

# ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Animal Health**

##### ***Section 1 – Slaughter for preventing spread of disease***

6. **Section 1** inserts a new section 32E and Schedule 3A into the 1981 Act and gives the Scottish Ministers supplemental powers to slaughter animals and birds with a view to preventing the spread of specified diseases including, for example, Foot and Mouth Disease (FMD) and Classical swine-fever. These new powers are additional to existing powers under section 31, as read with Schedule 3 to the 1981 Act, to slaughter animals “affected” with specified diseases (as well as those suspected of being affected, or which have been in contact with affected animals, or in any way exposed to the infection).
7. **Paragraph 6** of Schedule 3A gives the Scottish Ministers the power to extend the new slaughter power to any disease of animals they specify and, in such cases, to specify the animals (meaning any mammals except man), birds or amphibians which could be slaughtered. In the cases of the diseases specified in paragraphs 1 to 5, the Scottish Ministers may specify by order a wider group of animals to be slaughtered than those specified in these paragraphs. The diseases which may be specified are diseases of animals, as defined by section 87 of the 1981 Act. The power of slaughter provided for in paragraph 6 applies to, potentially, a wider category of “animals” than in paragraphs 1 to 5 of the Schedule. By virtue of paragraph 6 the Scottish Ministers can specify any animal, bird or amphibian to which the paragraph 6 slaughter power applies and in this context “animal” means any mammal (except man). The power will enable the slaughter of any mammal and not just those animals covered by the definition in section 87 of the 1981 Act, in order to prevent the spread of disease to farmed livestock in a disease outbreak. For example the slaughter of wild animals such as foxes might be necessary in event of an outbreak of a fast spreading disease capable of being transmitted by foxes to livestock.
8. **Paragraph 9** makes provision as to the procedure for making an order under paragraph 6. It requires such an order to be laid in draft and approved by a resolution of Parliament unless there is an outbreak of a disease of animals (as defined by section 87 of the 1981 Act) or some other emergency relating to a disease of animals in which case the emergency order making power detailed in paragraph 9(3) can be used. An emergency order must include a description of the emergency giving rise to the need to use the emergency procedure.
9. **Paragraph 7** of Schedule 3A provides that the Scottish Ministers may exercise the new powers of slaughter whether or not the animals, birds or amphibians concerned: are affected or suspected of being affected with the disease; are or have been in contact with animals, birds or amphibians so affected; have been in any way exposed to the disease; or have been treated with vaccine or serum or both against the disease. Therefore,

Scottish Ministers could, if considered necessary, adopt a slaughter policy to ring-fence disease beyond a disease infected area. For example, such a disease defence policy could be used in relation to FMD where the virus has been known to spread over many kilometres in certain wind conditions. In certain circumstances, such a cull could be deemed necessary to curtail the disease spread .

10. [Paragraph 8](#) requires the payment of compensation for any animal (as defined by section 87 of the 1981 Act) slaughtered under Schedule 3A, but not other animals, birds and amphibians, and allows different provision to be made for different cases or classes of case. The existing powers of the 1981 Act could be used, if it was considered to be appropriate, to provide for the payment of compensation for other animals or birds or amphibians slaughtered under the exercise of any of the new slaughter powers. An order, providing for the payment of compensation under paragraph 8(1), is subject to negative resolution of the Scottish Parliament.

### ***Section 2 – Slaughter of treated animals***

11. [Section 2](#) inserts section 16B into the 1981 Act and makes provision for animals (meaning any mammals except man) and birds which have been treated with vaccine or serum (or both) to prevent the spread of disease to be slaughtered for the purposes of securing (or helping to secure) disease free status. In this context, disease free status means recognition under Community law or any other international rules (such as those of the Office International des Epizootics) that the animals or birds of a particular class in a specified area are not infected by a particular disease or class of disease.
12. Subsection (1) extends the power of slaughter of animals or birds treated with a serum or vaccine to prevent the spread of the diseases listed in that subsection. “Animal” in this subsection means any mammal (except man).
13. Subsection (2) gives the Scottish Ministers the power, by order, to specify other diseases of animals (as defined by section 87 of the 1981 Act) to which this section will apply. The power of slaughter will however apply to any animal or bird treated to prevent the spread of that disease and in this context animal will mean any mammal (except man). The procedural formalities for such orders are set out in subsections (8) to (12). Briefly, such an order requires to be laid and approved by a resolution of the Scottish Parliament within 28 days of being made, failing which it ceases to have effect. Periods when the Parliament is dissolved or in recess for more than 4 days do not count towards the 28 day period. An order made under subsection (2) must refer to the circumstances giving rise to the need for that order.
14. Subsection (5) requires Scottish Ministers to pay compensation for any animal slaughtered under this section (animal being as defined by section 87 of the 1981 Act), whilst subsection (6) allows different provision as to compensation to be made for different cases or classes of case. The existing powers of the 1981 Act could be used, if it was considered to be appropriate, to provide for the payment of compensation for other animals or birds slaughtered under the exercise of this slaughter power. An order made under subsection (5) is subject to negative resolution of the Scottish Parliament.

### ***Section 3 – Disease control (slaughter) statement***

15. Section 3 of the Act inserts section 32F into the 1981 Act. Subsection (1) requires the Scottish Ministers to make a disease control (slaughter) statement before exercising any power of slaughter conferred by or under section 16B or Schedule 3A . Subsection (2) requires that the statement must describe the event or state of affairs in relation to which the power of slaughter is to be used and state why resort is to be made to the slaughter powers. Subsection (2) also provides that the statement made by Scottish Ministers may include further information about the factors that have been taken into account and the procedures to be followed such as the procedures to be followed in carrying out the slaughter. Subsection (3) provides that Scottish Ministers may make the statement in any manner they consider appropriate and publicise the statement as they see fit.

#### **Section 4 – Biosecurity codes**

16. Section 4 of the Act (inserting sections 6C and 6D into the 1981 Act) provides a power to allow Scottish Ministers to issue “Biosecurity codes”.
17. Subsections (4) and (7) of section 6C clarify that the Scottish Ministers may make biosecurity codes to deal with a range of scenarios in respect of particular diseases of animals (as defined by section 87 of the 1981 Act) and groups/species of animals (meaning any mammal except man), birds or amphibians. For example, the Scottish Ministers may issue a separate code for cattle and a separate one for sheep. Similarly, it allows for the issue of separate codes for individual diseases. Any code issued applies to persons who own, keep or are in charge of any creature of a kind to which the code relates. To that extent it is irrelevant whether the creatures are kept on agricultural land or not. The code may specify mandatory requirements, the breach of which would result in a criminal offence being committed. There could be other parts of the code which would be for guidance only.
18. Subsection (2) provides that biosecurity measures are measures for preventing the spread of diseases of animals, the spread of causative agents of diseases of animals among animals, bird or amphibians, between those creatures or from any of those creatures to humans. Subsection (3) defines “causative agent” in relation to a disease.
19. Subsection (6) provides that biosecurity codes may prescribe general or detailed requirements for persons who own, keep or are in charge of any creature to which the code applies.
20. Subsection (11) provides that biosecurity codes will be subject to consultation with the appropriate bodies. The resulting statutory instrument must be laid before and approved by the Scottish Parliament.
21. Where there has been an outbreak of a disease specified in Schedule 2B (see section 9) or some other emergency relating to a disease of animals (as defined by section 87 of the 1981 Act) which requires either a new code or an amendment to an existing code to help combat the outbreak, the Scottish Ministers have the power to make an emergency order under section 6D(1).
22. An emergency order allows the Scottish Ministers to make the statutory instrument at a time of animal disease emergency without the requirement to consult interested parties. It must include a description of the emergency giving rise to the need to use the emergency procedure. The emergency order would cease to have effect at the end of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order had been approved by the Scottish Parliament.

#### **Section 5 – Tests and samples**

23. Section 5 of the Act (inserting sections 6E and 6F into the 1981 Act) provides additional powers for inspectors, appointed or authorised by the Scottish Ministers, to enter any premises and to take samples and carry out tests, to ascertain whether there is any evidence that there is, or has been, a biological indicator of animal disease or such indicators of any causative agent of disease, on the premises. Subsection 6E(4) defines “biological indicator” and “causative agent”. Such samples and tests may be applied to any animal (meaning any mammal except man), bird or amphibian. Premises includes any land, building or any other place including a vehicle, vessel, tent or moveable structure.
24. Inserted section 6F also provides that Scottish Ministers may carry out other tests on a sample, already taken under existing legislation, for the purposes of monitoring, control or prevention of disease of animals (as defined by section 87 of the 1981 Act). In the event that the Scottish Ministers did not carry out the initial sampling and therefore do not possess the relevant sample, subsection (4) provides that they may instruct the person who does possess it to give it to them for the purposes of the further tests.

### ***Section 6 – Animal gatherings***

25. Section 6 of the Act (inserting section 8A into the 1981 Act) allows Scottish Ministers to make an order that would make provisions for the licensing of gatherings of animals or birds (or both) (referred to as “animal gatherings”) with a view to the prevention of the spread of disease. The meaning of an animal gathering is defined in subsections (3) and (4).
26. Subsections (5) and (6) set out some of the provisions which the Scottish Ministers may include in an order made under section 8A. Subsection (7) clarifies that the conditions which may be imposed on the granting or renewal of a licence include those relating to measures for the prevention of the spread of disease. The Scottish Ministers are required to consult certain interested persons before making an order under subsection (1) of section 8A. Subsection (8) provides that contravention of the conditions of a licence is an offence. Other offences as to licences are provided by sections 67 to 71 of the 1981 Act.

### ***Section 7 – Treatment***

27. Section 7 of the Act (amending section 16 of the 1981 Act) enables the Scottish Ministers, for the purposes of preventing the spread of disease, to cause any animal (meaning any mammal except man) or bird to be treated with serum or vaccine (or both). Subsection (1) of section 16 of the 1981 Act is repealed and replaced by subsection (1A).
28. Serum contains disease antibodies, whilst vaccine contains antigen to stimulate the production of antibodies in the treated animal or bird. The power provided in subsection (1A) of section 16 is wider than that previously provided by subsection (1) and could form part of the strategy to stop disease spreading by, for example, vaccinating in a wide area around an infected area to provide a barrier against disease spread.

### ***Section 8 – Seizure of carcasses etc.***

29. Section 8 of the Act (inserting new sections 36ZA and 36ZB into the 1981 Act) makes provision for the Scottish Ministers to make an order to allow for the seizure and disposal of items which might be capable of carrying or transmitting any disease in relation to which any of the new slaughter powers inserted by sections 1, 2 and 11 (Section 11 makes provision as to Transmissible Spongiform Encephalopathy (TSE) and includes a power of slaughter in this connection) is exercisable.
30. Subsections 36ZA(1) to (3) provide that the Scottish Ministers may by order make provision for the seizure and destruction of anything (other than a living animal (meaning any mammal except man), bird or amphibian) which might carry or transmit a relevant disease, being diseases in relation to which the slaughter powers under section 16B, Part 2B or Schedule 3A of the 1981 Act (inserted by sections 1, 2 and 11 of the Act respectively) are exercisable. Objects which could be seized by an order made under this section could include: infected implements; carcasses; creatures’ bedding; and their faeces etc.
31. Subsection 36ZA(4) creates an offence in connection with the throwing or placing of a carcase or anything else obtained from or produced by an animal, bird or amphibian slaughtered under section 16B, Part 2B or Schedule 3A into a river, stream, canal, navigation or other water or in the sea within 4.8 kilometres of the shore.
32. Section 36ZB provides that the Scottish Ministers must pay compensation for anything seized under section 36ZA.
33. Subsection (2) provides that this mandatory obligation to pay compensation does not extend to paying compensation for the seizure of carcasses or other things produced by or obtained from creatures. The mandatory compensation will be in relation to objects seized such as farm equipment and creature housing.

34. In the case of carcasses seized under section 36ZA(1) and other things produced by or obtained from creatures being seized, subsection (3) allows the Scottish Ministers to provide (by order) compensation at their discretion.
35. Subsection (4) makes provision for the payment of compensation at “value” for things seized, whilst subsection (5) extends that compensation provision to things which could have been seized under section 36ZA(1) but which were destroyed, buried or disposed of under an order made under section 23(e) of the 1981 Act.
36. Subsection (6) gives the Scottish Ministers power to make ancillary provision as to how values are to be ascertained and to regulate how applications for compensation are made and the mode of payment of compensation.

### ***Section 9 – Specified diseases***

37. Section 9 of the Act (inserting section 28I and Schedule 2B into the 1981 Act) relates to the new offence of deliberate infection of animals under section 10 of the Act and the making of an emergency biosecurity order under section 6D (inserted by section 4 of the Act). Schedule 2B lists fast spreading diseases, whilst section 28I allows that list of diseases to be modified by order. An order under section 28I would cease to have effect at the end of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order had been approved by the Scottish Parliament. An order made under subsection (2) must include a statement of the reasons giving rise to the need for that order.

### ***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 carcass of an animal or bird; and acquiring or retaining anything obtained from, produced by, or used in connection with an animal or bird or carcass 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.

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 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

### ***Section 11 – Livestock genotypes: specification, breeding and slaughter***

- 69. Section 11 of the Act (inserting Part 2B into the 1981 Act) deals with Transmissible Spongiform Encephalopathies (TSEs). A TSE is a disease which causes changes to the brain and nervous system of an animal leading to death. Whilst scientific knowledge in relation to genetic control of TSEs is limited to sheep at the present time, section 11 provides power to deal with TSEs in other species of livestock (a definition is given in section 36X of Part 2B) if necessary and where scientifically possible.
- 70. There is presently no vaccine or cure for TSEs. It is currently possible to identify whether sheep are naturally resistant or susceptible to Scrapie (a TSE of sheep and goats) by testing a blood sample or tissue containing the animal's DNA and thereby discovering its genotype which is the genetic constitution of an organism. Control of TSEs in sheep is possible by selective breeding to increase the levels of natural genetic resistance. The provisions of Part 2B will enable similar steps to be taken for other livestock species as scientific knowledge increases.
- 71. The new Part 2B of the 1981 Act provides powers to: specify TSE susceptible livestock genotypes; ascertain, by sampling, genotypes and identify livestock; place restrictions on breeding; review the above restrictions; enforce the restrictions if not complied with; slaughter livestock susceptible to TSEs; gain entry to premises; and to pay compensation compulsorily in certain circumstances. It also makes it an offence to fail to comply with restrictions or requirements without reasonable excuse, or to do certain other things.
- 72. Section 36N allows the Scottish Ministers by order to specify livestock genotypes if they are satisfied that an animal of a particular livestock genotype has (or has had) a form of TSE (whether in Scotland or elsewhere). If it is appropriate they may also specify the form of TSE concerned. It is envisaged that this power would be used where an outbreak of TSE had occurred and it was known that a particular livestock genotype was susceptible to that TSE.
- 73. Section 36O provides Scottish Ministers with regulation making powers, by statutory instrument, to make provision requiring keepers of livestock to allow an inspector to obtain a sample from an animal to enable its genotype to be identified, to administer or otherwise attach an identification device to a livestock species and to make record keeping requirements.



74. Section 36P applies to livestock whose genotype has been specified under section 36N. Restriction notices, applicable to the circumstances of the case, may be issued to prevent the using of livestock, its semen, eggs or embryos in connection with breeding. The semen, eggs or embryos must be destroyed. The owner must arrange for the creature to which the notice applies to be castrated, sterilised or slaughtered. This will enable a breeding programme to be set up where livestock would be used to produce offspring which are resistant to TSEs. The Scottish Ministers, under certain exceptional circumstances, may allow breeding with more susceptible genotypes if for example the breed is in danger of extinction.
75. Section 36Q makes provision for persons in receipt of a restriction notice to request a review of the restriction notice.
76. Section 36R applies if the Scottish Ministers are satisfied that an owner has not complied either entirely or in part with a restriction notice except where a review under section 36Q is still ongoing or has been successful. The Scottish Ministers may take such reasonable steps as they consider appropriate to secure compliance. In particular they may cause to be destroyed eggs, semen or embryos and may also have livestock castrated, sterilised or slaughtered.
77. Section 36S makes it an offence for a person to: sell or transfer livestock, semen, eggs or embryos to which a notice applies; fail without reasonable excuse to comply with a restriction notice; use any semen, eggs or embryos which the person knows, or ought reasonably to know, to have been taken from livestock to which a restriction notice applies; fail, without reasonable excuse, to comply with any provision of regulations made under section 36O; or fail to give an inspector such assistance or information as the inspector may reasonably request in connection with the exercise by the inspector of any of the inspector's functions under this Part. Where the person seeks to rely on the defence of excuse the onus is put on that person to prove - on balance of probabilities - the facts which underpin that defence.
78. Section 36T provides that the Scottish Ministers may cause to be slaughtered, with a view to preventing the spread of any form of TSE, livestock whose genotype has been specified by virtue of section 36N in relation to the form of TSE concerned. The Scottish Ministers may also cause to be slaughtered, to prevent the spread of any form of any TSE, livestock whose genotype has not been ascertained either due to matters of urgency or that the science does not enable the genotype to be identified.
79. Section 36U provides for an inspector to enter premises to ascertain whether a function of the Scottish Ministers or inspectors, conferred under Part 2B, should be exercised or to do anything in pursuance of or in connection with the exercise of that function. Inspectors must if required produce evidence of their authority to do this. Any power of entry must be exercised at a reasonable hour unless the inspector thinks the case is one of urgency (see section 62G(6)) and in relation to the power to enter premises used exclusively as a dwelling house, 24 hours' notice of the intended entry is to be given unless the case is one of urgency (see section 62G(5)). The provisions of section 62H (warrants) and section 62I (entry and warrants: supplementary) (see below) also apply to this power of entry.
80. Section 36V provides for the paying of compensation (by order, subject to negative resolution of the Scottish Parliament) for livestock slaughtered and property which has been destroyed by virtue of the restriction notice or by virtue of section 36R or livestock slaughtered by virtue of section 36T(1). The order may make different provision for different cases or classes of case.

## ***Section 12 – Powers of entry etc.***

81. **Section 12** inserts new sections 62G (Powers of entry etc.: Scotland), 62H (Warrants) and 62I (Entry and warrants: supplementary) into the 1981 Act. In order to prevent or limit a fast spreading animal disease, it may be necessary to enter land or premises to

take action. Entry may be necessary as a matter of urgency because of the nature of the disease.

82. The 1981 Act contains a number of powers relating to the entry of land or premises.
83. Section 62G provides an explicit power of entry for the purpose of ascertaining whether a power to slaughter, conferred by or under any provision mentioned in subsection (3), should be exercised or doing anything in pursuance of, for the purpose of, or in connection with, the exercise of that power. In relation to the power to enter premises used exclusively as a dwelling house, 24 hours' notice of the intended entry is to be given unless the case is one of urgency.
84. Section 62H makes provision for the issuing of warrants by a sheriff or justice of the peace and the conditions which must be satisfied to obtain a warrant. Where the conditions are satisfied a sheriff or justice of the peace may issue a warrant authorising an inspector appointed or authorised by the Scottish Ministers to enter, if necessary using reasonable force, any premises to ascertain whether a function conferred on the Scottish Ministers or an inspector by or under the 1981 Act should be exercised or doing anything in pursuance of, or in connection with, the exercise of that function. A warrant must be executed at a reasonable hour unless the inspector thinks the case is one of urgency.
85. Section 62I contains supplementary provisions where an inspector enters any premises under the powers conferred by or under the 1981 Act or under a warrant under section 62H including the provision that the inspector may take such persons or equipment as the inspector considers necessary. It also includes a provision for the inspector to require assistance by any person on the premises as detailed in subsection (4). If the inspector enters any unoccupied premises the inspector must leave the premises as secure as the inspector found them.

### ***Section 13 – Inspection of vehicles***

86. **Section 13** (inserting section 65B into the 1981 Act) provides a power to enable an inspector who is accompanied by a constable in uniform to stop, detain and inspect any vehicle within an infected place or area (as declared by an order made under section 17 of the 1981 Act) to ascertain compliance with any provision under the 1981 Act, any order made under the 1981 Act, any regulation of any local authority made under an order, or any regulations of the Scottish Ministers under that Act. This power would be used as necessary to help ensure containment of a fast spreading disease.

### ***Section 14 – Penalties and time limits***

87. Section 14 of the Act (substituting section 75 of the 1981 Act) revises and brings up-to-date the penalties (financial and/or custodial) for existing animal health offences committed under the 1981 Act and for the new offences detailed in the Act where a penalty is not specified by any other provision of the 1981 Act.
88. Subsection (2) provides that a person who commits an offence is liable on summary conviction to imprisonment up to 6 months or to a fine up to level 5 (currently £5000) on the standard scale or to both.
89. Subsection (3) extends the time limits within which prosecutions for offences under the 1981 Act can be brought. It provides that proceedings may be brought within the period of 6 months from the date on which evidence of that offence came to the knowledge of the prosecutor, provided this is within 3 years of the date on which the offence was committed (subsection (4)).
90. Subsection (5) provides clarification in the case of continuous contravention. Subsection (6) explains when proceedings are to be deemed to have started

***Section 15 – Electronic communication***

91. **Section 15** widens certain provisions in the 1981 Act, that are specified in subsection (3), so that a requirement for something to be done in writing may be met by using a document that is transmitted by electronic means and capable of being reproduced in legible form. However, in relation to the provisions specified in subsection (4), electronic communications are only permissible if the recipient has consented to receive the electronic communication for the relevant purpose, and an email address is provided by the recipient. Subsection (5) provides that, in respect of certain sections of the 1981 Act, a document sent electronically is taken only to be received on the day after the day of its transmission. Subsection (6) provides that Scottish Ministers may, for the purposes of the 1981 Act, by order make further provision for using electronic communication, including the use of electronic signatures, and for using documents in electronic form. Such an order is subject to negative resolution of the Scottish Parliament.