

2006 No. 3407

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

ANIMALS, ENGLAND AND WALES

ANIMAL HEALTH

**The Animal Health and Welfare (Scotland) Act 2006
(Consequential Provisions) (England and Wales) Order 2006**

Made - - - - *14th December 2006*

Coming into force - - *15th December 2006*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3), (4) and (5) of the Scotland Act 1998^(a);

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation commencement, and extent

1.—(1) This Order may be cited as the Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) (England and Wales) Order 2006 and shall come into force on the day after the day on which it is made.

(2) This Order extends to England and Wales only.

Interpretation

2. In this Order—

“the 1981 Act” means the Animal Health Act 1981^(b);

“the 2006 Act” means the Animal Health and Welfare (Scotland) Act 2006^(c); and

“animal” means a vertebrate other than man.

^(a) 1998 c.46.
^(b) 1981 c.22.
^(c) 2006 asp 11.

Effect in England and Wales of disqualification in Scotland under section 28F(1) of the 1981 Act or section 40(1) of the 2006 Act

3.—(1) Disqualification by virtue of an order made under section 28F(1) of the 1981 Act^(a) (deliberate infection: disqualification orders) or section 40(1) of the 2006 Act (disqualification orders) has effect insofar as it disqualifies a person from owning or keeping animals (or both), dealing in animals, or transporting animals.

(2) A person who breaches a disqualification from owning or keeping animals (or both), dealing in animals, or transporting animals under section 28F(1) of the 1981 Act or section 40(1) of the 2006 Act commits an offence.

(3) A person guilty of an offence under paragraph (2) is liable on summary conviction to—

- (a) imprisonment for a term not exceeding three months; or
- (b) a fine not exceeding level 5 on the standard scale,

or to both.

Seizure of animals in connection with disqualification

4.—(1) Where a person is convicted of an offence under article 3(2) because of owning or keeping an animal (or both) in breach of disqualification under section 28F(1) of the 1981 Act or section 40(1) of the 2006 Act, the court by or before which that person is convicted may order that all animals which that person owns or keeps in breach of the disqualification be taken into possession.

(2) An order under paragraph (1), so far as relating to any animal owned by the person subject to disqualification, shall have effect as an order for the disposal of the animal.

(3) Any animal taken into possession in pursuance of an order under paragraph (1) that is not owned by the person subject to disqualification shall be dealt with in such manner as the appropriate court may order.

(4) A court may not make an order for disposal under paragraph (3) unless—

- (a) it has given the owner of the animal an opportunity to be heard; or
- (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(5) Where a court makes an order under paragraph (3) for the disposal of an animal, the owner may—

- (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;
- (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.

(6) In paragraph (3), the reference to the appropriate court is to—

- (a) the court which made the order under paragraph (1); or
- (b) in the case of an order made by a magistrates' court, a magistrates' court for the same local justice area as that court.

(7) In this article, references to disposing of an animal include destroying it.

Article 4: supplementary

5.—(1) The court by which an order under article 4 is made may—

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;

^(a) Section 28F was inserted by section 10 of the Animal Health and Welfare (Scotland) Act 2006 (asp 11).

- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
 - (e) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order.
- (2) Directions under paragraph (1)(c) may—
- (a) specify the manner in which an animal is to be disposed of; or
 - (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under paragraph (1)(a).
- (3) In determining how to exercise its powers under article 4 and this article, the court shall have regard, amongst other things, to—
- (a) the desirability of protecting the value of any animal to which the order applies; and
 - (b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse.
- (4) In determining how to exercise a power delegated under paragraph (2)(b), a person shall have regard, amongst other things, to the things mentioned in paragraph (3)(a) and (b).
- (5) If the owner of an animal ordered to be disposed of under article 4 is subject to a liability by virtue of paragraph (1)(e), any amount to which that person is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

Orders under article 4: pending appeals

- 6.—(1) Nothing may be done under an order under article 4 unless—
- (a) the period for giving notice of appeal against the order has expired;
 - (b) the period for giving notice of appeal against the conviction on which the order was made has expired; and
 - (c) if the order or conviction is the subject of an appeal, the appeal has been determined or withdrawn.
- (2) Where the effect of an order is suspended under paragraph (1)—
- (a) no requirement imposed or directions given in connection with the order shall have effect; but
 - (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.
- (3) Directions under paragraph (2)(b) may, in particular—
- (a) authorise the animal to be taken into possession;
 - (b) authorise the removal of the animal to a place of safety;
 - (c) authorise a person to care for the animal either on the premises where it was being kept when it was taken into possession or at some other place;
 - (d) appoint a person to carry out, or arrange for the carrying out of, the directions;
 - (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
 - (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
 - (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.
- (4) Any expenses a person is directed to pay under paragraph (3)(g) shall be recoverable summarily as a civil debt.

Orders made on conviction for reimbursement of expenses

7. Where an order is made under article 5(1)(e), the expenses that are required by the order to be reimbursed shall not be regarded for the purposes of the Magistrates' Courts Act 1980(a) as a sum adjudged to be paid by a summary conviction, but shall be recoverable summarily as a civil debt.

Amendments consequential to the Animal Health and Welfare (Scotland) Act 2006

8.—(1) In section 1 of the Animal Boarding Establishments Act 1963(b) (licensing of boarding establishments for animals), in subsection (2), at the end of paragraph (f) insert—

“or

- (g) under subsection (1) of section 40 of the Animal Health and Welfare (Scotland) Act 2006 (asp 11), from an activity mentioned in subsection (2)(a), (b) or (c) of that section,”.

(2) In section 1 of the Riding Establishments Act 1964(c) (licensing of riding establishments), in subsection (2), at the end of paragraph (g) insert—

“or

- (h) under subsection (1) of section 40 of the Animal Health and Welfare (Scotland) Act 2006 (asp 11), from an activity mentioned in subsection (2)(a), (b) or (c) of that section,”.

(3) In section 1 of the Breeding of Dogs Act 1973(d) (licensing of breeding establishments for dogs) in subsection (2), at the end of paragraph (g) insert—

“or

- (h) under subsection (1) of section 40 of the Animal Health and Welfare (Scotland) Act 2006 (asp 11), from an activity mentioned in subsection (2)(a), (b) or (c) of that section,”.

DAVID CAIRNS

Parliamentary Under Secretary of State
Scotland Office,
Department for Constitutional Affairs

Dover House,
London
14th December 2006

(a) 1980 c.43.

(b) 1963 c.43. Paragraph (f) of section 1(2) was inserted by paragraph 5(1) of Schedule 3 to the Animal Welfare Act 2006 c.45.

(c) 1964 c.70. Paragraph (g) of section 1(2) was inserted by paragraph 6 of Schedule 3 to the Animal Welfare Act 2006 c.45.

(d) 1973 c.60. Paragraph (g) of section 1(2) was inserted by paragraph 7 of Schedule 3 to the Animal Welfare Act 2006 c.45. There are other amendments to section 1 of the 1973 Act which are not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”).

The 2006 Act amends the Animal Health Act 1981 (“the 1981 Act”) so as to make provision in relation to animal health, and also makes stand alone provision in relation to animal welfare. In particular, sections 10 (which inserts a new section 28F into the 1981 Act) and 40 of the 2006 Act make provision for a court in Scotland to disqualify a person from owning or keeping an animal (or both) and from certain other activities involving animals. Articles 3 to 7 of the Order provide for disqualification orders made in Scotland under those provisions to be enforced in England and Wales.

Article 8 provides for the modification of certain enactments in consequence of the 2006 Act. The effect of the modifications is to provide for references to section 40(1) and (2)(a), (b) or (c) (which relate to disqualification from owning or keeping animals (or both), and from dealing in animals and from transporting animals) to be added to the Animal Boarding Establishments Act 1963, the Riding Establishments Act 1964 and the Breeding of Dogs Act 1973.

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