

ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Animal Welfare

Section 40 – Disqualification orders

187. This section enables a court on convicting a person of a relevant offence to make an order in addition to, or instead of, any other penalty and disqualifying that person from one or more activities relating to animals.
188. The relevant offences, conviction of which can give rise to the making of such an order, are: causing unnecessary suffering (section 19); mutilation (section 20); cruel operations (section 21); administration of poisons etc. (section 22); animal fights (section 23); failing to ensure the welfare of an animal (section 24), failure to comply with a care notice (section 25(7)), abandonment (section 29) and failure to comply with a disqualification order (section 40(11)).
189. A disqualification order disqualifies a person from participating in one or more of 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 an animal for the purpose of an activity in respect of which one of the foregoing disqualifications is imposed; and taking charge of animals for any, or any other, purpose.
190. Subsection (3) provides that 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.
191. Subsection (4) provides an exception where a disqualification order includes disqualification from taking charge of animals for any (or any other) purpose under subsection (2)(h). A person subject to such a disqualification may take charge of an animal if no other arrangements for its care are reasonably available and the disqualified person takes charge of the animal for the purpose of alleviating suffering, or, with the consent of the owner for the purposes of caring for the animal.
192. Subsection (5) provides that the court has to state its reasons for not making a disqualification order on convicting a person of a relevant offence.
193. Subsection (6) provides that a disqualification order may be made in addition to or instead of any other penalty or order which may be imposed in relation to the relevant offence.

194. 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 this subsection to disqualify a person who has been convicted for failure to ensure the welfare of livestock only from keeping livestock, but not domestic pets.
195. Subsection (8) allows a court to make a disqualification order to restrict the number of animals of a particular kind (or kinds) which a person may own or keep (instead of prohibiting the owning or keeping of all such animals). This is intended to cover the situation where a person is convicted of a relevant animal welfare offence but the court considers it appropriate to make an order restricting the number of animals that the person can keep, rather than prohibiting the person from keeping animals altogether.
196. Subsection (9)(b) 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 terminated or varied.
197. Subsection (10) allows the court to suspend the operation of the disqualification order to enable practical arrangements to be made for the animals affected or for the period while an appeal may take place.
198. Subsection (11) makes it an offence to breach a disqualification order.
199. Subsection (12) provides that where a disqualification order restricting the number of animals that a person may own or keep is breached, all animals that the person owns or keeps are to be treated for certain purposes as being owned/kept in breach of the order. This provision is necessary for the proper operation of any subsequent deprivation orders. Without such a provision, disputes could arise as to which particular animals are kept in breach of the order.