POLICY NOTE

THE SCOTTISH ANIMAL WELFARE COMMISSION REGULATIONS 2020

SSI 2020/XXX

Introduction

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 36(1) of the Animal Health and Welfare (Scotland) Act 2006. The instrument is subject to affirmative procedure.

This instrument is being made alongside a declaration under section 23(1)(b) of the Wildlife and Countryside Act 1981. Together, the instrument and the declaration will give the Commission its functions to advise on matters relating to companion animals and wildlife.

Policy objective

The purpose of this instrument is to establish the Scottish Animal Welfare Commission ("the Commission") on a statutory basis to advise on matters relating to protected animals[1]. Functions to advise on matters relating to wildlife matters will be assigned to the Commission by ministerial declaration.

The establishment of the Commission was a 2018-19 Programme for Government Commitment. The instrument allows for the appointment and where appropriate reappointment of members, early termination of membership, payment of reasonable expenses and places a duty on the Commission to prepare and publish an annual work plan and report annually to the Scottish Ministers on progress with delivering the plan.

The Commission will not duplicate the current role of the UK Animal Welfare Commission (previously the Farm Animal Welfare Commission) in providing advice on farm animals across GB, but will advise on the welfare of companion animals and wild animals in Scotland. The Commission's remit does not include zoo animals as this is covered by the Zoo Expert Committee that advises all GB administrations or animals used in scientific procedures (this is already covered by the Animals in Science Committee).

It is anticipated that the Commission will provide written reports and opinions to Scottish Ministers giving practical recommendations based on scientific evidence and ethical considerations on:

- The way that the welfare needs of sentient animals are being met by the Scottish Government in all areas of policy development within the remit of Scottish Ministers.

[1] See section 17 of the Animal Health and Welfare (Scotland) Act 2006.

- Possible changes in legislation proposed to protect the welfare of sentient animals and the relative priority that should be given to these, taking into account the number of animals affected, the severity of the problem and the probability that legislative change will be effective.
- Non-legislative routes to improve animal welfare within the control of Government including guidance and public awareness campaigns, collaborative working with stakeholders etc.
- Research requirements to provide evidence for policy development.
- Short rapid opinions on specific issues at the request of the Minister.

The Commission will be required to submit annual reports on the performance of its functions to the Minister for Rural Affairs and Natural Environment. Reports will be laid before the Scottish Parliament.

Relevant legislation

Section 36 of the Animal Health and Welfare (Scotland) Act 2006 ("2006 Act")

The Commission is being established under Section 36 of the 2006 Act which states:

"The Scottish Ministers may by regulations
(a) establish a body with the function of providing advice to—
(i) the Scottish Ministers, and
(ii) such other persons as the Scottish Ministers may direct,
on such matters concerning the welfare of protected animals as may be specified in the regulations,
(b) make such provision for the purposes of and in connection with the establishment and operation of the body as the Scottish Ministers consider appropriate."

Section 36 of the 2006 Act allows the Commission to be established to advise on matters concerning the welfare of protected animals. "Protected animals" are defined by section 17 of the 2006 as follows:

"an animal is a "protected animal" if it is—
a) of a kind which is commonly domesticated in the British Islands,
b) under the control of man on a permanent or temporary basis, or
c) not living in a wild state."

Section 23 of the Wildlife and Countryside Act 1981 ("1981 Act")

Section 23 of the 1981 Act states:

23. Advisory bodies and their functions.

(1) The Secretary of State may—

(a) establish any body or bodies, consisting in each case of such members as he may from time to time appoint;

(b) assign to any body or bodies the duty referred to in subsection (4).

(2) Without prejudice to his power under subsection (1), the Secretary of State shall, as soon as practicable after the commencement date,—

(a) establish at least one body under paragraph (a) of subsection (1); or

(b) assign to at least one body, under paragraph (b) of that subsection, the duty referred to in subsection (4).

(3) A reference in this Part to an advisory body is a reference to a body which is established under subsection (1) or to which the duty there referred to is assigned under that subsection.

(4) It shall be the duty of an advisory body to advise the Secretary of State on any question which he may refer to it or on which it considers it should offer its advice—

(a) in connection with the administration of this Part; or

(b) otherwise in connection with the protection of birds or other animals or plants.

(5) In so far as it does not have power to do so apart from this subsection, an advisory body may publish reports relating to the performance by it of its duty under subsection (4).

(6) Before appointing a person to be a member of an advisory body established under subsection (1)(a), the Secretary of State shall consult such persons or bodies as he thinks fit.

(7) The Secretary of State may, out of moneys provided by Parliament and to such an extent as may be approved by the Treasury, defray or contribute towards the expenses of an advisory body established under subsection (1)(a).

The functions of the Secretary of State under section 23 of the 1981 Act are transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

On 19 February 2020, the Scottish Ministers by declaration established the Commission under section 23(1)(a) of the 1981 Act with the duty under section 23(4), that being to advise the Scottish Ministers in connection with the administration of Part 1 of the 1981 Act, or otherwise in connection with on the protection of birds or other animals or plants.

With the establishment of the Commission under section 36 of the 2006 Act, Scottish Ministers propose to use the power under section 23(1)(b) of the 1981 Act to assign to the Commission (by way of a further Ministerial declaration) the duty in section 23(4) of the 1981 Act. That further declaration will revoke the prior declaration.

Consultation

There is no statutory requirement on Scottish Ministers to consult on the establishment of a body under section 36 of the 2006 Act. The 1981 Act requires Scottish Ministers to consult such persons or bodies as they deem necessary before appointing a person to be a member of any body established under section 23(1)(a). Since 2018-19 when Scottish Ministers announced (through the PfG) their intention to establish an animal welfare commission for Scotland, the Scottish Government has had regular engagement and discussion with a number of key stakeholder groups on how best to ensure effective membership in terms of the required expertise, knowledge and qualifications required given the broad range of issues that the Commission may be required to consider. Discussions also took place with the UK AWC (formerly FAWC) and its Secretariat support staff within Defra.

Financial effects

Members appointed to serve on the Commission receive no financial remuneration for their time. Reasonable travel and subsistence expenses will be payable however and reimbursed in line with current Scottish Government travel and subsistence policy. Costs associated with the Commission will be met from the Animal Health and Welfare Divisional budget.

It is anticipated that the full Commission will meet 2 to 3 times per year with most communication and work done by e-mail and in smaller working groups between full plenary meetings. The costs associated with the Commission are not expected to be significant. For its first year the Scottish Government has allocated the Commission an operating budget of £50K. This will cover member's travel and subsistence expenses, costs associated with evidence gathering, meeting room hire, preparation and publication of reports etc.

The Secretariat support necessary to enable the Commission to function and deliver its work plan will be provided by staff in Animal Health and Welfare Division. This necessitated the recruitment of one additional B2 grade staff member who will act as a dedicated Secretariat resource.

Animal Welfare Team
Animal Health and Welfare Division
The Scottish Government
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