ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

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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 Animal Health and Welfare (Scotland) Bill introduced in the Scottish Parliament on 5 October 2005:
   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 47–PM.
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 schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Bill supports the Animal Health and Welfare Strategy for Great Britain. The Strategy was published by the Scottish Executive, the Department for Environment, Food and Rural Affairs and the Welsh Assembly Government in June 2004 and sets out a vision for raising animal health and welfare standards to the benefit of animals, animal keepers and society as a whole. The Bill makes provisions for both the health and welfare of animals in Scotland. For health, the primary purposes of the Bill are to provide supplemental powers to prevent the spread of diseases, to make provision for the establishment of a breeding programme to breed resistance to Transmissible Spongiform Encephalopathies (TSEs) in livestock and to aid the enforcement of the Animal Health Act 1981 (“the 1981 Act”). These purposes are to be achieved through amendments to the 1981 Act which provides the current legal basis for dealing with outbreaks of disease.

5. For welfare, the Bill consolidates and modernises animal welfare legislation for Scotland. The welfare provisions of the Bill will implement the commitment made in A Partnership for a Better Scotland to introduce a Protection of Animals Bill into the Scottish Parliament by 2007. The main purposes of the welfare provisions of the Bill are, firstly, to introduce a duty of care on keeping animals and, secondly, to allow animals either suffering or in danger of suffering to be removed from that place of danger.

THE BILL

6. The main provisions of the Bill are as follows:

- **Part 1** of the Bill amends the 1981 Act to provide additional powers to prevent the spread of animal diseases including: supplementary slaughter powers; powers to issue biosecurity codes; powers to make veterinary tests and take samples; powers to license animal gatherings; powers to vaccinate or treat animals and birds; supplemental powers to seize and dispose of carcases and other items; and the creation of new offences of deliberate infection of animals, and of acquiring or taking possession of diseased animals or birds, or animals or birds which are suspected of being diseased, the carcases of such animals or birds or anything obtained from, produced by or used in connection with such animals or birds. Part 1 also makes provision for the establishment of a breeding programme to
breed resistance in livestock to Transmissible Spongiform Encephalopathies (TSEs), for example Bovine Spongiform Encephalopathy (BSE) or other TSEs. Also, supplemental enforcement provisions are provided and the penalty for contravention of the 1981 Act (where no penalty is specified by any other provision of that Act) is revised.

- **Part 2** of the Bill supersedes a number of existing provisions in animal welfare legislation to prevent cruelty, promote welfare and protect animals in distress. It introduces an offence for the failure to take reasonable steps to ensure the welfare of animals for which a person is responsible (the duty of care), prohibits the giving of animals as prizes, raises the age at which young people can be sold animals, re-affirms the specific offence of abandonment and strengthens the provisions for animal fights. It also provides that an inspector or constable may take into their possession an animal which is suffering or likely to suffer; that a person be deprived of possession or ownership of an animal on conviction for certain specified offences; and that a person be disqualified from owning, keeping, dealing in or transporting animals and connected activities following conviction for certain offences.

- **Part 3** of the Bill makes provision for Crown application, consequential amendments, ancillary provision, order making powers and commencement provisions when the Bill receive Royal Assent.

- Schedule 1 to the Bill contains further provisions detailing the powers of authorised persons for Part 2.

- Schedule 2 to the Bill contains amendments to other enactments in consequence of the Bill.

**COMMENTARY ON SECTIONS**

**PART 1 – ANIMAL HEALTH**

**Section 1 – Slaughter for preventing spread of disease**

7. Section 1 inserts a new section 32E and Schedule 3A into the 1981 Act and gives the Scottish Ministers supplemental powers to slaughter animals and birds with a view to preventing the spread of specified diseases including, for example, Foot and Mouth Disease (FMD) and swine-fever. This will help to support the implementation of the EU FMD Directive. These new powers are additional to existing powers under section 31, as read with Schedule 3 of the 1981 Act, to slaughter animals “affected” with specified diseases (as well as those suspected of being affected, or which have been in contact with affected animals, or in any way exposed to the infection).

8. Paragraph 6 of Schedule 3A gives the Scottish Ministers the power to extend the new slaughter power to any disease of animals they specify and, in such cases, to specify the animals (meaning all mammals except man), birds or amphibians which could be slaughtered. In the cases of the diseases specified in paragraphs 1 to 5, the Scottish Ministers may specify by order a wider group of animals to be slaughtered than those specified in these paragraphs. The diseases which may be specified are diseases of animals, as defined by section 87 of the 1981 Act. The power of slaughter provided for in paragraph 6 applies to, potentially, a wider category of
“animals” than in paragraphs 1 to 5 of the Schedule. By virtue of paragraph 6 the Scottish Ministers can specify any animal, bird or amphibian to which the paragraph 6 slaughter power applies and in this context, “animal” means any mammal (except man). The power will enable the slaughter of specified non-farmed animals which can transmit disease to farmed livestock in a disease outbreak. For example the slaughter of wild animals such as foxes might be necessary in event of an outbreak of a fast spreading disease capable of being transmitted by foxes to livestock.

9. Paragraph 9 makes provision as to the procedure for making an order under paragraph 6. It requires such an order to be laid in draft and approved by a resolution of Parliament unless there is an outbreak of a disease of animals (as defined by section 87 of the 1981 Act) or some other emergency relating to a disease of animals in which case the emergency order making power detailed in paragraph 9(3) can be used.

10. Paragraph 7 of Schedule 3A provides that the Scottish Ministers may exercise the new powers of slaughter whether or not the animals, birds or amphibians concerned: are affected or suspected of being affected with the disease; are or have been in contact with animals, birds or amphibians so affected; have been in any way exposed to the disease; or have been treated with vaccine or serum or both against the disease. Therefore, Scottish Ministers could, if considered necessary, adopt a slaughter policy to ring-fence disease beyond a disease infected area. For example, such a disease defence policy could be used in relation to FMD where the virus has been known to spread over 180 kilometres in certain wind conditions. In certain circumstances, such a cull could be deemed necessary to prevent the disease from spreading more widely.

11. Paragraph 8 requires the payment of compensation for any animal (as defined by section 87 of the 1981 Act) slaughtered under Schedule 3A, but excludes other animals, birds and amphibians, and allows different provision to be made for different cases or classes of case. The existing powers of the 1981 Act could be used, if it was considered to be appropriate, to provide for the payment of compensation for other animals or birds or amphibians slaughtered under the exercise of any of the new slaughter powers.

Section 2 – Slaughter of treated animals

12. Section 2 inserts section 16B into the 1981 Act and makes provision for animals (meaning all mammals except man) and birds treated with vaccine or serum (or both) to be slaughtered for the purposes of securing (or helping to secure) disease free status. In this context, disease free status means recognition under Community law or any other international rules (such as those of the Office International des Epizootics) that in a particular area no animals or birds of a particular class are infected by a particular disease or class of disease.

13. Subsection (1) extends the power of slaughter of animals or birds treated with a serum or vaccine to prevent the spread of the diseases listed in that subsection. “Animal” in this subsection means any mammal (except man).

14. Subsection (2) gives the Scottish Ministers the power, by order, to specify other diseases of animals (as defined by section 87 of the 1981 Act) to which this section will apply. The power of slaughter will however apply to any animal or bird treated to prevent the spread of that
disease and in this context animal will mean any mammal (except man). The procedural formalities for such orders are set out in subsections (8) to (11). Briefly, such an order requires to be laid and approved by a resolution of Parliament within 28 days of being made, failing which it ceases to have effect. Periods when the Parliament is dissolved or in recess for more than 4 days do not count towards the 28 day period.

15. Subsection (5) provides a supplementary power which is required to enable an animal or bird to be slaughtered, or which is otherwise required in connection with the slaughter. This could include entering premises, tagging the relevant animals and bringing the necessary equipment onto the premises.

16. Subsection (6) requires Scottish Ministers to pay compensation for any animal slaughtered under this section (animal being as defined by section 87 of the 1981 Act), whilst subsection (7) allows different provision as to compensation to be made for different cases or classes of case. The existing powers of the 1981 Act could be used, if it was considered to be appropriate, to provide for the payment of compensation for other animals or birds slaughtered under the exercise of this slaughter power.

Section 3 – Biosecurity codes

17. Section 3 of the Bill (inserting sections 6C and 6D into the 1981 Act) provides a power to allow Scottish Ministers to issue “Biosecurity codes”.

18. Subsections (4) and (7) of section 6C allow the Scottish Ministers to make biosecurity codes to deal with a range of scenarios in respect of particular diseases of animals (as defined by section 87 of the 1981 Act) and groups/species of animals (meaning any mammal except man), birds or amphibians. For example, the Scottish Ministers may issue a separate code for cattle and a separate one for sheep. Similarly, it allows for the issue of separate codes for individual animal diseases depending upon the threat each disease presents. Any code issued applies to persons who own, keep or are in charge of any creature of a kind to which the code relates. To that extent it is irrelevant whether the creatures are kept on agricultural land or not. The code may specify mandatory requirements, the breach of which would result in a criminal offence being committed. There could be other parts of the code which would be for guidance only.

19. Subsection (6) provides that biosecurity codes may prescribe general or detailed requirements for persons who own, keep or are in charge of any creature to which the code applies.

20. Subsection (11) provides that biosecurity codes will be subject to consultation with the appropriate bodies. The resulting statutory instrument must be laid before and approved by the Scottish Parliament.

21. Where there has been an outbreak of a disease specified in Schedule 2B (see section 8) or some other emergency relating to a disease of animals (as defined by section 87 of the 1981 Act) which requires either a new code or an amendment to an existing code to help combat the outbreak, the Scottish Ministers would have the power to make an emergency order under section 6D(1).
22. An emergency order would allow Scottish Ministers to make the statutory instrument at a time of animal disease emergency without the requirement to consult interested parties. The emergency order would cease to have effect at the end of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order had been approved by Parliament.

Section 4 – Tests and samples

23. Section 4 of the Bill (inserting sections 6E and 6F into the 1981 Act) provides additional powers for inspectors, appointed or authorised by the Scottish Ministers, to enter any premises to take samples and carry out tests to ascertain whether there is any evidence that there is, or has been, animal disease or causative agent of disease, on the premises. Such samples and tests may be applied to any animal (meaning any mammal except man), bird or amphibian. Premises is given a broad definition and includes any land, building or other place including a vehicle, vessel, tent or moveable structure.

24. Inserted section 6F also provides that Scottish Ministers may carry out other tests on a sample, already taken under existing legislation, for the purposes of monitoring, control or prevention of disease of animals (as defined by section 87 of the 1981 Act). In the event that the Scottish Ministers did not carry out the initial sampling and therefore do not possess the relevant sample, subsection (4) provides that they may instruct the person who does possess it to give it to them for the purposes of the further tests.

Section 5 – Animal gatherings

25. Section 5 of the Bill (inserting section 8A into the 1981 Act) provides the power to the Scottish Ministers to make an order that would make provisions for the licensing of animal gatherings with a view to the prevention of the spread of disease.

26. Subsections (5) and (6) set out some of the provisions which the Scottish Ministers may include in an order made under section 8A. The Scottish Ministers are required to consult certain interested persons before making an order under subsection (1) of section 8A. Subsection (7) provides that contravention of the conditions of a licence is an offence. Other offences as to licences are provided by sections 67 to 71 of the 1981 Act.

Section 6 – Treatment

27. Section 6 of the Bill (amending section 16 of the 1981 Act) enables the Scottish Ministers, for the purposes of preventing the spread of disease, to cause any animal (meaning any mammal except man) or bird to be treated with serum or vaccine (or both). Subsection (1) of section 16 of the 1981 is repealed and replaced by subsection (1A).

28. Serum contains disease antibodies, whilst vaccine contains antigen to stimulate the production of antibodies in the treated animal or bird. The power provided in subsection (1A) of section 16 is wider than that previously provided by subsection (1) and could form part of the strategy to stop disease spreading by, for example, vaccinating in a wide area around an infected area to provide a barrier against disease spread.
Section 7 – Seizure of carcases etc.

29. Section 7 of the Bill (inserting new sections 36ZA and 36ZB into the 1981 Act) makes provision for the Scottish Ministers to make an order to allow for the seizure and disposal of items which might be capable of carrying or transmitting disease following the exercise of the new slaughter powers inserted by sections 1, 2 and 10 (section 10 makes provision as to Transmissible Spongiform Encephalopathy (TSE) and includes a power of slaughter in this connection).

30. Subsections 36ZA(1) to (3) provide that the Scottish Ministers may by order make provision for the seizure and destruction of anything (other than a living animal) which might carry or transmit a relevant disease, being diseases for which the slaughter powers under section 16B, Part 2B or Schedule 3A of the 1981 Act (inserted by sections 1, 2 and 10 of the Bill respectively) are exercised. Objects which could be seized by an order made under this section could include: infected implements; carcases; animal bedding; and animal faeces etc.

31. Subsection 36ZA(4) creates an offence in connection with the throwing or placing of a carcase or anything else obtained from or produced by an animal slaughtered under section 16B, Part 2B or Schedule 3A into a river, stream, canal, navigation or other water or in the sea within 4.8 kilometres of the shore.

32. Section 36ZB provides that the Scottish Ministers must pay compensation for anything seized under section 36ZA.

33. Subsection (2) provides that this mandatory obligation to pay compensation does not extend to paying compensation for the seizure of carcases or other things produced by or obtained from animals. The mandatory compensation will be in relation to objects seized such as farm equipment and animal housing.

34. In the case of carcases seized under section 36ZA(1) and other things produced by or obtained from animals being seized, subsection (3) allows the Scottish Ministers to provide (by order) compensation at their discretion.

35. Subsection (4) makes provision for the payment of compensation at “value” for things seized, whilst subsection (5) extends that compensation provision to things which could have been seized under section 36ZA(1) but which were destroyed, buried or disposed of under an order made under section 23(e) of the 1981 Act.

36. Subsection (6) gives the Scottish Ministers power to make ancillary provision as to how values are to be ascertained and to regulate how applications for compensation are made and the mode of payment of compensation.

Section 8 – Specified diseases

37. Section 8 of the Bill (inserting 28I and Schedule 2B into the 1981 Act) relates to the new offence of deliberate infection of animals under section 9 of the Bill and the making of an emergency biosecurity order under section 6D (inserted by section 3 of the Bill). Schedule 2B
lists fast spreading diseases, whilst section 28I allows that list of diseases to be modified by order. An order under section 28I would cease to have effect at the end of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order had been approved by the Scottish Parliament.

Section 9 – Deliberate infection of animals

38. Section 9 of the Bill (inserting new sections 28C, 28D, 28E, 28F, 28G and 28H into the 1981 Act) creates an offence of knowingly doing anything which causes, or is intended to cause, or recklessly causing an animal (as defined by section 87 of the 1981 Act) to be infected with a specified disease (the list of specified diseases is contained in Schedule 2B of the 1981 Act - inserted by section 8 of the Bill). This provision would deal with, for example, situations in which animals were deliberately infected with a disease in order for the owner to be able to claim compensation for their subsequent destruction.

39. Section 28C(2) and (3) create offences of: acquiring or taking possession of an animal or bird or the carcase of an animal or bird; and acquiring or taking possession of anything obtained from, produced by, or used in connection with an animal or bird or carcase of an animal or bird, in either case which that person knows or could reasonably be expected to know or reasonably suspects is infected with a disease specified in Schedule 2B. This section could include the following objects which could carry disease: infected implements; carcases; animal bedding; and animal faeces etc.

40. Anyone found guilty of committing these offences is liable on summary conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding the statutory maximum or to both. On conviction on indictment the person is liable to a term of imprisonment not exceeding 2 years or to an unlimited fine or to both.

41. Section 28D provides that if a person is convicted of an offence under section 28C they will be deprived of their entitlement to compensation under any other provision under the 1981 Act for the animals to which the offence relates and also for other animals which were kept on the same premises at the same time, or any part of the time, as those animals at or after the commission of the offence. Subsection (4) allows that compensation which has already been paid can be recovered by the Scottish Ministers.

42. Section 28E(1) provides that the court will have the power to, in addition to any other penalty or order, deprive a person found guilty of an offence under section 28C or section 28F(15) (breach of a disqualification order) of possession or ownership (or both) of an animal (and any dependent offspring) to which the offence relates. Section 28E(9) requires the court, where practicable, to allow the owner an opportunity to make representations before the court makes an order. The animal in respect of which the order can be made is the animal in relation to which the offence was committed. Section 28E(8) provides that the court may not make a deprivation order involving the destruction of an animal unless it is satisfied on the evidence of a veterinary surgeon that destruction would be in the interests of the animal.

43. Subsection (2) provides as to the order which the court has power to make in terms of subsection (1). It is an order which deprives the owner of ownership of the animals to which it
relates and also orders their destruction, sale or other disposal. Subsection (5) allows the order also to make provision in respect of the offspring of the animal.

44. Subsection (3) provides that the court has to explain its reasons for not making a deprivation order except where it has imposed a disqualification order under section 28F.

45. Subsection (6) makes further provision as to what can be included in a deprivation order. This includes provision for appointing someone to carry out the deprivation order, requiring delivery of relevant animals, conferring powers of entry on the person appointed to carry out the order and such other provision as the court considers appropriate. This may include specifying the manner in which the animal is to be destroyed.

46. Section 28F(1) provides that where a person is convicted of an offence under section 28C the court may in addition to any other penalty or order, disqualify a person from owning and keeping animals, dealing in animals and transporting animals.

47. Subsection (3) provides that a disqualification from an activity – be it owning and keeping, dealing in or transporting animals – disqualifies the person subject to the order from any participation in that activity. Paragraphs (a), (b) and (c) give examples of the kind of participation from which a person subject to an order is disqualified.

48. Subsection (4) provides that the court has to explain its reasons for not making a disqualification order on convicting a person of a relevant offence.

49. Subsection (6) provides that disqualification may be imposed in relation to animals generally or animals of a particular kind. Thus a court may, for example, use its discretion under the subsection to disqualify a person who has been convicted of an offence under this section of, for example deliberately infecting pigs only from keeping pigs, but not from keeping geese.

50. Subsection (7) allows the court to specify the length of time which must pass before the person who is the subject of a disqualification order may apply to have it lifted or varied under subsection (10).

51. Subsection (8) allows the court to suspend the disqualification order either to enable practical arrangements to be made for the animals to which the disqualification relates, or pending an appeal.

52. Subsection (9) clarifies that a disqualification order is for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995 to be treated as a sentence and accordingly the procedures for appeals against sentence should be followed.

53. Subsection (10) allows a person subject to a disqualification order to apply to the court for its termination or variation. The court can refuse the application, or terminate or vary the order and in considering the application the court must have regard to the offence, the character of the applicant and the conduct of the applicant following the imposition of the disqualification.
54. Section 28G gives the court power, where that court is satisfied that a person subject to a disqualification order owns or keeps any animals in breach of that order, to make an order that the animals so owned or kept by the disqualified person be seized.

55. Subsection (2) provides for a seizure order to be made following summary application to the court by an inspector where it appears that a person is owning or keeping animals in breach of a disqualification order. The order may be made by the court even if proceedings have not, or are not, or are not likely to be, taken against the person for an offence under section 28F(15).

56. Subsection (4) provides that a seizure order made under subsection (1) may deprive a person of possession or ownership (or both) of an animal and provide for the destruction, sale or other disposal of the animal.

57. Subsections (5) and (6) set out provisions which may be included in a seizure order. These are: appointing the person who is to carry out the order; requiring the delivery of the animal in question; and requiring the disqualified person to reimburse any reasonable expenses incurred in carrying out the order. The seizure order may also include provision authorising a person appointed to carry out the order, and anyone acting on their behalf, to enter any premises where the animal subject to the seizure order is kept.

58. Subsection (5)(c) provides that the order may include such other provision as the court considers appropriate. Examples of the kind of provisions which might be included are given in subsection (6).

59. Subsection (7) provides that the court may not make a seizure order involving the destruction of an animal unless it is satisfied on the evidence of a veterinary surgeon that destruction would be in the interests of the animal.

60. Subsection (8) requires the court to give the owner of the animals concerned the opportunity to make representations to the court prior to making a seizure order.

61. Subsection (9) requires the court to consider both protecting the value of any animal and avoiding increasing expenses incurred when determining whether to make a seizure order.

62. Subsections (10) and (11) provide that in relation to a seizure order any person who has an interest in the animal referred to in the order may appeal to the Sheriff Principal and may with the Sheriff Principal’s leave, appeal to the Court of Session against the Sheriff Principal’s decision.

63. Subsection (1) of section 28H suspends the operation of any deprivation or seizure order until the period for appeal against the order and conviction have expired and any appeal has been withdrawn or determined.

64. Subsection (2) provides that where the operation of an order is suspended the court may make an order making interim provision in relation to any animal to which the suspended order
These documents relate to the Animal Health and Welfare (Scotland) Bill (SP Bill 47) as introduced in the Scottish Parliament on 5 October 2005

applies. Subsection (3) provides that an interim order may include the provisions already stated in section 28G(5)(a) and (b) and section 28G(6)(a).

65. Subsection (4) requires the court to consider both protecting the value of any animal and avoiding increasing expenses when determining whether or how to make an interim order.

Section 10 – Livestock genotypes: specification, breeding and slaughter

66. Section 10 of the Bill (inserting Part 2B into the 1981 Act) deals with Transmissible Spongiform Encephalopathies (TSEs). A TSE is a disease which causes changes to the brain and nervous system of an animal leading to death. Whilst scientific knowledge in relation to genetic control of TSEs is limited to sheep at the present time, section 10 provides power to deal with TSEs in other species of livestock (a definition is given in section 36X of Part 2B) if necessary and where scientifically possible.

67. There is presently no vaccine or cure for TSEs. It is currently possible to identify whether sheep are naturally resistant or susceptible to scrapie (a TSE of sheep and goats) by testing a blood sample or tissue containing the animal’s DNA and thereby discovering its genotype which is the genetic constitution of an organism. Control of TSEs in sheep is possible by selective breeding to increase the levels of natural genetic resistance. The provisions of Part 2B will enable similar steps to be taken for other livestock species as scientific knowledge increases.

68. The new Part 2B of the 1981 Act provides powers to: specify TSE susceptible livestock genotypes; ascertain, by sampling, genotypes and identify livestock; place restrictions on breeding; review the above restrictions; enforce the restrictions if not complied with; slaughter livestock susceptible to TSEs; gain entry to premises; and to pay compensation compulsorily in certain circumstances. It also makes it an offence to fail to comply with restrictions or requirements without reasonable excuse, or to do certain other things.

69. Section 36N allows the Scottish Ministers by order to specify livestock genotypes if they are satisfied that an animal of a particular livestock genotype has (or has had) a form of TSE (whether in Scotland or elsewhere). If it is appropriate they may also specify the form of TSE concerned. It is envisaged that this power would be used where an outbreak of TSE had occurred and it was known that a particular livestock genotype was susceptible to that TSE.

70. Section 36O provides Scottish Ministers with regulation making powers to make provision requiring keepers of livestock to allow an inspector to obtain a sample from an animal to enable its genotype to be identified, to administer or otherwise attach an identification device to a livestock species and to make record keeping requirements.

71. Section 36P applies to livestock whose genotype has been specified under section 36N. Restriction notices may be issued to prevent the using of livestock, its semen, eggs or embryos in connection with breeding. The semen, eggs or embryos must be destroyed. The owner must arrange for the creature to which the notice applies to be castrated, sterilised or slaughtered. This will enable a breeding programme to be set up where livestock would be used to produce offspring which are resistant to TSEs. The Scottish Ministers, under certain exceptional
circumstances, may allow breeding with more susceptible genotypes if for example the breed is in danger of extinction.

72. Section 36Q makes provision for persons in receipt of a restriction notice to request a review of the restriction notice.

73. Section 36R applies if the Scottish Ministers are satisfied that an owner has not complied either entirely or in part with a restriction notice except where a review under section 36Q is still ongoing or has been successful. The Scottish Ministers may take such reasonable steps as they consider appropriate to secure compliance. In particular they may cause to be destroyed eggs, semen or embryos and may also have livestock castrated, sterilised or slaughtered.

74. Section 36S makes it an offence for a person to: sell or transfer livestock, semen, eggs or embryos to which a notice applies; fail without reasonable excuse to comply with a restriction notice; use any semen, eggs or embryos which the person knows to have been taken from livestock to which a restriction notice applies; fail, without reasonable excuse, to comply with any provision of regulations made under section 36O; or fail to give an inspector such assistance or information as the inspector may reasonably request in connection with the exercise by the inspector of any of the inspector’s functions under this Part. Where the person seeks to rely on the defence of reasonable excuse the onus is put on them to prove – on balance of probabilities – the facts which underpin that defence.

75. Section 36T provides that the Scottish Ministers may cause to be slaughtered, with a view to preventing the spread of any form of TSE, livestock whose genotype has been specified by virtue of section 36N in relation to the form of TSE concerned. The Scottish Ministers may also cause to be slaughtered, to prevent the spread of any form of any TSE, livestock whose genotype has not been ascertained either due to matters of urgency or that the science does not enable the genotype to be identified.

76. Section 36U provides for an inspector to enter premises to ascertain whether a power conferred under Part 2B should be exercised. Inspectors must if required produce evidence of their authority to do this. Any power of entry must be exercised at a reasonable hour unless the inspector thinks the case is one of urgency (see section 62G(5)) and in relation to the power to enter premises used exclusively as a dwelling house, 24 hours’ notice of the intended entry is to be given unless the case is one of urgency (see section 62G(4)). The provisions of section 62H (warrants) and section 62I (entry and warrants: supplementary) (see below) also apply to this power of entry.

77. Section 36V provides for the paying of compensation (by order) for livestock slaughtered and property which has been destroyed by virtue of the restriction notice or by virtue of section 36R or livestock slaughtered by virtue of section 36T(1). The order may make different provision for different cases or classes of case.

Section 11 – Powers of entry

78. Section 11 inserts new sections 62G (Powers of entry: Scotland), 62H (Warrants) and 62I (Entry and warrants: supplementary) into the 1981 Act. In order to prevent or limit a fast
spreading animal disease, it may be necessary to enter land or premises to take action. Entry may be necessary as a matter of urgency because of the nature of the disease.

79. The 1981 Act contains a number of powers relating to the entry of land or premises.

80. Section 62G provides an explicit power of entry for the purpose of ascertaining whether a power to slaughter, conferred by or under any provision mentioned in subsection (2), should be exercised or doing anything in pursuance of the exercise of that power. In relation to the power to enter premises used exclusively as a dwelling house, 24 hours’ notice of the intended entry is to be given unless the case is one of urgency.

81. Section 62H makes provision for the issuing of warrants by a sheriff or justice of the peace and the conditions which must be satisfied to obtain a warrant. Where the conditions are satisfied a sheriff or justice of the peace may issue a warrant authorising an inspector appointed or authorised by the Scottish Ministers to enter, if necessary using reasonable force, any premises to ascertain whether a power conferred by or under the 1981 Act should be exercised or doing anything in pursuance of the exercise of that power. A warrant must be executed at a reasonable hour unless the inspector thinks the case is one of urgency.

82. Section 62I contains supplementary provisions where an inspector enters any premises under the powers conferred by or under the 1981 Act or under a warrant under section 62H including the provision that the inspector may take such persons or equipment as the inspector considers necessary. It also includes a provision for the inspector to require assistance by any person on the premises as detailed in subsection (4). If the inspector enters any unoccupied premises the inspector must leave the premises as secure as the inspector found them.

Section 12 – Inspection of vehicles

83. Section 12 (inserting section 65B into the 1981 Act) provides a power to enable an inspector who is accompanied by a constable in uniform to stop, detain and inspect any vehicle within an infected place or area (as defined by section 17 of the Act) to ascertain compliance with any provision under the 1981 Act, any order made under the 1981 Act, any regulation of any local authority made under an order, or any regulations of the Scottish Ministers under that Act. This power would be used as necessary to help ensure containment of a fast spreading disease.

Section 13 – Penalties and time limits

84. Section 13 of the Bill (substituting section 75 of the 1981 Act) revises and brings up-to-date the penalties (financial and/or custodial) for existing animal health offences committed under the 1981 Act and for the new offences detailed in the Bill where a penalty is not specified by any other provision of the 1981 Act.

85. Subsection (2) provides that a person who commits an offence is liable on summary conviction to imprisonment up to 6 months or to a fine up to level 5 (currently £5000) on the standard scale or to both.
86. Subsection (3) extends the time limits within which prosecutions for offences under the 1981 Act can be brought. It provides that an offence may be brought within the period of 6 months from the date on which evidence of that offence came to the knowledge of the prosecutor, provided this is within 3 years of the date on which the offence was committed (subsection (4)).

87. Subsections (5) and (6) provide further clarification on the issues of continuous contravention, and when proceedings are viewed to be commenced.

PART 2 – ANIMAL WELFARE

Section 14 – Animals to which this Part applies

88. This section provides the definition of “animal” for the purposes of Part 2 of the Bill. This is necessary at the outset as the definition of the term “animal” can potentially be extremely wide. For example, a zoologist might classify a microbe as an “animal”. For the purposes of this Part the term “animal” means a vertebrate other than a man. Therefore insects are not “animals” for the purposes of this Part.

89. Given the potentially wide definition of “animal”, the welfare provisions in the Bill refer to two further refined groups of animals which are:

(a) “protected animals” are identifiable by domestication, control of man or captivity (this would include livestock and exotic captive animals, such as penguins in a zoo and feral cats as they are commonly domesticated in the British Islands); and

(b) “animals for which a person is responsible” the emphasis is on the human responsible rather than the animal (this would again include livestock and exotic captive animals).

90. Subsection (2) provides that the provisions in Part 2 do not apply to an animal while it is in its foetal or embryonic form.

91. Subsection (3) provides that the Scottish Ministers will be able to make regulations to change this definition so that it can be extended to include invertebrates of any description or an animal at an earlier stage of its development.

92. Subsection (4) provides that the Scottish Ministers can only invoke this power once satisfied, on the basis of scientific evidence, that other creatures are capable of experiencing pain or suffering. This approach will enable the definition to be amended in line with scientific developments and knowledge, and without recourse to primary legislation.

93. Subsection (5) imposes a duty on the Scottish Ministers to consult interested persons before introducing regulations to amend the definition of animal under this section.
Section 15 – Protected animals

94. By defining the meanings of “protected animal” and “person responsible for an animal”, this section and section 16 set the boundary of the application of the principal offences under the Bill. For example, the offence of causing unnecessary suffering under section 17(1) extends to “protected animals” and makes it an offence for any person, by their actions to cause suffering to a protected animal. Therefore, it is not an offence under this provision to cause unnecessary suffering to a wild animal living in a wild state, because such an animal is outwith the definition of “protected animal”. Animals not under the control of man and that are of a kind commonly domesticated in the British Islands, such as feral cats, sheep, goats or ponies are covered by the definition of “protected animal”. The welfare of animals which are not “protected animals” is covered by other legislation such as the Wildlife and Countryside Act 1981 and the Wild Mammals Protection Act 1996.

95. Animals that are not of a kind commonly domesticated in the British Islands are only “protected animals” if they are under the control of man or are not living in the wild. The expression “under the control of man” is intended to be a broader expression than “captive animal”, which is the expression used in an equivalent context in the Protection of Animals (Scotland) Act 1912 (“the 1912 Act”).

96. The alternative of “not living in a wild state” is intended to cover circumstances where a captive animal escapes. This would cover, for example, an ostrich escaping from a zoo. The ostrich would not be commonly domesticated in the British Islands, nor would it be under the control of man (as it had escaped). However, although it had escaped, it would not be living in a “wild state” and therefore would continue to be considered as a “protected animal”.

Section 16 – Responsibility for animals

97. The welfare provisions of the Bill distinguish between the duties owed towards an animal by the man in the street and a person who is responsible for an animal. Naturally, the duties of the responsible person are greater. In order that it is clear whether a person is responsible for an animal or not, section 16 makes specific provision as to who is the “person responsible for an animal” for the purposes of the animal welfare provisions of the Bill.

98. Responsibility for an animal is only intended to arise where a person can be said to have assumed responsibility for its day-to-day care, or for a specific purpose, or by virtue of owning it. The owner is always to be regarded as responsible for an animal. But, in addition, a person who is in charge of the animal is also responsible for it. This applies whether the person owns or is in charge of the animal on a temporary or permanent basis. If an animal is abandoned, the person responsible for it continues to be responsible for the animal even after it has been abandoned.

99. Where a person under 16 years of age is responsible for an animal, the person who has care and control of that young person is also responsible for their animal (subsection (4)). This seeks to ensure that an adult can normally be identified as the responsible person for an animal.
100. As noted above, responsibility for animals is a key concept in the welfare provisions, particularly in determining a person’s duties in relation to sections 17 (unnecessary suffering), 18 (mutilation), 19 (cruel operations) 20 (administration of poisons), 22 (ensuring the welfare of animals) and 26 (abandonment). Similarly, the regulation-making power in section 23 (provision for ensuring welfare) can be exercised only in relation to animals for which a person is responsible. The same is true for the provisions allowing for the making of regulations about licensing and registration under section 24.

Section 17 – Unnecessary suffering

101. This section sets out the circumstances in which a person who causes a protected animal to suffer commits an offence. Unnecessary suffering can be caused in two ways: either by taking action which causes unnecessary suffering, or by failing to take steps to prevent unnecessary suffering. The concept of ‘unnecessary suffering’ is central to the legal definition of cruelty and was previously included in the 1912 Act. The infliction of pain, even if extreme, is not in itself sufficient to constitute unnecessary suffering, as pain may be caused for beneficial reasons such as in surgery or medicine. Therefore consideration must be given to whether pain or suffering is necessary.

102. Subsection 17(1) provides that it will be an offence to cause by an act physical or mental suffering to a protected animal where this is unnecessary and the person committing the act knew or could reasonably be supposed to know that the act would cause, or would be likely to cause suffering.

103. Subsection 17(2) provides that a person who is responsible for an animal commits an offence if they cause by an act or omission unnecessary suffering to their animal and the person responsible for the animal knew or could reasonably be supposed to know that the act or omission would cause, or would be likely to cause suffering. It will not be necessary to prove that an accused person actually knew their act or failure to act would cause suffering, but only that they ought to have known.

104. Subsection 17(3) provides that a person who is responsible for an animal commits an offence if they let another person cause their animal to unnecessarily suffer by an act or by an omission and that person permits that to happen or fails to take reasonable steps to prevent someone from so doing. It will not be necessary to prove that an accused person actually knew their act or failure to act would cause suffering.

105. Subsection 17(4) sets out non-exhaustive considerations to which the courts should have regard to in determining whether the suffering is unnecessary. Considerations focus on the necessity, proportionality, humanity and competence of the conduct. The court should take all relevant considerations into account, weighing them against each other as appropriate. Where suffering occurs, but the person responsible for the animal complied with any regulations, licence or code of practice, an offence will not normally be committed.

106. Subsection 17(5) provides that nothing in this section applies to the appropriate and humane destruction of an animal. However the infliction of suffering over and above that necessarily caused by appropriate and humane destruction is not exempt.
Section 18 – Mutilation

107. This section prohibits the mutilation of any protected animal unless it is for medical treatment or the procedure has been exempted from this prohibition by regulations made under this section. Mutilations are procedures which involve interference with the sensitive tissues or bone structure of the animal, for example, castration or dehorning. Normal farming practices such as castration and dehorning etc. will be permitted under regulations made under this section.

108. The definition of “carrying-out of a prohibited procedure” referred to in subsection 18(4) is based on the definition of “mutilation” adopted by Royal College of Veterinary Surgeons.

Section 19 – Cruel operations

109. This provision supersedes section 1(1)(e) of the 1912 Act. Subsection (1) makes it an offence for a person to perform an operation on a protected animal without due care and humanity. It is not necessary to prove that the animal actually suffered to establish liability.

110. Subsection (2) provides that if a person who is responsible for an animal permits another person to perform an operation on that animal without due care and humanity or fails to take reasonable steps to prevent that from happening, then an offence is committed. Subsection (3) states that this section is subject to the Protection of Animals (Anaesthetics) Act 1954 (see amendment to Protection of Animals (Anaesthetics) Act 1954 in schedule 2 to the Bill).

Section 20 – Administration of poisons etc.

111. This section makes it an offence, without lawful authority or reasonable excuse, to knowingly administer to, or cause to be taken by, a protected animal any harmful substances. In other words, it would not be an offence for a veterinary surgeon to administer drugs which have potentially harmful side effects to an animal, however it would be an offence to feed a protected animal rat poison. (This is not intended to apply in the case of vermin as they are not considered protected animals.)

112. Under subsection 20(2), where a person is responsible for an animal, they must not permit another person to administer a poisonous or injurious substance or drug to that animal, or to cause such a substance or drug to be taken by that animal unless that person has a lawful authority or excuse. Where a person knows a drug or substance to be injurious or poisonous that person must take reasonable steps to prevent any other person administering to any animal, for which the first person is responsible, that drug or substance or causing that drug or substance to be taken by that animal.

113. Under this section it is not necessary to show that the animal did in fact suffer as a result of the prohibited action in order to establish liability. But it is necessary to show that the person accused of the offence knew the poisonous nature of the substance administered to the animal.

114. Subsection 20(3) provides for the offences in subsections 20(1) and (2) to apply in cases where substances that are otherwise harmless have been administered in a harmful quantity or by
a harmful method. An example of this would be allowing a sheep to ingest sheep dip (a substance which would not be harmful to a sheep if used externally as intended) in the knowledge that this would be harmful to the sheep.

**Section 21 – Animal fights**

115. This section creates a specific offence in relation to animal fights. In the 1912 Act provisions relating to animals fights were subsumed under the general heading of “offences of cruelty”. It is intended that anything done by a person in connection with an animal fight which would amount to a criminal offence under the existing law, will continue to amount to a criminal offence under the new provision.

116. The offences under section 21 replace the offences under section 1(1)(c), 5A and 5B of the 1912 Act.

117. Subsections 21(1) and (2) penalise various forms of involvement in animal fights. The majority of the specific offences contained in the 1912 Act such as advertising a fight, allowing premises to be used, and accepting money for admission to an animal fight are covered by subsection (2)(a) to (d). Some of the offences under this section can be committed without a fight having taken place, for example the offence of making arrangements for an animal fight would not depend on the fight subsequently taking place. An animal fight could be arranged which is later cancelled.

118. Subsection 21(5) defines an animal fight as an occasion on which a protected animal is placed with an animal or with a human for the purpose of fighting, wrestling or baiting. This means that an animal fight will be deemed to have taken place, even if both animals are wild animals, as the definition of protected animal in section 15 includes any animal under the control of man whether on a permanent or temporary basis.

**Section 22 – Ensuring welfare of animals**

119. The welfare offence in this section and the regulation-making power in section 23 of the Bill replace provisions in the Agriculture (Miscellaneous Provisions) Act 1968 and extend a similar level of protection to both farmed and non-farmed animals. Where someone is responsible for an animal, they have a duty to take such steps as are reasonable in all the circumstances to ensure its needs are met to the extent required by good practice (subsection (1)).

120. In considering whether a person has complied with section 22, the court is required to take into account all relevant circumstances. However, for the avoidance of doubt, subsection (2) specifies certain matters which the court is to take into consideration when deciding whether a person has committed an offence, namely, “any lawful purpose for which the animal is kept” and “any lawful activity undertaken in relation to the animal”. This provision recognises that some lawful practices may prevent or hinder a person from ensuring that certain welfare needs are met, and requires the court to take that into account when considering what is reasonable in the circumstances of each case. For example, a dog used for search and rescue purposes may be
These documents relate to the Animal Health and Welfare (Scotland) Bill (SP Bill 47) as introduced in the Scottish Parliament on 5 October 2005

placed in a dangerous situation and such an activity would not give rise to an offence under subsection (2).

121. Subsection (3) lists examples of the needs of an animal for the purpose of this section. This list is not exhaustive.

122. Subsection (4) makes clear that the killing of an animal is not in itself inconsistent with the duty to ensure its welfare if it is done in an appropriate and humane manner.

Section 23 – Provision for securing welfare

123. Section 23 enables the Scottish Ministers to make regulations to secure the welfare of animals and their progeny, for which a person is responsible. The inclusion of progeny in this section enables regulations to be made governing animal breeding to protect the progeny as well as the parent.

124. Subsection (2) provides a non-exhaustive list of the type of provision which may be made in such regulations. The list includes requirements or prohibitions, provision for enforcement, provision in relation to offences and post-conviction orders. Subsection (3) provides a non-exhaustive list of the matters to which requirements and prohibitions may relate and provides examples of the issues which may be addressed in such regulations including the prevention of suffering, the breeding and rearing of animals and the transportation of animals.

125. The power in subsection (2)(d) to apply a “post-conviction order” (as outlined in sections 35 to 39) in relation to an offence under the regulations enables the regulations to provide that conviction for certain offences may lead to consequences such as being disqualified from owning and keeping animals.

126. Subsection (5) imposes a duty on the Scottish Ministers to consult interested persons before introducing regulations under this section.

Section 24 – Licensing etc. of activities involving animals

127. Section 24 makes provision enabling the Scottish Ministers to make regulations for the introduction of licensing and registration regimes in relation to activities involving animals for which a person is responsible for the purposes of securing the welfare of animals. It is intended that, with a view to securing animal welfare, certain activities involving animals for which a person is responsible (such as pet shops, animal boarding establishments, livery yards and riding establishments) will be made subject to a requirement that the person carrying out the activity be either licensed by, or registered with, a local authority or the Scottish Ministers. At present, licensing regimes contain many identical or similar provisions and are to be found in a variety of statutes and secondary legislation.

128. It is intended that registration would be used in cases where it is necessary for the enforcement authority to know of the existence and location of organisations or individuals who are keeping specific animals or carrying out particular activities. Registration may be required
where it is considered that the additional controls and costs of a licensing regime are either unnecessary or would be unduly burdensome (such as livery yards and animal sanctuaries).

129. Subsection (4) sets out the types of provision that regulations for both licensing and registration may include: enforcement; the creation of offences; the imposition of penalties; post-conviction orders; the conferring of powers on specified individuals (such as powers of entry, search, inspection and seizure in connection with breaches and suspected breaches of provisions of the regulations); the creation of an offence of obstructing a person who is exercising their powers under this section; and for exemptions from or qualifications to an offence under the regulations.

130. Subsection (5) provides that the Scottish Ministers may by regulations make provisions about licences and registration for the purposes of this section.

131. Subsections (6) to (8) provide that the Scottish Ministers can set out procedures relating to: granting and refusing applications; qualifications to be held by applicants; other matters that are to be taken into account when considering applications; the conditions that are to be set out in the licence or registration; the suspension or revocation of a licence or registration; appeals; and the making provision for fees or other charges.

Section 25 – Prohibition on keeping certain animals

132. This section gives the Scottish Ministers power to make regulations for animal welfare purposes to prohibit the keeping of certain types of animals at domestic or other premises. “Domestic premises” are defined as premises or a part of premises used exclusively as a dwelling house including any land or structure belonging to or enjoyed with or adjacent to the house. Subsection (2) allows the Scottish Ministers to define the meaning of “other premises” by regulations. A distinction is made between domestic and other premises as the facilities which can be provided for an animal can vary greatly between a small flat and a safari park.

133. Subsection (4) sets out examples of the types of provision which may be included in the subsequent regulations. These include provision for enforcement, offences, penalties, post-conviction orders, the conferring of powers on specified individuals (such as powers of entry, search, inspection, and seizure) and for provision for exemptions or exceptions to the regulations.

134. Subsection (5) imposes a duty on the Scottish Ministers to consult interested persons before introducing regulations under this section.

Section 26 – Abandonment

135. This section provides a specific offence of abandonment. The Bill provides that a person commits this offence in two ways: in subsection (1), if they abandon an animal for which they are responsible; and in subsection (2) if they leave an animal for which they are responsible and fail to make adequate provision for its welfare. The latter provision is intended to cover a situation where an animal is not abandoned on a permanent basis but is left without adequate provision being made for its welfare.
136. Subsection (3) provides a non exhaustive list of the factors that the court is to have regard to when considering whether adequate provision has been made for the animal. These include the kind of animal, its age, state of health, the length of time for which it has been left and its requirements for food, water, shelter and warmth.

Section 27 – Sale of animals to children

137. At present, children as young as 12 are legally able to buy an animal and may do so with neither parental consent nor knowledge.

138. Subsection (1) makes it an offence for a person to sell an animal to a person under the age of 16 years.

139. Subsection (2) provides a defence if the seller believed that the purchaser was 16 or over and was either shown evidence of the purchaser’s age or had no reasonable cause to suspect from the purchaser’s appearance that they were under 16.

Section 28 – Offering animals as prizes

140. At present, people are legally able to offer animals as prizes. This section creates an offence where a person offers or gives another person an animal as a prize with the only exception being where the prize is given within a family context. Under the Bill it will be an offence to offer or give goldfish in bags at funfairs. However where a parent decides to give a dog to their child as a prize for success in exams or at a family event, that would not constitute an offence.

Section 29 – Taking possession of animals

141. This section makes provision as to the steps which an inspector or constable may take where they find a protected animal which appears to be suffering. Subsection (1) allows an inspector or constable who finds a protected animal suffering to take steps that need to be taken immediately to alleviate the animal’s suffering without resorting to destroying the animal (see section 15 for the definition of “protected animal” and section 44 for the definition of “inspector”). Relevant powers of entry are conferred by schedule 1.

142. Subsection (2) gives an inspector or constable the right to take possession of a protected animal if a veterinary surgeon certifies that animal is suffering or likely to suffer. In order to reach an opinion in this regard, the veterinary surgeon may examine and take samples from the animal (subsection (7)). Subsection (3) allows an inspector or constable to take this step without veterinary certification if it appears that the animal is suffering or likely to suffer and it is reasonable not to seek the assistance of, or wait for, a vet. This would apply to circumstances when the action required is urgent, such as discovering an animal in danger of dehydration in a vehicle in direct sunshine.

143. Subsection (4) provides that where an inspector or constable has taken possession of an animal, an inspector or constable may remove it, or arrange for it to be removed, to a place of safety (such as an animal welfare centre). Alternatively, they may care for the animal at the place...
where it was found (in which case they can make use of any equipment taken or found at the place, see subsection (6)). Subsection (5) allows that where an animal is removed, the inspector or constable may use a mark, microchip or other method to identify the animal.

144. Subsection (9) provides that any reasonable expenses incurred by an inspector or constable in taking steps to alleviate suffering or taking possession of an animal under this section can be recovered from the owner or other person responsible for that animal.

145. Schedule 1 paragraph 15(1)(a) makes it an offence for a person to intentionally obstruct an inspector or constable from using any of the powers conferred on him by this section.

Section 30 – Release orders where animals taken

146. Section 30 makes provision for a court, on summary application by the owner or any other person appearing to the court to have sufficient concern for the animal, to make an order as to the person to whom an animal taken under the previous section is to be delivered.

147. Subsection (3) describes who is entitled to be heard in relation to such an application. These are the owner, an inspector, a constable who took the animal into possession and is caring for the animal or arranged for its care, a person with whom an arrangement for the care of the animal has been made and who is authorised to be heard by the Scottish Ministers in relation to the application, and a person who appears to the court to have a sufficient concern for the animal.

148. In determining what order to make, the court must take into consideration the desirability of protecting the value of the animal and of avoiding any increase in the expenses which may need to be reimbursed by a person responsible for the animal.

Section 31 – Disposal orders where animals taken

149. This section sets out the disposal orders which a court can make in relation to animals that have been taken into possession under section 29. The court may order that specified treatment be administered to an animal, and/or order that the animal be: destroyed; sold or; disposed of in another manner (subsection (1)).

150. Subsection (4) specifies the persons who are entitled to make an application to the court under this section (the owner, an inspector, a constable who took the animal into possession and is caring for the animal or arranged for its care, a person with whom an arrangement for the care of the animal has been made and who is authorised by the Scottish Ministers to make the application and any other person appearing to the court to have sufficient concern for the animal).

151. Subsection (5) specifies the persons entitled to be heard in relation to such an application. These are broadly the same as those entitled to make an application to the court. In addition, a person with whom an arrangement for the care of the animal has been made under section 29 may be heard if they have been authorised by the Scottish Ministers. Subsection (6) provides that the court may not make a disposal order involving the destruction of an animal unless it is
satisfied on the evidence of a veterinary surgeon that destruction would be in the interests of the animal.

152. In addition, before a court makes an order under this section, it must give the owner of the animal the opportunity to make representations unless it is not practicable to do so (subsection (7)).

153. Subsection (8) provides that in determining what order (if any) to make, the court must have regard to the desirability of protecting the value of the animal, and of avoiding any increase in the expenses which may need to be reimbursed by a person responsible for the animal. The order made by the court may appoint a person to carry out the terms of the order, make provision for the reimbursement of any expenses and make other provision as appropriate (subsections (2) and (3)).

154. Subsection (9) provides that if the owner of the animal is subject to any liability under section 29 or subsection (3) of this section, any sum due to the owner from any proceeds of the sale of the animal under this section may be used to repay that liability.

155. Schedule 1 paragraph 15(1)(b) makes it an offence for a person to intentionally obstruct an inspector or constable from using any of the powers conferred on him by subsection (1) of this section.

Section 32 – Resort to destruction of animals

156. This section replaces and modernises the power currently contained in section 10 of the 1912 Act.

157. In terms of subsection (1), an inspector or constable may destroy or make arrangements for the destruction of a protected animal where a veterinary surgeon certifies the condition of the animal is such that destruction is appropriate. Subsection (3) allows a veterinary surgeon to examine and take samples from an animal with a view to forming an opinion in this regard.

158. In terms of subsection (2), an inspector or constable may destroy an animal without veterinary certification if the following conditions are met: (a) it appears that 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 or wait for veterinary advice.

159. Subsection (4) provides that any reasonable expenses incurred by an inspector or a constable in destroying an animal are recoverable from the owner or other person responsible for the animal.

160. Schedule 1 paragraph 15(1)(c) makes it an offence for a person to intentionally obstruct a person exercising a power conferred by this section.
Section 33 – Animal welfare bodies

161. Section 33 provides a regulation making power to allow the Scottish Ministers to establish a body to provide them and such other persons as the Scottish Ministers may direct with advice on such animal welfare issues as are specified in regulations.

162. Subsection (2) provides that the Scottish Ministers can also issue regulations in order to facilitate or improve co-ordination between bodies which have functions relating to the welfare of animals.

Section 34 – Animal welfare codes

163. Codes of practice are already widely used to promote the welfare of farmed animals and the Bill provides for their use to be extended to non-farmed animals. The existing codes on the welfare of farmed animals (which have been made under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968) will continue in force for the time being even after the new provisions come into force.

164. This section gives Scottish Ministers the power, after appropriate consultation, and subject to the approval of Parliament, to issue and revise codes which provide practical guidance in relation to any provision of the animal welfare part of the Bill or regulations made under that part. Subsection (6) makes provision regarding the publication of any animal welfare code made under this section.

165. Whilst failure to comply with a provision of an animal welfare code is not in itself an offence (subsection (7)), the courts can refer to the appropriate codes when making a judgement as to whether an offence has been committed under the welfare provisions of the Bill or regulations made under section 23 or 24 (subsection (8)). Owners and keepers of animals may therefore find the codes a useful resource by which to inform their understanding of acceptable welfare standards.

Section 35 – Deprivation orders

166. This section enables a court on convicting a person of a relevant offence to make an order, in addition to or instead of any other penalty, depriving an animal owner of possession or ownership (or both) of an animal. Section 35(9) requires the court, where practicable, to allow the owner an opportunity to make representations before the court makes an order. The animal in respect of which the order can be made is the animal in relation to which the offence was committed. In the case of animal fights, section 21(4) provides that this is the animal involved in the animal fight concerned. Section 35(8) requires the court to be satisfied, before ordering the destruction of animal, that the making of such an order is in the interests of the animal to which it applies except in the case of an offence under section 21 (animal fights).

167. The relevant offences, conviction of which can give rise to the making of such an order are (a) causing unnecessary suffering, (section 17), (b) mutilation (section 18), (c) cruel operations (section 19), (d) administration of poisons (section 20), (e) animal fights (section 21),
(f) failing to ensure the welfare of an animal (section 22) and (g) owning or keeping an animal in breach of a disqualification order (section 36).

168. Subsection (2) provides as to the order which the court has power to make in terms of subsection (1). It is an order which deprives the offender of ownership or possession (or both) of the animals to which it relates and also orders their destruction, sale or other disposal. Subsection (5) allows the order also to make provision in respect of the offspring of the animal.

169. Subsection (3) provides that the court has to explain its reasons for not making a deprivation order except where it has imposed a disqualification order under section 36.

170. Subsection (6) makes further provision as to what can be included in a deprivation order. This includes the provision for appointing someone to carry out the deprivation order, requiring delivery of relevant animals, conferring powers of entry on the person appointed to carry out the order and such other provision as the court considers appropriate.

Section 36 – Disqualification orders

171. This section enables a court on convicting a person of a relevant offence to make an order in addition to, or instead of, any other penalty and disqualifying that person from one or more activities relating to animals.

172. The relevant offences, conviction of which can gives rise to the making of such an order, are (a) causing unnecessary suffering (section 17), (b) mutilation (section 18), (c) cruel operations (section 19) (d) administration of poisons (section 20), (e) animal fights (section 21) and (f) failing to ensure the welfare of an animal (section 22).

173. A disqualification order disqualifies a person from owning and keeping, dealing in animals or transporting animals or any combination of these (subsection (2)).

174. Subsection (3) provides that disqualification from an activity – be it owning and keeping, dealing in or transporting animals – disqualifies the person subject to the order from any participation in that activity. Paragraphs (a), (b) and (c) give examples of the kind of participation from which a person subject to an order is disqualified.

175. Subsection (4) provides that the court has to state its reasons for not making a disqualification order on convicting a person of a relevant offence.

176. Subsection (6) provides that disqualification may be imposed in relation to animals generally or animals of a particular kind. Thus a court may, for example, use its discretion under this subsection to disqualify a person who has been convicted for failure to ensure the welfare of livestock only from keeping livestock, but not domestic pets.

177. Subsection (7)(b) allows the court to specify the length of time which must pass before the person who is the subject of a disqualification order may apply to have it terminated or varied.
178. Subsection (8) allows the court to suspend the operation of the disqualification order to enable practical arrangements to be made for the animals affected or while an appeal may take place.

179. Subsection (9) makes it an offence to breach a disqualification order.

Section 37 – Seizure orders where disqualification breached

180. This section gives the court power, where that court is satisfied that a person subject to a disqualification order owns or keeps any animal in breach of that order, to make an order that the animals so owned or kept by the disqualified person be seized.

181. Subsection (2) provides for a seizure order to be made following summary application to the court by an inspector where it appears that a person is owning or keeping animals in breach of a disqualification order. The order may be made by the court even if proceedings have not, or are not, or are not likely to be, taken against the person for an offence under section 36(9).

182. Subsection (3) provides that a seizure order made under subsection (1) may deprive a person of possession or ownership of an animal (or both) and provide for the destruction, sale or other disposal of the animal.

183. Subsection (4) sets out provisions which may be included in a seizure order. These are: appointing the person who is to carry out the order; requiring delivery of the animal in question; and by virtue of subsection (5) requiring the disqualified person to reimburse any reasonable expenses incurred in carrying out the order. The seizure order may also include provision authorising a person appointed to carry out the order, and anyone acting on their behalf, to enter any premises where the animal subject to the seizure order is kept.

184. Subsection (4)(c) provides that the order may include such other provision as the court considers appropriate. Examples of the kind of provision which might be included are given in subsection (5).

185. Subsection (6) provides that the court may not make a seizure order involving the destruction of an animal unless it is satisfied on the evidence of a veterinary surgeon that destruction would be in the interests of the animal.

186. Subsection (7) requires the court to give the owner of the animals concerned the opportunity to make representations to the court prior to making a seizure order.

187. Subsection (8) requires the court to consider both protecting the value of any animal and avoiding increasing expenses when determining whether to make a seizure order.
Section 38 – Termination or variation of disqualification

188. This section sets out the procedure under which a person may request to have a disqualification order applying to them terminated or varied. The request must be made to the court which made the disqualification order.

189. Subsection (2) provides time limits within which an application may not be made.

190. Subsection (4) outlines what the court must look at when considering such a request.

Section 39 – Appeals against orders

191. This section provides the rights of appeal available in relation to the orders made under sections 35, 36 and 37.

192. Subsection (1) provides that when a deprivation order is imposed it is part of the convicted person’s sentence, and any appeal will follow the appeal procedure set out in the Criminal Procedure (Scotland) Act 1995 (c.46) for appeals against sentence. Any person who has an interest in any animal to which a deprivation order applies (who is not the offender), may appeal to the High Court of Justiciary within 7 days of the making of the order.

193. In relation to a seizure order any person who has an interest in the animal referred to in the order may appeal to the Sheriff Principal (subsection (3)) and may with the Sheriff Principal’s leave, appeal to the Court of Session against the Sheriff Principal’s decision (subsection (4)).

194. Subsection (5) suspends the operation of any deprivation or seizure order until the periods for appeal against the order and conviction have expired and any appeal has been withdrawn or determined.

195. Subsection (6) provides that where the operation of an order is suspended the court may make an order making interim provision in relation to any animal to which the suspended order applies. Subsection (7) lists examples of the kind of provision which could be made in such an interim order and includes provision to enter premises where an animal to which the order applies is kept.

196. Subsection (9) provides that where the operation of a deprivation order has been suspended an offence is committed if the person disposes of a relevant animal.

Section 40 – Proceedings for animal fighting offences

197. This section provides for proceedings for section 21 offences (animal fights) and extends the time limits within which prosecution for offences under that section may be brought and sets out maximum periods after which proceedings for such an offence cannot be brought. It also makes provision as to when proceedings are deemed to be commenced.
198. Unless otherwise provided, proceedings for a statutory offence must normally be brought within 6 months of the offence being committed if the offence may only be tried summarily (i.e. by a sheriff without a jury) (Criminal Procedure (Scotland) Act 1995 section 136). Under section 21, the maximum period is 6 months from the date on which evidence sufficient in the prosecutor’s opinion to justify proceedings came to the knowledge of the prosecutor (subsection (1)). A certificate by the prosecutor setting out the date on which such evidence came to the prosecutor’s knowledge is to be conclusive evidence of that fact (subsection (4)).

199. Subsection (2) limits the period set out in subsection (1) by providing that no proceedings can be brought more than 3 years after the commission of the offence, and 3 years after the last date on which the offence was last committed in the case of a continuous contravention. Nevertheless, in the case of a continuous contravention, the whole period of contravention may be included in the offence charged (even if part of it occurs outwith the time limits specified in subsections (1) and (2) (see subsection (3)).

200. Subsection (5) provides that 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.

**Section 41 – Offences by bodies corporate etc.**

201. This section makes provision for circumstances where an offence is committed under Part 2 of the Bill by a company, a corporate body managed by its members, or a Scottish partnership with the consent or connivance, or due to the negligence, of specified persons responsible for managing its affairs. In those circumstances, not only is the company, other corporate body or Scottish partnership liable for the offence, but so too is the officer (or member) of the company or other corporate body or the partner, as the case may be.

**Section 42 – Penalties for offences**

202. This section makes provision as to the penalties for an offence under Part 2 of the Bill or regulations made under it. Except in the case of an animal fight offence, a person who commits an offence under Part 2 is liable on summary conviction to imprisonment for up to 6 months or to a fine up to level 5 (currently £5000) on the standard scale, or to both (subsection (2)). For animal fighting, a person who commits an offence is liable on summary conviction to imprisonment for up to 12 months or to a fine not exceeding £20,000 or to both.

203. A person who commits an offence under regulations made under Part 2 of the Bill is liable on summary conviction to the penalty specified in the regulations, but these penalties cannot exceed imprisonment of up to 6 months or a fine up to level 5 on the standard scale, or to both (subsection (3)).

**Section 43 – Exclusions**

204. Section 43 excludes from the application of Part 2 the following in paragraph (a) the Animals (Scientific Procedures) Act 1986, the subject matter of which is reserved by Head B.7 of Schedule 5 to the Scotland Act 1998. Paragraph (b) provides that the application of Part 2
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does not apply to anything done in the normal course of fishing. This is intended to exclude sea fishing and angling from the provisions of Part 2, but will not exclude fish farming.

Section 44 – Inspectors and constables

205. Subsection (1) provides that an “inspector” for the purposes of any provision of Part 2 of the Bill, is either appointed or authorised as inspector by the Scottish Ministers, or appointed as inspector by a local authority.

206. The powers in relation to inspectors and constables are set out in schedule 1 to the Bill (subsection (4)).

Section 45 – Premises

207. Subsection (1) defines “premises” for the purposes of Part 2 of the Bill as including any land or building, or any other place including a vehicle, vessel, tent or moveable structure.

208. Subsection (2) defines “domestic premises” for the purposes of Part 2 of the Bill as meaning premises or parts of premises used exclusively as a dwelling house and as including land or structure belonging to or usually enjoyed with the house. This could include a garage, garden or garden shed.

Section 46 – Regulations

209. This section provides that the Scottish Ministers’ power to make regulations under Part 2 of the Bill must be exercised by statutory instrument (subsection (1)), and that a draft of the instrument must be laid before, and approved by resolution of, the Scottish Parliament (subsection (3)).

210. Subsection (2) provides that such regulations may include further provisions for the purposes of or in connection with the regulations as the Scottish Ministers consider necessary or expedient.

PART 3 – GENERAL

Section 47 – Modification of enactments

211. Section 47 introduces schedule 2 (which modifies enactments for the purposes of this Bill).

Section 48 – Ancillary provision

212. This section enables the Scottish Ministers to make further provision, by order, in connection with the Bill.
Section 49 – Crown application

213. This Bill will bind the Crown subject to a common qualification regarding criminal liability.

Section 50 – Commencement and short title

214. This section provides for the short title of the Bill. Further, the section allows the Scottish Ministers to bring the provisions of the Bill into force by order on such a day as they appoint. Different days may be appointed in the order for different provisions.

SCHEDULES

Schedule 1 – Powers of inspectors and constables for Part 2

215. This schedule specifies the powers and duties of those exercising powers of entry, inspection or search under Part 2 of the Bill and provides clarification on conditions for granting warrants, stopping and detaining vehicles, and offences of obstruction.

216. Paragraph 1(1) provides power for an inspector to enter and inspect any premises to ascertain compliance with any regulations made under Part 2 of this Bill which implements a European Community obligation. However this does not apply in relation to domestic premises.

217. Paragraph 2 makes provision in relation to entry and search where animals are in distress. It allows for an inspector or a constable to enter and search premises for the purpose of exercising any power conferred by section 29 (taking possession of animals) and section 32 (resort to destruction of animals) without a warrant if this is in the immediate interest of the animal. However this does not apply to domestic premises.

218. Paragraph 2(1) provides for the granting of warrants where there are reasonable grounds for believing that there is on the premises a protected animal which is suffering or likely to suffer if its circumstances do not change. It refers to paragraph 5 which outlines the specific conditions.

219. Paragraph 3 provides that an inspector may enter and inspect any premises under Part 2 (apart from domestic premises) if there are reasonable grounds for believing an offence has been committed at the premises.

220. Paragraph 4 provides that a Sheriff or justice of the peace may grant a warrant if satisfied that there are reasonable grounds for believing that a relevant offence has been committed at the premises or that evidence of the commission of or participation in a relevant offence is to be found at the premises. An inspector or constable may enter premises and search without a warrant to gather evidence in relation to a relevant offence if it appears that delay would frustrate the purpose for which the search is to be carried out. It also sets out what that warrant would allow an inspector or constable to do. A relevant offence is defined as any offence under sections 17 to 21, section 22 and section 36(9).

221. Paragraph 5 provides further conditions for granting warrants under Part 2.
222. Paragraph 6 provides that a constable, or an inspector accompanied by a constable in uniform, can stop a vehicle in order to exercise a relevant power.

223. Paragraph 8 provides that any relevant power should be exercised at a reasonable time of day unless that would frustrate the purpose of exercising that power.

224. Paragraph 11(1) provides that assistance and equipment may be taken onto premises in order to exercise the relevant power. This could include being accompanied by an Agricultural Officer or bringing a trailer etc. onto premises to assist in the transportation of relevant animals.

225. Paragraph 11(3) provides that this paragraph includes carrying out tests and identifying animals.

226. Paragraph 14 and 15 provide clarification on the offences of obstruction.

227. Paragraph 16 provides that a constable may arrest without a warrant any person he believes to be committing or to have committed an offence under the following sections in Part 2: 17 – Unnecessary suffering; 18 – Mutilations; 19 – Cruel Operations; 20 – Administration of poisons; 21 – Animal Fights; or under paragraphs 14 or 15 – Offences of obstruction.

228. Paragraph 19 defines a “relevant power” for the purposes of the Schedule.

Schedule 2 – Modification of enactments

229. This schedule provides the detailed modifications of existing enactments which are required as a result of this Bill.

230. Paragraphs 1 to 4 make minor amendments to the Animal Health Act 1981 which are required by Part 1 of the Bill – Animal Health.

231. Paragraphs 5 to 7 make minor amendments to existing legislation such as the Protection of Animals (Scotland) Act 1912 and the Protection of Animals (Anaesthetics) Act 1954 which are required by Part 2 of the Bill – Animal Welfare.

232. Paragraph 8 provides a list of the legislation which will be repealed as a consequence of Part 2 or regulations made under Part 2.
FINANCIAL MEMORANDUM

INTRODUCTION

233. This document relates to the Animal Health and Welfare (Scotland) Bill introduced in the Scottish Parliament on 5 October 2005. It does not form part of the Bill and has not been endorsed by the Parliament. This document addresses the Health and Welfare Parts of the Bill separately.

PART 1 – ANIMAL HEALTH

COSTS ON THE SCOTTISH EXECUTIVE

234. The measures provided in the Health Part of the Bill are about creating greater flexibility to respond to an animal disease outbreak, and are not about creating new costs. The Bill does not create a new legal base for responding to animal disease outbreaks but rather amends the Animal Health Act 1981 to provide additional powers to reflect developments in disease control and understanding of risks. These disease control powers would not automatically be used but would rather be available to support the disease control response and support swift eradication of disease, but their use should have no direct cost implication for the Scottish Executive.

235. The 2001 Foot and Mouth Disease outbreaks showed that the costs of a disease outbreak can be significant – in Scotland the cost was identified by the National Audit Office as £334m. These costs related to the operating the disease control response – e.g. disease control centres, employment of additional staff – as well as costs relating to compensation payments. The basis of the 2001 costs is unaffected by the Bill which augments the toolkit of actions that could be taken to control disease. The principal cost that would be incurred by central Government would relate to the requirement to pay compensation for animals slaughtered as a consequence of the new powers. It is impossible to quantify this as the powers would only be used where a more traditional disease control strategy was shown to be insufficient and because the scale of payments would depend on a number of specific factors – e.g. type of disease, location, which animals were susceptible and the livestock density of that area. As inspectors are already appointed under the existing disease control methods in the existing 1981 Act, there would be no additional costs to the Scottish Executive in relation to the appointing of inspectors.

236. Under the terms of the Devolution Settlement it was agreed that the Great Britain disease control budget would be retained on a GB basis by the UK Government. This reflected the importance of co-ordination of disease control policy across the GB single epidemiological unit but also that the State Veterinary Service would be the principal source of the expenditure and operates on a GB wide basis. Whilst the Bill does not therefore impact on the Scottish Budget, Scottish Ministers are responsible for the policy and direction of the disease control strategy in Scotland deciding how the powers contained in the Bill would be used.

237. The Scottish Executive will produce a biosecurity code which will incur production and distribution costs. It is envisaged that this code will be sent to all farmers in Scotland and it is estimated that the total cost for production, printing and distribution will be approximately £75,000.
238. The State Veterinary Service, where necessary will license animal gatherings and as they will charge no fee for this licensing procedure, a cost will be incurred. This cost has been estimated to be between £100 to £500 depending on the amount of veterinary input which will be required for each individual licence.

239. It is not expected that the creation of the new offence of deliberate infection will lead to significant additional costs for prosecutors or the courts and there has been close liaison with the Crown Office and the Procurator Fiscal Service throughout the development of the Bill. The prosecution costs of such an offence could vary greatly depending on the severity of the offence and the circumstances in which the offence was committed.

240. The Scottish Executive would be responsible for meeting any costs that resulted from the use of the power to use surveillance samples taken for one disease to test for others. The use of this power would be targeted rather than routine – e.g. to support a specific survey. A typical laboratory test costs between £2 and £5 and depending on research methodology the relevant costs in a survey could be in the range £20-50k. Such surveys are likely to take place on an ad-hoc basis and are unlikely to occur more frequently than twice a year. Savings could also be made through the use of this power as it is likely to lead to a reduction in primary collection of samples and could, for a typical commissioned survey, be in the range of £10-20K.

COSTS ON LOCAL AUTHORITIES

241. Local authorities have a significant role to play in any disease control response. The new disease control powers in the Bill would not introduce any new burdens on them but it is likely that they would be involved in supporting disease control implementation through their membership of the local disease control management team. Local authorities would be reimbursed by the GB disease control budget, as happened in 2001.

242. In response to the consultation on the policy proposals behind the Bill, CoSLA responded requesting that the Executive amend the Animal Health Act to remove the requirement (under section 91) on them to publish, at their own expense, Orders, licenses and other instruments sent to them by Scottish Ministers. They argued that the requirement was outdated given modern technology and also duplicated work between local authorities. This amendment to the 1981 Act is included in the Bill. An initial estimate is that this could save local authorities around £1m per year.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

243. Consultation on the Bill and discussions with stakeholders has suggested that additional costs to a typical business are likely to be small. Compensation would be paid for any animals slaughtered under the new powers in the event of a disease outbreak. The more efficient disease control effort should result in lower numbers of animals which will require to be slaughtered and thereby reduce costs of compensation overall to the UK Government. Eradicating disease more quickly reduces business loss by returning to normal trading conditions sooner.

244. The Bill will not impose any additional costs on farm businesses which are meeting current requirements as it does not introduce any new obligations. The Small Business Service
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has been consulted and does not consider that there will be a disproportionate impact from the proposals on small businesses. In the event of an outbreak of exotic disease, the impact of the disease control response on small businesses will mostly be felt in the farming sector. In view of this, the NFU Scotland amongst others, were consulted on the proposals. NFU Scotland was broadly supportive of the legislative proposals.

245. Animal markets will benefit from a more efficient response to incursions of exotic disease given the reduced likelihood of them being closed. Under the new power on the licensing of animal gatherings, for which no license fee would be payable, some individuals or businesses may be obliged to undertake some additional measures to maintain biosecurity – e.g. additional cleansing and disinfection. Such activity would largely represent standard best practice within the industry and may cost around £1,000 a year to the most affected. The appropriate organisations and individuals will be consulted when Scottish Statutory Instruments are drawn up under the new powers in the Bill.

246. In relation to the Transmissible Spongiform Encephalopathies provision, costs would arise for livestock owners who wished to have their susceptible animals castrated or sterilised. The estimated cost to the producer of these procedures, which would be carried out by a veterinary surgeon, would be in the region of £50 per animal. It is likely that only a small number of owners would choose this option which is expected to be only attractive to hobby farmers or those who keep livestock as pets.

SAVINGS TO OTHER BODIES, INDIVIDUALS AND BUSINESSES

247. Similar to the position that generally the Bill will not lead to many direct or regular costs it will not lead to savings either. The general effect of the Bill will be through its ability to support an effective disease control response and minimise the impact of the disease outbreak on the livestock industry and wider rural economy and society.

PART 2 – ANIMAL WELFARE

COSTS ON THE SCOTTISH EXECUTIVE

248. The Welfare Part of the Bill will improve and strengthen the protection for animals and consolidate animal welfare legislation. It is generally an enabling measure which sets out the broad fundamental principles of animal welfare and allows for specific provisions to be made in secondary regulations. It also allows for Codes of Practice to be made and for the Scottish Ministers to make further provisions they think appropriate for animal welfare. Its structure will enable these provisions to be kept up to date and in line with developments in animal welfare and our knowledge of animal physiology and behaviour. This will allow the provisions to be easily revised, amended, kept up to date and further, for the Scottish Executive to respond to changes more quickly than it can do so at present. This will thus enable the Bill to be fit for purpose for a long period of time. It will be possible to use the Bill to implement EU and internal obligations concerning the welfare of farmed and other animals.

249. The Scottish Executive will produce Codes of Practice and there will be costs resulting from their production and distribution. It is estimated that these codes will be produced over a period of five years after the Bill is enacted. There will be codes to advise on good practice in
the following sectors and in the following quantities: pet shops – 500 codes; pet fairs – 200
codes; animal boarding – 500 codes; riding establishments – 500 codes; livery yards – 2000;
tethering of horses – 200 codes; greyhound racing – 50 codes; and game bird rearing – 100
codes.

250. The cost for each code will depend on the number printed and £5 is a fair estimate for
drafting, preparation, printing and distribution of each code. It is therefore estimated that the
total cost for a total of 4050 codes will be in the region of £20,250. Spread over 5 years the
annual cost will be about £4,050.

251. The Scottish Executive intends to issue guidance on the provisions of the Bill to local
authorities and other enforcement agencies. It is estimated that this would require approximately
200 copies. The estimated cost for drafting, preparation, printing and distribution will be £2,000.

252. It is not expected that there will be any significant additional costs for prosecutors or the
courts and there has been close liaison with the Crown Office and the Procurator Fiscal Service
throughout the development of the Bill. It is expected that there may be an initial rise of
approximately 10% in the number of cases that are brought to the attention of enforcers during
the period immediately after the Bill is enacted, as people become familiar with the new
legislation. The Scottish SPCA reported that 51 welfare cases were brought to the Procurator
Fiscal during 2004. It is not expected that there would be more than 56 cases under the Bill in the
first year. However, it is considered that the overall number of cases brought before the courts
will decline over time as people respond to advice issued. This will therefore reduce the number
of prosecutions for either failing to provide a duty of care or of causing unnecessary suffering.

COST ON LOCAL AUTHORITIES

253. The Bill introduces more regulations for local authorities to enforce and it has been
estimated that for licensed activities there will be a small reduction in local authorities’ annual
revenue from licences, but that this will be coupled with a reduction in the burden of inspection.
This is because of the extension of licences from the traditional 12 months to 3 years’ duration.
By lengthening the licence period to 3 years it will reduce inspection costs for local authorities as
they will no longer be required to inspect every premises annually as is currently the case. It will
also allow them to inspect premises on a risk based approach (concentrating on those
establishments/activities that may need to be monitored more closely). Therefore it is believed
that there will be no net effect on local authorities as the licensing regimes will operate under the
principle of full cost recovery and any additional cost will be born by third parties.

Licensed activities – already regulated

254. The following activities are all currently licensed annually by local authorities: pet shops,
animal boarding establishments, dog breeding establishments and riding establishments. The
regulations brought in under the Bill will extend the licence period for these activities to 3 years.
The average cost for licence fees for these activities ranges from £150 to £300. As the licence
period will be extended local authorities will be able to increase the licence fee by about 150% 
without increasing the annual burden on businesses. Therefore a 3 year licence fee could range 
from about £400 to £800.
255. By taking a risk based approach to inspection visits, it is anticipated that one third of licensed establishments (those requiring close monitoring – high risk) will require annual inspection, one third (those requiring some monitoring – medium risk) would require inspection every 18 months, and one third (those requiring little/no monitoring – low risk) would require inspection every 3 years. Therefore although the total annual revenue to local authorities from current licence fees may reduce, there will be a subsequent reduction in the number of inspections required to be carried out by local authorities.

Pet shops
256. There are currently estimated to be 360 licensed pet shops in Scotland, this number will not increase as a result of the Bill. As the licensing regime currently stands, all 360 premises require to be inspected annually. Under the new regulations 120 high risk premises would be required to be inspected annually, 120 medium risk premises would be required to be inspected every 18 months and 120 low risk premises would be required to be checked every 3 years. This would result in a reduction in the average number of inspections from 360 to 240 annually under the new regulations. The current estimated revenue to local authorities from pet shop licences is between £54,000 and £108,000. Under the new regulations the estimated revenue would be between £144,000 and £288,000 for a 3 year licence period, which would give a range of between £48,000 and £96,000 annually, a reduction of between £6,000 and £12,000 or 11%, but the number of inspections will reduce by 33%. It is anticipated that the new licensing regime will be introduced in 2007.

Animal boarding establishments
257. There are currently estimated to be 550 animal boarding establishments in Scotland, as the new regulations will cover some previously unlicensed boarding establishments, it is estimated that as a result of the Bill the number of animal boarding establishments which require licences will increase to 600. Currently all 550 establishments require annual inspection. Under the new regulations 200 high risk establishments would require to be inspected annually, 200 medium risk establishments would require to be inspected every 18 months and 200 low risk establishments would require to be inspected every 3 years. This would result in a reduction in the average number of inspections from 550 to 400 on average. The current estimated revenue to local authorities from animal boarding licences is between £82,500 and £165,000. Under the new regulations the estimated revenue would be between £240,000 and £480,000 for a 3 year licence period, which would give a range of between £80,000 and £160,000 annually a reduction of between £2,500 and £5,000 or 3%, but the number of inspections will reduce by 27%. It is anticipated that the new licensing regime will be introduced in 2007.

Dog breeding establishments
258. There are currently estimated to be 153 dog breeding establishments in Scotland, this number will not increase as a result of the Bill. Currently all 153 establishments require annual inspection. Under the new regulations 51 high risk establishments would require to be inspected annually, 51 medium risk establishments would require to be inspected every 18 months and 51 low risk establishments would require to be inspected every 3 years. This would result in a reduction of the average number of annual inspections from 153 to 102 on average. The current estimated revenue to local authorities from dog breeding establishment licences is between £22,950 and £45,900. Under the new regulations the estimated revenue would be between £61,200 and £122,400 for a 3 year licence period, which would give a range of between £20,400
and £40,800 annually a reduction of between £2,450 and £5,100 or 11%, but the number of inspections will reduce by 33%. It is anticipated that the new licensing regime will be introduced in 2007.

Riding establishments

259. There are currently estimated to be 315 licensed riding establishments in Scotland, this number will not increase as a result of the Bill. As the licensing regime currently stands, all 315 premises require to be inspected annually. Under the new regulations 105 high risk premises would be required to be inspected annually, 105 medium risk premises would be required to be inspected every 18 months and 105 low risk premises would be required to be checked every 3 years. This would result in a reduction in the average number of inspections from 315 to 210 annually under the new regulations. The current estimated revenue to local authorities from riding establishment licences is between £47,250 and £94,500. Under the new regulations the estimated revenue would be between £126,000 and £252,000 for a 3 year licence period, which would give a range of between £42,000 and £84,000 annually a reduction of between £5,250 and £10,500 or 11%, but the number of inspections will reduce by 33%. It is anticipated that the new licensing regime will be introduced in 2007.

Licensed activities – previously unregulated

Pet fairs

260. The Scottish SPCA has provided information that approximately 22 pet fairs took place in Scotland in 2004. Under the Bill these will now all require licences. The cost of these licences will be between £50 and £100. The licence fees for pet fairs will therefore provide additional revenue of between £1100 and £2200 to local authorities, however local authorities will be required to inspect these fairs and licence fees should be sufficient to recover inspection and administration costs. It is anticipated that this new requirement will be introduced in 2007.

Pet dealers

261. It is estimated that there are around 6 people dealing in young companion animals in Scotland. Under the Bill these people will all require licences. The cost of these 3 year licences will be approximately £800. The licence fees for pet dealers will therefore provide additional revenue of approximately £4800 for local authorities, however local authorities will be required to inspect pet dealers’ premises and licence fees should be sufficient to recover inspection and administration costs. It is anticipated that this new requirement will be introduced at the same time as the Bill receives Royal Assent, provisionally June 2006.

Registered activities

262. Under the Bill large animal sanctuaries and livery yards will be registered with their local authority for a period of up to 5 years (this will consist of an initial inspection and fee – no further inspections or fees are required unless the detail on the registration change or welfare concerns are raised). The initial inspection will impose a new burden on local authorities, however this is coupled with a new revenue stream from the new sectors which will require to be registered – both large animal sanctuaries and livery yards. A registration fee of £150 per establishment should be sufficient for local authorities to recover administration and inspection costs. It is anticipated that these new registration requirements will be introduced in 2008.
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<table>
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<tr>
<th>Activity</th>
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<th>Registration Fee for each activity/business</th>
<th>Anticipated revenue for local authorities</th>
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<td>£150</td>
<td>£7500</td>
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<tr>
<td>Total no. of registered activities</td>
<td>2050</td>
<td>£150</td>
<td>£307,500</td>
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</table>

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

263. Businesses which are not currently subject to regulation, and which will be regulated by licensing or registration under the Bill, may incur additional costs to meet minimum welfare standards as set out in licensing/registration conditions. There will be a licence or a registration fee set by the local authority to cover administration, inspection (sometimes by a specialist inspector) and enforcement costs. At present the cost of annual licences varies greatly between local authorities and activities and the typical average fee is in the range of £150 to £300. It is the intention to increase the validity of these licences from 1 to 3 years. This would bring the duration of licences for animal activities into line with other licences issued by local authorities. Annual licences which require inspections each year may be replaced by ones that apply over a 3 year interval. The cost of a 3 year licence will increase, but as there will be no requirement for an annual inspection it will not necessarily increase by a factor of 3. It is anticipated that an increase of about 150% to about £400 to £800 will provide sufficient funds for local authorities to undertake additional risk based inspections. Thus the annual licence cost is expected to decrease for existing licensed activities.

264. At this stage the only new activities which will require a licence are for those dealing in young companion animals and those operating pet fairs. It is thought that there are only about 6 people dealing in these animals and about 22 pet fairs operating in Scotland. Pet dealers who do not have premises to house the animals will be required to obtain them. The cost will vary with the number of animals to be housed at any one time and could range anywhere between £1,000 to £10,000. The requirement to retain the animals for a week, vaccinations and health checks will be about £60 per pup and somewhat less per kitten, responsible pet dealers would already be incurring this cost and therefore should experience no increase. The 3 year licence fee is likely to cost about £800.

265. In 2004 only one of the 22 pet fairs operating Scotland was licensed by a local authority. Regulations made under the Bill will require the others to obtain a “one day” pet shop licence to allow them to operate. The cost will be set by the local authority and will depend on the size of the fair, and the species and number of animals offered for sale. This temporary licence will cover the cost of administration and inspection and may cost between £50 to £100. However, a repeat licence is likely to be cheaper and may cost anything between £10 and £50. It is possible that some pet fairs will incur additional costs to meet the minimum standards of the licence conditions. Where this is required this is unlikely to cost more than £100.
266. There will be a requirement for the sale of animals from pet shops, pet fairs and dog breeding establishments to be accompanied with information leaflets. Most pet shops and dog breeding establishments already provide such leaflets, but the minority who do not will be required to do so in the future. Leaflets, which cover the vast majority of animals sold, are available which give the necessary information. These leaflets cost £3.50 for a pack of 50. Thus each leaflet costs about 7p. This small additional cost would be taken into account by the retailer when determining the price for each animal sold.

267. Livery yards will require to be registered and there will be a registration fee of about £150 for the 5 year period of the registration. This will affect most places where horses are boarded and a service is provided. The smallest livery yards and landowners offering “Do it Yourself” livery facilities will not require to be registered or to pay any fee to the local authority. It is estimated that about 2,000 livery yards will be covered by the new legislation. The total cost will be about £300,000 over a 5 year period, thus an annual cost of £60,000.

268. The 50 largest animal sanctuaries in Scotland will require to be registered. Registration is estimated to cost about £150 per qualifying sanctuary and will last for 5 years. The total cost will be about £7,500 for the 5 year period, or about £1,500 per year.

269. The Bill will ban mutilations, the interference with the sensitive tissues or bone structure of the animal, except for the medical treatment of an animal. However, Scottish Ministers will have the power to permit specified mutilations under regulation.

270. The proposed ban on the tail docking of dogs will result in a reduction in the income of veterinary surgeons who currently undertake this practice. Precise figures for these veterinary surgeons are not available, but for those who perform tail docking, a typical charge is likely to be about £50 per litter. Because a significant number of vets do not undertake this procedure the vets who do will attract clients from other practices. If a veterinary practice were to dock a litter of puppies as frequently as 1 litter per day, then the loss to the practice would be £1000 a month or £12,000 per year. If the number of puppies docked reduces by 5,000 per year and a litter has an average of 5 pups, then the total vet fees would reduce by £50,000. Vets who currently undertake this practice for non-therapeutic reasons are doing so in contravention of the Royal College of Veterinary Surgeons Guide to Professional Conduct.

271. It is estimated 7,000 dogs are registered each year by Scottish breeders from traditionally docked breeds. In future most of these dogs would be undocked, the exception being for gun and sniffer dogs working in thick cover or in confined spaces. A rough estimate is that annually some 5,000 dogs previously docked would no longer be docked. It has been claimed that an undocked puppy of a traditionally docked breed would be worth less than a docked puppy. If this were true, and assuming the value of each dog reduces by £50, then the annual loss to Scottish dog breeders would be in the region of £250,000. However, any drop in value would be temporary as the supply of docked puppies would reduce as the ban was enforced.

272. The Bill will raise the minimum age at which a minor can buy a pet animal from 12 years to 16 years. The more responsible pet shops and those which are members of some trade organisations already refuse to sell pet animals to unaccompanied children under the age of 16. This provision should not affect pet sales, and thus have no affect on the income of pet shops.
273. There are no meaningful statistics available which show the financial impact which a ban on the giving of animals as prizes (typically goldfish at fun-fairs) would have on those who undertake this activity. However, it is reasonable to assume that animals would be replaced with alternatives of a similar value.

SAVINGS TO OTHER BODIES, INDIVIDUALS AND BUSINESSES

274. The Bill will allow the enforcers of the animal welfare legislation to make a number of cost savings, as they will be able to intervene in welfare cases and take effective action at an earlier stage than is currently possible.

275. The Scottish SPCA estimates that their investigations can involve an average of between two and four welfare visits to an "at risk" or suffering animal, though a higher number of visits may also be required, depending on the circumstances of the animal. If action can be taken at an earlier stage than at present (currently action cannot be taken until an animal actually reaches the point of unnecessary suffering), then fewer visits will be required. The Scottish SPCA have found it difficult to quantify the actual reduction in the costs that will be made by allowing action to be undertaken at an earlier stage. Each welfare case has very different circumstances and their costs vary greatly: some animals only require minimal veterinary treatment and ownership of the animal can be quickly signed over to the Scottish SPCA, enabling it to re-home the animal. Others involve substantial veterinary treatment and for the animals to be cared for by the Scottish SPCA until the outcome of a court case, which may take some time.

276. The Bill will allow the court to make an order allowing the animal to be sold or disposed of before the outcome of any prosecution. This will have a major impact in reducing the costs of the Scottish SPCA and other organisations running animal sanctuaries.

277. It will allow animal welfare organisations and enforcement organisations to reduce their costs in looking after animals which currently have to be kept during proceedings. When the Society was asked what were their estimated annual costs for taking an animal welfare case to court they responded that it was very difficult to give an estimate as every case differed. However in 2004, 51 cases were lodged with the Procurator Fiscal, of these 30 were solely Scottish SPCA cases, 1 was joint with the RSPCA, 18 were joint with the police, and 2 were joint with local authorities. In some circumstance the costs to the Society of bringing a welfare case to the Procurator Fiscal can be high. For example, 7 puppies were treated and held by the Scottish SPCA for 18 months pending a court case, in which the owner was found guilty. The costs of £3,750 were not, however, recouped. A total of 32 guard dogs were removed in a joint police case and were kept by the Scottish SPCA for over 8 months pending court proceedings. The costs of £55,000 were also not recouped. The Bill also includes a provision which allows that any expenses reasonably incurred when an animal has been taken into possession are to be reimbursed by the owner or any other person responsible for the animal concerned which should also benefit the Scottish SPCA.
### SUMMARY TABLE OF COSTS

**PART 1 – ANIMAL HEALTH**

<table>
<thead>
<tr>
<th>Summary of Estimated Additional Costs to the Scottish Executive</th>
<th>Ref.</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publication of Biosecurity Code</td>
<td>Para 237</td>
<td>Estimated at £75,000</td>
</tr>
<tr>
<td>Licensing of animal gatherings – cost to the State Veterinary Service</td>
<td>Para 238</td>
<td>Between £100 and £500 per licence</td>
</tr>
<tr>
<td>Surveillance samples, laboratory tests</td>
<td>Para. 240</td>
<td>£10,000 - £30,000 net cost</td>
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<thead>
<tr>
<th>Summary of Savings to Local Authorities</th>
<th>Ref.</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removal of requirement to publish Orders licences and other instruments sent to Local Authorities by the Scottish Ministers</td>
<td>Para 242</td>
<td>Estimated saving of £1 million</td>
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</tbody>
</table>

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<tr>
<th>Summary of Estimated Costs on Other Bodies, Individuals and Businesses</th>
<th>Ref.</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Licensing of animal gatherings</td>
<td>Para. 245</td>
<td>At most £1,000 per annum</td>
</tr>
<tr>
<td>Costs of castration or sterilisation for susceptible animals</td>
<td>Para. 246</td>
<td>£50 per animal</td>
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</tbody>
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PART 2 – ANIMAL WELFARE

<table>
<thead>
<tr>
<th>SUMMARY OF ESTIMATED ADDITIONAL COSTS TO THE SCOTTISH EXECUTIVE</th>
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<td>Para. 250</td>
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EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

278. On 5 October 2005, the Minister for Environment and Rural Development (Ross Finnie) made the following statement:

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

279. On 3 October 2005, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Animal Health and Welfare (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Animal Health and Welfare (Scotland) Bill (SP Bill 47) as introduced in the Scottish Parliament on 5 October 2005

ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)


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