

challenged, because it will be always be virtually impossible to show that the Home Secretary, a layman, acted unreasonably in accepting the advice of his expert inspectors.

Secondly, even in relation to the requirement for immediate euthanasia, Parliament could not have envisaged that each animal would be under constant supervision (a contention not made by the BUAV). Thirdly, that there had been an unreasonable delay in bringing proceedings. To a significant extent the issues related to historical facts (some of which might be in dispute) and also to expert assessment. It might not be easy to apply a finding to different facts and finally, the cost and time involved in a full hearing, given the fact that expert evidence would be involved, were relevant factors.

Ground 3 (death as an adverse effect): the judge accepted that this claim was arguable and granted permission for it to proceed.

Ground 4 (training and testing), Stanley Burnton J. referred to *Notes on shaping animals*, a Cambridge document, indicating that an animal might become miserable or angry when subjected to testing of the sort contemplated and that symptoms included "screaming, trying to get out of the box, defecating". To the inexpert mind, he accepted that such symptoms were indications of "distress" within Section 2(1) of the 1986 Act (only procedures which may cause "pain, suffering, distress or lasting harm" need to be licensed). However, he again said the legal test was whether the Home Secretary was reasonable in accepting the advice of the CI that no distress was foreseeable. In addition, there had again been delay. Finally, the facts were peculiar to these research projects.

Ground 5: the judge accepted that it was arguable that the Home Secretary should have consulted the APC, on the basis that the guidance in questions amended a code of practice. He therefore granted permission to proceed with the claim.

Ground 6 (stock animals): the judge did not consider it arguable that the suffering and death of stock animals should be taken into account in the cost:benefit assessment. Their interests were protected under the provisions dealing with housing and care.

The grounds on which permission was granted will be considered at a full hearing. The BUAV is seeking permission to appeal the judge's decision on grounds 1 and 2.

UK CASE LAW

Nash v Birmingham Crown Court [2005] EWHC 38 (Admin)

This case concerned prosecution under the Protection of Animals Act 1911. Nash was convicted of causing unnecessary suffering to domestic cats by unreasonably omitting to provide them with proper care and attention contrary to Section 1(1)(a) of the said Act. The conviction was upheld by the Crown Court. It held that the information contained within the summons provided the appellant with reasonable information about the nature of the charges. It also held that even if the summons lacked particularity that did not render it defective, but gave a right to require further information about the nature of the charges. On appeal, the High Court held that the information

contained within the summons did not provide sufficient information about the nature of the charges and that the appellant was entitled to know what specific act or omission she was charged with. This did not render the summons defective, but required further information curing the defect be given in good time, and the appellant had indeed been provided with sufficient further information to enable the charges to be understood. The appeal was therefore dismissed.

Worcestershire County Council v Tongue and others [2004] EWCA Civ 140

The defendants were farmers who had been convicted of causing unnecessary suffering to part of their herd of cattle contrary to Section 1(1)(a) of the Protection of Animals Act 1911 and made subject to a disqualification order, preventing them from having custody of animals for the rest of their lives. The claimant authority sought an injunction for the removal of cattle from their custody on the grounds that they were in breach of the disqualification order. It submitted that the civil courts had jurisdiction to grant this relief by virtue of Section 222(1) of the Local Government Act 1972, under which it had the right to seek the assistance of the said courts in carrying out its functions under legislation.

It was held at first instance that although cattle were being kept in breach of the disqualification order, the fact that they were suffering and the desirability of their removal from the defendant's ownership did not give the court jurisdiction to make the order sought as the cattle were on the defendant's land and were his property. While a civil court had jurisdiction to grant relief in the form of a prohibitory injunction to restrain a person from

infringing a statute where the local authority had the power to enforce that statute through the criminal courts, it did not have jurisdiction as a matter of principle to order the cattle to be taken into possession of a third party in the absence of the Council having some right in respect of the cattle.

The local authority appealed against the decision. It argued that it was responsible for maintaining the welfare of animals in the region and was entitled to remove the animals as they were still being kept in breach of the disqualification orders. The appeal was dismissed and the Court of Appeal held that the Order sought went beyond the powers of the courts under the Protection of Animals (Amendment) Act 2000.

LEGISLATION

The Incidental Catches of Cetaceans in Fisheries (England) Order 2005

The Order makes provision for the enforcement of Community obligations relating to sea fishing by vessels in certain areas as set out in Council Regulation (EC) No 812/2004,⁴ requiring Member States to monitor the by catch of cetaceans by the implementation of an observer scheme and requiring certain vessels to deploy acoustic devices in relation to specified gear while fishing. The Order came into force on 2 February 2005 and does not form part of the law of Scotland or Northern Ireland and does not apply in Wales.

⁴ Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98, OJ L 150, 30.4.2004, p. 12.