

2007 No. 238

HIGH COURT OF JUSTICIARY

SHERIFF COURT

DISTRICT COURT

**Act of Adjournal (Criminal Procedure Rules Amendment)
(Animal Health and Welfare etc.) 2007**

Made - - - - - *9th March 2007*

Coming into force - - - - - *26th March 2007*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Animal Health and Welfare etc.) 2007 and shall come into force on 26th March 2007.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(b) shall be amended in accordance with sub-paragraphs (3) to (4).

(2) Rule 22.15 of the Act of Adjournal (Criminal Procedure Rules) 1996 shall apply in solemn proceedings which commenced after 1st April 2006 and in which there is a vulnerable witness within the meaning of section 271(1)(b) of the Criminal Procedure (Scotland) Act 1995, with proceedings being taken to have commenced when a report of the case has been received by the procurator fiscal.

(3) After Chapter 50 (football banning orders)(c) there shall be inserted the following:—

(a) 1995 c.46.

(b) S.I. 1996/513, last amended by S.S.I. 2006/436.

(c) Chapter 50 was inserted by S.S.I. 2006/436.

“CHAPTER 51
ANIMAL HEALTH AND WELFARE

Interpretation

51.1. In this Chapter—

“the 1981 Act” means the Animal Health Act 1981(a);

“the 2006 Act” means the Animal Health and Welfare (Scotland) Act 2006(b);

“deprivation order” means an order made under section 28E of the 1981 Act, section 39 of the 2006 Act, or section 47 of the Animal Welfare Act 2006(c);

“disqualification order” means an order made under section 28F of the 1981 Act or section 40 of the 2006 Act.

Deprivation orders

51.2. A deprivation order shall be in Form 51.2.

Representations

51.3.—(1) Where the court is considering making a deprivation order and it is practicable to do so—

- (a) the court shall appoint a diet for parties to be heard; and
- (b) the clerk of court shall intimate the diet to the owner of any animal to which the order would apply.

(2) A person who has received intimation under paragraph (1)(b) and wishes to make representations to the court under section 28E(9) of the 1981 Act, section 39(9) of the 2006 Act or section 47(9) of the Animal Welfare Act 2006 shall do so—

- (a) in writing to the clerk of court, unless the court otherwise directs; and
- (b) by such date as the court directs.

Forms of appeal by person with interest in animal

51.4. An application under section 28E(11) of the 1981 Act, section 43(2) of the 2006 Act or section 49(2) of the Animal Welfare Act 2006 (appeal) shall be in Form 51.4.

Disqualification orders

51.5. A disqualification order shall be in Form 51.5.

Termination or variation of disqualification orders

51.6. An application for the termination or variation of a disqualification order shall be made by petition in Form 51.6.”

(a) 1981 c.22.
(b) 2006 asp.11.
(c) 2006 c.45.

(4) In the appendix, after Form 50.3 (form of football banning order)(a) there shall be inserted the forms set out in the Schedule to this Act of Adjournal.

A C HAMILTON
Lord Justice General,
I.P.D.

Edinburgh
9th March 2007

(a) Form 50.3 was inserted by S.S.I. 2006/436.

SCHEDULE

Paragraph 2(5)

Form 51.2

Rule 51.2

Form of deprivation order

DEPRIVATION ORDER

COURT:

DATE:

OFFENDER:

Address:

Date of birth:

Owner of animal[s] to which offence relates if not offender:

THE COURT, sentencing the offender in respect of an offence mentioned in section 28E(1) of the Animal Health Act 1981 [*or* section 39(10) of the Animal Health and Welfare (Scotland) Act 2006] [*or* section 47(1) of the Animal Welfare Act 2006] namely the offence[s] of (*specify*);

[AND being satisfied on the evidence of (*specify name*) veterinary surgeon that destruction would be in the best interests of [some of] the animal[s] to which this order applies;]

ORDERS that the offender shall be deprived of the possession and/or ownership of the animal[s] in relation to which the offence was committed;

AND for

[(a) the destruction of (*specify animals identified in report of veterinary surgeon to be destroyed*);]
[and]

[(b) the sale of (*specify animals to be sold*);][and]

[(c) the disposal of (*specify animals to be disposed of*) by (*specify means of disposal*);]

[AND that any dependent offspring of an animal to which this order applies shall be (*specify provision to be made for dependent offspring*);]

[APPOINTS (*specify person appointed*) as the officer responsible for securing that this order is carried out;

REQUIRES any person possessing an animal to which this order applies to give the animal up to the officer appointed;

PROVIDES that the officer appointed and any person acting on the officer's behalf is authorised to enter, for the purposes of securing that the order is carried out, any premises where an animal to which the order applies is kept;]

[AND (*specify any other provision considered appropriate in connection with the order*)].

Signed

Clerk of Court

Copy: Offender, Officer appointed, Owner of animal[s] if not offender

[This Order is not operational until any period for an appeal against the order or conviction has expired or any such appeal has been withdrawn or finally determined.]

Form of appeal under section 28E(11) of the Animal Health Act 1981, section 43(2) of the Animal Health and Welfare (Scotland) Act 2006 or section 49(2) of the Animal Welfare Act 2006

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF [or DISTRICT] COURT AT (*place*)]

NOTE OF APPEAL

against deprivation order

under section 28E(11) of the Animal Health Act 1981

[or section 43(2) of the Animal Health and Welfare (Scotland) Act 2006]

[or section 49(2) of the Animal Welfare Act 2006]

by

[A.B.] (*address*)

APPELLANT

against

The Procurator Fiscal

RESPONDENT

To: Clerk of Justiciary

Name of convicted person:

Date of birth:

[Prisoner in the Prison of:]

Date of final determination of the proceedings:

Offence to which appeal relates:

Court and name of judge:

1. A deprivation order has been made against the above named convicted person.
2. The appellant has an interest in an animal to which the deprivation order applies as follows:— (*specify interest in animal(s) to which order applies*).
3. The appellant appeals against the deprivation order on the following grounds:— (*here give full statement of all grounds of appeal*).

(*Signed*)

[Solicitor for the appellant]

(*Address and telephone number of solicitor*)

(*Place and date*)

Form of disqualification order

DISQUALIFICATION ORDER

COURT:

DATE:

OFFENDER:

Address:

Date of birth:

THE COURT, sentencing the offender in respect of an offence mentioned in section 28F(1) of the Animal Health Act 1981 [*or* section 40(13) of the Animal Health and Welfare (Scotland) Act 2006], namely the offence[s] of (*specify*);

ORDERS that the offender shall be disqualified from (*specify in numbered paragraphs the activities that the offender is disqualified from; the kind of animals the order applies to and if the order is to apply to animals over a specified maximum number*);

[during a period of (*specify length of period*) from the date of this order [*or* the date that this suspended order becomes operational]];

[AND that during a period of (*specify length of period*) from the date of this order [*or* the date this suspended order becomes operational] the offender may not apply for this order to be terminated or varied;]

[BUT the operation of this order shall be suspended for a period of (*specify period of suspension*)].

Signed

Clerk of Court

Copy: Offender

Form of petition for termination or variation of disqualification order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE
CLERK and THE LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*)]

[or UNTO THE JUSTICES in the DISTRICT COURT OF (*name of district*)]

AT (*place*)

PETITION

of

[A.B.] (*address*)

[or Prisoner at the Prison of (*place*)]

PETITIONER

HUMBLY SHEWETH

1. That there is annexed to this petition a copy of the disqualification order which was made by the court [or the sheriff] [or the High Court sitting] at (*place*) on (*date*).

2. That no previous petition to terminate [or vary] the disqualification order has been made [or That a previous petition to terminate [or vary] the disqualification order was determined on (*date*)].

[3. That the disqualification order has been varied on (*date*) as follows:- (*specify details of any previous variation*).]

4. That the petitioner seeks to terminate [or vary] the disqualification order for the following reasons:- (*here state reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [or THE COURT]:

(1) to appoint intimation of this petition to be made to Her Majesty's Advocate;

(2) to appoint parties to be heard thereon on the earliest practicable date thereafter; and

(3) thereafter, on being duly satisfied, to make an order terminating [or varying] the disqualification order [by (*here state the terms of variation sought*)] and to do further and otherwise as to your Lordship[s] [or the court] shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

Solicitor for [A.B.]

(*address, e-mail address and telephone number of solicitor*)

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I. 1996/513) (“the 1996 Rules”). It makes provision consequent upon commencement of the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) and the Animal Welfare Act 2006. The Act of Adjournal provides forms for deprivation orders and disqualification orders under the Animal Health Act 1981 and the 2006 Act and deprivation orders under the Animal Welfare Act 2006. It also provides a procedure for representations to be made before a deprivation order is made, a form of appeal against a deprivation order by a third party with an interest and form of application for termination or variation of a disqualification order.

It also applies rule 22.15 to solemn proceedings after 1st April 2006 where there is a vulnerable witness under section 271(1)(b) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).

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