

# **Animal Health and Welfare (Scotland) Act 2006**

## **Guidance on Sections 32A – 32L for Authorised Persons**

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## **- Guidance on Sections 32A – 32L for Authorised Persons**

### **1. Introduction**

This guidance applies in Scotland only. It is issued by the Scottish Ministers under section 38 of the [Animal Health and Welfare \(Scotland\) Act 2006](#) (“the 2006 Act”). The purpose of this guidance is to help “authorised persons” understand the requirements of, and their functions under, sections 32A – 32M of the 2006 Act. Those sections were inserted into the 2006 Act by section 19 of the [Animals and Wildlife \(Penalties, Protections and Powers\) Act 2020](#) (“the 2020 Act”). Sections 32A – 32M of the 2006 Act came into force on 30 September 2021.

This guidance is issued with the purpose of assisting authorised persons in the carrying out of their functions. This guidance is advisory only and does not impose legal obligations on authorised persons. If there are conflicts between the content of this guidance and the provisions of the 2006 Act or any other legislation, such binding provisions should take priority. The interpretation of legislation is ultimately a matter for the courts.

### **2. Legislative background**

#### **2.1 Section 32 (taking possession of animals)**

The functions conferred on authorised persons by sections 32A – 32L of the 2006 Act relate to animals that have been taken into possession under section 32 of the 2006 Act.

Section 32(1) of the 2006 Act allows an inspector or constable to take action where such a person finds a protected animal which appears to be suffering or is likely to suffer if its circumstances do not change. Where a protected animal appears to be suffering, an inspector or constable may take steps which they consider need to be immediately taken to alleviate the suffering of the animal. Section 32(1) was not amended by the 2020 Act.

Section 32(2) allows an inspector or constable to take possession of a protected animal if a veterinary surgeon certifies that the animal is suffering or is likely to suffer if its circumstances do not change. However, where it is reasonable not to seek the assistance of, or wait for, a veterinary surgeon an inspector or constable can take possession of an animal under section 32(4) without veterinary certification if it appears that the animal is suffering or likely to suffer. 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. Section 32(5) allows an inspector or constable to take into possession any dependent offspring of an animal taken into possession under section 32(2) or (4). For example if it appears that a bitch with a litter of young puppies is suffering, then the bitch and the puppies could be taken into possession to ensure that the puppies’ welfare needs are met.

Where an inspector or constable has taken possession of an animal, that person may take it, or arrange for it to be taken, to a place of safety (such as an animal

welfare centre). Alternatively, the inspector or constable may care for the animal at the place where it was found.

Section 32(6)(c) expressly allows an inspector or constable to administer treatment (or arrange for the administration of treatment) to an animal that has been taken into possession under section 32 but only where the treatment is, in the opinion of the inspector or constable, unlikely to reduce the value of the animal or otherwise affect the character of the animal. The treatment must be, in the opinion of the inspector or constable, consistent with the long-term welfare of the animal. “Treatment” is defined in section 32A (10) and means any treatment or procedure which has any of the following purposes:

- preventing, reducing or alleviating an animal’s illness, disease, pain or discomfort,
- the better management of the animal,
- the health, safety or well-being of any other animal or person.

In practice the power in section 32(6)(c) regarding administration of treatment will allow most normal veterinary treatments or routine husbandry procedures that may be appropriate. This does not however allow for procedures which, although they may be desirable to make the animal easier to manage, could affect the character of or reduce the value of the animal, such as neutering an animal that would otherwise have been used for breeding. Section 32(6)(c) was inserted by the 2020 Act, and comes into force at the same time as sections 32A – 32L.

Section 32(7) allows an inspector or constable that has taken possession of an animal to use (or arrange to have used) a mark, microchip, or another method for identifying the animal.

Any reasonable expenses incurred by an inspector or constable in taking steps to alleviate suffering or taking possession of an animal under section 32 can be recovered from the owner or other person responsible for that animal as a civil debt. Such reasonable expenses must be deducted from compensation due to the owner of the animal following exercise of any powers to deal with the animal in section 32A, to the extent that—

- they were incurred in relation to an animal after it was taken into possession,
- they have been incurred by the authorised person who exercised the power in section 32A (or that person’s employer), and
- they have not been reimbursed by or on behalf of the owner.

The calculation of any compensation amount is commented on in greater detail in paragraph 4.14 below.

## **2.2 Section 33 (release orders where animals taken)**

Section 33 (release orders where animals taken) sets out a court process that is available to the owner of an animal taken into possession, or any other person appearing to the court to have sufficient concern for the animal, for seeking an order for release of the animal.

### **2.3 Section 34 (disposal orders where animals taken)**

Section 34 (disposal orders where animals taken) sets out a court process whereby certain persons may seek an order for an animal taken into possession to be destroyed, sold or disposed of in another manner.

### **2.4 Section 35 (resort to destruction of animals)**

Section 35(1) confers authority on an inspector or constable to destroy, or make arrangements for the destruction of, a protected animal where a veterinary surgeon certifies that the condition of the animal is such that destruction is appropriate.

Section 35(2) confers authority on an inspector or constable to destroy, or take steps for the destruction of, a protected animal without veterinary certification if it appears to the inspector or the constable that the condition of the animal is such that there is no reasonable alternative to destroying it and if it is reasonable in the circumstances not to seek or wait for veterinary advice. This provides for emergency situations such as mercy killing of severely injured animals.

## **3. Overview of powers**

Section 32A confers powers on authorised persons to deal with animals that have been taken into possession by an inspector or constable under section 32. The powers in section 32A may be exercised in relation to animals taken into possession under section 32 both before and after the coming into force of section 32A. Sections 32A – 32L set out the procedures that must be followed in relation to the powers in section 32A.

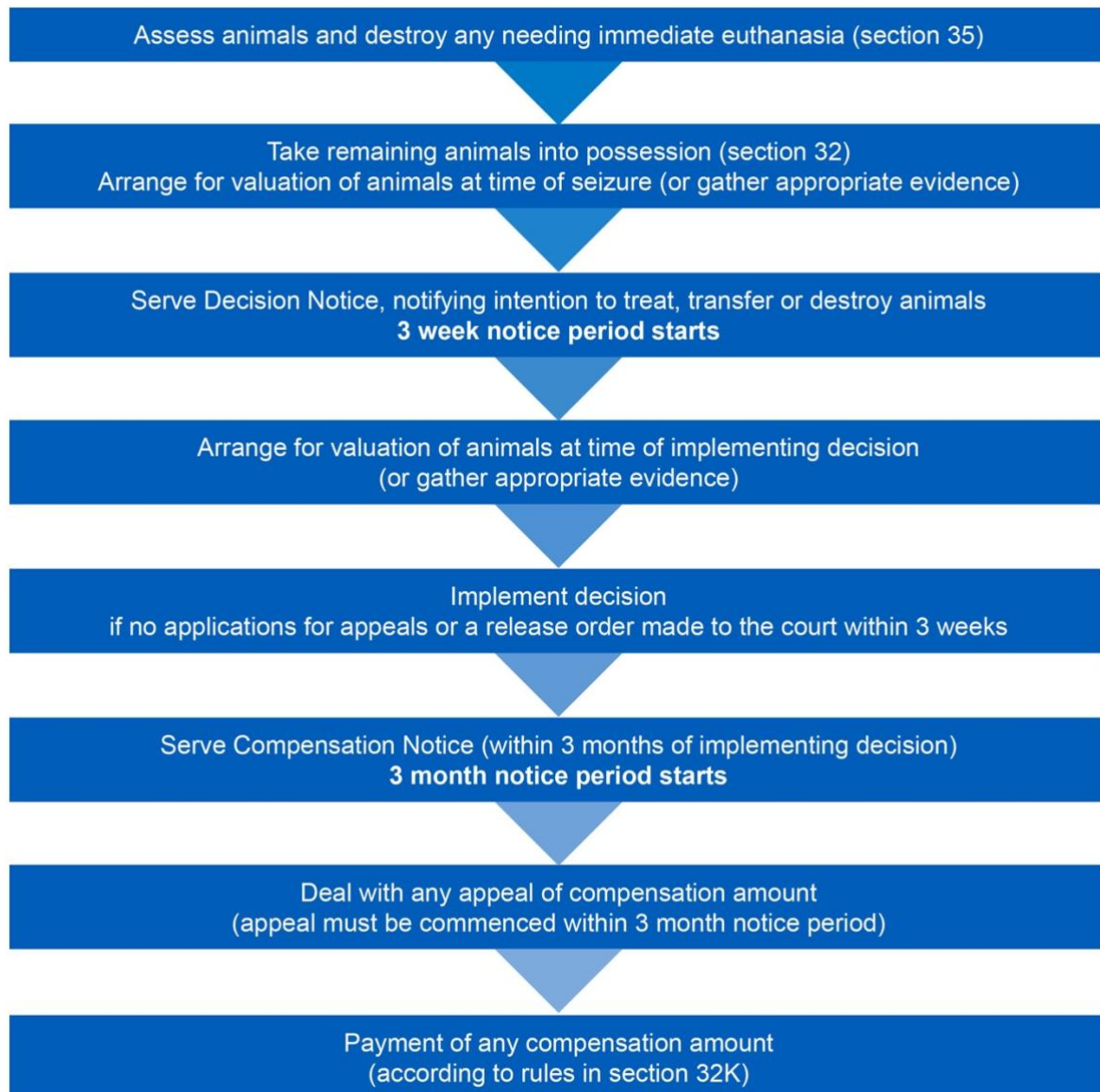
The new powers allow authorised persons to treat, transfer ownership of, or destroy animals taken into possession without the consent of the owner or the need to obtain a court order. The powers can be used in relation to any protected animal that has been seized under section 32 of the 2006 Act, including any animals taken into possession before section 32A came into force.

The new powers involve the service of two new types of notice:

1. a “decision notice” notifying the owner of the animal of a decision to treat, transfer ownership of, or destroy the animal, which must be served prior to implementation of the decision taken in relation to the animal,
2. a “compensation notice” notifying the owner of the animal the amount of any compensation payable after the implementation of the decision.

These notices may cover multiple animals that were taken into possession as a group and are believed to belong to the same person.

Typical order of events / decisions required when animals taken into possession:



As a result of the changes made to the 2006 Act by the 2020 Act, the powers in section 32A will be the default means of obtaining authority to transfer ownership of an animal taken into possession under section 32 in the absence of legal authority from the owner.

The powers in section 32A are the default means of destroying an animal taken into possession under section 32 where destruction of the animal is not permitted by section 35 in the absence of legal authority to do so from the owner.

The powers in section 32A are the default means for administering treatment to an animal if the treatment is not permitted by section 32A(6)(c). Accordingly, section 32A will be the usual means of obtaining authority to administer treatment to a seized animal where the treatment is likely to reduce the value of the animal or affect its character, in the absence of legal authority from the owner.

The court procedure for obtaining a disposal order under section 34 of the 2006 Act may only be used by authorised persons, and certain other persons involved in relation to an animal taken into possession under section 32, where a decision notice cannot be served.

#### **4. Detailed guidance on the sections 32A – 32L**

##### **4.1 Seizure of animal**

The powers to take animal into possession under section 32 of the 2006 Act remain unchanged. Inspectors and constables may have recourse to those powers in the same manner in which they did prior to introduction of the powers found in section 32A.

At the time the animal is seized, the inspector or constable (or a person who takes care of the animal whilst it remains seized) should either organise a valuation to establish the market value of the animal at the time it was taken into possession or arrange for sufficient information to be recorded about the condition of the animal to allow for the value of the animal at that time to be determined at a later date. For example, consideration should be given to taking photographs of the animal after it has been seized.

The above recommendation is made because the value of the animal at the time it is seized is relevant to calculation of any compensation amount payable in relation to the animal after exercise of the powers in section 32A by an authorised person. The authorised person may also opt to include specification of the value of the animal (as at the time of the seizure) in the decision notice that must be served prior to exercise of the power to deal with animals in section 32A.

##### **4.2 Authorised persons (section 32A(10))**

The powers to deal with animals in section 32A are conferred on “authorised persons”. The following are authorised persons:

- any inspector (a person appointed by the Scottish Ministers or a local authority as an inspector under section 49(2) of the 2006 Act) or constable who is caring for, or has arranged for the care of, the animal taken into possession under section 32 of the 2006 Act,
- any person with whom an arrangement for the care of the animal has been made under section 32 and who is authorised by the Scottish Ministers to exercise the powers to deal with animals.

Both individuals and legal persons may be appointed as authorised persons. Where a legal person is appointed as an authorised person, it may act through its employees to carry out its functions in relation to the powers to deal with animals in section 32A of the 2006 Act. Scottish Ministers will appoint legal persons such as the Scottish SPCA and Scottish local authorities as authorised persons for this purpose.

### **4.3 Powers conferred on authorised persons (section 32A(2))**

Section 32A confers power on authorised persons to take the following actions:

- administer treatment to an animal,
- transfer ownership of animal to another person,
- destroy an animal.

These actions are referred to as “relevant steps” throughout the legislation.

Treatment means any treatment or procedure which has any of the following purposes:

- preventing, reducing or alleviating an animal’s illness, disease, pain or discomfort,
- the better management of the animal,
- the health, safety or well-being of any other animal or person.

### **4.4 Decision-making (section 32A(3) and (4))**

In deciding to take a relevant step, the authorised person must have regard to the desirability of protecting the long-term welfare of the animal so far as it is reasonable to do so and avoiding increasing any expenses which a person may be required to reimburse.

Where deciding to administer treatment to the animal, there must also be regard to the desirability of protecting the value of the animal.

An authorised person may only decide to destroy an animal under section 32A if a veterinary surgeon has certified that destruction of the animal is appropriate. The ability to destroy an animal under section 32A sits alongside the power of an inspector or constable to destroy an animal under section 35. The power to destroy an animal under section 32A may enable destruction in circumstances in which destruction is not possible under section 35 (i.e. where destruction is not justified by the condition of the animal alone). An example of a situation in which destruction may be possible under section 32A but not section 35 would be where a farm animal that has no economic value due to having a false identity.

### **4.5 Relevance of decision notice (section 32A(5))**

A relevant step may not be taken until after service of a decision notice and lapse of the applicable time period. The purpose of the decision notice is to provide the owner of the animal with advance notice of the decision taken in relation to the animal and to alert the owner of the opportunity to appeal against that decision or to seek a release order in relation to the animal.

Where the owner does not make an appeal to the court, and no application for a release order under section 33 is made within the period of 3 weeks beginning with the date of service of the notice, the authorised person has authority to proceed by

taking the relevant step. The authorised person may not take the relevant step within that 3 week period.

Where an appeal is made within the 3 week period, the relevant step may not be taken until the court has made an order permitting it to be taken or the appeal has concluded without any order being made which prevents the relevant step being taken.

Where an application is made to the court for a release order within the 3 week period, the relevant step may not be taken until the application has been finally disposed of or abandoned.

Note that a decision notice may not be served in relation to an animal if an application to the court has already been made for a release order (under section 33) or disposal order (under section 34) and the proceedings in relation to the application have not been finally disposed of or abandoned.

#### **4.6 Content of a decision notice (sections 32B and 32C(3))**

The decision notice must include the following details:

- (a) a description of the protected animal,
- (b) the date on which the animal was taken into possession under section 32,
- (c) the relevant step that the authorised person intends to take in relation to the animal,
- (d) the reason for taking that step,
- (e) how any compensation will be assessed and the process by which it may become payable\*,
- (f) the effect of any forfeiture of compensation\*,
- (g) how service of the decision notice affects rights to apply for court orders to apply to release or otherwise dispose of animals under sections 33 and 34,\* and
- (h) the procedure for appealing to the court in respect of the decision notice and the period within which such an appeal may be made\*.

The items shown with an asterisk in the list above may be presented in generic text that is appropriate for the context in which the decision notice is served.

A decision notice need not include any details of the proposed transfer of ownership of the animal other than the fact that such a transfer is proposed as the relevant step. This means that the authorised person need not have a particular recipient of the animal in mind when making a decision to transfer ownership of an animal. Even if the owner contemplates transferring ownership of the animal to particular person at the time the decision is taken in relation to the animal, the authority conferred by the notice would enable transfer of ownership to another person.

A single decision notice may relate to multiple animals provided that the animals were taken into possession under the same exercise of the power under section 32 and, in the opinion of the authorised person, the animals belong to the same person. In order to be included in the same decision notice, the animals need not be taken



into possession at the same time. Where multiple animals are included in a decision notice, the animals should where possible be separately described.

The authorised person may choose to include in the decision notice the market value of the animal at the time the animal was seized. That value is the starting point for calculating any compensation that may be due after taking the relevant step. Where practicable, the authorised person should consider stating the value of the animal in the decision notice, as sight of this together with explanation of how compensation is to be calculated may dissuade the owner from seeking to appeal the decision taken in relation to the animal.

#### **4.7 Service of a decision notice (section 32C)**

The authorised person must serve the decision notice on the owner of the animal in order to have recourse to the powers to deal with animals. Before serving a decision notice, an authorised person must either make reasonable enquiries to establish the identity of the owner of the animal or be satisfied that such reasonable enquiries have been made by another person. The degree of enquiry that will be considered reasonable will depend on the circumstances. It is recommended that a record be kept of the enquiries that have been made regarding the identity of the owner of the animal.

A decision notice must be served on the owner of the animal by one of the following means:

- (a) leaving it at the owner's home or business address, or
- (b) sending it to such an address by—
  - (i) a registered post service (meaning a postal service which provides for the registration of postal packets in connection with their transmission by post and for the payment of compensation for any loss or damage), or
  - (ii) a postal service which provides for the delivery of the document to be recorded.

A decision notice may be left at an address by depositing it through an appropriate letter box or affixing it to a prominent place on the premises. Sending a decision notice by first or second class post will not amount to service for the purposes of the legislation.

The date the decision notice will be considered to have been served is the date it was either left at the owner's home or business address or **sent** to such an address, regardless of the date it was actually delivered or whether it was actually received by the owner. Since evidence that a decision notice has been sent is sufficient evidence of its service, authorised persons should ensure that, where possible, evidence of sending of the notice is retained.

#### **4.8 Appeals (section 32D)**

An appeal to the court against a decision notice may only be made within the period of 3 weeks beginning with the date of service of the decision notice. In the event of

an appeal, the authorised person may not proceed with any relevant step until the conclusion of any appeal.

The owner of the animal to which the decision notice relates or any other person appearing to the court to have sufficient concern for the animal may appeal to the court. Appeals may only be made to a sheriff court with jurisdiction. Appeals will be subject to summary application procedure, with the timetable decided by the court in accordance with the summary application rules.

An appeal to the court may be made in relation to a decision to serve a decision notice or to specify any relevant step in it on any of the following grounds:

- (a) that the decision is materially affected by an error of fact,
- (b) that the decision is wrong in law,
- (c) that the decision is unreasonable.

Therefore the scope for a successful appeal will be limited if the authorised person has followed the procedural steps required by the legislation in line with good practice.

Together with the categories of person that may bring an appeal, an authorised person, an inspector (if not an authorised person) and a constable who took the animal into possession under section 32 (if not an authorised person) are entitled to be heard in the course of an appeal.

There are a number of possible outcomes of an appeal. The court may do any of the following:

- make an order permitting the relevant step specified in the decision notice to be taken,
- make an order that the relevant step specified in the decision notice must not be taken,
- make an order varying the decision notice to permit a different relevant step to be taken in relation to the animal (including by varying a relevant step specified in the notice or by substituting for it another relevant step),
- make an order which would be available to the court on a valid application for application for a release order under section 33 on the same terms as set out in that section,
- dispose of the proceedings in any other way it thinks fit.

If the court makes an order that the relevant step specified in the decision notice must not be taken, the authorised person must refrain from implementing that step. Such an order would not prevent the authorised person deciding to take another relevant step in relation to the animal, in which case a new decision notice would need to be served, and the associated procedures followed, before implementing such a relevant step.

The decision of the court on an appeal regarding the decision is final, meaning that the appellant cannot thereafter appeal against the sheriff's decision regarding the disposal of the appeal.

#### **4.9 Applications for release orders (section 32E and section 33) and disposal orders (section 32F and section 34)**

Service of decision notice has the effect of imposing a time limit for any application to be made in relation to the animal for a release order under section 33. Such an application may only be made within the period of 3 weeks beginning with the date of service of the decision notice. In the event of an application for a release order being made to the court, the authorised person may not proceed with any relevant step until the conclusion of the resulting proceedings.

Service of a decision order has the effect of preventing any application being made in relation to the animal for an application for a disposal order under section 34.

The ability for a person to apply for a release order or disposal order will be reinstated in in any of the following circumstances:

- the court makes an order in an appeal under section 32D which results in no relevant step being permitted (other than treatment) and which does not result in the animal being returned to its owner or the transfer of ownership of the animal to another person,
- the relevant step is not taken within a period of a year beginning with the applicable date specified in section 32E(4) or 32F(4), or
- the authorised person advises the owner in writing that the relevant step specified in the decision notice will not be taken.

#### **4.10 Taking of relevant step**

Following service of a decision notice, the authorised person may proceed with taking the relevant step specified in the decision notice in the following circumstances:

- no appeal or application for a release order is made within the period of 3 weeks, or
- an appeal or application for a release order is made within the period of 3 weeks but the resulting proceedings are concluded without any order being made which would prevent the taking of the relevant step.

If the court makes an order requiring a relevant step to be taken that is different to that specified in the decision notice, the step ordered by the court must be taken.

Before taking a relevant step, the authorised person should either arrange for a valuation of the animal at that time or arrange for sufficient information to be recorded about the condition of the animal to allow for the value of the animal at that time to be determined at a later date. The above recommendation is made because the value of the animal at the time immediately before the taking of the relevant step is relevant to the calculation of any compensation amount payable in relation to the animal.

#### 4.11 Relevance of a compensation notice

A compensation notice must be served after the relevant steps have been taken, regardless of whether any compensation is payable to the relevant owner of the animal. The purpose of the compensation notice is to provide notification to the relevant owner of the animal of the following:

- that the relevant step has been taken,
- the authorised person's determination of the compensation amount, and
- whether the authorised person has elected to defer payment of the compensation amount.

Service of a compensation notice has the effect of triggering a 3 month period during which the relevant owner may appeal to the court for an order in respect of the compensation amount.

The relevant owner is the person who was the owner of the animal at the time it was taken into possession under section 32. This means that transfer of ownership of an animal between the date it was taken into possession and the date of payment of compensation amount does not affect any liability on the part of the authorised person to pay compensation.

#### 4.12 Content of a compensation notice (section 32G (1))

The compensation must include the following details:

- (a) a description of the animal,
- (b) which relevant step has been taken,
- (c) the date on which the relevant step was taken,
- (d) the compensation amount (if any) and how this has been calculated,
- (e) the effect the existence or possibility of relevant criminal proceedings may have on the payment of the compensation amount\*,
- (f) the process for payment of any compensation amount\*,
- (g) whether the authorised person is electing to defer payment of the compensation amount\*,
- (h) the procedure for appealing to the court in respect of the compensation amount\*

The items shown with an asterisk in the list above may be presented in generic text that is appropriate for the context in which the decision notice is served.

#### 4.13 Service of a compensation notice (section 32G)

Where the decision notice specifies only one relevant step, the authorised person must serve a compensation notice on the relevant owner **within 3 months** of the taking of the step.

Where the decision notice specifies more than one relevant step, the authorised person must serve a compensation notice on the relevant owner within three months of the earlier of the following events:

- the last relevant step being taken,
- the expiry of the period of 1 year beginning with the date on which the first relevant step is taken.

Where a compensation notice has required to be served because of the expiry of the period of 1 year beginning with the date of the first relevant step, the authorised person must also serve a compensation notice in relation to the taking of any other relevant step specified in the decision notice **within 3 months** of the taking of that other step.

If the authorised person acts promptly in taking all relevant steps specified in the decision notice a single compensation notice will normally be appropriate.

Before serving a compensation notice, an authorised person must either make reasonable enquiries to establish the **whereabouts** of the relevant owner of the animal or be satisfied that such reasonable enquiries have been made by another person. The nature of this duty is different to the duty to carry out reasonable enquiries before service of a decision notice: the enquiries prior to service of decision notice are about the identity of the owner; whereas the enquiries prior to service of compensation notice are about the **whereabouts** of the relevant owner. The purpose of the latter duty is to cater for the possibility that the place at which the decision notice was served is no longer the relevant owner's home or business address. The degree of enquiry that will be considered reasonable will depend on the circumstances.

A single compensation notice may be served in respect of multiple animals where a single decision notice was served in relation to the animals but only if relevant steps have been taken in relation to each animal by virtue of that same decision notice.

The same methods of service that are permitted in relation to decision notice are available in relation to service of a compensation notice. In addition, the authorised person may apply to the court for permission to serve the compensation notice by another method. The date the compensation notice will be considered to have been served is the date it was either left at the owner's home or business address or sent to such an address. Since evidence that a compensation notice has been sent is sufficient evidence of its service, authorised persons should ensure that, where possible, evidence of sending of the notice is retained.

#### **4.14 Calculation of compensation amount (section 32H)**

The compensation amount must be calculated with reference to the applicable formula prescribed by the legislation. These are summarised in the table below.

Relevant step in notice	Formula	Notes
Transfer of ownership of an animal	(A) The greater of the following: <ul style="list-style-type: none"> <li>the market value of the animal at the time it was seized</li> <li>the market value of the animal at the time immediately before the last relevant step specified in the compensation notice was taken</li> </ul>	There is no requirement on the authorised person to sell the animal for a price when transferring ownership of an animal. Where ownership of an animal is transferred in a context other than sale, the starting point for calculating compensation will be the greater of the two market values.
Destruction of an animal	<ul style="list-style-type: none"> <li>any proceeds of sale of the animal</li> </ul> <p>LESS</p>	In situations in which there has been no previous compensation notice in respect of the animal (i.e. the majority of cases) the calculation will be relatively straightforward.
Administration of treatment combined with transfer of ownership or destruction of the animal.	<p>(B) Any compensation amount which has been subject to a previous compensation notice in respect of the animal</p> <p>LESS</p> <p>(C) Any relevant expenses</p>	<p>No compensation amount will be payable where (A) is £0 (i.e. where the market value at the time of seizure and before taking the relevant step is nil and there are no proceeds of sale).</p> <p>No compensation amount will be payable where the total of (B) + (C) exceeds (A).</p>
Administration of treatment/procedure that reduces the value of the animal	<p>The decrease in value of the animal caused by the administration of treatment/procedure</p> <p>LESS</p> <p>Any relevant expenses</p>	<p>The decrease in the value of the animal may be calculated by deducting the value of the animal after the administration of the treatment from the value of the animal before the treatment, unless there is reason to believe that another factor has reduced the value of the animal.</p> <p>No compensation amount will be payable where the treatment does not decrease the value of the animal or when the relevant expenses exceed such decrease in value.</p>

Relevant expenses are defined as follows:

- any expenses reasonably incurred in relation to the animal after it was taken into possession,

- the reasonable costs of taking the relevant step specified in the compensation notice, and
- the reasonable costs of taking a relevant step specified in a previous compensation notice in respect of the animal, to the extent that they have been incurred by or on behalf of an authorised person or, where the authorised person is an individual, the authorised person's employer.

Relevant expenses must not be deducted if they have been reimbursed by or on behalf of the relevant owner or have been deducted when calculating the compensation amount in relation to a previous notice in respect of the animal.

#### **4.15 Application of any proceeds of sale (section 32I)**

Any proceeds of sale will first be directed to meet any liability of the relevant owner to reimburse any relevant expenses, and then to meet any liability of the authorised person to pay any compensation amount to the relevant owner.

The relevant owner is entitled to the compensation amount instead of any proceeds of sale of the animal.

#### **4.16 Deferral of payment of compensation amount (section 32K(3))**

The authorised person may opt to defer payment of the compensation in either of the following scenarios:

- relevant criminal proceedings have been commenced against the relevant owner and have not been concluded, or
- in the opinion of the authorised person, the relevant owner is at risk of having relevant criminal proceedings brought against them.

Relevant criminal proceedings are any proceedings for an offence under the following sections of the 2006 Act:

- section 19 (unnecessary suffering),
- section 20 (mutilation),
- section 21 (cruel operations),
- section 22 (administration of poisons),
- section 23 (animal fights),
- section 24 (ensuring welfare of animals),
- section 25(7) (failure to comply with a care notice),
- section 29 (abandonment),
- section 40 (11) (breach of a disqualification order),

but only if they arise from the circumstances which led to the animal being taken into possession.

Accordingly, it is not possible to defer compensation by reason of proceedings, or anticipated proceedings, arising from a separate animal welfare intervention.

As the compensation notice must include a statement on whether payment will be deferred, the authorised person must decide whether to defer payment of compensation before service of the compensation notice. The purpose of deferring compensation is to avoid payment of compensation where there is a possibility that a court will later order that compensation is forfeited.

#### **4.17 Appeals in respect of compensation (section 32J)**

The relevant owner of an animal may appeal to the court for an order in respect of the compensation amount. An appeal may only be concerned with the compensation amount; it is not possible to challenge a decision to defer payment of compensation in such an appeal.

Except where the authorised person has deferred payment of compensation, an appeal to the court may only be made within the 3 months beginning with date of service of the compensation notice except in the more unusual scenario in which more than one compensation notice has been served in relation to an animal. In that scenario, the appeal may be made within the 3 months beginning with the date of service of the latest compensation notice.

Where the authorised person has deferred payment of the compensation amount, an appeal may only be made within 1 month beginning with the date on which the compensation amount thereafter became payable.

The court may order the following:

- (a) payment of the compensation amount specified in the compensation notice,
- (b) payment of a different compensation amount,
- (c) that no compensation be paid.

The decision of the sheriff court on an appeal regarding compensation is final, meaning that the appellant cannot thereafter appeal against the sheriff's decision regarding the disposal of the appeal.

#### **4.18 Payment of compensation amount (section 32K)**

The legislation distinguishes between the date when any compensation amount becomes "payable" and the date by which the compensation amount must be paid to the relevant owner. When compensation becomes payable, the relevant owner is in principle entitled to the compensation amount; however, the relevant owner must then take a further step to trigger a duty on the part of the authorised person to make payment.

If there is no appeal in respect of compensation, the compensation amount usually becomes payable when the period for making such an appeal has expired. If there is an appeal, the compensation amount will usually become payable when the court decides the appeal and orders payment of compensation.

The exception to those rules is where the authorised person has deferred payment of compensation. Where the payment of compensation has been deferred, the date



on which the compensation amount becomes payable depends on whether relevant criminal proceedings have been commenced before a year has elapsed since the service of the compensation notice. In such a scenario, the compensation amount would become available on the conclusion of the relevant criminal proceedings. In any other scenario, the compensation amount becomes payable 1 year after service of the compensation notice. For the meaning of “relevant criminal proceedings” see paragraph 4.16 of this guidance.

Once it has become payable, the compensation amount must be paid within 3 weeks of the relevant owner providing details of the bank account to which the payment may be made.

Note that section 32K(6) makes special provision regarding determination of the identity of the relevant owner for the purposes of payment of compensation. Where there has been no appeal to the court in respect of the compensation amount, this will remain the person who was served with the compensation notice if the authorised person remains satisfied that such person is the relevant owner. If there has been such an appeal, the relevant owner is the person determined to be such in previous or fresh court proceedings in relation to the animal.

Where the authorised person is unable to pay the compensation amount (because the relevant owner has not provided the necessary bank account or for some other reason), the authorised person may apply to the court for an order as to the disposal of the compensation amount.

#### **4.19 Forfeiture of compensation (section 32L)**

A convicting court in relevant criminal proceedings (see paragraph 4.16) may order that a person forfeits (in whole or in part) any right to compensation which would otherwise be due in respect of the animal to which the offence relates.

The court can make an order of forfeiture and may include such other provision the court considers appropriate, including for the disposal of any proceeds of sale.



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