

The Animal Welfare Bill

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The Animal Welfare Bill was introduced in the House of Commons on 13 October. Since July 2004 when a draft Bill was published, it has undergone public consultation, pre-legislative scrutiny (by the Environment, Food and Rural Affairs Committee) and significant re-drafting. Shifts in Government policy during this period have affected its content. Although much in the Bill is a welcome improvement on the present situation, it is in some respects more conservative and preserving of the status quo than had been hoped.

This article analyses some of the principal provisions of the Bill and the areas intended to be dealt with in secondary legislation.

Welfare offence¹

The “welfare offence” is pivotal to bringing animal welfare law in line with prevailing ethical views on animals. The rationale underlying this offence is to enable action to be taken to prevent an animal from suffering to the degree required to act under the cruelty offence, by requiring a person responsible for an animal to take reasonable steps to ensure that its needs are met to the extent required by good practice. The needs of an animal will encompass its environment, diet, ability to exhibit normal behaviour, need to be housed with or apart from other animals, protection from pain, injury and disease and other factors. This offence should enable many animals to be helped in future.

However, although the duty is already qualified by the requirement to take only “such steps as are reasonable in all the circumstances”, new wording since the draft Bill makes it relevant for a court to

have regard to “any lawful purpose for which the animal is kept and any lawful activity undertaken in relation to the animal”. This has the unfortunate potential to create inconsistent protection for animals depending on the purpose for which they are used. Rather than the offence leading to the disappearance of activities involving animals where it is extremely difficult or impossible to ensure their welfare (for example the use of elephants in circuses), this proviso seems to give such activities special latitude.

Cruelty offence²

The new offence of causing or permitting unnecessary suffering updates its somewhat archaic equivalent in the Protection of Animals Act 1911. Although the Bill does not expressly refer to mental suffering as the 1911 Act does, the explanatory notes to the legislation expressly include it.

Recordings of cruelty

The draft Bill created an offence of making, possessing, distributing or publishing recordings of an animal fight. This has been removed. It has been suggested that animal welfare legislation is not the appropriate place to deal with recordings of animal fights, cruelty and bestiality as these are a matter of moral outrage not welfare. Not only does this seem extraordinary given that such material must feed the taste for violence towards animals and the demand for fights and cruelty to take place, but there is no indication that the problem will be dealt with elsewhere, for example in possible new laws on possessing and accessing extreme internet pornography. The existing law on obscenity and use of animals in films applies inadequately to these problems.

¹ Clause 8.

² Clause 4.

The definition of “animal”³

The protection given by the new legislation will be restricted to vertebrate animals unless regulations are adopted to extend the definition of “animal”. This limitation is ostensibly on the basis that only animals for which there is sufficient scientific evidence of their capability to experience pain or suffering should be included. There is, however, increasing scientific consensus that certain invertebrates have this capacity, in particular cephalopods and decapod crustaceans (octopus, squids and cuttlefish, crabs, lobsters and crayfish). These creatures are protected by welfare legislation in other countries, such as New Zealand, and the abovementioned Committee supported their inclusion in the new legislation. However, the Government proposes merely to “continue to review” this area, possibly because of the implications an extension of the definition of “animal” would have for the legislation governing animals used for experimental and scientific purposes.

The application of the Bill is further limited to, broadly, domesticated and kept animals. Wild animals living in the wild are not protected unless and until taken under control by a person.

Tail docking⁴

The Bill contains a ban on mutilations, including tail docking of dogs for cosmetic reasons, following the definition of a Royal College of Veterinary Surgeons working group. There is, however, a power to make exemptions in regulations that the Government has stated will, unless Parliament decides otherwise, permit docking.

Regulations⁵

Regulations may be made under the Bill for the purpose of promoting the welfare of

animals for which a person is responsible, avoiding the need to use primary legislation to update welfare standards applying to non-farmed animals, a factor partly responsible for the slow manner in which this area of law has been updated. (There already exist powers to adopt regulations relating to farmed animal welfare.)

The Department for the Environment, Food and Rural Affairs published its regulatory impact assessment coincident with the Bill. The specific activities involving animals to be regulated are:

- pet shops (including internet selling),
- pet fairs,
- animal sanctuaries and rehabilitation centers,
- livery yards,
- tethering of equines,
- riding establishments,
- animal boarding,
- dog breeding,
- greyhound racing,
- performing animal trainers and suppliers,
- rearing of game birds for sport shooting.

These areas will be variously subject to licensing, requirements to register with the local authority or compliance with codes of practice. The proposals lack real detail at this stage but appear to be influenced by a new Government policy on “better regulation” and what industry is prepared to bear. Areas of concern include the increase in the maximum period for licensing and inspection of establishments such as pet shops and riding schools from one year to three years, over-reliance on certain industries where serious welfare problems are known to regulate themselves, and the legalisation of pet fairs under licence. The moves to license livery yards and to start to regulate animal sanctuaries are, however, positive.

³ Clause 1.

⁴ Clause 5.

⁵ Clause 10.

Conclusion

Although this article focuses largely on where the Bill could have gone further, there is also much to welcome. It is hoped that some of its deficiencies can be remedied in Parliament. The new law is expected to enter into force in 2006. Further work will then be required over at least the next five years to put in place effective secondary legislation to further protect animals.

What we need is clarity: pet fairs and the Pet Animals Act 1951

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It was concerns about the depressing conditions in which pet animals were being sold at certain London markets that led Parliament to enact the Pet Animals (Amendment) Act 1983. That Act amended the Pet Animals Act 1951 so that it provided, in Section 2, that “[i]f any person carries on a business of selling animals as pets in any part of a street or public place, or at a stall or barrow in a market, he shall be guilty of an offence.” The 1983 amendment eventually led to the complete eradication of pet-selling stalls at regular markets.

Since the exotic pets craze of the early 1990s, however, a new form of market-type selling of pet animals has emerged which perhaps presents even greater animal welfare negatives than the market stalls which used to so sadden the compassionate market-goer. In many towns and cities across the UK, in community halls, leisure centres and schools, exotic animal fairs are taking place, often calling themselves “reptile exhibitions”, at which animals are sold as pets directly to the public. The typical event consists of a number of different trestle-table stalls from which tens, hundreds, or even thousands, of reptiles and other exotic animals are displayed and offered for immediate sale by different independent breeders and dealers. In many

ways the format is that of a jumble sale, albeit that the “goods” sold are sentient creatures rather than unwanted bric-a-brac. The animals have often been transported for many hours in the backs of hot cars and vans, before being displayed in unsuitable cages stacked one atop another. Many visitors to these “exhibitions” will make impulse purchases of exotic animals that have highly specialised care requirements, and will do so without the benefit of appropriate care advice from the sellers.

Pet birds are also being sold at such occasional events. Indeed, bird fairs tend to take place on a much larger scale than their reptilian counterparts. The National Cage and Aviary Bird Exhibition, organised by IPC Media (the publishers of *Cage and Aviary Birds* magazine), is the highlight of the bird dealers’ calendar. The 2003 event, which took place in early December of that year at the National Exhibition Centre near Birmingham, was granted a pet shop licence by Solihull Metropolitan Borough Council for the selling of up to 100,000 birds. Undercover investigators from Animal Aid visited the event and documented a number of apparent breaches of the conditions attached to that licence, as well as of the Wildlife and Countryside Act 1981.⁶ The multiple independent traders offering birds for sale at that event were drawn from across the UK, with at least one coming from another EU Member State. Plainly, therefore, the sellers were not mere small-time hobbyists, but were serious commercial operators. Many thousands of birds are believed to have changed hands in the course of that event.

Quite apart from the obvious welfare concerns that are posed by such events, campaigners against them also point to the potential risks to public health. Whatever claims may be made by the sellers of birds

⁶ “From Jungle to Jumble – National Cage and Aviary Birds Exhibition 2003: Evidence, findings and recommendations”, a report by Animal Aid, March 2004.