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.

and reptiles at such fairs, it is improbable to deny that at least some of the animals being offered for sale will have been caught in the wild or will at least have recently mixed with wild-caught animals. Indeed, such events would appear to be an ideal outlet for the disposal of animals by black market dealers or persons involved in various forms of wildlife crime. The Animal Aid report[7] recorded that, of a sample of five birds which were purchased at the event and tested for *Chlamydia psitacci* (psittacosis), one (a Senegal parrot) had the infection, which can be transmitted to humans. The avian flu outbreak in Asia, and the continuing spread of the virus around the world, would appear to highlight the dangers inherent in bird-human interaction in large-scale market-type situations.[8] Reptile fairs also present significant public health risks, particularly in view of the absence of quarantine requirements for imported cold-blooded animals and the documented cases of fatal infection of humans with salmonella through contact with pet reptiles. Indeed, the occurrence of two infant deaths in the UK within six months as a result of salmonella infections from reptiles prompted the Department of Health to re-issue a warning in 2000 that children under five years of age, pregnant women, the elderly, and the immuno-compromised should all avoid contact with reptiles.

What, then, is the legal position with regard to these events? Do they fall within the prohibition, in Section 2 of the 1951 Act, of selling animals from market stalls and in public places? And if they do not, then do they require a "pet shop licence" from the local authority in order to avoid the commission of criminal offences contrary to Section 1 of that Act, which prohibits the keeping of a pet shop except under the authority of such a licence? Campaigners against such events have faced considerable frustration at the variety of views of the law adopted by different local authorities, who bear the responsibility for granting licences and prosecuting offences under the 1951 Act. While most local authorities have accepted the campaigners' arguments that these events fall within the Section 2 prohibition, some have licensed them under Section 1, while yet another group of local authorities regard these events as outside the scope of the 1951 Act altogether so they are left unregulated.

The Section 2 prohibition on selling animals in public places and from market stalls

What exactly is a "public place" for the purposes of the 1951 Act? The phrase is not defined in the Act itself, but has generally been defined in other regulatory legislation as "[a]ny place to which the public have access whether on payment or otherwise".[9] Such a definition would appear to be capable of embracing leisure centres, racecourses, school playing fields, agricultural showgrounds and other places where pet fairs typically take place. The difficulty with giving such a broad scope to the phrase, however, is the need to exclude conventional pet shops, which it plainly cannot have been the intention of the legislature to prohibit.

Further confusion has been caused by the organisers of pet fairs who have sought to portray their events as being open to "members only", essentially as a device to circumvent rulings by some local authorities that pet fairs that are open to the public, whether on payment of an admission fee or otherwise, are properly regarded as being held in public places and thus as falling within the Section 2 prohibition. Often the "memberships" sold are a thinly disguised

[7] Ibid.

[8] The death of an imported parrot in an Essex quarantine facility from the H5N1 strain of avian flu (the lethal strain which can be passed on to humans) in October 2005 led to a temporary EU ban on the selling of birds at pet fairs. The ban is due to expire on 31 December 2005.

[9] Licensing Act 1902. Other examples of the use of the same or a similar definition are: Indecent Displays (Control) Act 1981; Environmental Protection Act 1990, Part VIII, Section 149(11); Dangerous Dogs Act 1991, Section 10(2).

sham, with "membership cards" being provided on payment of what is in truth no more than a nominal admission fee payable at the door.

Whether or not a pet fair is held in a public place, however, it will still fall within the Section 2 prohibition if it involves the selling of animals as pets from market stalls. The usual common law definition of a "market" is "a concourse of buyers and sellers". It seems likely that the selling of animals from a stall at an event which consisted of a number of different independently-run stalls gathered together in an open-plan setting would come within that definition, whether the event was held indoors or outdoors, and whether it took place regularly or occasionally.

Until this issue is resolved by the higher courts, however, confusion will continue to reign as to whether or not pet fairs do involve the commission of criminal offences contrary to Section 2.[10]

Assuming the events do not involve violations of Section 2, is a pet shop licence required under Section 1?

Section 1 of the 1951 Act makes it an offence to "keep a pet shop except under the authority of a licence granted in accordance with the provisions of [the] Act". The definition of a "pet shop" is provided in Section 7(1):
"References in this Act to the keeping of a pet shop shall, subject to the following provisions … be construed as references to *the carrying on at premises of any nature (including a private dwelling) of a business of selling animals as pets*, and as including references to the keeping of animals in any such premises as aforesaid with a view to their being sold in the course of such a business, whether by the keeper thereof or by any other person." (emphasis added)

Thus, it is not only conventional "high street" pet shops that are required to be licensed.[11] Accordingly, it would seem that, even if pet fairs do not involve the commission of criminal offences under Section 2, such offences would nevertheless be committed under Section 1 by any person "carrying on … a business of selling animals as pets" who was not doing so under the authority of a valid licence.

A question therefore arises as to the party who must apply for, and be issued with, a valid licence in order to "keep a pet shop" at the event (i.e. carry on a business of selling animals as pets). Section 1(2) of the 1951 Act appears to provide a simple answer:

[10] Section 2 has been the subject of a number of decisions in the magistrates' courts (see, e.g., *Rogers* v *Teignbridge District Council* (Torbay Magistrates' Court, 7 November 2000); *Rapa Limited* v *Trafford Borough Council* (Trafford Metropolitan Magistrates' Court, 18 June 2002); also the Scottish case *White* v *Kilmarnock and Louden District Council* 1991 SLT (Sh. Ct.) 69). However, Section 2 has not yet been the subject of a decision by the High Court or the Court of Appeal, and thus no binding authority exists.

[11] In *Chalmers* v *Diwell* (1975) 74 LGR 173, it was held that a premises where birds were held prior to export to overseas purchasers required a pet shop licence. The premises were effectively no more than a holding center: birds usually stayed on the premises for less than 48 hours, though they had occasionally remained on the premises for up to 12 days. Nevertheless, the defendant was held to have been keeping a pet shop. Giving judgment for the Court, Lawton J. attached no weight to the fact that purchasers did not visit the defendant's premises. It was sufficient that the defendant was: "in fact carrying on a business of selling animals [as] pets. He [was] in fact keeping those pets on the premises for the purposes of his business, even though it [was] for a limited time." The defendant appears to have supplied the birds directly to the final purchaser (i.e. the party who would keep the bird as a pet). It therefore remains unclear whether all premises that hold animals that are in the pet trade supply chain require a licence, or whether the requirement only applies to premises from which a business is carried on of supplying animals as pets to the final consumer (i.e. the pet owner).

"Every local authority may, *on application being made to them for that purpose by a person who is not for the time being disqualified from keeping a pet shop*, and on payment of such fee . . . as may be determined by the local authority, *grant a licence to that person to keep a pet shop* at such premises in their area as may be specified in the application and subject to compliance with such conditions as may be specified in the licence." (emphasis added)

Thus, the legislation appears to envisage pet shop licence applications being made only by the intending keepers of pet shops, i.e. the legal or natural persons intending to carry on a business of selling animals as pets (but not by persons employed within someone else's pet selling business). If that is correct, then it would appear to follow that every trader intending to sell animals as pets at a pet fair must apply for, and obtain, a valid licence from the local authority. It would not be open to local authorities to grant (as a small number have) an "umbrella" pet shop licence *to the organiser* of a pet fair under which all persons selling animals as pets at that event could shelter. The organiser of a pet fair is not, after all, the keeper of a pet shop at all since it is not the organiser who is carrying on a business of selling animals as pets. Rather, the organiser is carrying on a business of "renting out" stalls from which other parties (the independent traders) carry on their quite independent businesses of selling animals as pets.

Once again, however, we cannot be sure that this analysis represents the law until the point has been decided by a court of precedent.

Clarifying the law: the Animal Welfare Bill

The draft Animal Welfare Bill which was published by the Department for the Environment, Food and Rural Affairs (DEFRA) in July 2004 included powers for the Secretary of State to repeal the 1951 Act in its entirety and put in its place delegated legislation regulating the selling of pet animals. It was made clear at the time by DEFRA that they were minded to resolve the confusion over the legality of pet fairs by making express provision for such fairs to be licensed and repealing Section 2 of the 1951 Act – a change which would have been likely to lead to an increase in the number of such fairs, which would then have been unarguably legal. DEFRA sought to portray the proposed change as a pro-animal welfare move bringing pet fairs within the licensing control of local authorities for the first time. Accordingly, the question posed by DEFRA in its consultation documents was whether pet fairs *should be regulated*, and not, as anti-pet fair campaigners would have preferred, whether pet fairs *should be legalised.*

The draft Bill was considered by the Commons Environment, Food and Rural Affairs Committee in the 2004-5 Parliamentary session.[12] The Committee criticised DEFRA's consultation exercise in relation to the regulation/legalisation of pet fairs, recommending that DEFRA consult again, this time asking interested parties whether the confusion over the law should be resolved by expressly legalising pet fairs or banning them altogether.

The Animal Welfare Bill which is now making its way through Parliament does not provide a power for the Secretary of State to repeal Section 2 of the 1951 Act, since only Section 1(1) of that Act can be repealed in consequence of the making of delegated legislation. It is unclear whether that change was the result of a happy drafting error or a genuine change of heart by DEFRA. Curiously, the Regulatory Impact Assessment accompanying the Bill continues to state that pet fairs will be regulated (rather than prohibited). DEFRA's present position on the pet fairs issue is therefore unclear, and the Bill (as currently drafted) will do nothing whatsoever to resolve the confusion over the legality of pet fairs (which was, after all, DEFRA's original justification for its

[12] HC 52-1, December 2004.

intention to introduce regulation of such events). It thus seems that the legality of pet fairs will ultimately be decided by the courts, rather than the legislators we elect to make policy choices on the nation's behalf. What is needed is for the Bill to be amended to, in turn, amend Section 2 of the 1951 Act to make it clear that all commercial selling of animals as pets by more than one independent trader at a temporary event falls squarely within the Section 2 prohibition.

The Hunting Act: human rights and EC law challenges

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Introduction

On 29 July, the Divisional Court gave its judgment in the latest challenge to the validity of the Hunting Act 2004 (the "Act").[13] There were two main challenges, the first, led by the Countryside Alliance with a number of individual claimants, based on human rights arguments, and the second on European Community (EC) law. The Government was the defendant in each case.[14] The RSPCA was given permission to intervene to oppose the challenges.

The Act prohibits the hunting, or assisting the hunting of, wild mammals with dogs, unless one of the many exemptions in Schedule 1 applies. The exemptions relate to particular activities (such as stalking a wild mammal, or flushing it out of cover, in certain circumstances) or to species (rabbits and rats are not protected). Hare coursing is also banned. In this article, "hunting" refers to hunting with dogs.

The human rights arguments: engagement of, and interference with, articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms

There were ten individual claimants, including a huntsman with stag hounds, a professional terrierman, the owner of a livery yard business, a farrier, hare coursing greyhound trainers, a landowner who allowed hunting over his land, the master of a beagle pack and a person who claimed his social and family life revolved around hunting. They argued that the Act breached their rights under one or more of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"), including in particular Article 8 (right to respect for private life and the home), Article 11 (freedom of assembly and association), Article 1 of the First Protocol ("1P1") (right to possessions) and Article 14 (prohibition on discrimination).

In each case, the Court had first to decide whether the Article could in principle apply to the subject matter of the Act. If so, the question was whether there was a *prima facie* breach and, if so, whether the Government could nevertheless justify it. Since the justification arguments applied equally to the EC claim, the Court dealt with them together (see below).

Article 8 ECHR: engagement and interference

The Court said that, at best, the right to respect for private life could only be engaged for those for whom hunting was central to their lives. Two claimants who came reasonably close on the facts were the livery yard owner and the terrierman. However, the Court decided against even these claimants. The nature of the "intrusion into personal integrity and inter-personal development" caused by the hunting ban was qualitatively different from that

[13] *The Countryside Alliance and others; Derwin and others; Friend and Thomas* v *HM Attorney-General and the Secretary of State for the Environment, Food and Rural Affairs, RSPCA intervening* [2005] EWHC 1677.
[14] In the form of the Attorney-General and the Secretary of State for Food, the Environment and Rural Affairs.