

ANIMAL WELFARE ACT 2006 – HOW I SEE IT



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The Animal Welfare Act 2006 – how I see it.

‘The approach of the Animal Welfare Act is to place a legal burden on the person responsible to care for the welfare of the animal – to protect animals from their natural predators, humans’. Noel Sweeney, Barrister and author

John Brookland

BACKGROUND.

Most animal keepers may feel that their animals do not require protection from them, but unfortunately this is often what is exactly required, particularly when owners have no idea what their legal and moral responsibilities are. In a recent survey of pet owners by the PDSA(2016) 38% had not heard of the Animal Welfare Act and only 35% of pet owners surveyed were aware of the Five Needs or that they were incorporated into law, while 25% had not done any prior research into the costs and care of the pet they had obtained.

It is literally criminal that we take the ownership of animals so frivolously and through our irresponsible behaviour happily abandon them when they do not fit our purpose. Very few owners are aware of their legal obligations to animals in their care or know what is contained in the UK’s main welfare legislation. Too many animal owners obtain pets on a whim and have no idea how to look after them. If you consider the number of cruelty complaints and prosecutions that are investigated by the RSPCA (which are just the tip of the iceberg, animals do need some form of protection from us. Our perceived right to own an animal of any type just because we want one must be challenged. The misinformed choices and lack of awareness of their needs and preventative healthcare are the basis of all companion animal abuse.

In our country of so-called animal lovers, successive governments have boasted that they are committed to improving animal welfare standards and making them the best in the world, but at every opportunity they fail dismally when introducing new laws. Their level of commitment is underlined by the fact that it took 96 years to update our major animal welfare laws.

Most people involved in the prosecution of animal abusers in the UK feel that the Act has failed in most respects to be an effective and workable piece of legislation and missed the chance to right many of the wrongs contained in the old laws. Animal cruelty is a very

serious issue which judging by the fact that fines are minimal and prison terms almost unheard of in the UK, could be an indication that we view the issue far too lightly.

THE ANIMAL WELFARE ACT 2006

The Animal Welfare Act 2006 came into force on 6 April 2007 and replaced the extremely outdated Protection of Animals Act 1911. When the chance came for the Government to give us a fit for purpose, all-encompassing law to remedy all the problems they made their usual complete hash of it by **failing to appoint anyone to enforce it**. So official agencies like the Police and local authorities do not feel they have a [statutory duty](#) to bother. It is almost beyond belief, but that is what happened. It could be almost argued that it was intentional as in reality there are far too many people, organisations and other interests whose pastimes and businesses would be affected by too stringent animal cruelty and welfare laws.

“A major weakness of the Animal Welfare Act is that no state organisation is statutorily responsible for animal welfare. It is unacceptable that in a modern society no state organisation is responsible for animal welfare.” [Commons Select Committee Nov 2016](#)

The Act covers all animals classified as ‘protected’ which is:

“any animal commonly domesticated in the UK, under the control of man and not living in the wild state,”

Therefore, the main protection is biased towards companion and farm animals and there is little for the poor wildlife. There are provisions to cover marine life such as lobsters and fish if it is ever proved and accepted by science that they can feel pain and suffer, so only vertebrates (animals with backbones) are protected now. Some countries around the world have already included some invertebrates into their laws, but again we lag because of the impact it might have on human interests.

Because the wellbeing of humans and other human interests take priority over that of animals, scientific experiments and fishing activities are exempted.

It does single out and ban certain cruel practices such as animal **fighting, tail docking and other mutilation, torture and poisoning**. It also stops the giving of animals as prizes to anyone under 16 or selling an animal to someone under 16.

The most important bits for animal owners and keepers.

The old Protection of Animals Act (POA) was primarily concerned with cruelty, but the new Act doesn't contain the words cruelty or cruel at all which may be a surprise to most people. This is because it is supposedly all about promoting welfare and Sections 9 to 12 of the Act are titled: ‘Promotion of Welfare.’ Funnily enough currently there is no universally

accepted definition of animal welfare and so everyone has their own take on it which immediately leads to many confusing issues.

All animal keepers should learn the wording of Section 9 and Section 4 of the Act under which most prosecutions are taken. The whole of the Animal Welfare Act basically revolves around the wording in these sections. The two main offences are causing unnecessary suffering (Section 4) and failing to provide for an animal's needs. (section 9)

Duty of Care

The Act imposes a **legal duty of care** on owners for the first time which many people are totally unaware of, do not understand or even care. Duty of care means that you the owner are legally required to care for it properly under proven practices. Under the old law an animal had to suffer or be caused injury before anyone could come to its aid, but under this new Act action can be taken to stop it undergoing suffering in the future if the conditions and situation it is being kept in do not meet the requirements of the law and failing to do so is an offence. It doesn't matter whether you believe you are looking after it properly. Many owners have a self-righteous attitude to caring for animals and take offence if their actions are questioned. There is little or no excuse not to care for the animal adequately or to neglect it and allow it to suffer or get injured. It is not good enough anymore to take on an animal on a whim and find you are not able to support it or look after it properly.

THE IMPORTANCE OF SECTION 4 EXPLAINED

Section 4: Duty of person responsible for animal to ensure welfare

(1) A person commits an offence if he does not take such steps as are **reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.**

(2) **For the purposes of this Act, an animal's needs shall be taken to include—**

(a) its need for a suitable environment,

(b) its need for a suitable diet,

(c) its need to be able to exhibit normal behaviour patterns,

(d) any need it has to be housed with, or apart from, other animals, and

(e) its need to be protected from pain, suffering, injury and disease.

(3) The circumstances to which it is relevant to have regard when applying subsection

(1) include, in particular—

- (a) any lawful purpose for which the animal is kept, and
- (b) any lawful activity undertaken in relation to the animal.

“does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.”

This paragraph is important, but the phrases **“good practice”** and **“reasonable in all the circumstances”** may be difficult to understand for some people.

GOOD PRACTICE

This relates to what are called the “five needs” which are enshrined in the law and highlighted above. If you are not aware of them or are not abiding by them by default you will not be viewed as a particularly good owner under the law and could end up in trouble. They are widely publicised on national and local government websites, as well as veterinary and animal charity websites but they appear to be widely ignored.

Codes of good practice for the welfare of animals are published by the government department DEFRA and cover dogs, cats, horses and many other animals and are based on the five needs:

[Code of Practice for dogs](#)

[Code of Practice for cats](#)

The Five Needs

1. The need for a suitable environment
2. The need for a suitable diet
3. The need to exhibit normal behaviour patterns
4. Any need to be housed with or apart from other animals, and
5. The need to be protected from pain, suffering, injury and disease.

For a more detailed discussion and how to comply with them visit [Complying with the Five Needs and Freedoms](#).

Complying with them is a tall order as they are only a framework or a basis to work within and are pretty non-specific which leads to them being open to interpretation particularly in a court of law where normally a professional such as a veterinarian or animal behaviourist has the final word on whether as an owner you have **“ensured the needs of the animal”**.

There is also argument over what is **“reasonable in all the circumstances”** and courts now take into consideration the owners age, financial situation, how responsible a person is, how much they know about animal care, whether they liked the animal or was in a position to have avoided causing the neglect or abuse.

SECTION 9: UNNECESSARY SUFFERING

- (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,**
 - (c) the animal is a protected animal, and
 - (d) the suffering is unnecessary.
- (2) A person commits an offence if—
 - (a) he is responsible for an animal,
 - (b) **an act, or failure to act, of another person causes the animal to suffer,**
 - (c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as **were reasonable in all the circumstances to prevent that happening,** and
 - (d) the suffering is unnecessary.
- (3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—
 - (a) whether the suffering could reasonably have been avoided or reduced;
 - (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;
 - (c) whether the conduct which caused the suffering was for a legitimate purpose, such as—
 - (i) the purpose of benefiting the animal, or
 - (ii) the purpose of protecting a person, property or another animal;
 - (d) whether the suffering was proportionate to the purpose of the conduct concerned;
 - (e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

Taking Responsibility

The person responsible for the animal commits an offence if they cause unnecessary '*physical or mental suffering*' to it, but immediately this is where the law falters as no court has yet to define for certain what 'unnecessary suffering' constitutes, or for that matter,

how to precisely define mental and physical suffering, which allows defence lawyers the leeway to appeal.

Suffering can be mental or physical and although physical suffering can be obvious like starvation, fur loss, matting, broken bones, the mental side becomes difficult to prove and specialists in animal behaviour need to give evidence to substantiate it. The owner of the animal is always deemed as being “responsible” for it and is still regarded as responsible for anything that happens to it even if in the care of a child or a family member or friend who might be looking after it for a short period.

Some have questioned whether an owner who fails to take their pet to a vet when it is injured, or sick is guilty of causing it suffering and legal defences have used the argument that owners may have lacked the knowledge to know whether the animal needed treatment or lacked the means to get it treated. There is also an issue about whether taking the animal to the vet would have prevented the suffering. Realistically such excuses should not be accepted as the law states that all owners have the responsibility to care for their pet appropriately.

ENFORCEMENT

Enforcement is shared between the Police, Local authorities and DEFRA, but anyone can undertake a private prosecution, and this is where the RSPCA comes into the picture. In fact, the RSPCA are the only ones actively enforcing it taking over 90% of the prosecutions. The Police are happy to devolve the responsibility to them but assist whenever their powers are required to aid them. Although national and local Authorities could appoint Inspectors under the law few bothered due to the expense and the specialist knowledge required. The Government just presumed they would. A survey in 2011 found that only 40% appointed Inspectors and only 17% of these dealt with companion animals or pets. This is because like most agencies local authorities give low priority to animal welfare matters.

Under the Act an Inspector can issue an ‘improvement or compliance notice’ which can legally demand and specify that the owner improves the conditions under which the animal is being kept or if it is ill compel the owner to take the animal to a vet. If the owner refuses or fails to comply with the order the animal can be removed and/or a prosecution taken. There are also powers of entry available.

HOW DO THE RSPCA FIT IN?

The RSPCA uses its right as a “private prosecutor” under [section 6\(1\) of the Prosecution of Offences Act \(POA\) 1985](#), which gives every individual in the country the opportunity to instigate a prosecution. They use independent solicitors who act on behalf of the RSPCA (and the animals) as the [RSPCA have no legal powers](#) in their own right. They do not have

to involve the Crown Prosecution Service (CPS). It is an expensive niche area of law enforcement which no one really wants to get involved in. To put it into context, the RSPCA prosecute over 90% of cases taken under the Animal Welfare Act, 2006 and interestingly, the RSPCA is the only organisation that collects statistics on cruelty so without them we would not even know the level of cruelty in the country. With no one else apparently capable of doing the job it is lucky the RSPCA has stepped into the breach. But not everyone sees it that way.

Penalties

There is a maximum fine of £20,000 for offences and a belatedly increased maximum 5-year prison term. Disqualification orders banning people from owning, looking after, dealing or transporting animals can be issued for varying periods or for life.

Although everyone has got very excited by the increase in penalties they are of no value as a deterrent or as punishment when courts refuse to give high sentences even for serious and violent animal cruelty. Most courts appear to rate animal cruelty and suffering cases as being relatively unimportant which is reflected by the arguably low sentences. Prison sentences are rarely given and when they are, they tend to be suspended mainly because of our overcrowded prisons and the low priority of animal cruelty offences.

The worst kind of cases only count for 18 weeks of custody, and with this sentence the person may only serve as little as 4 weeks with good behaviour. Fines tend to be in the hundreds rather than thousands and although owners can be disqualified from keeping animals for anything up to a lifetime this is rare. Clever and astute mitigation by defence lawyers tend to sway magistrates as well with defendants often receiving more sympathy than the animals.

Even when defendants are given disqualification orders, there is no protocol like a sex-offenders register in place whereby someone checks up on that owner, and often the RSPCA are called again to the same person abusing yet another animal. RSPCA figures bear this out as 54 disqualified owners breached their disqualification orders were prosecuted again in 2016. Several cities in the USA have 'animal abuser's registers' for companion pets including New York, and at least one State publicly posts names and photographs of offenders.

In the USA it is felt that serious and violent animal cruelty offences are often associated with other crimes and courts are increasingly recommending maximum sentences in instances of repeated offences and tend to hand out far more prison terms to first offenders and juveniles unlike in the UK.

New Zealand is far ahead in their outlook, separating what they call wilful and reckless ill-treatment and specifying what it constitutes. A person commits an offence if they wilfully ill-treat an animal in such a way that: the animal is permanently disabled or the animal dies;

or the pain or distress caused is so great that it is necessary to destroy it in order to end its suffering; or the animal is seriously injured or impaired involving prolonged pain and suffering or a substantial risk of death or loss of a body part or permanent or prolonged loss of bodily function and requires treatment by or under supervision of a veterinarian. This is the kind of detail that is needed.

SOME PROBLEMS WITH ENFORCEMENT.

Under the old legislation authorities could only act after an animal had been cruelly treated or killed, but now in theory they can be rescued and removed before they suffer at the hands of their incompetent owners, but in practice this is difficult. Under the Act an 'improvement or compliance notice' can be issued to owners whose pet is considered to require treatment, to either take their animals to a vet or improve the conditions they are being kept under, and these are made significant use of in satisfying the 'promoting of welfare' premise, but of course this involves follow-up visits to ascertain the terms are complied with.

The Act has not had much impact in gaining access to a suffering animal or in saving it before it suffers as with no 'inspectors' possessing power of entry it is still problematic particularly when an owner initially refuses to open the door or communicate. Removing an 'at risk' animal is extremely complex and time consuming and can take weeks, unless it can be proved there is an immediate risk, in which case the Police must be involved and convinced that there is enough evidence for them to intervene, which they do not have the expertise or interest to do. If the evidence is great enough, particularly if an animal is abandoned inside premises' and there is a risk of it dying, they can break in or obtain a warrant, but not before a veterinary surgeon has attended and certified or given a professional opinion that the animal is suffering. Vets are the only profession that can do this and with most vets tied to their surgeries these days it often results in long waits for one to arrive at the scene or for a warrant to be issued before an animal can be removed.

The veterinary surgeon must be willing to sign a statement and confirm in their professional opinion that unjustifiable suffering was caused by neglect or cruelty at the hands of the owner and that the case warrants a possible prosecution. Only then can the animal be removed from the owner or as happens in most of cases, and dependent on the circumstances, is signed over for rehoming. The vet will be required to turn up in any future court case, which not all of them are keen to do as it can be a stressful and traumatic experience for them and time consuming and must be paid for all this involvement.

The RSPCA obviously has gone to "independent" vets i.e. not employed by them who are thankfully towards anti-cruelty and willing to go that extra mile, but detractors then accuse the RSPCA of using "tame" or biased vets. Meanwhile the animal, if not signed over, must be accommodated at a private kennels or other facilities often at great expense, pending the conclusion of the case, which can take months or even years. Many defence lawyers use delaying tactics in order to run up high costs to the RSPCA in some

childish way of teaching them a lesson for daring to prosecute someone. No wonder then that few authorities or organisations are disposed to taking on such prosecutions. It is no easy task to come to the aid of an ill-treated animal and most of us are unaware of these complications and are quick to complain when it appears that nothing is being done to save an animal.

Disclaimer: I am not a legal professional so don't take this information as gospel. The views in the article are my own and how I see it.
