

# **ANIMALS AND WILDLIFE (PENALTIES, PROTECTIONS AND POWERS) (SCOTLAND) ACT 2020**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Chapter 1 – Animal welfare, animal health and wildlife: offences and penalties***

#### **Animal welfare offences: disqualification orders**

#### ***Section 4 – Disqualification orders***

22. This section amends sections 40 and 42 of the 2006 Act, and inserts a new section 42A into the 2006 Act.
23. Section 4(2)(a) amends section 40(1) of the 2006 Act to place a requirement on courts to consider whether it is necessary, to protect animal welfare, to impose a disqualification order on a person who has been convicted of a relevant offence. The relevant offences are defined by section 40(13) of the 2006 Act.
24. Previously, section 40(1) provided that where a person is convicted of a relevant offence, the convicting court may make a disqualification order, and did not specify when such an order should be made. The amendment therefore places a stronger requirement on courts to consider issuing a disqualification order in every case where a person is convicted of a relevant offence, and makes clear that such an order should be imposed for the purposes of protecting animal welfare.
25. Section 4(2)(b) replaces the previous section 40(5) of the 2006 Act with a new section 40(5). The new section 40(5) requires the court to state its reasons for deciding to make a disqualification order, or for deciding not to make a disqualification order. In addition, where the court decides to make such an order, it is required to explain its reasons for specifying the particular disqualifications imposed by the order, any period for which the order is to have effect and any period within which an application under section 42(1) of the 2006 Act for termination or variation of the order may not be made.
26. Previously, section 40(5) of the 2006 Act only required the court to state its reasons when it decided not to make a disqualification order. The amendments therefore place additional requirements on courts to explain their reasons when they issue a disqualification order, and to provide detail about why they think the specifics of the order they have issued are appropriate in the circumstances of the case.
27. Section 4(3) inserts a new section 42(6) into the 2006 Act to require the court to state its reasons for deciding to grant an application to terminate or vary a disqualification order, or to refuse an application to vary or terminate a disqualification order. An application to vary or terminate a disqualification order may be made under section 42(1) of the 2006 Act by a person who is subject to such an order.

*These notes relate to the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (asp 14) which received Royal Assent on 21 July 2020*

28. Section 4(4) inserts a new section 42A into the 2006 Act to require the Scottish Courts and Tribunals Service to establish and maintain a record of the reasons relating to disqualification orders. The record needs to contain all such information which is required to be provided by the court under new sections 40(5) and 42(6).

***Section 5 – Disqualification orders: further provision***

29. Section 5 inserts a new section 40(1A) into the 2006 Act, and amends section 40(6) of the 2006 Act.
30. Section 5(2)(a) inserts new section 40(1A) into the 2006 Act. The new section 40(1A) provides that the purpose of a disqualification order is the future protection of animals and that it is not in substitution for a penalty for a relevant offence.
31. Section 5(2)(b) amends section 40(6) of the 2006 Act so that a disqualification order may be made in addition to any other penalty or order in relation to the offence, but not instead of such other penalty or order as was previously the case.