

*These notes refer to the Welfare of Animals Act (Northern Ireland)
2011 (c.16) which received Royal Assent on 29 March 2011*

Welfare of Animals Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Introductory

Section 1 – Animals to which this Act applies

The Act applies only to vertebrate animals, as these are currently the only demonstrably sentient animals. However, section 1(3) makes provision to extend the Act to cover invertebrates of any description in the future if the Department is satisfied on the basis of scientific evidence that these too are capable of experiencing pain or suffering.

Section 2 – Protected animals

Animals are “protected” if they are of a kind which is commonly domesticated in Northern Ireland or if they are under the control of man or not living in a wild state.

Section 3 – Responsibility for animals

While the owner is always regarded as responsible for an animal, a person who is in charge of an animal is also responsible for it. This includes a person who temporarily keeps an animal for any reason, for example, a veterinary surgeon taking responsibility for the animals kept in his surgery overnight, staff at boarding premises, and staff at animal sanctuaries.

Part 2 - Protection of Animals

Prevention of Harm

Section 4 – Unnecessary suffering

This section sets out the circumstances in which a person who causes or permits an animal to suffer commits an offence. It will be an offence to cause physical or mental suffering, whether by a positive act or an omission, to an animal. This section also sets out considerations in determining whether the suffering is unnecessary. Considerations focus on the necessity, proportionality, humanity

and competence of the conduct. Where suffering inevitably occurs in the course of complying with any regulations, licence or code of practice, an offence would not normally be committed as it would be for the overall betterment of the animal's welfare.

Section 5- Prohibited procedures

Prohibited procedures are those which involve interference with the sensitive tissues or bone structure of the animal, for example castration, ear tagging and dehorning. This section does not apply to the docking of a dog's tail which is dealt with in section 6. Section 5 makes it an offence to carry out a prohibited procedure on any protected animal. Exemptions to this prohibition are provided for in the Act and include the carrying out of any procedure by a veterinary surgeon, the diagnosis of disease or any medical treatment, and any procedure specified in regulations made by the Department. Regulations will ensure that normal farming practices (such as castration of lambs and the ear tagging of cattle and sheep) will be permitted which would otherwise be prohibited by the Act.

Section 6 – Docking of dogs' tails

This section prohibits the docking of a dog's tail, otherwise than for the purposes of its medical treatment by a veterinary surgeon or to safeguard its life. Subsections (4) – (18) provide an exemption subject to certain conditions for certified working dogs involved in law enforcement, lawful pest control or lawful shooting of animals. Schedule 1 sets out the breeds to which an exemption may apply. It will be an offence if a dog is docked under this exemption and not identified in accordance with regulations made by the Department. It will also be an offence to knowingly give false information to a veterinary surgeon in connection with the obtaining of certification for a dog. In addition it will be an offence to take, or cause another person to take, a dog from Northern Ireland for the purpose of having the whole or any part of its tail docked. The section also introduces a ban on the showing of dogs where the tail was docked after the coming into operation of section 6. Subsection (13) provides an exemption which allows a subsection 4 dog to be shown in circumstances where it can demonstrate its working ability.

Section 7 - Administration of poisons etc.

This section creates offences relating to the administration to a protected animal of any poisonous substance or drug without lawful authority or reasonable excuse. This also applies in cases where substances that are otherwise harmless have been administered in a harmful quantity or way.

Section 8 – Fighting etc.

This section creates a number of offences in relation to animal fighting, which is defined 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. This means

that an animal fight can be deemed to have taken place, even if both animals are wild animals, as the definition of protected animal under section 2 includes any animal under the control of man, whether on a permanent or temporary basis. 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.

Promotion of Welfare

Section 9 – Ensuring welfare of animals

The welfare offence in this section extends to non-farmed animals. A duty to ensure welfare will apply to all animals for which someone is responsible as defined in section 3. A person who is responsible for an animal has a duty to take steps that are reasonable to ensure its needs are met to the extent required by good practice.

Section 10 - Improvement notices

This section empowers inspectors to issue improvement notices to those responsible for animals if the inspector is of the opinion that a person is not meeting the requirements of section 9. The inspector must state in the notice what the person is failing to do to comply with section 9, the steps that should be taken in order to comply and the time in which the steps must be taken. Failure to comply with an improvement notice is an offence.

Section 11 - Regulations for securing welfare of animals

This section enables the Department to make regulations to secure the welfare of animals for which a person is responsible, or the progeny of such animals. The inclusion of 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.

Section 12 - Licensing or registration of activities involving animals

This section enables the Department to make regulations for the introduction of licensing and registration regimes in relation to activities involving animals for which a person is responsible for the purposes of securing the welfare of animals or the progeny of those animals.

Section 13 - Prohibition on keeping of certain animals

This section enables the Department to make regulations for securing animal welfare by prohibiting the keeping of certain types of animals at domestic or other premises. This power does not extend to zoos licensed or regulated by the Department of the Environment or animals licensed under the Dangerous Wild Animals (Northern Ireland) Order 2004.

Section 14 – Abandonment

This section makes it an offence to abandon an animal irrespective of whether the animal suffers or not.

Section 15 – Transfer of animals by way of sale or prize to persons under 16

This section prohibits the sale of animals to any person under 16. The section also makes it an offence to enter into an arrangement with a person under 16 whereby an animal is to be won as a prize, unless the person under 16 is under the care and control of an adult who has agreed to the arrangement.

Section 16 - Codes of practice

Codes of practice are already widely used to promote the welfare of farmed animals and the Act provides for the introduction of codes of practice for both farmed animals and other animals.

Part 3 - Animals in Distress

Section 17 – Powers in relation to animals in distress

This section authorises an inspector or constable who finds a protected animal that is suffering to take immediate steps to alleviate the animal's suffering.

Section 18 - Powers of entry for section 17 purposes

This section confers powers of entry for the purposes of section 17. It authorises an inspector or 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. Power of entry does not extend to a private dwelling unless a warrant is first obtained from a lay magistrate. Strict conditions must be met to satisfy the issue of a warrant. Schedule 3 provides safeguards in connection with powers of entry under warrant.

On the rare occasion when urgent entry is required before a warrant can be obtained this section authorises the use of reasonable force to effect entry, except to a private dwelling, without a warrant, for example if an animal is suffering in a vehicle where it would be inappropriate to delay.

Section 19 - Orders in relation to animals taken under section 17(5)

Where an animal has been taken into possession under section 17 and the animal is being retained, this section enables a magistrate's court to make an order for the treatment, giving up, sale, disposal or destruction of the animal. Either the owner of the animal or another person with a sufficient interest in the animal can apply to the court for an order to be made. The court cannot make an order 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 the owner.

Where a court orders that the animal taken into possession be sold, the proceeds of the sale to which the owner is entitled may be reduced so as to take account of the expenses incurred by the person who seized or cared for the animal and the expenses incurred by any person carrying out the order for sale. In making an order the court must also have regard to protecting the animal's value and avoid increasing any expenses which a person may incur or be ordered to reimburse.

Section 20 – Orders under section 19: appeals

Where a court has made an order under section 19 in relation to an animal, the animal's owner can appeal to the county court against the order. The section also provides a right of appeal to a person against whom an order for reimbursement of expenses is made.

Part 4 - Enforcement

Enforcement Powers

Section 21 – Seizure of animals involved in fighting offences

Section 21 confers on a constable power to take possession of an animal in relation to which an offence under section 8 has been committed. The use of this power would ensure that a seized animal could not be involved in further fighting offences.

Section 22 - Entry and search under warrant in connection with offences

This section provides that a lay magistrate may issue a warrant authorising an inspector or a constable to enter premises to search for evidence of offences relating to unnecessary suffering, prohibited procedures, tail docking, administration of poisons, fighting, ensuring welfare, failing to comply with an improvement notice, carrying out relevant activities without a licence or registration, abandonment, or breaching a disqualification imposed under section 33.

Section 23 - Inspection of records required to be kept by holder of licence

This section enables an inspector to require that the holder of a licence, granted under regulations must produce any records that the licence holder is required to keep as a condition of that licence.

Section 24 - Inspection in connection with licences

This section concerns powers of inspection in relation to activities for which it is necessary to obtain a licence. 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.

Section 25 - Inspection in connection with registration

This section concerns powers of inspection in relation to activities for which it is necessary to register under section 12.

Section 26 – Inspection of premises to check compliance with regulations made under section 13

This section allows inspectors to enter and inspect premises, except a private dwelling, in order to check compliance with regulations made under section 13 dealing with the prohibition on keeping certain animals.

Section 27 - Inspection of farm premises

This section allows inspectors to enter and inspect farm premises in order to check compliance with regulations made under the Act to secure the welfare of animals bred or kept for farming purposes and in order to ascertain whether an offence under the Act has been committed.

Section 28 - Inspection relating to Community obligations

This section provides a power for inspectors to enter and check compliance with regulations under section 11 which implement a Community obligation to secure welfare of animals. This power mirrors a power contained in the Diseases of Animals (Northern Ireland) Order 1981 as amended. It does not extend to any part of a premises used as a private dwelling (subsection (3)).

Prosecutions

Section 29 - Power of councils to prosecute offences

This section provides a power allowing district councils to initiate prosecution proceedings for any offence under the Act.

Section 30: Time limits for prosecutions

Summary proceedings for an offence under the Act may start at any time within three years of the offence or within twelve months of sufficient evidence being available to justify prosecution.

Post-Conviction Powers

Section 31: Penalties

This section provides that a person found guilty of a range of offences under the Act or regulations made under the Act is liable by summary conviction to imprisonment for a term not exceeding 6 months and/or a fine not exceeding level 5 (currently £5,000). It also sets out the serious offences which the prosecutor can decide to try either by summary conviction or by indictment. The maximum penalty for conviction on indictment is imprisonment for a term not exceeding two years and/or an unlimited fine.

Section 32: Deprivation

This section enables 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 or animals in respect of which the offence was committed. The court is required to give reasons if it decides not to make a deprivation order against a convicted person.

Section 33: Disqualification

This section confers a power on the court to disqualify a person from owning, keeping or participating in the keeping of animals and from being party to any arrangements to control or influence the way in which animals are kept. Disqualification may be imposed in relation to animals generally or to one or more kinds of animal. The court can also decide the period which must expire before the person, who is the subject of a disqualification order, may apply to have it lifted. The court can also provide for a suspension of a disqualification order pending appeal and has power to suspend a disqualification order to give the disqualified owner or keeper time to make arrangements for the animal.

Section 34: Seizure of animals in connection with disqualification

This section 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 the person 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 unnecessary suffering, prohibited procedures, docking of dogs' tails, administration of poisons, abandonment, fighting, welfare, not complying with an improvement notice, operating without a required licence or registration where this is required or of a breach of a previous disqualification order.

Section 35: Section 34: supplementary

This section sets out powers of the court when it makes an order under section 34. 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.

Section 36: Destruction in the interests of the animal

This section gives the court power, where it is persuaded by a veterinary surgeon that it is appropriate in the interests of the animal, to order the destruction of an animal in respect of an offence under the Act involving unnecessary suffering, prohibited procedures, tail docking, administration of poisons, fighting, ensuring animal welfare or abandonment.

Section 37: Destruction of animals involved in fighting offences

This section 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. This power is wider than that accorded in section 36, on the basis that there may be circumstances in which it is appropriate to order the destruction of an animal otherwise than in its own interests, for example, if the animal is considered to be a danger to public safety.

Section 38: Reimbursement of expenses relating to animals involved in fighting offences

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 39: Forfeiture of equipment used in offences

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).

Section 40: Orders under section 32, 34, 36, 37 or 39: pending appeals

This section suspends the operation of various orders relating to animals and equipment under the Act until the possibility of an appeal has expired. It also 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. It also provides that costs which a court directs a person to pay will be recoverable as a civil debt.

Section 41: Orders with respect to licences

This section provides that where a person is convicted of an offence under the sections relating to unnecessary suffering, prohibited procedures, docking of dogs' tails, administration of poisons, abandonment, 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 12, the court may cancel any licence held by that person and make an order disqualifying the person from holding such a licence.

Section 42: Termination of disqualification under section 33 or 41

This section enables a person subject to a disqualification order under section 33 or 41 to apply to the court for termination of the disqualification. Applications for termination can be made after one year, and every subsequent year thereafter.

Section 43: Orders made on conviction for reimbursement of expenses

This section clarifies that where a court makes an order for the care or disposal of an animal and a person incurs expenses in carrying out that order, these 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 (Northern Ireland) Order 1981.

Section 44: Orders for reimbursement of expenses: right of appeal for non-offenders

This section provides that where an order for the reimbursement of expenses is made under sections in the Act 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 (Northern Ireland) Order 1981.

Part 5 - General

Section 45: Inspectors

For the purposes of the Act an "inspector" is a person appointed either by the Department in respect of farmed animals or a council in respect of other animals. A definition of farmed animal has been provided in the Act and the definition can be amended by the Department by subordinate legislation should that be necessary in the future. Councils when appointing inspectors for the purposes of the Act must have regard to any guidance that may be issued by the Department. The Department may also issue a list of approved persons who are considered suitable for appointment as inspectors by councils. Councils must provide the Department with such information as may be required in relation to exercising any powers in the Act.

Section 46: Conditions for grant of warrant

The Act makes provision for warrants in order to obtain entry to premises including private dwellings in a variety of circumstances. This section sets out the conditions which must be met before a lay magistrate can grant a warrant to allow a constable or inspector to enter private dwellings and other premises.

Section 47: Powers of entry, inspection and search: supplementary

This section gives effect to Schedule 3, which specifies the power and duties of those exercising powers of entry, inspection or search under warrant.

Section 48: Power to stop and detain vehicles

This section allows a constable in uniform or an inspector if he is accompanied by such a constable, to stop and detain vehicles to search for animals in distress and gather evidence where there is reasonable suspicion that a relevant offence has been committed.

Section 49: Power to detain vessels, etc.

This section provides that a vessel can be detained in port if an inspector believes that an offence is being or has been committed on board. A certificate specifying this must be presented as soon as practicable to the person in charge of the vessel. The Department may make regulations extending this section to aircraft or hovercraft, or make other provision for detaining aircraft or hovercraft as appropriate.

Section 50: Obtaining of documents in connection with carrying out orders etc.

This section requires the owner of an animal, in relation to any order which has been made under the Act, to deliver relevant documents relating to that animal to the person who is authorised to carry out the order.

Section 51: Offences by bodies corporate

This section provides that a criminal prosecution may be brought against a member or members of a corporate body where they are responsible for an action or omission that constitutes an offence under the Act.

Section 52: Scientific research

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 the Act applies to anything lawfully done under the Animals (Scientific Procedures) Act.

Section 53: Hunting, coursing and fishing

This section provides that anything which occurs in the normal course of hunting or coursing is not covered by this Act unless the animal is released in an injured, mutilated or exhausted condition or is hunted or coursed in an enclosed space without reasonable chance of escape. It also provides that anything which occurs in the normal course of fishing is not covered by this Act.

Section 54: Application to the Crown

Under this section the Act and regulations and orders made under it apply to all Government departments and other crown bodies. 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. However this 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.

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Part 6 - Supplementary

Sections 55 – 60 deal with minor regulatory matters arising from the introduction of the Act.