



# Animal Health and Welfare (Scotland) Act 2006 2006 asp 11

## PART 1

### ANIMAL HEALTH

#### *Deliberate infection of animals*

#### **10 Deliberate infection of animals**

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

##### **“28C Deliberate infection: Scotland**

- (1) A person commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person—
  - (a) knowingly does anything which causes or is intended to cause; or
  - (b) recklessly causes,an animal or bird 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 lies on the person), that person acquires or retains—
  - (a) an animal or bird; or
  - (b) the carcase of an animal or bird,which the person knows, or ought reasonably to know, 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 lies on the person), that person acquires or retains anything obtained from, produced by or used in connection with—
  - (a) an animal or bird; or
  - (b) the carcase of an animal or bird,

which the person knows, or ought reasonably to know, to be infected with a disease specified in Schedule 2B to this Act.

- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) In this section and sections 28D to 28H, the references to an animal mean any kind of mammal (except man).

### **28D Deliberate infection: deprivation of entitlement to compensation**

- (1) Where a person is convicted of an offence under section 28C, any provision of this Act by virtue of which compensation is payable to the person does not apply in respect of anything to which this subsection applies.
- (2) Subsection (1) applies to animals to which that offence relates.
- (3) Subsection (1) also applies to any other animals which were kept on the same premises as the animals referred to in subsection (2)—
- (a) at the same time (or any part of the time) as those animals; and
  - (b) at or after the time when the offence was committed,
- and in relation to which compensation would be payable but for this section.
- (4) Subsection (1) also applies to—
- (a) any carcasses seized under an order made under section 35(1) or 36ZA(1)—
    - (i) which are of the animals referred to in subsection (2) or of the other animals referred to in subsection (3); and
    - (ii) in relation to which compensation would be payable but for this section;
  - (b) other things seized under such an order—
    - (i) which were obtained from or produced by those animals; and
    - (ii) in relation to which compensation would be payable but for this section; and
  - (c) anything else—
    - (i) seized under such an order; and
    - (ii) which was present on the same premises as those animals, or those carcasses or other things, at the time described by paragraphs (a) and (b) of subsection (3),
 and in relation to which compensation would be payable but for this section.
- (5) Any compensation paid to a person in respect of anything to which subsection (1) applies may be recovered by the Scottish Ministers.
- (6) In subsection (3), “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.

### **28E Deliberate infection: deprivation orders**

- (1) Where a person is convicted of—
- (a) an offence under section 28C; or
  - (b) an offence under section 28F(16) by reason of owning or keeping an animal,
- the convicting court may make an order (in this section and section 28H 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 possession or ownership (or both) of an animal; and
  - (b) for—
    - (i) the destruction;
    - (ii) the sale; or
    - (iii) another disposal,of the animal.
- (3) Where the court decides not to make a deprivation order in relation to an offence referred to in subsection (1), it must state its reasons except where it makes a disqualification order in relation to the offence.
- (4) A deprivation order may be made in addition to, or instead of, any other penalty or order which may be imposed in relation to a relevant offence.
- (5) A deprivation order may make provision in respect of any dependent offspring of an animal to which it applies.
- (6) A deprivation 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 subparagraph (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;
  - (c) such other provision as the court considers appropriate in connection with the order.
- (7) Provision under subsection (6)(c) may, in particular—
- (a) require reimbursement of any expenses reasonably incurred in carrying out the order;
  - (b) relate to the retention of any proceeds of the disposal.

- (8) The court may not make a deprivation order involving the destruction of an animal unless it is satisfied, on evidence provided (orally or in writing) by a veterinary surgeon, that destruction would be in the interests of the animal.
- (9) 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.
- (10) A deprivation order is, for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995 (c. 46), to be treated as a sentence.
- (11) Where a deprivation order is made, any person (apart from a person who may appeal against the order by virtue of subsection (10)) who has an interest in any animal to which the order applies may appeal to the High Court of Justiciary against the order by the same procedure as applies under subsection (10).
- (12) In this section and section 28G, “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.
- (13) In this section and section 28G, “veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (c. 36).

### **28F Deliberate infection: disqualification orders**

- (1) Where a person is convicted of an offence under section 28C or subsection (16), the convicting court may make an order (in section 28E, this section and section 28G referred to as a “disqualification order”) disqualifying that person, for such period as it thinks fit, from one or more of the activities specified in subsection (2).
- (2) Those activities are—
- (a) owning or keeping animals (or both);
  - (b) dealing in animals;
  - (c) transporting animals;
  - (d) working with or using animals;
  - (e) riding or driving animals;
  - (f) providing any service relating to animals (including, in particular, for their care) which involves taking possession of animals;
  - (g) taking possession of animals for the purpose of an activity in respect of which a disqualification mentioned in paragraphs (a) to (f) is imposed;
  - (h) taking charge of animals for any, or any other, purpose.
- (3) For the purposes of subsection (1), disqualification in respect of an activity specified in subsection (2) includes disqualification from any participation in the activity including, in particular—
- (a) making arrangements in connection with the activity;
  - (b) being party to arrangements under which the activity may be controlled or influenced;

- (c) being concerned (so far as relating to the activity) in the management or control of a body whose business involves the activity.
- (4) However, disqualification by reference to subsection (2)(h) does not include disqualification from taking charge of an animal for so long as is necessary in the circumstances—
  - (a) with the consent of the owner or keeper of the animal, for the purpose of caring for it;
  - (b) for the purpose of alleviating any suffering of the animal, if no alternative arrangements for its care are reasonably available.
- (5) Where the court decides not to make a disqualification order in relation to an offence under section 28C or subsection (16), it must state its reasons.
- (6) A disqualification order may be made in addition to, or instead of, any other penalty or order which may be imposed in relation to an offence under that section.
- (7) A disqualification order may apply to animals generally or to animals of any particular kind.
- (8) A disqualification order may specify a period within which an application under subsection (11) may not be made.
- (9) The court may suspend the operation of a disqualification 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 applies;
  - (b) pending an appeal.
- (10) A disqualification order is, for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995, to be treated as a sentence.
- (11) A person who is subject to a disqualification order may apply to the court which imposed the order to terminate or vary it.
- (12) An application under subsection (11) 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 (8) or (15).
- (13) On an application under subsection (11), 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.
- (14) In considering an application under subsection (11), the court must have particular regard to—
  - (a) the nature of the offence in relation to which the disqualification order was made;

- (b) the character of the applicant;
  - (c) the conduct of the applicant since the order was made.
- (15) Where the court refuses an application made under subsection (11), the court may specify a period within which the applicant may not make a further application under that subsection in relation to that order.
- (16) A person who breaches a disqualification order commits an offence.

### **28G Seizure orders where disqualification breached**

- (1) Where the court is satisfied 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 section and section 28H referred to as a “seizure order”) in respect of all animals which the person owns or keeps in breach of the disqualification order.
- (2) A seizure order may be made—
- (a) on summary application by an inspector;
  - (b) even if proceedings have not been, or are not likely to be, taken against the person for an offence under section 28F(16).
- (3) In subsection (2)(a), “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.
- (4) A seizure order is an order—
- (a) depriving a person of possession or ownership (or both) of an animal; and
  - (b) for—
    - (i) the destruction;
    - (ii) the sale; or
    - (iii) another disposal,
 of the animal.
- (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 subparagraph (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;
  - (c) such other provision as the court considers appropriate in connection with the order.

- (6) Provision under subsection (5)(c) may, in particular—
  - (a) require reimbursement of any expenses reasonably incurred in carrying out the order;
  - (b) relate to the retention of any proceeds of the disposal.
- (7) The court may not make a seizure order which involves the destruction of an animal unless it is satisfied, on evidence provided (orally or in writing) by a veterinary surgeon, that destruction would be in the interests of the animal.
- (8) 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.
- (9) In determining whether or how 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 required to reimburse.
- (10) Where an application is made under subsection (2)(a), the court may make an order under this subsection (an “interim order”) containing such provision as the court considers appropriate in relation to the keeping of an animal until the application is finally determined.
- (11) Subsections (5), (6)(a) and (9) apply in relation to an interim order as they apply in relation to a seizure order.
- (12) The disqualified person by reference to whom a seizure order is made, or any person (apart from that disqualified person) who entered the process prior to the making of the order, may appeal to the Sheriff Principal against the order.

### **28H Suspension of orders pending appeal**

- (1) The operation of any deprivation order or seizure order is suspended until—
  - (a) any period for an appeal against the order has expired;
  - (b) the period for an 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.
- (2) Where the operation of a deprivation order or seizure order is suspended under subsection (1), or such an order is not executable because decree has not been extracted, the court may make an order under this subsection (an “interim order”) containing such provision as the court considers appropriate in relation to the keeping of an animal for so long as the first-mentioned order remains suspended or inexecutable.
- (3) An interim order may, in particular, make provision of the sort described in—
  - (a) paragraphs (a) and (b) of subsection (5) of section 28G;
  - (b) paragraph (a) of subsection (6) of that section.
- (4) In determining whether or how to make an interim order, the court must have regard to the desirability of—

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*Status: This is the original version (as it was originally enacted).*

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- (a) protecting the value of any animal to which the order applies; and
- (b) avoiding increasing any expenses which a person may be required to reimburse.”.