

ANIMAL WELFARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Promotion of welfare

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

48. The welfare offence in this section extends to non-farmed animals similar provisions found in the Welfare of Farmed Animals (England) Regulations 2000¹ (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 The Abandonment of Animals Act 1960 is repealed and effectively replaced by this section, and anyone who leaves an animal without taking reasonable steps to ensure that it is capable of fending for itself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.

¹ S.I. 2000/1870

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

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.