

ANIMAL WELFARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Prevention of harm

Section 4: Unnecessary suffering

18. The 1911 Act makes 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. The 1911 Act has formed the basis for most prosecutions concerning animal cruelty and has been amended by several subsequent Acts. The provisions of the 1911 Act no longer reflect modern practice. Excepting the restriction to vertebrates, this section is intended to replicate the protection provided by the 1911 Act, but to simplify and update the legislation.
19. *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 physical or mental suffering, whether this is by a positive act or an omission, to a protected animal where this is unnecessary and the person knew or could be expected to know that an animal would suffer as a result. The effect of paragraph (b) is to introduce an objective mental element. It will not be necessary to prove that a defendant actually knew his act or failure to act would cause suffering.
20. *Subsection (2)* provides that a person responsible for an animal who permits another person to cause unnecessary suffering will commit an offence. He will also commit an offence if he fails to take reasonable steps to prevent the suffering from taking place, for example, a failure of supervision. An offence of ‘permitting’ unnecessary suffering caused by another can only be committed by a person in relation to an animal for which he is responsible. See further section 3.
21. *Subsection (3)* sets out 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 as appropriate. Where, for example, a horse suffers while being used for the purpose of riot control, this may well be considered necessary for the purposes of protecting persons or property (one of the considerations specified in the section). Or, where legitimate pest control activities entail an animal suffering, a court may consider whether this was in compliance with a relevant enactment, for a legitimate purpose, and proportionate to that purpose. 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 section). Where suffering inevitably occurs in the course of complying with any regulations, licence or code of practice an offence would not normally be committed.

Section 5: Mutilation

22. This section prohibits the mutilation (referred to as a “prohibited procedure”) of any protected animal unless the procedure has been exempted from the general prohibition

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by regulations made under *subsection (4)*. The expression “protected animal” is defined in section 2.

23. *Subsection (3)* defines the term "carrying-out of a prohibited procedure".
24. *Subsection (4)* makes provision for the Secretary of State and the National Assembly for Wales to specify procedures which will be exempted from *subsections (1) and (2)*.
25. *Subsection (5)* imposes a duty on the Secretary of State and the National Assembly for Wales to consult before introducing regulations under *subsection (4)*.
26. *Subsection (6)* makes clear that docking a dog’s tail is outside the scope of this section. This is to be considered solely under section 6.

Section 6: Docking of dogs’ tails

27. **Section 6** prohibits the docking of a dog’s tail, otherwise than for the purposes of its medical treatment, the dog is a certified working dog and is not more than 5 days old. It also restricts the showing of docked dogs. A dog docked after this section comes into force can only be shown if it is for the purpose of demonstrating its working abilities.
28. *Subsections (1) and (2)* make it an offence for a person to dock a dog’s tail, or for a person responsible for a dog to cause its tail to be docked or permit it to be docked, otherwise than for the purpose of its medical treatment.
29. *Subsections (3) and (4)* stipulate that an offence would not be committed under *subsection (1) or (2)* if the dog was under 5 days old and a vet had certified that he had seen evidence that it was likely to work. This would not affect the Veterinary Surgeons Act 1966 which provides that the docking of a dog’s tail can only be done by a vet. *Subsections (4), (5) and (6)* provide for the appropriate national authority to make regulations specifying both the evidence that a vet must see before he can certify the dog as a working dog, what types of work will qualify a dog as a working dog and the types (breed) of dog that may be exempted from the ban.
30. *Subsection (7)* sets out a defence available in respect of the *subsection (1) and (2)* offences. A person who docks a dog’s tail, or causes or permits a dog’s tail to be docked, will not commit an offence if he reasonably believes that the dog is under 5 days old and that a vet has certified it as a working dog. For example, if a vet docked the tail of a 6 day old police dog, reasonably believing it was 4 days old, he would not commit an offence.
31. *Subsection (8)* requires a person who owns a dog which was legitimately docked by a vet to ensure that the dog is identified as having been legally docked. The owner will commit an offence if he does not take reasonable steps to ensure that his docked dog is so identified before it is three months old. *Subsection (13)(b)* allows the appropriate national authority to make regulations about the method of identification required, e.g. micro-chipping.
32. *Subsections (9) to (11)* introduce a restriction on the showing of docked dogs. *Subsection (9)* makes it an offence to show a dog at an event to which a fee-paying public is admitted if the dog has had its tail removed. It will be irrelevant, for these purposes, whether the dog’s tail was removed in England and Wales or elsewhere. This ban on showing will apply to all dogs whose tail was removed after the date on which this section comes into force.
33. *Subsection (10)* provides an exemption to that ban if a certified working dog is being shown only for the purpose of demonstrating its working ability. *Subsection (11)* ensures that a person would not be liable to conviction if he could show that he reasonably believed either that the dog was docked before the section came into force, that the fee paying public was not being admitted or that the dog was a certified working dog demonstrating its working abilities.

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34. *Subsection (13)* allows the appropriate national authority to make regulations about the functions of inspectors in enforcing this section. This will enable the appropriate national authority to make provision, for example, empowering an inspector to inspect a certificate or read a microchip on a dog.

Section 7: Administration of poisons etc.

35. This provision, which replaces section 1(1)(d) of the 1911 Act, creates offences relating to the administration to a protected animal of any poisonous substance or drug where the person has no lawful authority or reasonable excuse.
36. Under *subsection (2)*, when a person is responsible for an animal, he must not permit another person to administer a poisonous or injurious substance or drug to the animal, unless that person has a lawful authority or reasonable excuse. Furthermore, a person responsible for an animal must take reasonable steps to prevent any other person from administering any drug or substance that he knows to be poisonous or injurious to the animal.
37. Under this section 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. It is, however, necessary to show that the person accused of the offence knew the poisonous nature of the substance administered to the animal. While this mental element relates to the nature of the substance administered, the term “administer” should be understood as indicating a deliberate action. Accidental poisoning will not be caught by section 7.
38. *Subsection (3)* provides for the offences in *subsections (1)* and *(2)* to apply in cases where substances that are otherwise harmless have been administered in a harmful quantity or way.

Section 8: Fighting etc.

39. This section creates a specific offence of animal fighting, which in the 1911 Act was subsumed under the general heading of “offences of cruelty”.
40. The offences under the section replace the offences under sections 1(1)(c), 5A and 5B of the 1911 Act.
41. *Subsection (1)(a)* will penalise a person causing an animal fight, or attempting to do so. *Subsections (1)(b)-(i)* cover various activities relating to animal fights, such as receiving money for admission, publicising a fight, training an animal to fight and taking part in a fight.
42. *Subsection (2)* will make it an offence to be present at an animal fight without lawful authority or reasonable excuse.
43. *Subsection (3)* creates offences relating to recordings of animal fights that took place in Great Britain after this section becomes law. It will be an offence to supply, publish, show, or possess with intent to supply, such a recording without lawful authority or reasonable excuse. An exemption from these offences is provided in *subsection (5)* for recordings used, or intended for use, in a “programme service” as defined in the Communications Act 2003.
44. *Subsection (6)* makes provision to ensure that the national authority can comply with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market (Directive on electronic commerce). The Directive requires that the offence is extended to information society service providers established in the UK but who operate (for example by publishing) in another EEA State. The government intends to effect this extension by making regulations under section 2(2) of the European Communities Act 1972. *Subsection (6)* will ensure that the same penalties

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can be applied to such providers as to others who commit the offence, when the offence is extended.

45. *Subsection (7)* defines an animal fight 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. The provision applies to any protected animal which under section 2 includes any animal under the control of man, whether on a permanent or temporary basis. As a result, a person commits an offence in relation to an animal fight even if there is no one who is responsible for the animal or animals involved within the meaning of section 3.
46. Legitimate pest control activities which involve the use of one animal to catch another will not fall within the definition of an animal fight, as the animals are not placed together for the purpose of fighting, wrestling or baiting.
47. *Subsection (7)* defines a video recording as a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image. This definition will not cover still photographs.