

# ANIMAL WELFARE ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Promotion of welfare*

#### *Section 9: Duty of person responsible for animal to ensure welfare*

48. The welfare offence in this section extends to non-farmed animals similar provisions found in the Welfare of Farmed Animals (England) Regulations 2000<sup>1</sup> (made under Part 1 of the Agriculture (Miscellaneous Provisions) Act 1968), which ensure the welfare of livestock situated on agricultural land. A duty to ensure welfare will therefore apply to all animals for which someone is responsible, as defined in section 3. Where someone is responsible for an animal, he has a duty to take steps that are reasonable in all the circumstances to ensure its needs are met to the extent required by good practice (*subsection (1)*).
49. Note that the duty will apply when a person abandons an animal for which he is responsible. The Abandonment of Animals Act 1960 is repealed and effectively replaced by this section, and anyone who leaves an animal without taking reasonable steps to ensure that it is capable of fending for itself and living independently will commit an offence under section 9. If the animal actually suffers as a result of its abandonment, there may also be an offence committed under section 4.
50. Note also that when a person transfers responsibility for an animal to another temporarily, the duty will apply in so far as he must take reasonable steps to ensure that the person to whom he transfers responsibility will care for it appropriately. Whether he fulfils his duty will depend on whether the steps he took to ascertain the competence of the person to whom he transferred responsibility were “reasonable in all the circumstances” under section 9(1).
51. *Subsection (2)* specifies some of the needs that a person responsible for an animal is required to meet (to the extent required by good practice), in order to avoid committing an offence under the section.
52. *Subsection (3)* specifies certain matters to which the courts should have regard, when considering whether a person has committed an offence under this section. The provision recognises that some otherwise lawful practices may prevent or hinder a person from ensuring that all of the welfare needs specified in *subsection (2)* can be met, and requires the courts to take this into account when considering what is reasonable in the circumstances of the case
53. Note that *subsection (3)* does not provide those responsible for animals with an absolute defence under this section. It will direct courts to take a lawful purpose or a lawful activity into account as one factor in the balance; it will not mean that no offence can be committed under this section so long as the activity or purpose is lawful.

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<sup>1</sup> S.I. 2000/1870

54. *Subsection (4)* clarifies that the killing of an animal is not in itself inconsistent with the duty to ensure its welfare, if done in an appropriate and humane manner.

### **Section 10: Improvement notices**

55. **Section 10** empowers inspectors under the Act to issue ‘improvement notices’ to those responsible for animals, if they are of the opinion that the requirements of section 9 are not being met.
56. *Subsection (1)* stipulates the information that an improvement notice must contain. The inspector must state that he believes the person is failing to comply with section 9 and the respects in which he believes the person is failing to comply; state the steps that should be taken in order to comply and the time in which they must be taken; and explain the effect of *subsections (2) and (3)*.
57. *Subsection (2)* ensures that no prosecution under section 9 can be initiated in respect of the non-compliance specified in the notice, or any continuation of that non-compliance, until the period for complying with the notice has passed. This will not affect the ability of enforcers to bring prosecutions under section 9 for non-compliance that is not specified in the notice – for example, a prosecution could still be initiated during the compliance period in relation to animals not specified in the notice (for failure to feed a flock of sheep, if the notice was issued for failure to feed a herd of cattle), or in relation to behaviour not specified in the notice (for failure to water when the notice relates to feed).
58. *Subsection (3)* provides that, where a person responsible for an animal takes the steps specified in a notice issued under *subsection (1)* within the time specified, no prosecution can be brought under section 9 for the non-compliance in relation to which the notice was issued, or any continuation of that non-compliance prior to the taking of the steps specified in the notice. This means that a person who takes the steps required by an inspector within the specified time will have a shield from prosecution under section 9, in relation to that particular instance of non-compliance with section 9.
59. This section will not affect the ability of enforcers to bring prosecutions under section 9 without issuing a notice first, or their ability to bring prosecutions in respect of non-compliance that is not specified in the notice (e.g. in respect of failure to feed cattle, where the notice relates to failure to feed sheep), or in respect of subsequent non-compliance (e.g. where a person takes the steps required by the notice, but two months later lapses again).
60. *Subsection (4)* provides that an inspector may extend, or further extend, the compliance period if he considers it appropriate.

### **Section 11: Transfer of animals by way of sale or prize to persons under 16**

61. *Subsections (1) and (2)* prohibit vendors from selling animals to any person under 16 in circumstances where they have reasonable cause to believe that the person is under 16. The prohibition applies equally to the direct sale of an animal and to any indirect sale that may accompany an otherwise legal transaction. The section extends the scope of the existing offence in section 3 of the Pet Animals Act 1951, which prohibits the sale of pet animals to children under 12.
62. *Subsections (3) and (4)* make it an offence to enter into an arrangement with a person reasonably believed to be under 16, who is not accompanied by an adult, whereby an animal is to be won as a prize, except in the circumstances specified.

### **Section 12: Regulations to promote welfare**

63. **Section 12** enables the Secretary of State and the National Assembly for Wales to make regulations to promote the welfare of animals for which a person is responsible, or the progeny of such animals. Those regulations made by the Secretary of State will

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

be subject to affirmative resolution in Parliament. Including the progeny of animals in this regulation-making power enables regulations to be introduced governing animal breeding that protect the offspring as well as the parent animal.

64. *Subsection (1)* creates a general power to make regulations for the purpose of promoting the welfare of animals for which a person is responsible.
65. *Subsection (2)* provides a non-exhaustive list of purposes for which the regulation-making power in *subsection (1)* may be exercised. This includes power to make regulations specifying how people responsible for animals should meet their animals' needs (section 62(5) provides that an "animal's needs" are to be understood as including those set out in section 9(2)).
66. *Subsection (3)* authorises the appropriate national authority to make it an offence to breach specified provisions of the regulations and confers associated powers. The power to apply a "relevant post-conviction power" in relation to conviction for an offence under the regulations enables the regulations to provide that conviction for certain offences will have certain consequences. For example, the regulations could provide that, on conviction for breach of a specified regulation, the court should have power to disqualify a person from owning animals under section 34. The phrase "relevant post-conviction power" is defined at section 62(6).
67. *Subsection (6)* imposes a duty on the Secretary of State and the National Assembly for Wales to consult interested parties before introducing regulations under this section.