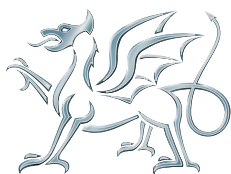


# Launch of the Draft Animal Welfare Bill



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



**defra**  
Department for Environment  
Food and Rural Affairs



# Launch of the Draft Animal Welfare Bill

Presented to Parliament by the Secretary of State  
for Environment, Food and Rural Affairs  
and the Chief Secretary to the Treasury  
by Command of Her Majesty  
July 2004

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## Foreword by Rt Hon Margaret Beckett MP



Secretary of State for the Environment, Food and Rural Affairs

We have a deserved reputation in this country as a nation of animal lovers. It was the United Kingdom which introduced the first parliamentary legislation for animal welfare in the world and our laws have a long history of protecting animals from cruelty. However, much of the key legislation currently relating to non-farmed animals was drafted in the nineteenth century and, despite a number of subsequent amendments, fails to provide animals with standards of welfare appropriate for our time.

One of the frequent complaints made against the existing animal welfare legislation is that effective action cannot be taken where a non-farmed animal, although not currently suffering, is being kept in such a way that suffering will probably occur at some future point. This is clearly unacceptable and I believe that a duty of care to promote the welfare of all animals kept by man is long overdue.

The creation of Defra in 2001 has brought all animal legislation – excluding that relating to animals used in scientific research – under one roof. This has provided a unique opportunity to embark on a root and branch modernisation of our animal welfare laws.

In January 2002 we started this process with a public consultation on what people would like to see in twenty first century welfare legislation. This consultation generated a number of proposals which were then looked at in a series of meetings with key stakeholders.

We have taken these views into consideration and are now ready to put forward our proposals for legislation for scrutiny and comment. The House of Commons Environment, Food and Rural Affairs (EFRA) Select Committee is set to carry out pre-legislative scrutiny of the draft Animal Welfare Bill and will shortly make arrangements to ensure the public can contribute their views and comments. I will then take full account of the suggestions made by this Committee before proceeding and introducing the Bill to Parliament.

This Bill is a watershed in ensuring that this country re-establishes itself as the pace setter for animal welfare standards throughout the world.

A handwritten signature in black ink that reads "Margaret Beckett".

Margaret Beckett

# Animal Welfare Bill

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A  
**B I L L**

TO

Make provision about animal welfare; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Specific offences relating to animals*

**1 Cruelty**

- (1) 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, 5
  - (c) the animal is a protected animal, and
  - (d) the suffering is unnecessary.
- (2) A keeper of an animal commits an offence if—
- (a) he permits another person to cause the animal to suffer, and 10
  - (b) the suffering caused by the other person is unnecessary.
- (3) The considerations to which it is relevant to have regard when determining for the purposes of subsections (1) and (2) whether suffering is unnecessary include—
- (a) whether the suffering could reasonably have been avoided or reduced; 15
  - (b) whether the conduct which caused the suffering was in compliance with any relevant statutory provisions, regulations, licence or code of practice;
  - (c) whether the conduct which caused the suffering was for a legitimate purpose, such as— 20
    - (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.
- (4) A person commits an offence if he—
  - (a) mutilates a protected animal,
  - (b) causes a protected animal to be mutilated, or 5
  - (c) permits the mutilation of an animal of which he is a keeper.
- (5) Subsection (4) does not apply in such circumstances as the appropriate national authority may specify by order.
- (6) No order under subsection (5) shall be made by the Secretary of State unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament. 10
- (7) A person commits an offence if, without lawful authority or excuse, he—
  - (a) administers any poisonous or injurious drug or substance to a protected animal,
  - (b) causes any such drug or substance to be taken by a protected animal, or 15
  - (c) permits any such drug or substance to be administered to an animal of which he is a keeper,
 in each case, knowing the drug or substance to be poisonous or injurious.
- (8) References in subsection (7) to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance. 20
- (9) A person commits an offence if he—
  - (a) performs an operation on a protected animal without due care and humanity, or 25
  - (b) permits an operation to be performed without due care and humanity on an animal of which he is a keeper.
- (10) For the purposes of this section—
  - (a) a person is a keeper of an animal if—
    - (i) he owns the animal, 30
    - (ii) he is responsible for, or in charge of, the animal, or
    - (iii) he has actual care and control of a person under the age of 16 years to whom sub-paragraph (i) or (ii) applies, and
  - (b) a keeper of an animal shall be treated as permitting something to happen to the animal if he fails to exercise reasonable care and supervision in relation to protecting the animal from it. 35

**2 Fighting etc**

- (1) A person commits an offence if he—
  - (a) arranges an animal fight;
  - (b) knowingly publicises an animal fight; 40
  - (c) uses a place, or permits a place to be used, for an animal fight;
  - (d) keeps a place, or permits a place to be kept, for use for an animal fight;
  - (e) receives money for admission to a place which is being or is to be used for an animal fight;

- (f) gives or receives money (or money's worth) by way of a bet on the outcome of an animal fight;
- (g) keeps or trains an animal for the purposes of an animal fight;
- (h) places a protected animal with an animal, or with a human, for the purposes of an animal fight; 5
- (i) has in his possession anything capable of being used in connection with an animal fight with a view to its being so used;
- (j) takes part in an animal fight.
- (2) A person commits an offence if, without lawful authority or excuse, he— 10
- (a) is present at an animal fight;
- (b) makes a recording of an animal fight;
- (c) has in his possession or distributes— 15
- (i) a recording of an animal fight,
- (ii) a copy of such a recording, or
- (iii) material from such a recording;
- (d) publishes material from a recording of an animal fight.
- (3) In this section—
- “animal fight” means an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting; 20
- “recording” means a record from which visual images or sounds may, by any means, be reproduced.
- 3 Welfare**
- (1) A keeper of an animal commits an offence if he fails to take reasonable steps to ensure the animal's welfare. 25
- (2) For the purposes of this section, a person is a keeper of an animal if—
- (a) he owns the animal,
- (b) he is responsible for, or in charge of, the animal, or
- (c) he has actual care and control of a person under the age of 16 years to whom paragraph (a) or (b) applies. 30
- (3) If an animal has been abandoned, any person who immediately before that time was a keeper of the animal shall continue to be a keeper of the animal for the purposes of this section until another person becomes a keeper of it.
- (4) For the purposes of this section, an animal's welfare shall be taken to consist of the meeting of its needs in an appropriate manner, and those needs shall be taken to include— 35
- (a) the need for a suitable environment in which to live,
- (b) the need for adequate food and water at appropriate intervals,
- (c) the need to be able to exhibit normal behaviour patterns,
- (d) any need to be housed with, or apart from, others of its own or other species, and 40
- (e) the need for appropriate protection from, and diagnosis and treatment of, pain, injury and disease.
- (5) In subsection (4), the reference to an appropriate manner is to a manner which is appropriate to— 45

- (a) the animal's species,
  - (b) its degree of domestication, and
  - (c) its environment and circumstances.
- (6) The killing of an animal in an appropriate and humane manner does not constitute an offence under subsection (1). 5

**4 Sale to persons under 16**

A person commits an offence if he sells an animal to a person whom he has reasonable cause to believe to be under the age of 16 years.

**5 Giving as prizes**

A person commits an offence if he gives an animal to another as a prize. 10

*Animal welfare regulations and guidance*

**6 Regulations to promote welfare**

- (1) The appropriate national authority may by regulations make such provision as the authority thinks fit for the purpose of promoting the welfare of animals kept by man. 15
- (2) Without prejudice to the generality of the power under subsection (1), regulations under that subsection may, in particular—
- (a) make provision relating to the welfare of animals in particular situations, including—
    - (i) while being kept for farming or other purposes, 20
    - (ii) during transport,
    - (iii) at market,
    - (iv) at slaughter, and
    - (v) when being used, or trained for use, in sport or entertainment;
  - (b) make provision with respect to accommodation for animals, 25 including—
    - (i) the dimensions and layout of accommodation,
    - (ii) the materials to be used in constructing accommodation,
    - (iii) the facilities by way of lighting, heating, cooling, ventilation, drainage, water supply and otherwise to be provided in connection with accommodation, and 30
    - (iv) the numbers of animals which may be kept in any accommodation;
  - (c) make provision for ensuring the provision of suitable diets for animals;
  - (d) make provision for prohibiting or regulating the use of any substance as food for animals; 35
  - (e) make provision for prohibiting or regulating the importation and supply of any substance intended for use as food for animals;
  - (f) make provision for prohibiting or regulating the use of any method of marking or restraining animals; 40
  - (g) make provision for prohibiting or regulating any method of interfering with the capacity of animals to smell, see, hear, emit sound or exercise any other faculty;

- (h) make provision for licensing in relation to specified activities involving animals;
- (i) make provision for registration in relation to specified activities involving animals;
- (j) make provision for prohibiting or regulating the use of equipment in relation to animals; 5
- (k) make provision for prohibiting specified practices in relation to animals;
- (l) make provision for prohibiting the keeping of animals of a specified kind in specified circumstances; 10
- (m) make provision for prohibiting the use of animals of a specified kind for a specified purpose;
- (n) make provision requiring the identification of animals by a specified method;
- (o) make provision about the breeding of animals; 15
- (p) make provision to facilitate or improve co-ordination in relation to the carrying-out by different persons of functions relating to the welfare of animals;
- (q) make provision for the establishment of one or more bodies with functions relating to advice about the welfare of animals. 20
- (3) Power to make regulations under subsection (1) includes power –
- (a) to create offences in relation to breach of specific regulations;
- (b) to make provision for fees or other charges in relation to the carrying-out of functions under the regulations;
- (c) to make different provision for different cases or areas; 25
- (d) to provide for exemptions from any provisions of the regulations, either subject to specified conditions or without conditions;
- (e) to make incidental, supplementary, consequential or transitional provision or savings;
- (f) to amend or repeal any enactment in consequence of provision of the kind mentioned in subsection (2)(h) or (i). 30
- (4) Power to make regulations under subsection (1) does not include power to create an offence triable on indictment or punishable with –
- (a) imprisonment for a term exceeding 51 weeks, or
- (b) a fine exceeding level 5 on the standard scale. 35
- (5) Regulations under subsection (1) which make provision of the kind mentioned in subsection (2)(h) may include provision for the attachment to licences under the regulations of conditions which have a public safety, rather than an animal welfare, purpose.
- (6) No regulations under subsection (1) shall be made by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament. 40
- (7) In this section –
- “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)); 45
- “specified” means specified in regulations under subsection (1).

**7 Codes of practice**

- (1) The appropriate national authority may issue, and may from time to time revise, codes of practice for the purpose of providing practical guidance in respect of any provision made by or under this Act.
- (2) The appropriate national authority shall publish any code of its under subsection (1) as for the time being in force. 5
- (3) A person’s failure to comply with a provision of a code of practice issued under this section shall not of itself render him liable to proceedings of any kind.
- (4) In any proceedings against a person for an offence under this Act or an offence under regulations under section 6(1)— 10
  - (a) failure to comply with a relevant provision of a code of practice issued under this section may be relied upon as tending to establish liability, and
  - (b) compliance with a relevant provision of such a code of practice may be relied upon as tending to negative liability. 15

**8 Making and approval of codes of practice: England**

- (1) Where the Secretary of State proposes to issue or revise a code of practice under section 7, he shall—
  - (a) prepare a draft of the code (or revised code),
  - (b) consult such persons about the draft as he thinks fit, and 20
  - (c) consider any representations made by them.
- (2) If following consultation under subsection (1) the Secretary of State decides to proceed with a draft code (either in its original form or with such modifications as he thinks fit), he shall lay a copy of the draft before each House of Parliament. 25
- (3) If, within the 40-day period, either House resolves not to approve a draft laid under subsection (2), the Secretary of State shall take no further steps in relation to the proposed code.
- (4) If, within the 40-day period, neither House resolves not to approve a draft laid under subsection (2), the Secretary of State shall issue the code (or revised code) in the form of the draft. 30
- (5) A code (or revised code) issued in pursuance of subsection (4) shall come into force on such day as the Secretary of State may by order appoint.
- (6) Subsection (3) does not prevent a new draft of a proposed code from being laid before Parliament. 35
- (7) An order under subsection (5) may contain such transitional provisions or savings as the Secretary of State considers necessary or expedient.
- (8) In this section, “40-day period”, in relation to the draft of a proposed code, means—
  - (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and 40
  - (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(9) In this section, references to a proposed code include a proposed revised code.

## **9 Making of codes of practice: Wales** 5

- (1) Where the National Assembly for Wales proposes to issue or revise a code of practice under section 7, it shall –
- (a) prepare a draft of the code (or revised code),
  - (b) consult such persons about the draft as it thinks fit, and
  - (c) consider any representations made by them. 10
- (2) If following consultation under subsection (1) the National Assembly for Wales decides to proceed with a draft code, it shall issue the code (or revised code) either in its original form or with such modification as it thinks fit.
- (3) A code (or revised code) issued in pursuance of subsection (2) shall come into force on such day as the National Assembly for Wales may by order appoint. 15
- (4) An order under subsection (3) may contain such transitional provisions or savings as the National Assembly for Wales considers necessary or expedient.

## **10 Revocation of codes of practice**

- (1) The appropriate national authority may by order revoke a code of practice issued by it under section 7. 20
- (2) Power to make an order under subsection (1) includes power to make transitional provision or savings.

### *Animals in distress: general*

## **11 Powers to take possession of, and retain, animals in distress**

- (1) An inspector or a constable may take a protected animal into possession if a veterinary surgeon certifies – 25
- (a) that it is suffering,
  - (b) that it is not being properly cared for, or
  - (c) that, if its circumstances do not change, it is likely to suffer or not to be properly cared for. 30
- (2) An inspector or a constable may act under subsection (1) without the certificate of a veterinary surgeon if it appears to him –
- (a) that the animal is suffering, or
  - (b) that, if its circumstances do not change, it is likely to suffer,
- and that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon. 35
- (3) An animal taken into possession under subsection (1) may be retained until –
- (a) the end of the period of eight days beginning with the day on which it was taken into possession, or
  - (b) if relevant proceedings are begun before the end of that period, until the proceedings are discontinued or otherwise disposed of. 40



- (4) The reference in subsection (3)(b) to relevant proceedings is to proceedings for an offence under this Act in respect of –
- (a) the animal in question, or
  - (b) another animal taken into possession under subsection (1) on the same occasion as that animal,
- being proceedings brought against the owner or a keeper of the animal. 5
- (5) An inspector or a constable may apply to a magistrates' court for an extension of the period mentioned in subsection (3)(a).
- (6) If an application under subsection (5) is not determined before expiry of the period mentioned in subsection (3)(a), that period shall be deemed to be extended until the application is determined or withdrawn. 10
- (7) On an application under subsection (5), the court may order that this section shall have effect, in relation to the animal, as if the period mentioned in subsection (3)(a) were such longer period as may be specified in the order.
- (8) Where an animal is being retained under subsection (3)(a), a magistrates' court may, on application by –
- (a) the person from whom the animal has been taken, or
  - (b) if different, the owner of the animal,
- order that the animal cease to be so retained. 15
- 12 Powers to remove and care for animals in distress 20**
- (1) Where an animal is taken into possession under section 11(1), an inspector or constable (or a person authorised by him) may –
- (a) remove the animal to a place of safety;
  - (b) while the animal is retained under section 11(3), care for the animal, or cause or procure it to be cared for –
- (i) on the premises where it was being kept when it was taken into possession, or
  - (ii) at such other place as he thinks fit. 25
- (2) Where an animal is being cared for under subsection (1)(b)(i), the person by whom it is being cared for, or a person authorised by him, may enter the premises where the animal is kept for the purpose of caring for it and make use for that purpose of any equipment on the premises. 30
- (3) In the case of any part of premises which is used as a private dwelling, a right of entry under subsection (2) may only be exercised under the authority of a warrant issued by a justice of the peace. 35
- (4) Any costs in relation to the removal or care of an animal which are incurred by a person acting under this section shall be recoverable from the owner of the animal summarily as a civil debt.
- 13 Other powers in relation to animals in distress**
- (1) If an inspector or constable, whether in the exercise of a power of entry and search under this Act or otherwise, finds a protected animal that is suffering, he may take, or authorise another to take, such steps as appear to him to be immediately necessary to alleviate the animal's suffering. 40

- (2) If a veterinary surgeon certifies that the condition of a protected animal is such that there is no reasonable alternative to killing it, an inspector or constable may –
- (a) kill the animal where it is or take it to another place and kill it there, or
  - (b) cause or procure the doing of any of the things mentioned in paragraph (a). 5
- (3) An inspector or a constable may act under subsection (2) without the certificate of a veterinary surgeon if it appears to him that –
- (a) there is no reasonable alternative to killing the animal, and
  - (b) the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon. 10
- (4) A veterinary surgeon may examine and take samples from an animal for the purpose of –
- (a) determining whether to issue a certificate under subsection (2) or under section 11(1) with respect to the animal, or 15
  - (b) giving evidence in connection with a decision by the court whether to exercise a power under this Act in relation to the animal.

#### 14 Entry to search for and deal with animals in distress

- (1) If an inspector or a constable reasonably believes –
- (a) that there is a protected animal on any premises, and 20
  - (b) that the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer,
- he may at any time enter the premises for the purposes of searching for such an animal and (where appropriate) exercising any powers he may have under this Act in relation to such an animal. 25
- (2) Subsection (1) does not authorise entry into any part of premises which is used as a private dwelling.
- (3) An inspector or constable may (if necessary) use reasonable force in exercising the power conferred by subsection (1), but only if it appears to him that entry is required before a warrant under subsection (5) can be obtained and executed. 30
- (4) Subsection (3) does not apply to an inspector exercising the power conferred by subsection (1) between the hours of 11pm and 5am, unless he is accompanied by a constable.
- (5) If, on application by an inspector or a constable, a justice of the peace is satisfied – 35
- (a) that there are reasonable grounds for believing –
    - (i) that there is a protected animal on any premises, and
    - (ii) that the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer, and 40
  - (b) that one or more of the conditions in subsection (6) is met,
- he may issue a warrant authorising an inspector or constable to enter the premises (if necessary, using reasonable force) for the purposes of searching for such an animal and (where appropriate) exercising any powers the inspector or constable may have under this Act in relation to such an animal. 45
- (6) The conditions are –

- (a) in the case of any part of premises which is used as a private dwelling, that the occupier of the premises has been informed of the decision to apply for the warrant;
  - (b) in the case of any part of premises which is not used as a private dwelling, that the occupier of the premises—
    - (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 a person mentioned in subsection (1), and
    - (iii) has been informed of the decision to apply for the warrant;
  - (c) in either case—
    - (i) that the premises are unoccupied, or the occupier is absent, and notice of intention to apply for the warrant has been left in a conspicuous place on the premises, or
    - (ii) an application for admission to the premises or the giving of notice of intention to apply for the warrant is inappropriate because entry is required as a matter of urgency.
- (7) References in subsection (6) to the occupier of premises, in relation to any vehicle, vessel, aircraft or hovercraft, are to the person who appears to be in charge of the vehicle, vessel, aircraft or hovercraft, and “unoccupied” shall be construed accordingly.
- (8) Sections 15 and 16 of the Police and Criminal Evidence Act 1984 (c. 60) shall have effect in relation to a warrant issued under this section to an inspector as they have effect in relation to a warrant so issued to a constable.

*Animals in distress: proceedings pending* 25

**15 Application of sections 16 to 19**

- (1) Sections 16 to 19 apply where—
  - (a) proceedings for an offence under this Act in relation to an animal have been brought against the owner, or a keeper, of the animal, and
  - (b) the proceedings have not been discontinued or otherwise disposed of.
- (2) A person who brings any such proceedings may not perform any functions of a prosecutor under those sections unless he is—
  - (a) a public authority (within the meaning of section 17 of the Prosecution of Offences Act 1985 (c. 23)),
  - (b) a person acting—
    - (i) on behalf of such an authority, or
    - (ii) in his capacity as an official appointed by such an authority, or
  - (c) a person authorised by the appropriate national authority to perform the functions of a prosecutor under those sections.

**16 Orders in relation to animals owned or kept by defendant** 40

- (1) If, on the application of the prosecutor, it appears to the court from evidence given by a veterinary surgeon—
  - (a) that any animal owned or kept by the defendant is suffering,
  - (b) that any such animal is not being properly cared for, or

- (c) that, if the circumstances of any such animal do not change, it is likely to suffer or not to be properly cared for,  
the court may authorise the prosecutor to do, or to arrange for the doing by another of, any one or more of the things mentioned in subsection (2).
- (2) Those things are – 5
- (a) taking the animal into possession and retaining it;
  - (b) removing the animal to a place of safety;
  - (c) caring for the animal, or causing or procuring it to be cared for, on the premises on which it is kept or at some other place;
  - (d) selling the animal for a fair price; 10
  - (e) disposing of the animal otherwise than by way of sale;
  - (f) slaughtering the animal, or causing or procuring it to be slaughtered.
- (3) The court may not make an order under subsection (1) unless it has given the owner of the animal in respect of which it is proposed to make such an order an opportunity to be heard. 15
- (4) Subsection (3) does not apply where the court is satisfied that it is not reasonably practicable to communicate with the owner.
- (5) In determining what to authorise under subsection (1), the court shall have regard to all the circumstances, including the desirability of protecting the value of the animal and avoiding increasing the defendant's costs. 20
- (6) A person who obstructs the prosecutor, or a person authorised by him, in the exercise of powers conferred by an order under subsection (1) commits an offence.
- (7) An order under subsection (1) ceases to have effect on the discontinuance or other disposal of the proceedings; but this is without prejudice to anything done before the order ceases to have effect. 25
- 17 Orders for disposal of animals taken under section 11(1) or 16(1)**
- (1) The court may, on the application of the prosecutor, make an order authorising the prosecutor to do, or arrange for the doing by another of, any of the following in relation to a relevant animal – 30
- (a) selling the animal at a fair price;
  - (b) disposing of the animal otherwise than by way of sale;
  - (c) slaughtering the animal, or causing or procuring it to be slaughtered.
- (2) The court may, on the application of the defendant, order any of the following in relation to a relevant animal – 35
- (a) the sale of the animal at a fair price;
  - (b) the disposal of the animal otherwise than by way of sale;
  - (c) the slaughter of the animal;
- and appoint a person to carry out the order.
- (3) Where the defendant is not the owner of a relevant animal, the power under subsection (2) is also exercisable on the application of the owner of the animal. 40
- (4) The court may not make an order under subsection (1) or (2) unless it has given the owner of the animal in respect of which it is proposed to make such an order an opportunity to be heard.

- (5) Subsection (4) does not apply where the court is satisfied that it is not reasonably practicable to communicate with the owner.
- (6) In determining whether to make an order under subsection (1) or (2), the court shall have regard to all the circumstances, including the desirability of protecting the value of the animal and avoiding increasing the defendant’s costs. 5
- (7) A person who obstructs the prosecutor, or a person authorised by him, in the exercise of powers conferred by an order under subsection (1) commits an offence.
- (8) An order under subsection (1) or (2) ceases to have effect on the discontinuance or other disposal of the proceedings; but this is without prejudice to anything done before the order ceases to have effect. 10
- (9) For the purposes of this section, a relevant animal is one which—  
 (a) has been taken into possession under section 11(1), or under an order under section 16(1), and 15  
 (b) is being retained under section 11(3)(b), or under such an order, and of which the defendant was the owner or a keeper immediately before it was so taken into possession.
- 18 Orders for release of animals taken under section 11(1) or 16(1)**
- (1) In relation to a relevant animal, the court may, on the application of the defendant or the owner of the animal, order— 20  
 (a) that the animal cease to be retained under section 11(3)(b), or  
 (b) that the order under section 16(1) cease to have effect, as the case may be.
- (2) In determining whether to make an order under subsection (1), the court shall have regard to all the circumstances, including the desirability of protecting the value of the animal and avoiding increasing the defendant’s costs. 25
- (3) In this section, “relevant animal” has the meaning given in section 17.
- 19 Powers in connection with orders under section 16(1) or 17(1)**
- (1) Where— 30  
 (a) an order is made under section 16(1) or 17(1), or  
 (b) the prosecutor has given notice to the court of his intention to apply for an order under section 16(1),  
 and the prosecutor is of the opinion that the animal to which the order, or proposed order, relates needs to be marked for identification purposes, he or a person authorised by him may enter the premises on which the animal is kept and mark it for those purposes (whether by the application of an ear tag or by any other means). 35
- (2) Where an order is made under section 16(1) or 17(1), the prosecutor or a person authorised by him may— 40  
 (a) enter the premises on which the animal to which the order relates is kept for the purpose of exercising the powers conferred by the order, and

- (b) if, in the case of an order under section 16(1), the order authorises the doing of any of the things mentioned in subsection (2)(a) to (c) of that section, make use for that purpose of any equipment on the premises.
- (3) In the case of any part of premises which is used as a private dwelling, a right of entry under this section may only be exercised under the authority of a warrant issued by a justice of the peace. 5
- (4) Any person who obstructs the prosecutor, or a person authorised by him, in the exercise of powers conferred by subsection (1) or (2) commits an offence.

## 20 Orders under section 16 or 17: financial provisions

- (1) Where an order is made under section 16(1) or 17(1), the prosecutor is entitled to be reimbursed by the defendant for any reasonable expenses incurred by the prosecutor in the exercise of powers conferred by virtue of the order. 10
- (2) The owner of an animal to which an order under section 16 or 17 relates is entitled to be paid any amount realised by disposal or slaughter of the animal in pursuance of the order. 15
- (3) If the owner of the animal to which an order under section 16 or 17 relates is subject to any liability under subsection (1), any sum owing to him under subsection (2) may be reduced by an amount equal to that liability.
- (4) Any amount payable under subsection (1) may be recovered summarily as a civil debt. 20

### *Animals kept for fighting etc*

## 21 Powers to take possession of, and retain, animals kept for fighting etc

- (1) Where a person is arrested for an offence under section 2(1)(g) or (h), a constable may (whether or not at the time of arrest) take into possession any animal which appears to him to have been the subject of, or used in connection with, the alleged offence. 25
- (2) An animal taken into possession under subsection (1) may be retained until—
- (a) the end of the period of eight days beginning with the day on which it was taken into possession, or
- (b) if relevant proceedings are begun before the end of that period, until the proceedings are discontinued or otherwise disposed of. 30
- (3) The reference in subsection (2)(b) to relevant proceedings is to proceedings brought against any person for an offence by virtue of which the animal in question was taken into possession under subsection (1).
- (4) A constable may apply to a magistrates' court for an extension of the period mentioned in subsection (2)(a). 35
- (5) If an application under subsection (4) is not determined before expiry of the period mentioned in subsection (2)(a), that period shall be deemed to be extended until the application is determined or withdrawn.
- (6) On an application under subsection (4), the court may order that this section shall have effect, in relation to the animal in question, as if the period 40

mentioned in subsection (2)(a) were such longer period as may be specified in the order.

- (7) Where an animal is being retained under subsection (2), a magistrates' court may, on application by –
- (a) the person from whom the animal has been taken, or
  - (b) if different, the owner of the animal,
- order that the animal cease to be so retained.

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**22 Powers to remove and care for animals kept for fighting etc**

- (1) Where an animal has been taken into possession under section 21(1), a constable (or a person authorised by him) may –
- (a) remove the animal to a place of safety;
  - (b) while the animal is retained under section 21(2), care for the animal or cause or procure it to be cared for at such place as he thinks fit.
- (2) Any costs in relation to the removal or care of an animal which are incurred by a person acting under this section shall be recoverable from the arrested person summarily as a civil debt.
- (3) The reference in subsection (2) to the arrested person is to the person on whose arrest the animal was taken into possession under section 21(1).

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**23 Entry to search for and take possession of animals kept for fighting etc**

- (1) If a constable reasonably believes –
- (a) that there is an animal on any premises, and
  - (b) that the animal is one in relation to which the power under section 21(1) is exercisable,
- he may at any time enter and search the premises for the purpose of exercising that power.
- (2) Subsection (1) does not authorise entry into any part of premises which is used as a private dwelling.
- (3) A constable may (if necessary) use reasonable force in exercising the power conferred by subsection (1), but only if it appears to him that entry is required before a warrant under subsection (4) can be obtained and executed.
- (4) If, on an application by a constable, a justice of the peace is satisfied –
- (a) that there are reasonable grounds for believing that –
    - (i) there is an animal on any premises, and
    - (ii) the animal is one in relation to which the power under section 21(1) is exercisable, and
  - (b) that one or more of the conditions in subsection (5) is met,
- he may issue a warrant authorising a constable to enter and search the premises (if necessary, using reasonable force) for the purpose of exercising the power under section 21(1).
- (5) The conditions are –
- (a) in the case of any part of premises which is used as a private dwelling, that the occupier of the premises has been informed of the decision to apply for the warrant;

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- (b) in the case of any part of premises which is not used as a private dwelling, that the occupier of the premises –
- (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 a person mentioned in subsection (1), and 5
  - (iii) has been informed of the decision to apply for the warrant;
- (c) in either case –
- (i) that the premises are unoccupied, or the occupier is absent, and notice of intention to apply for the warrant has been left in a conspicuous place on the premises, or 10
  - (ii) an application for admission to the premises or the giving of notice of intention to apply for the warrant is inappropriate because –
    - (a) it would defeat the object of entering the premises, or 15
    - (b) entry is required as a matter of urgency.
- (6) References in subsection (5) to the occupier of premises, in relation to any vehicle, vessel, aircraft or hovercraft, are to the person who appears to be in charge of the vehicle, vessel, aircraft or hovercraft, and “unoccupied” shall be construed accordingly. 20

*Powers following conviction*

**24 Imprisonment or fine**

- (1) A person guilty of an offence under section 1 or 2 shall be liable on summary conviction to –
- (a) imprisonment for a term not exceeding 51 weeks, or 25
  - (b) a fine not exceeding £20,000,
- or to both.
- (2) A person guilty of an offence under section 3 or 26(4) shall be liable on summary conviction to –
- (a) imprisonment for a term not exceeding 51 weeks, or 30
  - (b) a fine not exceeding level 5 on the standard scale.
- (3) A person guilty of any other offence under this Act shall be liable on summary conviction to –
- (a) imprisonment for a term not exceeding 51 weeks, or
  - (b) a fine not exceeding level 4 on the standard scale. 35
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in each of subsections (1)(a), (2)(a) and (3)(a) to 51 weeks is to be read as a reference to 6 months.

**25 Deprivation**

- (1) If the person convicted of an offence under section 1, 2(1)(g) or 3 is the owner of the animal in relation to which the offence is committed, 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. 40



- (2) If the person convicted of an offence under section 2(1)(h) is the owner of—
- (a) the animal which he placed with an animal, or with a human, for the purposes of an animal fight, or
  - (b) an animal with which he placed another animal for those purposes,
- 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. 5
- (3) Where the owner of an animal is convicted of an offence under subsection (4) of section 26 because ownership of the animal is in breach of a disqualification under subsection (1) of that section, 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. 10
- (4) Where a court makes an order under subsection (1), (2) or (3), it may—
- (a) appoint such person as it thinks fit to carry out the order;
  - (b) require any person who has custody of the animal to deliver it up to enable the order to be carried out;
  - (c) give such directions as it thinks fit with respect to the carrying-out of the order.
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- (5) Directions under subsection (4)(c) may—
- (a) specify a particular manner of disposal, or
  - (b) authorise the person appointed to carry out the order to dispose of the animal in such manner as that person thinks fit.
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- (6) A person appointed to carry out an order under subsection (1), or a person authorised by him, may—
- (a) mark the animal to which the order relates, for identification purposes,
  - (b) take possession of that animal for the purpose of carrying out the order, and
  - (c) enter any premises on which that animal is kept, for the purpose of carrying out any function under this section.
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- (7) In the case of any part of premises which is used as a private dwelling, the right of entry under subsection (6)(c) may only be exercised under the authority of a warrant issued by a justice of the peace. 30
- (8) In this section, “disposal” includes slaughter.

## 26 Disqualification

- (1) If a person is convicted of an offence under section 1, 2 or 3, or under regulations under section 6(1), 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 disqualifying him, for such period as it thinks fit, from engaging in the following activities—
- (a) owning animals;
  - (b) keeping, or arranging for or participating in the keeping of, animals;
  - (c) dealing in animals;
  - (d) transporting, or arranging for the transport of, animals.
- 40
- (2) Disqualification under subsection (1) may be imposed in relation to animals generally, or in relation to animals of one or more kinds. 45

- (3) The court by which an order under subsection (1) is made may –
- (a) suspend the operation of the order pending an appeal, or
  - (b) where it appears to the court that the person in respect of whom the order is made owns or keeps an animal of a kind to which the order applies, suspend the operation of the order for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal. 5
- (4) A person who breaches a disqualification under subsection (1) commits an offence.
- 27 Duty to explain non-exercise of powers under sections 25 and 26 10**
- (1) If the court by or before which a person is convicted of a relevant offence decides –
- (a) not to make a deprivation order, and
  - (b) not to make a disqualification order,
- it shall give its reasons for those decisions in open court. 15
- (2) If the court by or before which a person is convicted of a relevant offence makes a deprivation order, but decides not to make a disqualification order, it shall give its reasons for that decision in open court.
- (3) In this section –
- “deprivation order” means an order under section 25(1) or (2); 20
  - “disqualification order” means an order under section 26(1);
  - “relevant offence” means an offence under section 1, 2(1)(g) or (h) or 3.
- 28 Seizure of animals in connection with disqualification**
- (1) If it appears to a court which makes an order under section 26(1) that the person in respect of whom the order is made owns or keeps an animal of a kind to which the order relates, it may order that the animal be taken into possession. 25
- (2) Where a person is convicted of an offence under section 26(4) because of owning or keeping an animal, the court by or before which he is convicted of the offence may order that the animal be taken into possession. 30
- (3) A court may not make an order under subsection (1) or (2) unless it has given the owner of the animal in respect of which it is proposed to make such an order an opportunity to be heard.
- (4) Subsection (3) does not apply where the court is satisfied that it is not reasonably practicable to communicate with the owner. 35
- (5) The court by which an order under subsection (1) or (2) is made may –
- (a) appoint such person as it thinks fit to carry out the order,
  - (b) require any person who has custody of the animal to which the order relates to deliver it up for the purposes of the order;
  - (c) give such directions as it thinks fit – 40
    - (i) with respect to the carrying-out of the order, and
    - (ii) with respect to the manner in which the animal to which the order relates is to be dealt with (whether by way of retention or disposal) after being taken into possession.

- (6) Directions under subsection (5)(c)(ii) may –
- (a) specify the manner in which the animal is to be dealt with, or
  - (b) authorise the person appointed to carry out the order to deal with the animal in such manner as that person thinks fit.
- (7) A person appointed to carry out an order under subsection (1) or (2), or a person authorised by him, may –
- (a) mark the animal to which the order relates, for identification purposes, and
  - (b) enter any premises on which that animal is kept, for the purpose of carrying out any function under this section.
- (8) In the case of any part of premises which is used as a private dwelling, the right of entry under subsection (7)(b) may only be exercised under the authority of a warrant issued by a justice of the peace.
- (9) Where a court makes an order under subsection (1) or (2) in respect of an animal not owned by the person subject to the disqualification concerned, the owner may appeal to the Crown Court against the order.
- (10) In subsection (5)(c)(ii), “disposal” includes slaughter.

## 29 Seizure under section 28: financial provisions

- (1) The person appointed to carry out an order under section 28(1) or (2) is entitled, in relation to any reasonable expenses incurred by him in carrying out his functions under that section, to be reimbursed by the person subject to the disqualification concerned.
- (2) The person appointed to carry out an order under section 28(1) or (2) shall account to the owner of the animal to which the order relates for any amount realised by disposal of the animal.
- (3) If the owner of the animal to which an order under section 28(1) or (2) relates is subject to any liability under subsection (1), any sum owing to him under subsection (2) may be reduced by an amount equal to that liability.
- (4) Any amount payable under subsection (1) may be recovered summarily as a civil debt.

## 30 Destruction in the interests of the animal

- (1) The court by or before which a person is convicted of an offence under section 1, 2(1)(g) or (h) or 3 may order the destruction of the relevant animal if it is satisfied, on the basis of evidence given by a veterinary surgeon, that it is appropriate to do so in the interests of the animal.
- (2) For the purposes of this section, the relevant animal is –
- (a) in relation to an offence under section 1, 2(1)(g) or 3, the animal in respect of which the offence was committed;
  - (b) in relation to an offence under section 2(1)(h) –
    - (i) the animal which was placed with an animal, or a human, for the purposes of an animal fight, or
    - (ii) the animal with which another animal was placed for those purposes.

- (3) A court may not make an order under subsection (1) unless it has given the owner of the animal in respect of which it is proposed to make such an order an opportunity to be heard.
- (4) Subsection (3) does not apply where the court is satisfied that it is not reasonably practicable to communicate with the owner. 5
- (5) Where a court makes an order under subsection (1), it may –
- (a) appoint such person as it thinks fit to carry out the order;
  - (b) give such directions as it thinks fit with respect to –
    - (i) the carrying-out of the order, or
    - (ii) how the animal to which the order relates is to be dealt with pending its destruction; 10
  - (c) require any person who has custody of that animal to deliver it up to enable the order to be carried out;
  - (d) order the offender to pay such sum as the court may determine to be the reasonable expenses of carrying out the order and of dealing with that animal pending its destruction. 15
- (6) Any sum ordered to be paid under subsection (5)(d) shall be treated for the purposes of enforcement as if it were a fine imposed on conviction.
- (7) A person appointed to carry out an order under subsection (1), or a person authorised by him, may – 20
- (a) mark the animal to which the order relates, for identification purposes,
  - (b) take possession of that animal, for the purpose of carrying out the order, and
  - (c) enter any premises on which that animal is kept, for the purpose of carrying out any function under this section. 25
- (8) In the case of any part of premises which is used as a private dwelling, the right of entry under subsection (7)(c) may only be exercised under the authority of a warrant issued by a justice of the peace.
- (9) In the case of an order under subsection (1) made by a magistrates' court, the offender and, if different, the owner of the animal to which the order relates may appeal to the Crown Court. 30
- (10) Subsection (9) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal to which the order relates that the carrying-out of the order should not be delayed.
- (11) In this section, “offender”, in relation to an order under subsection (1), means the person on whose conviction the order was made. 35

### 31 Destruction of fighting animals

- (1) The court by or before which a person is convicted of an offence under section 2(1)(g) or (h) may order the destruction of the relevant animal if it is satisfied –
- (a) that the animal constitutes a danger to public safety, or 40
  - (b) that the animal may be used in the commission of further such offences (by that person or another).
- (2) For the purposes of this section, the relevant animal is –
- (a) in relation to an offence under section 2(1)(g), the animal in respect of which the offence was committed; 45

- (b) in relation to an offence under section 2(1)(h) –
- (i) the animal which was placed with an animal, or a human, for the purposes of an animal fight, or
  - (ii) the animal with which another animal was placed for those purposes. 5
- (3) A court may not make an order under subsection (1) unless it has given the owner of the animal in respect of which it is proposed to make such an order an opportunity to be heard.
- (4) Subsection (3) does not apply where the court is satisfied that it is not reasonably practicable to communicate with the owner. 10
- (5) Where a court makes an order under subsection (1), it may –
- (a) appoint such person as it thinks fit to carry out the order;
  - (b) give such directions as it thinks fit with respect to –
    - (i) the carrying-out of the order, or
    - (ii) how the animal to which the order relates is to be dealt with pending its destruction; 15
  - (c) require any person who has custody of that animal to deliver it up to enable the order to be carried out;
  - (d) order the offender to pay such sum as the court may determine to be the reasonable expenses of carrying out the order and of dealing with that animal pending its destruction. 20
- (6) Any sum ordered to be paid under subsection (5)(d) shall be treated for the purposes of enforcement as if it were a fine imposed on conviction.
- (7) A person appointed to carry out an order under subsection (1), or a person authorised by him, may – 25
- (a) mark the animal to which the order relates, for identification purposes,
  - (b) take possession of that animal, for the purpose of carrying out the order, and
  - (c) enter any premises on which that animal is kept, for the purpose of carrying out any function under this section. 30
- (8) In the case of any part of premises which is used as a private dwelling, the right of entry under subsection (7)(c) may only be exercised under the authority of a warrant issued by a justice of the peace.
- (9) In the case of an order under subsection (1) made by a magistrates’ court, the offender and, if different, the owner of the animal to which the order relates may appeal to the Crown Court. 35
- (10) In this section, “offender”, in relation to an order under subsection (1), means the person on whose conviction the order was made.

### 32 Orders under section 25, 28, 30 or 31: pending appeals

- (1) Where – 40
- (a) a court makes an order under section 25, 28, 30 or 31, and
  - (b) the order, or the conviction on which the order is made, is the subject of an appeal,

nothing may be done under the order while the appeal is pending, but the court may give such directions as it thinks fit with respect to how the animal to which the order relates is to be dealt with during that period.

- (2) Directions under subsection (1) may, in particular –
- (a) authorise the animal to be taken into possession and retained; 5
  - (b) authorise the removal of the animal to a place of safety;
  - (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
  - (d) provide for the recovery of any costs in relation to removal or care of the animal which are incurred in carrying out the directions; 10
  - (e) appoint a person to carry out the directions;
  - (f) require any person who has custody of the animal to deliver it up for the purposes of the directions.
- (3) A person appointed to carry out directions under subsection (1), or a person authorised by him, may – 15
- (a) mark the animal to which the directions relate, for identification purposes, and
  - (b) enter any premises on which that animal is kept, for the purpose of carrying out any function under this section.
- (4) In the case of any part of premises which is used as a private dwelling, the right of entry under subsection (3)(b) may only be exercised under the authority of a warrant issued by a justice of the peace. 20
- (5) Where –
- (a) a court makes an order under section 25, and
  - (b) the order, or the conviction on which the order is made, is the subject of an appeal, 25
- it may order the appellant not to sell or part with the animal to which the order relates while the appeal is pending.
- (6) A person who fails to comply with an order under subsection (5) commits an offence. 30

### 33 Orders with respect to licences

- (1) If a person is convicted of an offence under any of sections 1 to 5, or under regulations under section 6(1), the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way – 35
- (a) make an order cancelling any licence held by him;
  - (b) make an order disqualifying him, for such period as it thinks fit, from holding a licence.
- (2) Disqualification under subsection (1)(b) may be imposed in relation to licences generally, or in relation to licences of one or more kinds.
- (3) The court by which an order under subsection (1) is made may suspend the operation of the order pending an appeal. 40

### 34 Termination of disqualification under section 26 or 33

- (1) A person who is disqualified by virtue of an order under section 26 or 33 may apply to the appropriate court for the termination of the order.

- (2) No application under subsection (1) may be made –
  - (a) before the end of the period of one year beginning with the date on which the order is made, or
  - (b) where a previous application under that subsection has been made in relation to the same order, before the end of the period of one year beginning with the date on which the previous application was determined. 5
- (3) On an application under subsection (1), the court may –
  - (a) if it thinks it appropriate to do so having regard to the character of the applicant, his conduct since the imposition of the disqualification and any other circumstances of the case –
    - (i) terminate the disqualification,
    - (ii) restrict the animals in relation to which the disqualification applies, or
    - (iii) refuse the application; 10
  - (b) order the applicant to pay all or part of the costs of the application. 15
- (4) In subsection (1), the reference to the appropriate court is to the court which made the order under section 26 or 33 or, in the case of an order made by a magistrates’ court, to a magistrates’ court acting for the same local justice area as that court. 20
- (5) Until the coming into force of section 8 of the Courts Act 2003 (c. 39), subsection (4) shall have effect with the substitution for “local justice area” of “petty sessions area”.

*Enforcement powers*

**35 Arrest without warrant 25**

In Schedule 1A to the Police and Criminal Evidence Act 1984 (c. 60) (specific offences which are arrestable offences), at the end there is inserted –

*“Animal Welfare Act 2004*

An offence under –

- (a) section 1 of the Animal Welfare Act 2004 (cruelty), or
- (b) section 2 of that Act (fighting etc).” 30

**36 Inspection of records required to be kept by licence**

- (1) An inspector may require the holder of a licence to produce for inspection any records which he is required to keep by a condition of the licence.
- (2) Where records which a person is so required to keep are stored in electronic form, the power under subsection (1) includes power to require the records to be made available for inspection –
  - (a) in a visible and legible form, or
  - (b) in a form from which they can readily be produced in a visible and legible form. 35
- (3) An inspector may inspect and take copies of any records produced for inspection in pursuance of a requirement under this section. 40

**37 Entry and inspection in connection with licensed activities**

- (1) Where a licence authorises the carrying-on of an activity on particular premises, an inspector may at any reasonable time enter and inspect those premises.
- (2) Where a licence authorises the carrying-on of an activity, but not on particular premises, an inspector may at any reasonable time enter and inspect any premises on which he reasonably believes that the activity to which the licence relates is being carried on. 5
- (3) The purpose for which the power under subsection (1) or (2) may be exercised is to check compliance with— 10
- (a) the conditions subject to which the licence is granted, and
  - (b) the provisions made by or under this Act which are relevant to the carrying-on of the activity to which the licence relates.

**38 Entry and inspection of farm premises**

- (1) An inspector may at any reasonable time enter and inspect premises which he reasonably believes to be premises on which animals are bred or kept for farming purposes, in order to— 15
- (a) check compliance with regulations under section 6(1), and
  - (b) ascertain whether any offence under this Act has been or is being committed in relation to such animals. 20
- (2) Subsection (1) does not authorise entry into any part of premises which is used as a private dwelling.

**39 Entry and search without a warrant**

- (1) If a constable or an inspector reasonably suspects— 25
- (a) that a relevant offence is being or has been committed on any premises, or
  - (b) that evidence of the commission of a relevant offence is to be found on any premises,
- he may at any reasonable time enter the premises and search them for evidence of the commission of a relevant offence. 30
- (2) Subsection (1) does not authorise entry into any part of premises which is used as a private dwelling.
- (3) In this section, “relevant offence” means—
- (a) an offence under section 1, 2, 3 or 26(4);
  - (b) an offence under regulations under section 6(1). 35

**40 Entry and search by force without a warrant**

- (1) If a constable or an inspector reasonably believes—
- (a) that evidence of the commission of a relevant offence is to be found on any premises, and
  - (b) that the evidence is likely to be removed, destroyed or lost before a warrant can be obtained and executed, 40
- he may at any time enter the premises and search them for evidence of the commission of a relevant offence.



- (2) Subsection (1) does not authorise entry into any part of premises which is used as a private dwelling.
- (3) A constable or an inspector exercising –
  - (a) powers under subsection (1), or
  - (b) powers under Schedule 1 in connection with the exercise of powers under subsection (1),
 may (if necessary) use such force as is reasonable in the exercise of those powers. 5
- (4) An inspector may not exercise the power of entry conferred by subsection (1) between the hours of 11pm and 5am unless accompanied by a constable. 10
- (5) In this section, “relevant offence” has the meaning given in section 39.

**41 Entry and search with a warrant**

- (1) If, on an application by a constable or an inspector, a justice of the peace is satisfied –
  - (a) that there are reasonable grounds for believing that –
    - (i) a relevant offence is being or has been committed on any premises, or
    - (ii) evidence of the commission of a relevant offence is to be found on any premises, and15
  - (b) that one or more of the conditions in subsection (2) is met, 20  
 he may issue a warrant authorising a constable or an inspector to enter the premises and search them for evidence of the commission of a relevant offence.
- (2) The conditions are –
  - (a) in the case of any part of premises which is used as a private dwelling, that the occupier of the premises has been informed of the decision to apply for the warrant; 25
  - (b) in the case of any part of premises which is not used as a private dwelling, that the occupier of the premises –
    - (i) has been informed of the decision to seek entry to the premises and the reasons for that decision, 30
    - (ii) has failed to allow entry to the premises on being requested to do so by a person mentioned in section 39(1) or 40(1), and
    - (iii) has been informed of the decision to apply for the warrant;
  - (c) in either case –
    - (i) that the premises are unoccupied, or the occupier is absent, and notice of intention to apply for the warrant has been left in a conspicuous place on the premises, or 35
    - (ii) an application for admission to the premises or the giving of notice of intention to apply for the warrant is inappropriate because –
      - (a) it would defeat the object of entering the premises, or
      - (b) entry is required as a matter of urgency. 40
- (3) References in subsection (2) to the occupier of premises, in relation to any vehicle, vessel, aircraft or hovercraft, are to the person who appears to be in charge of the vehicle, vessel, aircraft or hovercraft, and “unoccupied” shall be construed accordingly. 45

- (4) Sections 15 and 16 of the Police and Criminal Evidence Act 1984 (c. 60) shall have effect in relation to a warrant issued under this section to an inspector as they have effect in relation to a warrant so issued to a constable.
- (5) A constable or an inspector exercising –
- (a) powers under a warrant issued under this section, or 5
  - (b) powers under Schedule 1 in connection with the execution of such a warrant,
- may (if necessary) use such force as is reasonable in the exercise of those powers.
- (6) In this section, “relevant offence” has the meaning given in section 39. 10

### *Prosecutions*

#### **42 Power of local authority to prosecute offences**

A local authority in England or Wales may prosecute proceedings for any offence under this Act.

#### **43 Time limits for prosecutions**

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- (1) Notwithstanding anything in section 127(1) of the Magistrates’ Courts Act 1980 (c. 43), a magistrates’ court may try an information relating to an offence under this Act if the information is laid before –
- (a) the end of the period of three years beginning with the date of the commission of the offence, or 20
  - (b) the end of the period of six months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge,
- whichever is the earlier.
- (2) For the purposes of subsection (1)(b), a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved. 25

### *Inspectors*

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#### **44 Appointment of inspectors by local authorities**

- (1) In appointing a person to be an inspector for the purposes of this Act, a local authority shall have regard to guidance issued by the Secretary of State.
- (2) The Secretary of State may, in connection with guidance under subsection (1), draw up a list of persons whom he considers suitable for appointment by a local authority to be an inspector for the purposes of this Act. 35
- (3) A person may be included in a list under subsection (2) as suitable for appointment as an inspector for all the purposes of this Act or only for such one or more of those purposes as may be specified in the list.

**45 Protection of inspectors**

An inspector shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Act if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

5

*General*

**46 Powers of entry: supplementary**

Schedule 1 (which makes provision for supplementary matters in relation to powers of entry) has effect.

**47 Power to stop and detain vehicles**

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(1) A constable in uniform or, if accompanied by such a constable, an inspector may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred –

- (a) by section 14(1), 39 or 40, or
- (b) by a warrant under section 14(5) or 41.

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(2) A constable in uniform may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power conferred by, or by a warrant under, section 23.

(3) If accompanied by a constable in uniform, an inspector may stop and detain a vehicle for the purpose of entering and inspecting it in the exercise of a power conferred by section 37 or 38.

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(4) The time for which a vehicle may be detained for the purposes of such a search or inspection is such time as is reasonably required to permit a search or inspection to be carried out (including the exercise of any related power under this Act, consequent on the power of search or inspection) either at the place where the vehicle was first detained or nearby.

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(5) In this section, references to a vehicle shall be treated as including any vessel, aircraft or hovercraft.

**48 Obtaining of documents in connection with carrying out orders etc.**

(1) Where –  
(a) an order under section 16(1), 17(1), 25(1), (2) or (3), 28(1) or (2) or 30(1) has effect, and

30

(b) the owner of the animal to which the order relates has in his possession, or under his control, documents which are relevant to the carrying-out of the order or any directions given in connection with it,

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the owner must, if so required by a person authorised to carry out the order, deliver the documents to that person as soon as practicable and in any event before the end of the period of 10 days beginning with the date on which he is notified of the requirement.

(2) Where –  
(a) directions under section 32(1) have effect, and

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- (b) the owner of the animal to which the directions relate has in his possession, or under his control, documents which are relevant to the carrying-out of the directions,  
the owner must, if so required by a person authorised to carry out the directions, deliver the documents to that person as soon as practicable and in any event before the end of the period of 10 days beginning with the date on which he is notified of the requirement. 5
- (3) A person who fails without reasonable excuse to comply with subsection (1) or (2) commits an offence.
- 49 Offences by bodies corporate 10**
- (1) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
- (a) any director, manager, secretary or other similar officer of the body corporate, or 15
- (b) any person who was purporting to act in any such capacity,  
he (as well as the body corporate) commits the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 20
- 50 Scientific research**
- (1) Except as provided in subsection (2), references in this Act to animals do not include animals in respect of which a person has been specified in a certificate pursuant to section 6(5)(a) or 7(5)(a) of the Animals (Scientific Procedures) Act 1986 (c. 14) (which relate to designated establishments). 25
- (2) Subsection (1) does not apply to references—
- (a) in section 1 or 2, or
- (b) in any other provision of this Act, so far as it has effect in relation to those sections. 30
- (3) Nothing in this Act applies to anything lawfully done under the Animals (Scientific Procedures) Act 1986.
- 51 Crown application**
- (1) Subject to the provisions of this section, this Act binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention. 35
- (3) Subsection (2) does not affect the criminal liability of persons in the public service of the Crown. 40
- (4) If the Secretary of State certifies that it appears to him appropriate in the interests of national security that powers of entry conferred by or under this

Act should not be exercisable in relation to Crown premises specified in the certificate, those powers shall not be exercisable in relation to those premises.

- (5) In subsection (4), “Crown premises” means premises held by or on behalf of the Crown.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act. 5

## 52 Orders and regulations

Any power of the Secretary of State or the National Assembly for Wales to make orders or regulations under this Act is exercisable by statutory instrument. 10

## 53 “Animal”

- (1) Subject to the provisions of this section, in this Act “animal” means a vertebrate other than man. 15
- (2) Nothing in this Act applies to an animal while it is in its foetal, larval or embryonic form.
- (3) The appropriate national authority may by order for all or any of the purposes of this Act –
- (a) extend the definition of “animal” so as to include invertebrates of any description; 20
  - (b) make provision in lieu of subsection (2) as respects any invertebrate so included;
  - (c) amend subsection (2) to extend the application of this Act to an animal from such earlier stage of its development as may be specified in the order. 25
- (4) No order under subsection (3) may be made by the Secretary of State unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.
- (5) In this section, “vertebrate” means any animal of the Sub-phylum Vertebrata of the Phylum Chordata and “invertebrate” means any animal not of that Sub-phylum. 30

## 54 General interpretation

- (1) In this Act –
- “appropriate national authority” means – 35
    - (a) in relation to England, the Secretary of State;
    - (b) in relation to Wales, the National Assembly for Wales;
  - “inspector” means a person appointed to be an inspector for the purposes of this Act by –
    - (a) the appropriate national authority, or 40
    - (b) a local authority;
  - “licence” means a licence under regulations under section 6(1);
  - “local authority” means –

- (a) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Wales, a county council or a county borough council; 5
- “premises” includes any place and, in particular, includes –
- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any tent or movable structure;
- “veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (c. 36). 10
- (2) An animal is a “protected animal” for the purposes of this Act if –
- (a) it is of a kind which is commonly domesticated in the British Islands, or
- (b) it is not of such a kind but – 15
- (i) is being kept by man,
- (ii) has ceased to be so kept but is not (or not yet) living in a wild state, or
- (iii) is temporarily in the custody or control of man.
- (3) An animal is “kept by man” for the purposes of this Act if there is a person who owns, or is responsible for, or in charge of, it. 20
- 55 Minor and consequential amendments**
- Schedule 2 (minor and consequential amendments) has effect.
- 56 Repeals**
- The enactments specified in Schedule 3 are hereby repealed to the extent specified. 25
- 57 Short title, commencement and extent**
- (1) This Act may be cited as the Animal Welfare Act 2004.
- (2) This Act, except this section, shall come into force on such day as the Secretary of State may appoint by order, and different days may be so appointed for different purposes. 30
- (3) The Secretary of State may by order make such transitional provision or savings as he thinks fit in connection with the coming into force of any provision of this Act.
- (4) This Act extends to England and Wales only.

## SCHEDULES

### SCHEDULE 1

Section 46

#### POWERS OF ENTRY: SUPPLEMENTARY

##### *Introduction*

- |   |   |    |
|---|---|----|
| 1 | (1) This Schedule makes provision for supplementary matters in relation to the powers conferred –                           | 5  |
|   | (a) by sections 12(2), 14(1), 19(1) or (2), 23(1), 25(6), 28(7), 30(7), 31(7), 32(3), 37(1) or (2), 38(1), 39(1) and 40(1); |    |
|   | (b) by a warrant issued under any of sections 12(3), 14(5), 19(3), 23(4), 25(7), 28(8), 30(8), 31(8), 32(4) or 41(1).       | 10 |
|   | (2) References in this Schedule to a power to which this Schedule applies are to a power mentioned in sub-paragraph (1).    |    |

##### *Duty to produce evidence of identity*

- |   |  |    |
|---|--|----|
| 2 | A person’s right to exercise a power to which this Schedule applies is subject –             | 15 |
|   | (a) to his producing evidence of his identity and his entitlement to exercise the power, and |    |
|   | (b) to his outlining the purpose for which the power is exercised, if requested to do so.    |    |

##### *Power to take persons and equipment onto premises* 20

- |   |  |  |
|---|--|--|
| 3 | In exercising a power to which this Schedule applies, a person may take with him onto the premises such other persons, and such equipment and materials, as he thinks appropriate. |  |
|---|--|--|

##### *Power to require assistance*

- |   |  |    |
|---|--|----|
| 4 | (1) Where a person enters premises in the exercise of a power to which this Schedule applies, he may require any qualifying person on the premises to give him such assistance as he may reasonably require for the purpose for which entry is made. | 25 |
|   | (2) The reference in sub-paragraph (1) to a qualifying person is to –  |    |
|   | (a) the occupier of the premises;  | 30 |
|   | (b) any person who appears to the person exercising the power to be the owner or a keeper of animals on the premises;  |    |
|   | (c) any person who appears to the person exercising the power to be under the direction or control of a person mentioned in paragraph (a) or (b).  | 35 |

- (3) In the case of a power under section 37, the reference in sub-paragraph (1) to a qualifying person also includes the holder of a licence authorising –
- (a) the carrying-on of an activity on the premises, or
  - (b) the carrying-on of an activity which is carried on on the premises.

*Powers related to search and inspection*

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5 Paragraphs 6, 7 and 10 apply to the following powers –

- (a) any power of entry and inspection conferred by section 37 or 38;
- (b) any power of entry and search conferred –
  - (i) by section 39 or 40, or
  - (ii) by a warrant issued under section 41.

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6 A power to which this paragraph applies includes power to inspect any animal found on the premises and any other thing on the premises, including any documents and records (in whatever form they are held).

7 A power to which this paragraph applies shall be taken to include power also to –

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- (a) carry out measurements and tests (including measurements and tests of any animals found on the premises);
- (b) take samples (including samples from any such animals and from any substance on the premises which appears to be intended for use as food for the animals);
- (c) mark any such animals for identification purposes;
- (d) remove the carcase of any animal found on the premises for the purpose of carrying out a post-mortem examination on it;
- (e) take copies of any documents and records on the premises (in whatever form they are held);
- (f) require any information stored in any electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form;
- (g) take photographs of anything on the premises;
- (h) seize and detain or remove anything which he reasonably believes to be evidence of any non-compliance, or of the commission of any offence, relevant to the purpose for which the inspection or search is made.

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8 A person who takes a sample from an animal pursuant to paragraph 7(b) shall give a part of the sample, or a similar sample, to any person appearing to be the owner or a keeper of the animal if, before the sample is taken, he is requested to do so by that person.

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9 (1) Paragraph 7(h) does not include power to seize an item which the person exercising the power has reasonable grounds for believing to be subject to legal privilege (within the meaning of section 10 of the Police and Criminal Evidence Act 1984 (c. 60)).

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(2) A person who seizes anything in exercise of the power under paragraph 7(h) shall, if requested to do so by a person showing himself –

- (a) to be the occupier of premises on which it was seized, or
- (b) to have had custody or control of it immediately before its seizure, provide that person with a record of what he seized.

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- (3) Subject to sub-paragraph (4), anything which has been seized in the exercise of a power under paragraph 7(h) may be retained so long as is necessary in all the circumstances and in particular –
- (a) for use as evidence at a trial for a relevant offence, or
  - (b) for forensic examination or for investigation in connection with a relevant offence. 5
- (4) Nothing may be retained for either of the purposes mentioned in sub-paragraph (3) if a photograph or a copy would be sufficient for that purpose.
- 10 As soon as reasonably practicable after having exercised a power to which this paragraph applies, the person who exercised the power shall – 10
- (a) prepare a written report of the inspection or search, and
  - (b) if requested to do so by the occupier of the premises, give him a copy of the report.

*Offences*

- 11 A person commits an offence if he – 15
- (a) intentionally obstructs a person in the lawful exercise of –
    - (i) a power to which this Schedule applies, or
    - (ii) a power conferred by this Schedule, or
  - (b) fails without reasonable excuse to give any assistance which he is required to give under paragraph 4. 20

*Duty to leave premises secured*

- 12 If, in the exercise of a power to which this Schedule applies, a person enters premises which are unoccupied, he shall leave them as effectively secured against entry as he found them.

*Interpretation*

- 13 In this Schedule, reference to the occupier of premises, in relation to any vehicle, vessel, aircraft or hovercraft, is to the person in charge of the vehicle, vessel, aircraft or hovercraft, and “unoccupied” shall be construed accordingly.

## SCHEDULE 2

Section 55 30

## MINOR AND CONSEQUENTIAL AMENDMENTS

*Performing Animals (Regulation) Act 1925 (c. 38)*

- 1 In section 4 of the Performing Animals (Regulation) Act 1925 (offences and legal proceedings), in subsection (2), after “1911” there is inserted “or an offence under any of sections 1 to 5 of, or under regulations under section 6(1) of, the Animal Welfare Act 2004”. 35

*Cinematograph Films (Animals) Act 1937 (c. 59)*

- 2 In section 1 (prohibition of films involving cruelty to animals), in subsection

(4), for paragraph (b) there is substituted –

“(b) the expression “animal” –

- (i) in relation to England and Wales, has the same meaning as the term “protected animal” in the Animal Welfare Act 2004, and
- (ii) in relation to Scotland, has the same meaning as in the Protection of Animals (Scotland) Act 1912.”

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*Pet Animals Act 1951 (c. 35)*

- 3 In section 5 of the Pet Animals Act 1951 (offences and disqualifications), in subsection (3), after “1912,” there is inserted “or of any offence under any of sections 1 to 5 of, or under regulations under section 6(1) of, the Animal Welfare Act 2004,”.

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*Protection of Animals (Anaesthetics) Act 1954 (c. 46)*

- 4 (1) In section 1 of the Protection of Animals (Anaesthetics) Act 1954 (use of anaesthetics in operations on animals), in subsection (5)(a) (definition of “the principal Act”, in relation to England and Wales), for “Protection of Animals Act 1911” there is substituted “Animal Welfare Act 2004”.
- (2) In section 2 of that Act (citation etc.), subsection (2) is omitted.

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*Animals (Cruel Poisons) Act 1962 (c. 26)*

- 5 In section 4 of the Animals (Cruel Poisons) Act 1962 (short title, citation, extent and commencement), in subsection (2), the words from “and the Protection of Animals Acts 1911” to “and this Act” are omitted.

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*Animal Boarding Establishments Act 1963 (c. 43)*

- 6 (1) In section 1 of the Animal Boarding Establishments Act 1963 (licensing of boarding establishments for animals), in subsection (2), for paragraph (e) there is substituted –
- “(e) under section 26 of the Animal Welfare Act 2004, from engaging in the activities mentioned in subsection (1) of that section,”.
- (2) In section 3 of that Act (offences and disqualification), in subsection (3), after “1951,” there is inserted “or of any offence under any of sections 1 to 5 of, or under regulations under section 6(1) of, the Animal Welfare Act 2004,”.

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*Protection of Animals (Anaesthetics) Act 1964 (c. 39)*

- 7 In section 2 of the Protection of Animals (Anaesthetics) Act 1964 (citation etc.), in subsection (1), paragraph (a) is omitted.

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*Riding Establishments Act 1964 (c. 70)*

- 8 (1) In section 1 of the Riding Establishments Act 1964 (licensing of riding establishments), in subsection (2), for paragraph (e) there is substituted –
- “(e) under section 26 of the Animal Welfare Act 2004, from engaging in the activities mentioned in subsection (1) of that section,”.

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- (2) In section 4 of that Act (penalties and disqualification), in subsection (3), after “1963,” there is inserted “or of any offence under any of sections 1 to 5 of, or under regulations under section 6(1) of, the Animal Welfare Act 2004,”.

*Breeding of Dogs Act 1973 (c. 60)*

- 9 In section 1 of the Breeding of Dogs Act 1973 (licensing of breeding establishments for dogs), in subsection (2), for paragraph (e) there is substituted – 5
- “(e) under section 26 of the Animal Welfare Act 2004, from engaging in the activities mentioned in subsection (1) of that section,”. 10

*Guard Dogs Act 1975 (c. 50)*

- 10 In section 3 of the Guard Dogs Act 1975 (guard dog kennel licences), in subsection (4), after “1973,” there is inserted “or of an offence under any of sections 1 to 5 of, or under regulations under section 6(1) of, the Animal Welfare Act 2004,”. 15

*Dangerous Wild Animals Act 1976 (c. 38)*

- 11 In section 6 of the Dangerous Wild Animals Act 1976 (penalties), in subsection (2) –
- (a) for “Protection of Animals Acts 1911 to 1964,” there is substituted “Protection of Animals Act 1911,” 20
- (b) after “1912 to 1964,” there is inserted “the Performing Animals (Regulation) Act 1925,”,
- (c) after “1951,” there is inserted “the Animals (Cruel Poisons) Act 1962”, and
- (d) after “1973,” there is inserted “or of an offence under any of sections 1 to 5 of, or under regulations under section 6(1) of, the Animal Welfare Act 2004,”. 25

*Magistrates’ Courts Act 1980 (c. 43)*

- 12 In section 108 of the Magistrates’ Courts Act 1980 (right of appeal to the Crown Court), in subsection (3)(c), for “section 2 of the Protection of Animals Act 1911” there is substituted “section 30 or 31 of the Animal Welfare Act 2004”. 30

*Zoo Licensing Act 1981 (c. 37)*

- 13 In section 4 of the Zoo Licensing Act 1981 (grant or refusal of licence), in subsection (5) – 35
- (a) for “the Protection of Animals Acts 1911 to 1964” there is substituted “the Protection of Animals Act 1911”,
- (b) after the entry for the Protection of Animals (Scotland) Acts 1912 to 1964, there is inserted –
- “the Performing Animals (Regulation) Act 1925;”, 40
- (c) after the entry for the Pet Animals 1951, there is inserted –
- “the Animals (Cruel Poisons) Act 1962;”, and

- (d) at the end, there is inserted –  
“sections 1 to 5 and section 6(1) of the Animal Welfare Act 2004.”

*Animals (Scientific Procedures) Act 1986 (c. 14)*

- 14 (1) In section 22 of the Animals (Scientific Procedures) Act 1986 (penalties for contraventions), in subsection (5), for “section 1 of the Protection of Animals Act 1911” there is substituted “section 1 or 2 of the Animal Welfare Act 2004”. 5
- (2) In section 26 of that Act (prosecutions), in subsection (1)(b), for “section 1 of the Protection of Animals Act 1911” there is substituted “section 1 or 2 of the Animal Welfare Act 2004”. 10
- (3) In section 29 of that Act (application to Northern Ireland), in subsection (5), for “section 1 of the Protection of Animals Act 1911” there is substituted “section 1 or 2 of the Animal Welfare Act 2004”.

*Wild Mammals (Protection) Act 1996 (c. 3)* 15

- 15 For section 3 of the Wild Mammals (Protection) Act 1996 (interpretation) there is substituted –

**“3 Interpretation**

In this Act “wild mammal” means –

- (a) in relation to England and Wales, any mammal which is not a “protected animal” within the meaning of section 54 of the Animal Welfare Act 2004; 20
- (b) in relation to Scotland, any mammal which is not a domestic or captive animal within the meaning of the Protection of Animals (Scotland) Act 1912.” 25

*Criminal Justice and Police Act 2001 (c. 16)*

- 16 (1) In section 57 of the Criminal Justice and Police Act 2001 (retention of seized items), in subsection (1), at the end there is inserted –  
“(r) paragraph 9(3) of Schedule 1 to the Animal Welfare Act 2004.”, 30
- (2) In section 66 of that Act (general interpretation of Part 2), in subsection (4), at the end there is inserted –  
“(o) section 37(1) or (2) and section 38(1) of the Animal Welfare Act 2004 (entry and inspection in connection with licensed activities and entry and inspection of farm premises).” 35
- (3) In Part 1 of Schedule 1 to that Act (powers of seizure to which section 50 applies), the following paragraph shall be added at the end –

“*Animal Welfare Act 2004*

The power of seizure conferred by paragraph 7(h) of Schedule 1 to the Animal Welfare Act 2004.” 40

## SCHEDULE 3

Section 56

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Metropolitan Police Act 1839 (c. 47)	Section 47.	5
Town Police Clauses Act 1847 (c. 89)	Section 36.	
Protection of Animals Act 1911 (c. 27)	Sections 1 to 7. Sections 9 to 13. In section 14 –	10
	(a) in subsection (1), the words “or order (other than an order for the destruction of an animal)”, and	
	(b) subsection (2).	
	In section 15, paragraphs (a), (c), (e) and (f).	15
Protection of Animals (1911) Amendment Act 1921 (c. 14)	The whole Act.	
Protection of Animals Act 1934 (c. 21)	The whole Act.	
Pet Animals Act 1951 (c. 35)	Section 3.	20
Cockfighting Act 1952 (c. 59)	The whole Act.	
Protection of Animals (Amendment) Act 1954 (c. 40)	The whole Act.	
Protection of Animals (Anaesthetics) Act 1954 (c. 46)	Section 2(2).	25
Abandonment of Animals Act 1960 (c. 43)	The whole Act.	
Animals (Cruel Poisons) Act 1962 (c. 26)	In section 4(2), the words from “and the Protection of Animals Acts 1911” to “and this Act”.	30
Protection of Animals (Anaesthetics) Act 1964 (c. 39)	Section 2(1)(a).	
Agriculture (Miscellaneous Provisions) Act 1968 (c. 34)	Part 1.	35
Animal Health Act 1981 (c. 22)	Sections 37 to 39. In Schedule 5, paragraph 8.	
London Regional Transport Act 1984 (c. 32)	In Schedule 6, paragraph 23.	40
Police and Criminal Evidence Act 1984 (c. 60)	In Schedule 2, the entry for section 12(1) of the Protection of Animals Act 1911.	
Animals (Scientific Procedures) Act 1986 (c. 14)	In Schedule 3, paragraphs 1 and 7.	

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Protection of Animals (Penalties) Act 1987 (c. 35)	The whole Act.
Protection of Animals (Amendment) Act 1988 (c. 29)	Section 1. In section 2 – (a) in subsection (1), the words “section 47 of the Metropolitan Police Act 1839,” and the words “and section 36 of the Town Police Clauses Act 1847”, and (b) subsection (2).
Protection against Cruel Tethering Act 1988 (c. 31)	The whole Act.
Protection of Animals (Amendment) Act 2000 (c. 40)	The whole Act.

### Introduction

1. These explanatory notes relate to the Animal Welfare Bill. They have been produced by the Department for the Environment, Food and Rural Affairs in order to assist the reader in the understanding of the Bill.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.
3. The Bill applies to England and Wales only.

### Background

4. The main purpose of this Bill is to bring together and modernise legislation that exists to promote the welfare of vertebrate animals. The categories of animals that are protected under the Bill depends on the offence in question. For example, the duty to ensure an animal's welfare only applies in respect of animals that are owned or for which someone is responsible or in charge. In contrast, the cruelty and fighting offences have a wider application. The Bill does not generally apply to animals in research establishments because the Bill does not extend to scientific procedures involving animals which are carried out under the Animals (Scientific Procedures) Act 1986. The Bill will address the difference in 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 nineteenth century. The Bill will bring about the type of reform that has already been undertaken in some overseas countries – notably New Zealand and Sweden.
5. The legislation that this Bill repeals is set out in Annex A.
6. The Bill follows a public consultation and a series of meetings between Ministers and officials with representatives of over 100 groups. These groups encompassed a wide spectrum of animal welfare interests including commercial and industry representatives, the police, professional veterinarian associations, academics, other government departments, local authority enforcement officers, welfare groups and other individuals with a particular interest in the subject.

### Overview

7. The Bill covers various aspects of animal welfare and clauses are grouped under 10 headings. These are as follows.
8. Specific offences relating to animals (Clauses 1 to 5) sets out the offences that are being introduced and the categories of animals to which they can apply.
9. Animal welfare regulations and guidance (Clauses 6 to 10) provides for the making of regulations and codes for the purpose of promoting the welfare of animals protected under the Bill. This includes power to regulate by licensing regime or registration scheme.

10. Animals in distress: general (Clauses 11 to 14).
11. Animals in distress: proceedings pending (Clauses 15 to 20).
12. Animals kept for fighting etc (Clauses 21 to 23).
13. Powers following conviction (Clauses 24 to 34).
14. Enforcement powers (Clauses 35 to 41).
15. Prosecutions (Clauses 42 to 43).
16. Inspectors (Clauses 44 to 45).
17. General (Clauses 46 to 57).
18. Schedule 1 Powers of entry: supplementary.
19. Schedule 2 Minor and consequential amendments.
20. Schedule 3 Repeals.

## **Territorial extent**

21. The Bill extends to England and Wales. The Bill does not extend to Scotland and Northern Ireland.

## **Territorial application: Wales**

22. All of the regulation and order making powers contained in the Bill are to be exercised by the Secretary of State in relation to England only. In relation to Wales, all of those powers are to be exercised by the National Assembly. Unlike in England, no parliamentary procedure attaches to codes issued by the National Assembly for Wales. In all other respects the Bill affects England and Wales in the same way.

## **Commentary on clauses**

### **Specific offences relating to animals**

#### **Clause 1: Cruelty**

23. The Protection of Animals Act 1911 made 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 and in the course of hunting. The 1911 Act has formed the basis for most prosecutions concerning animal welfare and has required amendment by several Acts.



## Explanatory Notes

The provisions of the 1911 Act no longer reflect modern practice, lack legal certainty in modern circumstances and are not consistent with the scheme of protection for vertebrate animals under the Bill. Excepting the restriction to vertebrates, the cruelty clause is intended to retain all protection in the 1911 Act which remains relevant today and which has not been provided for elsewhere in the Act.

24. 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 suffering to a protected animal where this is considered unnecessary. The offence can be committed by act or omission where the person knew or could be expected to know that an animal would thereby suffer.

25. Subsection (2) provides that a keeper who permits another person to cause unnecessary suffering will be committing an offence. A keeper is defined in subsection (10). 'Permitting' suffering may include a failure to exercise reasonable care and supervision with view to protecting the animal (subsection (10)(b)). So, for example, if a parent fails to supervise his children in the care of their animals, he may be committing an offence if the children cause unnecessary suffering. Similarly, a person who employs another to look after his animals may commit an offence if he fails to supervise his employee and that person causes unnecessary suffering.

26. Subsection (3) sets out the 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 where appropriate. As an example of how the clause operates, where, for example, a horse suffers whilst being used for the purpose of riot control, this is likely to be considered necessary for the purposes of protecting persons or property (one of the considerations specified in the clause). 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 clause). In the (unlikely) event that, in a particular case a court finds that an animal affected by legitimate pest control is a protected animal (as to which, please see the notes on Clause 54 (2) below), any suffering would be likely to be considered necessary to protect persons or property. The extent to which the suffering is considered necessary could be affected by the competence or legitimacy of the pest controller's activities (also considerations specified in the clause). Where suffering is necessary to comply with any regulations, licence or code of practice under the Bill (which is also a consideration specified in the clause), an offence would not normally be committed. Suffering inflicted over and above that which is necessary in the course of legitimate activities, is likely to amount to cruelty.

27. Subsection (4) prohibits the mutilation of any protected animal unless the mutilation has been exempted from the general prohibition by an order made under subsection (5). The intention is that the appropriate national authority (the Secretary of State or the National Assembly for Wales) would make an order to come into force on the same day as this provision, specifying which mutilations are exempted from the prohibition.

28. The offence applies to those who permit or cause an animal owned by them, or for which they have responsibility, to be mutilated as well as to those who carry out the mutilation.

29. Subsection (7) which re-enacts in substance section 1(d) of the 1911 Act, provides that it is an offence to administer to a protected animal any poisonous substance or drug or other

substance that will be injurious to an animal. The offence may also be committed where a person permits such a substance or drug to be administered. Under this clause 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. No offence is committed if there is lawful authority or excuse for administering the poisonous or injurious substance or drug.

30. Subsection (8) specifies that substances which are otherwise harmless, may become harmful depending on how they are administered. For example, salt solution may be fatal if injected in large quantities, and sleeping tablets are also harmful in large quantities.

31. Subsection (9) prohibits the performance of operations on protected animals 'without due care and humanity'. A person may also be liable under this provision if he permits another to perform such an operation. It is not necessary to prove that the animal suffered to establish liability. This provision re-enacts in substance section 1(e) of the 1911 Act.

32. Subsection (10)(a) sets out the circumstances in which a person will be regarded as the keeper of an animal.

33. Subsection (10)(b) specifies that failing to supervise or exercise reasonable care can result in cruelty.

### Clause 2: Fighting etc

This clause makes separate provision about animal fighting which in the Protection of Animals Acts 1911 was subsumed under the general heading of "offences of cruelty". The offences under the clause reproduce the substance of the offence under section 1(c) of that Act, but with changes to reflect modern circumstances.

Subsections (1) and (2) penalise various forms of involvement in an animal fight, which is defined in subsection (3) 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. Where fighting occurs but is incidental to another legitimate purpose no offence will be committed. For example, where an animal is used to capture another animal or for the purpose of other legitimate activities, it will not be considered to be "fighting" within the meaning of this clause.

### Clause 3: Welfare

34. The Agriculture Miscellaneous Provisions Act 1968 introduced a positive duty to ensure the welfare of livestock situated on agricultural land. This meant that, in addition to an ability to prosecute offenders where an animal had already suffered, animals could also be protected in circumstances where they were likely to suffer. The new welfare offence extends this protection to non-farmed animals so that the duty to ensure welfare now applies to all kept animals (that are owned or for which someone is responsible or in charge).

35. Subsection (1) specifies that a keeper of an animal must do all that is reasonable to ensure its welfare.

36. Subsection (2) defines keeper to include the owner, the person who is responsible for or in

## **Explanatory Notes**

charge of the animal and, any adult who has actual care and control of a person under the age of 16 to which the above applies.

37. Subsection (3) establishes the principle that a keeper of an animal does not cease to be its keeper simply by abandoning it, and as such, continues to have responsibility for its welfare. It re-enacts in substance the Abandonment of Animals Act 1960.

38. Subsection (4) provides that ensuring an animal's welfare entails providing for its needs in an appropriate manner and gives examples of animals' welfare needs.

39. Subsection (5) sets out considerations to which the courts should have regard in determining the appropriateness of steps that have been taken to ensure an animal's welfare.

40. Subsection (6) 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.

### **Clause 4: Sales to persons under 16**

41. This clause prohibits vendors from selling animals to persons under 16 in circumstances where they ought to know that the person is under 16. It is intended to increase the scope of the existing offence in section 3 of the Pet Animals Act 1951 which is limited to children under 12 and to the sale of animals as pets.

### **Clause 5: Giving as prizes**

42. This clause introduces a new prohibition on the giving of animals as prizes. The giving of animals as prizes is not thought to be consistent with a responsible approach to becoming an owner or keeper.

## **Animal welfare regulations and guidance**

### **Clause 6: Regulation to promote welfare**

43. Subsection (1) creates a general power to make regulations for the purpose of promoting the welfare of animals kept by man.

44. Subsection (2) provides a non-exhaustive list of purposes for which the regulation making power in subsection (1) may be exercised.

45. At present licensing regimes contain many identical or similar provisions and are to be found in a variety of statutes and secondary legislation. Subsection (2)(h) specifies that subsection (1) would enable the appropriate national authority to introduce a more flexible and consistent approach to licensing. As now, licensing will normally be the responsibility of the local authority. Regarding entry and inspection in connection to licensed activities please see the explanatory notes for clause 37.

46. Subsection (3) enables the appropriate national authority to make it an offence to carry on a licensed activity without a licence.

47. Under subsection (2)(i) activities may be subject to a registration requirement 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.

### **Clause 7: Codes of practice**

48. Codes of practice are already widely used to promote the welfare of farmed animals and the Bill will extend their use to non-farmed animals. Codes provide 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 Bill have been attained. Owners and keepers of animals will 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. The codes are intended to supplement provisions in regulations and on the face of the Bill.

### **Clause 8: Making and approval of codes of practice: England**

49. Codes of practice issued under the Bill will be capable of being evidence of either an offence under the Bill or, in contrast, compliance with its requirements. In connection with the welfare offence, a failure to follow a code of practice could be used as evidence of failure to provide adequately for the animal's welfare. In contrast, following guidance in a code could be evidence that a defendant has not in fact committed an offence. The existing code on the welfare of farmed animals, which has been prepared under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968, will be treated as if issued under the Bill and other codes will be made in relation to other situations (e.g. training of performance animals, riding establishments, game bird keeping) and types of animal (e.g. horses or exotic animals).

50. Subsections (1) to (4) of clause 8 provide that codes of practice shall only be issued following consultation with relevant interest groups and will be subject to Parliamentary approval under the negative resolution procedure.

### **Clause 9: Making of codes of practice: Wales**

51. 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 law-making procedures. Similar consultation procedures must be followed before the code is adopted.

## **Animals in distress: General**

### **Clause 11: Power to take possession of, and retain, animals in distress**

52. In order to protect an animal's welfare without delay in an emergency, where a veterinary surgeon certifies that a protected animal is suffering or not being properly cared for or is likely to suffer or not be properly cared for, subsection (1) authorises the enforcement authority to take it into possession and retain it for a period of up to 8 days pending the commencement of proceedings for an offence under the Bill. This power extends the power in the Protection of Animals Act 2000 in three ways. Firstly, the power is available immediately and before proceedings are commenced. Secondly, it is not restricted to animals kept for commercial purposes. Thirdly, it covers not only the animals which are suffering but also those which are likely to suffer if action is not taken.

53. Subsection (2) authorises the inspector or constable to act without the certificate of a veterinary surgeon where the particular urgency of the situation requires this. This is intended to cover an urgent situation such as, for example, a dog left in a hot car. Here there is a risk that the animal might die whilst waiting for the veterinary surgeon to arrive. It is anticipated that such a situation will be rare and that generally it will be appropriate to wait for a veterinary surgeon to attend.

54. Subsection (3) specifies the duration of powers of retention under subsection (1) or (2). An animal may only be retained for 8 days before proceedings are commenced unless an application for an extension is made to a magistrates' court under subsection (5). Once proceedings have been commenced the animals may be retained until the proceedings are determined or discontinued.

55. Subsection (4) specifies the animals that may be retained under subsection (3). The power to retain possession of animals extends beyond those in respect of which proceedings have been commenced to include other animals taken into possession on the same occasion. For example, if some cattle in a herd are found to be suffering, the whole herd could be taken into possession and cared for even though proceedings are commenced only in relation to some of the animals.

56. Under subsection (8) the owner or person from whom the animal was taken may apply to the court for an order bringing to an end the right of retention under subsection (3).

### **Clause 12: Powers to remove and care for animals in distress**

57. This clause confers ancillary powers to enable an animal to be cared for once it has been taken into possession under clause 11.

58. Subsection (1) gives an inspector or constable a right to remove the animal to a place of safety and a power to care for the animal either on the premises where it was being kept when it was taken into possession or elsewhere.

59. Subsection (2) gives a power of entry to the person who is charged with looking after the animal and a right to use equipment on the premises for that purpose.

60. Subsection (4) authorises the recovery from the owner of costs incurred in the exercise of powers conferred by this clause.

### **Clause 13: Other powers in relation to animals in distress**

61. If an inspector or constable finds an animal which is suffering, subsection (1) authorises him to take whatever steps need to be taken immediately to alleviate the animal's suffering. This power extends to animals found in a public place. This power would allow the treatment of an animal in distress.

62. Under subsection (2), 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.

63. Subsection (3) allows an inspector or constable to kill an animal without waiting for a vet in an emergency where it is obvious that the animal is suffering and has to be killed. For example, where an animal has been injured in a road traffic accident, is obviously in serious pain and appears unlikely to survive.

64. Subsection (4) authorises a veterinary surgeon to examine an animal and to take samples from it for the purpose of determining whether a certificate should be issued under subsection (2) (to kill the animal) or for the purposes of clause 11(1) (to take an animal into possession). The veterinary surgeon may also examine and take samples under this clause for the purpose of giving evidence to a court in relation to the animal, for example, for an order under clause 16 during pending proceedings.

### **Clause 14: Entry to search for and deal with animals in distress**

65. This clause sets out the circumstances in which an inspector or police constable may enter onto premises (which includes vehicles, vessels, aircraft and hovercraft) without a warrant in order to deal with animals that are suffering or are believed to be suffering or likely to suffer if remedial action is not taken. Subsection (1) includes a power to enter to search for such animals that the constable reasonably believes to be there.

66. The power of entry does not extend to any part of premises used as a private dwelling (subsection (2)). In relation to such premises a warrant must be obtained from a justice of the peace.

67. Subsection (3) authorises the use of reasonable force to effect entry where this is necessary and entry is needed before a warrant can be obtained.

68. Under subsection (4) an inspector may not use force to enter between the hours of 11 p.m. and 5 a.m. unless he is accompanied by a constable.

69. Subsection (5) sets out the circumstances in which a justice of the peace may issue a warrant authorising the inspector or constable to enter premises where an animal that is suffering or likely to suffer is present or is reasonably believed to be present. A warrant would authorise entry to parts of premises used as a private dwelling if animals are kept there.

70. Preconditions to the issue of a warrant are set out in subsection (6).

71. The power of entry applies also to means of transport which are included in an extended definition of premises in subsection (7).

72. Sections 15 and 16 of the Police and Criminal Evidence Act 1984 apply to constables acting under warrants. Subsection (8) extends the safeguards in those sections to inspectors acting under warrants issued in accordance with this section.

## **Animals in distress: proceedings pending**

### **Clause 15: Application of sections 16 to 19**

73. In order to ensure that the powers conferred on prosecutors while proceedings are pending under the Bill (powers of entry and of search and to take into possession etc) are exercised responsibly and proportionately in accordance with the relevant provisions of the Police and Criminal Evidence Act 1984, subsection (2) provides that these powers may only be exercised by prosecutors who are public authorities, persons who have been authorised to act on their behalf and bodies that have been expressly authorised by an appropriate national authority to prosecute under the Bill. Such authorisations will be given in England by the Department for the Environment Food and Rural Affairs and in Wales by the National Assembly for Wales. The power to authorise specific bodies to act as prosecuting authorities carries forward a similar provision in the Protection of Animals Act 2000 under which an agreement has been entered into between the Secretary of State and the RSPCA allowing the latter to make applications under that Act.

### **Clause 16: Orders in relation to animals owned or kept by the defendant**

74. Where proceedings are pending, the prosecutor may apply to the court for orders authorising him to take action, or to arrange for action to be taken, to protect animals owned or kept by the defendant pending the determination of the proceedings. The application must be supported by veterinary evidence that the animals are suffering, not being cared for or are likely to suffer or not be cared for properly if left as they are.

75. The steps that the order may authorise the prosecutor to take on an application made under subsection (1) are set out in subsection (2). These include removing the animal to a place of safety, arranging for it to be cared for or for it to be sold or otherwise disposed of, including by slaughter.

76. Subsection (3) stipulates that an order may only be made under subsection (1) after the owner has had an opportunity to be heard. This is to cover the situation where the defendant before the court is not the owner of the animals. However, the need to contact the owner and protect his interest in the animals has to be balanced against the need to protect the animals if appropriate. Therefore subsection (4) allows the court to proceed if it is not reasonably practicable to communicate with the owner.

77. Subsection (5) provides safeguards to preserve the value of the animal and prevent the defendant being subjected to excessive costs. These factors must be taken into account together with all the other circumstances.

78. Under subsection (6) it is an offence to obstruct a person who is giving effect to an order made under this clause.

79. Subsection (7) sets out the period of validity of an order made under this clause. The order ceases to have effect when the proceedings are disposed of or discontinued. The cessation of the order has no effect upon the validity of any action taken whilst it remained in force.

### **Clause 17: Orders for disposal of animals taken under section 11(1) or 16(1)**

80. Where the prosecutor has taken an animal into possession in an emergency under clause 11(1) or retains such an animal under clause 11(3)(b), and where the court has ordered that an animal be taken into possession under clause 16(1) and the animal is being retained under the order, the court may make an order for disposal of the animal. Such an order may be ordered on the application of the prosecutor, the defendant, or the owner if different from the defendant.

81. Where the applicant is not the owner of the animal, the owner must be given an opportunity to be heard unless the court is satisfied that it is not reasonably practicable to communicate with him. In deciding this the court will need to take into account the urgency of the need to order an alternative disposal and weigh this with the nature of the interest the owner might have in the animal (whether financial or otherwise).

82. Subsection (7) provides that obstruction of the prosecutor seeking to carry out an order for alternative disposal under subsection (1) is an offence.

83. As under clause 16(7), an order under this clause will cease to have effect once the proceedings have finished. Subsections (1), (2) and (3) allow the court to order sale, disposal or slaughter on the application of the prosecutor, defendant or if different, the owner of the animals.

### **Clause 18: Orders for release of animals taken under section 11(1) or 16(1)**

84. Where animals are being retained during proceedings, then the court can order their release on the application of the defendant or owner, if different. This is similar to the power to order release of animals seized before starting proceedings, in clause 11(8).

### **Clause 19: Powers in connection with orders under section 16(1) or 17(1)**

85. This clause gives certain powers to assist in the carrying out of orders made by the court under clauses 16(1) or 17(1).

86. Subsection (1) allows the prosecutor or a person authorised by him to enter premises in order to mark the animals to which the order applies or will apply.

87. Subsection (2) gives a power to enter for the purpose of carrying out the order. If entry into premises used as a private dwelling is required, the court will need to issue a warrant authorising this.



## Explanatory Notes

88. Under subsection (4) it is an offence to obstruct a prosecutor or a person authorised by him who is entering premises under the powers conferred by this clause.

### Clause 20: Orders under section 16 or 17: financial provisions

89. Where the court makes an order under section 16(1) or 17(1) the prosecutor can claim reasonable expenses in exercising the powers conferred by virtue of the order from the defendant.

90. Under subsection (2), if the animal is disposed of, the owner is entitled to any proceeds of the disposal but expenses may be deducted from the proceeds before accounting to the owner for the balance (subsection (3)).

## Animals kept for fighting

### Clause 21: Powers to take possession of, and retain, animals kept for fighting etc

91. This clause confers power to take possession of an animal in connection with the arrest of a person for particular aspects of the offence under clause 2. Although constables and others will have the power to arrest for the offences under clause 1 (cruelty) and clause 2 (fighting) (because clause 35 amends Schedule 1A of the Police and Criminal Evidence Act 1984), only constables will have the power to seize animals which appear to be owned or kept by the arrested person for the purposes of animal fighting. The purpose of this power is to enable the police to keep fighting animals in order to allow the court to make a deprivation or destruction order on conviction (clauses 25 and 31). If the animal is not seized on arrest, the concern is that it might be difficult to trace on conviction, or that it might be used for further fighting offences in the interim.

92. Subsection (1) authorises a constable to take into possession any animal that appears to be the subject of, or used in connection with, an offence under clause 2(1)(g) or (h). That is, any animal which appears to have been kept or trained for fighting by the arrested person, or, where the arrested person is accused of placing an animal in a fight, the animal so placed or another animal in the fight. The power to seize these animals is exercisable at the time of arrest or at a subsequent time if an animal is found later.

93. Subsection (2)(a) specifies 8 days as the period for which an animal that is taken under subsection (1) may be retained pending the commencement of proceedings for an offence under clause 2. Under subsection (2)(b), once such proceedings have commenced, the animal may be retained until they have been determined.

94. Subsections (4) to (6) make provisions in relation to the extension of the period under subsection (2)(a).

95. Subsection (7) gives the owner of the animal or the person from whom the animal was taken a right to apply to a magistrates' court seeking the release of an animal taken into possession under this clause.

## Clause 22: Powers to remove and care for animals kept for fighting etc

96. This clause confers powers to look after an animal that has been taken into possession under clause 21 following an arrest for a fighting offence. Subsection (1) authorises the removal of the animal to a place of safety, and to care for it or make arrangements for it to be cared for either on the premises where it was taken into possession or on other premises.

97. Subsection (2) provides for the recovery of costs incurred in removing and caring for animals under this clause from the person who was arrested for the fighting offence in relation to which the power to take the animal into possession was exercised.

## Clause 23: Entry to search for and take possession of animals kept for fighting etc

98. Subsection (1) authorises a constable to enter premises to search for an animal which he reasonably believes to be on the premises and which he would be entitled to take into possession under clause 22, with a view to taking such an animal into possession.

99. The power contained in subsection (1) may only be exercised in relation to a private dwelling if a justice of the peace has authorised entry to the premises (subsection (2)).

100. Subsections (3) and (4) deal with the issue of warrants authorising entry and search in relation to private dwellings and the use of reasonable force.

101. Under subsection (5), in relation to vehicles, the person who is, or appears to be, in charge of the means of transport, is to be treated as the occupier for the purposes of this clause.

## Powers following conviction

### Clause 24: Imprisonment or fine

102. The maximum penalty for an offence under clause 1 (cruelty) or 2 (fighting) of the Bill is imprisonment for a term not exceeding 51 weeks or a fine of up to £20,000 or both. The new provision for punishment by custodial sentence under the Criminal Justice Act 2003 is commonly known as 'custody plus'. This provides for a short term of imprisonment combined with a licence period, the combined periods totalling not more than 51 weeks. Once this provision comes into force, it will replace the power of magistrates' courts to impose short terms of imprisonment. Until this provision comes into force, the maximum term of imprisonment for offences under clauses 1 and 2 is 6 months. The option of a very high fine is to cater for serious cases of cruelty, for example those which involve a significant profit to the offender.

103. Failure to ensure welfare of animals or breaches of disqualifications will attract a maximum penalty of 51 weeks or a fine up to level 5 on the standard scale. This is currently set at £5,000. The power to make regulations under the Bill includes a power to create offences, and clause 6(4) provides that a penalty of up to 51 weeks and/or level 5 on the standard scale may be set under regulations. The reason for this is that breach of regulations may be the equivalent of a welfare offence under clause 3 and would therefore warrant the same penalty. (Other less serious offences in regulations may attract a lower maximum penalty).

## Explanatory Notes

104. Other offences under the Bill will attract a maximum penalty of 51 weeks or fine up to level 4 on the standard scale. This is currently set at £2,500. These offences will include obstruction of inspectors and failure to comply with court orders, as well as offences to do with licensing such as breach of licence conditions.

### Clause 25: Deprivation

105. The aim of this clause is to prevent a person, who has been convicted of an offence which shows that he is unfit to look after animals, from having responsibility for the animals in respect of which the offence was committed. This is intended both as a punishment and to protect the animals concerned. A deprivation order is limited to cases where there is a clearly identifiable animal in respect of which the offence was committed. It can only be made against a defendant who is the owner of the animal concerned.

106. Subsections (1), (2) and (3) give the court power where it has convicted a person of an offence of cruelty, breach of the duty of care in relation to animal welfare or certain fighting offences, and breach of a disqualification order, to make an order that deprives him of ownership of the animals in respect of which the offence was committed and to make an order for the disposal of those animals. Disposal in this clause includes slaughter of the animal. Deprivation of animals may be ordered in addition to or instead of other measures.

107. Subsection (4) confers ancillary powers to appoint someone to carry out the deprivation order, to require delivery up of relevant animals and to give directions concerning the carrying out of the order.

108. Subsection (5) authorises delegation of the decision about the method of disposal.

109. Under subsection (7) the power of entry conferred by subsection (6) may only be exercised in relation to a dwelling house if a warrant authorising entry has been obtained from a magistrates' court.

### Clause 26: Disqualification

110. Under the Protection of Animals Act 1954 a person who has been convicted of an offence under the Protection of Animals Act 1911 may be disqualified 'for having custody of' specified animals for a specified period. It has proved difficult in practice to determine in many cases when a disqualified person 'has custody of' animals such as to place him in breach of a disqualification order and this has limited the effectiveness of such orders. For example, a farmer who has been disqualified may employ a farm manager to organise the day to day care of the animals and continue to operate a farming enterprise despite his disqualification. 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 recently by the Court of Appeal in *Worcestershire County Council v Tongue* (CA 17<sup>th</sup> February 2004). This clause makes such provision.

111. Subsection (1) extends the range of activities that a disqualified person is forbidden to undertake in respect of animals. In addition to owning animals, he is disqualified from keeping them, arranging for their keeping or participating in their keeping. He is also disqualified from dealing in animals or transporting or arranging the transport of animals. Thus it is intended that a person who has been disqualified will be prohibited from continuing to run a farming enterprise by employing a manager to look after his livestock. It is also intended that where a disqualified person continues to live in a house with animals owned or kept by other occupants, that he should be disqualified from taking any part in the care of those animals. A person may be disqualified under this clause on conviction for an offence under clause 1,2 or 3 of this Bill and also on conviction for an offence under regulations made under clause 6.

112. Subsection (2) provides that disqualification may be imposed in relation to any animals or kind of animal. Thus, for example, a person who engages in dog fighting may be disqualified from having dogs but not fish. A farmer who is convicted of cruelty to his cattle might, for example, be disqualified from having livestock but not domestic dogs or cats.

113. If a disqualification order takes immediate effect the disqualified person cannot have any further involvement with the animals that were formerly kept or owned by him. This would prevent him from making alternative arrangements for the sale or care of his animals. Subsection (3)(b) therefore gives the court power to suspend the operation of the order to give the disqualified person time to make such arrangements for the animals' welfare.

114. Under subsection (3)(a) the effect of the order may also be suspended pending the determination of any appeal. Otherwise, the disqualified person would have to make arrangements for someone else to care for his animals pending the determination of the appeal.

### **Clause 27: Duty to explain non-exercise of powers under sections 25 and 26**

115. Subsection (1) requires an explanation to be given where a person is convicted of a relevant offence and the court decides to make neither a deprivation order nor a disqualification order.

116. Subsection (2) requires the court to give reasons in open court also where it makes a deprivation order but does not also make a disqualification order.

117. The requirement to give reasons applies when a person has been convicted of an offence under clause 1 (cruelty), 2 (certain fighting offences), or 3 (welfare). The relevant fighting offences are limited to those under 2(1)(g) and (h) here because it is only possible to make a deprivation order after conviction of these offences. It is possible to make a disqualification order on conviction of any offence under clause 2.

### **Clause 28: Seizure of animals in connection with disqualification**

118. Subsection (1) gives the court power, where it makes a disqualification order to make an order that any animals owned or kept by the disqualified person may be taken into possession. This power will assist in cases where the disqualified person has indicated an unwillingness to comply with the disqualification order, or where he has failed to dispose of his animals during a period of suspension of an order under clause 26(3).

## Explanatory Notes

119. Subsection (2) allows the court to order animals to be taken into possession where a person is convicted of breach of a disqualification order.

120. The power may only be exercised when the owner has had an opportunity to be heard unless it is not reasonably practicable to contact him (subsection (3) and (4)).

121. Subsection (5) sets out the powers of the court when it makes such an order. These include appointing another person to care for the animals and ordering persons (generally the owner or keeper) to deliver them up and a power to give directions concerning the carrying out of the order.

122. Subsection (6) sets out the extent of the court's powers to give directions under subsection (5) and subsection (7) lists ancillary powers of the person who is appointed to look after the animals under subsection (1) or (2).

123. Subsection (8) limits the power of entry conferred by subsection (7) where the premises are a dwelling house. In relation to those premises a warrant must first be obtained from a magistrates' court.

124. Where the disqualification order has been made against someone who is not the owner of the animals, the owner may appeal against an order made under this clause (subsection (9)).

### Clause 29: Seizure under section 28: financial provisions

125. The enforcing authority may recover costs it reasonably incurs in carrying out a seizure order under clause 28.

126. Under subsection (2), if the animal is sold the authority must account to the owner for the proceeds. Expenses may be deducted from the proceeds of sale before accounting to the owner for the balance (subsection (3)).

### Clause 30: Destruction in the interests of the animal

127. This clause replaces the power previously in section 2 of the Protection of Animals Act 1911.

128. Subsection (1) gives the court power, where it is in the interests of the animal and a veterinary surgeon certifies that it is appropriate, to order the destruction of the animal in respect of which a specified offence was committed. This is a somewhat wider test than that in the 1911 Act, being whether or not it is cruel to keep the animal alive. A destruction order may be made in relation to an animal as respect which a person is convicted of an offence under clause 1 (cruelty), 2 (certain fighting offences (those under subsections (1)(g) and (1)(h) of clause (2)) or 3 (welfare) or where a disqualification order has been made.

129. Under subsection (3), a destruction order can only be made after the owner has been given the opportunity to be heard, unless it is not practicable to communicate with him.

130. Under subsection (5), the court can make orders relating to practical arrangements for carrying out the destruction order and require the offender to meet the costs of its implementation and of keeping the animal until it is destroyed.

131. Under subsection (6) costs payable by the offender under subsection (5)(d) may be recovered by civil proceedings as a debt. The purpose of saying that something is recoverable summarily as a civil debt is to key into section 58 of the Magistrates' Courts Act 1980, which provides a convenient enforcement mechanism.

132. Subsection (7) confers powers on the person charged with carrying out the order to enable him to do so.

133. Under subsection (8) the power of entry conferred by subsection (7)(c) may only be exercised in relation to premises used as a dwelling under the authority of a warrant issued by a magistrates' court.

134. Subsection (9) confers a right of appeal but under subsection (10) no right of appeal lies if the court directs that the welfare of the animal requires it to be destroyed without delay.

### **Clause 31: Destruction of fighting animals**

135. This clause allows the court to order the destruction of fighting animals where there has been a conviction for an offence of keeping or training an animal for fighting or of placing an animal in a fight.

136. Subsection (1) requires the court to be satisfied that the animal is a danger to public safety (for example in the case of a dog trained for fighting), or that the animal may be used in the commission of further offences.

137. Subsection (2) specifies the animals in relation to which an order under this clause can be made. Where the offence of which a person is convicted is an offence under clause 2(1)(g), it is the animal which has been kept or trained for fighting. Where the offence of which a person is convicted is an offence under clause 2(1)(h), the order can relate to any animal which was in the fight.

### **Clause 32: Orders under section 25, 28, 30 or 31: pending appeals**

138. This clause provides that where an appeal is pending, the court may make an order in relation to the defendant for the purpose of preserving the status quo.

139. Subsection (1) provides that the effect of any order made by the court is stayed until the appeal is determined or abandoned. Equally, if the court orders the defendant not to sell or part with an animal pending the determination of his appeal, he commits an offence if he sells or parts with any animal to which the order relates (subsection (5)).

140. Subsection (2) gives examples of the directions the court may give under subsection (1) to provide for the animal's welfare pending the determination of the appeal. Examples of the sort of directions that may be given include removal of the animal to a place of safety and a power to appoint someone to carry out the order.

## Explanatory Notes

141. Subsection (3) sets out powers conferred on the person appointed to look after an animal pending appeal to enable him to mark animals and to enter premises.

142. Subsection (4) provides that the power of entry conferred by subsection (3)(b) may only be exercised in relation to a private dwelling with the authority of a warrant issued by a magistrates' court.

143. Where an appeal is lodged, subsection (5) gives the court power to order the person who has been convicted not to sell or part with any animal that was the subject of the proceeding pending the determination of the appeal. If he contravenes such an order he commits an offence. This clause is aimed at cases where a destruction or deprivation order has been made.

### Clause 33: Orders with respect to licences

144. Subsection (1)(a) confers powers exercisable where a court convicts a person of an offence under clauses 1 to 5. Under paragraph (a) the court has power to cancel a licence granted under regulations made under clause 6 (regulations to promote welfare). Under paragraph (b) the court may disqualify a person from holding a licence granted under such regulations.

145. Subsection (2) provides that a person may be disqualified from holding licences generally or from holding a particular sort, or sorts of, licence.

146. Subsection (3) gives the court power to suspend the effect of its order pending an appeal.

### Clause 34: Termination of disqualification under section 26 or 33

147. Subsection (1) enables a person who has been disqualified from owning or keeping animals or being involved in their transport or dealing in animals or from holding a licence, to apply for the termination of the disqualification order.

148. Subsection (2) sets out pre-conditions to the making of an application under subsection (1). An application cannot be made until at least one year after the disqualification order was made or, where a previous application has been made under this clause, one year after the determination of that application. These time limits are designed to balance the rights of the individual against the Bill's aim of protecting animals and the need to discourage frivolous applications that are costly and waste the court's time.

149. Subsection (3) sets out the court's powers. It may grant the application, grant it in relation to a restricted class of animals, or dismiss it. The court may also order the applicant to pay all or part of the costs of the application (whether or not it is successful).

150. The application must be made to a magistrates' court for the same area as the court which made the original order (subsection (4)).

151. Subsection (5) specifies the courts to which the application shall be made before section 8 of the Courts Act 2003 comes into force. The Courts Act 2003 changes the name of the area for which the magistrates' court sits.

## Enforcement powers

### Clause 35: Arrest without warrant

152. The Bill amends Schedule 1A of the Police and Criminal Evidence Act 1984 in order to make offences of cruelty and fighting under clauses 1 and 2 arrestable offences. This means that certain other provisions in that Act to do with arrest, for example powers to enter and search premises on arrest, automatically apply to arrests for those offences.

### Clause 36: Inspection of records required to be kept by licence

153. Where a licence requires the keeping of records, these must be produced for inspection when required.

154. 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 to enable them to be taken away and considered without removing the computer on which they are stored.

155. The inspector may make copies of records produced under this clause.

### Clause 37: Entry and Inspection in connection with licensed activities

156. This clause concerns powers of entry and inspection in relation to licensed activities. It provides that regular inspections may be carried out to check that licence conditions are being complied with. Previously, in relation to some licensable activities, inspections could only be made where the commission of an offence was suspected. Inspectors will also be able to inspect where they have reasonable grounds to believe that a person is carrying on a licensable activity without a licence.

157. Subsection (1) confers powers of entry and inspection in circumstances where a licence issued under regulations made under clause 6 (regulations to promote welfare) of the Bill specifies the premises where the licensed activity may be carried on. It gives an inspector power to enter onto the premises which are specified in the licence at any reasonable time to inspect them.

158. Subsection (2) confers a similar power of inspection of licensed activities in relation to which the premises where the activity is to be carried on are not specified in the licence. Any premises where the licensed activity is carried on may be inspected at any reasonable time.

159. Subsection (3) sets out the purposes for which the power of inspection may be exercised. Inspectors are to check that the licence conditions are being complied with and that any requirements of the Bill and any secondary legislation made under it are also being complied with.



### Clause 38: Entry and inspection of farm premises

160. This clause allows inspectors to enter and inspect farm premises in order to check compliance with regulations made under the Bill and in order to ascertain whether an offence has been committed. In practice this will allow inspectors of the Secretary of State (generally officers of the State Veterinary Service) and local authority inspectors to enter farms in order to ensure the welfare of the animals there, whether or not they have evidence of a problem. State inspectors already have such a power under the Agriculture (Miscellaneous Provisions) Act 1968. This clause will extend the powers of local authority inspectors. This power is necessary to ensure compliance with EU law and also because experience has shown that current powers are inadequate where inspectors have reason to believe that a problem might exist, but they cannot obtain any firm evidence of the situation without going onto the farm and examining the animals there.

161. Entry to parts of premises which are used as a private dwelling is not permitted under this clause. If entry to such premises is required, it will be necessary to obtain a warrant under clause 41 or under clause 14.

### Clause 39: Entry and search without a warrant

162. This clause sets out the circumstances in which an inspector or constable may enter premises without a warrant.

163. Entry without a warrant is authorised under subsection (1)(a) where the constable or inspector has reasonable grounds to believe that an offence has been committed under clause 1 (cruelty), 2 (fighting), 3 (welfare) or where a disqualification order has been made under clause 26 or under regulations made under Clause 6 (regulations to promote welfare).

164. Under subsection (1)(b) entry is authorised where the inspector or constable has reasonable grounds to believe that evidence of the commission of such an offence will be found on the premises.

165. Subsection (2) stipulates that the power does not extend to any part of premises used as a private dwelling.

### Clause 40: Entry and Search by force without a warrant

166. This clause sets out the circumstances in which an inspector or constable may use force to enter premises without a warrant.

167. Subsection (1) provides that the power may be exercised where an inspector or constable reasonably believes that there is evidence of the commission of an offence on the premises and that the evidence is likely to be removed, destroyed or lost before a warrant can be obtained.

168. Subsection (3) sets out the powers in relation to which the use of reasonable force is authorised.

169. Subsections (2) and (4) provide respectively that the power conferred by subsection (1) may not be exercised in relation to any part of premises used as a private dwelling and that the power must not be exercised by an inspector between 11 p.m. and 5 a.m. unless he is accompanied by a constable.

170. This power applies to offences specified in clause 39(3).

### **Clause 41: Entry and search with a warrant**

171. This clause specifies the circumstances in which a justice of the peace may issue a warrant authorising an inspector or a constable to enter premises to search them for evidence of the commission of an offence.

172. Subsection (1) provides that before he issues a warrant a justice of the peace must be satisfied that one of the offences in relation to which a power of entry without a warrant may be exercised under clause 39 has been or is being committed. He must also be satisfied that evidence of the commission of the offence is likely to be found on the premises. In addition, one or more of the conditions listed in subsection (2) must be satisfied. The warrant may only be issued to authorise a search for evidence of the commission of an offence.

173. The conditions for the issue of a warrant set out in subsection (2) include that the occupier has been notified of the wish to enter and has refused entry despite being told that a warrant will be applied for, that the premises are unoccupied or that the purpose of entering the premises would be frustrated if permission were to be sought from the occupier, or that entry is needed urgently.

174. Under subsection (3) premises includes a vehicle, vessel, aircraft or hovercraft. In relation to these premises, the person who appears to be in charge is to be treated as the "occupier" for the purpose of the clause. Under subsection (4) the power must be exercised in accordance with the safeguards set out in sections 15 and 16 of the Police and Criminal Evidence Act 1984. Subsection (5) authorises the use of reasonable force in the execution of a warrant issued under this clause.

## **Prosecutions**

### **Clause 42: Power of local authority to prosecute offences**

175. This clause is designed to specify that local authorities do have power to prosecute offences under the Bill. Unless a statute provides to the contrary the general rule under English law is that anyone may bring a criminal prosecution. This is the position under the Bill.

### **Clause 43: Time limits for prosecutions**

176. Under the existing law it has sometimes proved difficult to prosecute for cruelty to animals because evidence of the offence has not been discovered until some considerable time after the offence was committed.

## Explanatory Notes

177. Subsection (1) authorises prosecutions to be commenced within 3 years of the date the offence was allegedly committed provided the proceedings are brought within 6 months of the date when sufficient evidence to mount a prosecution comes to the prosecutor's knowledge. This is thought to strike a fair balance between the rights of the accused and the need to have an effective mechanism to prosecute wrongdoers.

178. Subsection (2) provides a mechanism whereby, if a prosecutor certifies when he learnt of the relevant evidence, that provides the baseline for calculating a period within which proceedings must be commenced.

## Inspectors

### Clause 44: Appointment of inspectors by local authorities

179. As the enforcement authority for much of the Bill it will be the function of local authorities to appoint inspectors. In doing so they are required to have regard to guidance issued by the Secretary of State setting out the criteria (qualifications, experience etc) that are relevant to the appointment of inspectors for different purposes under the Bill.

180. Under subsection (2) the Secretary of State may also issue a list of approved persons who are considered suitable for appointment as inspectors from whom inspectors are to be selected.

181. A person may be included on the list kept under subsection (2) either for all the purposes of the Act or for limited specified purposes.

## General

### Clause 46: Powers of entry: supplementary

182. This clause gives effect to Schedule 1 which sets out supplementary provisions relating to powers of entry.

### Clause 47: Power to stop and detain vehicles

183. Where there is a right of entry to deal with animals in distress, or a power to search for evidence where there is reasonable suspicion of an offence, and in either case whether entry is with or without a warrant, clause 47 gives a right to stop and detain vehicles for the purpose of such inspection or search.

184. Subsection (2) extends this power to stop and detain vehicles to enter and search with a view to taking possession of fighting animals. Subsection (3) extends the power to stop and detain vehicles for the purpose of inspecting licensed activities and farmed animals.

185. Subsection (4) provides that the vehicle can only be detained for as long as necessary to search and exercise any other related power, for example to take samples.

## **Clause 48: Obtaining of documents in connection with carrying out orders etc**

186. This clause requires the owner of an animal in relation to which an order for taking into possession or for sale, disposal other than by sale or slaughter has been exercised or in relation to which a deprivation order, seizure order following disqualification or a destruction order has been made, to deliver the documents relating to that animal to the person who was authorised to exercise those powers. The documents must be delivered as soon as practicable and, in any event, within 10 days of being informed of the requirement.

187. Subsection (2) imposes a similar duty on the owner to deliver up documents where a court has made directions regarding the animal pending appeal.

188. A person commits an offence if he refuses to supply a document under this clause without reasonable excuse (subsection (3)).

## **Clause 49: Offences by bodies corporate**

189. This clause gives flexibility in the exercise of enforcement powers by authorising concurrent proceedings to be brought against a corporate body and individuals who are associated with the corporate body either 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.

190. 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 act of neglect that constitutes an offence under the Act.

## **Clause 50: Scientific research**

191. Scientific procedures on animals are governed by the Animals (Scientific Procedures) Act 1986 which makes provision for the licensing of people, projects and places where research is carried out on animals. Nothing in this Bill applies to anything lawfully done under that Act.

192. The combined effect of subsections (1) and (2) is to provide that the cruelty and fighting offences apply to animals bred or kept for research in establishments designated under sections 6 and 7 of the 1986 Act. In addition, the enforcement provisions of this Bill also apply to those animals insofar as they relate to enforcement of clauses 1 and 2 only.

193. Clause 3 of this Bill (welfare) does not apply to animals in designated establishments which are being bred or kept for research. This is because the designation procedure takes account of the welfare requirements of these animals.

194. On the other hand, any animals which are at such an establishment but which are not covered by the 1986 Act, whether because they are not listed in the schedules to the 1986 Act or because they are unrelated to scientific research (such as a guard dog), could be covered by all the provisions of this Bill in the normal way.

### Clause 51: Crown application

195. Under subsection (1) the Bill will apply to the Crown. This means that it will bind all Crown Government departments and other public bodies that are part of the Crown.

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

197. Under subsection (3) the fact that the Crown cannot itself be found criminally liable under the Bill 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 Bill in the same way as private individuals, private organisations and their staff.

198. There are two exceptions to the application of the Bill to the Crown. The first, contained in subsection (4) is that powers of entry made under the Bill may not be exercised at specified premises held by or on behalf of the Crown unless a Minister certifies that this would be contrary to the interests of national security.

199. Subsection (6) contains the usual exception from the general rule of Crown application for the Queen in her private capacity.

### Clause 53: "Animal"

200. This clause specifies the categories of animal to which the Act applies. The Bill affords protection to vertebrate animals other than man. The restriction to vertebrates is made on the basis that there is insufficient evidence to show conclusively that invertebrates are capable of experiencing pain, suffering and distress. There is an order making power to extend the definition to invertebrates or to particular types of invertebrates. This power would be exercised if scientific evidence demonstrated in future that such animals can in fact experience pain, suffering and distress.

201. Subsection (1) provides the definition of animal.

202. Subsection (2) specifies that the Act does not apply to unborn animals.

203. Subsection (3) sets out the ways in which the power to extend the definition of animal may be exercised. This includes a power to extend protection to unborn animals.

204. Subsection (4) provides for an affirmative parliamentary procedure in respect of the order making power in subsection (3).

205. Subsection (5) provides definitions of vertebrate and invertebrate.

## Clause 54: General interpretation

206. Subsection (2) defines the expression “protected animal” which is what sets the boundary of the application of the offences under the clause. Broadly, animals of a kind which are commonly domesticated in the British Isles will be within the protection of the offences. This category includes most pets and farmed animals. Non-domestic animals are only protected in specified circumstances and not if living in a wild state. For example, a deer would be protected from cruelty under the Bill if there was someone who was responsible or in charge of it. Generally speaking, deer do not have this relationship with man and so would not be protected under this category. If a deer had been injured and taken into care by an animal sanctuary and then released it would only be protected if it could be said that the sanctuary had been responsible for or in charge of it and that the deer, upon release, was not (or not yet) living in a wild state. If a deer was temporarily in the custody or control of man it could be a protected animal. In these circumstances the cruelty offence would apply so that no person could cause unnecessary suffering to the deer.

207. Subsection (3) defines “kept by man”. An animal is kept by man whenever someone can be identified as being in charge of or responsible for the animal.

## Clause 57: Short title, commencement and extent

208. All of the substantive provisions of the Bill will come into force when commencement orders are made by the Secretary of State in relation to England and by the National Assembly for Wales in relation to Wales. The statutes which are to be repealed under the Bill will only be repealed when the corresponding provisions of the Bill, or of regulations made under it, are brought into force.

209. Subsection (3) gives power to make transitional provisions and savings.

210. Subsection (4) sets out the territorial extent of the Bill. It extends to England and Wales only. Existing legislation that is to be repealed under the Bill and which extends also to Scotland will continue in force in relation to Scotland.

## Schedule 1

211. This schedule sets out the duties of those exercising powers of entry under the Bill and the powers which they, or those accompanying them, will have. The powers to which the schedule applies are listed in paragraph 1.

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

213. Paragraph 3 contains a power to take other persons and equipment 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, it is intended that the veterinary surgeon should have powers to examine the animals under paragraph 6 and to take samples, tests etc under paragraph 7.

## Explanatory Notes

214. Paragraph 4 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 control of the owner or keeper. In the case of entry to inspect licensed activities under clause 37, the obligation to give assistance extends to the licence holder.

215. Paragraph 11 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 4.

216. The powers to take samples, mark animals etc set out in paragraphs 6 and 7 apply to entry for the purpose of inspecting licensed activities and inspection of farmed animals. They also apply to entry and search where there is reasonable suspicion that an offence is being, or has been committed. These powers are considered essential for the proper investigation of possible offences against the Bill and against regulations under it, including those implementing EU legislation.

### Effect on public expenditure and public service manpower

217. It is not anticipated that the Bill will entail any substantial changes in public service expenditure or manpower. HM Treasury were consulted during the preparation of the Regulatory Impact Assessment (RIA).

### Costs to business and regulatory impact

218. The RIA explains that additional financial burdens / increased manpower commitments will not be placed on local or central government. There will not be significant additional work for charities. The impact on businesses will be similar as they should already be meeting standards set under existing law and be taking steps to ensure that animals do not suffer. The Cabinet Office, Regulatory Impact Unit and Small Business Service have been involved in the preparation of the RIA.

### European Convention on Human Rights

219. The Secretary of State is satisfied that the draft Bill is compatible with the European Convention on Human Rights.

220. The provisions of the European Convention on Human Rights that are relevant to the Bill are Article 1 of the First Protocol (right to the peaceful enjoyment of possessions), Article 8 (right to respect for private and family life) and Article 6 (right to a fair trial).

221. **Article 1 of the First Protocol to the Convention:** animals are a form of property covered by this provision. We consider that the provisions of the Bill that regulate the manner in which animals are kept and the powers which it confers to deprive a person of his animals or to destroy them, are justified in the interests of animal welfare, provided the powers are exercised in a proportionate manner.

222. **Article 8 ECHR – right to respect for private and family life:** this is a qualified right. The Bill provides that powers of search and entry may only be exercised in relation to private dwelling houses or parts of premises that are used as private dwellings with a warrant issued by a justice of the peace. Such premises may only be entered in limited circumstances. We consider that the limited interference with the right to respect for private and family life is justified under Article 8.

223. **Article 6 – right to a fair trial:** rights of appeal have been conferred in relation to all provisions which give rise to a determination of civil rights and obligations. Where an order affecting the owner's interests in an animal is made in proceedings brought against a third party, the owner has a right to be heard, provided he can be located by reasonable efforts.



## Repeals

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Metropolitan Police Act 1839(c. 47)	Section 47.
City of London Police Act 1839 (c. xciv)	Section 31.
Town Police Clauses Act 1847 (c. 89)	Section 36.
Protection of Animals Act 1911 (c. 27)	The whole Act, except for sections 8, 15(b) and (d), 16 and 19.
Protection of Animals (1911) Amendment Act 1921 (c. 14)	The whole Act.
Protection of Animals Act 1934 (c. 21)	The whole Act.
Pet Animals Act 1951 (c. 35)	Section 3.
Cockfighting Act 1952 (c. 59)	The whole Act.
Protection of Animals (Amendment) Act 1954 (c. 40)	The whole Act.
Protection of Animals (Anaesthetics) Act 1954 (c. 46)	Section 2(2).
Abandonment of Animals Act 1960 (c. 43)	The whole Act.
Animals (Cruel Poisons) Act 1962 (c. 26)	In section 4(2), the words "and the Protection of Animals Acts 1911 to 1960 may be cited together as the Protection of Animals Acts 1911 to 1962, and this Act".
Protection of Animals (Anaesthetics) Act 1964 (c. 39)	Section 2(2)(a).
Agriculture (Miscellaneous Provisions) Act . 1968 (c. 34) Part 1	In Schedule 7, paragraph 15.
Animal Health Act 1981 (c. 22)	Sections 37, 38 and 39.  In Schedule 5, paragraph 8.
Zoo Licensing Act 1981 (c. 37)	In section 4(5), the entry for the Protection of Animals Acts 1911 to 1964.

London Regional Transport Act 1984 (c. 32)	In Schedule 6, paragraph 23.
Police and Criminal Evidence Act 1984 (c. 60)	In Schedule 2, the entry for section 12(1) of the
Protection of Animals Act 1911.	
Animals (Scientific Procedures) Act 1986 (c. 4)	In Schedule 3, paragraphs 1 and 7.
Protection of Animals (Penalties) Act 1987 (c. 35)	The whole Act.
Protection of Animals (Amendment) Act 1988 (c. 29)	The whole Act.
Protection against Cruel Tethering Act 1988 (c. 31)	The whole Act.
Protection of Animals (Amendment) Act 2000 (c. 40)	The whole Act.

### **Purpose and intended effect of measure**

#### **The objective**

1. To bring together and bring up-to-date legislation that exists to promote the welfare of farmed, domestic and captive animals. The Secretary of State made a bid for advance drafting authority in the 3rd session 2003/4 with a view to introducing a bill in the 4th session 2004/5.

#### **Devolution**

2. The Act would apply to England and Wales. The Scottish Parliament are proposing to update and consolidate their animal welfare legislation. NAW will be responsible for making secondary legislation under the Act and they have indicated at official level that the secondary legislation/codes that are being proposed (see paragraph 29) are likely to be approved by the Assembly. Northern Ireland has its own animal welfare legislation and DARDNI are being kept informed about how the bill is developing.

#### **The background**

3. The animal welfare legislation which we are seeking to address is at present contained in 21 Acts of Parliament going back to the Protection of Animals Act 1911 which is itself a consolidation of 19th century legislation. Much of the legislation has ceased to meet modern day animal welfare needs. There has also been significant judicial criticism of the ambiguities and out-dated language that can be found in the 1911 Act. The creation of Defra has brought under one roof the legislation relating to farmed, companion, captive and sporting animals and this has provided a unique opportunity to consolidate and revise these laws.

#### **The risk that the bill addresses**

4. The Act is expected to primarily impact on the number of prosecutions that are brought under the Protection of Animals Act 1911.

5. In 2002 (the latest available figures) there were 1,006 defendants proceeded against for offences under 1911 Act. 768 of whom were found guilty.

6. In 2002 the RSPCA rescued or picked up more than 194,000 animals, answered more than 1.4 million telephone calls and investigated 114,004 cruelty cases.

7. In addition, the RSPCA is either directly or indirectly responsible for the running of 52 Rescue Centres. There are no statistics available for rescue centres and animal sanctuaries that are independent of the RSPCA.

8. One of the benefits of the bill is an expected reduction in these figures in the long term.

### Conclusions from the consultation and the subsequent stakeholder meetings

9. From January to April 2002, Defra ran a consultation on the need for an Animal Welfare Bill. The response from animal welfare professionals such as the veterinarian associations, local authorities and the police confirmed that a radical overhaul of animal welfare legislation was needed. Following the written consultation exercise, Defra officials engaged with representatives of over 200 stakeholder groups who assisted in the development of the Animal Welfare Bill and its related secondary legislation. These groups encompassed the complete spectrum of animal welfare interests including commercial interests, the police, local authority enforcement officers and welfare groups with a radical agenda.

10. The consultation process confirmed that almost every group – regardless of their agenda – consider that existing animal welfare legislation needed to be modernised. There was concern that although the legislation relating to farmed animals had kept up to speed with the modern view that welfare law should be pro-active and prevent suffering before it occurred, the law relating to pet and captive animals was rooted in the 19th Century view that prosecutions could only be mounted after an animal had suffered.

11. The majority of groups wanted to see pro-active legislation that made an animal owner/keeper responsible for ensuring that proper care is provided at all times. Improvement notices, already available for farmed animals, were considered as a way of directing owners/keepers, who were failing to provide an acceptable level of care for the animal, to improve their standard of care without needing to prosecute. However, improvement notices in farm welfare are still a relatively recent concept (introduced in 2000) and it was therefore considered that it would be better to allow more time for them to bed in before extending their use into all captive and domestic animals. It was therefore considered that the Bill should contain a clause allowing for the introduction of improvement notices once it is decided to issue them. Such a decision would only be made following a round of consultation on the issue of improvement notices.

12. There was also support from welfare organisations and enforcement agencies for an Act that addressed the anomalies in the current legislation. This included greater consistency to the sentences available for the most serious offences and in the powers of arrest and entry. On a more specific point there was a general feeling that the existing laws allowed farmers convicted of cruelty to continue to look after their animals on the pretence that ownership has passed to a relative or a manager.

13. There was widespread support from welfare organisations for greater licensing controls to achieve a better regulation of circuses both on the road and in quarters, pet fairs, animal sanctuaries, greyhound-racing tracks, the welfare standards in pheasant rearing and livery yards.

14. There was widespread support for the creation of more competent animal vendors that would provide purchasers with comprehensive information about the care that the animal they were buying should be given. It was suggested that approved information leaflets would be a positive step in this direction. There was also widespread support for raising the minimum age at which an unaccompanied child can buy a pet from 12 to 16 years. Some of the respondents were also concerned about the adverse welfare impact of selling animals via the internet.

## Regulatory Impact Assessment

15. There was also concern about the standards set by some licensing authorities. A uniformly high licensing standard was seen as key to the success of any new legislation.
16. The Association of Chief Police Officers also questioned the extent to which the police should be involved with the enforcement of animal welfare laws unless overt cruelty was involved. However, Defra and local authorities considered that the withdrawal of police from animal welfare – albeit only partial withdrawal – was probably an unrealistic goal. Even in routine welfare cases it would often be necessary to seek the assistance of a police officer where, for example, the person under investigation was refusing access to land.
17. There was also widespread support from animal welfare organisations, including the RSPCA, and the veterinarian associations for a ban on the docking of dog's tails for non-therapeutic reasons. However, a ban would be opposed by breed societies. The sporting shooting lobby would be likely to support a ban on docking for cosmetic reasons but there would be strong opposition to a ban on docking for working dogs, particularly spaniels and possibly Hunt Point Retrievers. It is considered that there is a case for banning the docking of dogs' tails for cosmetic purposes.
18. Farming and commercial groups did not support a ban on docking for sheep and pigs, although in the longer term it would seem likely that they would co-operate with moves to improve the competency of those that undertake surgical procedures on farmed animals, eg, farm workers who undertake castration.
19. The animal welfare groups also wanted the banning of electronic training aids (electronic collars that stop dogs from barking) and electric fencing for dogs. However, the commercial interest in these aids argued that in the absence of science based evidence it would be difficult to sustain a ban.
20. Another issue that received support from animal welfare groups was a ban on pets given as prizes.
21. There was widespread support from welfare groups for breeding out excessive and potentially harmful characteristics that have been bred into some breeds of dogs, eg, the squashed face of the British Bulldog. However, the view of Defra veterinarians was the resolution on harmful characteristics that had been included in the Council of Europe Convention for the Protection of Pet Animals was flawed and needed to be overhauled before it could become a basis for legislation. This view was supported by the Kennel Club.
22. The application of science for legitimate research purposes – which remains the responsibility of the Home Office – was outside the scope of the bill.
23. During the consultation there had been some press articles concerning what the papers erroneously described as the decision of the government to licence pet groomers, pet sitters and dog walkers. The limited interest that these issues generated in the consultation would suggest that they were possible long-term objectives for better regulation rather than immediate priorities.

### Issues of equity and fairness

24. It is not considered that the new legislation will disproportionately affect any key group. The lengthy consultation exercise with some 200 affected groups has enabled Defra to arrive at this conclusion. The bill will have initial cost implications for those with commercial interests in animals, enforcement agencies, the judicial system, animal sanctuaries and the general public. The beneficiary will be society in general as better cared for animals were less likely to stray, create a public nuisance, display aggression and be prone to disease or injury. There would be a variable impact on charities. The bill was aimed at encouraging the better care of animals so in the long term there should be a reduction in the number of animals that were taken into the care of sanctuaries. Those charities – such as the RSPCA – that are actively engaged in taking action against those guilty of cruelty or negligence would be likely to find – at least in the short term – an increase to the volume of their work.

### Options

#### *25. Option 1: Do nothing*

For the past decade the Protection of Animals Act 1911 has been under increasing scrutiny from animal welfare organisations. Their main concern is that it has ceased to meet the needs of society. The consultation has confirmed that the concerns of the welfare organisations are shared by a wide spectrum of professional, governmental and commercial organisations. The pressure to change the law is bound to increase both inside and outside Parliament.

#### *26. Option 2: Impose a voluntary code of practice/self regulation*

The Protection of Animals Act 1911 deals with those who cause unnecessary suffering through either deliberate cruelty or neglect. This cannot be addressed through self-regulation. There are already some voluntary codes of practice for commercial undertakings such as pet traders and livery yards but no mechanism exists to see that they are properly policed.

#### *27. Option 3: Prepare a draft bill as proposed in paragraph 1*

The preferred option. The bill would be an enabling measure, setting out certain fundamental principles but leaving detailed legislation to regulations and codes of practice. It would thus be possible to use the bill, for example, to implement EU obligations concerning the welfare of farmed animals and to produce codes of practice. If Parliament so decides, the present affirmative procedure for codes of practice could be replaced with a negative one.

28. The bill would allow action to be taken either by way of an advice letter or by prosecution in the courts where an animal was being treated in such a way that suffering would be an inevitable consequence. Provision would also be made for the banning of mutilations. Exceptions to this ban could be made when they are justified on animal welfare grounds.

29. It is anticipated that within 5 years of the Act coming into force, regulations and codes of practice would be introduced and enforced by local authorities (or possibly the State Veterinary Service in relation to gamebirds) concerning:

## Regulatory Impact Assessment

Circuses and animals in entertainment  
Pet Fairs and the better regulation of the sale of pets  
Animal Sanctuaries  
Livery Yards  
Tethering  
The welfare of greyhounds at race tracks  
The rearing of gamebirds  
Dog breeding establishments (already subject to statutory controls)  
Dog and cat boarding establishments (already subject to statutory controls)

### Benefits

30. *Option 1*: No benefits.
31. *Option 2*: No benefits.
32. *Option 3*: Benefits from clearer simpler legislation making compliance easier for business and government. Benefits to animals. Benefits to the public as outlined above.

### Costs

33. *Option 1*:  
Continue high costs to rehome inappropriately sold pets or cure the ills of mis-treated animals.
34. *Option 2*:  
As Option 1.
35. *Option 3 (see below each separate annexes for costs of each issue/proposal)*:  
The licensing/registering option will incur additional costs to those businesses that are currently not subject to such regulation. However, depending on size of business/activity in some cases the cost burden will be reduced from annual licence to an 18 month licence and in some cases to registration. It is anticipated that the cost of licences will be in the range of £200 to £400; and registration to between £30 to £60 (registration does not require regular inspection) and it is proposed for the better regulation of smaller animal sanctuaries.
36. Overall we do not expect any additional expenditure for local authorities as an increase in responsibilities will be matched with reduced inspection requirements. However, there may be some initial training costs to attain minimum standards (NVQ level 3). There would also – at least initially – be a possibility of more litigation. However, in the long term there are likely to be significant savings on enforcement and judicial costs as the bill would encourage a more responsible attitude to animal ownership. Putting mechanisms in place to increase regulation and making the public more aware about the need to be pro-active in good animal care would be key to reducing prosecutions. These are processes that could take up to 5 years from the passing of the bill before they start to impact on the level of offences.

37. The Bill would also provide Defra with the opportunity to take a central part in the co-ordination of animal welfare between the various enforcement agencies, in addition to the RSPCA by the introduction of a shared Animal Welfare Enforcement Database. Many groups called for greater consistency in the enforcement and priority given to animal welfare legislation. It was also pointed out that the issue of who enforces what particular part of the legislation was confusing. Defra would have the opportunity to provide advice and information for enforcers of the new legislation. Enforcers frequently needed to obtain the advice of a specialist veterinarian or other expert when dealing with a less well known animal. As part of a co-ordinating role Defra see merit in establishing a central database for enforcers to access such information as criminal records of those convicted of animal cruelty and who may be disqualified from keeping an animal or running an animal related business. The database could also keep a register of specialist experts ideally accessible to enforcers. Defra would ensure that the database fulfills the requirements of the Data Protection Act 1998.

38. Another opportunity would be to facilitate cross boundary working between local authorities. Local authorities' expertise in animal welfare varies from one authority to another. The national database would enable local authorities to post details of particular staff's expertise on certain animal welfare issues which could be referred to by other local authorities who may lack experience in a particular area.

39. Defra also consider that there would be merit in establishing a database in relation to animal welfare convictions. Offenders who are disqualified from either owning animals or running a particular animal related establishment often evade detection by moving to another area of the country. Allowing enforcers access to a central database of animal welfare related criminal records would assist in the prevention of this type of circumvention.

40. Issues relating to the Data Protection Act 1998, HRA and civil liberties issues in general would need to be addressed, to include consultation with the Department for Constitutional Affairs and possibly the Information Commissioner before any final decision was made on setting up a database. The setting up of a database is necessary but not critical as far as the success of the new Act is concerned.

### **Consultation with small businesses**

41. The SBS have been consulted in the development of the proposals. In principle the SBS are content with a reform of animal welfare legislation and the case for greater licensing control.

### **Competition assessment**

42. The Bill will not be placing undue additional burdens on businesses – instead it promotes good welfare and best practice in the keeping of animals which all such keepers should be adopting anyway. The additional burdens that are proposed relate mainly to the regulation of certain industries (set out in the Annexes) but the costs involved are considered unlikely to affect a small business from continuing to compete. Likewise the additional costs are also unlikely to prevent new businesses from entering the marketplace.



## Regulatory Impact Assessment

43. The Bill is unlikely to have a significant impact on UK firms in the animal related industry. In applying the competition filter test to the proposed regulations, it was considered that whilst the cost of some of the additional burdens might affect some firms more than others (depending on size and turnover), they would not have a detrimental affect on any. There may also be the concern that the cost of licences vary from one local authority to another. Although, the cost of licences is not something that Defra can limit, an attempt has been made to reduce licensing costs for firms by proposing an 18 month licence instead of the existing 12 months.

44. There are no firms that provide more than 10% of the market share and none of the proposed regulations would place higher set-up or ongoing costs for new or potential firms that existing ones would not have to meet.

### Enforcement and Sanctions

45. As with existing animal welfare legislation, the new Act will be enforced by local authorities, State Veterinary Service, police. The Act will also retain a “common informants” status, allowing individuals or organisations, such as the RSPCA, to prosecute for cruelty and welfare offences.

46. Local authorities and the SVS will continue to have powers to inspect those activities subject to regulation as well as those activities where it is proposed to regulate.

47. As with existing legislation relating to animal cruelty there will be criminal sanctions for certain offences (see Annex J).

### Monitoring and Review

48. As most of the detail will be contained in secondary legislation or codes of practice, the opportunity to review and, if necessary, update the legislation would be easier to achieve than at present. It is proposed to review the new legislation three years after it enters into force. If the Animal Welfare Enforcement Database is introduced, local authorities and other enforcement agencies would be able to provide the day-to-day monitoring of the legislation. The database will also enable Defra to develop a closer monitoring role.

### Sustainable Development

49. The proposed Bill contributes to the UK’s guiding principles on sustainable development:

- (i) Costs and Benefits – consideration has been given to balancing out costs with benefits in the development of the proposals
- (ii) Taking a Long Term Perspective – because it is an enabling Bill it will be fit for 100 years
- (iii) Using Scientific Knowledge – the Bill encourages the use of scientific knowledge to develop policy
- (iv) Transparency, Information Participation and Access to Justice – stakeholders have been heavily involved in the development of the Bill.

### Public Services Threshold Test

50. Local authority inspectors (the frontline enforcers of the licensing provisions) and the State Veterinary Service were consulted and have been involved in the development of the proposals contained within the Bill and its regulations and codes. Great care has been taken to limit enforcement costs in applying additional responsibilities to local authorities (see Annex L).

### Option 3 estimated costs

51. Most of the costs relate to orders/regulations following on from the main Bill in the form of secondary legislation, introduced at various stages once the main Animal Welfare Act has entered into force. Each piece of secondary legislation will be subject to a separate RIA and consultation once it is decided to take forward work on that particular regulation/order. Where the proposal is in a provision contained in the main Act, this is stated after the activity in brackets. The estimated total costs for each issue/proposal is set out in the attached annexes. A range of costs is given because in some cases the proposal is already being implemented voluntarily and would therefore have a limited impact on the business/activity as a whole. The upper cost is a "worst case scenario" if every business/activity affected did not already meet the proposed standard. A summary is provided below but the details are contained in the annexes:

## Regulatory Impact Assessment

<b>Annex</b>	<b>Activity/Business</b>	<b>Estimated total cost to business/activity</b>
A	Circuses – licensing of winter quarters and inspection of travelling circuses	£23,000 to £100,000
	Licensing/registering of other animals in entertainment	£28,000 to £120,000
B	Pet fairs – licensing	£47,000 to £350,000
C	Minimum age at which to buy pet animals and vendors to issue information leaflets ( <i>contained in primary legislation</i> )	£250,000 to £400,000
D	Internet sales and small mammals bred for pet trade – regulation	£800 to £30,000
E	Animal sanctuaries – licensing of large estabs	£64,000 to £1 million
	Animal sanctuaries – registering of small estabs	£17,500 to £350,000
F	Livery yards and tethering	£1.7 million to £10 million
G	Tail docking and dog and cat breeding	Negligible
H	Greyhound racing kennels	£2,500 to £250,000
I	Game rearing for sport shooting	Negligible
J	Offences, penalties, deprivation and disqualification orders ( <i>contained in primary legislation</i> )	Negligible
K	Setting up and operating a national database	£1.3 million to £4.7 million
L	Enforcement costs	Negligible
	<b>TOTAL</b>	<b>£3.4 million to £16 million</b>

## **Proposal to Licence Circuses with Performing Animals and Other Animal Related entertainment**

Given that the Association of Circus Proprietors has produced a voluntary code of practice and wants better regulation, it is likely that the compliance costs for members of the Association will be minimal. However, licensing may lead to the closure of some of the smaller and less well run animal shows. The numbers involved are likely to be minimal and their closure will be welcomed from an animal welfare point of view. There are a number of high profile welfare groups, including the RSPCA, that would welcome the end of animal acts in circuses.

Currently all performing animal acts should be registered under the Performing Animals (Regulation) Act 1925 but the legislation is regarded as outdated and almost valueless from a welfare point of view. Due to the decline in the use and numbers of performing animals in circuses it is not proposed to ban the use of animals in circuses. The preferred option would be to extend the regulation to require that all performing animal acts should be licensed and subject to regular inspection by a local authority.

Consideration is being given to an 18 month licence (rather than the traditional 12 month licence) to reduce the costs for both businesses and local authorities as well as enabling inspections to take place at different times of the year. The cost of licensing a circus is likely to be around £230 a year (based on two-thirds of a typical zoo licence). There would also be additional expenses relating to raising welfare standards to meet minimum licensing requirements and other consequential expenses such as complying with a code of practice and additional veterinary fees. These costs could be anything up to £10,000 and could possibly put some smaller ones using large exotic wild species out of business – but this can be defended if welfare standards were not being met.

It is also proposed to licence/register those companies who provide animals for other forms of entertainment (television, films, theatre and promotional work). An 18 month licence is likely to cost about £230, plus any additional costs.

There will be a right of entry for local authority inspectors to premises where animals are either kept or are performing.

Small amateur theatrical productions should be exempt.

## Annex A

All figures relate to England and Wales unless otherwise stated.

<b>Proposal/Issue</b>	<b>Estimated total number</b>	<b>Estimated possible additional cost to meet minimum standards – per establishment*</b>
Licensing of circus winter quarters and powers to inspect travelling circuses	No. of circuses with animals 10	£230 to £10,000 each <b>Totals</b> £23,000 to £100,000
Licensing/registering of other animals in entertainment	No. of suppliers/trainers 120	£230 to £1,000 <b>Totals</b> £28,000 to £120,000

\*cost to establishments include: *licence fee; achieving minimum standards set by statutory code of practice; staff training; and any additional veterinary fees.*

## Proposal to Licence Pet Fairs

Pet shops are currently regulated and this will continue under the new legislation. However, the law relating to the sale of animals, particularly reptiles and birds, at pet fairs is ambiguous. Some local authorities ban these fairs whereas others consider that they can be licensed under existing legislation. There are about 350 one-day pet fairs every year. There are three main types: birds, fish and reptiles. It is proposed that local authorities should licence the organisers of these events and therefore place them on a similar regulatory footing as pet shops. Similar standards of welfare would apply and so there may be some additional costs for organisations in order to achieve minimum standards although many already work to a code of practice. Consideration is being given to an 18 month licence (rather than the traditional 12 month licence) to reduce the costs for both businesses and local authorities as well as enabling inspections to take place at different times of the year but it is acknowledged that this may be difficult in relation to annual events.

All figures relate to England and Wales unless otherwise stated.

<b>Proposal/Issue</b>	<b>Estimated total number</b>	<b>Estimated possible additional cost to meet minimum standards – per establishment*</b>
Licensing of pet fairs (birds, reptiles, fish)	No. of pet fairs 350	£135 to £1,000 <b>Totals</b> £47,000 to £350,000

\*cost to establishments include: *licence fee; achieving minimum standards set by statutory code of practice; staff training; and any additional veterinary fees.*

## Proposal that the Minimum Age at which a Minor can buy a Pet Animal be raised from 12 to 16 and that Vendors of all Pet Animals to provide Written Details to Prospective Buyers

### Minimum age

There are concerns that children purchase animals on a whim without realising how to look after the animal and possibly without parental consent. When the child loses interest in the animal its welfare may suffer or it may even be abandoned. Such purchases can arise from fads (eg Dalmatians and terrapins). The more responsible pet shops already refuse to serve unaccompanied children under the age of 16 and the raising of the minimum age from 12 to 16 will have minimal compliance costs.

### Information leaflets

To help educate prospective purchasers in the husbandry and care of the animal(s) they are considering owning it is proposed that all vendors of pet animals should issue information leaflets.

There are about 4,500 pet shops and just under 5,000 dog breeding establishments. The Pet Care Trust (the pet trade representative body) currently provide information leaflets for its members to give to prospective buyers of most animals. The leaflets cost £3.50 for a pack of 50 and there 25 are different leaflets each about a different animal. 50 of each leaflet would only cost vendors £87.50.

All figures relate to England and Wales unless otherwise stated.

Proposal/Issue	Estimated total number	Estimated possible additional cost to meet minimum standards – per establishment*
Vendors of companion animals to provide written guidance to prospective buyers about the animal(s)	4,500 pet shops 4,900 dog breeding establishments	Pet Care Trust currently produce 25 separate leaflets about different species, which their members provide to prospective buyers. They cost £3.50 for a pack of 50. 50 of each pack would therefore cost: £3.50 x 25 = £87.50. $(4,500 + 4,900) \times £87.50 = £822,500$ . However, at least half of these estabs already provide this information = £250,00 to 400,000.

\*cost to establishments include: *licence fee; achieving minimum standards set by statutory code of practice; staff training; and any additional veterinary fees.*

## Proposal to Regulate the Sale of Pet Animals over the Internet and Establishments that breed Small Mammals for the Pet Trade (including as Food for Raptors and Reptiles)

Whilst trading in pet animals over the internet is not subject to the same provisions that regulate pet shops, there is a need to ensure that the businesses are responsible in how this is done. It seems reasonable that if animals are being sold from sites in England and Wales then they should be expected to comply with minimum welfare conditions.

A possible option would be a statutory code of practice applying to all internet sales. The need to provide easily accessible information about each animal will not incur any additional expenses for reputable businesses, as they would be aware of the animal's needs and the information could be made available in the internet advert.

Consideration is also being given to regulate those establishments that breed small mammals for the pet trade either as pets or as pet food. There are very few such suppliers in England and Wales but it follows that if small pet shops are regulated then larger suppliers should also be considered for such measures. An 18 month licence (rather than the traditional 12 month licence) is being considered to reduce the costs for both businesses and local authorities as well as enabling inspections to take place at different times of the year. An alternative would be registration in line with other farming practices.

All figures relate to England and Wales unless otherwise stated.

Proposal/Issue	Estimated total number	Estimated possible additional cost to meet minimum standards – per establishment*
Licensing of estabs breeding and selling small mammals for pet trade	No. of estabs 6	£135 to £5,000 <b>Totals</b> £800 to £30,000

\*cost to establishments include: *licence fee; achieving minimum standards set by statutory code of practice; staff training; and any additional veterinary fees.*



## Proposal to Licence/Register Animal Sanctuaries

The National Animal Sanctuaries Association expressed reservations about licensing on the grounds of cost. However, there is widespread support for the licensing of such establishments. This concern was heightened following a number of recent prosecutions involving sanctuaries where the animals were suffering from severe neglect. The compliance costs will chiefly impact on the poorly run sanctuaries which may cause some to close down (in these cases this may be to the benefit to the animals providing alternative sanctuaries can be found). A possible solution is to register, rather than licence, the smaller establishments.

It is not clear exactly how many animal sanctuaries there are in England and Wales as they are not subject to any regulation at all and most are independent. However, a conservative estimate has been given of 700. We have estimated that half would be subject to licensing and half to registering. The larger ones would need to meet a licence fee of about £184 (an 18 month licence rather than the traditional 12 month licence is being considered to reduce the costs for both businesses and local authorities as well as enabling inspections to take place at different times of the year). The smaller sanctuaries we consider could pay a one off initial registration fee of £50, and for some there may be additional costs to meet minimum welfare standards. It is also possible that some would close completely due to poor welfare standards and lack of income.

All figures relate to England and Wales unless otherwise stated.

Proposal/Issue	Estimated total number	Estimated possible additional cost to meet minimum standards – per establishment*
Licensing of large animal sanctuaries	350	£184 to £3,000 <b>Totals</b> £64,000 to £1 million
Registering of small animal sanctuaries	350	£50 to £1,000 <b>Totals</b> £17,500 to £350,000

\*cost to establishments include: *licence fee; achieving minimum standards set by statutory code of practice; staff training; and any additional veterinary fees.*

## Proposal to Licence Livery Yards and Issue a Code of Practice on the Tethering of Equines

### Livery yards

The proposal to licence livery yards is borne out of an apparent anomaly that riding establishments and animal boarding establishments (dogs and cats) are regulated but livery yards are not. There are welfare concerns about some livery yards that have been set up recently in response to the rise in horse ownership and the encouragement given to farmers to diversify. These concerns have been heightened following some recent prosecutions involving the proprietors of livery yards.

There is currently a voluntary licensing scheme but given the rapid growth in this sector it is likely that a significant number will incur compliance costs. However, as the worst establishments are probably already in breach of current animal welfare legislation it is necessary to balance compliance costs against the risk that they may currently be liable to prosecution and closure.

It is not clear exactly how many livery yards there are in England and Wales as they are not subject to any specific legislation. However, the British Horse Society (BHS), estimate that there are probably about 7-10,000.

Establishments would need to pay a licence fee of about £165 and possible additional costs to achieve minimum welfare standards (an 18 month licence rather than the traditional 12 month licence is being considered to reduce the costs for both businesses and local authorities as well as enabling inspections to take place at different times of the year licence fee). Some livery yards where there are welfare concerns would face probable closure. The BHS operate a scheme whereby livery yards can be "licensed" by them and the members must adhere to a code of practice. Such a scheme would form the basis of an official licensing scheme.

All figures relate to England and Wales unless otherwise stated.

Proposal/Issue	Estimated total number	Estimated possible additional cost to meet minimum standards – per establishment*
Licensing of livery yards	10,000 (1,000 in BHS scheme)	£165 to £1,000 <b>Totals</b> £1.7 million to £10 million

\*cost to establishments include: *licence fee; achieving minimum standards set by statutory code of practice; staff training; and any additional veterinary fees.*

## **Tethering**

The proposal to introduce a statutory code of practice for the tethering of equines is desired because of the concern that large numbers of equines are tethered in situations likely to cause them suffering.

There would be minimal costs for owners to ensure that their equines are tethered and any significant costs needed to comply with a code of practice should already have been met for the welfare of the animal – such as providing cover in inclement weather.

<b>Proposal/Issue</b>	<b>Estimated total number</b>	<b>Estimated possible additional cost to meet minimum standards – per establishment*</b>
Code of Practice on the tethering of equines	950,000 horses in England and Wales of which an estimated 2% are tethered = 19,000	Tethering equipment, collars, chains swivels and stakes (estimate £100-150). Costs should already be being met if owners are responsible in looking after their equines.

## **Proposal to Ban or Restrict the Docking of Dogs' Tails and to Breed Out Characteristics that make a Dog or Cat More Prone to Suffering**

It is proposed to ban or restrict the docking of dogs' tails for prophylactic purposes. There may be arguments for retaining the practice for those dogs whose tails are particularly prone to tail injury (eg certain working dogs). However, as alternatives are likely to be developed over the coming years it is considered appropriate to include a section in the AW Bill giving the SofS power to ban or restrict certain mutilations and, where appropriate, to introduce a code to regulate the competency of non-veterinarians permitted to undertake mutilations (eg removal of dew claws).

A proposal to phase out certain characteristics in cats and dogs that make them more prone to suffering is considered proactive and in keeping with the intentions of the Bill. Breeding out of characteristics must be seen as a long-term objective that can only be achieved with the co-operation of breed societies. The Kennel Club are currently taking this work forward for dogs and we consider this is an area where government would want to encourage voluntary schemes, rather than rush in with regulations.

A ban on tail docking will result in a reduction of the income of some veterinary surgeons. However, this has to be balanced against the support given by the professional veterinarian associations to a ban.

Estimates on the numbers of breeds of dogs traditionally docked, the numbers of dogs docked each year and estimated cost of docking a dogs' tail have still to be worked up. However, a mandatory ban on tail docking would produce virtually no compliance costs. It would have minimal impact on veterinary surgeons as the practice forms only a minor contribution to their income. A ban is also likely to be supported by the veterinary associations. The breeding out of characteristics will have some cost implications for a very limited number of breeders.

## Proposal to Licence/Register Kennels at Dog Race Tracks

The National Greyhound Racing Club (NGRC) works to a code of practice and regulates just over half of all greyhound tracks (mainly large well-known tracks). Such tracks attract off-course betting from large betting companies and it is suggested, though not proved, that this could be to the detriment of the welfare of the dogs. The rest are independent tracks with minimal income but who only attract small on-course betting companies. There may in some cases be concerns about how these courses arrange veterinary cover for the dogs as most do not have a vet to be present on race nights. Over the last few years, there has been a growing impetus within the racing industry to raise welfare standards. There is tangible evidence for this in an increase in funds from the racing and betting industry being made available to raise welfare standards for retired greyhounds. The British Greyhound Racing Board (BGRB) is in the process of drawing up proposals for further reform and in these circumstances it is premature for government to assess the extent to which government regulation would be necessary to raise standards. However, the smaller independent tracks that race outwith BGRB/NGRC control will not be subject to these reforms and are likely to need regulation.

One of the options, is a Code of Practice enforced by local authorities. We would also want a veterinary surgeon to be present at all race meetings. The average cost of a registration fee is likely to be £50. There may be additional costs for some tracks to achieve minimum standards. Owners of small independent tracks will be concerned about any additional costs but if their assurances that the welfare of the dogs is of an acceptable standard at their tracks then any additional costs are likely to be minimal, apart from possible the costs associated with a veterinary presence at all race meetings – see estimated costs below. Consideration is being given to self-regulation by the NGRC who would also regulate non-NGRC tracks – such regulation would not affect local authority costs.

All figures relate to England and Wales unless otherwise stated.

<b>Proposal/Issue</b>	<b>Estimated total number</b>	<b>Estimated possible additional cost to meet minimum standards – per establishment*</b>
Licensing/Registration of grehound race tracks	50 race tracks (30 NGRC approved, 20 non-NGRC)	£50 to £5,000 <b>Totals</b> £2,500 to £250,000

\*cost to establishments include: *licence fee; achieving minimum standards set by statutory code of practice; staff training; and any additional veterinary fees.*

Estimated cost to non-NGRC tracks

average of 2.3 meetings per week

Cost of vet at meeting = £70 per hour x 3 1/2 hours = £245

Cost of vet per week at 1 meeting per week  $245 \times 1 = £245$

Cost of vet per week at 2 meetings per week  $245 \times 2 = £490$

**Cost of vet per week at 2.3 meetings per week  $245 \times 2.3 = £563.50$**

Cost of vet per week at 3 meetings per week  $245 \times 3 = £735$

Annual cost of vet at 1 meeting per week  $245 \times 52 = £12,740$

Annual cost of vet at 2 meetings per week  $490 \times 52 = £25,480$

**Annual cost of vet at 2.3 meetings per week  $563.5 \times 52 = £29,302$**

**Annual cost of vet at 3 meetings per week  $735 \times 52 = £38,220$**

## **Proposal to Introduce a Statutory Code of Practice for the Rearing of Game Birds for Sport Shooting**

Farmed birds primarily reared for consumption are subject to the provisions of the Agriculture (Miscellaneous Provisions) Act 1968. However, gamebirds reared for sport shooting are not subject to the same provisions. Whilst there is little concern generally about the welfare of gamebirds it would seem appropriate to make the industry subject to similar provisions. The proposal to introduce a statutory code of practice is in keeping with the principals of the Bill and would alleviate an apparent anomaly between birds reared for food and those primarily reared for sport shooting.

There are estimated to be about 300 game farms in England and Wales. Additional costs for gamefarmers are likely to be nominal as most if not all already work to a voluntary code of practice. Consultations have taken place with the game farming industry to produce a statutory code of practice.

There are unlikely to be any significant costs for the industry as a whole as about half of the game farms in England and Wales are members of the Game Farmers' Association (GFA) and comply with a code of practice. It is envisaged that the GFA code would form the basis for a Defra approved code and be applied to all game farms in England and Wales. It is also considered that most non-GFA members would be able to comply with a revised code without significant costs.

## Proposals for offences, penalties, disqualification and deprivation orders in the Animal Welfare Bill

### Offences and penalties

All offences under the Bill will be summary only (triable only in the Magistrates court).

The Bill will provide different levels of maximum penalty depending on the potential seriousness of the offence. Offences of cruelty and offences to do with animal fighting, including distributing recordings of animal fights and placing or taking bets on animal fights, both of which might involve the making of profit out of cruelty, will attract a maximum penalty of 51 weeks imprisonment or a fine of £20,000 or both.

Offences of failing to ensure the welfare of a kept animal or breach of a disqualification order will attract a maximum penalty of 51 weeks imprisonment or a fine up to level 5 on the Standard Scale (currently £5,000).

The power to make regulations under the Bill, includes a power to specify penalties for breach of those regulations up to the same maximum as that available for the 'welfare' offence.

Other offences under the Bill, for example, obstruction of inspectors, will attract a maximum penalty of 51 weeks imprisonment or a fine up to level 4 on the Standard Scale (currently £2,500).

When the relevant provisions come into force the Criminal Justice Act 2003 will replace custodial sentences of less than 12 months with 'custody plus' which means that the court can order imprisonment of between 2 and 13 weeks, with the remainder of the term up to a maximum of 51 weeks in total being spent on licence.

The effect of this is that the offender might spend the same amount of time in prison as he would in practice under a six month sentence which is the current maximum under the Protection of Animals Act 1911.

In addition the Bill will introduce exceptional maximum fines of up to £20,000 for the most serious offences, for example where financial gain is made out of cruelty inflicted on animals.

### Deprivation and Disqualification orders

#### *Deprivation orders:*

Where a person is convicted of an offence of cruelty, or failure to ensure welfare, or where he has been convicted of certain fighting offences, if he is the owner of the animal in relation to which the offence is committed, he may be deprived of ownership of that animal.



***Disqualification orders:***

Currently a person who is the subject of a disqualification order can retain ownership and an element of control of animals by giving the day to day care of them to another. It is proposed that the current wording referring to 'custody' should be broadened to include ownership, keeping, arranging or participating in keeping, dealing in and being involved in the transport of animals.

The court may suspend the operation of a disqualification order in appropriate cases to allow the convicted person to sell or make other arrangements to get rid of the animals.

The court may also make an order for the removal of animals from the disqualified person where it makes the original order or where that person has been convicted of breach of a disqualification order by subsequently having animals in his ownership, care etc. Costs incurred in removing and selling or otherwise disposing of animals belonging to or in the care of disqualified people may be recovered by the enforcing authority.

Where the court decides not to make a deprivation or disqualification order, or where it decides to make a deprivation but not a disqualification order, it must explain its reasons in open court.

We do not expect there to be any significant additional costs for prosecutors or the courts. It is expected that there may be an initial rise in the number of cases brought to the attention of enforcers, while people become familiar with the new legislation. However overall the number of cases brought before the courts will decline as people start to observe regulations and codes of practice as well as advice given by enforcement authorities with a view to improving standards of care and avoiding prosecution. It is hoped that prosecution will be the last resort and that the existence of the duty of care to ensure welfare will serve to reduce the number of cruelty prosecutions being brought.

## Setting Up and Operating a National Database for Recording Licences held under Proposed Animal Welfare Act; Animal Cruelty Offences; and Best Practice

To assist in the enforcement of the Act it is recommended that there be a shared national database accessible by enforcement agencies. One of the criticisms of current welfare legislation is that often enforcement agencies do not have the resources to be able to check whether applicants for licences to run animal related businesses are not already disqualified from operating such businesses. The Police National Computer currently does not hold details of persons subject to disqualification/deprivation orders made under the Protection of Animals Act 1911. The database would fill this void and enable enforcers to uphold penalties and to know if someone, who was under investigation for animal related offences, was subject to an active disqualification/deprivation order.

There are between 800-1,000 people convicted of animal cruelty each year but not all are made subject to disqualification/deprivation orders. The main prosecutors for these offences are the RSPCA. Under the new legislation it is proposed for courts to at least consider making disqualification/deprivation orders in cases of animal cruelty. Although we are anticipating an overall reduction in the number of people prosecuted for animal cruelty if 800 people a year receive disqualification/deprivation orders then it would only require the RSPCA to enter on average the details of four people per working day. *The RSPCA have confirmed that this would not be a drain on their resources.*

The database could also provide details on all licences held and how long it had taken to process the application. There has been criticism over the length of time some local authorities process licence applications. A national database of animal related licences would enable Defra to identify any problems and where appropriate respond. In addition, the database could contain examples of best practice.

**Option 1:** Such databases already exists in relation to farms – Animal Movement Enforcement System (AMES) and the Animal Movement Licensing System (AMLS) and are operated by Defra. One option would be to extend one of the existing databases to companion animal related businesses.  
Estimated costs: £1.3 million

**Option 2:** Centralised Animal Welfare Enforcement Database. This option involves capturing other existing databases with Defra. A single register, and identifier, will facilitate a 'whole customer' view for users of the information, enabling us to provide a much more efficient service, as well as reducing costs incurred by having to maintain the various existing registers. Such a register would be accesible to customers (businesses and individuals) although it would not be desirable to allow customers access to an enforcement database (data protection). There are also higher costs involved than option 1 without any obvious benefits to being associated with some of the other databases.  
Estimated costs: £1.8 million

**Option 3:** Another option would be to set up a completely separate database in co-operation with local authorities and other enforcement agencies. This option would incur the most costs and would for the most part duplicate a system/network that is already in place (option 1).  
Estimated costs: £4.7 million

## **Annex K**

It is recommended that Option 1 be used as a basis to set up the national database. However, in addition to setting up a new database or extending an existing one, investigations are still being made to see if information stored on existing databases could be accessible to enforcers. An approach to the Information Commissioner will be made before a final decision is taken.

## **Possible Additional Costs for Local Authorities to enforce Regulatory Provisions**

Although the Bill introduces more regulations for businesses and for local authorities to enforce, it is not expected that there will be significant additional costs for either. This is because of the possible extension of at least some licences from the traditional 12 months to 18 months duration. By lengthening the licence to 18 months it will reduce inspecting costs for both local authorities and businesses. This will allow local authorities to inspect the new activities (eg livery yards and animal sanctuaries) without adding significantly to their costs. It will also allow local authorities to inspect premises at different times of the year which may help to identify welfare problems influenced by weather conditions. Game farms are situated on agricultural land and so are subject to inspection by the State Veterinary Service for animal health purposes – this could be extended to welfare purposes without incurring any additional costs.

The additional regulatory burdens will also be phased in over a period of about four years thus spreading any additional costs and allowing for planning.

## Proposed phasing-in of regulations timetable

Year	Regulation/Code	Impact
2006	Riding Schools Livery Yards Dog & Cat Boarding Pet Shops Pet Fairs Other means of selling animals. Breeding of gamebirds Mutilations Tethering of horses Definition of the welfare offence	Inspections held at 18 month intervals. Veterinary presence at all inspections. Inspections held at 18 month intervals. Veterinary presence at inspections every 5 years Inspections held at 18 month intervals. Veterinary presence at inspections every 5 years. Inspections held at 18 month intervals. Veterinary presence at all inspections All fairs open to the public to be licensed. Veterinary presence at all fairs. Policy to be agreed. No impact. No impact. No impact. No impact.
2007	No regs/codes	Training and recruitment commences in preparation for the second tranche of codes and regulations.
2008	Animal Sanctuaries	Inspections of animal sanctuaries that are registered charities to be licensed, Inspections held at 18 month intervals. Veterinary presence at inspections every 5 years. Animal sanctuaries that are not registered charities to be registered with the local authority, the animal sanctuary to submit a veterinarian report every 5 years.
2009	Performing Animals	Trainers to be inspected every 18 months. Premises where performing animals are kept to be inspected every 18 months. Right of entry to all premises where animals are performing.
2010	Greyhounds	Compulsory veterinarian presence at all race meetings. Registration of all premises where racing greyhounds are kept and trained to be registered with the local authority, the owner/trainer to submit a veterinarian report every year. Right of entry to all premises where animals are either kept or racing. Possibility of self-regulation rather than statutory regulation.



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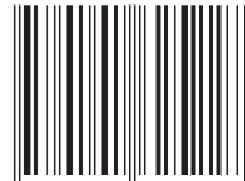
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