

ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Animal Health

Section 10 – Deliberate infection of animals

38. Section 10 of the Act inserts new sections 28C, 28D, 28E, 28F, 28G and 28H into the 1981 Act. Section 28C(1) creates an offence of knowingly doing anything which causes, or is intended to cause, or recklessly causes an animal (meaning any kind of mammal except man) or bird to be infected with a specified disease (the list of specified diseases is contained in Schedule 2B of the 1981 Act - inserted by section 9 of the Act). This provision would deal with, for example, situations in which animals were deliberately infected with a disease in order for the owner to be able to claim compensation for their subsequent destruction.
39. Section 28C(2) and (3) create offences of: acquiring or retaining an animal or bird or the carcase of an animal or bird; and acquiring or retaining anything obtained from, produced by, or used in connection with an animal or bird or carcase of an animal or bird, in either case which that person knows, or ought reasonably to know, is infected with a disease specified in Schedule 2B. This section could include the following objects which could carry disease: infected implements; carcasses; animal or bird bedding; and their faeces etc.
40. Anyone found guilty of committing these offences is liable on summary conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding the statutory maximum or to both. On conviction on indictment the person is liable to a term of imprisonment not exceeding 2 years or to an unlimited fine or to both.
41. Section 28D provides that if a person is convicted of an offence under section 28C they will be deprived of their entitlement to compensation under any other provision under the 1981 Act for the animals to which the offence relates and also for other animals which were kept on the same premises at the same time, or any part of the time, as those animals, at or after the commission of the offence. The section also provides for the withholding of any compensation which is paid in relation to certain items seized under sections 36ZA (inserted by section 8) and 35 (in the 1981 Act). Subsection (5) allows that compensation which has already been paid can be recovered by the Scottish Ministers.
42. Section 28E(1) provides that the court will have the power to, in addition to any other penalty or order, deprive a person found guilty of an offence under section 28C or section 28F(16) (breach of a disqualification order) of possession or ownership (or both) of an animal (and any dependent offspring) to which the offence relates. Section 28E(9) requires the court, where practicable, to allow the owner an opportunity to make representations before the court makes an order. Section 28E(8) provides that the

court may not make a deprivation order involving the destruction of an animal unless it is satisfied on the evidence of a veterinary surgeon that destruction would be in the interests of the animal. The veterinary surgeon may provide such evidence orally or in writing and therefore does not necessarily require to attend the court in person but can provide evidence via alternative methods (such as video links, teleconferencing or in writing).

43. Subsection (2) provides details of the order which the court has power to make in terms of subsection (1). It is an order which deprives the owner of ownership of the animals to which it relates and also orders their destruction, sale or other disposal. Subsection (5) allows the order also to make provision in respect of the offspring of the animal.
44. Subsection (3) provides that the court has to explain its reasons for not making a deprivation order except where it has imposed a disqualification order under section 28F.
45. Subsection (6) makes further provision as to what may be included in a deprivation order. This includes provision for appointing someone to carry out the deprivation order, requiring delivery of relevant animals, conferring powers of entry on the person appointed to carry out the order and such other provision as the court considers appropriate. This may include specifying the manner in which the animal is to be destroyed.
46. Subsections (12) and (13) provide definitions for “premises” and “veterinary surgeon” as they apply to this section and section 28G.
47. Section 28F(1) provides that where a person is convicted of an offence under section 28C or section 28F(16) the court may in addition to any other penalty or order, disqualify a person from participating in a range of animal-related activities. These activities are: owning or keeping animals or both); dealing in animals; transporting animals; working with or using animals; riding or driving animals; providing any service relating to animals which involves taking possession of animals (this could include dog walking or pet grooming businesses); taking possession of animals for the purpose of an activity in respect of which a disqualification is imposed; and taking charge of animals for any, or any other, purpose.
48. Subsection (3) provides that a disqualification from any animal-related activity disqualifies the person subject to the order from any participation in that activity. Paragraphs (a), (b) and (c) give examples of the kind of participation from which a person subject to an order is disqualified.
49. Subsection (4) provides an exception where a disqualification order includes disqualification from taking charge of animals for any purpose. This exception will allow a person, disqualified from taking charge of an animal for any purpose, to take charge of an animal if no other arrangements for its care are reasonably available but only for so long as is necessary in the circumstances. This exception only applies where the disqualified person takes charge of the animal with the consent of the owner for the purposes of caring for the animal or takes charge of the animal for the purpose of alleviating any suffering of the animal.
50. Subsection (5) provides that the court has to explain its reasons for not making a disqualification order on convicting a person of a relevant offence.
51. Subsection (7)> provides that disqualification may be imposed in relation to animals generally or animals of a particular kind. Thus a court may, for example, use its discretion under the subsection to disqualify a person who has been convicted of an offence under this section of, for example deliberately infecting pigs only from keeping pigs, but not from keeping geese.

*These notes relate to the Animal Health and Welfare (Scotland)
Act 2006 (asp 11) which received Royal Assent on 11 July 2006*

52. Subsection (8) allows the court to specify the length of time which must pass before the person who is the subject of a disqualification order may apply to have it lifted or varied under subsection (11).
53. Subsection (9) allows the court to suspend the disqualification order either to enable practical arrangements to be made for the animals to which the disqualification relates, or pending an appeal.
54. Subsection (10) clarifies that a disqualification order is for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995 to be treated as a sentence and accordingly the procedures for appeals against sentence should be followed.
55. Subsection (11) allows a person subject to a disqualification order to apply to the court for its termination or variation. The court can refuse the application, or terminate or vary the order and in considering the application the court must have regard to the offence, the character of the applicant and the conduct of the applicant following the imposition of the disqualification.
56. Section 28G gives the court power, where that court is satisfied that a person subject to a disqualification order owns or keeps any animals in breach of that order, to make an order that the animals so owned or kept by the disqualified person be seized.
57. Subsection (2) provides for a seizure order to be made following summary application to the court by an inspector where it appears that a person is owning or keeping animals in breach of a disqualification order. The order may be made by the court even if proceedings have not, or are not, or are not likely to be, taken against the person for an offence under section 28F(16).
58. Subsection (4) provides that a seizure order made under subsection (1) may deprive a person of possession or ownership (or both) of an animal and provide for the destruction, sale or other disposal of the animal.
59. Subsections (5) and (6) set out provisions which may be included in a seizure order. These include: appointing the person who is to carry out the order; requiring the delivery of the animal in question; and requiring the disqualified person to reimburse any reasonable expenses incurred in carrying out the order. The seizure order may also include provision authorising a person appointed to carry out the order, and anyone acting on their behalf, to enter any premises where the animal subject to the seizure order is kept.
60. Subsection (5)(c) provides that the order may include such other provision as the court considers appropriate. Examples of the kind of provisions which might be included are given in subsection (6).
61. Subsection (7) provides that the court may not make a seizure order involving the destruction of an animal unless it is satisfied on the evidence of a veterinary surgeon that destruction would be in the interests of the animal. The veterinary surgeon may provide such evidence orally or in writing and therefore does not necessarily require to attend the court in person but can provide evidence via alternative methods (such as video link, teleconferencing or in writing).
62. Subsection (8) requires the court to give the owner of the animals concerned the opportunity to make representations to the court prior to making a seizure order.
63. Subsection (9) requires the court to consider both protecting the value of any animal and avoiding increasing expenses incurred when determining whether to make a seizure order.
64. Subsection (10) provides for the making of an interim order pending the final determination of a seizure order. The court may make an interim order in relation to the keeping of an animal before the application for a seizure order is determined and until

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such time as all appeals are dealt with. Subsection (11) provides that subsections (5), (6)(a) and (9) which relate to seizure orders also apply to interim orders.

65. Subsection (12) provides that the disqualified person or any person who entered process prior to the making of the order may appeal to the Sheriff Principal against the order.
66. Subsection (1) of section 28H suspends the operation of any deprivation or seizure order until the period for appeal against the order and conviction have expired and any appeal has been withdrawn or determined.
67. Subsection (2) provides that where the operation of an order is suspended or decree has not been extracted the court may make an order making interim provision in relation the keeping of the animal affected. Subsection (3) provides that an interim order may include the provisions already stated in section 28G(5)(a) and (b) and section 28G(6)(a).
68. Subsection (4) requires the court to consider both protecting the value of any animal and avoiding increasing expenses when determining whether or how to make an interim order