}(4A) A person mentioned in paragraphs (b) to (da) of subsection (4) may only make an application for an order under subsection (1) if a decision notice cannot be served under section 32C(2).]
- (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) [^{F7}, (da)] or (e) of subsection (4), or
 - (b) a person—

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)

- (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),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.

Textual Amendments

- F5** S. 34(4)(da) inserted (30.9.2021) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), ss. 21(a), 22(2); S.S.I. 2021/303, reg. 2(e) (with reg. 3)
- F6** S. 34(4A) inserted (30.9.2021) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), ss. 21(b), 22(2); S.S.I. 2021/303, reg. 2(e) (with reg. 3)
- F7** Words in s. 34(5)(a) inserted (30.9.2021) by Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14), ss. 21(c), 22(2); S.S.I. 2021/303, reg. 2(e) (with reg. 3)

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 **S**

- (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).

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)

- (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 **S**

- (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.

Commencement Information

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

37 Animal welfare codes **S**

- (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.

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) 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](#)

38 Animal welfare guidance **S**

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 **S**

- (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

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)

- (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,
 - (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)**

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

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 **S**

- (1) Where a person is convicted of a relevant offence, the convicting court [^{F8}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).
- [^{F9}(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),
 - (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.
- [^{F10}(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

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)

- (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 ^{F11}... 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.

Textual Amendments

- F8** 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\(a\)](#)
- F9** 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\(b\)](#)
- F10** 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\(a\)](#)
- F11** 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\(b\)](#)

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 **S**

- (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.

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 **S**

- (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.

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.

[^{F12}(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

F12 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)

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))

[^{F13}**42A Disqualification orders: record of reasons** **S**

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

F13 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 **S**

- (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 [^{F14}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

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) 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,
 - (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

- F14** 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

^{F15} 44 Proceedings for animal fighting offences **S**

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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)

Textual Amendments

F15 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. **S**

- (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.
- (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 **S**

- [^{F16}(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 [^{F17}(other than under regulations made under section 46A)] is liable on summary conviction to such penalties, not exceeding the penalties [^{F18}mentioned in subsection (4)], as are provided for in the regulations.

[^{F19}(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

F16 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)

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)

- F17** 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.](#)
- F18** 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.](#)
- F19** 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](#)

[^{F20} 46A Fixed penalty notices for certain offences **S**

- (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).
- (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”),

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)

- (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),
 - (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).

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)

- (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

F20 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 **S**

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),
- (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 **S**

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 **S**

- (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

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)

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 [^{F21}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

F21 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](#)

50 Premises **S**

- (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.

Commencement Information

I35 [S. 50](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

51 Regulations **S**

- (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.

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) 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.

Commencement Information

I36 [S. 51](#) in force at 6.10.2006 by [S.S.I. 2006/482](#), [art. 2](#)

Changes to legislation:

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