

ANIMAL WELFARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Animals in distress

Section 18: Powers in relation to animals in distress

82. This section authorises an inspector or police constable who finds a protected animal that is suffering to take those steps that need to be taken immediately to alleviate the animal's suffering (see section 2 for the definition of "protected animal" and section 51 for the definition of "inspector"). Powers of entry are conferred by section 19. Section 18 is wider than the power in the Protection of Animals Act 2000 (which this Act repeals) in three ways. First, the power is available even if no proceedings have been commenced. Secondly, it is not restricted to animals kept for commercial purposes. Thirdly, it allows inspectors to take into possession not only animals which are suffering but also those which are likely to suffer if action is not taken.
83. Under *subsection (3)*, where an animal is suffering to such an extent that there is no alternative but to kill it and a veterinary surgeon issues a certificate to that effect, the enforcement authority (an inspector or police constable) may kill the animal or arrange for it to be killed either where it is or elsewhere, or arrange for those steps to be taken by someone else.
84. *Subsection (4)* allows an inspector or constable to kill an animal without waiting for a vet. This only applies where the animal is suffering to such an extent that there is no alternative but to kill it immediately.
85. *Subsection (5)* authorises an inspector or constable to take a protected animal into possession where a veterinary surgeon certifies that it is suffering or is likely to suffer.
86. *Subsection (6)* authorises the inspector or constable to do the same without the certificate of a veterinary surgeon in an emergency.
87. *Subsection (7)* ensures that where an animal taken into possession under *subsection (5)* has dependent offspring, those offspring can be taken into possession along with it. This ensures that even if the offspring are not themselves suffering or likely to suffer, they can still be taken with the parent.
88. *Subsection (8)* gives an inspector or constable a right to remove the animal to a place of safety. They also have the power to care for the animal either on the premises where it was being kept or elsewhere. This subsection also allows an animal to be marked so it can be identified, for example if it is being kept with similar animals. Any method used to mark the animal would have to be compatible with the ban on mutilations in section 5 of the Act, and any regulations made under section 5(4).
89. *Subsection (10)* gives a vet the power to examine and take samples (such as blood or urine) from an animal so that he can decide if it should be killed or taken into possession.

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90. *Subsection (11)* requires an inspector or constable as soon as reasonably practicable to take such steps as are reasonable in all the circumstances to notify the person responsible for the animal that he has taken action under section 18 in relation to that animal. This obligation is only engaged where the inspector or constable acts otherwise than with the knowledge of the person responsible for the animal.
91. *Subsection (13)* allows a person to apply to the court for an order to reimburse him for expenses he incurs when acting under this section. The court can make an order against the person it considers most appropriate. *Subsection (14)* allows the person against whom such an order is made to appeal.

Section 19: Powers of entry for section 18 purposes

92. This section confers powers of entry for the purposes of section 18. It authorises an inspector or police constable to enter onto premises to deal with a protected animal that is believed to be suffering or likely to suffer if remedial action is not taken. Obstruction of a person exercising such a power is an offence (paragraph 16 of Schedule 2).
93. *Subsection (1)* confers a power to enter to search for a suffering animal which the constable or inspector reasonably believes to be there.
94. *Subsection (2)* provides that the power of entry does not extend to any part of premises which is used as a private dwelling. For example, an inspector could enter the parts of a building used as an office but not those parts which are used for residential purposes unless he first obtains a warrant from a justice of the peace under *subsection (4)*.
95. *Subsection (3)* authorises the use of reasonable force to effect entry without a warrant, where entry is needed urgently before a warrant can be obtained, for example if an animal is suffering so much that it would be inappropriate to delay. Where there is no such urgency, if force is required to gain entry, a warrant must be obtained from a justice of the peace, as provided for by *subsection (4)*.
96. *Subsection (5)* sets out the criteria that an application must meet before a justice of the peace may grant a warrant. There must be reasonable grounds for believing that there is a protected animal on the premises, that is either suffering or likely to do so, and one of the four conditions in section 52 must be met.

Section 20: Orders in relation to animals taken under section 18(5)

97. Where an animal has been taken into possession under section 18(5) and the animal is being retained, this section enables a magistrates' court to make an order for the treatment, giving up, disposal or destruction of the animal.
98. *Subsection (1)* provides that the court can make an order relating to the treatment, giving up, sale, disposal or destruction of the animal. If a person responsible for an animal considers it was wrongly taken into possession under section 18(5), he could apply under section 20(1)(b) to have the animal returned.
99. In *subsection (1)(a)* 'treatment' is intended to cover significant interventions such as castration. Routine day-to-day treatment such as worming or routine veterinary attention is considered to be caring for the animal as set out in section 18(8)(b).
100. *Subsection (2)* provides that orders made under *subsection (1)* can also apply to the offspring of an animal that was pregnant at the time it was taken into possession under section 18(5).
101. *Subsection (3)* enables an application to be made to the court for an order under *subsection (1)*, either by the owner of the animal taken into possession or by another person with a sufficient interest in the animal. The court has the discretion to make any order under *subsection (1)* that it considers appropriate, including an order other than that applied for. For example, the court could hear an application for sale under

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section 20(1)(c), but determine that the animal should be returned to its owner under section 20(1)(b).

102. *Subsection (4)* provides that an order cannot be made unless either the owner has been given an opportunity to be heard, or the court is satisfied that it is not reasonably practical to communicate with him.
103. *Subsection (5)(b)* enables the court to make directions for carrying out an order under *subsection (1)*.
104. *Subsection (6)* provides that the court, when deciding how to exercise its powers under the section, must consider the financial effect the decision will have on the owner of the animal and on others.
105. *Subsection (8)* provides that, where a court orders that the animal taken into possession under section 18(5) be sold, the proceeds of the sale to which the owner is entitled are to be reduced so as to take account of the expenses incurred by the person who seized or cared for the animal under section 18(5), and the expenses incurred by any person carrying out the order for sale.

Section 21: Orders under section 20: appeals

106. Where a court has made an order under section 20(1) in relation to an animal, section 21(1) allows the animal's owner to appeal to the Crown Court against the order.
107. *Subsection (2)* suspends the operation of orders made under section 20(1) until the possibility of a successful appeal has expired. *Subsection (3)* provides that if an order is suspended under *subsection (2)*, the court may, nevertheless, give directions as to how the animal(s) should be dealt with during the suspension. *Subsection (4)* gives examples of the kinds of directions the court may give under *subsection (3)(b)* to provide for the animal's welfare pending the determination of the appeal.
108. *Subsection (5)* also allows the animal's owner a right of appeal where the court has refused to grant an order which he has applied for. So if the court, for example, refuses to return the animal, the owner can appeal against that decision.
109. *Subsection (6)* provides that a person against whom an order for the reimbursement of expenses is made under section 20(5) shall also have a right of appeal to the Crown Court.