

2003 No. 174

ZOOS

The Zoo Licensing Act 1981 Amendment (Scotland) Regulations 2003

Made 11th March 2003

Laid before the Scottish Parliament 11th March 2003

Coming into force 1st April 2003

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Zoo Licensing Act 1981 Amendment (Scotland) Regulations 2003 and shall come into force on 1st April 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations “the Act” means the Zoo Licensing Act 1981(b).

Amendment of the Zoo Licensing Act 1981

3. The Act shall be amended in accordance with regulations 4 to 26.

4. In section 1 (licensing of zoos by local authorities)—

- (a) in subsection (2) omit the words from “; and this Act” to the end of the subsection; and
- (b) after subsection (2) insert—

“(2A) This Act applies to any zoo to which members of the public have access, with or without charge for admission, on seven days or more in any period of 12 consecutive months.

(2B) This Act also applies to any zoo to which members of the public do not have such access if a licence is in force in respect of it or as otherwise provided (in particular, in section 13 and 16C to 16G).

(2C) In this Act—

- (a) a section of a zoo means—
 - (i) a particular part of the zoo premises;
 - (ii) animals of a particular description in the zoo; or

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1981 c.37. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

- (iii) animals of a particular description which are kept in a particular part of the zoo premises; and
- (b) references to the closure of a section of a zoo to the public mean–
 - (i) the closure to the public of a particular part of the zoo premises;
 - (ii) ceasing to exhibit animals of a particular description to the public; or
 - (iii) ceasing to exhibit animals of a particular description to the public in a particular part of the zoo premises.”.

5. After section 1 (licensing of zoos by local authorities) insert–

“Conservation measures for zoos

1A. The following are conservation measures to be implemented in zoos in accordance with this Act:–

- (a) participating in at least one of the following:–
 - (i) research from which conservation benefits accrue to species of wild animals;
 - (ii) training in relevant conservation skills;
 - (iii) the exchange of information relating to the conservation of species of wild animals;
 - (iv) where appropriate, breeding of wild animals in captivity; and
 - (v) where appropriate, the repopulation of an area with, or the reintroduction into the wild of, wild animals;
- (b) promoting public education and awareness in relation to the conservation of biodiversity, in particular by providing information about the species of wild animals kept in the zoo and their natural habitats;
- (c) accommodating their animals under conditions which aim to satisfy the biological and conservation requirements of the species to which they belong, including–
 - (i) providing each animal with an environment well-adapted to meet the physical, psychological and social needs of the species to which it belongs; and
 - (ii) providing a high standard of animal husbandry with a developed programme of preventative and curative veterinary care and nutrition;
- (d) preventing the escape of animals and putting in place measures to be taken in the event of any escape or unauthorised release of animals;
- (e) preventing the intrusion of pests and vermin into the zoo premises; and
- (f) keeping up-to-date records of the zoo’s collection, including records of–
 - (i) the numbers of different animals;
 - (ii) acquisitions, births, deaths, disposals and escapes of animals;
 - (iii) the causes of any such deaths; and
 - (iv) the health of the animals.”.

6. In section 2 (application for licence) after subsection (2) insert–

“(2A) Any notice given to the local authority under subsection (1) must also specify how the conservation measures referred to in section 1A are being or will be implemented at the zoo.”.

7. In section 4 (grant or refusal of licence)–

- (a) in subsection (1) omit paragraph (b) and “, or” immediately preceding it;
- (b) after subsection (1) insert–

“(1A) Before granting or refusing to grant a licence for a zoo, the local authority shall also–

- (a) consult the applicant about the conditions they propose would be attached to the licence, if one were granted, under section 5(2A) and (if applicable) section 5(3); and
 - (b) make arrangements for an inspection to be carried out in accordance with section 9A (subject to subsection (2) of that section).”;
- (c) after subsection (2) insert–

“(2A) The local authority shall also refuse to grant a licence for a zoo if they are not satisfied that the conservation measures referred to in section 1A will be implemented in a satisfactory manner at the zoo.”; and

- (d) in subsection (3) after “if” insert “subsection (2A) does not apply but”.

8. In section 5 (periods and conditions of licence)–

- (a) after subsection (2) insert–

“(2A) A licence under this Act shall be granted subject to conditions requiring the conservation measures referred to in section 1A to be implemented at the zoo.”;

- (b) in subsection (3)–

(i) after “such” insert “other”; and

(ii) omit paragraphs (a) and (b);

- (c) in subsection (4) omit “(if any)”; and

- (d) for subsection (5) substitute–

“(5) The Scottish Ministers may, after consulting the authority, direct the authority to attach one or more conditions to a licence, and the authority shall give effect to such a direction.

(5A) But the Scottish Ministers may not direct the authority to attach a condition which is inconsistent with the implementation at the zoo of the conservation measures referred to in section 1A.”.

9. In section 6 (renewal of licence)–

- (a) after subsection (1) insert–

“(1A) Before extending the period of an existing licence under subsection (1)(a) the authority shall–

(a) make arrangements for an inspection to be carried out under section 9A (subject to subsection (2) of that section); and

(b) consider the report made to them pursuant to that inspection.”; and

- (b) in subsection (2) omit the words from “and, if” to the end of the subsection.

10. In section 7(1) (transfer, transmission and surrender of licence) for the words from “which application” to the end of the subsection substitute “specified by the authority and notified by them to the transferor and transferee”.

11. In section 8 (the Scottish Ministers’ list)–

- (a) in subsection (2) at the end insert “and shall be competent to advise about the implementation in zoos of the conservation measures referred to in section 1A”; and

- (b) in subsection (3) after “welfare,” insert “to advise about the implementation in zoos of the conservation measures referred to in section 1A”.

12. Before section 10 (periodical inspections) insert–

“Procedures relating to inspections before the grant, refusal, renewal or significant alteration of licences

9A.—(1) This section applies where an inspection is to be carried out as mentioned in sections 4(1A)(b), 6(1A)(a) and 16(2B)(b) and (3A)(b).

(2) Where an inspection under section 10 falls to be carried out within the period of 12 months beginning with the date on which a local authority becomes required to make arrangements for an inspection to be carried out as mentioned in subsection (1)–

(a) the authority need not arrange for an inspection to be carried out in accordance with this section; and

(b) if they do not, subsections (10) to (13) of this section apply in relation to the inspection under section 10 as they would have applied in relation to an inspection in accordance with this section.

(3) Where–

(a) an application has been made under section 6(1) for renewal of a zoo’s licence and the authority propose to extend the period of the licence; and

(b) one or more inspections of the zoo are required by section 16, the authority may combine those inspections with the inspection which is required by section 6(1A)(a).

(4) Where more than one inspection is required under section 16, the authority may combine the inspections.

(5) Subject to subsection (6), where in the course of an inspection under section 10 or 12 or in accordance with this section it becomes apparent to the inspectors that a significant alteration to the licence is likely to be needed, they shall—

- (a) consult the holder of the licence about that alteration;
- (b) consider whether any new conditions they consider will be needed to secure that alteration will be met if the licence is altered; and
- (c) include their findings and recommendations in their report.

(6) Subsection (5) does not apply where the inspection is an inspection before the significant alteration of a licence, and the significant alteration the inspectors consider likely to be needed is the same or substantially the same as that which the local authority propose to make or the Scottish Ministers propose to direct the authority to make.

(7) An inspection required by section 4(1A)(b) or section 6(1A)(a) (including an inspection required by section 6(1A)(a) which is combined with another inspection) shall be conducted by one or more inspectors nominated, after consultation with the local authority, by the Scottish Ministers from the list.

(8) An inspection required by section 16(2B)(b) or (3A)(b) (including such an inspection which is combined with another such inspection, but not including such an inspection which is combined with an inspection required by section 6(1A)(a)) shall be conducted by one or more persons who appear to the authority to be competent for the purpose and who are authorised by the local authority to conduct the inspection.

(9) Before an inspection is carried out in accordance with this section the authority shall, after consultation with the applicant or operator of the zoo (as the case may be), give the applicant or operator of the zoo at least twenty-eight days' notice of the date on which it is proposed to carry it out.

(10) Except in the case of an inspection carried out before the grant or refusal of an original licence, the inspector shall consider whether the conditions attached to the licence are met.

(11) In the case of an inspection carried out before the grant or refusal of a licence, the inspector shall consider whether the conditions proposed by the authority under section 4(1A)(a) are likely to be met if the licence is granted.

(12) In the case of an inspection carried out before the period of an existing licence is extended, the inspector shall consider whether the conditions attached to the licence are likely to be met if the period of the licence is extended.

(13) In the case of an inspection carried out before the significant alteration of a licence, the inspector shall consider—

- (a) whether any new or varied conditions proposed by the authority under section 16(2B)(a) or by the Scottish Ministers under section 16(3A) are likely to be met if the licence is so altered; and
- (b) whether the conservation measures referred to in section 1A will be implemented at the zoo if the licence is altered as proposed by the authority or the Scottish Ministers (as the case may be).

(14) Except in the case of an inspection carried out before the grant or refusal of an original licence, the inspector may require the production of all records kept by the holder of the licence in pursuance of conditions imposed to ensure that the conservation measures referred to in section 1A(f) are implemented at the zoo and the holder of the licence shall produce the records.

(15) The inspector shall send his report to the authority, and within one month after receiving the report of the inspection the authority shall send a copy to the applicant or operator of the zoo (as the case may be) and give the applicant or operator an opportunity to comment on it.”.

13. In section 10(4)(e) (periodical inspections) for “under section 5(3)(b)” substitute “requiring the conservation measures referred to in section 1A(f) to be implemented at the zoo”.
14. In section 11(1)(c) (special inspections) after “inspection” insert “in accordance with section 9A or”.
15. After section 11 insert–

“Special inspections of closed zoos

11A.—(1) The local authority may at any time carry out a special inspection of a zoo, or a section of a zoo to which 16E applies–

- (a) if they consider it appropriate to do so having regard to their functions under section 16E(4) of supervising the implementation of a plan prepared under section 16E(2);
- (b) if they consider it appropriate to do so having regard to their function under section 16E(6); or
- (c) if they consider it appropriate to do so in order to determine whether to exercise their function under section 16E(7) or (8).

(2) Section 10(4)(c) and section 11(2), (3) and (4) apply to an inspection under this section as they apply to an inspection under those sections.

(3) The inspectors may require the production of all records of the zoo’s collection kept by the operator of the zoo, and the operator shall produce the records.

(4) The inspectors shall send their report to the authority, and except where, after reasonable enquiries have been made, the operator of the zoo cannot be found, the authority shall send a copy to the operator forthwith and give him an opportunity to comment on it.”.

16. In section 12(1) (informal inspections) after “sections” insert “9A,”.

17. In section 13 (local authority zoos) for subsections (4) and (5) substitute–

“(4) Sections 16(1A), 16A, 16B, and 18 apply as if–

- (a) references to the authority were references to the Scottish Ministers; and
- (b) the words “granted by them” in section 16A(1) were omitted.

(5) Section 16(1B) applies as if for “authority shall make such alterations to the licence as they consider” there were substituted “the Scottish Ministers shall direct the authority to make such alterations to the licence as they consider”.

(6) The following provisions apply in place of section 16C:–

- (a) paragraph (b) applies where the Scottish Ministers are of the view that a zoo is being operated without a licence in contravention of this Act.
- (b) the Scottish Ministers shall make a zoo closure direction in respect of the zoo unless–
 - (i) the authority inform the Scottish Ministers that in their opinion a direction should be made under section 14(1) in respect of the zoo, and the Scottish Ministers make a direction under section 14(1)(a); or
 - (ii) the authority grant a licence for the zoo within such period as the Scottish Ministers consider to be reasonable in the circumstances.

(7) Section 16D applies as if–

- (a) references to section 16E were references to subsection (8) of this section; and
- (b) the reference in subsection (2) to the authority were a reference to the Scottish Ministers.

(8) The following provisions apply in place of section 16E to a zoo to which, by virtue of subsection (7)(a), this subsection applies:–

- (a) the authority shall make arrangements in relation to all animals kept in the zoo–
 - (i) for their future care; or

- (ii) for their disposal and for their care until they are disposed of;
- (b) the authority shall supply the Scottish Ministers with any information they request about the care or disposal of animals kept in the zoo;
- (c) the Scottish Ministers may, after giving the authority an opportunity to be heard, give them a direction in such terms as they see fit about the care of animals kept in the zoo or their disposal, and the authority shall comply with such a direction;
- (d) arrangements for the care or disposal of animals under this subsection shall not be prejudicial to the interests of the protection of wild animals and the conservation of biodiversity;
- (e) the Scottish Ministers may, after giving the authority an opportunity to be heard, make a direction under this paragraph varying a direction under paragraph (c) (including such a direction as varied by a direction under this paragraph);
- (f) the Scottish Ministers may, after giving the authority an opportunity to be heard, make a direction revoking a direction under paragraph (c) (including such a direction as varied by a direction under paragraph (e));
- (g) where this subsection applies by virtue of section 16D(3) (read in accordance with subsection (7) above), references in this subsection and in subsections (9) and (10) to a zoo shall be read as references to that section of the zoo which is closed permanently to the public.

(9) If the Scottish Ministers consider that an inspection of a zoo to which subsection (8) applies is appropriate having regard to their function under subsection (8)(c) they may require an authority to—

- (a) carry out a special inspection of the zoo to be conducted by one or more inspectors nominated, after consultation with the authority, by the Scottish Ministers from the list;
- (b) obtain a report of the inspection; and
- (c) send a copy of the report to the Scottish Ministers forthwith.

(10) For the purposes of an inspection under subsection (9), inspectors may require the production of all records of the zoo's collection kept by the operator, and the operator shall produce the records.

(11) Section 10(4)(c) applies to an inspection under subsection (9) as it applies to an inspection under that section.

(12) References in this Act to “a zoo closure direction” are to a direction requiring a zoo to be closed permanently to the public.”.

18. In section 14 (dispensation for particular zoos)—

- (a) in subsection (1)—
 - (i) at the beginning insert “Subject to subsection (1A),”; and
 - (ii) for “size of” substitute “number of animals kept in”;
- (b) after subsection (1) insert—

“(1A) The Scottish Ministers may only make a direction under subsection (1) where they are satisfied that it is not prejudicial to the protection of wild animals and the conservation of biodiversity to do so.”;

- (c) in subsection (3) at the beginning insert “Subject to subsection (3A),”; and
- (d) after subsection (3) insert—

“(3A) The Scottish Ministers may only vary a direction made under subsection (1) where they are satisfied that it is not prejudicial to the protection of wild animals and the conservation of biodiversity to do so.”.

19. In section 15 (fees and other charges)—

- (a) in subsection (1)—
 - (i) after “such” where it occurs for the first time insert “reasonable”;
 - (ii) in paragraph (b) after “renewal” insert “, alteration”;
 - (iii) omit the words from “and may charge” to the end of the subsection; and

- (b) after subsection (2) insert–
- “(2A) Subject to this section, the authority may charge to the operator of the zoo such sums as they may determine in respect of expenses incurred by them–
- (a) in connection with inspections in accordance with section 9A and under sections 10 to 12;
 - (b) in connection with the exercise of their powers to make directions under this Act;
 - (c) in the exercise of their function under section 16E(4) of supervising the implementation of plans prepared under section 16E(2); and
 - (d) in connection with the exercise of their function under section 16E(7) or (8).
- (2B) The authority’s charge under subsection (2A)(d) shall take into account any sums that have been, or will fall to be, deducted by them from a payment under section 16F(7) in respect of their costs.”; and
- (c) in subsection (5) for “amount of” where it occurs for the second time substitute “reasonable”.

20. In section 16 (power to alter licences)–

- (a) after subsection (1) insert–
- “(1A) Subsection (1B) applies where–
- (a) the authority have made a direction under section 16A(2) in respect of a zoo;
 - (b) the period specified in the direction by virtue of section 16A(2)(c), including such a direction as varied under section 16A(4) has expired; and
 - (c) the authority are satisfied that a condition specified in that direction, which requires any conservation measures referred to in section 1A to be implemented at the zoo, is not met in relation to–
 - (i) if the zoo was specified under section 16A(2)(b)(i), any section of the zoo;
 - (ii) if a section of the zoo was specified under section 16A(2)(b)(ii), that section of the zoo or any smaller section of the zoo included in that section.

(1B) The authority shall make such alterations to the licence as they consider to be necessary or desirable to secure that the section of the zoo in relation to which they are satisfied that the condition is not met is closed permanently to the public.”;

- (b) after subsection (2) insert–
- “(2A) Subsection (2B) applies in place of subsection (2) where the authority propose to make under subsection (1) a significant alteration to a licence (not being one to which subsection (3A) applies), except where the alteration is in accordance with the recommendations in a report pursuant to section 9A(5)(c).
- (2B) Before making a significant alteration to a licence the authority shall–
- (a) consult the holder of the licence about the alteration they propose to make to the licence;
 - (b) make arrangements for an inspection to be carried out in accordance with section 9A (subject to subsection (2) of that section); and
 - (c) consider the report made to them pursuant to that inspection.”;

(c) for subsection (3) substitute–

“(3) Subject to subsections (3A) and (3B), at any time after the grant of a licence under this Act, the Scottish Ministers may, after consulting the authority, direct them to alter the licence, and the authority shall give effect to such a direction within a reasonable time.

(3A) If the Scottish Ministers propose to direct the authority to make a significant alteration to a licence, they shall first notify the authority of the proposed alteration and the authority shall–

- (a) consult the holder of the licence about the alteration which the Scottish Ministers propose to direct them to make to the licence;
- (b) make arrangements for an inspection to be carried out in accordance with section 9A (subject to subsection (2) of that section); and
- (c) send a copy of the report made to them pursuant to that inspection to the Scottish Ministers.

(3B) The Scottish Ministers may not direct the authority to make an alteration to the licence which is inconsistent with the implementation at the zoo of the conservation measures referred to in section 1A.”;

- (d) after subsection (4) insert–

“(4A) Subject to subsection (3), the local authority shall secure that upon its alteration a licence contains such conditions as the authority think necessary or desirable for requiring the conservation measures referred to in section 1A to be implemented at the zoo.”; and

- (e) in subsection (6)–
 - (i) for “subsection (1) or in pursuance of a direction under subsection (3)” substitute “this section”; and
 - (ii) at the end insert “and (7A)”.

- 21. After section 16 (power to alter licences) insert–

“Enforcement of licence conditions

16A.—(1) Subsection (2) applies where the local authority, after giving the licence holder an opportunity to be heard, are not satisfied that a condition attached to a licence granted by them under this Act is met in relation to the zoo or a section of it.

- (2) Unless subsection (3) applies, the authority shall make a direction specifying–
 - (a) the licence condition which they are not satisfied is met;
 - (b) whether they are not satisfied that that condition is met in relation to–
 - (i) the zoo; or
 - (ii) a section of the zoo, and if so, which section;
 - (c) steps to be taken by the licence holder to ensure that that condition is met in relation to the zoo (or, if a section of the zoo is specified under paragraph (b)(ii), in relation to that section) within a period specified in the direction, which may not exceed two years from the date of the direction; and
 - (d) whether the zoo or a section of it is required to be closed to the public during that period or any part of it specified in the direction.

(3) This subsection applies if the authority have power to make a zoo closure direction under section 16B(5) and they exercise that power.

(4) The authority may, after giving the licence holder an opportunity to be heard, make a direction under this subsection varying a direction under subsection (2) (including such a direction as varied by a direction under this subsection).

(5) A direction under subsection (4) may increase the period specified in the direction under subsection (2)(c) or (d) but the period as increased must not exceed two years beginning with the date of the direction under subsection (2).

(6) A direction under subsection (2) (including such a direction as varied by a direction under subsection (4)) may be revoked by a further direction of the local authority.

Zoo closure direction

16B.—(1) The local authority shall make a zoo closure direction in respect of a zoo licensed under this Act where–

- (a) they have made a direction under section 16A(2) in respect of the zoo;
- (b) the period specified in the direction by virtue of section 16A(2)(c), including such a direction as varied under section 16A(4), has expired; and

- (c) they are satisfied, after giving the licence holder an opportunity to be heard, that a condition–
 - (i) specified in that direction and in respect of which the zoo was specified under section 16A(2)(b)(i), and
 - (ii) which requires any conservation measure referred to in section 1A to be implemented at the zoo, is not met in relation to the zoo.

- (2) The authority shall make a zoo closure direction in respect of a zoo licensed under this Act where they are satisfied, after reasonable enquiries have been made, that the operator cannot be found.

- (3) The authority shall make a zoo closure direction in respect of a zoo licensed under this Act where, after giving the licence holder an opportunity to be heard–
 - (a) they are satisfied that members of the public have had access to it on fewer than seven days in the period of 12 months ending on the date on which the authority determine that they are so satisfied; and
 - (b) it does not appear to them that it is the licence holder’s intention that members of the public will have access to it on seven days or more during any future period of 12 months.

- (4) The authority may make a zoo closure direction in respect of a zoo licensed under this Act where–
 - (a) they have made a direction under section 16A(2) in respect of a zoo;
 - (b) the period specified in that direction by virtue of section 16A(2)(c), including such a direction as varied under section 16A(4), has expired; and
 - (c) they are satisfied, after giving the licence holder an opportunity to be heard, that a condition specified in that direction, other than one which requires any conservation measure referred to in section 1A to be implemented at the zoo, is not met in relation to–
 - (i) if the zoo was specified in that direction, the zoo or any section of it; or
 - (ii) if a section of the zoo was specified in that direction, that section, any part of that section, any larger section which includes that section, or the whole zoo.

- (5) The authority may, after giving the licence holder an opportunity to be heard, make a zoo closure direction in respect of a zoo licensed under this Act if–
 - (a) any reasonable requirements relating to the premises or conduct of the zoo notified by them to the licence holder in consequence of the report of any inspection under this Act are not complied with within such time as is reasonable in the circumstances;
 - (b) they are satisfied that the zoo has been conducted in a disorderly manner or so as to cause a nuisance;
 - (c) the licence holder (or where the licence holder is a body corporate, the body or any director, manager or secretary or similar officer of the body) is convicted of any offence mentioned in section 4(4); or
 - (d) any person who, to the knowledge of the licence holder, has been so convicted is employed as a keeper in the zoo.

- (6) But the authority may not make a zoo closure direction under subsection (5) if a direction under section 16A(2) is in force in respect of the zoo and–
 - (a) when that direction was made there were grounds upon which the authority could have made a zoo closure direction under subsection (5) in respect of the zoo, but they chose not to do so; and
 - (b) the grounds upon which they would make a zoo closure direction under subsection (5) are the same as any of the grounds upon which they could have made a zoo closure direction when they made the direction under section 16A(2) instead.

- (7) No zoo closure direction may be made under subsection (5)(a) or (b) on grounds involving the care or treatment of animals unless the authority have first consulted such

persons on the list as the Scottish Ministers may nominate for the purposes of this subsection.

(8) Where the authority make a zoo closure direction in respect of a zoo under this section, the zoo's licence is revoked from the date on which the direction has effect.

Zoo closure direction for zoos without licences

16C.—(1) This section applies where the local authority are of the view that a zoo is being operated without a licence in contravention of the Act.

(2) If the authority are satisfied, after reasonable enquiries have been made, that the operator of a zoo to which this section applies cannot be found, they shall make a zoo closure direction in respect of the zoo.

(3) Otherwise, unless the authority inform the Scottish Ministers that in their opinion a direction should be made under section 14(1) and they make a direction under section 14(1)(a) the authority shall give to the operator of the zoo at least 35 days' notice in writing of—

- (a) their intention to make a zoo closure direction in respect of the zoo; and
- (b) the operator's opportunity to be heard in accordance with subsection (4)(a).

(4) Where notice has been given under subsection (3)—

- (a) the authority shall give the operator of the zoo an opportunity to be heard; and
- (b) after the period of notice has expired, and after having given the operator an opportunity to be heard, the authority shall make a zoo closure direction in respect of the zoo unless—
 - (i) it appears to the authority that the view they reached as mentioned in subsection (1) was incorrect; or
 - (ii) notice under section 2(1) of intention to make an application for a licence for the zoo has been given to the authority before the expiration of the period of notice given under subsection (3).

(5) Where, before the expiration of the period referred to in subsection (3), notice is given to the authority under section 2(1) of intention to make an application for a licence for the zoo, but—

- (a) an application for a licence for the zoo is not made by the end of a period of three months beginning on the date on which the notice was given under section 2(1); or
- (b) the application for a licence for that zoo is refused and—
 - (i) no appeal is brought against the refusal within the time mentioned in section 18(2); or
 - (ii) if an appeal is brought against the refusal within the time mentioned in section 18(2), it is abandoned or the court confirms the decision to refuse the application,

the authority shall make a zoo closure direction in respect of the zoo.

Application of section 16E

16D.—(1) Section 16E applies to—

- (a) a zoo in respect of which a zoo closure direction has been made, from the date on which the direction has effect (in accordance with section 18(10));
- (b) a zoo whose licence has expired or been surrendered, from the date of its expiration or surrender (as the case may be).

(2) This Act shall cease to apply to a zoo when the local authority have notified the operator, or, where the operator cannot be found, any person appearing to them to be responsible for the zoo, in writing that they are satisfied that—

- (a) all animals which are to be disposed of pursuant to section 16E have been disposed of;
- (b) satisfactory arrangements for the care of any animals kept in the zoo which are not to be disposed of pursuant to section 16E are in effect; and

- (c) there are reasonable grounds for believing that satisfactory arrangements will continue to be maintained for such animals.

(3) Section 16E applies to a section of a zoo which is closed permanently to the public by virtue of alterations to the zoo's licence under section 16(1B), from the date on which those alterations have effect (in accordance with section 18(7A)).

(4) If a section of a zoo which was closed permanently to the public by virtue of alterations to the zoo's licence under section 16(1B) reopens pursuant to further alterations to the licence, section 16E shall cease to apply to that section.

Welfare of animals following closure of zoo

16E.—(1) Subsections (2) to (7) apply to a zoo to which this section applies unless the local authority are satisfied, after reasonable enquiries have been made, that the operator of the zoo cannot be found.

(2) As soon as reasonably practicable after the date from which this section applies, the operator of the zoo shall give to the authority a plan of the arrangements the operator proposes to make in relation to all the animals kept in the zoo—

- (a) for their future care; or
- (b) for their disposal and for their care until they are disposed of.

(3) The operator of the zoo shall supply the authority with any information they request about the care or disposal of animals kept in the zoo.

(4) Where the authority notify the operator of the zoo that they approve a plan prepared under subsection (2), the operator shall implement it under the supervision of the authority.

(5) Except with the agreement of the authority, the operator of the zoo shall not—

- (a) dispose of any animal kept in the zoo before a plan prepared under subsection (2) has been approved by the authority; or
- (b) dispose of any animal kept in the zoo other than in accordance with a plan so approved.

(6) Where—

- (a) the authority are not satisfied with a plan prepared under subsection (2);
- (b) the authority are not satisfied with the way in which such a plan is being implemented;
- (c) the operator of the zoo has not prepared such a plan within a reasonable period after the date from which this section applies; or
- (d) the authority consider that urgent steps need to be taken by the operator to safeguard the welfare of animals kept in the zoo,

the authority may, after giving the operator an opportunity to be heard, make a direction in such terms as they see fit as to the care of animals kept in the zoo or for their disposal and for their care until they are disposed of.

(7) Where—

- (a) the zoo operator has not complied with a direction under subsection (6) to the satisfaction of the authority; or
- (b) the authority consider that urgent steps need to be taken by them to safeguard the welfare of animals kept in the zoo,

the authority shall, after giving the operator an opportunity to be heard, make arrangements in relation to all the animals kept in the zoo for their future care, or for their disposal and for their care until they are disposed of.

(8) Where the authority are satisfied, after reasonable enquiries have been made, that the operator of the zoo cannot be found, they shall make arrangements for the future care of the animals kept in the zoo, or for their disposal and for their care until they are disposed of.

(9) For the purpose of giving effect to arrangements under subsection (7) or (8) the authority may—

- (a) care for any animal on the premises of the zoo; or

- (b) remove any animal found on the premises of the zoo and either retain it in the authority's possession or dispose of it.

(10) Arrangements for the care or disposal of animals under this section shall not be prejudicial to the interests of the protection of wild animals and the conservation of biodiversity.

(11) The authority may make a direction varying or revoking a direction under subsection (6) (including such a direction as varied by a direction under this subsection), but unless they are satisfied, after reasonable enquiries have been made, that the operator cannot be found, they shall not do so without first giving him an opportunity to be heard.

(12) Where this section applies by virtue of section 16D(3), references in this section to a zoo shall be read as references to that section of the zoo which is closed permanently to the public.

Power of authority to dispose of animals

16F.—(1) This section applies where a local authority are required to make arrangements under section 16E(7) or (8).

(2) The authority may sell or otherwise dispose of any animal in relation to which arrangements are required to be made if—

- (a) after making reasonable inquiries they are satisfied that the animal is owned by the operator of the zoo;
- (b) after making reasonable inquiries they are unable to identify or unable to find the animal's owner;
- (c) they have obtained the consent of the owner of the animal;
- (d) the owner of the animal has been asked for his consent before a date specified in the request but that date has passed and the authority have not received it and the owner has not arranged to take possession of the animal or arranged for such possession to be taken by another person; or
- (e) the owner has arranged to take possession of the animal or for its possession to be taken by another person, but the date for implementation of the arrangements has passed and they remain unimplemented.

(3) Where an animal is sold or given away under subsection (2) above, any person to whom the animal is sold or given shall have a good title to it.

(4) Subsections (5) to (9) apply when the authority have sold all the animals which are to be sold under subsection (2).

(5) Subject to subsection (8), the authority shall pay to the operator of the zoo a sum equal to the total proceeds of the sales of animals falling within subsection (6), less any part of the charge which the authority are entitled to make under section 15(2A)(d) which has not been paid.

(6) An animal falls within this subsection if the authority are satisfied that it was owned by the operator of the zoo immediately before its sale under subsection (2) (whether or not they were so satisfied when they exercised their power of sale under that subsection).

(7) Where an animal is not owned by the operator and the authority have identified a person whom they are satisfied was the owner of an animal immediately before its sale under subsection (2), they shall (subject to subsection (8)) pay to that person a sum equal to the proceeds of the sale of that animal, less the costs incurred by them in connection with the sale and in caring for the animal before the sale.

(8) If the person to whom the authority is required to make a payment under subsection (5) or (7) cannot be found before the end of the period of four months beginning with the date of the sale of the last animal which is to be sold under subsection (2), the proceeds of sale shall vest in the authority.

(9) Any remaining proceeds of the sales under subsection (2) shall vest in the authority.

(10) An authority must make any payment they are required to make under subsection (5) or (7) before the end of the period of four months beginning with the date of the sale of the last animal which is to be sold under subsection (2), but they shall not make such payment before the end of the period of one month beginning with the date of that sale.

(11) Nothing in this section shall prevent an authority from making arrangements, on the advice of a veterinary surgeon or practitioner, for an animal to be put down without delay where it is necessary or expedient to do so in the interests of its welfare.

(12) References in this section, other than at subsection (2)(a), to an animal owned by the operator of the zoo include an animal which is owned by the operator jointly with any other person.

Powers of entry

16G.—(1) For the purpose of giving effect to arrangements under section 16E(7) or (8), a person duly authorised by the local authority for the purposes of this subsection may, on producing his authority if so required, enter the premises of the zoo for the purposes of—

- (a) inspecting any animal found there to which the arrangements relate;
- (b) inspecting the accommodation of any such animal;
- (c) caring for any such animal;
- (d) removing any such animal; or
- (e) removing any records of any such animal.

(2) Subsection (1) shall not authorise entry into any part of the premises of the zoo which is used as a private dwelling.

(3) If a sheriff is satisfied by evidence on oath that—

- (a) it is necessary or desirable for the purpose of giving effect to arrangements under section 16E(7) or (8) for a person duly authorised by the authority for the purposes of this subsection to enter the premises of the zoo for the purposes mentioned in subsection (1); and
- (b) either—
 - (i) any part of the premises to which admission for any of those purposes is sought is used as a private dwelling; or
 - (ii) admission to the premises or any part of the premises for any of those purposes has been refused,

that sheriff may grant a warrant authorising that person to enter the premises, or (as the case may be) the part of the premises used as a private dwelling or to which admission has been refused for any or all of those purposes with or without constables and any other persons who may be necessary, and if need be by reasonable force.

(4) A warrant granted under subsection (3) shall also specify—

- (a) the length of time for which it is valid; and
- (b) the times at which entry may be effected,

and may contain such restrictions as the sheriff thinks fit.

(5) A person duly authorised for the purposes of subsection (3) shall, if so required, produce his authority and warrant before entering the premises of the zoo or part of the premises to which the warrant relates (as the case may be).”.

22. Section 17 (revocation of licence) shall cease to have effect.

23. In section 18 (appeals)—

(a) for subsection (1) substitute—

“(1) A person aggrieved by—

- (a) the refusal to grant a licence;
- (b) any condition attached to a licence;
- (c) any variation or cancellation of a condition;
- (d) the refusal to approve the transfer of a licence;

- (e) a direction under section 13(8)(c) at 16A(2) or any variation of such a direction;
 - (f) a zoo closure direction;
 - (g) the refusal to approve a plan prepared under section 16E(2);
 - (h) a direction under section 16E(6) or any variation of such a direction; or
 - (i) any arrangements under section 16E(7) or (8),
- may appeal by summary application to the sheriff.”;
- (b) in subsection (2)–
 - (i) for “twenty-one” substitute “twenty-eight”, and
 - (ii) for the words from “to refuse” to “case may be” substitute “as to the matter in question”;
 - (c) After subsection (7) insert–
 - “(7A) An alteration to a licence under section 16(1B) has effect–
 - (a) if an appeal is brought under this section within the time mentioned in subsection (2), and the authority’s decision is confirmed or varied, on the day following the day on which the appeal is determined, or on such other day as the court directs;
 - (b) if an appeal is brought under this section within the time mentioned in subsection (2) but is subsequently abandoned, on the day following the day on which the appeal is abandoned, or on such other day as the court directs; or
 - (c) if no appeal is brought within the time mentioned in subsection (2), on the expiration of that time.”; and
 - (d) for subsections (8) and (9) substitute–
 - “(8) Subsection (9) applies to the following directions:–
 - (a) a direction under section 16A(2)(d) which requires the zoo or a section of it to be closed to the public;
 - (b) a direction under section 13(8)(c), 16A(2) or 16E(6) which imposes a requirement on the operator of the zoo to carry out works the operator would not otherwise be required to carry out; and
 - (c) a direction under section 13(8)(c) or 16E(6) which imposes a requirement to dispose of any animals or any variation of such a direction.
 - (9) A direction to which this subsection applies shall not have effect–
 - (a) during the period within which the holder is entitled to appeal against it; or
 - (b) where such an appeal is brought within that period, during the period before the appeal is determined or abandoned.
 - (10) A zoo closure direction has effect–
 - (a) if an appeal is brought under this section within the time mentioned in subsection (2), and the authority’s decision is confirmed or varied, on the day following the day on which the appeal is determined, or on such other date as the courts directs;
 - (b) if an appeal is brought under this section within the time mentioned in subsection (2) but is subsequently abandoned on the day following the day on which the appeal is abandoned, or on such other day as the court directs; or
 - (c) if no appeal is brought within the time mentioned in subsection (2), on the expiration of that time.”.

24. In section 19 (offences and penalties)–

- (a) after subsection (3) insert–

“(3A) Any person who intentionally obstructs a person duly authorised for the purposes of section 16G(1) or (3) and acting pursuant to that authorisation is guilty of an offence.

(3B) If the holder of a licence for a zoo fails without reasonable excuse to comply with a direction given under section 16A(2)(d) to close the zoo, or a section of it to the public, for a period, the holder is guilty of an offence.

(3C) If any person notified in writing of a zoo closure direction pursuant to section 19A(1) or (2) fails without reasonable excuse to comply with that direction, the operator is guilty of an offence.

(3D) If the operator of a zoo fails without reasonable excuse to comply with a local authority's request for information under section 16E(3), the operator is guilty of an offence.

(3E) If, contrary to section 16E(5), the operator of a zoo without reasonable excuse and without the agreement of the local authority disposes of any animal kept in the zoo—

(a) before a plan prepared under section 16E(2), has been approved by the authority; or

(b) otherwise than in accordance with such a plan which has been approved by the authority,

the operator is guilty of an offence.

(3F) If the operator of a zoo fails without reasonable excuse to comply with a direction given under section 16E(6), the operator is guilty of an offence.

(3G) If, contrary to section 4(8), the holder of a licence for a zoo fails without reasonable excuse to display the zoo licence or a copy of it publicly at each public entrance to the zoo the holder of the licence is guilty of an offence.”; and

(b) in subsection (4)—

(i) for “or (2)” substitute “, (2), (3A), (3B), (3C), (3E) or (3F)”, and

(ii) at the end of the subsection insert “,(3D) or (3G)”.

25. Before section 20 (transitory provision for existing zoos) insert—

“Directions

19A.—(1) Where a local authority make a direction under this Act, they shall take reasonable steps to secure that the operator of the zoo is notified in writing of it.

(2) But where, after reasonable enquiries have been made, the operator of the zoo cannot be found, the authority shall take reasonable steps to secure that any person appearing to them to be responsible for the zoo is notified in writing of the direction.

(3) The operator of a zoo or other person notified in writing of a direction pursuant to subsection (2) shall comply with a direction under this Act made in respect of that zoo.”.

26. In section 21(1) (interpretation) at the end insert—

““zoo closure direction” has the meaning assigned by section 13(12).”.

Existing licences

27.—(1) This regulation applies to all zoos in respect of which a licence is in force under the Act on 1st April 2003, except zoos which close permanently to the public before 1st September 2003.

(2) The local authority shall before 1st September 2003 secure that each licence granted by them under the Act contains such conditions as the authority think necessary or desirable to secure that the conservation measures referred to in section 1A of the Act are implemented at the zoo, and may alter the licence for that purpose.

(3) Section 16(2) to (6) of the Act applies to the alteration of a licence under paragraph (2) as if the references in section 16(2) and (6) to “subsection (1)” were references to that paragraph.

(4) Section 18(1)(b) and (c), (2), (4), (6) and (7) of the Act applies to the alteration of a licence under paragraph (2).

(5) In deciding what conditions to attach to a licence under paragraph (2) an authority shall have regard to any standards specified by the Scottish Ministers under section 9 of the Act.

(6) An alteration of a licence under paragraph (2) shall not be treated as a significant alteration for the purposes of section 16 of the Act.

Transitory provision for zoos without licences

28.—(1) This regulation applies to a zoo which by virtue of the amendments made to the Act by these Regulations is required to be licensed under the Act but which immediately before 1st April 2003 was not required to be so licensed.

(2) Notwithstanding any such amendment, a person who immediately before 1st April 2003 was operating a zoo to which this regulation applies on any premises may continue to operate that zoo on those premises without a licence under the Act—

- (a) during the period of 6 months beginning with that date; and
- (b) if within that period application is made for a licence, until that application is finally disposed of or withdrawn.

(3) Section 16C of the Act does not apply to a zoo to which this regulation applies for so long as a person may by virtue of paragraph (2) continue to operate the zoo without a licence.

(4) If the licence is granted, it shall be granted for a period of four years beginning with the date on which the licence is granted.

JAMES WALLACE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
11th March 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, contain provisions implementing Council Directive 1999/22/EC relating to the keeping of wild animals in zoos (O.J. No. L 094, 9.4.1999 p.24-26) (“the Directive”). For this purpose they amend the Zoo Licensing Act 1981 (c.37) (“the Act”) as follows.

Section 1 of the Act (licensing of zoos by local authorities) is amended to secure that the Act applies to zoos open seven days in a year in addition to zoos open on more than seven days in a year. It is also amended so that the Act applies to zoos which are not open on seven days or more but in respect of which a licence is in force (regulation 4).

A new section 1A is inserted which gives effect to the conservation measures that zoos are required to adopt by virtue of Article 3 of the Directive (regulation 5).

Section 2 (application for licence) is amended to require an applicant for a zoo licence to submit to the local authority their proposals for implementing the conservation measures at the zoo (regulation 6).

Section 4 of the Act (grant or refusal of licence) is amended to provide that before attaching any conditions to a new licence or making a significant alteration to an existing licence the authority must consult the applicant or licence holder of the conditions they propose to attach and arrange for the zoo to be inspected and consider the inspector’s report. Section 4 is also amended to provide that the local authority must refuse to grant a licence if they are not satisfied that the zoo will be able to comply with licence conditions giving effect to the conservation measures within an appropriate period (regulation 7).

The Regulations amend section 5 (periods and conditions of licence) and 16 of the Act (power to alter licences) to require appropriate conditions to be attached to all zoo licences which give effect to the conservation measures (regulations 8, 20 and 21).

Section 6 of the Act (renewal of licence) is amended to provide that the local authority must make arrangements for an inspection to be carried out and that the local authority must consider any report made pursuant to that inspection prior to extending the period of an existing licence (regulation 9).

Section 8 of the Act (Secretary of State’s list) is amended to ensure that the veterinary surgeons and practitioners and other persons on the list are competent to advise about the conservation measures (regulation 11).

The Regulations insert section 9A which introduces a requirement for a zoo to be inspected before a decision is taken about granting, refusing, renewing a licence or making a significant alteration to a licence. Inspectors making inspections in accordance with section 9A (or in circumstances described in section 9A, under section 10) must consider whether existing, and any proposed, licence conditions will be met (regulation 12).

The Regulations insert section 11A which allows a local authority to carry out in certain circumstances a special inspection of a zoo in respect of which a zoo closure direction has been made (regulation 15).

Section 13 of the Act (local authority zoos) is amended to provide for the application of the new sections 16-16G to local authority zoos (regulation 17).

Section 14 of the Act (dispensation for particular zoos) is amended to secure that exemptions from the requirements of the Act may only be granted where this is not prejudicial to the objectives of the Directive, set out in Article 1 (protection of wild fauna and conservation of biodiversity) (regulation 18).

Section 15 of the Act (fees and other charges) is amended to enable an authority to recover from the zoo operator their costs under the Act as amended (regulation 19).

The Regulations also amend section 16 of the Act (power to alter licences) and insert sections 16A to 16G which give a local authority new powers to enforce licence conditions, to secure the closure of a zoo or a section of it, at which breaches of licence conditions persist and to secure the welfare of animals after the closure of a zoo or a section of it (regulations 20 and 21).

Section 16 is amended to enable an authority to alter a zoo's licence to secure permanent closure of a section of a zoo (defined in section 1(2C)) where at the end of the term of a direction under section 16A(2) requiring compliance with a licence condition requiring the conservation measures to be implemented a section of the zoo remains in breach of the licence condition.

Section 16A enables an authority to issue directions to zoo licence holders requiring them to comply with licence conditions, and to require the public to be excluded from the zoo or from a section of it for a period of time.

Section 16B gives a local authority power to make a zoo closure direction requiring the zoo to be closed and revoking its licence. They must make such a direction if a zoo has not complied with a direction under section 16A(2) to comply with a licence condition requiring the conservation measures to be implemented. They must also make a zoo closure direction where the zoo operator cannot be found or where the public are no longer admitted to the zoo on seven days or more in a year. A zoo closure direction can also be made on any of the other grounds which were previously grounds for revocation of a licence under section 17 of the Act (revocation of licence).

Section 16C gives local authorities power to secure the permanent closure of zoos operating without licences in contravention of the Act. Section 13(6) gives the Scottish Ministers power to secure the permanent closure of zoos owned by authorities which operate without a licence in contravention of the Act.

Section 16D provides for the zoos to which section 16E applies.

Section 16E requires the operator of a zoo to prepare a plan of the proposed arrangements for the future care of the animals in the zoo or for their disposal, and seek the local authority's approval of it. Arrangements must not be prejudicial to the objectives of the Directive. After the authority have approved the plan the operator must implement it under their supervision. The authority may request information from the zoo operator about the care or disposal of animals in a closed zoo. Section 11A gives the authority power to inspect closed zoos in certain circumstances. If a plan prepared under section 16E does not satisfy the authority, the authority may give directions to the zoo operator. There is a residual duty for the authority to make their own arrangements for the care or disposal of the animals kept in the zoo.

Section 16F permits authorities acting pursuant to such arrangements to sell zoo animals in certain circumstances.

Section 16G gives authorities powers to enter the premises of closed zoos to inspect animals and their accommodation, care for animals and to remove animals where they make such arrangements. Section 13(8) and (9), inserted by regulation 17, makes provision in relation to closed zoos owned by authorities.

Once the authority have signified that arrangements for the future care or disposal of the animals in a zoo have been implemented to their satisfaction, section 16D(2) provides that the Act will cease to apply to the closed zoo.

Section 17 of the Act (revocation of licence) ceases to have effect (regulation 22).

Section 18 of the Act (appeals) is amended to introduce various new rights of appeal to the Sheriff court connected with the new local authority functions introduced by the Regulations. The period for bringing an appeal is extended to 28 days (regulation 23).

Various criminal offences are inserted into section 19 of the Act (offences and penalties) including offences connected with authorities' new licence condition enforcement powers, and the new provisions to secure the welfare of animals at closed zoos (regulation 24).

Section 19A is inserted into the Act which provides that the local authority must take reasonable steps to secure that the operator of a zoo or any person appearing to them to be responsible for the zoo is notified in writing of any direction made by them under the Act. Section 19A also provides that the operator of the zoo or the person notified shall comply with a direction made under the Act (regulation 25).

A definition of "zoo closure direction" is inserted into section 21 of the Act (regulation 26).

The Regulations include transitional provision concerning the alteration of existing zoo licences, and transitory provisions for zoos without licences they also make minor or consequential amendments to the Act (regulations 27 and 28).

A Regulatory Impact Assessment has been prepared in relation to these Regulations. A copy may be obtained from the Scottish Executive Justice Department, Criminal Procedure Division, Branch 2, St Andrew's House, Edinburgh. A copy of the transposition note in relation to the implementation of the Directive can be obtained from the same address. Copies of both these documents have been placed in the Scottish Parliament Information Centre.

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ZOOS

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