

“It’s a Dog’s Life”

Animal Health & Welfare in Scotland Today

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Introduction

1. Animal health is a very topical issue in Scotland at present and it should be clear that we are not just talking about fox hunting and tail docking but about a whole range of animals and their welfare. Farmers and those involved in estate management require to be made aware of the wide range of issues now covered by legislation in Scotland.

Background to the Law

2. The most up to date legislation is the Animal Health and Welfare (Scotland) Act 2006. The majority of the provisions of this Act came into force on 6 October 2006. It is described as being an Act to amend the Animal Health Act 1981, to make provisions to prevent the spread of disease and the welfare of animals. The welfare provisions of this Act modernise and bring together in one statute some 20 Acts relating to the welfare of captive and domestic animals in Scotland. Repealed Acts include the Cockfighting Act 1952 (c.59), the Performing Animals (Regulation) Act 1925 (c.38) and the Protection of Animals (Scotland) Act 1993 (c.15).

3. The 2006 Act is essentially an enabling measure [it does bit of hybrid as does bit of both]. It sets out the broad fundamental principles of animal welfare and allows more specific provisions to be made in the form of secondary legislation. The advantage of this is that it will enable up to date secondary legislation to be made in order to keep pace with the developments of animal science and to enable quick action to be taken if and when required in order to react to any particular issue which might arise in the future.
4. In general terms the new Act covers a wide range of animal welfare related issues and the main headings are as follows:

Part 1 – Animal Health

- Slaughter for preventing spread of disease in animals
- TSE – Transmissible Spongiform Encephalopathies (BSE in cattle)
- Scottish Ministers’ Powers of Enforcement

Part 2 – Animal Welfare

- Prevention of harm
- Licensing of activities involving animals
- Prohibition on the keeping of certain animals
- Animals in distress
- Seizure and deprivation orders

General Observations on the 2006 Act

5. In terms of the 2006 Act ‘Animal’ is described as ‘*a vertebrate other than man*’¹. This is a fairly wide description and it remains to be seen whether or not this definition ever leads to legal debate. Just in case it may miss something there is

¹ Part 2 section 16(1)

also provision for the Scottish Ministers to allow them to extend the definition to include invertebrates of any kind². So it really is pretty well covered.

Part 1 – Animal Health

6. The main headings under this part relate to the powers of slaughter, the spread of disease, animal testing and the control of animal gatherings.

*Powers of slaughter*³

7. This has effect to a range of diseases including cattle plague and foot-and-mouth disease. The Act gives the Scottish Ministers almost unfettered power to embark upon widescale programs of slaughter in order to prevent the spread of disease. There are of course provisions for compensation and so there is arguably nothing new about these particular measures.

*Biosecurity codes*⁴

8. Will be prepared and sent to farmers making sure that they are aware of what action to take to deal with emergency outbreaks of disease. It will be an offence not to comply with these codes.

*Testing, sampling and seizure*⁵

9. The Act contains wide powers to allow inspectors access at any time to check for disease in any animals. Where any such inspections lead to seizures being made compensation must be paid.⁶ The Act also has a provision making power to allow the Scottish Ministers to control animal gatherings described as an occasion at

² 16(3)(a)(i)

³ Sections 1-3

⁴ Sections 4-6

⁵ Sections 6-9

⁶ Section 8

which animals or birds or both are brought together for any purpose. It is important to note that there is one obvious exception to this being that an animal gathering is not in fact an animal gathering if all the animals are either owned by the same person or the occasion takes place on land which more than one person has a right to use. What the Members of the Scottish Parliament thought when over 100 protestors and their dogs gathered outside Holyrood to make the case for the docking of working dogs' tails is unclear.

*Deliberate infection of animals*⁷

10. In short it is an offence to either knowingly or recklessly do something which causes an animal or bird to become infected with one of the diseases specified in the Act. A wide list is published.⁸ There is naturally no compensation payable for animals seized as a result of being deliberately infected and the sanctions are severe – up to six months on summary conviction or up to two years on conviction on indictment. A person convicted of an offence under this head can thereafter be disqualified from owning, keeping or transporting animals for a period. Care must therefore be taken especially as any charge will be capable of being proven on the basis of what a reasonably competent animal keeper ought to have done.

TSE

11. The severity of this is such that the Act has a specific section relating to this issue⁹. The Act provides for specialist testing, checking, seizures and slaughter and of course compensation.

⁷ Section 10 and inserted as Sections 28C-H in the 1981 Animal Health Act

⁸ Schedule 2B

⁹ Section 11 and inserted as Sections 36N-X in the 1981 Act

Part 2- Animal Welfare

12. Essentially makes individuals liable for the animals in their care and outlaws unnecessary suffering, mutilation, what are described as cruel operations, poisoning and animal fights.¹⁰ Animal fights being of course outlawed as opposed to regulated. There are also general restrictions upon the keeping of certain animals¹¹ and it is now an offence to sell an animal to anyone under 16¹². Following on from these provisions local authorities can seize any animals that are being treated contrary to the Act.¹³ As in the provisions in Part 1 of the Act individuals can be prevented from owning, keeping or selling any animals.¹⁴
13. What specific provisions have therefore been considered following the coming into force of the Act in October 2006?

Secondary Legislation following the 2006 Act¹⁵

14. In February 2007 Regulations were laid in the Scottish Parliament which exempts a number of procedures including ear tagging, livestock and the micro chipping of pets from the general ban.

Licensing of Animal Dealers (Scotland) Regulations 2006

15. Prior to the 2006 Act being passed by the Scottish Parliament, Christine Grahame MSP had lodged a proposal for a Members' Bill called, '*The Transportation and Sale of Puppies (Scotland) Bill*' in November 2003. The rationale behind this Bill was a desire to bring about an end to animal welfare issues associated with the transport and sale of puppies in Scotland. These proposals and others were

¹⁰ Sections 16-23

¹¹ Section 28

¹² Section 30

¹³ Section 32

¹⁴ Section 40

¹⁵ Section 27(1)

brought together under the proposals for *The Licensing of Animal Dealers (Scotland) Regulations 2006*. As matters currently stand, these Regulations will come into force in July 2007.

16. The aim of these proposed Regulations is to set up a licensing system for people who deal in puppies and kittens. They will apply to people who buy puppies or kittens under 84 days of age and resell them within 60 days. This will greatly improve the conditions of these animals. The proposals also make provision for these animals to be kept separate from other animals for a period of at least 10 days from the date of purchase, for them to undergo a full veterinary inspection before they are sold on and for a written record to accompany a cat or a dog when it is sold by a dealer. So quite a few important changes to what is an expanding business.
17. There has been a significant amount of recent concern in the trade of young cats or dogs – or young companion animals as they are better known in the official scripts. Dogs as young as six weeks old have been found on sale and at this age young puppies are not robust enough to withstand the stress of travel. Furthermore they are often only just weaned and if they are sold off too early they are at risk of suffering from severe behavioural problems in later life. So it is a serious issue.
18. As far as a definition of dealer is concerned the proposed regulations do not describe a dealer as such but instead define the activity that is being carried out. In short it is a matter of intensity and is not designed to catch the person who buys a family pet or who buys a pet and then decides it is too much trouble and sells it on.
19. Therefore it is proposed that anyone who wishes to deal in cats and dogs will need to apply to the licensing authority for a dealer's licence. It is intended that this will be the local authority where the dealer resides. Where an applicant does not

reside in Scotland their application would be made to the City of Edinburgh Council. A licence will be valid for three years. As regards the fee it has been decided that it should be an amount sufficient to cover the local authority's costs in administering the licensing regime. The licence will have attached to it a number of conditions relating to how the trade can be carried on and local authorities will be entitled to carry out spot inspections to ensure that the dealers are trading within the framework of the law.

20. There is of course an appeals process and an applicant will be able to appeal against the licensing authority for refusing to grant a licence and against a range of decisions which the authority may impose on a licence. Appeals will be made to the Sheriff Principal.

Offences

21. There are a range of offences under the proposed Regulations which generally deal with non compliance of the licensing provisions. Provision has also been made that where a corporate body (including a partnership) is guilty of an offence under the Regulations, then a director, manager or secretary can be proceeded against and punished.
22. Penalties are a fine not exceeding level 4 on the standard scale or up to three months imprisonment or both.
23. As a final point there have been a number of observations raised about these proposed Regulations during the Consultation period. One in particular being that they really deal only with puppies and kittens (although this has not been stated as such) and that if other species are shoe horned into these Regulations that it is bound to lead to confusion at best and at worst ineffective law. It is also felt that the proposals would not catch factory breeders operating outwith Scotland. There

is still therefore a fair amount of amendment which may be required prior to these Regulations coming into force later in the year.

The Prohibited Procedures (Exemptions) Scotland Regulations 2007

24. These second proposed Regulations stem from section 20 of the 2006 Act which makes it an offence to interfere with the sensitive tissues or the bone structure of an animal unless it is for the medical treatment of the animal. There are however certain procedures which the Executive feel are worthy of exemption – I hesitate to coin the phrase state sponsored mutilation! In general terms it is proposed that exemptions under section 20 (5) of the 2006 Act will be for the purposes of identification, control of reproduction and general animal management. I will look briefly at these in turn in order to provide a flavour of what is being proposed.

Identification

25. Identification of certain animals is an EC requirement and farmers well know that the penalties for failing to enforce EC requirements can be draconian. The proposed exemption regulations will include the ID procedures of freeze branding, hot branding, tattooing, ear notching, ear clipping, ear tagging, ear tipping and pit tagging of fish.

Reproduction

26. The proposals allow for the continuation of a number of procedures which are undertaken to control reproduction. These are vasectomy, spaying, ova transplantation by surgical methods and castration. This is a wide section covering a number of specific animals and as far as castration is concerned the procedure will continue to be permitted in all species of animal.

General Animal Management

27. Proposed under this section, depending upon the species, are antler removal, dehorning, disbudding, desnooding (turkeys), dubbing, ringing, tusk trimming, beak trimming, tooth cutting, laparoscopy, removal of fish scales, supernumerary teat removal, toe cutting/detoeing, dew claw removal and tail docking.

Tail docking

28. The burning political hot potato. As far as pigs are concerned no problem. Tail docking, done to prevent the animals biting one another's tails which can then become infected, is to be permitted. Similarly the tail docking of sheep, undertaken to avoid maggot infestation or fly strike of tails, is to be permitted.
29. It is however to dogs that the gauntlet has been thrown down [highlight newspaper example]. By way of background on 31 May 2006 the Scottish Parliament voted by a huge majority not to accept an amendment to the Bill which would have exempted the tail docking of working dogs.¹⁶ This means that as things currently stand the tail docking of dogs can only be undertaken as a result of tail damage or a disease or if in the future it becomes permitted under a Regulation¹⁷. However as matters stand although the Bill provided for a maximum penalty of £5,000 and six months imprisonment this has been increased to £20,000 and 12 months.
30. Although intriguingly the Deputy Minister has stated that further representations on the issue of the tail docking of dogs could be raised for consideration during the consulting process of these proposed exemption Regulations. It is likely that these Regulations will come into force later in 2007.

¹⁶ From section 20(1) and (2) of the 2006 Act

¹⁷ Made under section 20(5) of the 2006 Act

Recent UK decisions

31. As yet there is no case law in Scotland under the 2006 Act but it is only a matter of time before there are. One recent decision in England perhaps gives a flavour of what to expect. In *Compassion in World Farming Ltd v Secretary of State for the Environment, Food and Rural Affairs*.¹⁸ In an application for judicial review against the feeding of broiler chickens the High Court found that it had not been proved that the birds experienced chronic hunger and that a regime of restricted feeding was not in itself contrary to the law. The Court of Appeal dismissing the appeal of the earlier decision stated that: *'...if owners fed their broiler chickens a diet that was wholesome, appropriate to their age and species and was sufficient to maintain good health and satisfy nutritional needs they were not failing to promote the chickens' well being. Promoting an animal's well being required a balancing of conflicting factors. In any event, the facts showed that an overfed chicken could be an unhealthy chicken.'*
32. Food for thought as they say. One cannot help feel that whilst the 2006 Act is clearly well intentioned and well motivated that its interpretation in the Courts may not be as straightforward as the legislators envisaged. Whether for chickens, cats, puppies, cattle and sheep, the ubiquitous phrase, *'it's a dog's life'* may remain apt for some time to come.

For any further information or assistance please feel free to contact me at any time - william@frain-bell.com or at the Faculty of Advocates on 0131 226 5071

¹⁸ [2004] EWCA 1009