This document relates to the Fur Farming (Prohibition) (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 5 October 2001

FUR FARMING (PROHIBITION) (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Fur Farming (Prohibition) (Scotland) Bill introduced in the Scottish Parliament on 5 October 2001:

   • Explanatory Notes;

   • a Financial Memorandum;

   • an Executive Statement on Legislative Competence; and

   • the Presiding Officer’s Statement on Legislative Competence.

A Policy Memorandum, also prepared by the Scottish Executive, is printed separately as SP Bill 39–PM.
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EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill’s purpose is to prohibit the keeping of animals solely or primarily for slaughter for the value of their fur or for breeding progeny for such slaughter. It provides for the making of a forfeiture order following a conviction so as to allow the forfeiture and destruction or other disposal of the animals. It enables persons authorised by the court to carry out a forfeiture order to enter any premises where such animals are being kept for the purpose of implementing the order. The Scottish Ministers may also authorise persons to enter and inspect premises where it is suspected that an offence under the Bill has been or is being committed. It enables the Scottish Ministers to establish by order a scheme for paying compensation to persons who incur specified losses as a result of the prohibition of fur farming. Finally, it allows for disputes as regards a person’s entitlement to such compensation or the amount thereof to be adjudicated by the Lands Tribunal for Scotland.

Section 1: Offences relating to fur farming

5. Section 1 creates the offence of keeping animals solely or primarily for slaughter for the value of their fur or for breeding progeny for such slaughter (sections 1(1)(a) and (b) respectively).

6. By applying the “solely or primarily” test, anyone who keeps animals partly for slaughter for the value of their fur and partly for another purpose will be guilty of the offence only if the primary purpose for which they keep the animals is for the value of their fur. This principally means commercial value, but the term is sufficiently wide to include the value of the fur to an individual who has no intention of selling it.

7. Section 1(2) also makes it an offence for a person to knowingly cause or permit another person to keep animals where the purpose is to keep animals solely or primarily for the value of their fur (section 1(2)). It is anticipated that there will be relatively few cases where an offence would arise under section 1(2). Notably a person might knowingly cause or permit the keeping of animals for the prohibited purpose without there being any clear relationship of agency with the person who physically keeps the animals. An example of this could be a person who grants a tenancy of land for the purpose of enabling the tenant to carry on a fur farming business.
8. Section 1(3) makes it clear that the reference in the offence provision to keeping animals for slaughter and to breeding progeny for slaughter includes keeping or breeding such animals with the intention of selling them on for slaughter, as well as the slaughter of them while they are in the ownership or possession of such a person.

9. The offence provisions apply to any person, whether an individual or a legal person. They also apply to the officers of a company (section 1(4)) and to partners of a Scottish partnership (section 1(5)).

10. Section 1(6) provides that the maximum penalty is £20,000 for offences committed under section 1.

Section 2: Forfeiture orders

11. Section 2(1) allows the court to make a forfeiture order in respect of any animals, following conviction under section 1(1), of the same type to which the offence related.

12. Section 2(2) allows a forfeiture order to be made in respect of any animals kept by a person where another person is convicted of an offence under section 1(2), provided the animals are of the same type to which the offence related.

13. Section 2(3) defines the relevant period for the purposes of section 2(1) and 2(2). A forfeiture order may apply in respect of any animals of the same type to which the offence related which are kept by a person at the time the forfeiture order is made or which come into that person’s keeping pending the carrying out of the order.

14. Section 2(4) explains that a forfeiture order is an order for the destruction or other disposal of the animals to which the order applies. Its effect is to deprive any person of their rights in those animals (section 2(5)).

15. Section 2(6) allows the court to make a forfeiture order irrespective of whether it also deals with the offender. So, where a person is convicted but there is no dealing such as a fine, the court may still make a forfeiture order.

16. Section 2(7) requires the court to take into account any representations made to it by any person who has a legal interest in the ownership of the animals which could be the subject of a forfeiture order. It is expected that procedural provision in this regard could be made by Act of Adjournal under section 305 of the Criminal Procedure (Scotland) Act 1995.

17. Section 2(8) sets out the timescale within which an interested person may lodge an appeal against the making of forfeiture order.
Section 3: Enforcement of forfeiture orders

18. Section 3(1) gives the court certain powers in relation to the enforcement of a forfeiture order. It may appoint a person to implement the order (subsection (1)(a)), impose requirements on any person as regards the keeping of the animals pending implementation of the order (subsection (1)(b)), make the offender pay the reasonable expenses of implementing the order and, where the offender does not keep the animals, of keeping them pending their destruction or other disposal (subsection (1)(c)).

19. Section 3(1)(d) allows the court to make provision in relation to the operation of a forfeiture order pending the making or determination of any appeal or application.

20. Section 3(2) allows any sums ordered to be paid under section 3(1)(c) to be recovered by civil diligence.

21. Section 3(3) prevents a forfeiture order from being carried out before the end of the period within which an appeal against the making of the order may be made, finally determined or abandoned.

Section 4: Powers of entry and enforcement

22. Section 4(1) enable persons authorised in writing by the Scottish Ministers to enter and inspect premises where it is suspected that an offence under section 1(1) has been or is being committed. Anyone appointed by the court under section 3(1)(a) to carry out a forfeiture order may also enter any premises on which that person has reasonable grounds for suspecting that animals to which the order applies are being kept and carry out the order (subsection 4(2)). Under section 4(3), evidence of identity, authority or appointment (as the case may be) and the reason for seeking entry must be given. Neither of these powers of entry may be exercised in respect of a house (section 4(5)).

23. Section 4(4) creates an offence of intentionally obstructing or delaying any person in the exercise of their power of entry and the maximum penalty is a fine not exceeding level 3 on the standard scale (currently £1,000).

Section 5: Compensation for affected businesses

24. Section 5(1) enables the Scottish Ministers to establish by order made by statutory instrument a scheme for paying compensation to fur farmers who incur specified losses as a result of the prohibition of fur farming.

25. Section 5(2) specifies what must be covered within any compensation scheme (if made). For example, any scheme must specify the businesses and losses in respect of which payments are to be made, the basis of valuation for determining losses and the procedure to be followed.
26. Section 5(3) allows the order establishing the scheme to provide for any dispute as regards a person’s entitlement to compensation or the amount thereof to be determined by the Lands Tribunal for Scotland, on such basis and subject to such procedure as may be specified in the order.

27. Section 5(4) provides that the Scottish Ministers must consult any persons that they consider may be entitled to payment under the scheme and such organisations as appear to them to represent those persons before making the scheme.

28. Section 5(5) provides that any order making the scheme shall be subject to negative resolution of the Scottish Parliament.

Section 6: Commencement and short title

29. Section 6(1) provides that the foregoing provisions will come into force on a day to be appointed by an order made by the Scottish Ministers.

FINANCIAL MEMORANDUM

INTRODUCTION

30. The Bill prohibits the keeping of animals solely or primarily for slaughter for the value of their fur or for breeding progeny for such slaughter.

31. The principal costs that may flow from the Bill will be those related to inspection of premises, payment of compensation, legal proceedings and enforcement and the carrying out of a forfeiture order.

COSTS ON THE SCOTTISH ADMINISTRATION

Inspection of premises

32. The Bill enables persons authorised in writing by the Scottish Ministers to enter and inspect premises where it is suspected that an offence under section 1(1) has been or is being committed. The Executive would meet any costs arising from the exercise of this provision.

33. The consultation exercise carried out between March and June 2000 on the Scottish Ministers’ proposals to ban fur farming did not identify any fur farms in Scotland. As there are no known fur farms in Scotland it is not anticipated that this provision will be used. If is it used, inspections would be carried out by staff from the agricultural group. It is anticipated that any such additional costs could be absorbed within existing budgets.
Compensation scheme

34. The Bill contains provisions that enable the Scottish Ministers by order made by statutory instrument to make a scheme for paying compensation to fur farmers who incur specified losses as a result of the prohibition of fur farming. The Executive would meet any costs arising from the exercise of this provision.

35. As there are no known fur farms in Scotland, the Bill enables rather than requires the making of a compensation scheme. It cannot be categorically stated however that there are no fur farms in Scotland. It is possible that animals such as arctic fox, racoon dog, sable and fisher may be being farmed. In that event, the compensation provisions are necessary to ensure that the Bill is ECHR compliant.

36. It is notable that the keeping of mink in Scotland is either prohibited or may only be carried out under licence. The Scottish Executive announced on 19 December 2000 that only those businesses that had submitted a licence application to farm fur prior to 20 December 2000 would be entitled to compensation. The purpose of making this announcement was to create a cut-off date to dissuade fur farmers in England and Wales from relocating their businesses to Scotland. No fur farmers from England or Wales had made a licence application prior to that date. No-one currently holds a licence and the consultation exercise failed to identify any fur farms.

37. On the basis of the foregoing it is not expected that it will be necessary to use the compensation provisions.

Costs of legal proceedings, enforcement and the carrying out of a forfeiture order

38. The Executive will not be a party to proceedings under the Bill’s enforcement provisions. The devotion of resources to the detection, investigation and prosecution of offences will be matters for the judgement of the police and the procurator fiscal, in the ordinary way, within existing budgets. The Bill envisages no overall increase in central or local funding for those functions.

39. The provision of prosecutorial and judicial time and (where applicable) the grant of legal aid in relation to proceedings under the Bill, whether at first instance or on appeal, will likewise be a matter of allocation of existing resources.

40. Where a person is convicted of an offence under the Bill, the court will have discretion to make a forfeiture order. A forfeiture order is an order for the forfeiture and destruction or other disposal of the animals. The Executive would meet any costs arising from the making of a forfeiture order that are not met by the offender. It is not anticipated that it will be necessary to use this provision. If it is used it is anticipated that any additional costs could be absorbed within existing budgets.
COSTS ON LOCAL AUTHORITIES

41. The Bill will impose no additional costs on local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Compensation scheme

42. It is not anticipated that any costs will fall on other bodies, individuals and businesses by reason of the enactment or coming into force of the Bill.

43. There are no known fur farms in Scotland. The Bill is necessary to prohibit the establishment of fur farms in Scotland and to prevent fur farmers in England and Wales from using the absence of a prohibition in Scotland as a loophole and so relocate their businesses to Scotland. Nevertheless, it is recognised that if there are any operative businesses, the consequences of a ban on fur farming may not be insignificant. With this in mind, the Bill contains provisions that enable the Scottish Ministers by order to make a scheme for paying compensation to fur farmers who incur specified losses as a result of the prohibition of fur farming. This would help to alleviate any financial losses incurred by operative businesses in consequence of the ban. On the basis that there are no known fur farms it is not anticipated that it will be necessary to use the compensation provisions.

Legal proceedings and forfeiture orders

44. Persons prosecuted for offences under the Bill will be responsible for their own legal expenses in the usual way. Persons of limited means will be eligible to seek legal aid.

45. Where a court makes a forfeiture order it may order the offender to make payments to defray the expense of carrying out the order and of keeping the animals pending their destruction or other disposal.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

46. On 1 October 2001, the Minister for Environment and Rural Development (Ross Finnie) made the following statement:

“In my view, the provisions of the Fur Farming (Prohibition) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

47. On 3 October 2001, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Fur Farming (Prohibition) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”