

Cases, Materials and News

Animal Experimentation

The Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012

The regulations amend the Animals (Scientific Procedures) Act 1986 to transpose EC Directive 2010/63/EU on the protection of animals used for scientific purposes. The EC Directive 2010/63/EU replaces Directive 86/609/EEC.

Medicines labelling and animal testing

The *Medicinal Labelling Bill 2013* (HL Bill No.11) was introduced for in the House of Lords for its 1st reading on 13 May 2013. The Bill requires that all medicines are labelled so as to declare whether the product has been produced as a result of research on animals. It was introduced by Lord Winston, not out of a belief that public pressure would result in people switching to non-tested medicines, but to emphasize the importance of animal research in producing safe medicines. It is thought that the Government and pharmaceutical industry is likely to oppose the Bill on grounds that it may deter some patients from taking medicines which they have been prescribed.

Article – David Thomas discusses the impact of the Freedom of Information

Act 2000 on disclosures relating to animal research and considers how the system might be improved. Public Law P.L. (2013), January Pages 10-19.

Criminal Law – Animal Offences

(1) R (on the application of James Gray) (2) James Gray & Julie Gray (Claimants) v Aylesbury Crown Court (Defendant) & RSPCA (Interested Party)
[2013] EWHC 500 (Admin)

The claimants were a horse trader and his wife, from whom a large number of horses were seized on welfare grounds. Both were convicted of offences under the Animal Welfare Act 2006 ('the 2006 Act') and ordered to pay towards the prosecution costs. Both appealed to the Crown Court, resulting in two of the charges being dismissed. Both claimants were ordered to pay £200,000 each towards the prosecution's costs of the appeal.

The Crown Court refused James Gray's request to state a case on points of law, and Julie Gray's request in respect of the costs order made against her. The claimants applied for judicial review. The High Court held that the judge had correctly directed himself that the prosecution had to establish that the defendant knew or ought to have reasonably known that

his act or failure would cause an animal to suffer and that the suffering was unnecessary, for the purposes of s.4(1).

In relation to s.9(1) of the 2006 Act it was held that the judge had correctly interpreted this section as setting an objective standard of care which a person responsible for an animal was required to provide.

The High Court rejected a complaint that the seizure of the horses was unlawful as the certification by the inspector had not been in writing. Whilst the court held that the certification under s.18(5) had to be in writing, this did not render the seizures unlawful in this case as the officer acted lawfully under s.18(6) which provides that an inspector or constable may act without a certificate under certain circumstances. Even if that was

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wrong, the probative value of the evidence justified its admission and no significant prejudice was caused by the fact that the vets' assessment was not in writing.

The High Court also rejected submissions that the Crown Court had no jurisdiction to hand down deprivation orders after an appeal.

In relation to the complaint that a conviction under s.9 (failure to 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) was bad for duplicity if it was based upon the same facts as a conviction under s.4 (causing an animal unnecessary suffering) the High Court held that the court should not generally convict for a less serious offence as the guilty conduct would be subsumed within the more serious offence, however there was no obvious duplication in this case and no reason to interfere with the conviction under s.9.

The High Court also rejected submissions that the costs were grossly disproportionate to the fine. It found that the Crown Court had been entitled to impose the costs order that it had upon James Gray. There were a high number of animals involved and there had been lengthy proceedings, including a lengthy appeal. The approach was consistent with the

principle that the purpose of a costs order was to compensate the prosecutor, not to punish a defendant.

The High Court did find that the court was wrong to hold both claimants equally liable for the prosecutions costs and held that the proper approach would have been to consider what the position would have been had Julie Gray been tried alone. The matter of her costs was remitted for further determination.

R (on the application of RSPCA) v Guildford Crown Court
[2012] EWHC 3392 (Admin)

The RSPCA applied by way of judicial review for a declaration as to the court's discretion when making disqualification orders under s.34 (2) of the Animal Welfare Act 2006 ('the 2006 Act'), which enables the court to disqualify a person from owning and keeping animals, participating in the keeping of animals and from being party to an arrangement under which he is entitled to control or influence the way in which animals are kept.

The declaration was sought after a traveller and horse dealer prosecuted for offences relating to the ill treatment of horses was subject to a disqualification order under s.34 (2) of the 2006 Act. On appeal the Crown Court varied the order so that he was relieved from the disqualification from participating in the keeping of animals, due to concern that given his lifestyle, could result in an inadvertent breach of the order.

The High Court held that there was no discretion under s.34 to relieve a defendant from any of the activities from which he had been disqualified, however in certain circumstances the construction of the section could be modified to meet the obligation under the Human Rights Act 1998 to

interpret legislation in a way which was compatible with the European Convention on Human Rights 1950 in relation to which Article 8 was relevant, as the defendant's private life would have been disproportionately interfered with had he been disqualified from participating in the keeping of animals.

R (on the application of Rees) v Snaresbrook Crown Court
[2012] EWHC 3879 (Admin)

The claimant (a sheep farmer) applied for judicial review of a decision of the Crown Court arising out of a successful appeal from a conviction of an offence of cruelty following which the court had refused to make an order for costs in his favour out of central funds. The court commented that 'it was not certain' that he had told the truth. The claimant argued that it was unlawful not to order that his costs be paid and also submitted that the court's comments about him violated the presumption of innocence.

In relation to the decision about costs, the High Court considered whether the decision fell within the class of cases where the defendant should not be deprived on his costs despite his acquittal (*see Practice Direction (CA (Crim Div): Costs: Criminal Proceedings*) [2004] 1 WLR 2657).

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The key point was whether there were positive reasons for depriving a defendant of his costs, which included circumstances where a defendant had brought suspicion on himself or where the court was sure that the defendant had perjured himself, or the prosecution had been ambushed by the nature of the defence. If the court was sure as to any of these matters it could deprive a party of costs, but should do so without expressing a view which might be taken as suggesting that the defendant was guilty of the offence. The reasons given by the crown court did not meet the test set out in the Practice Direction and the claimant was awarded his costs from central funds.

Animal Livestock and Transportation

R (on the application of Barco De Vapor) v Thanet District Council [2012] EWHC 3429 (Admin)

As a result of an incident at Ramsgate Dock resulting in the death of some lambs who had escaped from a transporter the local authority banned the shipment of livestock through Ramsgate. The claimant, a livestock haulier, who had a consignment due, sought to quash the ban on the grounds that it was in breach of article 35 of Regulation 1/2005 and that there was no justification for imposing a ban. The claimant also sought an order restraining the local authority from preventing the shipment of its animals through Ramsgate.

The court refused to quash the ban imposed by the local authority pending a review into whether the facilities were adequate to cope with a livestock emergency, but the court

restrained the local authority from preventing a shipment by the claimant of a shipment that had been arranged before the ban was imposed.

The Welfare of Animals (Slaughter or Killing) (Amendment) (England) Regulations 2012

These Regulations (which apply in England only) amend the Welfare of Animals (Slaughter or Killing) Regulations 1995¹ to:

- permit the use of a biphasic carbon dioxide gas mixture to kill poultry in Slaughterhouses. The restriction is removed which limits the killing of birds on-farm by gas, to end-of lay and end-of-life breeder hens only.
- extend the range of birds that can be killed by gas mixtures on premises where they have been kept for the production of meat or eggs to domestic fowl, turkeys, pheasants, quail, partridges, geese, ducks and guinea fowl; and
- extends the time limits under which a prosecution may be brought, bringing the Regulations in line with other animal welfare legislation, such as the Animal Welfare Act 2006.

The Government states² that the amendment to permit 'the use of a biphasic gas mixture in slaughterhouses to kill poultry in line with latest scientific evidence, Farm Animal Welfare Council recommendations and the implementation of Council Directive 93/119/EC by other Member States.'

The amendments are also a response to pressure from the poultry industry to permit the use of gas rather than manual culling methods such as neck dislocation, which is time and

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resource intensive. The measures are anticipated by the Government to improve welfare and enable the poultry industry to respond to emergencies which require the culling of a large number of birds.

During the consultation phase the RSPCA and Compassion in World Farming raised a number of concerns about the use of biphasic carbon dioxide gas mixture to kill poultry, particularly if 'the phase 1 gas mixture was restricted to a mixture of carbon dioxide above 30% in volume and air.' There was also concern that gas should only be used to kill birds on farms as a last resort where other more humane methods were not viable. In response the Government permitted by the 2012 Regulations the mixing of carbon dioxide with other gases' allowing use of more welfare-friendly hyperoxygenated gas mixtures.'

The Welfare of Animals at the time of killing (Scotland) Regulations 2012

These Regulations which came into force on 1 January 2013 make provision in Scotland for the implementation of Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing. The Regulation 1099/2009 is directly applicable in Scots law, however it was considered necessary to make legislative provision to ensure that the Regulation can be properly enforced with appropriate sanctions.

The 2012 Regulations replace the *Welfare of Animals (Slaughter or*

¹ which give effect to Council Directive 93/119/EC on the protection of animals at the time of slaughter or killing.

² See Explanatory Memorandum 2012 No. 501

Killing Regulations 1995 (which give effect to the provisions of Council Directive 93/119/EC and continue to apply in England and Wales). However due to problems with that were identified with Directive 93/112/EC the European Commission brought forward proposals to replace the 1993 Directive with Regulation 1099/2009, a key objective of which is to improve the protection of animals at the time of killing.

Wildlife

The Mink Keeping (Prohibition) (Wales) Order 2012

This Order imposes an absolute prohibition upon the keeping of mink in Wales. The keeping of mink is already prohibited by the Destructive Imported Animals Act 1932, except as permitted by licence. An absolute prohibition was imposed in England by the Mink Keeping (Prohibition) (England) Order 2004 (S.I. No. 100) and the Mink Keeping (Prohibition) (Wales) Order 2012 (S.I. No. 1427) makes similar prohibition for Wales, although licenses can be issued in exceptional circumstances. In Scotland, there are similar provisions which apply to the keeping of mink, muntjac deer, muskrat and other “invasive animals” under the Wildlife and Countryside Act 1981 and the Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Order 2012 (S.S.I. No. 174).

Companion Animals

The Welfare of Animals (Docking of Working Dogs’ Tails and Miscellaneous Amendments) Regulations 2012

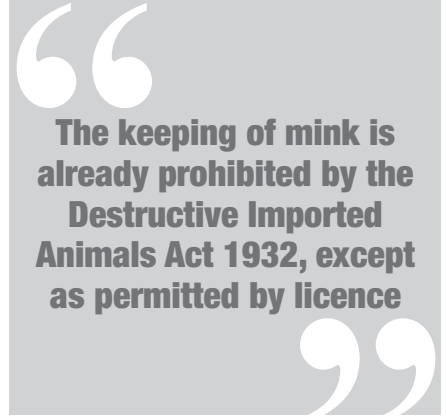
The tail docking of dogs was banned in Northern Ireland from 1 January 2013. The Regulations were made under the Welfare of Animals Act

2011. There are however exemptions from the ban for certain breeds of working dog, of no more than five days of age, who may have their tails docked by a veterinary surgeon, and in circumstances where docking is required as part of medical treatment or in an emergency to save the dogs’ life. The Regulations also ban the showing of dogs which are docked on or after the 1 January 2013, at events where the exhibitor pays a fee or members of the public pay an admittance fee. This ban does not apply where a dog is shown only for the purpose of demonstrating its working ability. The offence carries with it an unlimited fine and maximum of two years imprisonment.

Control of Dogs (Wales) Bill

Following a consultation period on the Control of Dogs (Wales) Bill, Alun Davies AM, Minister for Natural Resources and Food in the Welsh Government announced in May 2013 that work on the Bill would be suspended to explore the potential of a joint collaborative approach with the UK Government. In particular consideration is given to whether Defra’s proposals to amend the Dangerous Dogs Act may include provision for it to be an offence for dogs to be out of control on private premises and to provide protection for assistance dogs, including statutory training and a dog welfare regime. If agreement cannot be reached the Welsh Government may still pursue the option of introducing a Welsh bill.

Article – Tim Ryan of Warners Solicitors comments upon the law relating to dangerous and out of control dogs, including new sentencing guidelines and penalties for dangerous dog offences. Solicitors Journal S.J 2012) Vol.156 No.33 (Pages 10-11).



The keeping of mink is already prohibited by the Destructive Imported Animals Act 1932, except as permitted by licence

Microchipping for Dogs in Wales

Alun Davies AM, Minister for Natural Resources and Food announced in April 2013 plans by the Welsh Assembly Government to introduce compulsory microchipping of dogs by 2015. In support of this proposal, which was backed by the majority of respondents (including the Dogs Trust) to a public consultation in 2012, he said: *“It is increasingly important that we have a method of tracing dogs back to their owner. Dog owners already have a duty of care under the Animal Welfare Act but it can be difficult to ensure that this duty is being met without a reliable form of identification.... By microchipping all dogs in Wales we can formalise the relationship between an owner and pet and ensure an increased level of accountability.”*

In England compulsory microchipping will not come into force until April 2016.

Judgment in Case T-526/10 Inuit Tapiriit Kanatami and Others v Commission

The General Court confirms the validity of the Regulation on the marketing of seal products. Inuit Tapiriit Kanatami, which represents Canadian Inuits, the manufacturers and traders of seal products) took issue with regulation.

Animals in Entertainment

The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012

The Welfare of Wild Animals in Travelling Circuses (England)

Regulations 2012, SI 2012/2932 were introduced from 20 January 2013 to regulate the use of wild animals in travelling circuses.

The Regulations are intended to act as a stop gap until primary legislation (the Wild Animals in Circuses Bill) is enacted banning the use of wild animals in travelling circuses on ethical grounds.

Animal welfare groups including the RSPCA, the Born Free Foundation and Animal Defenders International all support an outright ban and are strongly opposed to the licensing system introduced by the Regulations and opted not to respond to the public consultation on them. They argue that the welfare of animals cannot be met in the travelling circus environment and that licensing conditions are unenforceable. Supporters of the Regulations however contend that licensing is preferable and that there is insufficient evidence of welfare problems to justify a ban.

The prospect of a complete ban on the use of wild animals contemplated by the Wild Animals in Circuses Bill was dealt a blow however when earlier in the year the EFRA Select Committee recommended that the Government bans certain species rather than banning all wild animals.

Is Religion good for your Cat and Dog?

A new research project at Oxford will examine whether animals benefit or suffer thanks to religion.

Inspired by Baptist Preacher Charles Spurgeon's claim that a person cannot be a true Christian if his dog or cat is not the better off for it, the Centre will explore whether religious traditions are animal-friendly. The questions to be addressed include

whether religious people and religious institutions benefit animals? Are they more or less likely to be respectful to animals – either those kept as companions or those used for other human purposes?



The project is being organised by the Oxford Centre for Animal Ethics. It will be multidisciplinary, multifaith, and draw in not only theologians and religious thinkers, but also other academics including social scientists, psychologists, historians, and criminologists. *“We want to know whether religion makes any difference for animals”*, says Oxford theologian, Professor Andrew Linzey, who is Director of the Oxford Centre for Animal Ethics. *“We often hear of how religion is detrimental to human rights, but is it also detrimental to animal protection?”*

Academics interested in contributing to the project should contact the Centre's Deputy Director, Clair Linzey, in the first instance depdirector@oxfordanimaethics.com or (+44) (0)1865 201565.

ESRC Green criminology Research Seminar Series

Green criminology applies criminological insights to the problems of animal abuse and

environmental harm. A unique seminar programme is taking place covering such key topics as wildlife crime and animal abuse. For information about future seminars and videos of previous seminars go to: <http://www.northumbria.ac.uk/sd/academic/sass/about/socscience/events/greencrime>

New Blog from the Centre for Animals and Social Justice

The Centre for Animals and Social Justice (CASJ) has a new blog called 'Animal Republic' which aims to provide a forum for academics and other animal protection experts to discuss the latest in research and other developments in animal politics. In the first blog post, Dr Alasdair Cochrane discusses 'animal welfare' and 'animal rights' and challenges the assumption that these two concepts are strongly antagonistic. Dr Cochrane lectures in political theory at the University of Sheffield. <http://www.casj.org.uk/blogs/animal-welfare-vs-animal-rights-false-dichotomy/>

Breaking News – August Bank Holiday Monday 2013

The Badger cull has started. See the following links for more information:

<http://www.league.org.uk/content/643/Badger-Cull>

<http://www.league.org.uk/uploads/media/17/11253.pdf>

<http://www.teambadger.org.uk/press.html>

http://www.badger.org.uk/_Attachments/Resources/911_S4.pdf

http://www.badger.org.uk/_Attachments/Resources/903_S4.pdf

http://www.badgertrust.org.uk/_Attachments/Resources/908_S4.pdf