

**Draft Animal Welfare Bill, Command No. 6252, 15.7.2004**

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**The Fur Farming (Compensation Scheme) (England) Order 2004**

The Order establishes a compensation scheme for mink farmers affected by Section 1 of the Fur Farming (Prohibition) Act 2000 banning fur farming in England with effect from 31 December 2002. The original scheme was quashed by the High Court.

**The Conservation of Seals (Scotland) Order 2004**

The Order prohibits from 4 September 2004 the killing, injuring or taking of common seals and grey seals in a defined area within the Moray Firth (Article 2). The protection offered to seals in this Order is in addition to protection afforded during closed seasons for seals provided for in Section 2(1) of the Conservation of Seals Act 1970.

In 2004 the UK signed up to the new *Council of Europe Convention on the Protection of Animals During International Transport*. The Convention will extend improved animal welfare standards beyond EU borders. Other countries that signed the Convention were Belgium, Croatia, Finland, Germany and Greece.

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**Freedom of information – implications for animal welfare campaigners**

*David Thomas*  
*Solicitor*

The Freedom of Information Act 2000 (the “FoI Act”) finally came fully into force on 1 January 2005. With the Data Protection Act 1998 and the Environmental Information Regulations 2004, it forms a triumvirate of legislation dealing with access to information.

The FoI Act entitles anyone to ask a public authority whether it holds information of a particular description and, if it does, to disclose it. The information can pre-date the Act, provided it is still held by the authority in question. There are around 100,000 public authorities, ranging from government departments and local authorities to universities, health trusts and myriad other bodies. An applicant only has to pay for the cost of copying and postage, although a public authority can reject a request if it would take too long to find the information (roughly three and a half days with central government and two and a half days with other public authorities).

The right to information is not, of course, absolute. There are numerous exemptions, such as national security and defence, governmental policy-making, confidential information and personal safety. Prohibitions on disclosure in other legislation continue to apply. Some exemptions are absolute and some are subject to a public interest test. If a request is rejected, in whole or part, the applicant can complain to the Information Commissioner and then to the Information Tribunal. A challenge raising a point of law can be taken to the High Court. Ministers have the right of veto

even in relation to information the Commissioner etc says should be disclosed, but this is likely to be exercised only rarely.

A great deal of animal suffering takes place behind closed doors such that the public never gets to hear about it, unless there is an undercover investigation. The FoI Act should enable the veil of secrecy to be pulled back. Commercial confidentiality will continue to trump transparency in many cases, but much information should nevertheless be disclosable.

One of the principal battlegrounds will be animal experiments, where the Government and researchers have always resisted the disclosure of information (except on their terms). Early indications are that the Home Office will fight meaningful disclosure but there are powerful arguments that their approach is unlawful. Non-governmental organisations are likely to test these arguments over the coming months.

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## **French cosmetics challenge**

***David Thomas***  
***Solicitor***

France is challenging before the European Court of Justice (ECJ) the animal testing amendments to the Cosmetics Directive<sup>5</sup> introduced in 2003.<sup>6</sup> The amendments are very complicated, but in essence they ban

animal testing for cosmetics in the EU by March 2009 at the latest and the sale in the EU of cosmetics tested on animals after that date (or March 2013 in relation to three particular tests), wherever the testing took place.

France argues (amongst other things) that (a) the sale ban is inconsistent with the World Trade Organisation (WTO) agreements; (b) the provisions as a whole are ambiguous and therefore fail the test of legal certainty; and (c) they are disproportionate in their effect (the advantages to animal welfare are outweighed by the disadvantages to business).

On 17 March, Advocate General Geelhoed delivered his opinion on the case to the ECJ. He advised the court to dismiss the challenge, on all grounds. His reasoning is powerful and he makes comments which have an importance for animal welfare beyond this case. His view is that, although this would be a matter for the WTO dispute panels not the ECJ, the sale ban does not fall foul of the WTO agreements. This is particularly important, given that it is often argued – incorrectly – that the agreements prevent bans on the import of cruelly-produced goods.

The ECJ normally adopts the advice of its advocate generals and it would be a surprise if it did not do so in this case.

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<sup>5</sup> Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products, OJ L 262, 27.9.76, p. 169.

<sup>6</sup> Case C-244/3 French Republic v European Parliament and Council of the European Union, not yet published.