

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

ANIMAL WELFARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

General

Section 51: Inspectors

193. *Subsection (1)* defines the term “inspector” for the purposes of the Act. An inspector is a person appointed either by a local authority or by the appropriate national authority (either the Secretary of State or the National Assembly for Wales). In practical terms, an inspector of the appropriate national authority is currently likely to be a State Veterinary Service inspector.
194. *Subsection (2)* requires local authorities, when appointing inspectors for the purposes of the Act, to have regard to any guidance that may be issued by the Secretary of State or National Assembly for Wales. It is expected that such guidance would, for example, set out relevant criteria (qualifications, experience etc.) for the appointment of inspectors.
195. Under *subsection (3)* the Secretary of State or National Assembly for Wales may also issue a list of approved persons who are considered suitable for appointment as inspectors by local authorities.
196. *Subsection (4)* provides that a person may be included on the list kept under *subsection (3)* either for all the purposes of the Act or for limited specified purposes.
197. *Subsection (5)* provides immunity for inspectors for actions taken outside their powers, so long as in purporting to act under their powers, they acted reasonably and in good faith.

Section 52: Conditions for grant of warrant

198. The Act makes provision for warrants in order to obtain entry to premises in a variety of circumstances. A justice of the peace can issue warrants under sections 19(4) (animals in distress), 22(4) (seizure of animals involved in fighting), 23(1) (entry and search for evidence of offences) and 28(4) (inspection of farm premises)
199. In all of the cases cited above, one of four conditions set out in this section must be met before a magistrate can grant a warrant to allow a constable or inspector to enter. *Subsections (4) and (5)* apply equally to private dwellings and other premises.

Section 53: Powers of entry, inspection and search: supplementary

200. This section gives effect to Schedule 2, which sets out supplementary powers and duties relating to powers of entry, inspection or search conferred by the Act, or conferred by warrants under the Act.

Section 54: Power to stop and detain vehicles

201. Where there is a right of entry for constables and inspectors under the Act, the definition of premises includes vehicles and various moveable structures (see definition in section 62(1)). In order to facilitate searches of this kind, section 54 creates powers to stop and detain vehicles.
202. *Subsection (1)* allows a constable, or an inspector if he is accompanied by a constable, to stop and search vehicles to search for animals in distress and gather evidence where there is reasonable suspicion that a relevant offence has been committed. *Subsection (3)* allows an inspector, if accompanied by a constable in uniform, to stop and detain a vehicle in order to search it in connection with the exercise of his powers of inspection in relation to licensed activities, registration, inspection of farm premises and compliance with EC obligations. These subsections also apply where the constable or inspector is acting under a relevant warrant.
203. *Subsection (2)* allows a constable to stop and detain a vehicle for the purposes of seizing an animal used in connection with a fighting offence if he reasonably believes that it contains such an animal or he is acting under a warrant for these purposes.
204. *Subsection (4)* provides that the vehicle can be detained for as long as is reasonably required to enable a search or inspection to be carried out (including the exercise of any other related power, e.g. to take tests or samples).

Section 55: Power to detain vessels, aircraft and hovercraft

205. *Subsection (1)* provides that a vessel can be detained in port if an inspector believes that an offence is being or has been committed on board. He must put his reasons in writing. He must present a copy of this as soon as practicable to the person in charge of the vessel (*subsection (4)*).
206. *Subsection (3)* allows the detention of the ship to be enforced. Section 284 of the Merchant Shipping Act 1995 provides various penalties should the ship leave port before it has been granted permission to do so.
207. *Subsection (6)* allows the Secretary of State or National Assembly for Wales to make regulations extending this section to aircraft or hovercraft, or to make other provision for detaining aircraft or hovercraft that they consider appropriate.

Section 56: Obtaining of documents in connection with carrying out orders etc.

208. This section requires the owner of an animal in relation to which any of the various orders under the Act has been made to deliver relevant documents relating to that animal to the person who is authorised to carry out the order. The documents must be delivered as soon as practicable and, in any event, within 10 days of the person being informed of the requirement.
209. *Subsection (2)* imposes a similar duty on the owner to deliver documents to a person who is authorised to carry out a direction made during a period when the effect of an order is suspended pending appeal (see further section 41).

Section 57: Offences by bodies corporate

210. *Subsection (1)* gives flexibility in the exercise of enforcement powers. It authorises simultaneous proceedings to be brought against a corporate body and individuals who are associated with the corporate body. This may either be 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.
211. 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 action or omission that constitutes an offence under the Act.

Section 58: Scientific research

212. Scientific procedures on animals are governed by the Animals (Scientific Procedures) Act 1986 (“ASPA”), which makes provision for the licensing of people, projects and places where research is carried out on animals. Nothing in this Act applies to anything lawfully done under that Act.
213. *Subsection (2)* provides that powers of entry conferred by this Act do not apply in relation to places designated under sections 6 and 7 of ASPA. The only exception to this is the power of entry to inspect farming premises. Some ASPA premises are ‘dual purpose’; they operate both as designated premises, and also as farms. The power under section 28(2) to inspect farm premises will only be exercisable in relation to animals which are reasonably believed to be bred or kept for farming purposes i.e. the power will not extend to those animals on the premises which are being bred, kept or used for experimental or scientific purposes.
214. *Subsection (3)* provides that section 9 of the Act (duty to ensure welfare) does not apply to animals at a designated place which are kept for use in regulated procedures, or which have been bred for such a use, or which are kept for breeding offspring to be used in regulated procedures.
215. **Section 9** of this Act does apply to any animals that are at a designated place but which are not covered by ASPA, whether because they are of a type that is not listed in the schedules to ASPA or because they are not being used in connection with the scientific research covered by the ASPA licence.

Section 59: Fishing

216. This section provides that anything which occurs in the normal course of fishing is not covered by this Act. A fish may be a protected animal if under the control of man. The effect of this exception is that, where a fish is under the control of man in the course of fishing, the Act has no application to anything that happens to the fish in the normal course of fishing. So, for example, whilst they are normal fishing practices the use of livebait and the practice of catch and release will not be subject to the Act.
217. The term ‘fishing’ should be understood as applying to ordinary activities of fishermen and anglers, and also the ordinary activities of those who own and run stocked ponds in allowing fishing activities to take place on their ponds.

Section 60: Crown application

218. Under *subsection (1)* the Act and regulations made under it, once enacted, apply to the Crown. This means that they will bind all Government departments and other public bodies that are part of the Crown. It will not be possible for the Queen herself to be personally sued or prosecuted under the Act, as the courts are the Queen’s Courts and consequently have no jurisdiction over her personally.
219. In accordance with normal practice, *subsection (2)* provides that the Crown is not subject to criminal liability if it contravenes the requirements of the Act. Instead, the court has power to make a declaration that the conduct is unlawful.
220. Under *subsection (3)* the fact that the Crown cannot itself be found criminally liable under the Act 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 Act in the same way as private individuals, private organisations and their staff.

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221. *Subsections (4) and (5)* provide that powers of entry conferred under the Act may not be exercised at specified premises held or used by or on behalf of the Crown if the Secretary of State certifies that this would be contrary to the interests of national security.
222. *Subsection (6)* disapplies the powers of entry granted to constables and inspectors under the Act in respect of land belonging to Her Majesty as Her private estates. Offences under this Act may still be committed on Her private estates, but in the interests of security, constables and inspectors will require permission to enter Her land. *Subsection (7)* defines Her Majesty's private estates.

Section 61: Orders and regulations

223. *Subsection (1)* provides for all order and regulation-making powers of the Secretary of State, the National Assembly for Wales or the Scottish Ministers under the Act to be exercisable by statutory instrument (other than the power of the National Assembly for Wales under section 17 to revoke codes of practice).
224. *Subsection (2)* provides for regulations made by the Secretary of State under sections 1(3) (extension of definition of "animal"), 5(4) (specified exemptions to the prohibition on mutilations), 6 (regulations about the docking of working dogs' tails), 12 (regulations to promote welfare) or 13 (licensing or registration activities involving animals) to be subject to the affirmative resolution procedure.
225. *Subsection (5)* provides that regulations made by the Secretary of State under section 55(6) (extension of the power to detain aircraft) are to be subject to negative resolution procedure.
226. *Subsections (3) and (4)* provide that where a code is to be revoked under section 17, and not be replaced, a draft of the instrument which contains the revocation order shall be laid before Parliament.
227. Orders for commencement and transition, made by the Secretary of State under section 66(1) and section 68, are not subject to any Parliamentary control.

Section 66: Transition

228. *Subsections (3)–(6)* make transitional provision for those disqualification orders, made under the Protection of Animals Act 1954, that are still in force.

Schedule 1- Regulations under section 13

229. *Schedule 1* is divided into three parts: Part 1 deals with licensing, Part 2 with registration and Part 3 contains general provisions.
230. The Schedule has effect in relation to regulations that can be made under section 13. *Paragraph 2* provides that the "licensing authority" (the particular authority which has responsibility for enforcing the regulations) will either be the relevant local authority or the appropriate national authority (in England, the Secretary of State or in Wales, the National Assembly for Wales). *Paragraph 5* stipulates that licences cannot run for more than 3 years.
231. *Paragraph 7* requires that regulations provide that a licensing authority must inspect premises before granting a licence.
232. *Paragraph 8* provides that regulations may allow a licensing authority to attach conditions to a licence, or require it to do so.
233. *Paragraph 9* provides that breach of a licence condition may be made an offence under the regulations, and that regulations may apply a relevant post-conviction power in relation to conviction for an offence. The expression "relevant post-conviction power" is defined in section 62 (general interpretation), and is explained further in the explanatory note for section 12.

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234. Provisions in Part 2 (registration) mirror those in *paragraphs 1, 2, 3, 6, 10 and 11* of Part 1 (licensing)
235. *Part 3* (supplementary) contains provisions which expand the regulation-making powers under section 13. *Paragraphs 18(a) and 19(2) and (3)* enable existing licensing regimes for the licensing of activities involving animals, to be reproduced by regulations under section 13, even though not required for the purpose of promoting animal welfare (for example, the requirement under section 1(4A)(d) of the Riding Establishments Act 1964, which makes it a licence condition that the keeper of a riding establishment should have appropriate insurance). *Paragraph 18(a)* enables regulations under section 13(7) to include an equivalent licence condition in any new licensing regime substituted by the regulations for an existing regime. Alternatively, if the existing licensing regime is simply repealed by regulations under section 13(8), *paragraph 19(2) and (3)* enable regulations to make consequential provision for the purpose of continuing the effect of the old licence condition, i.e. that the keeper of a riding establishment is required to have appropriate insurance.

Schedule 2 - Powers of entry, inspection and search: supplementary

236. This Schedule specifies the powers and duties of those exercising powers of entry, inspection or search under the Act.
237. *Paragraph 1(1)* provides that the safeguards in relation to the issue of warrants to constables contained in the Police and Criminal Evidence Act 1984 (c.69), apply to inspectors for the purposes of the issue of warrants under sections 19(4) or 23(1).
238. *Paragraphs 2 and 3* apply the safeguards in relation to the issue of warrants to constables contained in sections 15 and 16 of the Police and Criminal Evidence Act 1984, to inspectors exercising a right of entry under section 28(4). These paragraphs reflect sections 15 and 16 to the extent that they are relevant to the issue of warrants under section 28(4) – they do not reflect the provisions that relate to search. Multiple entry or multiple premises warrants (available to constables under the 1984 Act) are not available to inspectors.
239. *Paragraph 4(2)* requires the person entering to show evidence of his identity and his authority to enter, and to give information about his reasons for entering. There needs to be a request for these things before there is a requirement to provide them.
240. *Paragraph 5* contains a power to take other persons 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, an accompanying veterinary surgeon will have powers to examine the animals under *paragraph 10(2)(a)* and to take samples, tests etc under *paragraph 10(2)(d)* (see *paragraph 10(3)*). The powers set out in *paragraph 10*, which also include the power to seize documents, apply to entry for the purpose of inspecting licensed and registered activities, inspection of farmed animals and checking compliance with European legislation. They also apply to entry and search where there is reasonable suspicion that an offence is being, or has been committed.
241. *Paragraph 6* imposes a duty to ensure that a search or inspection is undertaken at a reasonable time, unless it appears to the constable or inspector that the purpose of the search or inspection would be frustrated if the power was exercised at a reasonable time.
242. *Paragraph 7* 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 direction or control of the owner or keeper. In the case of entry to inspect licensed activities under section 26, the obligation to give assistance extends to the licence holder.
243. *Paragraph 8* will allow an inspector or constable entering premises under the powers specified in *paragraph 7(1)* to take equipment onto the premises with him.

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244. *Paragraph 10* outlines the powers of inspection, search, and seizure which an inspector or constable will have once he has entered premises under section 26(1), 27(1), 28(1) or 29(1), or under a warrant conferred under section 23(1). *Paragraph 15* outlines the more limited powers of inspection and seizure which an inspector or constable will have when he has entered to search for an animal in distress under section 19.
245. *Paragraph 14* provides for the use reasonable force in the exercise of certain powers under *paragraph 10*.
246. *Paragraph 16* 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 7*.