

ANIMAL WELFARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Post-Conviction Powers

Section 32: Imprisonment or fine

136. This section prescribes the penalties for offences under the Act. It distinguishes (at *subsection (5)*) between the penalties available for offences committed before and after the commencement of section 281(5) of the Criminal Justice Act 2003. The new provision for punishment by custodial sentence under the Criminal Justice Act is commonly known as ‘custody plus’. It provides for a short term of imprisonment combined with a period of release on licence, the combined periods totalling not more than 51 weeks. Until this provision comes into force, the maximum term of imprisonment for offences under the Act is six months.
137. The section also ensures that all offences under the Act, or which may be created by regulations under it, are to be dealt with by a magistrates’ court.
138. *Subsection (1)* sets the maximum penalty for an offence under sections 4, 5, 6(1) and (2), 7 and 8 of the Act (cruelty and fighting offences) as imprisonment for a term not exceeding 51 weeks or a fine of up to £20,000, or both. The option of a very high fine is intended for use in very serious cases.
139. *Subsection (2)* sets the maximum penalty for an offence under section 9 (failure to ensure welfare of animals), section 13(6) (carrying on an activity as specified by regulations without a licence or without being registered) or section 34(9) (breaches of disqualifications) as imprisonment for a term not exceeding 51 weeks or a fine up to level 5 on the standard scale (currently £5,000), or both.
140. *Subsection (3)* applies to offences under regulations made under sections 12 (for the promotion of welfare) and 13 (licensing and registration) of the Act. Those regulations may prescribe penalties by way of imprisonment or fine. Section 12(4) provides that a maximum term of imprisonment of 51 weeks and a fine up to level 5 on the standard scale (currently £5,000) or both may be set for offences under regulations made under section 12 for the promotion of welfare. The reason for this is that some breaches of section 12 regulations may be the equivalent of a welfare offence under section 9 and warrant the same penalty. Paragraph 9 of Schedule 1, which applies to regulations made under section 13, provides the same upper limit in relation to breach of licence conditions.
141. *Subsection (4)* provides that all other offences under the Act attract a maximum penalty of 51 weeks’ imprisonment or a fine up to level 4 on the standard scale (currently £2,500), or both. These offences include obstruction of inspectors.

Section 33: Deprivation

142. The aim of this section is to enable the courts to confiscate an animal from an owner who has been convicted of an offence in relation to that animal. A deprivation order is limited to cases where there is a clearly identifiable animal in respect of which the offence was committed.
143. In cases where a court has convicted a person of (a) a cruelty offence, (b) a fighting offence, (c) breach of the duty of care in relation to animal welfare, or (d) breach of a disqualification order (i.e. offences under sections 4, 5, 6(1) and 6(2), 7 to 9 and 34(9)), *subsections (1), (2) and (3)* give the court power to make an order depriving him of ownership of the animals in respect of which the offence was committed, and any dependent offspring of those animals, and to make an order for the disposal of those animals. Disposal in this section includes slaughter of the animal. Deprivation of ownership of animals may be ordered in addition to or instead of other penalties.
144. *Subsection (4)* confers ancillary powers to appoint someone to carry out the deprivation order, to require delivery of relevant animals and to confer additional powers on the person appointed to carry out the order, including powers of entry. The offender can also be made to meet the costs of carrying out the order.
145. *Subsection (6)* requires a court to give reasons if it decides not to make a deprivation order against a convicted person. By way of exception to this, *subsection (7)* provides that reasons for not imposing a deprivation order do not have to be given if a disqualification order is made under section 34(1).
146. *Subsection (8)* makes it clear that where a person is convicted of an animal fighting offence, the power to make a deprivation order is exercisable in relation to any animal which took part in the fight.

Section 34: Disqualification

147. Under the Protection of Animals Act 1954 a person convicted of an offence under the Protection of Animals Act 1911 may be disqualified from ‘having custody of’ specified animals for a specified period. However, it has proved difficult in practice to determine in many cases when a disqualified person ‘has custody of’ animals, so as to place him in breach of a disqualification order; and this has limited the effectiveness of such orders. Furthermore, the 1954 Act does not give any power to make consequential orders to provide for the welfare of animals kept or owned by a disqualified person nor does it provide for removal of such animals on conviction for breach of the disqualification. The lack of such a power was commented upon by the Court of Appeal in *Worcestershire County Council v Tongue* (CA 17th February 2004). This section and section 35 are designed to make good this omission.
148. *Subsection (1)* confers a power on the court to disqualify a person from doing the things mentioned in *subsection (2), (3) or (4)* or any combination of those subsections.
149. *Subsection (5)* provides that disqualification may be imposed in relation to animals generally or to one or more kinds of animal. Thus a court may, for example, use its discretion under this subsection to disqualify a person who has been convicted of organising dog fights from owning or keeping dogs, but not any other kind of animal.
150. *Subsection (6)* allows the court to decide the period which must expire before the person who is the subject of a disqualification order may apply to have it lifted. Under the current law, applications can be made after one year, and every subsequent year thereafter (see further section 43).
151. *Subsection (7)* provides for suspension of a disqualification order pending appeal. It also gives the court power to suspend a disqualification order to give the disqualified owner or keeper time to make arrangements for the animal.

152. *Subsection (10)* provides that disqualification orders can be imposed for offences including those relating to cruelty, fighting, welfare, operating without a required licence or without registering where this is required and for a breach of a previous disqualification order.

Section 35: Seizure of animals in connection with disqualification

153. *Subsection (1)* enables a court to combine a disqualification order with an order that any animals owned or kept by the person disqualified be seized, where continued ownership or possession would put him in breach of the disqualification. Such an order could be made by the court when a person was convicted of any of the offences under the sections relating to cruelty, fighting, welfare or operating without a required licence or without registering where this is required or of a breach of a previous disqualification order.
154. *Subsection (2)* deals with the case where a person is disqualified under section 34 from owning or keeping animals and is then convicted of the offence under section 34(9) of breaching the disqualification. It provides for the seizure of all animals that are owned or kept by that person in breach of the disqualification.
155. A seizure order made under section 35(1) or 35(2) differs from a deprivation order made under section 33(2) in that a deprivation order may only be made against a convicted owner. A seizure order under these subsections may also be made against a person who keeps an animal in breach of a disqualification order.
156. A further distinction between a seizure order made under section 35(1) or 35(2), and a deprivation order made under section 33(2), is that the former does not involve depriving the owner of his economic interest in it. Unlike an owner who is the subject of a deprivation order, an owner whose animal is seized under section 35 continues to be entitled to any disposal proceeds (less any relevant expenses).
157. The effect of *subsections (3) and (4)* is that if an animal seized under *subsection (1) or (2)* is owned by the disqualified person, it automatically falls to be disposed of. But, if it is not, the court must order how it can be disposed of. *Subsection (5)* ensures in this case that the owner has a chance to intervene. *Subsection (6)* enables the owner to appeal against any order for disposal that may be made.

Section 36: Section 35: supplementary

158. *Subsection (1)* sets out powers of the court when it makes an order under section 35. These include appointing a person to carry out the order and a power to give directions concerning the carrying out of the order. It can also provide that the owner of the animal or any other person the court thinks fit must reimburse costs incurred, and can confer additional powers, including powers of entry, on the person appointed to carry out the order.
159. *Subsection (2)* clarifies the extent of the court's powers to give directions under *subsection (1)*. It includes delegating the decision on the method of disposal to the person appointed by the court under *subsection (1)*.
160. *Subsections (3) and (4)* require the court and the person carrying out the order to have regard to protecting the value of the animal and to limiting the costs which may be payable under a reimbursement order under *subsection (1)(e)*. If a reimbursement order is made against an owner for the costs of carrying out a section 35 order, *subsection (5)* allows the amount to be deducted from any amount due to the owner from sale of the animal.

Section 37: Destruction in the interests of the animal

161. This section replaces the power previously in section 2 of the 1911 Act.

*These notes refer to the Animal Welfare Act 2006 (c.45)
which received Royal Assent on 8 November 2006*

162. *Subsection (1)* gives the court power, where it is persuaded by a vet that it is appropriate in the interests of the animal, to order the destruction of an animal in respect of which a cruelty, fighting or welfare offence under section 4, 5, 6(1) or 6(2), 7, 8(1) or 8(2) or 9 has been committed.
163. *Subsection (2)* gives the owner the opportunity to be heard before a destruction order is made, unless the court decides it is not reasonably practicable to communicate with him.
164. Under *subsection (3)*, the court can make orders relating to practical arrangements for carrying out the destruction order and require the offender or any other person to meet the costs of carrying out the order.
165. *Subsections (4) and (5)* confer a right of appeal on the offender or owner (if the owner is not the offender) unless the court considers the welfare of the animal requires it to be destroyed without delay.

Section 38: Destruction of animals involved in fighting offences

166. *Subsection (1)* allows the court to order the destruction of fighting animals, otherwise than in the interests of the animal, where there has been a conviction for a fighting offence under section 8(1) or (2). This power is wider than that accorded in section 37, on the basis that there may be circumstances in which it is appropriate to order the destruction of an animal otherwise than in its interests; for example, if the animal is considered to be a danger to public safety. Section 38 is not the only power available to a court to deal with fighting animals, and a fighting animal will not necessarily be subject to a destruction order. This is simply an additional power to ensure the court has sufficient discretion to dispose of animals that have been involved in fights or trained to fight.
167. *Subsection (3)* provides that the court can make orders relating to practical arrangements for carrying out the destruction order and require the offender or any other person the court thinks fit to meet the costs of its implementation, including keeping the animal until it is destroyed.
168. *Subsection (4)* allows the owner (if different from the person convicted) to appeal the order made under *subsection (1)*.
169. *Subsection (5)* provides that destruction orders may be made against any animal which took part in an animal fight, in relation to which any offence under section 8(1) or (2) has been committed.

Section 39: Reimbursement of expenses relating to animals involved in fighting offences

170. This section provides that a court which has convicted a person of an offence under section 8(1) or (2) can require that person, or another person as appropriate, to reimburse police for expenses they have incurred in looking after an animal involved in that offence. This includes animals that took part in the fight in relation to which the offence was committed.

Section 40: Forfeiture of equipment used in offences

171. This section gives the court power, where a person is convicted of an offence under sections 4, 5, 6(1) or (2), 7 or 8, to order equipment that it considers to have been used in the offences for which the offender has been convicted to be forfeited and destroyed (or otherwise dealt with).
172. *Subsection (3)* provides that a court shall not order the forfeiture of any equipment if the owner, or someone claiming an interest in it, has applied to the court to be heard, and has not already had the opportunity to show cause why the forfeiture order should not be made.

Section 41: Orders under section 33, 35, 37, 38 or 40: pending appeals

173. *Subsection (1)* suspends the operation of various orders relating to animals and equipment under the Act until the possibility of a successful appeal has expired. *Subsection (3)* provides that if an order is suspended under *subsection (1)*, the court may, nevertheless, give directions as to how the animal(s) should be dealt with during the suspension. *Subsection (4)* gives examples of the kinds of directions the court may give under *subsection (3)(b)* to provide for the animal's welfare pending the determination of the appeal.
174. *Subsection (5)* provides that costs which a court directs a person to pay will be recoverable as a civil debt.

Section 42: Orders with respect to licences

175. *Subsection (1)* provides that where a person is convicted of a cruelty, fighting, or welfare offence, an offence in connection with transferring an animal by way of sale or prize to a person under sixteen, or an offence against regulations made under section 13, the court may cancel his licence and make an order disqualifying him from holding such a licence.
176. *Subsection (3)* enables a court to decide the length of time that must expire before the person who is the subject of an order disqualifying him from holding a licence may apply to have it lifted (see further section 43).

Section 43: Termination of disqualification under section 34 or 42

177. *Subsection (1)* enables a person subject to a disqualification order under section 34 or 42 to apply to the court for termination of the disqualification, but *subsection (2)* imposes restrictions on the right to apply. An application cannot be made until one year has elapsed since the disqualification order was made (*subsection (2)(a)*). Where a previous application for termination of a disqualification order has been made under this section, the application cannot be made until one year after the determination of that application (*subsection (2)(b)*). In addition to this, applications cannot be made until a period specified by the court under sections 34(6), 42(3) or *subsection (5)* of this section has elapsed (*subsection (2)(c)*).
178. *Subsection (3)* sets out the court's powers in relation to an application to terminate a disqualification order. The court may terminate the disqualification, make it less onerous, or refuse the application. *Subsection (5)* provides that, if a court dismisses the application, it may specify a longer period than the period given at *subsection (2)(b)* in which the offender may not make an application for termination of the disqualification order. The court may also order the applicant to pay all or part of the costs of the application.
179. *Subsection (7)* specifies the court to which application must be made.

Section 44: Orders made on conviction for reimbursement of expenses

180. This section clarifies that where a court makes an order for the care or disposal of an animal under section 33(4)(e), 36(1)(e), 37(3)(e), 38(3)(e) or 39(1), and a person incurs expenses in carrying out that order, their expenses are recoverable as a civil debt. They are not to be treated as a fine imposed on conviction for the purposes of the Magistrates' Courts Act 1980.

Section 45: Orders for reimbursement of expenses: right of appeal for non-offenders

181. This section provides that where an order for the reimbursement of expenses is made under section 36(1)(e), 37(3)(e), 38(3)(e) or 39(1) against a person other than the person convicted of an offence under the Act, that person will have a right of appeal against

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the order. The convicted person will already have such a right of appeal by virtue of the Magistrates Courts Act 1980.