

ANIMAL WELFARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Introductory

Section 1: Animals to which the Act applies

11. The Act will apply only to vertebrate animals, as these are currently the only demonstrably sentient animals. However, section 1(3) makes provision for the appropriate national authority to extend the Act to cover invertebrates in the future if they are satisfied on the basis of scientific evidence that these too are capable of experiencing pain or suffering.
12. In the case of Wales, the “appropriate national authority” means the National Assembly for Wales, and for England it means the Secretary of State.

Section 2: “Protected animal”

13. This section, together with section 3, establishes the scope of the principal offences under the Act, by defining those animals which the Act will cover. The cruelty and fighting offences (Sections 4 – 8) extend to “protected animals” as defined in this section, whereas the welfare offence (Section 9) applies to animals for which a person is “responsible” as that word is to be understood under section 3.
14. Animals of a kind commonly domesticated in the British Islands are to be “protected animals”, whether they can be said to be under the control of man or not. This ensures that, for example, stray dogs and feral cats are covered. Kinds of animals which are to be considered commonly domesticated in the British Islands are those whose collective behaviour, life cycle, or physiology has been altered as a result of their breeding and living conditions being under human control, in the British Islands, for multiple generations.
15. Animals of a kind not commonly domesticated in the British Islands are only “protected animals” to the extent that they are under the control of man or are not living independently in the wild. “Under control” is intended to be a broader expression than “captive animal”, which was used in an equivalent context in the Protection of Animals Act 1911 (“the 1911 Act”). The latter expression was interpreted narrowly in the courts. “Not living in a wild state” is intended to cover those animals which may have ceased to be under the control of man, and therefore do not fall within section 2(b), but are not yet living wild, including (though not limited to) animals which have escaped, for example from a zoo or circus.

Section 3: Responsibility for animals

16. Sections 4(2), 5(2), 6(2), 7(2) and 9 only apply to persons who are “responsible for an animal” as that phrase is understood under this section. Similarly, the power to issue improvement notices in section 10 and the regulation-making power in section 12 can

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

be exercised only in relation to animals for which a person is responsible. The same is true for licensing and registration provisions under section 13.

17. Responsibility for an animal is only intended to arise where a person can be said to have assumed responsibility for its day-to-day care or for its care for a specific purpose or by virtue of owning it. This will include a person who assumes responsibility for the animal temporarily (*subsection (1)*) such as, for example, a veterinary surgeon taking responsibility for the animals kept in his surgery overnight, staff at boarding premises, and staff at animal sanctuaries.