

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

## **ANIMAL WELFARE ACT 2006**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Animal Welfare Act 2006 which received Royal Assent on 8 November 2006. They have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

#### **BACKGROUND**

3. The Act brings together and updates legislation that exists to promote the welfare of vertebrate animals, other than those in the wild. The categories of animals that are protected under the Act depend on the offence in question. For example, the duty to ensure an animal's welfare only applies to animals that are owned or for which someone is otherwise responsible, but the cruelty and fighting offences have a wider application. The Act has only limited application to animals in research establishments, the welfare of which is regulated by the Animals (Scientific Procedures) Act 1986. The Act aligns welfare standards for farmed animals, which have generally kept in line with developments in scientific understanding, and non-farmed animals which are largely protected by laws formulated in the early twentieth century.
4. The legislation that this Act repeals is set out in Schedule 4.
5. A draft Bill was published in July 2004 (Cm 6252). The draft followed a public consultation conducted between 2 January 2002 and 30 April 2002. (Analysis of the responses to that consultation can be found on the Defra website at <http://www.defra.gov.uk/animalh/welfare/domestic/awbillconsultanalysis.pdf>.)
6. In the second half of 2004, the House of Commons Select Committee on Environment, Food and Rural Affairs carried out pre-legislative scrutiny of the draft Bill. The Select Committee published its report on 8 December 2004 (HC 52-I and II). On 3 March 2005 EFRA published Defra's response to the Committee's report (HC 385). Both the Report and the response are available on the UK Parliament's website at:  
[www.publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/cmenvfru.htm](http://www.publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/cmenvfru.htm). The Committee published a further report on 14 December 2005 (HC 683). This report is available at [www.publications.parliament.uk/pa/cm/cmenvfru.htm](http://www.publications.parliament.uk/pa/cm/cmenvfru.htm). No response was required as the report contained no recommendations.

## **OVERVIEW**

7. The Act covers various aspects of animal welfare and sections are grouped under 11 headings. These are as follows:

**Introductory** Sections 1 to 3 set out the scope of the Act and define the different categories of animal to which the Act applies.

**Prevention of harm** Sections 4 to 8 set out offences relating to cruelty and animal fighting.

**Promotion of welfare** Sections 9 to 12 set out specific offences which relate to the promotion of welfare. Section 9 imposes a duty to ensure welfare. Section 10 empowers inspectors under the Act to issue improvement notices to those responsible for animals. Section 11 relates to the sale of animals to persons under 16 and the giving of animals as prizes to unaccompanied under 16s. Section 12 provides for the making of regulations for the purpose of promoting the welfare of animals for which a person is responsible.

**Licensing and registration** Section 13 confers power to make regulations that will require people conducting certain activities involving animals to register or hold a licence, and to deal with existing licensing or registration regimes relating to such activities.

**Codes of practice** Sections 14 to 17 contain details of the purpose and function of Codes of Practice along with details of how they will be made, amended and revoked.

**Animals in distress** Sections 18 to 21 describe the powers which an inspector or constable has to enter premises and remove animals which are in distress, including powers to take the animal into possession or to destroy it. Further, they set out the procedure for the treatment, release, sale, other disposal or destruction of animals under these sections.

**Enforcement powers** Sections 22 to 29 set out the enforcement powers contained in the Act, including the powers of entry and search, seizure of animals and inspection under certain conditions.

**Prosecutions** Sections 30 and 31 give local authorities the power to prosecute proceedings for any offence under the Act and set time limits for prosecutions.

**Post-conviction powers** Sections 32 to 45 set out the penalties available on conviction. They include imprisonment, fine, deprivation, disqualification, destruction, forfeiture of equipment and cancellation of a licence or registration.

**Scotland** Sections 46 to 50 make provision for disqualification orders under the Act to apply across Great Britain and for the powers of the Scottish courts in relation to breach in Scotland of disqualification under the Act.

**General** Sections 51 to 69

Schedule 1 (Regulations under section 13)

Schedule 2 (Powers of entry, inspection and search: supplementary)

Schedule 3 (Minor and consequential amendments)

Schedule 4 (Repeals)

## **TERRITORIAL EXTENT**

8. The Act extends to England and Wales. It extends to Scotland only in respect of (a) section 46, which enables disqualification orders made by the courts in England and Wales to have force in Scotland, (b) sections 47 to 50, which make provision about the powers of the Scottish courts to enforce in Scotland of disqualification orders under the Act, (c) repeals of certain legislation and (d) commencement orders. It extends to Northern Ireland in respect of certain consequential and minor amendments only.

## **TERRITORIAL APPLICATION: WALES**

9. In relation to England, all of the regulation and order making powers contained in the Act are to be exercised by the Secretary of State. In relation to Wales all of those same powers are to be exercised by the National Assembly for Wales. Unlike for England, the Act does not set out the parliamentary procedure for codes of practice issued by the National Assembly for Wales, although such codes will be subject to scrutiny in accordance with the Assembly's Standing Orders. In all other respects the Act affects England and Wales in the same way.

## **APPLICATION TO THE SEA**

10. The Act will apply to all inland waters (rivers, streams, lakes and ponds) and to estuaries. It will not apply to the sea.

## **COMMENTARY ON SECTIONS**

### **Introductory**

#### **Section 1: Animals to which the Act applies**

11. The Act will apply only to vertebrate animals, as these are currently the only demonstrably sentient animals. However, section 1(3) makes provision for the appropriate national authority to extend the Act to cover invertebrates in the future if they are satisfied on the basis of scientific evidence that these too are capable of experiencing pain or suffering.

12. In the case of Wales, the "appropriate national authority" means the National Assembly for Wales, and for England it means the Secretary of State.

#### **Section 2: "Protected animal"**

13. This section, together with section 3, establishes the scope of the principal offences under the Act, by defining those animals which the Act will cover. The cruelty and fighting offences (Sections 4 – 8) extend to "protected animals" as defined in this section, whereas the welfare offence (Section 9) applies to animals for which a person is "responsible" as that word is to be understood under section 3.

14. Animals of a kind commonly domesticated in the British Islands are to be "protected animals", whether they can be said to be under the control of man or not. This ensures that, for example, stray dogs and feral cats are covered. Kinds of animals which are to be considered commonly domesticated in the British Islands are those whose collective behaviour, life cycle, or physiology has been altered as a result of their breeding and living conditions being under human control, in the British Islands, for multiple generations.

15. Animals of a kind not commonly domesticated in the British Islands are only “protected animals” to the extent that they are under the control of man or are not living independently in the wild. “Under control” is intended to be a broader expression than “captive animal”, which was used in an equivalent context in the Protection of Animals Act 1911 (“the 1911 Act”). The latter expression was interpreted narrowly in the courts. “Not living in a wild state” is intended to cover those animals which may have ceased to be under the control of man, and therefore do not fall within section 2(b), but are not yet living wild, including (though not limited to) animals which have escaped, for example from a zoo or circus.

### **Section 3: Responsibility for animals**

16. Sections 4(2), 5(2), 6(2), 7(2) and 9 only apply to persons who are “responsible for an animal” as that phrase is understood under this section. Similarly, the power to issue improvement notices in section 10 and the regulation-making power in section 12 can be exercised only in relation to animals for which a person is responsible. The same is true for licensing and registration provisions under section 13.

17. 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 its care for a specific purpose or by virtue of owning it. This will include a person who assumes responsibility for the animal temporarily (*subsection (1)*) such as, for example, a veterinary surgeon taking responsibility for the animals kept in his surgery overnight, staff at boarding premises, and staff at animal sanctuaries.

### **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.

### **Section 5: Mutilation**

22. This section prohibits the mutilation (referred to as a “prohibited procedure”) of any protected animal unless the procedure has been exempted from the general prohibition by regulations made under *subsection (4)*. The expression “protected animal” is defined in section 2.

23. *Subsection (3)* defines the term “carrying-out of a prohibited procedure”.

24. *Subsection (4)* makes provision for the Secretary of State and the National Assembly for Wales to specify procedures which will be exempted from *subsections (1)* and *(2)*.

25. *Subsection (5)* imposes a duty on the Secretary of State and the National Assembly for Wales to consult before introducing regulations under *subsection (4)*.

26. *Subsection (6)* makes clear that docking a dog’s tail is outside the scope of this section. This is to be considered solely under section 6.

### **Section 6: Docking of dogs’ tails**

27. Section 6 prohibits the docking of a dog’s tail, otherwise than for the purposes of its medical treatment, the dog is a certified working dog and is not more than 5 days old. It also restricts the showing of docked dogs. A dog docked after this section comes into force can only be shown if it is for the purpose of demonstrating its working abilities.

28. *Subsections (1)* and *(2)* make it an offence for a person to dock a dog’s tail, or for a person responsible for a dog to cause its tail to be docked or permit it to be docked, otherwise than for the purpose of its medical treatment.

29. *Subsections (3)* and *(4)* stipulate that an offence would not be committed under *subsection (1)* or *(2)* if the dog was under 5 days old and a vet had certified that he had seen evidence that it was likely to work. This would not affect the Veterinary Surgeons Act 1966 which provides that the docking of a dog’s tail can only be done by a vet. *Subsections (4)*, *(5)* and *(6)* provide for the appropriate national authority to make regulations specifying both the evidence that a vet must see before he can certify the dog as a working dog, what types of work will qualify a dog as a working dog and the types (breed) of dog that may be exempted from the ban.

30. *Subsection (7)* sets out a defence available in respect of the *subsection (1) and (2)* offences. A person who docks a dog's tail, or causes or permits a dog's tail to be docked, will not commit an offence if he reasonably believes that the dog is under 5 days old and that a vet has certified it as a working dog. For example, if a vet docked the tail of a 6 day old police dog, reasonably believing it was 4 days old, he would not commit an offence.

31. *Subsection (8)* requires a person who owns a dog which was legitimately docked by a vet to ensure that the dog is identified as having been legally docked. The owner will commit an offence if he does not take reasonable steps to ensure that his docked dog is so identified before it is three months old. *Subsection (13)(b)* allows the appropriate national authority to make regulations about the method of identification required, e.g. micro-chipping.

32. *Subsections (9) to (11)* introduce a restriction on the showing of docked dogs. *Subsection (9)* makes it an offence to show a dog at an event to which a fee-paying public is admitted if the dog has had its tail removed. It will be irrelevant, for these purposes, whether the dog's tail was removed in England and Wales or elsewhere. This ban on showing will apply to all dogs whose tail was removed after the date on which this section comes into force.

33. *Subsection (10)* provides an exemption to that ban if a certified working dog is being shown only for the purpose of demonstrating its working ability. *Subsection (11)* ensures that a person would not be liable to conviction if he could show that he reasonably believed either that the dog was docked before the section came into force, that the fee paying public was not being admitted or that the dog was a certified working dog demonstrating its working abilities.

34. *Subsection (13)* allows the appropriate national authority to make regulations about the functions of inspectors in enforcing this section. This will enable the appropriate national authority to make provision, for example, empowering an inspector to inspect a certificate or read a microchip on a dog.

### **Section 7: Administration of poisons etc.**

35. This provision, which replaces section 1(1)(d) of the 1911 Act, creates offences relating to the administration to a protected animal of any poisonous substance or drug where the person has no lawful authority or reasonable excuse.

36. Under *subsection (2)*, when a person is responsible for an animal, he must not permit another person to administer a poisonous or injurious substance or drug to the animal, unless that person has a lawful authority or reasonable excuse. Furthermore, a person responsible for an animal must take reasonable steps to prevent any other person from administering any drug or substance that he knows to be poisonous or injurious to the animal.

37. 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. It is, however, necessary to show that the person accused of the offence knew the poisonous nature of the substance administered to the animal. While this mental element relates to the nature of the substance administered, the term "administer" should be understood as indicating a deliberate action. Accidental poisoning will not be caught by section 7.

38. *Subsection (3)* provides for the offences in *subsections (1)* and *(2)* to apply in cases where substances that are otherwise harmless have been administered in a harmful quantity or way.

### **Section 8: Fighting etc.**

39. This section creates a specific offence of animal fighting, which in the 1911 Act was subsumed under the general heading of “offences of cruelty”.

40. The offences under the section replace the offences under sections 1(1)(c), 5A and 5B of the 1911 Act.

41. *Subsection (1)(a)* will penalise a person causing an animal fight, or attempting to do so. *Subsections (1)(b)-(i)* cover various activities relating to animal fights, such as receiving money for admission, publicising a fight, training an animal to fight and taking part in a fight.

42. *Subsection (2)* will make it an offence to be present at an animal fight without lawful authority or reasonable excuse.

43. *Subsection (3)* creates offences relating to recordings of animal fights that took place in Great Britain after this section becomes law. It will be an offence to supply, publish, show, or possess with intent to supply, such a recording without lawful authority or reasonable excuse. An exemption from these offences is provided in *subsection (5)* for recordings used, or intended for use, in a “programme service” as defined in the Communications Act 2003.

44. *Subsection (6)* makes provision to ensure that the national authority can comply with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market (Directive on electronic commerce). The Directive requires that the offence is extended to information society service providers established in the UK but who operate (for example by publishing) in another EEA State. The government intends to effect this extension by making regulations under section 2(2) of the European Communities Act 1972. *Subsection (6)* will ensure that the same penalties can be applied to such providers as to others who commit the offence, when the offence is extended.

45. *Subsection (7)* 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. The provision applies to any protected animal which under section 2 includes any animal under the control of man, whether on a permanent or temporary basis. As a result, a person commits an offence in relation to an animal fight even if there is no one who is responsible for the animal or animals involved within the meaning of section 3.

46. Legitimate pest control activities which involve the use of one animal to catch another will not fall within the definition of an animal fight, as the animals are not placed together for the purpose of fighting, wrestling or baiting.

47. *Subsection (7)* defines a video recording as a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image. This definition will not cover still photographs.

## **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.

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.

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



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 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.

## **Licensing and registration**

### **Section 13: Licensing or registration of activities involving animals**

68. Under *subsection (1)* regulations made for the purpose of promoting animal welfare may require certain animal-related activities to be licensed by the local authority or appropriate national authority. At present, licensing regimes contain many identical or similar provisions and are to be found in a variety of statutes and secondary legislation.

69. Under *subsection (3)* activities may be subject to a registration rather than a licensing requirement. The registration procedure 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 on particular activities, but where the additional controls and costs of a licensing regime are either unnecessary or would be unduly burdensome.

70. *Subsection (5)* provides that licensing and registration requirements may only be introduced for the purposes of promoting the welfare of animals for which a person is responsible, or the progeny of those animals.

71. *Subsection (6)* provides that it is an offence to carry on an activity for which a licence or registration is required without being licensed or registered. Schedule 1 makes further provision about licensing and registration under this power; see the relevant explanatory note.

72. *Subsection (7)* enables the Secretary of State or the National Assembly for Wales to set out the regimes introducing a licence or registration requirement in regulations. As now, licensing and registration will normally be the responsibility of the local authority, though under the Act it would be possible in principle to fulfil this function centrally. Regarding

entry and inspection in connection with licensed and registered activities, see the explanatory notes for sections 25 to 27.

73. *Subsection (8)* enables the Secretary of State or National Assembly for Wales to repeal the provisions of existing Acts that impose licence or registration requirements relating to activities involving animals. Other provisions of the relevant Acts which assume the existence of the licence or registration requirement may be consequentially repealed (see paragraph 19(2) of Schedule 1). The power will be exercised where it is decided to replace provision for licensing or registration in an existing Act with provision for licensing or registration in regulations. The power will also enable provision for licensing or registration in an existing Act to be repealed without replacement should that be considered appropriate.

74. *Subsection (9)* imposes a duty on the Secretary of State and the National Assembly for Wales to consult interested parties before introducing regulations under this section.

## **Codes of practice**

### **Section 14: Codes of practice**

75. Codes of practice are already widely used to promote the welfare of farmed animals and the Act extends their use to non-farmed animals.

76. Codes provide non-binding guidance - agreed by Parliament after appropriate consultation - that enforcers and the courts can refer to when making judgements on whether the relevant welfare standards stipulated in the Act have been attained. Owners and keepers of animals may also find the codes a useful resource by which to increase or confirm their understanding of acceptable welfare standards and to regulate their conduct accordingly.

### **Section 15: Making and approval of codes of practice: England**

77. *Subsections (1) to (4)* of section 15 provide that codes of practice shall only be issued following consultation with interested parties and subject to a negative parliamentary procedure whereby the code is laid before parliament in draft, and cannot be issued if the draft is disapproved within 40 days.

78. *Subsection (5)* makes provision for the commencement of codes of practice.

### **Section 16: Making of codes of practice: Wales**

79. In relation to animals kept in Wales, the power to make codes of practice lies with the National Assembly for Wales in accordance with its own procedures. Similar consultation procedures must be followed in Wales as in England before the code is adopted. The code will state the date on which it comes into force.

### **Section 17: Revocation of codes of practice**

80. Codes of practice may be revoked by the Secretary of State or the National Assembly for Wales by order.

81. Section 61 *subsections (3) to (5)* provide that where a code is revoked without being replaced, a draft of the instrument containing the revocation order must be laid before Parliament.

## **Animals in distress**

### **Section 18: Powers in relation to animals in distress**

82. This section authorises an inspector or police constable who finds a protected animal that is suffering to take those steps that need to be taken immediately to alleviate the animal's suffering (see section 2 for the definition of "protected animal" and section 51 for the definition of "inspector"). Powers of entry are conferred by section 19. Section 18 is wider than the power in the Protection of Animals Act 2000 (which this Act repeals) in three ways. First, the power is available even if no proceedings have been commenced. Secondly, it is not restricted to animals kept for commercial purposes. Thirdly, it allows inspectors to take into possession not only animals which are suffering but also those which are likely to suffer if action is not taken.

83. Under *subsection (3)*, where an animal is suffering to such an extent that there is no alternative but to kill it and a veterinary surgeon issues a certificate to that effect, the enforcement authority (an inspector or police constable) may kill the animal or arrange for it to be killed either where it is or elsewhere, or arrange for those steps to be taken by someone else.

84. *Subsection (4)* allows an inspector or constable to kill an animal without waiting for a vet. This only applies where the animal is suffering to such an extent that there is no alternative but to kill it immediately.

85. *Subsection (5)* authorises an inspector or constable to take a protected animal into possession where a veterinary surgeon certifies that it is suffering or is likely to suffer.

86. *Subsection (6)* authorises the inspector or constable to do the same without the certificate of a veterinary surgeon in an emergency.

87. *Subsection (7)* ensures that where an animal taken into possession under *subsection (5)* has dependent offspring, those offspring can be taken into possession along with it. This ensures that even if the offspring are not themselves suffering or likely to suffer, they can still be taken with the parent.

88. *Subsection (8)* gives an inspector or constable a right to remove the animal to a place of safety. They also have the power to care for the animal either on the premises where it was being kept or elsewhere. This subsection also allows an animal to be marked so it can be identified, for example if it is being kept with similar animals. Any method used to mark the animal would have to be compatible with the ban on mutilations in section 5 of the Act, and any regulations made under section 5(4).

89. *Subsection (10)* gives a vet the power to examine and take samples (such as blood or urine) from an animal so that he can decide if it should be killed or taken into possession.

90. *Subsection (11)* requires an inspector or constable as soon as reasonably practicable to take such steps as are reasonable in all the circumstances to notify the person responsible for the animal that he has taken action under section 18 in relation to that animal. This obligation is only engaged where the inspector or constable acts otherwise than with the knowledge of the person responsible for the animal.

91. *Subsection (13)* allows a person to apply to the court for an order to reimburse him for expenses he incurs when acting under this section. The court can make an order against the

person it considers most appropriate. *Subsection (14)* allows the person against whom such an order is made to appeal.

### **Section 19: Powers of entry for section 18 purposes**

92. This section confers powers of entry for the purposes of section 18. It authorises an inspector or police constable to enter onto premises to deal with a protected animal that is believed to be suffering or likely to suffer if remedial action is not taken. Obstruction of a person exercising such a power is an offence (paragraph 16 of Schedule 2).

93. *Subsection (1)* confers a power to enter to search for a suffering animal which the constable or inspector reasonably believes to be there.

94. *Subsection (2)* provides that the power of entry does not extend to any part of premises which is used as a private dwelling. For example, an inspector could enter the parts of a building used as an office but not those parts which are used for residential purposes unless he first obtains a warrant from a justice of the peace under *subsection (4)*.

95. *Subsection (3)* authorises the use of reasonable force to effect entry without a warrant, where entry is needed urgently before a warrant can be obtained, for example if an animal is suffering so much that it would be inappropriate to delay. Where there is no such urgency, if force is required to gain entry, a warrant must be obtained from a justice of the peace, as provided for by *subsection (4)*.

96. *Subsection (5)* sets out the criteria that an application must meet before a justice of the peace may grant a warrant. There must be reasonable grounds for believing that there is a protected animal on the premises, that is either suffering or likely to do so, and one of the four conditions in section 52 must be met.

### **Section 20: Orders in relation to animals taken under section 18(5)**

97. Where an animal has been taken into possession under section 18(5) and the animal is being retained, this section enables a magistrates' court to make an order for the treatment, giving up, disposal or destruction of the animal.

98. *Subsection (1)* provides that the court can make an order relating to the treatment, giving up, sale, disposal or destruction of the animal. If a person responsible for an animal considers it was wrongly taken into possession under section 18(5), he could apply under section 20(1)(b) to have the animal returned.

99. In *subsection (1)(a)* 'treatment' is intended to cover significant interventions such as castration. Routine day-to-day treatment such as worming or routine veterinary attention is considered to be caring for the animal as set out in section 18(8)(b).

100. *Subsection (2)* provides that orders made under *subsection (1)* can also apply to the offspring of an animal that was pregnant at the time it was taken into possession under section 18(5).

101. *Subsection (3)* enables an application to be made to the court for an order under *subsection (1)*, either by the owner of the animal taken into possession or by another person with a sufficient interest in the animal. The court has the discretion to make any order under *subsection (1)* that it considers appropriate, including an order other than that applied for. For example, the court could hear an application for sale under section 20(1)(c), but determine that the animal should be returned to its owner under section 20(1)(b).

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

102. *Subsection (4)* provides that an order cannot be made unless either the owner has been given an opportunity to be heard, or the court is satisfied that it is not reasonably practical to communicate with him.

103. *Subsection (5)(b)* enables the court to make directions for carrying out an order under *subsection (1)*.

104. *Subsection (6)* provides that the court, when deciding how to exercise its powers under the section, must consider the financial effect the decision will have on the owner of the animal and on others.

105. *Subsection (8)* provides that, where a court orders that the animal taken into possession under section 18(5) be sold, the proceeds of the sale to which the owner is entitled are to be reduced so as to take account of the expenses incurred by the person who seized or cared for the animal under section 18(5), and the expenses incurred by any person carrying out the order for sale.

### **Section 21: Orders under section 20: appeals**

106. Where a court has made an order under section 20(1) in relation to an animal, section 21(1) allows the animal's owner to appeal to the Crown Court against the order.

107. *Subsection (2)* suspends the operation of orders made under section 20(1) until the possibility of a successful appeal has expired. *Subsection (3)* provides that if an order is suspended under *subsection (2)*, the court may, nevertheless, give directions as to how the animal(s) should be dealt with during the suspension. *Subsection (4)* gives examples of the kinds of directions the court may give under *subsection (3)(b)* to provide for the animal's welfare pending the determination of the appeal.

108. *Subsection (5)* also allows the animal's owner a right of appeal where the court has refused to grant an order which he has applied for. So if the court, for example, refuses to return the animal, the owner can appeal against that decision.

109. *Subsection (6)* provides that a person against whom an order for the reimbursement of expenses is made under section 20(5) shall also have a right of appeal to the Crown Court.

## **Enforcement Powers**

### **Section 22: Seizure of animals involved in fighting offences**

110. This section confers on a police constable power to take possession of an animal in relation to which an offence under section 8(1) or (2) has been committed. The use of this power would ensure that a seized animal could not be involved in further fighting offences. The provision will also improve the chances of enforcing a deprivation or destruction order upon conviction. The Police (Property) Act 1897, which provides that a court may order the return of property seized by the police on application by the owner, will apply to animals seized under this power. This will achieve the same outcome as an order under section 20(1)(b) would for an animal seized under section 18(5).

111. The effect of *subsections (3) to (5)* is that the power contained in *subsection (1)* may be exercised in relation to parts of premises used as a private dwelling only if a justice of the peace has issued a warrant authorising entry to them.

112. *Subsection (5)* provides that, before a justice of the peace issues a warrant, he must be satisfied that there are reasonable grounds for believing that an animal used in connection with a fighting offence is to be found on the premises. One of the four conditions set out in section 52 must also be met.

113. *Subsection (6)* provides that the power to seize extends to any animal which took part in the fight in relation to which an offence under section 8(1) or (2) has been committed. So, where an offence under section 8(2) is reasonably suspected, for example, the power to seize extends to the animals used in the fight at which the person was present.

### **Section 23: Entry and search under warrant in connection with offences**

114. This section provides that a justice of the peace may issue a warrant authorising an inspector or a constable to enter premises to search for evidence of offences relating to cruelty, mutilations, tail docking, administration of poisons, fighting, welfare, carrying out relevant activities without a licence or registration, or breaching a disqualification imposed under section 34 (these offences are listed in *subsection (3)*).

115. Paragraph 10 of Schedule 2 confers a number of additional powers on a person exercising a power of entry under a warrant under this section. The effect of paragraph 14 of the Schedule is that a warrant authorises a person to use reasonable force in the exercise of those additional powers. Note that paragraph 1 of the Schedule imposes a number of safeguards in relation to warrants under the Act.

### **Section 24: Entry for purposes of arrest**

116. This section adds the most serious offences under this Act (those in sections 4, 5, 6(1) and 6(2), 7 and 8(1) and 8(2)) to the list of offences in section 17(1)(c) of the Police and Criminal Evidence Act 1984. This ensures the police have power to enter and search premises for the purposes of effecting an arrest in connection with these offences.

### **Section 25: Inspection of records required to be kept by holder of licence**

117. *Subsection (1)* enables an inspector to require that the holder of a licence, granted under regulations made under section 13, produce any records that he is required to keep by a condition of a licence.

118. *Subsection (2)* deals with records stored electronically, for example on a computer. In this case, the inspector may require records to be printed or to be saved onto a disc or similar device. This is to enable them to be taken away and considered without removing the computer on which they are stored.

### **Section 26: Inspection in connection with licences**

119. This section concerns powers of inspection in relation to activities for which it is necessary to obtain a licence under section 13(1). It provides that routine inspections may be carried out to check that licence conditions are being complied with. Currently, in relation to some activities that require a licence, inspections can only be made when inspectors suspect an offence has been committed.

120. *Subsection (1)* sets out the purposes for which the power of inspection may be exercised. Inspectors can check that any licence conditions are being complied with. They are also able to check that the general requirements of the Act and any secondary legislation made under it are also being complied with.

121. *Subsection (2)* confers powers to enter and inspect licensed premises and premises where the inspector reasonably believes a licensed activity is going on. In both cases, the inspector may enter a private dwelling only if he gives 24 hours' notice (*subsection (3)*).

122. There is no power for an inspector to apply for a warrant under this section. Powers to apply for a warrant to enter will be available elsewhere in the Act if the inspector reasonably believes that an animal in distress is to be found on the premises (under section 19(4)) or if he reasonably believes an offence has been committed on the premises (under section 23(1)). Other than in these situations, secondary legislation under which the licensing regimes are adopted will give an inspector the power to revoke a licence, or amend its conditions, should a request to enter premises in order to carry out an inspection be unreasonably refused.

### **Section 27: Inspection in connection with registration**

123. This section concerns powers of inspection in relation to activities for which it is necessary to register under section 13(3).

124. *Subsection (1)* provides that inspections may be carried out to check compliance with any provision in the Act or in secondary legislation relating to an activity for which registration is required.

125. *Subsection (2)* confers powers on an inspector to enter premises if he reasonably believes that someone who is registered to carry on an activity is carrying on the registered activity there.

126. A private dwelling may only be entered if 24 hours' notice is given (*subsection (3)*).

### **Section 28: Inspection of farm premises**

127. This section allows inspectors to enter and inspect farm premises in order to check compliance with regulations made under the Act and in order to ascertain whether an offence under the Act has been committed.

128. *Subsection (2)* enables an inspector to enter premises to carry out an inspection if he reasonably believes that animals are bred or kept there for farming purposes.

129. The effect of *subsections (3)* and *(4)* is to prohibit entry into any parts of premises used as private dwellings, other than on the authority of a warrant issued by a justice of the peace. They also enable an inspector to use reasonable force to secure entry to premises if a warrant authorises this.

130. Paragraph 10 of Schedule 2 confers a number of additional powers on a person exercising a power of entry under a warrant under this section. The effect of paragraph 14 of the Schedule is that a warrant authorises a person to use reasonable force in the exercise of those additional powers. Note that paragraphs 2 and 3 of the Schedule impose a number of safeguards in relation to warrants under section 28(4).

### **Section 29: Inspection relating to Community obligations**

131. This section provides a power for inspectors to enter and check compliance with regulations under section 12 made in order to comply with European Community obligations. This power mirrors a power contained in the Animal Health Act 1981. It does not extend to any parts of premises used as private dwellings (*subsection (3)*).



## **Prosecutions**

### **Section 30: Power of local authority to prosecute offences**

132. The right to launch private prosecutions derives from the common law. This Act does not limit that right in respect of offences committed under this Act. In addition, local authorities are given a power to prosecute offences under the Act.

### **Section 31: Time limits for prosecutions**

133. Under the existing law, which requires that a prosecution be commenced within 6 months of the date of the offence being committed, it has sometimes proved difficult to prosecute for cruelty to animals when evidence of the offence has not been discovered until some considerable time after the offence was committed. For example, if a recording of an animal fight was discovered and the enforcer wished to bring a prosecution under section 8(1).

134. *Subsection (1)* authorises prosecutions to be commenced within three years of the date the offence was allegedly committed, in the rare circumstance where evidence of the alleged offence has not come to light within the usual six month time limit, provided the proceedings are brought within six months of the date when sufficient evidence to mount a prosecution comes to the prosecutor's knowledge.

135. *Subsection (2)* provides that if a prosecutor certifies the date on which he learnt of the relevant evidence, that date shall be the starting point for calculating the period within which proceedings must be commenced.

## **Post-Conviction Powers**

### **Section 32: Imprisonment or fine**

136. This section prescribes the penalties for offences under the Act. It distinguishes (at *subsection (5)*) between the penalties available for offences committed before and after the commencement of section 281(5) of the Criminal Justice Act 2003. The new provision for punishment by custodial sentence under the Criminal Justice Act is commonly known as 'custody plus'. It provides for a short term of imprisonment combined with a period of release on licence, the combined periods totalling not more than 51 weeks. Until this provision comes into force, the maximum term of imprisonment for offences under the Act is six months.

137. The section also ensures that all offences under the Act, or which may be created by regulations under it, are to be dealt with by a magistrates' court.

138. *Subsection (1)* sets the maximum penalty for an offence under sections 4, 5, 6(1) and (2), 7 and 8 of the Act (cruelty and fighting offences) as imprisonment for a term not exceeding 51 weeks or a fine of up to £20,000, or both. The option of a very high fine is intended for use in very serious cases.

139. *Subsection (2)* sets the maximum penalty for an offence under section 9 (failure to ensure welfare of animals), section 13(6) (carrying on an activity as specified by regulations without a licence or without being registered) or section 34(9) (breaches of disqualifications) as imprisonment for a term not exceeding 51 weeks or a fine up to level 5 on the standard scale (currently £5,000), or both.

140. *Subsection (3)* applies to offences under regulations made under sections 12 (for the promotion of welfare) and 13 (licensing and registration) of the Act. Those regulations may prescribe penalties by way of imprisonment or fine. Section 12(4) provides that a maximum term of imprisonment of 51 weeks and a fine up to level 5 on the standard scale (currently £5,000) or both may be set for offences under regulations made under section 12 for the promotion of welfare. The reason for this is that some breaches of section 12 regulations may be the equivalent of a welfare offence under section 9 and warrant the same penalty. Paragraph 9 of Schedule 1, which applies to regulations made under section 13, provides the same upper limit in relation to breach of licence conditions.

141. *Subsection (4)* provides that all other offences under the Act attract a maximum penalty of 51 weeks' imprisonment or a fine up to level 4 on the standard scale (currently £2,500), or both. These offences include obstruction of inspectors.

### **Section 33: Deprivation**

142. The aim of this section is to enable the courts to confiscate an animal from an owner who has been convicted of an offence in relation to that animal. A deprivation order is limited to cases where there is a clearly identifiable animal in respect of which the offence was committed.

143. In cases where a court has convicted a person of (a) a cruelty offence, (b) a fighting offence, (c) breach of the duty of care in relation to animal welfare, or (d) breach of a disqualification order (i.e. offences under sections 4, 5, 6(1) and 6(2), 7 to 9 and 34(9)), *subsections (1), (2) and (3)* give the court power to make an order depriving him of ownership of the animals in respect of which the offence was committed, and any dependent offspring of those animals, and to make an order for the disposal of those animals. Disposal in this section includes slaughter of the animal. Deprivation of ownership of animals may be ordered in addition to or instead of other penalties.

144. *Subsection (4)* confers ancillary powers to appoint someone to carry out the deprivation order, to require delivery of relevant animals and to confer additional powers on the person appointed to carry out the order, including powers of entry. The offender can also be made to meet the costs of carrying out the order.

145. *Subsection (6)* requires a court to give reasons if it decides not to make a deprivation order against a convicted person. By way of exception to this, *subsection (7)* provides that reasons for not imposing a deprivation order do not have to be given if a disqualification order is made under section 34(1).

146. *Subsection (8)* makes it clear that where a person is convicted of an animal fighting offence, the power to make a deprivation order is exercisable in relation to any animal which took part in the fight.

### **Section 34: Disqualification**

147. Under the Protection of Animals Act 1954 a person convicted of an offence under the Protection of Animals Act 1911 may be disqualified from 'having custody of' specified animals for a specified period. However, it has proved difficult in practice to determine in many cases when a disqualified person 'has custody of' animals, so as to place him in breach of a disqualification order; and this has limited the effectiveness of such orders. Furthermore, the 1954 Act does not give any power to make consequential orders to provide for the welfare

of animals kept or owned by a disqualified person nor does it provide for removal of such animals on conviction for breach of the disqualification. The lack of such a power was commented upon by the Court of Appeal in Worcestershire County Council v Tongue (CA 17th February 2004). This section and section 35 are designed to make good this omission.

148. *Subsection (1)* confers a power on the court to disqualify a person from doing the things mentioned in *subsection (2), (3) or (4)* or any combination of those subsections.

149. *Subsection (5)* provides that disqualification may be imposed in relation to animals generally or to one or more kinds of animal. Thus a court may, for example, use its discretion under this subsection to disqualify a person who has been convicted of organising dog fights from owning or keeping dogs, but not any other kind of animal.

150. *Subsection (6)* allows the court to decide the period which must expire before the person who is the subject of a disqualification order may apply to have it lifted. Under the current law, applications can be made after one year, and every subsequent year thereafter (see further section 43).

151. *Subsection (7)* provides for suspension of a disqualification order pending appeal. It also gives the court power to suspend a disqualification order to give the disqualified owner or keeper time to make arrangements for the animal.

152. *Subsection (10)* provides that disqualification orders can be imposed for offences including those relating to cruelty, fighting, welfare, operating without a required licence or without registering where this is required and for a breach of a previous disqualification order.

### **Section 35: Seizure of animals in connection with disqualification**

153. *Subsection (1)* enables a court to combine a disqualification order with an order that any animals owned or kept by the person disqualified be seized, where continued ownership or possession would put him in breach of the disqualification. Such an order could be made by the court when a person was convicted of any of the offences under the sections relating to cruelty, fighting, welfare or operating without a required licence or without registering where this is required or of a breach of a previous disqualification order.

154. *Subsection (2)* deals with the case where a person is disqualified under section 34 from owning or keeping animals and is then convicted of the offence under section 34(9) of breaching the disqualification. It provides for the seizure of all animals that are owned or kept by that person in breach of the disqualification.

155. A seizure order made under section 35(1) or 35(2) differs from a deprivation order made under section 33(2) in that a deprivation order may only be made against a convicted owner. A seizure order under these subsections may also be made against a person who keeps an animal in breach of a disqualification order.

156. A further distinction between a seizure order made under section 35(1) or 35(2), and a deprivation order made under section 33(2), is that the former does not involve depriving the owner of his economic interest in it. Unlike an owner who is the subject of a deprivation order, an owner whose animal is seized under section 35 continues to be entitled to any disposal proceeds (less any relevant expenses).

157. The effect of *subsections (3) and (4)* is that if an animal seized under *subsection (1) or (2)* is owned by the disqualified person, it automatically falls to be disposed of. But, if it is not, the court must order how it can be disposed of. *Subsection (5)* ensures in this case that the owner has a chance to intervene. *Subsection (6)* enables the owner to appeal against any order for disposal that may be made.

### **Section 36: Section 35: supplementary**

158. *Subsection (1)* sets out powers of the court when it makes an order under section 35. These include appointing a person to carry out the order and a power to give directions concerning the carrying out of the order. It can also provide that the owner of the animal or any other person the court thinks fit must reimburse costs incurred, and can confer additional powers, including powers of entry, on the person appointed to carry out the order.

159. *Subsection (2)* clarifies the extent of the court's powers to give directions under *subsection (1)*. It includes delegating the decision on the method of disposal to the person appointed by the court under *subsection (1)*.

160. *Subsections (3) and (4)* require the court and the person carrying out the order to have regard to protecting the value of the animal and to limiting the costs which may be payable under a reimbursement order under *subsection (1)(e)*. If a reimbursement order is made against an owner for the costs of carrying out a section 35 order, *subsection (5)* allows the amount to be deducted from any amount due to the owner from sale of the animal.

### **Section 37: Destruction in the interests of the animal**

161. This section replaces the power previously in section 2 of the 1911 Act.

162. *Subsection (1)* gives the court power, where it is persuaded by a vet that it is appropriate in the interests of the animal, to order the destruction of an animal in respect of which a cruelty, fighting or welfare offence under section 4, 5, 6(1) or 6(2), 7, 8(1) or 8(2) or 9 has been committed.

163. *Subsection (2)* gives the owner the opportunity to be heard before a destruction order is made, unless the court decides it is not reasonably practicable to communicate with him.

164. Under *subsection (3)*, the court can make orders relating to practical arrangements for carrying out the destruction order and require the offender or any other person to meet the costs of carrying out the order.

165. *Subsections (4) and (5)* confer a right of appeal on the offender or owner (if the owner is not the offender) unless the court considers the welfare of the animal requires it to be destroyed without delay.

### **Section 38: Destruction of animals involved in fighting offences**

166. *Subsection (1)* allows the court to order the destruction of fighting animals, otherwise than in the interests of the animal, where there has been a conviction for a fighting offence under section 8(1) or (2). This power is wider than that accorded in section 37, on the basis that there may be circumstances in which it is appropriate to order the destruction of an animal otherwise than in its interests; for example, if the animal is considered to be a danger to public safety. Section 38 is not the only power available to a court to deal with fighting animals, and a fighting animal will not necessarily be subject to a destruction order. This is

simply an additional power to ensure the court has sufficient discretion to dispose of animals that have been involved in fights or trained to fight.

167. *Subsection (3)* provides that the court can make orders relating to practical arrangements for carrying out the destruction order and require the offender or any other person the court thinks fit to meet the costs of its implementation, including keeping the animal until it is destroyed.

168. *Subsection (4)* allows the owner (if different from the person convicted) to appeal the order made under *subsection (1)*.

169. *Subsection (5)* provides that destruction orders may be made against any animal which took part in an animal fight, in relation to which any offence under section 8(1) or (2) has been committed.

### **Section 39: Reimbursement of expenses relating to animals involved in fighting offences**

170. This section provides that a court which has convicted a person of an offence under section 8(1) or (2) can require that person, or another person as appropriate, to reimburse police for expenses they have incurred in looking after an animal involved in that offence. This includes animals that took part in the fight in relation to which the offence was committed.

### **Section 40: Forfeiture of equipment used in offences**

171. This section gives the court power, where a person is convicted of an offence under sections 4, 5, 6(1) or (2), 7 or 8, to order equipment that it considers to have been used in the offences for which the offender has been convicted to be forfeited and destroyed (or otherwise dealt with).

172. *Subsection (3)* provides that a court shall not order the forfeiture of any equipment if the owner, or someone claiming an interest in it, has applied to the court to be heard, and has not already had the opportunity to show cause why the forfeiture order should not be made.

### **Section 41: Orders under section 33, 35, 37, 38 or 40: pending appeals**

173. *Subsection (1)* suspends the operation of various orders relating to animals and equipment under the Act until the possibility of a successful appeal has expired. *Subsection (3)* provides that if an order is suspended under *subsection (1)*, the court may, nevertheless, give directions as to how the animal(s) should be dealt with during the suspension. *Subsection (4)* gives examples of the kinds of directions the court may give under *subsection (3)(b)* to provide for the animal's welfare pending the determination of the appeal.

174. *Subsection (5)* provides that costs which a court directs a person to pay will be recoverable as a civil debt.

### **Section 42: Orders with respect to licences**

175. *Subsection (1)* provides that where a person is convicted of a cruelty, fighting, or welfare offence, an offence in connection with transferring an animal by way of sale or prize to a person under sixteen, or an offence against regulations made under section 13, the court may cancel his licence and make an order disqualifying him from holding such a licence.

176. *Subsection (3)* enables a court to decide the length of time that must expire before the person who is the subject of an order disqualifying him from holding a licence may apply to have it lifted (see further section 43).

#### **Section 43: Termination of disqualification under section 34 or 42**

177. *Subsection (1)* enables a person subject to a disqualification order under section 34 or 42 to apply to the court for termination of the disqualification, but *subsection (2)* imposes restrictions on the right to apply. An application cannot be made until one year has elapsed since the disqualification order was made (*subsection (2)(a)*). Where a previous application for termination of a disqualification order has been made under this section, the application cannot be made until one year after the determination of that application (*subsection (2)(b)*). In addition to this, applications cannot be made until a period specified by the court under sections 34(6), 42(3) or *subsection (5)* of this section has elapsed (*subsection (2)(c)*).

178. *Subsection (3)* sets out the court's powers in relation to an application to terminate a disqualification order. The court may terminate the disqualification, make it less onerous, or refuse the application. *Subsection (5)* provides that, if a court dismisses the application, it may specify a longer period than the period given at *subsection (2)(b)* in which the offender may not make an application for termination of the disqualification order. The court may also order the applicant to pay all or part of the costs of the application.

179. *Subsection (7)* specifies the court to which application must be made.

#### **Section 44: Orders made on conviction for reimbursement of expenses**

180. This section clarifies that where a court makes an order for the care or disposal of an animal under section 33(4)(e), 36(1)(e), 37(3)(e), 38(3)(e) or 39(1), and a person incurs expenses in carrying out that order, their expenses are recoverable as a civil debt. They are not to be treated as a fine imposed on conviction for the purposes of the Magistrates' Courts Act 1980.

#### **Section 45: Orders for reimbursement of expenses: right of appeal for non-offenders**

181. This section provides that where an order for the reimbursement of expenses is made under section 36(1)(e), 37(3)(e), 38(3)(e) or 39(1) against a person other than the person convicted of an offence under the Act, that person will have a right of appeal against the order. The convicted person will already have such a right of appeal by virtue of the Magistrates Courts Act 1980.

### **Scotland**

#### **Section 46: Effect in Scotland of disqualification under section 34**

182. The disqualification provision in section 34 replaces, for England and Wales, that under the Protection of Animals (Amendment) Act 1954 (c.40). Because the 1954 Act extends to Scotland, as well as to England and Wales, the position at present is that a disqualification order made by a court in England and Wales has effect in Scotland. Since section 34 only extends to England and Wales, it is necessary to make further provision in this section to secure the result that disqualification orders made by a court in England and Wales also have effect in Scotland.

183. *Subsection (1)* ensures that disqualification orders imposed by courts in England and Wales have effect in Scotland. *Subsections (2)* and *(3)* provide that breach of a

disqualification order constitutes an offence and set down the penalties that apply. As the ‘custody plus’ scheme (see section 32) does not extend to Scotland, the maximum prison term there will be six months.

#### **Section 47: Deprivation orders in connection with offence under section 46(2)**

184. This section gives a Scottish court power to deprive a person of ownership or possession (or both) and order disposal of an animal to which a conviction under section 46(2) for breach of a disqualification order relates.

185. *Subsection (2)* gives the court power not only to deprive a person of ownership or possession of the animal but also to order that the animal be disposed of, including destruction or sale.

186. *Subsection (6)* gives the court ancillary powers when making a deprivation order, such as the power to appoint a person to carry it out, and a power to require the person in possession of the animal to give it up. *Subsection (7)* provides that these powers may include a provision ordering the convicted person to reimburse the expenses of the person carrying it out, and a provision depriving the convicted person of the proceeds of the animal’s disposal.

187. *Subsection (8)* stipulates that destruction of the animal may only be ordered where it is in the animal’s interests.

#### **Section 48: Seizure orders where disqualification breached: Scotland**

188. This section provides that an inspector may make an application to a court in Scotland for seizure of animals that are being kept in Scotland in breach of a disqualification order made in England and Wales. Unlike under section 47, *subsection (2)* provides that criminal proceedings for breach of the disqualification need not have been initiated against the person, nor need there be any intention of doing so. However, the court will have to be satisfied that a person owns or is keeping animals in breach of the disqualification order concerned.

#### **Section 49: Appeals against deprivation orders and seizure orders**

189. This section provides the mechanism by which orders made under section 47 or 48 can be appealed and also ensures that no orders made under section 47 or 48, can be given effect until the period for giving notice of appeal against the order or conviction has expired, or if notice of appeal is given, until the appeal has been withdrawn or decided.

190. *Subsection (5)* provides for the court to make interim orders in relation to the animal’s keeping while the order under section 47 or 48 is suspended.

#### **Section 50: Deprivation orders, seizure orders and interim orders: offences**

191. *Subsection (1)* makes it an offence to sell or dispose of an animal that is subject to a suspended deprivation order.

192. *Subsection (2)* makes it an offence to obstruct a person carrying out a deprivation, seizure or interim order.

### **General**

#### **Section 51: Inspectors**

193. *Subsection (1)* defines the term “inspector” for the purposes of the Act. An inspector is a person appointed either by a local authority or by the appropriate national authority

(either the Secretary of State or the National Assembly for Wales). In practical terms, an inspector of the appropriate national authority is currently likely to be a State Veterinary Service inspector.

194. *Subsection (2)* requires local authorities, when appointing inspectors for the purposes of the Act, to have regard to any guidance that may be issued by the Secretary of State or National Assembly for Wales. It is expected that such guidance would, for example, set out relevant criteria (qualifications, experience etc.) for the appointment of inspectors.

195. Under *subsection (3)* the Secretary of State or National Assembly for Wales may also issue a list of approved persons who are considered suitable for appointment as inspectors by local authorities.

196. *Subsection (4)* provides that a person may be included on the list kept under *subsection (3)* either for all the purposes of the Act or for limited specified purposes.

197. *Subsection (5)* provides immunity for inspectors for actions taken outside their powers, so long as in purporting to act under their powers, they acted reasonably and in good faith.

#### **Section 52: Conditions for grant of warrant**

198. The Act makes provision for warrants in order to obtain entry to premises in a variety of circumstances. A justice of the peace can issue warrants under sections 19(4) (animals in distress), 22(4) (seizure of animals involved in fighting), 23(1) (entry and search for evidence of offences) and 28(4) (inspection of farm premises)

199. In all of the cases cited above, one of four conditions set out in this section must be met before a magistrate can grant a warrant to allow a constable or inspector to enter. *Subsections (4) and (5)* apply equally to private dwellings and other premises.

#### **Section 53: Powers of entry, inspection and search: supplementary**

200. This section gives effect to Schedule 2, which sets out supplementary powers and duties relating to powers of entry, inspection or search conferred by the Act, or conferred by warrants under the Act.

#### **Section 54: Power to stop and detain vehicles**

201. Where there is a right of entry for constables and inspectors under the Act, the definition of premises includes vehicles and various moveable structures (see definition in section 62(1)). In order to facilitate searches of this kind, section 54 creates powers to stop and detain vehicles.

202. *Subsection (1)* allows a constable, or an inspector if he is accompanied by a constable, to stop and search vehicles to search for animals in distress and gather evidence where there is reasonable suspicion that a relevant offence has been committed. *Subsection (3)* allows an inspector, if accompanied by a constable in uniform, to stop and detain a vehicle in order to search it in connection with the exercise of his powers of inspection in relation to licensed activities, registration, inspection of farm premises and compliance with EC obligations. These subsections also apply where the constable or inspector is acting under a relevant warrant.



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203. *Subsection (2)* allows a constable to stop and detain a vehicle for the purposes of seizing an animal used in connection with a fighting offence if he reasonably believes that it contains such an animal or he is acting under a warrant for these purposes.

204. *Subsection (4)* provides that the vehicle can be detained for as long as is reasonably required to enable a search or inspection to be carried out (including the exercise of any other related power, e.g. to take tests or samples).

#### **Section 55: Power to detain vessels, aircraft and hovercraft**

205. *Subsection (1)* provides that a vessel can be detained in port if an inspector believes that an offence is being or has been committed on board. He must put his reasons in writing. He must present a copy of this as soon as practicable to the person in charge of the vessel (*subsection (4)*).

206. *Subsection (3)* allows the detention of the ship to be enforced. Section 284 of the Merchant Shipping Act 1995 provides various penalties should the ship leave port before it has been granted permission to do so.

207. *Subsection (6)* allows the Secretary of State or National Assembly for Wales to make regulations extending this section to aircraft or hovercraft, or to make other provision for detaining aircraft or hovercraft that they consider appropriate.

#### **Section 56: Obtaining of documents in connection with carrying out orders etc.**

208. This section requires the owner of an animal in relation to which any of the various orders under the Act has been made to deliver relevant documents relating to that animal to the person who is authorised to carry out the order. The documents must be delivered as soon as practicable and, in any event, within 10 days of the person being informed of the requirement.

209. *Subsection (2)* imposes a similar duty on the owner to deliver documents to a person who is authorised to carry out a direction made during a period when the effect of an order is suspended pending appeal (see further section 41).

#### **Section 57: Offences by bodies corporate**

210. *Subsection (1)* gives flexibility in the exercise of enforcement powers. It authorises simultaneous proceedings to be brought against a corporate body and individuals who are associated with the corporate body. This may either be as employees (but only if they are, or purport to be, holders of a relevant office) or directors or officers who were responsible for the conduct in relation to which the offence was committed.

211. By deeming members of a corporate body who have responsibility for the affairs of the organisation to be in an equivalent position to a director in relation to the management activities they undertake, *subsection (2)* makes it possible for a criminal prosecution to be brought against a member or members of a corporate body where they are responsible for the action or omission that constitutes an offence under the Act.

#### **Section 58: Scientific research**

212. Scientific procedures on animals are governed by the Animals (Scientific Procedures) Act 1986 (“ASPA”), which makes provision for the licensing of people, projects and places

where research is carried out on animals. Nothing in this Act applies to anything lawfully done under that Act.

213. *Subsection (2)* provides that powers of entry conferred by this Act do not apply in relation to places designated under sections 6 and 7 of ASPA. The only exception to this is the power of entry to inspect farming premises. Some ASPA premises are ‘dual purpose’; they operate both as designated premises, and also as farms. The power under section 28(2) to inspect farm premises will only be exercisable in relation to animals which are reasonably believed to be bred or kept for farming purposes i.e. the power will not extend to those animals on the premises which are being bred, kept or used for experimental or scientific purposes.

214. *Subsection (3)* provides that section 9 of the Act (duty to ensure welfare) does not apply to animals at a designated place which are kept for use in regulated procedures, or which have been bred for such a use, or which are kept for breeding offspring to be used in regulated procedures.

215. Section 9 of this Act does apply to any animals that are at a designated place but which are not covered by ASPA, whether because they are of a type that is not listed in the schedules to ASPA or because they are not being used in connection with the scientific research covered by the ASPA licence.

### **Section 59: Fishing**

216. This section provides that anything which occurs in the normal course of fishing is not covered by this Act. A fish may be a protected animal if under the control of man. The effect of this exception is that, where a fish is under the control of man in the course of fishing, the Act has no application to anything that happens to the fish in the normal course of fishing. So, for example, whilst they are normal fishing practices the use of livebait and the practice of catch and release will not be subject to the Act.

217. The term ‘fishing’ should be understood as applying to ordinary activities of fishermen and anglers, and also the ordinary activities of those who own and run stocked ponds in allowing fishing activities to take place on their ponds.

### **Section 60: Crown application**

218. Under *subsection (1)* the Act and regulations made under it, once enacted, apply to the Crown. This means that they will bind all Government departments and other public bodies that are part of the Crown. It will not be possible for the Queen herself to be personally sued or prosecuted under the Act, as the courts are the Queen’s Courts and consequently have no jurisdiction over her personally.

219. In accordance with normal practice, *subsection (2)* provides that the Crown is not subject to criminal liability if it contravenes the requirements of the Act. Instead, the court has power to make a declaration that the conduct is unlawful.

220. Under *subsection (3)* the fact that the Crown cannot itself be found criminally liable under the Act does not prevent criminal convictions being made against individuals, such as civil servants who are in the service of the Crown as public servants. They can be prosecuted under the Act in the same way as private individuals, private organisations and their staff.

221. *Subsections (4) and (5)* provide that powers of entry conferred under the Act may not be exercised at specified premises held or used by or on behalf of the Crown if the Secretary of State certifies that this would be contrary to the interests of national security.

222. *Subsection (6)* disapplies the powers of entry granted to constables and inspectors under the Act in respect of land belonging to Her Majesty as Her private estates. Offences under this Act may still be committed on Her private estates, but in the interests of security, constables and inspectors will require permission to enter Her land. *Subsection (7)* defines Her Majesty's private estates.

### **Section 61: Orders and regulations**

223. *Subsection (1)* provides for all order and regulation-making powers of the Secretary of State, the National Assembly for Wales or the Scottish Ministers under the Act to be exercisable by statutory instrument (other than the power of the National Assembly for Wales under section 17 to revoke codes of practice).

224. *Subsection (2)* provides for regulations made by the Secretary of State under sections 1(3) (extension of definition of "animal"), 5(4) (specified exemptions to the prohibition on mutilations), 6 (regulations about the docking of working dogs' tails), 12 (regulations to promote welfare) or 13 (licensing or registration activities involving animals) to be subject to the affirmative resolution procedure.

225. *Subsection (5)* provides that regulations made by the Secretary of State under section 55(6) (extension of the power to detain aircraft) are to be subject to negative resolution procedure.

226. *Subsections (3) and (4)* provide that where a code is to be revoked under section 17, and not be replaced, a draft of the instrument which contains the revocation order shall be laid before Parliament.

227. Orders for commencement and transition, made by the Secretary of State under section 66(1) and section 68, are not subject to any Parliamentary control.

### **Section 66: Transition**

228. *Subsections (3) – (6)* make transitional provision for those disqualification orders, made under the Protection of Animals Act 1954, that are still in force.

### **Schedule 1- Regulations under section 13**

229. Schedule 1 is divided into three parts: Part 1 deals with licensing, Part 2 with registration and Part 3 contains general provisions.

230. The Schedule has effect in relation to regulations that can be made under section 13. *Paragraph 2* provides that the "licensing authority" (the particular authority which has responsibility for enforcing the regulations) will either be the relevant local authority or the appropriate national authority (in England, the Secretary of State or in Wales, the National Assembly for Wales). *Paragraph 5* stipulates that licences cannot run for more than 3 years.

231. *Paragraph 7* requires that regulations provide that a licensing authority must inspect premises before granting a licence.

232. *Paragraph 8* provides that regulations may allow a licensing authority to attach conditions to a licence, or require it to do so.

233. *Paragraph 9* provides that breach of a licence condition may be made an offence under the regulations, and that regulations may apply a relevant post-conviction power in relation to conviction for an offence. The expression “relevant post-conviction power” is defined in section 62 (general interpretation), and is explained further in the explanatory note for section 12.

234. Provisions in Part 2 (registration) mirror those in *paragraphs 1, 2, 3, 6, 10 and 11* of Part 1 (licensing)

235. Part 3 (supplementary) contains provisions which expand the regulation-making powers under section 13. *Paragraphs 18(a) and 19(2) and (3)* enable existing licensing regimes for the licensing of activities involving animals, to be reproduced by regulations under section 13, even though not required for the purpose of promoting animal welfare (for example, the requirement under section 1(4A)(d) of the Riding Establishments Act 1964, which makes it a licence condition that the keeper of a riding establishment should have appropriate insurance). *Paragraph 18(a)* enables regulations under section 13(7) to include an equivalent licence condition in any new licensing regime substituted by the regulations for an existing regime. Alternatively, if the existing licensing regime is simply repealed by regulations under section 13(8), *paragraph 19(2) and (3)* enable regulations to make consequential provision for the purpose of continuing the effect of the old licence condition, i.e. that the keeper of a riding establishment is required to have appropriate insurance.

#### **Schedule 2 - Powers of entry, inspection and search: supplementary**

236. This Schedule specifies the powers and duties of those exercising powers of entry, inspection or search under the Act.

237. *Paragraph 1(1)* provides that the safeguards in relation to the issue of warrants to constables contained in the Police and Criminal Evidence Act 1984 (c.69), apply to inspectors for the purposes of the issue of warrants under sections 19(4) or 23(1).

238. *Paragraphs 2 and 3* apply the safeguards in relation to the issue of warrants to constables contained in sections 15 and 16 of the Police and Criminal Evidence Act 1984, to inspectors exercising a right of entry under section 28(4). These paragraphs reflect sections 15 and 16 to the extent that they are relevant to the issue of warrants under section 28(4) – they do not reflect the provisions that relate to search. Multiple entry or multiple premises warrants (available to constables under the 1984 Act) are not available to inspectors.

239. *Paragraph 4(2)* requires the person entering to show evidence of his identity and his authority to enter, and to give information about his reasons for entering. There needs to be a request for these things before there is a requirement to provide them.

240. *Paragraph 5* contains a power to take other persons onto the premises. This is at the discretion of the inspector or constable who is entering. For example, it may be necessary to take a veterinary surgeon onto the premises. In such a case, an accompanying veterinary surgeon will have powers to examine the animals under *paragraph 10(2)(a)* and to take samples, tests etc under *paragraph 10(2)(d)* (see *paragraph 10(3)*). The powers set out in *paragraph 10*, which also include the power to seize documents, apply to entry for the purpose of inspecting licensed and registered activities, inspection of farmed animals and checking compliance with European legislation. They also apply to entry and search where there is reasonable suspicion that an offence is being, or has been committed.

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241. *Paragraph 6* imposes a duty to ensure that a search or inspection is undertaken at a reasonable time, unless it appears to the constable or inspector that the purpose of the search or inspection would be frustrated if the power was exercised at a reasonable time.

242. *Paragraph 7* imposes an obligation to give assistance. This is imposed on the occupier, anyone appearing to be the owner or keeper of animals there, or anyone appearing to be under the direction or control of the owner or keeper. In the case of entry to inspect licensed activities under section 26, the obligation to give assistance extends to the licence holder.

243. *Paragraph 8* will allow an inspector or constable entering premises under the powers specified in *paragraph 7(1)* to take equipment onto the premises with him.

244. *Paragraph 10* outlines the powers of inspection, search, and seizure which an inspector or constable will have once he has entered premises under section 26(1), 27(1), 28(1) or 29(1), or under a warrant conferred under section 23(1). *Paragraph 15* outlines the more limited powers of inspection and seizure which an inspector or constable will have when he has entered to search for an animal in distress under section 19.

245. *Paragraph 14* provides for the use reasonable force in the exercise of certain powers under *paragraph 10*.

246. *Paragraph 16* makes it an offence to obstruct a person lawfully exercising a power of entry or a power under the Schedule, or to fail to give assistance as required under *paragraph 7*.

## CONCLUDING SECTIONS

247. Section 68 sets out the Act's commencement provisions.

248. Sections 61 (orders and regulations), 67 (extent), 68 (commencement) and 69 (short title) came into force on Royal Assent.

249. Sections 46 to 50 (Scotland) will be brought into force by commencement orders made by the Scottish Ministers.

250. All other provisions will be brought into force by orders made by the Secretary of State or the National Assembly for Wales.

## HANSARD REFERENCES

251. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<b>Stage</b>	<b>Date</b>	<b>Hansard reference</b>
<i>House of Commons</i>		
Introduction	13 October 2005	Vol. 437 Col 465
Second Reading	10 January 2006	Vol. 441 Cols. 161-249
Committee	17, 19, 24 and 26 January 2006	Hansard Standing Committee A
Report and Third Reading	14 March 2006	Vol. 443 Cols 1329-1427

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Commons Considerations of Lords	6 November 2006	Vol. 451 Cols 598-619
<i>House of Lords</i>		
Introduction	15 March 2006	Vol. 679 Col 1222
Second Reading	18 April 2006	Vol. 680 Col 979-1015
Grand Committee	23 May 2006	Vol. 682 Cols GC145-200
	24 May 2006	Vol. 682 Cols GC201-264
Report	23 October 2006	Vol. 685 Cols 995-1055
Third Reading	1 November 2006	Vol. 686 Cols 315-320

**Royal Assent** – 8 November 2006    House of Lords Hansard Vol.686 Col 750

House of Commons Hansard Vol.451 Col 825

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