

(since these benefits must outweigh the animal suffering) and for which no non-animal alternatives exist will be granted a licence to proceed. Unfortunately, on closer inspection, how the Act works in practice offers a bleaker picture. The cost-benefit assessment, which looks so promising on paper, is difficult to implement. The benefit is limited to the projected optimism of the researchers rather than the wider picture of the efficacy of the animal model. The costs are difficult to quantify and the severity classification scheme needs to be modernised. The obligation to use non-animal alternatives appears to have little weighting in practice. The UK boasts an exemplary regulatory system on paper but the author argues that its practical implementation does not approach its potential.

The criminalisation of the possession of extreme pornographic images of bestiality: the Criminal Justice and Immigration Act 2008

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The new Criminal Justice and Immigration Act 2008 ("CJIA") covers a wide range of areas of criminal law as well as immigration issues. It also contains new provisions on the possession of extreme pornographic material depicting scenes of violence and abuse, necrophilia and sexual acts with animals. The provisions on possession of an extreme pornographic image are found in section 63(1). To fall within section 63(1) an image would need to be both pornographic, that is, "of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal" (section 63(3)) and extreme. Extreme images include: "a person performing an act of intercourse or oral sex with an animal (whether dead or alive)", if a reasonable person looking at the image would think that any such person or animal was real" (section 63(7)).

The offence applies to still or moving images and to data capable of being converted to an image and to offline and mobile phone material. The maximum penalty for possession of extreme pornographic images of bestiality will be 2 years imprisonment (section 67).

Defences for accidental possession, unsolicited material and legitimate reasons for possession are stipulated in section 65 with the burden of proof lying on the defence. Proceedings may only be brought with the consent of the Director of Public Prosecutions (section 63(10)). No date has yet been fixed for entry into force of these provisions, but it is expected to be early 2009.

These provisions have been introduced to address the tide of extreme pornography on the Internet with which the Obscene Publications Act 1959 ("OPA") is ill-equipped to deal. The new provisions are much broader than those of the OPA because mere possession is sufficient for an offence to be committed, whereas under the OPA it is necessary for an obscene article to be published and distributed and obscenity is defined in terms of the tendency to deprave and corrupt those persons who are likely to read, see or hear such material.

Although the provisions on violence in the CJIA have generated considerable debate, the use of animals and corpses has received less attention. The use of animals clearly raises animal welfare issues insofar as it entails exploitation of and assaults on animals and treating them without respect. While such use of animals does not raise the issue of consent to harm which has preoccupied the criminal law since *R v Brown*,⁸⁰ and which has been considered by the Law Commission in its consultation papers on consent in the criminal law,⁸¹ nonetheless the use of animals in pornography is clearly still problematic because it is degrading to animals, as well as to humans. Consent is an irrelevant issue just as it would be in relation to necrophilia. Even if a person made a living will giving consent to their body being used for sexual purposes after their death and for this to be recorded, such consent would not make that activity either lawful or non-degrading. Animal pornography again emphasises the use of animals as a means to an end, in this case the sexual gratification of humans, and reinforces their subordinate status, even if that gratification is achieved voyeuristically.

The exploitation of animals in pornography is not covered by the Animal Welfare Act 2006 or its predecessor, the Protection of Animals Act 1911. However bestiality has of course long been a

⁸⁰ *R v Brown, Laskey, Jaggard and others* [1993] 2 All ER 75, [1994] 1 AC 212.

⁸¹ "Consent and offences against the person", Law Commission, 1994, "Consent in the criminal law", Law Commission, 1995.

criminal offence,⁸² governed previously by section 12 of the Sexual Offences Act 1956, and now by section 69 of the Sexual Offences Act 2003 (“SOA”), which makes sexual intercourse with an animal an offence punishable by 6 months imprisonment and/or a maximum fine in the magistrates’ courts and by a maximum of 2 years imprisonment in the Crown Court. However, section 69 of the SOA does not cover sexual interference with a dead animal, in contrast to the possession offence in the CJIA.

One apparent anomaly is that under the SOA the substantive offences of intercourse with a live animal and sexual penetration of a corpse carry the same sentences as possession of images of such acts under the CJIA, which may have implications for the deterrent effect of these provisions. However, if bestiality and necrophilia are committed in the course of a pornographic production, then these actions are crimes in their own right and, by viewing the material, the consumer is creating a demand for those acts and is to that extent complicit in the crime. But even if the action is simulated, such images in pornography still legitimise the sexual exploitation and degradation of animals and indeed of the individuals in those productions.

The new provisions are concerned with the use of animals in sexual contexts so would not cover possession of images of other forms of animal abuse which are not intended for sexual arousal. Indeed, the use of images of violent assaults on animals in art has a long history, for example with animals depicted in their death throes in hunting scenes. They also would not capture the more modern example of animal suffering embodied in “works of art” such as the notorious example of the Costa Rican artist, Guillermo Vargas, who exhibited a tethered emaciated dog so the audience could watch him starve to death, a production which caused considerable outrage and led some galleries to boycott his work. The debate on the borderline between art and pornography, however, lies outside the scope of this article.

⁸² It was originally not a crime at common law, but an ecclesiastical offence and made a felony by statute in the 16th century.