

EXPLANATORY MEMORANDUM TO
THE ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006
(CONSEQUENTIAL PROVISIONS) (ENGLAND AND WALES) ORDER 2006

2006 No. 3407

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order makes provision consequential on the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”). Section 10 of the 2006 Act inserts (for Scotland only) new sections 28C to 28H into the Animal Health Act 1981 (“the 1981 Act”); these sections relate to the offence of the deliberate infection of animals. Section 28F provides that where a court convicts a person of an offence under section 28C, that court may also make a disqualification order which disqualifies the convicted person from one or more specified activities relating to animals (such as owning or keeping an animal or dealing in animals). In addition, section 40 of the 2006 Act gives courts in Scotland power to disqualify a person convicted of certain animal welfare offences from owning or keeping an animal (or both), from dealing in animals, from transporting animals, and from certain other activities involving animals.

2.2 The provisions relating to disqualification orders in the 2006 Act replace (for Scotland) the existing UK wide provisions in the Protection of Animals (Amendment) Act 1954 (“the 1954 Act”). The 1954 Act contained provisions allowing a court to impose a disqualification order on a person convicted of an offence of cruelty to an animal under the Protection of Animals Act 1911 or the Protection of Animals (Scotland) Act 1912. The effect of such a disqualification order was that the person subject to it was prevented from having custody of any animal or any animal of a kind specified in the order of the court. The 1954 Act was repealed for Scotland by the 2006 Act to make way for the new Scottish disqualification provisions.

2.3 Article 3 of this Order makes provision in consequence of the 2006 Act to ensure that disqualification orders made by a court in Scotland have effect in England and Wales insofar as the order disqualifies a person from owning or keeping animals (or both), dealing in animals or transporting animals. Article 3 also provides that breach of such an order is an offence in England and Wales. Articles 4 to 7 of the Order make further provision to ensure that, where a person is convicted by a court in England and Wales of owning or keeping animals in breach of a Scottish disqualification order, that court has the power to order that the animals owned or kept by that person are taken into possession and disposed of (these provisions are similar in effect to the provision made for Scotland in section 10 (insofar as it inserts new sections 28G and 28H into the Animal Health Act 1981) and sections 41 to 43 of the 2006 Act).

2.4 Article 8 of the Order amends section 1 of the Animal Boarding Establishments Act 1963 (“the 1963 Act”), section 1 of the Riding Establishments Act 1964 (“the 1964 Act”) and section 1 of the Breeding of Dogs Act 1973 (“the 1973 Act”). These Acts deal, respectively,

with the granting of licences to keep animal boarding establishments, riding establishments and dog breeding establishments. Currently, section 1(2) of each Act provides that it is not possible to obtain a licence under the relevant Act if the person applying for a licence is disqualified under the 1954 Act from having the custody of animals. The 2006 Act repealed the 1954 Act for Scotland and so it is necessary, in consequence of the 2006 Act, to insert a reference to disqualification orders made under that Act so that a person subject to a Scottish disqualification order is not able to obtain a licence in England and Wales under the 1963, 1964 or 1973 Act. It is noted that the Animal Welfare Bill, which is currently before Parliament, also amends section 1(2) of the 1963, 1964 and 1973 Acts for England and Wales. It is understood that this Bill will have received Royal Assent before the section 104 Order is made. Accordingly, the paragraphs inserted by Article 8 of this Order take account of the numbering of the amendments made to the 1963, 1964 and 1973 Acts by Schedule 3 to the Animal Welfare Bill.

2.5 It is also noted that whilst schedule 2 to the 2006 Act actually repeals (for Scotland) the 1963, 1964 and 1973 Acts, these repeals will not be brought into force for a number of years to allow the Scottish Executive to put their own systems in place. As a result, the Scottish Executive has amended section 1 of the 1963, 1964 and 1973 Acts for Scotland in an Order made under the 2006 Act (this Order, the Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006, is currently in draft before the Scottish Parliament). The effect of that Order is that persons subject to a Scottish disqualification order made under section 28F(1) of the 1981 Act (as amended) or section 40 of the 2006 Act will not be able to obtain a licence under the 1963, 1964 or 1973 Act to keep an animal boarding establishment, riding establishment or dog breeding establishment in Scotland.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998. The instrument is, by virtue of section 115 of, and Schedule 7 to, that Act, subject to Type C procedure, and is subject to affirmative resolution procedure in each House of the UK Parliament. Section 104 of the Scotland Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of any Act of the Scottish Parliament.

4. Legislative Background

4.1 The 2006 Act was introduced to the Scottish Parliament on 5th October 2005, passed by the Parliament on 31st May 2005 and received Royal Assent on 11th July 2006. The main provisions came into force on 6th October 2006.

4.2 The 2006 Act has two main objectives; firstly, to strengthen the powers of Scottish Ministers in dealing with an outbreak of an infectious animal disease, like foot and mouth disease, where urgent action would be required to implement disease control measures. Secondly, to strengthen animal welfare legislation by introducing a “duty of care” on those responsible for animals to ensure their welfare and to allow animals in danger of suffering to be taken into possession by inspectors appointed or authorised under the 2006 Act.

4.3 The 2006 Act also increases the penalties which the courts can impose on those convicted of causing an animal unnecessary suffering and on those convicted of animal fighting offences. The penalties can include an order disqualifying a person from owning or

keeping animals, from dealing in animals, from transporting animals and from other animal related activities. Disqualification orders can be time limited and may be species specific.

4.4 As noted above, the 1954 Act, which the 2006 Act repeals in Scotland, makes provision for a disqualification order made by a court in Scotland, England or Wales to apply throughout Great Britain. This Order seeks to retain that reciprocity by ensuring that a disqualification order made by a court in Scotland will apply in England and Wales. (Separate provision is to be made (see clauses 44 to 48 of the Animal Welfare Bill) to ensure that disqualification orders made by the English and Welsh courts can be enforced in Scotland.)

5. Extent

5.1 The order will extend to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) (England and Wales) Order 2006 are compatible with the Convention rights.”

7. Policy background

7.1 The Protection of Animals (Scotland) Act 1912 was the foundation stone on which Scottish animal welfare legislation was based. Although it had been amended many times in the last 90 years, it was legislation which was essentially aimed at dealing with animal cruelty in the 19th Century. Other Acts were introduced during the course of the 20th Century which required certain animal activities (such as the operation of pet shops, the sale and breeding of dogs, dog and cat boarding, and the operation of riding stables) to be licensed by local authorities. However, this took the form of primary legislation and a good deal of Parliamentary time was required to amend or update the legislation.

7.2 The 2006 Act introduces a duty of care on all those responsible for animals to ensure that the welfare needs of their animals are met (section 24), and allows the Scottish Ministers to make regulations (with the approval of the Scottish Parliament) to regulate a range of animal activities (section 27).

7.3 The power of courts to disqualify a person convicted of an animal welfare offence (which was previously contained in the 1954 Act) is retained and strengthened, and the purpose of this Order is to maintain reciprocal arrangements in relation to the enforcement of disqualification orders made by the Scottish courts in England and Wales.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There will be no impact on the public sector.

9. Contact

Glenn Preston at the Scotland Office [Glenn.Preston@scotland.gsi.gov.uk or 020 7270 6749] can answer any queries regarding the instrument.

Scotland Office
November 2006