

UK CASE LAW

*R (on the application of Royal Society for the Prevention of Cruelty to Animals) v Secretary of State for Environment, Food and Rural Affairs*³⁶

The RSPCA challenged by judicial review the legality of an amendment to the Welfare of Animals (Slaughter or Killing) Regulations 1995, Schedule 9 (“the Regulations”). The amendment to the Regulations added “ventilation shutdown” to the permitted methods of killing animals for the purpose of disease control. In particular the amendment was intended to make provision for the use of ventilation shutdown (which involves cutting off the ventilation in places where birds are housed with the inevitable result of death as temperatures rise to a level incompatible with life) as a method of killing birds in the event of an outbreak of avian disease.

The Regulations implemented Directive 93/119/EC concerning the protection of animals at the time of slaughter or killing³⁷ and the RSPCA challenged the amendment on the grounds that it was incompatible with that Directive. It argued that the amendment failed to have sufficient regard to the welfare implications for birds and the availability of alternative methods of slaughter in the event of an outbreak of avian influenza, that its practical implementation was uncertain and that it was disproportionate. The Secretary of State denied that the amendment was unlawful and contended that a provision had been made for ventilation shutdown to be used only as a last resort where other permitted methods of slaughter might be insufficient.

The Administrative Court held that that while the provisions of the Directive were aimed at rapid transition to death and the prohibition of avoidable pain and suffering, this did not guarantee an absence of all discomfort where the method, by its nature and the fact that it was a last resort, might not be able to achieve that, despite professional care, nor was there a requirement that death would always ensue from unconsciousness. The amendment was not incompatible with the Directive.

In considering proportionality, the Court held that given that the objective of the amendment was

³⁶ [2008] EWHC 2321 (Admin.).

³⁷ Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing, OJ L 340, 31.12.1993, p. 21.

the protection of public health and safety and the fact that it was a provision of last resort, it was not disproportionate.

Finally, the Court rejected the argument that the amendment was not sufficiently certain; it was not possible to prescribe all the circumstances where the method might be used.

LEGISLATION

The *Dog Control Bill*, which purports to make provision for the control of dogs and their welfare, received its first reading in the House of Lords on 12 December 2008.

The *Trading of Primates as Pets (Prohibition) Bill*, initially introduced as a Private Member’s Bill, was dropped at its second reading in the 2007-2008 session. The Bill aimed to prohibit the breeding, selling, purchasing and keeping of primates as pets in the United Kingdom.

The *Cat and Dog Fur (Control of Import and Export and Placing on the Market) Regulations 2008*³⁸ were introduced to provide a criminal sanction for breach of Regulation (EC) No 1523/2007³⁹, which banned the commercial import, export and sale of cat and dog fur following animal welfare concerns in certain third countries. The Regulation gave Member States until 31 December 2008 to provide an effective penalty for breach thereof.

In the UK the Customs and Excise Management Act 1979 provides a penalty of seven years imprisonment for deliberate breach of an enactment which prohibits imports into or exports from the UK. This legislation does not however cover unintentional breaches of the customs prohibition or deliberate or unintentional breaches on the prohibition on sale. The 2008 Regulations introduce a criminal sanction with a maximum penalty of £75,000 fine. There are also powers of investigation, seizure and forfeiture of goods to trading standards bodies.

³⁸ SI 2008/2795.

³⁹ Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur, OJ L 143, 27.12.2007, p. 1.

*The Dangerous Wild Animals Act 1976 (Modification) (Scotland) Order 2008*⁴⁰ was made in exercise of powers under section 8(1) of the Dangerous Wild Animals Act 1976. The 1976 Act aims to regulate the keeping of certain dangerous wild animals⁴¹ listed in a Schedule. Section 8(1) of the Act permits the relevant Minister to add animals from the Schedule which pose a threat to public safety or conversely to remove those animals from the Schedule which no longer pose such a threat.

The Order substitutes a new Schedule to the Act, removing a large number of animals previously listed and adding others.

*The Wildlife and Countryside Act 1981 (Variation of Schedule 4) (England) Order 2008*⁴² and the *Wildlife and Countryside Act 1981 (Registration and Ringing of Certain Captive Birds) (Amendment) Regulations 2008*⁴³

The Order and Regulations apply in England only and implement amendments to Schedule 4 to the Wildlife and Countryside Act 1981. The Order reduces the number of species that, if kept in captivity, have to be registered with the relevant Secretary of State and ringed or marked in accordance with section 7 of the 1981 Act. The Regulations amend earlier regulations by providing that for peregrine falcon and merlin, where there is appropriate certification under regulations which implement the Convention on the International Trade in Endangered Species (CITES), such listing is sufficient. Similarly, birds marked in accordance with those (CITES implementing) regulations will be considered marked for the purpose of the Regulations.

CONSULTATION PROCEDURES

A consultation procedure on codes of practice for the welfare of cats, dogs and equines respectively, by the Department of Environment, Food and Rural Affairs (DEFRA) was closed on 31 December 2008. The three proposed codes of practice aim to help pet owners understand their duties under the

Animal Welfare Act 2006 and will offer practical advice on pet ownership. Whilst there would not necessarily be a sanction for failure to comply with a code of practice, any such failure could be referred to in a prosecution for cruelty offences under the Act.

DEFRA has launched a consultation on the draft *Welfare of Farmed Animals and Mutilations (Permitted Procedures) (England) (Amendment) Regulations 2009*, including a revised meat chicken welfare code. These regulations implement Council Directive 2007/43/EC.⁴⁴ It has also launched a consultation on a proposed EC regulation on slaughter and killing. This will replace Council Directive 93/119/EEC.⁴⁵ The deadline for responses for both consultations is 20 April 2009.

REPORTS

Farm Animal Welfare Council report on tail-docking and castration of lambs

In June 2008 the Farm Animal Welfare Council (FAWC) published a report considering the implications of castration and tail-docking for the welfare of lambs. The report acknowledges that the potential for suffering is considerable given the scale of the castration and tail-docking, which runs into several millions. Concern was raised about these practices in the FAWC's 1994 Report on the Welfare of Sheep, but the FAWC considered that there was insufficient scientific evidence available at the time to resolve the matter. Following research on the behavioural and physiological responses of lambs to castration and tail-docking the FAWC reports that scientifically-based advice can now be given that will minimise the suffering from these procedures and/or reduce the number of such procedures performed.⁴⁶

APGAW report on dangerous dogs

In May 2008 the Associate Parliamentary Group for Animal Welfare (APGAW) produced a short

⁴⁰ SSI 2008/302.

⁴¹ By section 5, the Act does not apply to dangerous wild animals kept in a zoo, circus, pet shop or registered scientific establishment, as such premises are covered by specific legislation.

⁴² SI 2008/431.

⁴³ SI 2008/2357.

⁴⁴ Council Directive 2007/43/EC of 28 June 2007 laying down rules for the protection of chickens kept for meat production, OJ L 182, 12.7.2007, p. 19.

⁴⁵ Council Directive 93/19/EEC of 22 December 1993 on the protection of animals at the time of slaughter and killing, OJ L 340, 31.12.1993, p. 21.

⁴⁶ The report can be obtained at www.fawc.org.uk/pdf/report-080630.pdf.

report⁴⁷ on the issues surrounding dangerous dogs and the relevant legislation. With statistical data showing a record 4,000 cases of dog-bite wounds treated by doctors in the last year and a dramatic increase in the number of fighting dogs and dog-related anti-social behaviour, the main piece of UK legislation intended to address this problem, the Dangerous Dogs Act 1991, is clearly not achieving its aim. The report acknowledges the failure of the the 1991 Act and notes the negative welfare implications for dogs that are subjected to its provisions, regardless of whether they are a real threat. APGAW then turns to relevant member organisations for recommendations for reducing aggressive dog incidents and improving the welfare of the affected animals.

Many animal welfare organisations, including Battersea Dogs & Cats Home, the Blue Cross, the Dogs Trust, the Kennel Club and the RSPCA, have been looking at this issue for a number of years. They recommend preventative measures through early intervention, such as responsible dog ownership education programmes to encourage neutering, microchipping and dog training. Enforcement action similar to that provided for by the “improvement notices” under the Animal Welfare Act 2006 would also provide an early intervention mechanism.

The organisations generally believe that the current legislation should be consolidated and updated, with a new focus on the “deed not the breed” principle. The spectrum of offences should take into account different circumstances, such as an aggravating element where a dog is encouraged to attack another person or animal, and a corresponding defence where the dog is provoked. Penalties should be flexible and include exploring mandatory muzzling, re-homing and compulsory training.

Meanwhile, debate continues over whether the Index of Exempted Dogs should be reopened to allow owner-led applications alongside concerns about effective enforcement and its demands on the courts and the police.

The report concludes with a brief statement from each political party, all of whom agreed that there is need for reform of the current dangerous dogs legislation.

⁴⁷ “Dangerous dogs: an APGAW mini-report”, see www.apgaw.org.uk/reports.asp.

Can a chimpanzee be a legal person?

Joeli Norman

Law student, Northumbria University

This is an edited version of the winning entry of an Animal Law Centre⁴⁸ essay competition. The question concerned a fictional scenario involving the Island of Joata which houses a sanctuary for chimpanzees. A company called Chimera Developments operated an animal research unit on the island and one of their chimps, named Winston, escaped. Winston was discovered by the sanctuary staff but he had been attacked and was injured. The sanctuary discovered that Winston was being used in military research. Winston was eventually taken back to the research unit against the wishes of the sanctuary. A legal team was assembled to try to secure Winston’s return to the sanctuary. The students were asked to submit arguments for granting an order of habeas corpus in respect of Winston which could be used by the legal team.

A habeas corpus writ essentially requires a legal person detained by the authorities to be brought before a court so that the legality of the detention may be examined. It does not determine guilt or innocence, merely whether the “person” is legally imprisoned. The Habeas Corpus Act 1679 guaranteed this right in law. For the purposes of bringing a claim for habeas corpus on behalf of the chimpanzee, Winston, it must first be established that he is a legal person.

Establishing that Winston is a legal person is vastly different to saying that he is a human being and so entitled to all human rights. It is important to establish Winston as a legal person because this would provide him with basic human rights, including the right to have a habeas corpus writ brought on his behalf. There is no direct case law on this point in England and Wales, but international cases will be considered.

One of the earliest cases concerning treating an animal as a legal person occurred in 1977, when an American judge had to decide whether or not a dolphin was a legal person. Dolphins are similar to chimpanzees in that they are both intelligent animals. However, it was held by Judge Doi that the dolphin could not be classified as a legal person and it was

⁴⁸ www.animallawcentre.org.uk.