

# Draft Animal Health and Welfare (Scotland) Bill Consultation

## Draft Bill

Issued by the Scottish Executive Environment and  
Rural Affairs Department

May 2005



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ISBN: 0-7559-2555-6

Scottish Executive  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for the Scottish Executive by Astron B41477 05/05

Published by the Scottish Executive, May, 2005

Further copies are available from  
Blackwell's Bookshop  
53 South Bridge  
Edinburgh  
EH1 1YS

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# Animal Health and Welfare (Scotland) Bill

## CONSULTATION DRAFT

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CONSULTATION DRAFT

# Animal Health and Welfare (Scotland) Bill

An Act of the Scottish Parliament to amend the Animal Health Act 1981, including by making provision for preventing the spread of disease; to make provision for the welfare of animals, including for prevention of harm; and for connected purposes.

## PART 1

### ANIMAL HEALTH

#### *Powers of slaughter*

#### **1 Slaughter for preventing spread of disease**

- (1) In the Animal Health Act 1981 (c.22) (in this Part referred to as the “1981 Act”), after section 32D there is inserted—

**“32E Slaughter for preventing spread of disease: Scotland**

Schedule 3A to this Act has effect as to the slaughter of animals in relation to—

- (a) cattle plague;
  - (b) pleuro-pneumonia;
  - (c) foot-and-mouth disease;
  - (d) swine-fever;
  - (e) diseases of poultry; and
  - (f) such other diseases as are specified under paragraph 6 of that Schedule.”.
- (2) After Schedule 3 of that Act there is inserted—

“SCHEDULE 3A

*(introduced by section 32E)*

POWER OF SLAUGHTER FOR PREVENTING SPREAD OF DISEASE: SCOTLAND

#### *Cattle plague*

- 1 With a view to preventing the spread of cattle plague, the Scottish Ministers may, if they think fit, cause any animals to be slaughtered.



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*Pleuro-pneumonia*

- 2 With a view to preventing the spread of pleuro-pneumonia, the Scottish Ministers may, if they think fit, cause any cattle to be slaughtered.

*Foot-and-mouth disease*

- 3 With a view to preventing the spread of foot-and-mouth disease, the Scottish Ministers may, if they think fit, cause any animals to be slaughtered.

*Swine-fever*

- 4 With a view to preventing the spread of swine-fever, the Scottish Ministers may, if they think fit, cause any swine to be slaughtered.

*Diseases of poultry*

- 5 With a view to preventing the spread of diseases of poultry, the Scottish Ministers may, if they think fit, cause any animals to be slaughtered.

*Other diseases*

- 6 (1) With a view to preventing the spread of such other disease as the Scottish Ministers may by order specify, the Scottish Ministers may, if they think fit, cause to be slaughtered any animals of such description as they may so specify.
- (2) In this paragraph—
- “animals” is not restricted by its definition in this Act;
  - “disease” is not restricted by its definition in this Act.

*Exercise of power of slaughter*

- 7 The Scottish Ministers may exercise a power of slaughter under paragraphs 1 to 6 whether or not animals—
- (a) are affected with the disease or suspected of being so affected;
  - (b) are or have been in contact with animals so affected;
  - (c) have been in any way exposed to the disease; or
  - (d) have been treated with serum or vaccine (or both) against the disease.

*Compensation*

- 8 (1) The Scottish Ministers must pay compensation, of such amount as they may prescribe by order, in respect of any animal slaughtered by virtue of this Schedule.
- (2) An order under sub-paragraph (1) may make different provision for different cases and classes of case.

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*Orders*

- 9 (1) No order is made under paragraph 6 unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.
- (2) But where the Scottish Ministers are of the opinion that there exists—
- (a) an outbreak of a disease not specified in or by virtue of paragraphs 1 to 6; or
  - (b) some other emergency,
- sub-paragraph (1) does not apply in relation to the making of an order under paragraph 6.
- (3) Where sub-paragraph (2) applies, an order made accordingly (an “emergency order”)—
- (a) must be laid before the Scottish Parliament; and
  - (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by a resolution of the Parliament.
- (4) In reckoning for the purposes of sub-paragraph (3)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved; or
  - (b) in recess for more than 4 days.
- (5) Sub-paragraph (3)(b) is without prejudice to anything previously done by reference to an emergency order or to the making of a new emergency order.
- (6) An order under paragraph 6 which—
- (a) revokes (wholly or partly) an emergency order; and
  - (b) does nothing else, or nothing else except make provision incidental or supplementary to the revocation,
- is to be laid before the Scottish Parliament after being made.”.

## **2 Slaughter of treated animals**

After section 16A of the 1981 Act there is inserted—

### **“16B Slaughter of treated animals: Scotland**

- (1) This section applies to any animal which has been treated with serum or vaccine (or both) for the purposes of controlling, or preventing the spread of—
- (a) cattle plague;
  - (b) pleuro-pneumonia;
  - (c) foot-and-mouth disease;
  - (d) swine-fever; or
  - (e) diseases of poultry.
- (2) This section also applies to any animal which has been treated with serum or vaccine (or both) for the purposes of controlling, or preventing the spread of, such other disease as the Scottish Ministers may by order specify.

- 
- (3) The Scottish Ministers may cause to be slaughtered any animal to which this section applies.
  - (4) The power conferred by subsection (3) extends to the taking of any action—
    - (a) which is required to enable any such animal to be slaughtered; or
    - (b) which is otherwise required in connection with the slaughter.
  - (5) The Scottish Ministers must pay compensation, of such amount as they may prescribe by order, in respect of any animal slaughtered by virtue of this section.
  - (6) An order under subsection (5) may make different provision for different cases and classes of case.
  - (7) No order is made under subsection (2) unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.
  - (8) But where the Scottish Ministers are of the opinion that there exists—
    - (a) an outbreak of a disease not specified in or by virtue of subsections (1) or (2); or
    - (b) some other emergency,subsection (7) does not apply in relation to the making of an order under subsection (2).
  - (9) Where subsection (8) applies, an order made accordingly (an “emergency order”)—
    - (a) must be laid before the Scottish Parliament; and
    - (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by a resolution of the Parliament.
  - (10) In reckoning for the purposes of subsection (9)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
    - (a) dissolved; or
    - (b) in recess for more than 4 days.
  - (11) Subsection (9)(b) is without prejudice to anything previously done by reference to an emergency order or to the making of a new emergency order.
  - (12) An order under subsection (2) which—
    - (a) revokes (wholly or partly) an emergency order; and
    - (b) does nothing else, or nothing else except make provision incidental or supplementary to the revocation,is to be laid before the Scottish Parliament after being made.
  - (13) In subsection (2)—

“animal” is not restricted by its definition in this Act;  
“disease” is not restricted by its definition in this Act.”.

**3 Biosecurity codes**

After section 6B of the 1981 Act there is inserted—

**“6C Biosecurity codes: Scotland**

- (1) The Scottish Ministers may make an order containing a code (referred to in this section as a “biosecurity code”) which makes provision for the taking of, and in relation to, the measures specified in subsection (2).
- (2) Those are measures (“biosecurity measures”) for assessing, preventing, controlling and minimising the spread of causative agents of disease—
  - (a) between animals; or
  - (b) between animals and humans.
- (3) In subsection (2), the reference to causative agents includes any virus, bacterium and any other organism or infectious substance which may cause or transmit disease.
- (4) A biosecurity code may relate solely to one, or more than one—
  - (a) kind of animal; or
  - (b) disease.
- (5) A biosecurity code may include guidance as to the best practicable means of taking biosecurity measures.
- (6) A biosecurity code may—
  - (a) prescribe general requirements to which persons to whom the code applies are subject;
  - (b) prescribe particular requirements to which such persons are, in such circumstances as are specified in the code, subject; and
  - (c) specify circumstances in which any person is to be regarded for the purposes of this section as complying with, or (as the case may be) not complying with, any requirements prescribed under paragraphs (a) or (b).
- (7) A biosecurity code may make different provision for different cases or classes of case.
- (8) A biosecurity code applies, to the extent provided for in the code, to any person who owns, keeps or is in charge of any animal in relation to which the code is made.
- (9) A person must, to the extent to which a biosecurity code applies to him, comply with the code.
- (10) A person who is subject to a requirement prescribed under subsection (6)(a) or (b) commits an offence if, without lawful authority or excuse (proof of which lies on him), he fails to comply with the requirement.
- (11) Before making an order under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate about the proposed biosecurity code.

- 
- (12) A statutory instrument containing an order under subsection (1) is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.
- (13) In this section—
- “animals” is not restricted by its definition in this Act;
  - “disease” is not restricted by its definition in this Act.

**6D Emergency biosecurity orders: Scotland**

- (1) Where the Scottish Ministers are of the opinion that there exists—
- (a) an outbreak of a disease specified in Schedule 2B to this Act; or
  - (b) some other emergency,
- subsections (11) and (12) of section 6C do not apply in relation to the making of an order under subsection (1) of that section.
- (2) Where subsection (1) applies, an order made accordingly (an “emergency order”)—
- (a) must be laid before the Scottish Parliament; and
  - (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by a resolution of the Parliament.
- (3) In reckoning for the purposes of subsection (2)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved; or
  - (b) in recess for more than 4 days.
- (4) Subsection (2)(b) is without prejudice to anything previously done by reference to an emergency order or to the making of a new emergency order.
- (5) An order under section 6C(1) which—
- (a) revokes (wholly or partly) an emergency order; and
  - (b) does nothing else, or nothing else except make provision incidental or supplementary to the revocation,
- is to be laid before the Scottish Parliament after being made.”.

**4 Animal gatherings**

After section 6D (inserted by section 3 of this Act) of the 1981 Act there is inserted—

**“6E Animal gatherings: Scotland**

- (1) The Scottish Ministers may by order make provision for or in connection with the licensing by them, or by other persons on their behalf, of—
- (a) the holding of animal gatherings; and
  - (b) the carrying on by any person (in this section referred to as a “dealer”) of an activity involving—
    - (i) the buying or selling of animals; or

- 
- (ii) acting as an intermediary in the buying or selling of animals, at, or in relation to, an animal gathering.
- (2) But, for the purposes of subsection (1)(b), a person carrying on such an activity is not a dealer if he was responsible for the breeding or rearing of the animals concerned.
- (3) In this section, an “animal gathering” means an occasion at which animals are brought together for one or more of the following purposes—
- (a) a sale, show or exhibition;
  - (b) onward consignment within Great Britain;
  - (c) inspection to confirm that the animals possess specific breed characteristics.
- (4) But, for the purposes of subsection (3), an occasion is not an animal gathering if—
- (a) all the animals involved are owned by the same person;
  - (b) the occasion—
    - (i) takes place on land in respect of which more than one person has a right of use; and
    - (ii) involves animals all of which are owned by persons who have a right of use of the land.
- (5) An order under subsection (1) must be with a view to the control and prevention of—
- (a) disease; or
  - (b) the spread of disease.
- (6) An order under subsection (1) may, in particular, include provision as to—
- (a) the procedure to be followed in relation to an application for a licence;
  - (b) any considerations to be taken into account in determining an application;
  - (c) the duration and renewal of a licence;
  - (d) conditions that must or may be imposed on granting or renewing a licence;
  - (e) requirements to be imposed on any person attending an animal gathering;
  - (f) restrictions to be imposed at the premises following an animal gathering;
  - (g) circumstances in which a licence (or any of the conditions imposed in relation to the licence) must or may be revoked or suspended;
  - (h) requirements for notification of any granting, renewal, revocation, suspension or variation of a licence;
  - (i) the inspection of premises—
    - (i) where animal gatherings may take, or are taking or have taken, place;
    - (ii) used by a dealer in relation to a licence,

- 
- for the purpose of ensuring compliance with any condition of a licence;
- (j) the inspection of—
    - (i) premises used;
    - (ii) vehicles used to transport animals; and
    - (iii) equipment used,in connection with an animal gathering;
  - (k) requirements or restrictions to be imposed in relation to premises used for or in connection with an animal gathering; and
  - (l) appeals in connection with licences.
- (7) A person commits an offence if, without reasonable excuse (proof of which lies on him), he—
- (a) is responsible for the holding of an animal gathering for which a licence is required by virtue of an order made under subsection (1); or
  - (b) carries on the activities of a dealer for which a licence is so required,
- without holding a licence granted in accordance with the order.
- (8) A person who holds a licence in accordance with an order made under subsection (1) commits an offence if, without reasonable excuse (proof of which lies on him), he contravenes any condition of the licence.
- (9) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10) An order under subsection (1) may make different provision for different cases or classes of case.
- (11) In this section—
- “premises” includes—
    - (a) any land or building; or
    - (b) any other place, in particular—
      - (i) a vehicle or vessel; or
      - (ii) a tent or moveable structure; and
  - “vehicle” includes—
    - (a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
    - (b) anything on a vehicle;
    - (c) a detachable part of a vehicle;
    - (d) a container or other structure designed or adapted to be carried by or on a vehicle.”.

## **5 Tests and samples**

After section 6E (inserted by section 4 of this Act) of the 1981 Act there is inserted—

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**“6F Tests and samples: Scotland**

- (1) An inspector may at any time enter any premises in Scotland for the purpose of ascertaining (any or all)—
  - (a) whether disease anti-bodies exist in animals on the premises;
  - (b) whether any animal on the premises or which was kept there at any time is, or was at the time it was so kept, infected with disease;
  - (c) whether any causative agent of disease is present on the premises.
- (2) The inspector may take such samples (including samples from any animal on the premises) and carry out such tests as he thinks are necessary for a purpose mentioned in subsection (1).
- (3) In subsection (1)—

“disease” is not restricted by its definition in this Act;

“inspector” means—

  - (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
  - (b) a person authorised by the Scottish Ministers for those purposes;

“premises” includes—

  - (a) any land or building; or
  - (b) any other place, in particular—
    - (i) a vehicle or vessel; or
    - (ii) a tent or moveable structure; and

“causative agent” includes any virus, bacterium and any other organism or infectious substance which may cause or transmit disease.
- (4) In subsection (3), “vehicle” includes—
  - (a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
  - (b) anything on a vehicle;
  - (c) a detachable part of a vehicle;
  - (d) a container or other structure designed or adapted to be carried by or on a vehicle.”.

**6 Treatment**

- (1) In subsection (1) of section 16 of the 1981 Act, after the word “of” where it first occurs there is inserted “controlling disease or”.
- (2) After that subsection, there is inserted—

“(1A) For the purpose of controlling disease or preventing the spread of disease, the Scottish Ministers may, if they think fit, cause to be treated with serum or vaccine, or with both serum and vaccine, any bird or animal.”.
- (3) In subsection (2) of that section—
  - (a) for the words “officer of the Minister” there is substituted “inspector”; and



- 
- (b) for the words from “land” to the end there is substituted “premises”.
- (4) After that subsection there is added—
- “**(3)** In this section—
- “inspector” means—
- (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
- (b) a person authorised by the Scottish Ministers for those purposes;
- “premises” includes—
- (a) any land or building; or
- (b) any other place, in particular—
- (i) a vehicle or vessel; or
- (ii) a tent or moveable structure; and
- “vehicle” includes—
- (a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
- (b) anything on a vehicle;
- (c) a detachable part of a vehicle;
- (d) a container or other structure designed or adapted to be carried by or on a vehicle.”.

## **7 Specified diseases**

- (1) After section 28E (inserted by section 9 of this Act) of the 1981 Act there is inserted—
- “28F Specified diseases: Scotland**
- (1) Schedule 2B to this Act has effect as to the specification of certain diseases.
- (2) The Scottish Ministers may by order modify Schedule 2B.
- (3) Any order made under subsection (2)—
- (a) must be laid before the Scottish Parliament; and
- (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by a resolution of the Parliament.
- (4) In reckoning for the purposes of subsection (3)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved; or
- (b) in recess for more than 4 days.
- (5) Subsection (3)(b) is without prejudice to anything previously done by reference to a modification made by an order under subsection (2) or to the making of a new order under that subsection.
- (6) In this section, “disease” is not restricted by its definition in this Act.”.

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(2) After Schedule 2A of that Act there is inserted—

“SCHEDULE 2B  
*(introduced by section 28F)*  
SPECIFIED DISEASES: SCOTLAND

African horse sickness  
African swine fever  
Highly pathogenic avian influenza  
Bluetongue  
Classical swine fever  
Contagious bovine pleuropneumonia  
Foot-and-mouth disease  
Lumpy skin disease  
Newcastle disease  
Peste des petits ruminants  
Rift Valley fever  
Rinderpest  
Sheep pox and goat pox  
Swine vesicular disease  
Vesicular stomatitis.”.

**8 Seizure and disposal of carcasses etc.**

After section 36 of the 1981 Act there is inserted—

**“36ZA Seizure and disposal of carcasses etc.: further provision for Scotland**

- (1) The Scottish Ministers may by order make provision for—
  - (a) the seizure of anything (whether animate or inanimate) by or by means of which it appears to them that any disease to which this subsection applies might be carried or transmitted;
  - (b) the destruction, burial, disposal or treatment of anything seized under the order; and
  - (c) regulating the matters mentioned in paragraphs (a) and (b).
- (2) Subsection (1) does not authorise provision for the seizure of an animal; but an order under that subsection may provide for the seizure of carcasses and of anything obtained from or produced by an animal.
- (3) Subsection (1) applies to the diseases in the case of which any power of slaughter is exercisable under section 16B, Part 2B or Schedule 3A.
- (4) A person commits an offence if, without lawful authority or excuse (proof of which shall lie on him), he throws or places, or causes or suffers to be thrown or placed, into—

- 
- (a) any river, stream, canal, navigation or other water; or
  - (b) the sea within 4.8 kilometres of the shore,

the carcase of, or anything obtained from or produced by, an animal which has been slaughtered in the exercise of any power under section 16B, Part 2B or Schedule 3A.

**36ZB Compensation for seizure**

- (1) The Scottish Ministers must pay compensation for—
  - (a) anything seized under an order made under section 36ZA(1) in connection with foot-and-mouth disease;
  - (b) anything seized under such an order in connection with any other disease to which section 36ZA(1) applies.
- (2) But subsection (1)(b) does not apply to—
  - (a) carcasses seized; or
  - (b) other things seized which are obtained from or produced by animals or birds.
- (3) The Scottish Ministers may by order provide for the payment by the Scottish Ministers of compensation for—
  - (a) carcasses seized under an order made under section 36ZA(1); and
  - (b) other things seized under such an order which are obtained from or produced by animals or birds.
- (4) But subsection (3) does not apply to carcasses, or other things, seized in connection with foot-and-mouth disease or fowl pest.
- (5) The compensation payable under subsection (1) or (3) for anything seized shall be its value at the time of seizure.
- (6) Where anything destroyed, buried or disposed of under an order made under paragraph (e) of section 23 could have been seized under an order made under section 36ZA(1), compensation (if any) is payable under subsections (1) or (3) as if the thing had been so seized at the time of destruction, burial or disposal.
- (7) The Scottish Ministers may make such orders as they think fit for—
  - (a) prescribing how the value of anything seized under section 36ZA(1) is to be ascertained; or
  - (b) regulating applications for, and the mode of payment of, any compensation payable by virtue of this section.”.

*Deliberate infection of animals*

**9 Deliberate infection of animals**

After section 28B of the 1981 Act there is inserted—

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**“28C Deliberate infection: Scotland**

- (1) A person commits an offence if, without lawful authority or excuse (proof of which shall lie on him), that person knowingly does anything which causes or is intended to cause an animal to be infected with a disease specified in Schedule 2B to this Act.
- (2) A person commits an offence if, without lawful authority or excuse (proof of which shall lie on him), that person acquires or takes possession of—
  - (a) an animal; or
  - (b) the carcase of an animal,which he knows or reasonably suspects to be infected with a disease specified in Schedule 2B to this Act.
- (3) A person commits an offence if, without lawful authority or excuse (proof of which shall lie on him), that person acquires or takes possession of anything obtained from, produced by or used in connection with—
  - (a) an animal; or
  - (b) the carcase of an animal,which he knows or reasonably suspects to be infected with a disease specified in Schedule 2B to this Act.

**28D Deliberate infection: disqualification**

- (1) Where a person is convicted of an offence under section 28C the court may make an order (in this section referred to as a ‘disqualification order’) disqualifying that person, for such period as it thinks fit, from keeping or dealing in—
  - (a) any animals; or
  - (b) any animals of a specified kind.
- (2) A disqualification order may specify a period within which an application under subsection (4) may not be made.
- (3) The court may suspend the operation of the order—
  - (a) for such period as it thinks necessary to enable arrangements to be made for the keeping of any animals to which the disqualification relates;
  - (b) pending an appeal.
- (4) A person who is subject to a disqualification order may apply to the court which imposed the order to remove or vary it.
- (5) An application under subsection (4) may not be made—
  - (a) before the expiry of the period of one year beginning with the date on which the order was made;
  - (b) where there has been a previous application under that subsection in relation to the same order, before the expiry of the period of one year beginning with the date on which the previous application was determined; or
  - (c) within any period specified under subsection (2) or (8).

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- (6) On an application under subsection (4), the court may—
    - (a) refuse the application;
    - (b) remove the disqualification;
    - (c) reduce the period of the disqualification; or
    - (d) vary the disqualification to apply it only to such animals or kind of animals as it specifies.
  - (7) In considering an application under subsection (4), the court may have regard to—
    - (a) the nature of the offence in respect to which the disqualification was imposed;
    - (b) the character of the applicant;
    - (c) the conduct of the applicant since the disqualification was imposed.
  - (8) Where the court refuses an application made under subsection (4), the court may specify a period within which the applicant may not make a further application under that subsection in relation to that order.
  - (9) For the purposes of this section, keeping or dealing in an animal includes—
    - (a) owning an animal;
    - (b) having custody or control of an animal;
    - (c) being concerned in the management or control of a body (whether or not incorporated) whose activities include keeping or dealing in animals.

**28E Deliberate infection: deprivation of entitlement to compensation**

- (1) Where a person is convicted of an offence under section 28C(1), any provision of this Act by virtue of which compensation is payable to the person in respect of animals does not apply in respect of animals to which this subsection applies.
- (2) Subsection (1) applies to—
  - (a) animals to which that offence relates; and
  - (b) any other animals—
    - (i) kept on the same premises at the same time (or any part of the time) as the animals referred to in paragraph (a) were kept; and
    - (ii) in relation to which compensation would be payable but for this section.
- (3) Any compensation paid to a person in respect of animals to which subsection (1) applies may be recovered by the Scottish Ministers.”.

*Particular provision for TSE*

**10 Livestock genotypes: identification, breeding and slaughter**

After Part 2A of the 1981 Act there is inserted—

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**“PART 2B**

TSE: SCOTLAND

*Livestock genotypes*

**36N Power to specify susceptible livestock genotypes**

Where, in the opinion of the Scottish Ministers, a livestock genotype is capable of—

- (a) being infected by a form of TSE; or
- (b) becoming a carrier of a form of TSE,

the Scottish Ministers may by order specify, for the purposes of this Part, the livestock genotype and, if they consider it appropriate, the form of TSE concerned.

**36O Ascertaining genotypes and identifying livestock**

- (1) The Scottish Ministers may by regulations make provision requiring the keeper of any livestock—

- (a) to allow an inspector to take a sample from it, for the purpose of ascertaining its genotype;
- (b) to allow an inspector to administer or otherwise attach to it an identification device;
- (c) where the genotype of the livestock has been ascertained (whether or not as a result of the exercise of powers conferred by this Part), to keep a record of its genotype.

- (2) The regulations may, in particular—

- (a) provide that only identification devices of a kind specified in the regulations may be administered or attached;
- (b) make provision as to the assistance which an inspector may require the keeper to give to him;
- (c) make provision with respect to the testing of samples;
- (d) require the issuing and keeping of certificates recording the genotypes of livestock.

**36P Restrictions on breeding**

- (1) This section applies where it appears to the Scottish Ministers that livestock is of a genotype specified in an order under section 36N.
- (2) The Scottish Ministers must consider whether there are exceptional circumstances that justify allowing the livestock to be used for breeding.
- (3) If it appears to the Scottish Ministers that allowing the livestock, or its semen, eggs or embryos, to be used for or in connection with breeding would not be justified, they must give a notice (in this Part referred to as a “restriction notice”) to its keeper.
- (4) A restriction notice—
  - (a) may be made so as to apply to more than one creature;

- 
- (b) may describe the livestock to which it applies in such a way as the Scottish Ministers consider appropriate; and
  - (c) must specify the restrictions and requirements provided for in subsections (7) to (9).
- (5) If the keeper of the livestock is not the same person as its owner, the Scottish Ministers may give a separate restriction notice to the owner.
- (6) If the keeper of the livestock is not the same person as the person in possession of the semen, eggs or embryos of the livestock, the Scottish Ministers may give a separate restriction notice to the person in possession of the semen, eggs or embryos.
- (7) A person to whom a restriction notice is given must not—
- (a) use livestock to which the notice applies, or its semen, eggs or embryos, for purposes of or in connection with breeding; or
  - (b) cause or permit such livestock or such semen, eggs or embryos to be used by another person for those purposes.
- (8) A person to whom a restriction notice is given must arrange for any semen, egg or embryo which—
- (a) has at any time been taken from livestock to which the notice applies: and
  - (b) is in the person’s possession or under the person’s control,
- to be destroyed within such period, of not less than 21 days, as may be specified in the notice.
- (9) A person to whom a restriction notice is given must arrange for each creature to which the notice applies—
- (a) to be castrated or (as appropriate) sterilised within such period, of not less than 21 days, as may be specified in the notice; or
  - (b) to be slaughtered within such period, of not less than 21 days, as may be specified in the notice,
- whichever the person considers appropriate.
- (10) But where a request for a review is made under section 36Q(1), the operation of the restriction notice is, so far as relating to the matters subject to review, suspended until the review is determined.
- (11) For the purposes of subsection (2), exceptional circumstances include circumstances in which the imposition in relation to the livestock of the restrictions and requirements mentioned in subsections (7) to (9) is likely to—
- (a) cause the extinction of the breed or type of which the livestock is a member; or
  - (b) jeopardise the sustainability of a common or well-established breed.
- (12) For the purposes of this Part, “slaughter” includes the killing of a fish.

### **36Q Review**

- (1) A person to whom a restriction notice is given may, within the period referred to in subsection (2)—

- 
- (a) make a written request to the Scottish Ministers for a review of the restriction notice or any part of it;
    - (b) make written representations to the Scottish Ministers; and
    - (c) request an appearance, for the purposes of the review, before an assessment panel.
  - (2) The period is—
    - (a) 21 days beginning with the day on which the notice is given; or
    - (b) in exceptional circumstances, such longer period as the Scottish Ministers may agree to.
  - (3) Where a person requests an appearance before an assessment panel—
    - (a) the Scottish Ministers must arrange for an assessment panel to hear the person's representations;
    - (b) the panel must not, except with the consent of the person, include members of the staff of the Scottish Administration; and
    - (c) if the person so requests, the hearing must be in public.
  - (4) The assessment panel—
    - (a) is to conduct the hearing in such form and manner as the panel considers fit; and
    - (b) must prepare and send a report to the Scottish Ministers which—
      - (i) states findings of fact; and
      - (ii) makes a recommendation as to how to determine the review.
  - (5) The Scottish Ministers, having regard to the written representations made under subsection (1)(b) and any report sent to them under subsection (4)(b), must—
    - (a) determine the review; and
    - (b) give to the person written notification of their determination and their reasons for it.
  - (6) If a person who has appeared before an assessment panel so requests, the Scottish Ministers must provide the person with a copy of the report sent to them under subsection (4)(b).
  - (7) The Scottish Ministers may recover from the person such reasonable expenses arising from any sampling or testing that were carried out in relation to an unsuccessful review.
  - (8) In this section, an “assessment panel” consists of one or more persons appointed by the Scottish Ministers for the purposes of this section.

#### *Enforcement*

### **36R Scottish Ministers' powers of enforcement**

- (1) This section applies if the Scottish Ministers are satisfied that a person to whom a restriction notice has been given has failed to comply with one or more of the restrictions or requirements imposed on that person by the notice.



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- (2) But this section does not apply in relation to any livestock—
    - (a) which is the subject of a review under section 36Q which has not been determined; or
    - (b) which, as the result of a successful review, is no longer subject to the restriction notice.
  - (3) The Scottish Ministers may take such reasonable steps as they consider appropriate to secure that effect is given to the restriction or requirement.
  - (4) In particular, the Scottish Ministers may—
    - (a) cause to be destroyed any semen, egg or embryo which has not been destroyed as required by section 36P(8);
    - (b) cause to be castrated (or as appropriate sterilised) or slaughtered any livestock—
      - (i) which is the subject of the notice; but
      - (ii) which has neither been castrated (or as appropriate sterilised) nor slaughtered within the period specified for that purpose in the notice.

### **36S Offences**

- (1) A person to whom a restriction notice is given commits an offence (whether or not the notice is the subject of a review under section 36Q) if he—
  - (a) sells (or otherwise transfers to another person) livestock to which the notice applies, or any of its semen, eggs or embryos;
  - (b) fails, without reasonable excuse (proof which lies on him) to comply with any of the restrictions or requirements specified in the notice.
- (2) Any other person commits an offence if he uses any semen, egg or embryo which he knows, or has reasonable cause to believe, has been taken from livestock which is the subject of a restriction notice.
- (3) A person commits an offence if, without reasonable excuse (proof of which lies on him), he fails to comply with any provision of regulations made under section 36O.
- (4) A person who gives false or misleading information with the intention of obstructing or impeding an inspector (or any person assisting an inspector) in the execution of his functions under this Part is to be regarded as obstructing or impeding for the purposes of section 66(c).

### *Powers of slaughter*

### **36T Powers of slaughter: TSE**

- (1) With a view to—
  - (a) preventing the spread of;
  - (b) controlling; or
  - (c) eliminating,

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any form of TSE, the Scottish Ministers may, if they think fit, cause any livestock to which this subsection applies to be slaughtered.

- (2) Subsection (1) applies to livestock—
  - (a) whose genotype is specified by virtue of section 36N; and
  - (b) in relation to whose genotype the form of TSE concerned is so specified.
- (3) Subsection (1) also applies to livestock whose genotype is not ascertained because—
  - (a) it is not reasonable in the circumstances, by reason of urgency or otherwise, to seek to ascertain the genotype; or
  - (b) the genotype cannot, in the absence for the time being of scientific knowledge, established method or otherwise, reasonably be ascertained.

#### *Powers of entry*

### **36U Powers of entry**

- (1) An inspector may enter any premises in Scotland for the purpose of—
  - (a) ascertaining whether a power conferred by or under this Part should be exercised; or
  - (b) doing anything in pursuance of the exercise of that power.
- (2) An inspector acting under subsection (1) must, if required, produce evidence of his authority.

#### *Compensation*

### **36V Compensation**

- (1) The Scottish Ministers must pay compensation, of such amount as they may prescribe by order, in respect of—
  - (a) any livestock slaughtered, or other thing destroyed, in accordance with a restriction notice;
  - (b) any livestock slaughtered, or other thing destroyed, by virtue of section 36R;
  - (c) any livestock slaughtered by virtue of section 36T(1).
- (2) An order under subsection (1) may make different provision for different cases and classes of case.

#### *General*

### **36W Orders and Regulations**

- (1) A power to make an order or regulations under this Part is exercisable by statutory instrument.
- (2) Any such statutory instrument is subject to annulment in pursuance of a resolution of the Scottish Parliament.

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## **36X Interpretation**

In this Part—

“keeper”, in relation to an animal, includes the owner of the animal;

“inspector” means

- (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
- (b) a person authorised by the Scottish Ministers for those purposes;

“livestock” means—

- (a) any creature, including a fish, which is kept, fattened or bred for the production of food, wool, skin or fur;
- (b) any creature, other than a dog, which is kept for use in the farming of land; and
- (c) any equine animal;

“premises” includes—

- (a) any land or building; or
- (b) any other place, in particular—
  - (i) a vehicle or vessel; or
  - (ii) a tent or moveable structure;

“vehicle” includes—

- (a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
- (b) anything on a vehicle;
- (c) a detachable part of a vehicle;
- (d) a container or other structure designed or adapted to be carried by or on a vehicle; and

“TSE” means transmissible spongiform encephalopathy.”.

### *Powers of entry etc.*

## **11 Powers of entry etc.**

After section 62F of the 1981 Act there is inserted—

### **“62G Powers of entry: Scotland**

- (1) An inspector may enter any premises in Scotland for the purpose of—
  - (a) ascertaining whether a power conferred by or under any provision mentioned in subsection (2) should be exercised; or
  - (b) doing anything in pursuance of the exercise of that power.
- (2) The provisions are—
  - (a) section 16B;
  - (b) section 32;

- 
- (c) Schedule 3;
  - (d) Schedule 3A,
- of this Act.
- (3) An inspector acting under subsection (1) must, if required, produce evidence of his authority.
  - (4) Where any power of entry conferred on an inspector by this Act is exercised in relation to premises used exclusively as a dwelling-house, 24 hours' notice of the intended entry is to be given to the occupier unless the case is one of urgency.
  - (5) Any power of entry conferred on an inspector by this Act must be exercised at a reasonable hour unless the inspector thinks the case is one of urgency.
  - (6) In this section and sections 62H and 62I, an "inspector" means—
    - (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
    - (b) a person authorised by the Scottish Ministers for those purposes.
  - (7) In this section and sections 62H and 62I, "premises" includes—
    - (a) any land or building; or
    - (b) any other place, in particular—
      - (i) a vehicle or vessel; or
      - (ii) a tent or moveable structure.
  - (8) In subsection (7), "vehicle" includes—
    - (a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
    - (b) anything on a vehicle;
    - (c) a detachable part of a vehicle;
    - (d) a container or other structure designed or adapted to be carried by or on a vehicle.

## **62H Warrants**

- (1) If a sheriff or justice of the peace is satisfied by evidence on oath that—
  - (a) the first condition is satisfied; and
  - (b) either the second or the third condition is satisfied,he may issue a warrant authorising an inspector to enter (if necessary using reasonable force) any premises in Scotland for the purpose mentioned in subsection (2).
- (2) The purpose is that of—
  - (a) ascertaining whether a power conferred by or under this Act should be exercised; or
  - (b) doing anything in pursuance of the exercise of that power.
- (3) The evidence must include—

- 
- (a) a statement as to whether any representations have been made by the occupier of the premises to an inspector concerning the purpose for which the warrant is sought;
    - (b) a summary of any such representations.
  - (4) The first condition is that there are reasonable grounds for an inspector to enter the premises for that purpose.
  - (5) The second condition is that each of the following applies—
    - (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision;
    - (b) the occupier has failed to allow entry to the premises on being requested to do so by an inspector; and
    - (c) the occupier has been informed of the intention to apply for the warrant.
  - (6) The third condition is that—
    - (a) that the premises are unoccupied or the occupier appears to be absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or
    - (b) the object of entering would be defeated if the occupier were requested to allow entry or informed of an intention to apply for a warrant.
  - (7) A warrant issued under this section must be executed at a reasonable hour unless the inspector thinks the case is one of urgency.
  - (8) A warrant issued under this section remains in force for one month starting with the date of its grant.

**62I Entry and warrants: supplementary**

- (1) This section applies to an inspector who enters any premises by virtue of a power conferred on him by or under this Act or under a warrant under section 62H.
- (2) The inspector may take with him—
  - (a) such other persons as he thinks necessary to give him such assistance as he thinks necessary;
  - (b) such equipment as he thinks necessary.
- (3) The inspector may require any person on the premises who falls within subsection (4) to give him such assistance as he may reasonably require.
- (4) The following persons fall within this subsection—
  - (a) the occupier of the premises;
  - (b) a person appearing to the inspector to have charge of animals on the premises;
  - (c) a person appearing to the inspector to be under the direction or control of a person mentioned in paragraph (a) or (b).
- (5) If the inspector enters any premises by virtue of a warrant issued under section 62H he must at the time of entry—
  - (a) serve a copy of the warrant on the occupier of the premises; or

- 
- (b) if the occupier is not on the premises, leave a copy of the warrant in a conspicuous place on the premises.
  - (6) If the inspector enters any unoccupied premises he must leave them as effectively secured against entry as he found them.”.

## 12 **Inspection of vehicles**

After section 65A of the 1981 Act there is inserted—

### “65B **Inspection of vehicles: Scotland**

- (1) If each of the conditions in subsection (2) is satisfied, an inspector may stop, detain and inspect any vehicle to ascertain whether the provisions of any of the following are being complied with—
  - (a) this Act;
  - (b) an order under this Act;
  - (c) a regulation of a local authority made in pursuance of such an order.
- (2) The conditions are—
  - (a) that the vehicle is in an infected place or area;
  - (b) that the inspector is accompanied by a constable in uniform.
- (3) In this section, a “vehicle” includes—
  - (a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;
  - (b) anything on a vehicle;
  - (c) a detachable part of a vehicle;
  - (d) a container or other structure designed or adapted to be carried by or on a vehicle.”.

### *Offences: penalties and time limits*

## 13 **Offences: penalties and time limits**

For section 75 of the 1981 Act there is substituted—

### “75 **Penalties and time limits for certain offences: Scotland**

- (1) This section applies to any offence under this Act for which no penalty is specified by any other provision of this Act.
- (2) A person guilty of an offence to which this section applies is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (3) Proceedings for an offence to which this section applies may be brought within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge.
- (4) No such proceedings may be brought more than 3 years—
  - (a) after the commission of the offence; or

- 
- (b) in the case of an offence involving a continuous contravention, after the last date on which the offence was committed.
- (5) It shall be competent in a prosecution of an offence involving a continuous contravention to include the entire period during which the contravention occurred.
- (6) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted provided that the warrant is executed without undue delay.
- (7) A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed is to be treated as being so signed unless the contrary is proved."

## PART 2

### ANIMAL WELFARE

#### *Introductory*

#### **14 Animals to which this Part applies**

- (1) In this Part, "animal" means a vertebrate other than man.
- (2) But this Part does not apply to an animal while it is in its foetal or embryonic form.
- (3) The Scottish Ministers may by regulations—
- (a) make provision which—
- (i) extends the definition of "animal" so as to include invertebrates of any description; and
- (ii) applies instead of subsection (2) as respects any invertebrate so included; or
- (b) amend subsection (2) so as to extend the application of such provisions of this Part as are specified in the regulations to an animal from such earlier stage of its development as is so specified.
- (4) The powers conferred by subsection (3) are exercisable only if the Scottish Ministers are satisfied, on the basis of scientific evidence, that creatures of the kind concerned are capable of experiencing pain or suffering.
- (5) In this section, "vertebrate" means any creature of the Sub-phylum Vertebrata of the Phylum Chordata; and "invertebrate" means any creature not of that Sub-phylum.

#### **15 Protected animals**

In this Part, an animal is a "protected animal" if it is—

- (a) of a kind which is commonly domesticated in the British Islands;
- (b) under the control of man whether on a permanent or temporary basis; or
- (c) not living in a wild state.

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**16 Responsibility for animals**

- (1) In this Part, references to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis.
- (2) In this Part, references to being responsible for an animal include being in charge of it.
- (3) For the purposes of this Part, a person who owns an animal is always to be regarded as being a person who is responsible for it.
- (4) For the purposes of this Part, a person is to be regarded as responsible for any animal for which a person under the age of 16 years, of whom the person has actual care and control, is responsible.
- (5) For the purposes of this Part, a person does not relinquish responsibility of an animal by reason only of abandoning it.

*Prevention of harm*

**17 Unnecessary suffering**

- (1) A person commits an offence if—
  - (a) the person causes a protected animal unnecessary suffering by an act or omission; and
  - (b) the person knew, or ought reasonably to have known, that the act or omission would have caused the suffering or be likely to do so.
- (2) A person who is responsible for an animal commits an offence if—
  - (a) another person causes the animal unnecessary suffering by an act or omission; and
  - (b) that person responsible for the animal—
    - (i) permits that to happen; or
    - (ii) fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.
- (3) The considerations to which regard is to be had in determining, for the purposes of subsections (1) and (2), whether suffering is unnecessary include—
  - (a) whether the suffering could reasonably have been avoided or reduced;
  - (b) whether the conduct concerned was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;
  - (c) whether the conduct concerned was for a legitimate purpose, for example—
    - (i) the purpose of benefiting the animal; or
    - (ii) the purpose of protecting a person, property or another animal;
  - (d) whether the suffering was proportionate to the purpose of the conduct concerned;
  - (e) whether the conduct concerned was in the circumstances that of a reasonably competent and humane person.
- (4) This section does not apply to the destruction of an animal in an appropriate and humane manner.



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## **18 Mutilation**

- (1) A person commits an offence if the person—
  - (a) carries out a prohibited procedure on a protected animal; or
  - (b) causes a prohibited procedure to be carried out on a protected animal.
- (2) A person who is responsible for an animal commits an offence if—
  - (a) another person carries out a prohibited procedure on the animal; and
  - (b) that person responsible for the animal—
    - (i) permits that to happen; or
    - (ii) fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.
- (3) Subsections (1) and (2) do not apply in such circumstances as the Scottish Ministers may by regulations specify.
- (4) In this section, references to the carrying out of a prohibited procedure on an animal are to the carrying out of a procedure, otherwise than for the purpose of medical treatment of the animal, which involves interference with the sensitive tissues or bone structure of the animal.

## **19 Cruel operations**

- (1) A person commits an offence if the person performs an operation on a protected animal without due care and humanity.
- (2) A person who is responsible for an animal commits an offence if—
  - (a) another person performs an operation on the animal without due care and humanity; and
  - (b) that person responsible for the animal—
    - (i) permits that to happen; or
    - (ii) fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.

## **20 Administration of poisons etc.**

- (1) A person commits an offence if, without lawful authority or reasonable excuse, the person—
  - (a) administers any poisonous or injurious drug or substance to a protected animal; or
  - (b) causes any poisonous or injurious drug or substance to be taken by a protected animal,and the person knows the drug to be poisonous or injurious.
- (2) A person who is responsible for an animal commits an offence if—
  - (a) without lawful authority or reasonable excuse, another person—
    - (i) administers a poisonous or injurious drug or substance to the animal; or

- 
- (ii) causes the animal to take such a drug or substance; and
  - (b) that person responsible for the animal—
    - (i) permits that to happen; or
    - (ii) knowing the drug or substance to be poisonous or injurious, fails to take such steps (whether by way of supervising the other person or otherwise) as are reasonable in the circumstances to prevent that happening.
  - (3) In this section, references to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance.

## **21 Animal fights**

- (1) A person commits an offence if the person—
  - (a) keeps or trains an animal for an animal fight; or
  - (b) possesses, intending it to be used at an animal fight, any equipment which is designed or adapted for use at an animal fight.
- (2) A person commits an offence if the person—
  - (a) arranges an animal fight;
  - (b) knowingly participates in making, or carrying out, arrangements for an animal fight (including allowing premises to be used for, or charging admission to attend, an animal fight);
  - (c) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring (or not occurring) in the course of an animal fight; or
  - (d) takes part in an animal fight.
- (3) A person commits an offence if, without lawful authority or reasonable excuse, the person is present at an animal fight.
- (4) Any reference in this Part to an animal in relation to which an offence was committed includes, in the case of an offence under this section, an animal involved in the animal fight concerned.
- (5) In this section, an “animal fight” is an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting.

### *Promotion of welfare*

## **22 Ensuring welfare of animals**

- (1) A person commits an offence if the person does not take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which the person is responsible are met to the extent required by good practice.
- (2) The circumstances to which, for the purposes of subsection (1), regard is to be had include—
  - (a) any lawful purpose for which the animal is kept; and
  - (b) any lawful activity undertaken in relation to the animal.
- (3) For the purposes of subsection (1), an animal’s needs include—

- 
- (a) its need for a suitable environment;
  - (b) its need for a suitable diet;
  - (c) its need to be able to exhibit normal behaviour patterns;
  - (d) any need it has to be housed with, or apart from, other animals; and
  - (e) its need to be protected from pain, suffering, injury and disease.
- (4) This section does not apply to the destruction of an animal in an appropriate and humane manner.

### **23 Provision for ensuring welfare**

- (1) The Scottish Ministers may by regulations make provision for the purposes of, and in connection with, ensuring the welfare of—
- (a) animals for which a person is responsible; and
  - (b) the offspring of such animals.
- (2) Regulations under subsection (1) may include—
- (a) provision prescribing general or specific requirements or prohibitions;
  - (b) provision for enforcement, other than by way of proceedings for an offence, of provisions of the regulations;
  - (c) provision—
    - (i) that breach of a provision of the regulations is an offence; and
    - (ii) for penalties as respects the offence;
  - (d) provision for and in connection with post-conviction orders (whether by reference to sections 35 to 40 or otherwise) in relation to an offence under the regulations;
  - (e) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of provisions of the regulations;
  - (f) provision—
    - (i) that obstructing a person in the exercise of a power conferred by the regulations is an offence; and
    - (ii) for penalties as respects the offence; and
  - (g) provision (whether or not subject to specified conditions) for exemptions from, or qualification to, any requirements, prohibitions or offences provided for in the regulations.
- (3) For the purpose of subsection (2), requirements and prohibitions may, in particular, relate to—
- (a) the prevention of unnecessary suffering;
  - (b) the way in which animals are looked after and the conditions in which they are kept;
  - (c) the identification of animals (whether by use of marks, microchips or otherwise);
  - (d) the breeding and rearing of animals;
  - (e) how animals are transported;

- 
- (f) how animals are prepared for killing and are killed;
  - (g) hygiene and prevention of disease and the spread of disease; and
  - (h) the keeping of records.
- (4) Regulations under subsection (1) may make provision for fees or other charges in relation to the exercise of functions under the regulations.
- (5) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) such persons appearing to them to represent any relevant interests; and
  - (b) such other persons,
- as they consider appropriate.

## **24 Licensing etc. of activities involving animals**

- (1) The Scottish Ministers may by regulations prohibit the carrying on, without the authority of a licence for the purpose, of an activity which—
- (a) involves animals for which a person is responsible; and
  - (b) is specified in the regulations.
- (2) The Scottish Ministers may by regulations prohibit the carrying on, without the authority of registration for the purpose, of an activity which—
- (a) involves animals for which a person is responsible; and
  - (b) is specified in the regulations.
- (3) Regulations under subsection (1) or (2) must be for the purposes of ensuring the welfare of animals and their offspring.
- (4) Regulations under subsection (1) or (2) may include—
- (a) provision for enforcement, other than by way of proceedings for an offence, of provisions of the regulations;
  - (b) provision—
    - (i) that breach of a provision of the regulations is an offence; and
    - (ii) for penalties as respects the offence;
  - (c) provision for and in connection with post-conviction orders (whether by reference to sections 35 to 40 or otherwise) in relation to an offence under the regulations;
  - (d) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of provisions of the regulations;
  - (e) provision—
    - (i) that obstructing a person in the exercise of a power conferred by the regulations is an offence; and
    - (ii) for penalties as respects the offence; and
  - (f) provision (whether or not subject to specified conditions) for exemptions from, or qualification to, an offence under the regulations.
- (5) The Scottish Ministers may by regulations make provision about—
- (a) licences for the purposes of subsection (1); and

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- (b) registration for the purposes of subsection (2).
  - (6) Such provision may, in particular, relate to—
    - (a) procedures for—
      - (i) applying for licences or (as the case may be) registration; and
      - (ii) granting and refusing applications;
    - (b) any—
      - (i) qualifications required to be held by applicants for licences or (as the case may be) registration; and
      - (ii) other matters to be taken into account when considering applications for licences or (as the case may be) registration;
    - (c) conditions of licences or (as the case may be) registration;
    - (d) suspension and revocation of licences or (as the case may be) registration in specified circumstances; and
    - (e) appeals in connection with the matters mentioned in paragraphs (a) to (d).
  - (7) Regulations under subsection (5)(a) may include—
    - (a) provision for enforcement, other than by way of proceedings for an offence, of provisions of licences;
    - (b) provision—
      - (i) that contravention of a condition of a licence is an offence; and
      - (ii) for penalties as respects the offence;
    - (c) provision for and in connection with post-conviction orders (whether by reference to sections 35 to 40 or otherwise) in relation to an offence under the regulations; and
    - (d) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with contraventions (and suspected contraventions) of provisions of licences.
  - (8) Regulations under subsection (1), (2) or (5) may make provision for fees or other charges in relation to the exercise of functions under the regulations.
  - (9) Before making regulations under subsection (1), (2) or (5), the Scottish Ministers must consult—
    - (a) such persons appearing to them to represent any relevant interests; and
    - (b) such other persons,as they consider appropriate.

## **25 Prohibition on keeping certain animals**

- (1) The Scottish Ministers may by regulations prohibit the keeping at—
  - (a) domestic premises; or
  - (b) other premises,of any animals of a kind specified in the regulations.

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- (2) For the purposes of subsection (1)(b), “other premises” means premises of such other type as are described in the regulations.
  - (3) Regulations under subsection (1) must be for the purposes of ensuring the welfare of animals.
  - (4) Regulations under subsection (1) may include—
    - (a) provision for enforcement, other than by way of proceedings for an offence, of provisions of the regulations;
    - (b) provision—
      - (i) that breach of a provision of the regulations is an offence; and
      - (ii) for penalties as respects the offence;
    - (c) provision for and in connection with post-conviction orders (whether by reference to sections 35 to 40 or otherwise) in relation to an offence under the regulations;
    - (d) provision conferring on persons of a specified description powers of entry, search, inspection and seizure in connection with breaches (and suspected breaches) of provisions of the regulations;
    - (e) provision—
      - (i) that obstructing a person in the exercise of a power conferred by the regulations is an offence; and
      - (ii) for penalties as respects the offence; and
    - (f) provision (whether or not subject to specified conditions) for exemptions from, or qualification to, an offence under the regulations.

## **26 Abandonment**

- (1) A person commits an offence if the person abandons an animal for which the person is responsible.
- (2) A person commits an offence if the person leaves an animal for which the person is responsible and, without reasonable excuse, fails to make adequate provision for its welfare.
- (3) The considerations to which regard is to be had in determining, for the purposes of subsection (2), whether such provision has been made include—
  - (a) the kind of animal concerned and its age and state of health;
  - (b) the length of time for which it is, or has been, left; and
  - (c) what it reasonably requires by way of—
    - (i) food and water; and
    - (ii) shelter and warmth.

## **27 Sale of animals to children**

- (1) A person commits an offence if the person sells an animal to another person whom the person has reasonable cause to believe to be under the age of 16 years.

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- (2) For the purposes of this section, selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction.

## **28 Giving animals as prizes**

- (1) A person commits an offence if the person gives an animal to another person as a prize.
- (2) Subsection (1) does not apply where the prize is given in a family context.

### *Animals in distress*

## **29 Taking possession of animals**

- (1) An inspector or a constable may, if it appears that a protected animal is suffering—
- (a) take; or
  - (b) arrange for the taking of,
- such steps, except that of destroying the animal, as appear to be immediately necessary to alleviate the animal's suffering.
- (2) If a veterinary surgeon certifies that a protected animal is—
- (a) suffering; or
  - (b) likely to suffer if its circumstances do not change,
- an inspector or a constable may take possession of the animal.
- (3) But an inspector or a constable may take that step, or arrange for the taking of that step, without the certification of a veterinary surgeon if—
- (a) it appears that the animal is—
    - (i) suffering; or
    - (ii) likely to suffer if its circumstances do not change; and
  - (b) it is reasonable in the circumstances not to seek the assistance of, or wait for, a veterinary surgeon.
- (4) Where possession is taken of an animal under subsection (2) or (3), an inspector or a constable may—
- (a) remove the animal, or arrange for it to be removed, to a place of safety; or
  - (b) care for the animal, or arrange for it to be cared for—
    - (i) at the place where it was found; or
    - (ii) at such other place as the inspector or constable considers appropriate,
- and, in either case, use (or arrange to have used) a mark, microchip or another method for identifying it.
- (5) An inspector or a constable may, in acting under subsection (4)(b)(i), make use of any equipment found at the place.
- (6) A veterinary surgeon may examine, and take samples from, an animal for the purpose of determining its condition for the purposes of subsection (2).

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- (7) In considering, for the purposes of subsection (2) or (3), whether an animal is likely to suffer if its circumstances do not change, account may be taken of any suffering of other animals that are (or were recently) subject to similar circumstances at the same place.
  - (8) Any expenses reasonably incurred by an inspector or a constable in consequence of acting under this section are to be reimbursed by the owner or any other person responsible for the animal concerned.
  - (9) This section is without prejudice to—
    - (a) the ability of an inspector or a constable to take possession of an animal with the consent of its owner or of any other person who is responsible for it; and
    - (b) any other authority for taking possession of an animal.

### **30 Order for release of animals taken**

- (1) The court may order that any animal taken into possession under section 29 be given up to a person specified in the order.
- (2) An order under subsection (1) may be made on summary application by—
  - (a) the owner of the animal; or
  - (b) any other person appearing to the court to have a sufficient interest in the animal.
- (3) A person is entitled to be heard in relation to an application for an order under subsection (1) if the person is the applicant or (if different)—
  - (a) the owner of the animal;
  - (b) an inspector;
  - (c) a constable who—
    - (i) took the animal into possession under section 29; or
    - (ii) is caring for, or has arranged for the care of, the animal under that section; or
  - (d) a person—
    - (i) with whom an arrangement for the care of the animal has been made under that section; and
    - (ii) who is authorised by the Scottish Ministers to be heard in relation to the application.
- (4) In determining whether to make an order under subsection (1), the court must have regard to the desirability of—
  - (a) protecting the value of any animal to which the order applies; and
  - (b) avoiding increasing any expenses which a person may be ordered to reimburse.

### **31 Other orders relating to animals taken**

- (1) The court may, in relation to any animal taken into possession under section 29, order—
  - (a) that specified treatment be administered to the animal; or
  - (b) that the animal be—
    - (i) destroyed;



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- (ii) sold; or
    - (iii) disposed of in another manner.
  - (2) An order under subsection (1) may include—
    - (a) provision—
      - (i) appointing a person who is to secure that the order is carried out; and
      - (ii) for reimbursement of any expenses reasonably incurred in carrying out the order; and
    - (b) such other provision as the court considers appropriate in connection with the order.
  - (3) An order under subsection (1) may be made on summary application by—
    - (a) the owner of the animal;
    - (b) an inspector;
    - (c) a constable who—
      - (i) took the animal into possession under section 29; or
      - (ii) is caring for, or has arranged for the care of, the animal under that section;
    - (d) a person—
      - (i) with whom an arrangement for the care of the animal has been made under that section; and
      - (ii) who is authorised by the Scottish Ministers to make the application; or
    - (e) any other person appearing to the court to have a sufficient interest in the animal.
  - (4) An inspector must, if an application for an order under subsection (1) is not made by another person within 14 days of the date on which the animal was taken into possession under section 29, make an application under subsection (3)(b).
  - (5) A person is entitled to be heard in relation to an application for an order under subsection (1) if the person is the applicant or (if different)—
    - (a) a person mentioned in subsection (3)(a) to (c); or
    - (b) a person—
      - (i) with whom an arrangement for the care of the animal has been made under section 29; and
      - (ii) who is authorised by the Scottish Ministers to be heard in relation to the application.
  - (6) Before making an order under subsection (1), the court must give the owner of the animal an opportunity to make representations unless it is not practicable for it to do so.
  - (7) In determining whether or how to make an order under subsection (1), the court must have regard to the desirability of—
    - (a) protecting the value of any animal to which the order may apply; and
    - (b) avoiding increasing any costs which a person may be ordered to reimburse.
  - (8) If an owner of an animal is subject to any liability by virtue of—
    - (a) section 29(8); or

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(b) subsection (2)(a)(ii),  
any sum which the owner is due as a result of sale of the animal under this section may be used to offset the liability.

### **32 Resort to destruction of animals**

- (1) If a veterinary surgeon certifies that the condition of a protected animal is such that it is appropriate that it be destroyed, an inspector or a constable may—
  - (a) destroy the animal where it is or take it elsewhere and destroy it there; or
  - (b) arrange for the taking of any of those steps.
- (2) But an inspector or a constable may take, or arrange for the taking of, any of those steps without the certification of a veterinary surgeon if—
  - (a) it appears the condition of the animal is such that there is no reasonable alternative to destroying it; and
  - (b) it is reasonable in the circumstances not to seek the assistance of, or wait for, a veterinary surgeon.
- (3) Any other person may, without authority, destroy a protected animal where it is if—
  - (a) the circumstances are exceptional;
  - (b) it appears that the condition of the animal is such that there is no reasonable alternative to destroying it;
  - (c) it is reasonable in the circumstances not to seek the assistance of, or wait for, an inspector, a constable or a veterinary surgeon; and
  - (d) the person is, without such assistance, able to take that step in an appropriate and humane manner.
- (4) Where a person destroys an animal under subsection (3), the person must, as soon as practicable, inform an inspector or a constable of that fact.
- (5) A veterinary surgeon may examine, and take samples from, an animal for the purpose of determining its condition for the purposes of subsection (1).
- (6) Any expenses reasonably incurred by an inspector or a constable in consequence of acting under this section may be recovered from the owner or any other person responsible for the animal concerned.

#### *Welfare bodies and codes*

### **33 Animal welfare bodies**

- (1) The Scottish Ministers may by regulations—
  - (a) establish a body with the function of providing advice to—
    - (i) the Scottish Ministers; and
    - (ii) such other persons as the Scottish Ministers may direct,on such matters concerning the welfare of animals as may be specified in the regulations; and
  - (b) make such provision for the purposes of and in connection with the establishment and operation of the body as the Scottish Ministers consider appropriate.

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- (2) The Scottish Ministers may by regulations make provision for facilitating or improving co-ordination among bodies which have functions relating to the welfare of animals.

### **34 Animal welfare codes**

- (1) The Scottish Ministers may make codes of practice for the purpose of providing practical guidance in respect of any provision made by this Part or by regulations under this Part.
- (2) Before making a code of practice under subsection (1) (in this section referred to as an “animal welfare code”), the Scottish Ministers must consult—
- (a) such persons appearing to them to represent any relevant interests; and
  - (b) such other persons,
- as they consider appropriate.
- (3) An animal welfare code—
- (a) requires to be laid before, and approved by resolution of, the Scottish Parliament; and
  - (b) comes into effect on such date after its approval under paragraph (a) as is specified in the code.
- (4) An animal welfare code may—
- (a) make different provision for different cases or class of case;
  - (b) revise a previous code.
- (5) The Scottish Ministers may revoke, with such transitional or saving provision as they consider to be necessary or expedient, any animal welfare code.
- (6) The Scottish Ministers must, in such manner and to such extent as they consider appropriate, publicise any animal welfare code.
- (7) A person’s failure to comply with a provision of an animal welfare code does not of itself render the person liable to proceedings of any kind.
- (8) In any proceedings for an offence under this Part, or under regulations made under section 23 or 24—
- (a) failure to comply with a relevant provision of an animal welfare code may be relied upon as tending to establish liability; and
  - (b) compliance with a relevant provision of an animal welfare code may be relied upon as tending to negative liability.

#### *Post-conviction orders*

### **35 Deprivation orders**

- (1) Where a person is convicted of a relevant offence, the court may make an order (in this Part referred to as a “deprivation order”) in respect of any animal in relation to which the offence was committed.
- (2) A deprivation order is an order—
- (a) depriving a person of ownership of an animal; and
  - (b) for the destruction or other disposal of the animal.

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- (3) A deprivation order may make provision in respect of any dependent offspring of an animal to which it applies.
  - (4) A deprivation order may include—
    - (a) provision—
      - (i) appointing a person who is to secure that the order is carried out; and
      - (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under sub-paragraph (i);
    - (b) provision authorising—
      - (i) a person appointed under paragraph (a)(i); and
      - (ii) any person acting on that person’s behalf,  
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
    - (c) such other provision as the court considers appropriate in connection with the order.
  - (5) Provision under subsection (4)(c) may, in particular—
    - (a) specify the manner in which an animal is to be disposed of; and
    - (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (4)(a)(i).
  - (6) A deprivation order may not be made unless the court is satisfied that the carrying out of the order would be in the interests of each animal to which it applies.
  - (7) Before making a deprivation order, the court must give the owner of the animal concerned an opportunity to make representations unless it is not practicable for it to do so.
  - (8) Where the court decides not to make a deprivation order in relation to a relevant offence, the court must state its reasons except where the court imposes a disqualification order in relation to the offence.
  - (9) In this section, a “relevant offence” is—
    - (a) any offence under sections 17 to 21;
    - (b) any offence under section 22; and
    - (c) any offence under section 37(6) committed by reason of owning an animal in breach of a disqualification order.

### **36 Destruction orders**

- (1) Where a person is convicted of a relevant offence, the court may make an order (in this Part referred to as a “destruction order”) in respect of any animal in relation to which the offence was committed.
- (2) A destruction order is an order for the destruction of an animal.
- (3) A destruction order may include—
  - (a) provision—
    - (i) appointing a person who is to secure that the order is carried out;

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- (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under sub-paragraph (i); and
    - (iii) requiring the offender to reimburse any expenses reasonably incurred in carrying out the order;
  - (b) provision authorising—
    - (i) a person appointed under paragraph (a)(i); and
    - (ii) any person acting on that person’s behalf,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
  - (c) such other provision (including provision as to the keeping of the animal until it is destroyed) as the court considers appropriate in connection with the order.
- (4) Except in relation to an offence under section 21, a destruction order may not be made unless the court is satisfied, on the basis of evidence given by a veterinary surgeon, that the carrying out of the order would be in the interests of each animal to which it applies.
  - (5) Before making a destruction order, the court must give the owner of the animal concerned an opportunity to make representations unless it is not practicable for it to do so.
  - (6) In this section, a “relevant offence” is—
    - (a) any offence under sections 17 to 21; and
    - (b) any offence under section 22.

### **37 Disqualification orders**

- (1) Where a person is convicted of a relevant offence, the court may make an order (in this Part referred to as a “disqualification order”) which imposes on the person one or more of the disqualifications specified in subsection (2).
- (2) Those are—
  - (a) disqualification from—
    - (i) owning animals;
    - (ii) keeping, and participating in the keeping of, animals; and
    - (iii) being party to arrangements under which the keeping of animals may be controlled or influenced;
  - (b) disqualification from dealing in animals; and
  - (c) disqualification from transporting, and arranging for the transport of, animals.
- (3) A disqualification order may relate to animals generally or to animals of particular kinds.
- (4) A disqualification order—
  - (a) has effect for such period as may be specified in the order; and
  - (b) may specify a period within which an application under section 39(1) for termination of the order may not be made.
- (5) Where the court decides not to make a disqualification order in relation to a relevant offence, the court must state its reasons.

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- (6) A person who breaches a disqualification order commits an offence.
  - (7) In this section, a “relevant offence” is—
    - (a) any offence under sections 17 to 21; and
    - (b) any offence under section 22.

### **38 Breach of disqualification: seizure orders**

- (1) Where a person is convicted of an offence under section 37(6) by reason of owning or keeping an animal in breach of a disqualification order, the court may make an order (in this Part referred to as a “seizure order”) in respect of all animals which the person owns or keeps in breach of the disqualification order.
- (2) Where it appears to the court that a person who is subject to a disqualification order owns or keeps any animal in breach of the order, the court may make an order (in this Part referred to as a “seizure order”) in respect of all animals which the person owns or keeps in breach of the disqualification order.
- (3) A seizure order may be made under subsection (2)—
  - (a) on summary application by—
    - (i) an inspector; or
    - (ii) a procurator fiscal; and
  - (b) even if proceedings have not been, or are not being or are not likely to be, taken against the person for an offence under section 37(6).
- (4) A seizure order is an order for the taking of an animal from a person and—
  - (a) if the animal is owned by the person, for the destruction or other disposal of the animal; or
  - (b) if the animal is not owned by the person, for dealing with the animal in such manner as the court considers appropriate.
- (5) A seizure order may include—
  - (a) provision—
    - (i) appointing a person who is to secure that the order is carried out;
    - (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under sub-paragraph (i);
    - (iii) requiring the person who is subject to the relevant disqualification, or another person, to reimburse any expenses reasonably incurred in carrying out the order;
  - (b) provision authorising—
    - (i) a person appointed under paragraph (a)(i); and
    - (ii) any person acting on that person’s behalf,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
  - (c) such other provision as the court considers appropriate in connection with the order.
- (6) Provision under subsection (5)(c) may, in particular—

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- (a) specify the manner in which an animal is to be disposed of; and
  - (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (5)(a)(i).
- (7) Before making a seizure order, the court must give the owner of the animals concerned an opportunity to make representations unless it is not practicable for it to do so.
- (8) In determining whether to make a seizure order, the court must have regard to the desirability of—
- (a) protecting the value of any animal to which the order applies; and
  - (b) avoiding increasing any expenses which a person may be ordered to reimburse.

### **39 Termination of disqualification**

- (1) A person who is subject to a disqualification order may, by summary application, request the court to terminate or vary the order.
- (2) An application under subsection (1) may not be made—
- (a) before the expiry of the period of one year beginning with the date on which the order was made;
  - (b) where there has been a previous application under that subsection in relation to the same order, before the expiry of the period of one year beginning with the date on which the previous application was determined; or
  - (c) within any period specified under—
    - (i) section 37(4)(b); or
    - (ii) subsection (5).
- (3) On an application under subsection (1), the court may—
- (a) refuse the application;
  - (b) terminate the disqualification order; or
  - (c) vary the disqualification order so as to relax any disqualification imposed by it.
- (4) In considering the application, the court must have regard to—
- (a) the character of the applicant;
  - (b) the applicant's conduct since the disqualification order was made; and
  - (c) such other matters as the court considers to be relevant.
- (5) Where the court refuses an application made under subsection (1), the court may specify a period within which the applicant may not make a further application under that subsection in relation to the same order.

### **40 Appeals against orders**

- (1) Where an order to which this subsection applies is made, any person who has an interest in any animal to which the order applies may, within 7 days of the making of the order, appeal to the High Court of Justiciary against the order.
- (2) The operation of an order to which this subsection applies is suspended until—
- (a) the period for appeal against the order has expired;

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- (b) any period for appeal against the conviction on which the order depends has expired; and
    - (c) any appeal against the order or that conviction has been withdrawn or finally determined.
  - (3) Subsections (1) and (2) apply to any—
    - (a) deprivation order;
    - (b) destruction order; and
    - (c) seizure order.
  - (4) Where the operation of an order is suspended under subsection (2), the court may make an order under this subsection containing such provision as the court considers appropriate in relation to any animal to which the suspended order applies.
  - (5) An order under subsection (4) may, in particular, make—
    - (a) provision—
      - (i) appointing a person who is to secure that the order is carried out;
      - (ii) requiring any person possessing an animal to which the order applies to give it up to a person appointed under sub-paragraph (i); and
      - (iii) for reimbursement of any expenses reasonably incurred in carrying out the order;
    - (b) provision for—
      - (i) the removal of an animal to a place of safety; or
      - (ii) the caring for an animal at the place where it was found or at another place; and
    - (c) provision authorising—
      - (i) a person appointed under paragraph (a)(i); and
      - (ii) any person acting on that person's behalf,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.
  - (6) Where a deprivation order is suspended under subsection (2), a person commits an offence if the person sells or otherwise parts with an animal to which the order applies.
  - (7) Where a disqualification order is made, a person on whom the relevant disqualification is imposed may, within 7 days of the making of the order, appeal to the High Court of Justiciary against the order.
  - (8) The court may—
    - (a) suspend the operation of a disqualification order pending an appeal; or
    - (b) where a person on whom a relevant disqualification is imposed owns or keeps animals to which the order applies, suspend the operation of the order for such period as it considers necessary for enabling alternative arrangements to be made for the animals.



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*Offences and penalties*

**41 Proceedings**

- (1) Proceedings for an offence under this Part, or under regulations made under this Part, may be brought within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge.
- (2) But no such proceedings may be brought more than 3 years—
  - (a) after the commission of the offence; or
  - (b) in the case of an offence involving a continuous contravention, after the last date on which the offence was committed.
- (3) In a prosecution of an offence involving a continuous contravention, the entire period during which the contravention occurred may be included.
- (4) A certificate signed by or on behalf of the prosecutor which states the date on which evidence referred to in subsection (1) came to the prosecutor's knowledge is conclusive evidence of that fact; and such a certificate which purports to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) For the purposes of this section, proceedings are deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted provided that the warrant is executed without undue delay.
- (6) In this Part, the "court" means the sheriff court.

**42 Bodies corporate etc.**

- (1) Where an offence under this Part, or under regulations made under this Part, is committed by a body corporate and is committed with the consent or connivance of, or is attributable to the neglect of—
  - (a) a director, manager, secretary or other similar officer of the body; or
  - (b) a person purporting to act in any such capacity,that person (as well as the body corporate) commits the offence.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to acts and omissions by members in exercising functions of management as if they were directors of the body corporate.
- (3) Where an offence under this Part, or under regulations made under this Part, is committed by a Scottish partnership and is committed with the consent or connivance of, or is attributable to the neglect of a partner, that partner (as well as the partnership) commits the offence.

**43 Penalties**

- (1) A person who commits an offence under this Part is (subject to subsection (3)) liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.
- (2) A person who commits an offence under regulations made under this Part is (subject to subsection (4)) liable on summary conviction to such penalties, not exceeding the penalties referred to in subsection (1), as are provided for in the regulations.

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- (3) A person who commits—
- (a) an offence under section 21; or
  - (b) an aggravated offence under this Part,
- is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £20,000 or to both.
- (4) A person who commits an aggravated offence under regulations made under this Part is liable on summary conviction to such penalties, not exceeding the penalties referred to in subsection (3), as are provided for in the regulations.
- (5) For the purposes of subsections (3)(b) and (4), an offence is aggravated if the offence involves deliberate cruelty to an animal.

*Exclusions from application of this Part*

**44 Exception for scientific research**

This Part does not apply in relation to anything which occurs by virtue of, or in accordance with, a provision of the Animals (Scientific Procedures) Act 1986 (c.14).

**45 Exception for fishing**

This Part does not apply in relation to anything which occurs in the normal course of fishing.

*Miscellaneous*

**46 Inspectors etc.**

- (1) In this Part, an “inspector” is, in the context of any particular provision, a person appointed as inspector for the purposes of the provision by—
- (a) the Scottish Ministers; or
  - (b) a local authority.
- (2) In subsection (1)(b), a “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).
- (3) An inspector incurs no civil or criminal liability for anything which the inspector does in purported exercise of any functions conferred on the inspector by a provision of this Part, or by regulations made under this Part, where the inspector acts on reasonable grounds and in good faith.
- (4) Subsection (3) does not affect any liability of any other person in respect of the thing done.
- (5) In this Part, a “constable” means a constable of a police force.

**47 Premises**

- (1) In this Part, “premises” includes—
- (a) any land or building; or
  - (b) any other place, in particular—
    - (i) a vehicle or vessel; or

- 
- (ii) a tent or moveable structure.
- (2) In this Part, “domestic premises”—
- (a) means premises, or a part of premises, used (or used for the time being) exclusively as a dwelling-house; and
  - (b) includes any land or structure belonging to or usually enjoyed with, or adjacent to and for the time being enjoyed with, the house.

#### **48 Powers of authorised persons**

Schedule 1 makes provision in relation to powers of authorised persons for the purposes of and in connection with this Part.

#### **49 Regulations**

- (1) The powers of the Scottish Ministers to make regulations under this Part are exercisable by statutory instrument.
- (2) And they include power to—
  - (a) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of or in consequence of any provisions of this Part; and
  - (b) make different provision for different purposes.
- (3) But a statutory instrument containing regulations under this Part is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

### **PART 3**

#### **GENERAL**

#### **50 Amendment of enactments**

Schedule 2 amends enactments for the purposes of and in consequence of this Act.

#### **51 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.
- (2) The power to make orders under subsection (1) is exercisable by statutory instrument.
- (3) But—
  - (a) a statutory instrument containing an order under subsection (1) which amends an Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament; and
  - (b) a statutory instrument containing any other order under that subsection is subject to annulment in pursuance of a resolution of the Parliament.

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**52 Commencement and short title**

- (1) The provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (2) The power to make orders under subsection (1) is exercisable by statutory instrument.
- (3) And it includes power—
  - (a) to appoint different days for different provisions of this Act;
  - (b) to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of or in consequence of this Act; and
  - (c) to make different provision for different purposes.
- (4) This Act may be cited as the Animal Health and Welfare (Scotland) Act 2005.

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SCHEDULE 1  
*(introduced by section 48)*

POWERS OF AUTHORISED PERSONS FOR PART 2

*Entry and inspection in connection with Community obligations*

- 1 (1) An inspector may enter and inspect any premises for the purpose of ascertaining compliance with any regulations made under Part 2 which implement a Community obligation.
- (2) Sub-paragraph (1) does not apply in relation to domestic premises.

*Entry and search where animals in distress*

- 2 (1) A sheriff or justice of the peace may grant a warrant under this sub-paragraph if satisfied—
  - (a) that there are reasonable grounds for believing that there is at premises a protected animal which—
    - (i) is suffering; or
    - (ii) is likely to suffer if its circumstances do not change; and
  - (b) that paragraph 5 is complied with in relation to the premises.
- (2) A warrant under sub-paragraph (1) authorises an inspector or a constable to enter and search the premises for the purpose of exercising any power conferred by sections 29 and 32.
- (3) An inspector or a constable may—
  - (a) enter and search premises for the purpose of exercising any power conferred by sections 29 and 32; and
  - (b) do so without a warrant under sub-paragraph (1),if it appears that immediate entry is appropriate in the interests of an animal.
- (4) Sub-paragraph (3) does not apply in relation to domestic premises.

*Entry and inspection in connection with offences*

- 3 (1) An inspector may enter and inspect any premises for the purpose of ascertaining whether an offence under Part 2 has been committed at the premises.
- (2) Sub-paragraph (1) does not apply in relation to domestic premises.

*Entry and search etc. in connection with offences*

- 4 (1) A sheriff or justice of the peace may grant a warrant under this sub-paragraph if satisfied—
  - (a) that there are reasonable grounds for believing—
    - (i) that a relevant offence has been committed at premises; or

- 
- (ii) that evidence of the commission of, or participation in, a relevant offence is to be found at premises; and
    - (b) that paragraph 5 is complied with in relation to the premises.
  - (2) A warrant under sub-paragraph (1) authorises an inspector or a constable to—
    - (a) enter the premises; and
    - (b) search for, examine and seize any animal (including the carcase of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence.
  - (3) An inspector or a constable may—
    - (a) enter premises and search for, examine and seize any animal (including the carcase of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence; and
    - (b) do so without a warrant under sub-paragraph (1),if it appears that immediate entry is appropriate in the interests of an animal.
  - (4) Sub-paragraph (3) does not apply in relation to domestic premises.
  - (5) In this paragraph, a “relevant offence” is—
    - (a) any offence under sections 17 to 21;
    - (b) any offence under section 22; and
    - (c) any offence under section 37(6).

*Conditions for granting warrants*

- 5 (1) This paragraph is complied with in relation to premises if at least one of the conditions specified in sub-paragraphs (2) to (4) is met.
- (2) The condition is—
  - (a) that—
    - (i) admission to the premises has been refused; or
    - (ii) such a refusal may reasonably be expected; and
  - (b) that—
    - (i) notice of the intention to seek a warrant has been given to the occupier of the premises; or
    - (ii) the giving of such notice would frustrate the purpose for which the warrant is sought.
- (3) The condition is that the premises are unoccupied or the occupier is temporarily absent.
- (4) The condition is that the case is one of urgency.

*Stopping and detaining vehicles etc.*

- 6 (1) A constable in uniform may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.
- (2) An inspector, if accompanied by a constable in uniform, may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.

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- (3) A vehicle or vessel may be detained under sub-paragraph (1) or (2) for as long as is reasonably required for the exercise of the power concerned.
  - (4) The power concerned may be exercised either at the place where the vehicle or vessel was first detained or nearby.

*Entry and search etc.: supplementary*

- 7 A warrant granted under a provision of this schedule remains in force for one month beginning with the date on which it was granted.
- 8 (1) A relevant power is exercisable only at a reasonable time.
  - (2) Sub-paragraph (1) does not apply if it appears that exercise of the power at a reasonable time would frustrate the purpose of exercising the power.
- 9 (1) A relevant power is exercisable, if necessary, by using reasonable force.
  - (2) Sub-paragraph (1) does not apply to the power conferred by paragraph 3.
- 10 A person exercising a relevant power must, if required, produce evidence of the person's authority.
- 11 (1) A relevant power includes power to take onto premises—
  - (a) such assistance; and
  - (b) such equipment;as appears to be required for the purpose of the exercise of the power.
  - (2) A relevant power includes power to secure the taking of any of the steps mentioned in sub-paragraph (3).
  - (3) Those steps are—
    - (a) carrying out tests on, and taking samples from—
      - (i) an animal (including a carcase of an animal); and
      - (ii) any equipment, substance or other thing; and
    - (b) using a mark, microchip or other method of identifying an animal.
- 12 A relevant power authorises any person taken onto premises under paragraph 11(1)(a) to exercise the power provided that the person is in the company of, and is supervised by, the person on whom the power is conferred.
- 13 (1) A qualifying person must—
  - (a) comply with any reasonable direction made by a person exercising a relevant power; and
  - (b) in particular, give that person such information and assistance as that person reasonably requires.(2) In sub-paragraph (1), a “qualifying person” is—
  - (a) the occupier of premises in relation to which a relevant power is being exercised;
  - (b) any person who appears to be responsible for animals at the premises; and
  - (c) any person who appears to be under the direction or control of a person referred to in paragraph (a) or (b).

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- 14 A person exercising a relevant power in relation to unoccupied premises must leave the premises as effectively secured against entry as the person found them.

*Offences of obstruction*

- 15 (1) A person commits an offence if, without reasonable excuse, the person contravenes paragraph 13(1).
- (2) A person commits an offence if the person intentionally obstructs a person in the exercise of a relevant power.
- 16 (1) A person commits an offence if the person intentionally obstructs a person in the exercise of a power conferred by—
- (a) section 29;
  - (b) an order under section 31(1); or
  - (c) section 32.
- (2) A person commits an offence if the person intentionally obstructs a person in the carrying out of—
- (a) a deprivation order;
  - (b) a destruction order;
  - (c) a seizure order; or
  - (d) an order under section 40(4).

*Powers of constables: supplementary*

- 17 A constable may arrest without warrant any person whom the constable reasonably believes is committing or has committed an offence under—
- (a) sections 17 to 21; or
  - (b) paragraph 15 or 16.
- 18 The powers conferred on constables by this schedule are without prejudice to any powers conferred on constables by law apart from this schedule.

*Interpretation*

- 19 In this schedule, a “relevant power” is any power—
- (a) conferred on an inspector by—
    - (i) a provision of this schedule; or
    - (ii) a warrant granted under a provision of this schedule; or
  - (b) conferred on a constable by—
    - (i) a provision of this schedule except paragraph 17; or
    - (ii) a warrant granted under a provision of this schedule.
- 20 References in Part 2 to that Part include this schedule.



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SCHEDULE 2  
*(introduced by section 50)*  
AMENDMENT OF ENACTMENTS

*Animal Health Act 1981 (c.22)*

- 1 (1) In section 22 (powers of entry etc. for section 21) of the Animal Health Act 1981, subsection (5) is repealed.
- (2) In section 63 (general powers of inspectors) of that Act, after subsection (9) there is added—
  - “(10) An inspector acting under this section must, if required, produce evidence of his authority.”.
- (3) In section 64 (powers of inspectors as to poultry) of that Act, after subsection (2) there is added—
  - “(3) An inspector acting under this section must, if required, produce evidence of his authority.”.
- (4) In section 91 (orders etc.) of that Act, subsection (2) is repealed.

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Astron B41477 05/05

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