

CHAPTER 22

Animals, birds and plants

PROTECTION OF ANIMALS p 726 et seq

Delete this heading and all of the text which sits beneath it and above the heading
BADGERS AND OTHER WILD ANIMALS *and replace with the following:*

PROVISIONS OF THE ANIMAL WELFARE ACT 2006

Introduction

The Animal Welfare Act 2006 (AWA 2006) repeals the provisions referred to in the text which dealt with various offences of animal cruelty (other than such offences in relation to wild animals). As a result, the references in the text to the following provisions should be deleted: the Protection of Animals Acts 1911, Pet Animals Act 1951 (except in respect of pet shop licensing), and the Abandonment of Animals Act 1960

The animals to which AWA 2006 applies are vertebrates other than man. A 'protected animal' is one which –

- (a) is of a kind which is commonly domesticated in the British Islands;
- (b) is under the control of man whether on a permanent or a temporary basis; or
- (c) it is not living in a wild state.

The Act refers to a person responsible for an animal. Such references are to persons responsible for an animal whether on a permanent or a temporary basis. References to 'being responsible' include references to 'being in charge'. A person who owns an animal is always regarded as being a person who is responsible for it. A person is treated as responsible for an animal for which a person under 16, for whom he has the actual care or control, is responsible.

OFFENCES INVOLVING CRUELTY AND DISPLAY OF ACTS OF CRUELTY

Causing unnecessary suffering

AWA 2006, s 4(1) provides that a person commits an offence if –

- (a) an act of his, or a failure of his to act, causes an animal to suffer;
- (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so;
- (c) the animal is a protected animal; and
- (d) the suffering is unnecessary.

Section 4(2) provides that a person commits an offence if –

- (a) he is responsible for an animal;
- (b) an act, or failure to act, of another person causes the animal to suffer;
- (c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening; and
- (d) the suffering is unnecessary.

Section 4(3) states that considerations to which it is relevant to have regard when determining for the purposes of s 4 whether suffering is unnecessary include:

- (a) whether the suffering could reasonably have been avoided or reduced;
- (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;
- (c) whether the conduct which caused the suffering was for a legitimate purpose, such as –
 - (i) the purpose of benefiting the animal; or
 - (ii) the purpose of protecting a person, property or another animal;
- (d) whether the suffering was proportionate to the purpose of the conduct concerned;
- (e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

Nothing in the s 4 applies to the destruction of an animal in an appropriate and humane manner.

Section 4(1) therefore covers any act, or neglect, which will cause a protected animal to suffer, coupled with knowledge, or circumstances in which that person should have known, that a protected animal would suffer unnecessarily. There have been a number of incidents recently in which a large number of animals have been found on premises, suffering from injuries and neglect. Persons responsible for the animals commit an offence if that suffering occurs due to direct actions or neglect. Animals may have been tethered or confined in a manner which leads to unnecessary suffering, or it may be that they have not been fed or tended in a humane manner. The owner of animals may employ other persons to carry out tasks connected to the welfare of the animals, but he will remain a 'person responsible for an animal' and may commit an offence under s 4(2) if he permits an employee or someone else to cause the animal unnecessary suffering.

The considerations in respect of which regard should be taken in determining whether the suffering was 'unnecessary suffering' are merely a recognition that, in certain circumstances, acts must be carried out which will cause suffering, but overall the act is humane and for the benefit of the animal. But even in such circumstances consideration will be given as to whether the suffering was proportionate in those circumstances and whether the act was carried out competently and humanely.

The responsibilities of persons responsible for animals are extended by AWA 2006, s 9 which sets out responsibilities in respect of animal welfare (see below).

Mutilation

AWA 2006, s 5 provides an offence of carrying out a prohibited procedure on a protected animal, or causing such a procedure to be carried out on such an animal. A person responsible for an animal also commits an offence where another person carries out a prohibited procedure on an animal and he permitted that to happen, or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in the circumstances to prevent that happening.

A 'prohibited procedure' is the carrying out of a procedure which involves interfering with the sensitive tissues or bone structure of the animal, otherwise than for the purpose of its medical treatment.

Nothing in the s 5 applies to the removal of a dog's tail, but this matter is dealt with separately under s 6 below. The Mutilations (Permitted Procedure) Regulations 2007 disapply the offences under s 5 in respect of (a) identification procedures such as tagging and procedures involved in the control of reproduction, such as castration and vasectomy; and (b) procedures carried out in an emergency to save life or relieve pain. [SI 2007/1100]

Docking of dogs' tails

AWA 2006, s 6(1) provides that a person commits an offence if he removes, or causes the removal, of the whole or any part of a dog's tail otherwise than for the purpose of its medical treatment. A person also commits an offence under s 6(2) where he is responsible for a dog, another person carries out such an act, and he permitted that to happen, or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.

The above provisions of s 6 do not apply if the dog is a certified working dog that is not more than five days old. For this purpose, a dog is a certified working dog if a veterinary surgeon has certified that the act was in accordance with regulations: (a) that the dog is likely to be used for law enforcement, activities of HM Forces,; emergency rescue, lawful pest control, or the lawful shooting of animals; and (b) that the dog is of a type specified within regulations. The Docking of Dogs' Tails (England) Regulations 2007 provide that a veterinary surgeon may certify that the dog is of a type to be used for a specified type of work where (i) he is satisfied that the dam of the dog is one of the types specified in Sch 1 to the Regulations (hunt point retrieve breeds of any type or combination of types; spaniels of any type or combination of types; and; terriers of any type or combination of types) and (ii) that he reasonably believes that the dog is not more than five days old. and (iii) that the owner of the dog (or his representative) has shown him evidence of the requisite facts. [SI 2007/1120]

It is a defence for a person charged with an offence under s 6(1) or 6(2) to show that he reasonably believed that the dog was a certified working dog.

It is an offence for a person who owns a certified working dog to fail to take reasonable steps to secure that, before the dog is three months old, it is identified as a certified working dog in accordance with the regulations.

Section 6(9) deals with show dogs. It provides that a person commits an offence if (a) he shows a dog at an event to which members of the public are admitted on payment of a fee; a dog's tail has been wholly or partly removed (in England or Wales or elsewhere) and (c) removal took place on or 6 April 2007 (England)/27 March 2007 (Wales) after the commencement day. However, this does not apply where the dog is shown only for the purpose of demonstrating its working ability where that dog is a certified working dog. It is a defence for a person charged with an offence under s 6(9) to show that he reasonably believed that (i) the event was not one to which members of the public were admitted on payment of an entrance fee; (ii) that the removal had taken place 6 April 2007 (England)/27 March 2007 (Wales) or (iii) that the dog was a certified working dog and was shown only for the purpose of demonstrating its working ability.

It is an offence under s 6(12) for a person knowingly to give false information to a veterinary surgeon in connection with the giving of a certificate under the section.

Administration of poisons etc.

AWA 2006, s 7(1) provides that a person commits an offence if, without lawful authority or reasonable excuse, he administers to (or causes to be taken by) a protected animal any poisonous or injurious drug or substance, knowing it to be poisonous or injurious. It is an offence against s 7(2) for a person who is responsible for an animal, (a) to permit another person so to act without lawful authority or reasonable excuse, or (b) knowing that the drug or substance is poisonous or injurious, to fail to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all of the circumstances to prevent the other person so acting.

A drug or substance may be poisonous or injurious by virtue of the manner or the quantity in which it is administered or taken.

Fighting

AWA 2006, s 8(1) provides that it is an offence for a person to:

- (a) cause an animal fight to take place, or attempt to do so;
- (b) knowingly receive money for admission to an animal fight;
- (c) knowingly publicise a proposed animal fight;
- (d) provide information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;
- (e) make or accept a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight;
- (f) take part in an animal fight;

- (g) have in his possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used;
- (h) keep or train an animal for use for or in connection with an animal fight; keeps any premises for use for an animal fight
- (i) keep any premises for use for an animal fight.

It is an offence under s 8(2) for a person, without lawful authority or reasonable excuse, to be present at an animal fight.

It is also an offence under s 8(3) for a person, without lawful authority or reasonable excuse, knowingly to supply, publish or show to another a video recording of an animal fight or to possess such a recording, knowing it to be such, and with the intention of supplying it. Section 8(3) does not apply to recordings taken outside Great Britain or those which were made before 6 April 2007 (England) and 27 March 2007 (Wales). The prohibition upon the supply of such a video recording does not apply to supply for the inclusion in a programme service, or the publication or showing of such a recording in a programme service, or possession with the intention to supply to a programme service. **These provisions concerning video recordings are not yet in force.**

For the purposes of s 8 an 'animal fight' means an occasion upon which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting. A 'video recording' means 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. A programme service is one as described in the Communications Act 2003 (TV programme service, public teletext service, or digital additional service).

The Act embraces all forms of involvement in animal fights and the display of forms of visual recordings of animal fights. Animal fights are arranged for the benefit of those who gain pleasure from watching acts of cruelty and those who become involved in the betting transactions which invariably accompany such animal fights. 'Bullfighting' involves a man fighting with animals and it was therefore necessary to include fights involving humans and animals. Dog fights and cockfighting are invariably accompanied by heavy betting upon the outcome and those involved in such transactions in any way are caught by the provisions of the Act. The offence under s 8(1) of keeping or training of an animal for fighting may do much to prevent such fights being arranged.

AWA 2006 anticipates the difficulties which exist in proving that such animal fights have occurred and in securing evidence of the particular activities of those who attend. Surveillance will be essential and a record of that which occurred must be made for evidential purposes. The Act therefore grants immunity to enforcement officers acting in good faith and on reasonable grounds in the performance of their functions. Section 8(5) above protects investigative journalists who may make video recordings of events, and excludes from the provisions of the Act possession of those recordings together with their use within an approved programme service.

References to supplying or publishing video recordings refer to supplying or publishing in any manner, including, in relation to a video recording in the form of data stored electronically, by means of transmitting such data.

PROMOTION OF ANIMAL WELFARE

Duty of responsible persons

AWA 2006, s 9 creates an offence which can be committed by a person in relation to the welfare of animals for which he is responsible. A person commits the offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of the animal for which he is responsible are met to the extent required by good practice. Those needs include the need for a suitable environment; the need for suitable diet; the need to be able to exhibit normal behaviour patterns; and need to be housed with, or apart from, other animals; and the need to be protected from pain, suffering, injury and disease.

In relation to this offence, the circumstances to which it is relevant to have regard include, in particular, any lawful purpose for which the animal is kept and any lawful activity undertaken by the animal. This will protect those who keep animals for use within various lawful activities, against prosecution in the event of a complaint from an animal rights group, to the effect that the manner of their keeping, the environment within which they are kept, or their ability to display normal behaviour patterns, are unsatisfactory.

The provisions of s 9 do not apply to the destruction of an animal in an appropriate and humane manner.

Improvement notices

AWA 2006, s 10 provides that an inspector (person appointed to be an inspector by a national authority or a local authority) may serve a notice on a person requiring him to take specified steps to improve if he is of the opinion that the person is not meeting the requirements of s 9. Where such a notice is served there can be no proceedings under s 9 before the end of the period for improvement specified in the notice. If the appropriate steps are taken, that is the end of the matter.

An inspector is empowered to extend a notice.

Transfer of animals by way of sale or prize to persons under sixteen

By AWA 2006, s 11(1), a person commits an offence if he sells (which term includes transfer, or an agreement to transfer ownership in consideration of entry by the transferee into another transaction) an animal to a person whom he had reasonable cause to believe to be under the age of 16 years.

It is also an offence under s 11(3) to enter into an arrangement with such a person under which that person has a chance to win an animal as a prize.

However, no such offence will be committed where the arrangement is made in the presence of the person concerned provided that the accused has reasonable cause to believe that the person with whom the arrangement is made is accompanied by a person who is not under the age of 16. N is such an offence committed if the accused enters into an arrangement otherwise than in the presence of the person with whom the arrangement is made and he has reasonable cause to believe that a person who has the actual care and control of the person with whom the arrangement is made, has consented to the arrangement. Any arrangement entered into in a family context is also excluded from the application of s 11(3).

Licensing or registration of activities involving animals

Provision is made by AWA 2006 for the licensing of persons who carry on a specified activity involving animals for which they are responsible. Regulations will specify those activities. In respect of other activities to be so specified, registration is required. Provisions is also made for codes of practice to be issued by a national authority. By s 13(6), carrying out an activity for which a licence or registration is required when one is not so licensed or registered is an offence.

An inspector may require a licence holder to produce records and may copy them. He may also carry out any inspection to ensure that requirements imposed by regulations are carried out by registered persons. If accompanied by a constable in uniform, an inspector may stop and detain a vehicle for the purpose of exercising these powers or those existing under a warrant.

Although not associated with licensing or registration it is worth noting that inspectors have powers of entry and inspection in relation to farm premises. A warrant may be issued by a justice where an inspector is denied entry.

By AWA 2006,s 42, where a licence holder is convicted of an offence of causing unnecessary suffering,, of mutilation, of docking of dogs' tails, of administration of poisons, of animal fighting, of failing to ensure welfare of animals, of sale of animals to person under sixteen, or an offence related to licensed activities, a court may make an order cancelling his licence and may make an order disqualifying him, for such period as it thinks fit, from holding a licence.

ANIMALS IN DISTRESS

Powers in relation to animals in distress

Under AWA 2006, s 18, where an inspector or a constable reasonably believes that a protected animal is suffering, he may take, or arrange for the taking of, such steps as appear to him to be immediately necessary to alleviate the animal's suffering. This does not include the destruction of an animal unless it appears that the condition of the animal is such that there is no reasonable alternative to destroying it and that the need

for action is such that it is not reasonably practicable to wait for a veterinary surgeon. In other circumstances a veterinary surgeon must certify that the condition of the protected animal is such that it should, in its own interests be destroyed. If he does so, an inspector or constable may destroy the animal where it is or take it to another place and destroy it there, or arrange for this to be done. Section 54 empowers a constable in uniform, or an inspector who is accompanied by such a constable to stop and detain a vehicle for the purpose of entering and searching it in the exercise of these powers, or the exercise of powers under a warrant.

An inspector or constable is empowered to take a protected animal (and its dependent offspring) into his possession where a veterinary surgeon certifies that it is suffering or that it is likely to suffer if circumstances do not change. He may do so without such certification where it appears to him that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon. Where such an animal is taken into possession an inspector or constable may remove it, or make arrangements for it to be removed to a place of safety or may care for it or arrange for such care to be provided. Such an animal may be marked for identification purposes. On the application of the owner, or any other person appearing to have an interest, a magistrates' court may make an order in relation to an animal so taken into possession. An order may order that specified treatment be given to the animal, that possession be surrendered to a specified person, that the animal be sold or otherwise disposed of, or that the animal be destroyed.

Where such actions are carried out under s 18 otherwise than with the knowledge of a person responsible for the animal, he must be informed (by the person who acted) of the action taken as soon as reasonable practicable.

It is an offence to intentionally obstruct a person exercising his powers under s 18.

Powers of entry for the purposes of s 18

AWA 2006, s 19(1) empowers an inspector or constable to enter premises for the purpose of searching for a protected animal and of exercising any power given by s 18 if he reasonably believes that there is a protected animal on the premises and that the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer. Reasonable force may be used if it appears to him that entry is required before a warrant can be obtained. The power of entry does not extend to a private dwelling.

By s 19(4), justice of the peace may, on the application of an inspector or constable, issue a warrant authorising entry into any premises, by force if necessary, for the purpose mentioned in s 18(1) if there are reasonable grounds for believing that there is a protected animal on the premises and that the animal is suffering or is likely to suffer if its circumstances do not change. The justices must be satisfied that one of the following conditions exists:

- (a) the first condition is that the whole of the premises is used as a private dwelling and the occupier has been informed of the decision to apply for a warrant;
- (b) the second condition is that no part of the premises is used as a dwelling and the occupier -

- (i) has been informed of the decision to seek entry to the premises and the reasons for that decision,
- (ii) has failed to allow entry to the premises on being requested to do so by an inspector or a constable, and
- (iii) has been informed of the decision to apply for a warrant;
- (c) the premises are unoccupied or the occupier is absent and notice of intention to apply for a warrant has been left in a conspicuous place on the premises;
- (d) it is inappropriate to inform the occupier of the decision to apply for a warrant because it would defeat the object of entering the premises, or entry is required as a matter of urgency.

Seizure of animals involved in fighting offences

AWA 2006, s 22 empowers a constable to seize any animal it appears to him is one in relation to which an offence under s 8(1) (causing, publicising etc animal fighting) or s 8(2) (presence at animal fight) has been committed. He may enter and search premises if he reasonably believes that there is an animal on the premises and it is one on respect of which that power of seizure applies. The section does not authorise such entry to a private dwelling.

A justice of the peace may issue a warrant to enter premises, by force if necessary, in respect of the powers under s 8(1) or (2) and 19 if he has reasonable grounds for believing that there is on the premises an animal in respect of which an offence has been committed and that one of the four conditions listed above in respect of a warrant under s 19 is satisfied.

Entry and search under warrant in connection with offences

A justice of the peace may issue a warrant authorising an inspector or constable to enter premises, by force if necessary, in order to search for evidence of the commission of a relevant offence if he has reasonable grounds for believing that an offence under ss 4 -9 (offences relating to prevention of harm), 13(6) ((non-compliance with licensing or registration requirement) or s 34(9) (breach of a disqualification order, below) has been committed, or that evidence of the commission of such an offence is to be found on the premises.. A constable may stop and detain a vehicle to exercise powers under s 19 or under a warrant.

Entry for purpose of arrest

AWA 2006 s 24 amends PACE, s 17(1)(c) (power of constable to enter and search premises for the purpose of arresting a person for offence under specified enactments so as to add offences against any of the sections 4, 5, 6(1) and (2), 7 and 8(1) and (2) of the Animal Welfare Act 2006 (offences relating to the prevention of harm to animals, respectively, unnecessary suffering, mutilation, docking of dogs' tails, administration of poisons, and animal fighting).

PROSECUTIONS AND LIMITATIONS IN RESPECT OF PROCEEDINGS

A local authority may prosecute proceedings for any offence under the Act.

A magistrates' court may try an information (or requisition) in relation to an offence under the Act which is laid before the end of a period of three years beginning with the date of the commission of the offence, and before the end of a period of six months beginning on the date on which evidence which the prosecutor thinks is sufficient to justify proceedings comes to his knowledge.

POST-CONVICTION POWERS

Deprivation

AWA 2006, s 33 provides that where a person is convicted of an offence under any of ss 4, 5, 6(1) and (2), 7, 8 and 9 (offences relating to the prevention of harm to animals, respectively, unnecessary suffering, mutilation, docking of dogs' tails, administration of poisons, animal fighting and duty to ensure welfare of animals).and he is the owner of the animal, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal. This also applies to a conviction under s 34(9) on the ground that ownership of the animal is in breach of a disqualification.

Disqualification orders

AWA 2006, s 34 deals with disqualification orders which may be made in relation to animals generally, or in relation to animals of one or more kinds. The section applies to offences under ss 4, 5, 6(1) and (2), 7, 8, 9 and 13(6) and 34(9) (offences relating to the prevention of harm to animals, respectively, unnecessary suffering, mutilation, docking of dogs' tails, administration of poisons, animal fighting and duty to ensure welfare of animals, non-compliance with licensing and registration requirements and breach of a disqualification order).

A disqualification order under s 34 may disqualify the accused under any one or more of s 34(2), 34(3) or 34(4) for such period as the court thinks fit .Disqualification under s 34(2) in respect of owning animals, keeping animals, participation in the keeping of animals, and being party to arrangements under which the accused is entitled to control or influence the way in which animals are kept. Disqualification under s 34(3) disqualifies a person from dealing in animals. Disqualification under s 34(4) disqualifies a person from transporting animals or arranging to do so.

Section 35 permits the inclusion in an order of a power of seizure of animals which such a person concerned owns or keeps.

A person who is disqualified by an order under s 34 may apply to the appropriate court (that which made the order or in the case of an order made by a magistrates' court, a magistrates' court acting for the same local justice area as that court) for the termination of the order. No application may be made before the end of a period of

one year beginning with the date upon which the order was made, nor subsequently within a one-year period after an unsuccessful application. In addition, where a court making the disqualification order which specified a period during which the offender may not make an application for termination, that limit applies to any application for termination of the order.

Destruction in the interests of an animal

By AWA 2006, s 37 provides that where conviction follows an offence under ss 4, 5, 6(1) and (2), 7, 8, 9 (offences relating to the prevention of harm to animals, respectively, unnecessary suffering, mutilation, docking of dogs' tails, administration of poisons, animal fighting and duty to ensure welfare of animals). the court may order the destruction of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by a veterinary surgeon, that it is appropriate to do so in the interest of the animal. It may also order the forfeiture and destruction of any equipment used in such offences (s 40).

Section 38 permits the making of an order for the destruction of an animal in relation to which an offence under s 8(1) or (2) (animal fighting) was committed on grounds other than in the interests of the animal.

MISCELLANEOUS

Power to detain vessels

Certain powers are given to an inspector to certify in writing that he is satisfied that an offence under or by virtue of the Act has been committed on board a vessel in port, that vessel may be detained. The certificate specifying the alleged offence must set out the inspector's reasons for being satisfied that each offence to which it relates has or have been committed.

Scientific research

Nothing in the Act applies to anything lawfully done under the Animals (Scientific Procedures) Act 1986, nor does anything which occurs in the normal course of fishing.