

ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Animal Welfare

Section 19 – Unnecessary suffering

103. This section sets out the circumstances in which a person who causes a protected animal to suffer commits an offence. Unnecessary suffering can be caused in two ways: either by taking action which causes unnecessary suffering, or by failing to take steps to prevent unnecessary suffering. The concept of “unnecessary suffering” is central to the legal definition of cruelty and was previously included in the Protection of Animals (Scotland) Act 1912 (“the 1912 Act”). The infliction of pain, even if extreme, is not in itself sufficient to constitute unnecessary suffering, as pain may be caused for beneficial reasons such as in surgery or medicine. Therefore, consideration must be given to whether pain or suffering is necessary.
104. Subsection (1) provides that it will be an offence for any person, by an act, to cause unnecessary physical or mental suffering to a protected animal where the person committing the act knew or ought reasonably to have known, that the act would cause, or would be likely to cause, suffering.
105. Subsection (2) provides that a person who is responsible for an animal commits an offence if, by an act or omission, that person causes unnecessary suffering to their animal and the person responsible for the animal knew or ought reasonably to have known that the act or omission would cause, or would be likely to cause, suffering. It will not be necessary to show that an accused person actually knew that their act or omission would cause suffering, but only that they ought reasonably to have known.
106. Subsection (3) provides that a person who is responsible for an animal commits an offence if they let another person cause their animal to suffer unnecessarily, either by an act or by an omission, and the person responsible for the animal actively permits that to happen, or fails to take reasonable steps to prevent it from happening.
107. Subsection (4) sets out a non-exhaustive list of considerations to which the courts are to have regard in determining whether suffering is unnecessary. These considerations include whether the suffering could reasonably have been avoided or reduced, compliance with any relevant enactment, licence or code of practice issued on a statutory basis, the purpose of the conduct, the proportionality of the suffering to the purpose, and whether the conduct was that of a reasonably competent and humane person.
108. Subsection (5) provides that nothing in this section applies to the appropriate and humane destruction of an animal. However the infliction of suffering over and above that necessarily caused by appropriate and humane destruction is not exempt.