These notes refer to the Animal Welfare Act 2006 (c.45)
which received Royal Assent on 8 November 2006

ANIMAL WELFARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Prevention of harm

Section 4: Unnecessary suffering

18. The 1911 Act makes it an offence to cause unnecessary suffering to any domestic or captive animal, with limited exceptions including suffering caused under the Animals (Scientific Procedures) Act 1986. The 1911 Act has formed the basis for most prosecutions concerning animal cruelty and has been amended by several subsequent Acts. The provisions of the 1911 Act no longer reflect modern practice. Excepting the restriction to vertebrates, this section is intended to replicate the protection provided by the 1911 Act, but to simplify and update the legislation.

19. Subsection (1) sets out the circumstances in which a person who causes an animal to suffer commits an offence. It will be an offence to cause physical or mental suffering, whether this is by a positive act or an omission, to a protected animal where this is unnecessary and the person knew or could be expected to know that an animal would suffer as a result. The effect of paragraph (b) is to introduce an objective mental element. It will not be necessary to prove that a defendant actually knew his act or failure to act would cause suffering.

20. Subsection (2) provides that a person responsible for an animal who permits another person to cause unnecessary suffering will commit an offence. He will also commit an offence if he fails to take reasonable steps to prevent the suffering from taking place, for example, a failure of supervision. An offence of ‘permitting’ unnecessary suffering caused by another can only be committed by a person in relation to an animal for which he is responsible. See further section 3.

21. Subsection (3) sets out considerations to which the courts should have regard 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, for example, a horse suffers while being used for the purpose of riot control, this may well be considered necessary for the purposes of protecting persons or property (one of the considerations specified in the section). Or, where legitimate pest control activities entail an animal suffering, a court may consider whether this was in compliance with a relevant enactment, for a legitimate purpose, and proportionate to that purpose. The court would also consider the extent to which the suffering could reasonably have been avoided or reduced (another of the considerations specified in the section). Where suffering inevitably occurs in the course of complying with any regulations, licence or code of practice an offence would not normally be committed.