



# Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020

2020 asp 14

## CHAPTER 2

### ANIMAL WELFARE: POWERS IN RELATION TO ANIMALS TAKEN INTO POSSESSION

#### 19 Taking possession of animals: additional powers

In the 2006 Act, after section 32 insert—

##### “32A Powers of authorised person where animal taken into possession

- (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,

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- (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
  - (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.

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

- (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,
  - (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.

### **32C Decision notice: service**

- (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—

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- (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).
- (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.

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

- (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—

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- (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.
- (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.

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

- (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,
  - (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)

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- 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.

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

- (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
    - (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,

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- (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.

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

- (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.
- (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.

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- (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.

### **32H Compensation amount**

- (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



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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.

### **32I Application of proceeds of sale**

(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.

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

(1) The relevant owner of a protected animal may appeal to the court for an order in respect of the compensation amount.

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- (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.

### **32K Payment of compensation amount**

- (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

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- 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.
- (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.

### **32L Forfeiture of compensation**

- (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).

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

- (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)),
    - (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.”.

## **20 Taking possession of animals: amendment of existing powers**

In section 32 (taking possession of animals) of the 2006 Act—

- (a) in subsection (2), for “section 35 makes” substitute “sections 32A and 35 make”,
- (b) after subsection (6)(b) insert—
  - “(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.”.

## **21 Disposal orders where animals taken: restriction of application**

In section 34 (disposal orders where animals taken) of the 2006 Act—

- (a) in subsection (4), before “or” where it appears at the end of paragraph (d) insert—

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- “(da) an authorised person (as defined in section 32A) who does not fall within paragraphs (b) to (d),”
- (b) after that subsection insert—
  - “(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).”
- (c) in subsection (5)(a), after “(c)” insert “, (da)”.