Nina Lowney

Subject: FW: Select Committee on the petition for redress of Roseleen Harrison - DEFA submission

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From: Skinner, Janice [mailto:Janice.Skinner@gov.im]
Sent: 14 January 2015 14:21
To: Lambden, Marie
Cc: Thomas, Chris (MHK); Lole, Richard; Jaques, Stuart
Subject: Select Committee on the petition for redress of Roseleen Harrison - DEFA submission

Good Afternoon Marie

As discussed yesterday, here is the letter and associated attachments forming the response to the Select Committee on the petition for redress from Roseleen Harrison concerning animal welfare.

There is a great deal of documentation which is listed in the letter and I have attached them in the order they are listed in that letter as follows:

1. Letter to Select Committee
2. Department detailed proposals for Animal Welfare Bill
3. UK Animal Welfare act annotated with recommendations indicated and provisions already in place in IOM identified
4. Report on an independent review into the prosecution activity of the RSPCA
5. Response to report by RSPCA
6. Report on Companion Animal Welfare establishments in the UK
7. Report on the rescuing and re-homing of companion animals
8. Veterinary Surgeons Act 2005
9. Cruelty to Animals Act 1997
10. Welfare of Farmed Animals Order 2002 (consolidated)
11. Riding Establishments (Inspection) Act 1968
12. Animal Boarding Establishments (Isle of Man) Act 1973
13. Document concerning changes to pet movements in the EU
14. Various correspondence regarding animal welfare – recent
15. Report by Chief Veterinary Officer on Bulgham goats
16. House of Keys Hansard extract 26.11.13 (puppy farms)
17. Report on Canadian accident concerning ducklings

If you require any additional information or documentation then myself of Stuart Jaques, Chief Veterinary Officer (686096) are the relevant contacts in the Department.

Kind Regards

Janice

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Mrs E M Lambden
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16th January 2015

Dear Mrs Lambden,

Select Committee considering petition for redress from Roseleen Harrison concerning animal welfare

I am pleased to submit information to the Tynwald appointed Select Committee, which is to consider and to report to Tynwald on the Petition for Redress of Roseleen Harrison presented at St John's on 7th July 2014 in relation to animal welfare.

Summary of the Department's position regarding Animal Welfare legislation:

The Department believes that it should introduce an Animal Welfare Bill and the proposed Bill has been on the Department's legislative programme since August 2012.

Farmed Animals are currently protected under the Welfare of Farmed Animals Order 2002 as amended. Therefore, the primary legislative gap is that of a lack of provision for the welfare of animals that are not farmed, often know as companion animals (such as horses, donkeys, dogs, cats and any other kept or caged animal).

The Department sees an initial consultation via a proposed Forum, which is intended to ultimately become a 'Manx Welfare Advisory Body', to be a desirable vehicle for discussions. It is envisaged that this Forum could be established, and the content of a draft Bill agreed, ready to take to public consultation and submit into the Branches during the 2016/17 legislative year.

The Department believes that the Animal Welfare Act 2006 (UK) is a suitable reference for an initial draft. A copy of the UK Act is provided that identifies the areas already legislated in the island (CA for Cruelty to Animals Act 1997 etc.) and further identifies the recommended parts of the UK Act that should form part of our new Animal Welfare Bill (R1 R2 etc). These recommended parts are cross referenced in the main position document.

There are no substantive parts of the UK Act that are viewed as undesirable and there are two items that are considered as potential additions:

- Controls on feral animals (R11)
- Explicit provision for regulations for animal sanctuaries (R3)

There is another issue that merits further careful thought:

- Possible authorisation of individual third parties as warranted officers under specific sections of the Act for enforcement purposes. It will be seen from the supporting documentation that the RSPCA do not have powers under the UK 2006 Act but rely on a separate provision contained in the UK Prosecution of Offences Act 1985. There is no similar provision in Manx statute.

A paper containing initial detailed proposals for the content of the Bill is attached.

As stated above, it is our intention to bring the proposed Bill into the Branches during the 2016/17 legislative year and we are currently working towards this timescale.

The Department believes the above timetable is achievable. The UK experiences (independent reports supplied), indicate that there are significant issues we need to understand and adapt for our island situation. Such an important, complex and in some parts contentious Bill merits full consideration and open discussion with stakeholders; in order to ensure the final proposal is fit for purpose now and for many years to come.

Current Situation

At the Policy and Strategy meeting of 22 September 2014 the Department decided that an Animal Welfare Bill would not be delivered during the current administration, though should be a priority for the next administration and delivered for the 2016/17 legislative programme.

The minute reads:

"Animal Welfare

It was noted that the proposed Bill would concern the control of animal welfare beyond livestock which was currently in place. Whilst the Cruelty to Animals Act allowed for action against perpetrators of cruelty towards animals (unnecessary pain and suffering), there was no provisions that governed the general welfare of animals (unnecessary pain and distress) and that is what the Bill intends to address. It was further noted that this is a political issue and could be quite an emotive subject. SJ had no evidence to suggest animal welfare issues were more numerous or serious than in the UK, but such circumstances do not dissuade individuals from vociferous campaigning. It was agreed that this Bill would not be part of the Department's legislative priorities for this parliament."

The subject was further discussed on 14th November 2014

The minute reads:

"(b) Animal Welfare Bill

It was noted that a motion being heard by Tynwald next week to convene a Committee to consider a Petition for Redress may lead to the issue of an Animal Welfare Bill being re-addressed. The Animal Welfare Bill is currently scheduled for the 2016-17 legislative year. It was noted that, although the petition seeks to introduce legislation equivalent to the UK Animal Welfare Act, this would not address the petitioner's main priority which seems to be the trade in pets. There is already sufficient legislation to regulate animal cruelty, scientific procedures, the breeding of dogs and to ensure the welfare of farm animals. Although the Department would agree with the concept of this legislation the import of puppies would not be covered by it as it is a trade issue."

Expected limits to the scope of a Welfare Bill

The petition and other communications from related individuals demonstrate further concerns for:

- The importing of puppies bred in puppy farms
- The importing of furs
- New Road Traffic offences for collisions with animals.

The importation of both dogs and furs are viewed under EU legislation as traded goods. While the conditions of transportation would be a welfare issue, the type or source of any dog/puppy cannot be used as a means to prevent trade. However, owing to widespread concern in Europe over the increased trade in puppies across international boundaries, the rules that apply to the movement of dogs, cats and ferrets ("PETS") have recently been tightened to address such concerns (see additional documents).

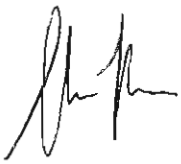
There are no known puppy farms in the Island. If one were identified in future, it would be subject to inspection and control under the Breeding of Dogs and Cats Act 1981, which in any event, would not permit what, would normally be described as a "puppy farm".

It has been suggested we criminalise the running over of cats and dogs. Whilst such incidents are very distressing, they are usually accidents and we would make the following observations:

- Firstly, we understand this is a road traffic issue and not part of an Animal Welfare Act;
- secondly, any deliberate act to kill or injure an animal in a way which causes unnecessary suffering is already likely to be an offence under the Cruelty to Animals Act, and
- thirdly, criminalising such accidents could increase the risk of people taking extreme measures to avoid running over animals, which perversely could result in more people being injured instead.

This letter is intended to provide an overview of the Department's position on an Animal Welfare Bill. We are grateful for the invitation to provide further relevant information, which accompanies this letter and look forward to discussing the contents and any further questions with the Committee in the near future.

Yours sincerely,



Chris Thomas, MHK
Member for Department of Environment, Food and Agriculture

List of documents attached

1) DEFA paper, which lists and details recommendations.

2) Copy of UK Animal Welfare Act 2006 with annotations.

3) Independent review of Prosecution Activity of RSPCA 2014 (and RSPCA response)
   a. Identifies that the enforcement of UK Welfare legislation suffers from a lack of structure and cohesiveness (unlike IOM where DEFA and Police have/will have powers)
   b. Identifies the potential conflict of interest between RSPCA policy and public policy on welfare enforcement
   c. Identifies the RSPCA has no powers of enforcement (need to be accompanied by Police and use "private prosecution" to bring cases)
   d. Identifies the need for an arms-length Prosecution Department for the charity

   It is suggested that a small animal welfare society on the Island would not have sufficient resources to create an enforcement arm; neither is there provision for private prosecutions in Isle of Man statute. Conversely the Department, in conjunction with the Police would have sufficient combined and coordinated resource.

4) Companion Animal Welfare Council (CAWC) report on Companion Animal Welfare Establishments 2004
   a. Conclusion 2. *It follows that however well motivated a person or organisation may be, and no matter how restricted their resources, neither a well-placed intention to help animals nor a shortage of funds can ever justify an inadequate standard of welfare. The Council strongly refutes any suggestion that motivation can provide an excuse for compromising animal welfare.*
   b. Conclusion 5 iii. *In the view of the Council, arranging euthanasia as a means of preventing further suffering may be a legitimate function of a companion animal welfare establishment. In our judgement, by accepting responsibility for displaced companion animals, an establishment should not have imposed upon it a responsibility to provide for the lifetime needs of any animal.*

   The issue of animal welfare in Companion Animal Welfare establishments is a significant one that is comprehensively explored in the CAWC report. It cannot be acceptable to rescue an animal, yet subsequently use the compassionate act of rescuing as a justification for long term poor care.

5) CAWC report: Rescue and Re-homing of Companion Animals 2011
   a. Recommendation 1: Not all animals are suitable for re-homing. The objective should be to ensure that decisions whether or not to re-home are based on sound evidence and judgement.

   In recognising that not all animals are suitable to be re-homed, CAWC further identifies and discusses the need for organisations to have a euthanasia policy founded on sound ethical grounds.

   Both CAWC reports contain a wealth of useful information.

6) Further related legislation:
   a. Veterinary Surgeons Act 2005
   b. Cruelty to Animals Act 1997
   c. Welfare of Farmed Animals Order 2002 (consolidated for ease of access)
   d. The Riding Establishments (Inspection) Act 1968 - 86
   e. The Breeding of Dogs and Cats Act 1981
   f. The Animal Boarding Establishments (Isle of Man) Act 1973

7) Other:
   a. Changes to EU PETS regime
   b. Various recent letters to MHKs
   c. CVO base draft on the Bulgham goats
   d. House of Keys Hansard 26.11.13
   e. Report from Independent (UK) on the imprisonment of an individual in Canada as a direct consequence of assisting ducklings at the roadside, which resulted in the deaths of two people.

Department of Environment Food and Agriculture

SUBJECT : **Animal Welfare Bill: Detailed Proposals**

1. This paper gives further detail on the recommendations for an Animal Welfare Bill, the areas of welfare that may be considered in future, and the potential composition of a Forum to consider the content of the proposed Bill. It is hoped that this proposed Forum will develop into a 'Manx Welfare Advisory Body' (statutory) with a remit to consider future regulations, codes and other legislative needs from time to time concerning animal welfare matters.

Current situation

2. The Department has powers to prevent "unnecessary pain and distress" to livestock on agricultural land under the Animal Health Act 1996 Part III (AHA 1996). The Department may make orders under this Part for the protection of livestock; it may also issue codes of recommendations.

Meaning of "livestock" under AHA 1996
'livestock' means any species kept for the production of food, wool, skin or fur or for use in the farming of land or for such other purposes as the Department may by order specify and includes horses;

Primary issue

3. The current powers to protect the welfare of animals do not apply to any animal outside of agricultural land. The primary "legislative gap" to be filled is the extension of the current controls upon farmed animals on agricultural land to all vertebrate animals.

[N.B. There is no intention to change the controls on farmed animals, beyond the explicit placing into law of "the five freedoms" (Appendix 1). Currently, the five freedoms sit in the welfare codes, yet they have implicitly informed the basis of all welfare decisions for the last twenty years i.e. no change to current views on either interpretation, or enforcement, for farmed animals.]

List of Current Recommendations

4. The proposal is to legislate for the following purposes:

4.1 Extension of protection of animal welfare to all vertebrates, and any other animals by order (perhaps octopus)
4.2 Responsibility for animals to fall onto the controlling individual, (includes on a temporary basis)
4.3 Provide controls for pet shops/sanctuaries
4.4 Prevent the sale/transfer/prize gifting of animals to those under 16
4.5 Identify those over 16 as being responsible for their children's pets.
4.6 Enhance the controls of animal (especially dog) fighting - an update for Cruelty to Animals Act 1997: taking photographs, making videos, being present, publicising and other peripheral issues

4.7 Provide powers for regulations to:
   a. Promote the welfare of animals and their progeny
   b. Imposing specific requirements for the needs of animals
   c. Provide welfare advisory body

4.8 Licensing and registration of certain animal activities – provides for the gradual repeal of boarding, breeding, riding establishment acts as they are replaced by appropriate provisions

4.9 Production of welfare codes for animals beyond livestock (codes currently apply to farm animals only) and associated facilities to include:
   a. Game birds
   b. Primates
   c. Circuses
   d. Pet fairs

4.10 Relevant powers of entry/inspection/improvement notices for all purposes

4.11 Powers to control feral populations of domesticated species

4.12 Provision to charge relevant fees for functions under the Act

4.13 It should be noted the UK Animal Welfare Act 2006 includes large sections on cruelty and scientific procedures; these are controlled in the Island under the Cruelty to Animals Act 1997 that contains substantially similar provisions.

DETAIL

Extension of protection of animal welfare to all vertebrates, and any other animals by order

5. This is the key provision that will provide for the protection of all domesticated and captive animal's welfare. A duty would be laid upon the *controlling individual* to ensure an animal's welfare. Clearly, truly wild creatures do not have an owner or keeper and a responsible individual cannot be identified in order to improve their welfare; however, there may be specific issues in the Island concerning ownerless animals that require a local solution: see 11) for feral/wild populations.

5.1 The limited protection of wild animals is contained within the Cruelty Act (not restricted to domesticated animals) and within the Wildlife Act (prevention of interference etc). This does not extend, and cannot extend, to welfare because there is no controlling individual.

[N.B. The UK Welfare Act does extend in general to stray dogs and feral cats being "commonly domesticated" but their welfare is not protected unless there is a controlling individual. The UK Act is designed to include escaped exotic or non-domesticated animals up to the point where they are successfully living in the wild. The UK Act does not extend to wild animals.]

5.2 In identifying *vertebrates* and *under control* the proposal would include all captive animals, even those held captive on a temporary basis. This is coherent with the Endangered Species Act 2010 where endangered species are imported under licence and their conditions of captivity on the Island would fall under the remit of an Animal Welfare Act.

5.3 Ensuring the welfare of an animal is related to the "Five Freedoms" and encompasses:
- The need for a suitable environment

- The need for a suitable diet
- The need to exhibit normal behaviour
- The need for suitable housing (with or without others for example)
- The need to be protected from pain, suffering and distress

5.4 Certain invertebrates that are kept may have sufficient sentience to have protection extended to them by order (perhaps octopus).

Responsibility for animals to fall onto the controlling individual

6. It is proposed that a controlling individual must be at least 16. An owner would always be responsible for an animal and temporarily passing control to another would not negate the need to ensure the temporary keeper had sufficient instructions or knowledge to care for the animal appropriately.

6.1 Responsibility would also be extended to those "in charge" of an animal, even on a temporary basis. For example, a person looking after another's pet for a day and failing to provide water/keeping it in an extreme environment (hot car).

6.2 An owner would remain responsible for an abandoned or escaped animal until such time as it is successfully living in the wild.

Provide controls for pet shops/sanctuaries

7. While there is current legislative provision for boarding breeding and riding establishments (see under 8) there are no provisions for Pet Shops or Pet Sanctuaries.

7.1 It is proposed that provision is made for the controlling of Pet Shops or Pet Sanctuaries by order/regulation as under 8). Such orders may take account of the following concerns:

7.2 Pet Shops would be responsible for the welfare of animals owned/kept by the establishment, but the situation is clearly different to that of a household: animals are offered for sale and are a more transient and diverse population. These premises would need suitable controls in order to identify the controlling individual and ensure animals are appropriately protected and cared for in circumstances that differ from the home. The availability of suitable and sufficient information for the future care of animals sold may also need to be considered.

7.3 It is not envisaged that a formal licensing system would be the most desirable outcome. The definition of what constitutes a "Pet Shop" would be required. Clear conditions for keeping animals at Pet Shops would be required also, as would be formal methods of identifying and displaying the details of controlling individuals. Disease control measures on the introduction and mixing of stock may be appropriate. Disqualification from controlling a Pet Shop is proposed as an available sanction.

7.4 Pet Sanctuaries are a significant area where large numbers of animals are kept as a result of being found ownerless/surrendered or other cause of lacking a controlling individual. While the intentions of individuals running such establishments should be lauded, there still exists the potential for animals to be kept in poor conditions: the fact that these animals have been initially "saved" from a worse fate does not excuse a prolonged existence in conditions that are contrary to the welfare of the animals concerned.

7.5 Areas that could be considered include:

- Definition of a "Pet Sanctuary"
- Register of animals kept
- Density of animals (by species)
- Log of keeper attendance
- Frequency and records of veterinary visits
- Ability of inspector to issue welfare improvement notices

Prevent the sale/transfer/prize gifting of animals to those under 16 and identifying those over 16 as being responsible for their children's pets.

8. While parents/carers/guardians would be able to obtain pets for minors, the responsibility for the care of such animals is proposed to rest with an individual of sufficient age and competence. Minors should not be able to purchase or obtain animals (selling/transferring to a minor would be made an offence) – this would increase the likelihood of animals being well looked after and restrain inappropriate trade. It follows that those under 16 would not be "owners" in keeping with 2). It also follows that controlling individuals would not be able to evade responsibility by declaring the animal was left in the care of a minor – sufficient provision would have to be made by the controlling individual for the animal's welfare to be reasonably protected.

   [N.B. nothing in this provision should interfere with the transactions made within a family, the parent/guardian will remain the controlling individual]

Enhance the controls of animal (especially dog) fighting - an update for Cruelty to Animals Act 1997

9. The island introduced revised Cruelty legislation in advance of the UK. In the intervening years technology has moved on and attitudes to animal fighting have hardened further. The current Cruelty Act is silent on:

   - Making/supplying/publishing/possessing with intent to supply, photographs, images or video recordings of animal fights*
   - being present at an animal fight
   - publicising an animal fight
   - providing information to another about an animal fight (to encourage attendance/promotion)
   - betting on animal fights
   - taking part in animal fights (animal vs human)
   - keeping and/or training animals for fighting

9.1 The proposal would be to prohibit all the above.

   [*N.B. exclusions would need to be considered for bodies that obtain such for educational programmes or the purpose of prosecution.]

Provide powers for regulations to:

a. Promote the welfare of animals and their progeny
b. Imposing specific requirements for the needs of animals
c. Provide welfare advisory bodies
d. Identify (and register) individual animals

10. The proposed Act would provide the powers to further regulate animal welfare, including the future prohibition or control of specific practices, prescribing particular needs for all vertebrates, or certain types or species e.g. dietary requirements, exercise, access to daylight, the keeping of birds in Larsen Traps. The power to identify and even register certain protected animals would be useful in particular circumstances (where individual animals of a species subject to care or supervision are very similar).

10.1 The progeny aspect is intended to include the ability to extend protection to foetal stages in specific circumstances - if appropriate. For example: if an act performed upon a pregnant female is carried out for the sole purpose of affecting the unborn (this would require the demonstration of the ability of the particular unborn species to experience pain and/or suffering). The progeny aspect would also extend to acts that intend the breeding of individuals that would have their welfare compromised owing to their physical or physiological form – extreme breeding of dogs and cats for example.

10.2 The route to identifying requirements or practices that should become the subject of future regulation would be via consulting with a Manx Welfare Advisory Body (MWAB). It is envisaged that the Island should establish one such body, and this body may, in turn, either invite interested parties to join the main body for issues that are relevant to the invited parties, or establish sub-committees to consider specific aspects of welfare legislation.

10.3 Membership of MWAB is suggested to be divided into permanent members and associate members. Permanent members would include a Chairperson, the CVO for the Department, a private veterinary representative, and Island wide general welfare bodies such as MSPCA; associate members would be species specific parties, for example the British Horse Society, Manx Horse Council, Mannin Kennel Association, and invited when matters relevant to that species is discussed.

Licensing and registration of certain animal activities

11. Licensing is a generally more onerous provision that relies on the Department to generate a licence, frequently as a result of an inspection procedure or other process. It would be an offence for operators to continue without a licence.

11.1 Registration may be as simple as a requirement to advise the Department as to the existence of the specific animal activity, but may further extend to an obligation to carry out that activity in accordance with the particular regulations. Again, continuing activities without a registration would be an offence.

11.2 The island currently has three aged Acts that provide, in part, for various aspects of animal welfare:

- The Riding Establishments (Inspection) Act 1968 - 86
- The Breeding of Dogs and Cats Act 1981
- The Animal Boarding Establishments (Isle of Man) Act 1973

11.3 These acts are very outdated and further contain certain proscriptions/controls within the bodies of the Acts that would be both better provided for, and modified, by regulations. All three require inspections and licensing. It is proposed that the Animal Welfare Act provide for the future repeal of these Acts and their replacement with controls made by regulation under the Animal Welfare Act (such regulations to come into force only when approved by Tynwald).

11.4 There are other animal activities that may benefit from regulatory control e.g. livery stables. It is proposed that the Act provide for the licensing or registration of additional animal activities that are controlled by regulations and these activities and regulations also be subject to prior consultation with the Manx Welfare Advisory Body.

Production of welfare codes for animals beyond livestock

12. The current welfare codes apply to farm animals on agricultural land only. It is proposed to extend the ability of the Department to prepare codes for all vertebrates.

12.1 Codes are advisory and useful guidance for controlling individuals to discharge their welfare responsibilities. Breach of welfare codes does not incur an immediate liability (they are not directly legally binding); however, they do represent a considered set of means to care for specific animal species. The current Animal Health Act identifies that the failure of any person [to observe a code provision] may be relied upon by the prosecution as tending to establish the guilt of the accused. Individuals would have to demonstrate good reason why they had not followed a welfare code. Suggested areas for future codes would include:

a. Dogs and cats
b. Horses, Donkeys etc
c. Game birds (to the point of release whereupon they are "wild")
d. Primates (the keeping of higher mammals as "pets" is highly questionable)
e. Circuses
f. Pet fairs
g. Reptiles
h. Farmed fish
i. Captive birds

Relevant powers of entry/inspection/improvement notices for all purposes

13. It is proposed that officers of DEFA are designated as inspectors for the purposes of this Act in addition to the constabulary. Inspectors would have powers of entry onto land and buildings, ships etc. Access to dwellings would be effected by means of warrant from a Justice of the Peace. Obstruction of an inspector or officer would be an offence.

13.1 Inspectors would have the ability to serve "improvement notices". These specify the issue of non-compliance, the steps to be taken to rectify it, and the period for rectification. Such notices have two major benefits: firstly, the welfare issue is clearly identified to the controlling individual, and secondly, the welfare issue is speedily addressed (compared to a Court process) and resolved. Please also note: the controlling individual cannot be prosecuted for the issue under the notice during the specified rectification period; nonetheless, they could be prosecuted on expiry for failure to comply.

13.2 While the ability to prosecute without issuing an improvement notice first would be retained, the general enforcement policy of the Department is to encourage compliance in the first instance rather than prosecute – except where circumstances are so extreme as to warrant immediate prosecution (far more likely in cruelty cases).

13.3 Inspectors would have the powers to:

- Ascertain whether the provisions of the Act or regulations are being complied with
- Require owners/operators to produce licences, records etc

- Inspect records and take copies
- Search for evidence of offences with reasonable grounds
- Inspect records required by EU law

Feral/Stray Animals

14. Over the past 20 years it has become evident that unwanted animals have been dumped in the Manx countryside. While this is an offence in itself ("abandonment" under Section 1(m) of the Cruelty to Animals Act 1997) individuals are unlikely to be caught abandoning these animals that subsequently have to fend for themselves. Such an existence will generally end in suffering and death, unless a public spirited person feeds and cares for them extremely regularly. Unfortunately, should this occur, our experience has shown that this simply multiplies the problem as the animals then breed very successfully! The well meaning individual also becomes legally responsible for the livestock's welfare if they routinely feed them.

14.1 In practice, these animals are normally exposed to welfare risks and insults that would not be tolerated on farms, or in households; they may also become a risk to:
- Farmed livestock through transmission of disease
- Vehicular traffic
- Property (gardens, vegetables etc)

14.2 The above risks have become extremely evident in the Bulgham goats where road traffic accidents have been recorded, where they pose a disease risk to the entire Island at times of Foot and Mouth disease, and where they have also been recorded as passing orf to local sheep.

14.3 Similarly, the numbers of abandoned hens, and especially cockerels, have damaged the environment where they are released through destroying banks and hedgerows and leaving land "faeces burned" (chicken excrement is very acidic). They are also the source of a disproportionate number of nuisance complaints, for which the Department (or wider government) has little or no legal remedy.

14.4 It is not suggested that the Department adopt a proactive policy of removal of all such populations, undesirable as they may be; however, the current position where the landowner is the only party with the rights to control such populations is wholly unsatisfactory. In the past, certain landowners have allowed feral populations to build to levels that disturb the entire neighbourhood; there is also the grave risk that the landowner may prevent, however inadvertently, necessary control measures in the face of epidemic disease.

14.5 It is proposed that the Department take powers to give notice to landowners of the need to control feral populations of domestic species on their land. Should there be a clear risk to livestock on neighbouring land, or the landowner fails to comply with a notice, the Department would have the power to control the feral animals and recover costs if appropriate.

14.6 Stray animals pose a different problem in that they are usually "ownerless": they bear no identity which would result in speedy return to their owner. For the past 10-20 years animals that are found straying with no identity are very rarely claimed – they are frequently ill-kept, unwanted, or unhealthy (usually sheep or cockerels). It is proposed that the Department take permissive powers to take control of any stray animals and

dispose of them in keeping with individual circumstances. Retaining stray livestock for onward sale would run counter to provenance needs, chemical and drug residue safety, and disease control measures - it is not recommended.

OTHER ISSUES

15. Repeal of related or redundant legislation

a. The Pinfolds Act 1963
   This act provides for the establishment of pounds (Pinfolds) for stray animals, the care of said animals at a non-compensatory rate, and their subsequent sale though a market (it is only after this offer for sale that the Department may take control of the animal). All these provisions are unnecessarily unwieldy and would incur the Department excessive costs.
   Farming and disease control practice has moved on, with the traceability and provenance of animals becoming paramount for both the food chain and biosecurity.
b. Riding, Breeding and Boarding Acts - see under 8)
c. Section 7 of The Cruelty to Animals Act: Animals in Pinfolds

16. Suggested consequent modifications of existing Acts

a. Cruelty to Animals Act 1997

   1. Introducing the ability for constables to remove dependent animals in addition to the current power of removing distressed animals from their present location for the purpose of preventing further cruelty under Section 9 sub section (3). This avoids the current problem of being lawfully unable to remove a suckling animal from a location, despite the fact that the mother is suffering.
   2. Animal fighting – see under 6)

b. Wildlife Act 1990

   The provisions for the welfare of captive birds in Section 8 should be removed and remade within the Animal Welfare Act. This will lead to improved liaison and control for captive birds as suitable inspectors under the Animal Welfare Act will be able to inspect captive bird premises.

c. Animal Health Act 1996

   It is likely that Chambers will recommend the repeal of the welfare provisions for livestock under Part III of the AHA 1996 and their inclusion in the new Animal Welfare Act.

17. Penalties

- disqualification from keeping
- disqualification from obtaining a licence/registration
- disqualification from operating
- Removal of animals – power to **arrange** treatment or care for if owner not present/unable/incompetent? With cost recovery if appropriate
- Deprivation of specific animal/s?
- Power to seize?

Time limitation 6 months from discovery of "sufficient evidence"?

18. Angling

The UK saw the need to explicitly state that anything done in the normal course of angling to be outside the provisions of their act.

APPENDIX: The five freedoms

The ***Five Freedoms*** are –

1. Freedom from hunger and thirst

- by ready access to fresh water and a diet to maintain full health and vigour;

2. Freedom from discomfort

- by providing an appropriate environment including shelter and a comfortable resting area;

3. Freedom from pain injury or disease

- by prevention or by rapid diagnosis and treatment;

4. Freedom to express most normal behaviour

- by providing sufficient space, proper facilities and company of an animal's own kind;

5. Freedom from fear and distress

- by ensuring conditions and treatment to avoid mental suffering.

These are reflected in the UK Animal Welfare Act 2006:

(1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.

(2) For the purposes of this Act, an animal's needs shall be taken to include—
(a) its need for a suitable environment,
(b) its need for a suitable diet,
(c) its need to be able to exhibit normal behaviour patterns,
(d) any need it has to be housed with, or apart from, other animals, and
(e) its need to be protected from pain, suffering, injury and disease.

(3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular—
(a) any lawful purpose for which the animal is kept, and
(b) any lawful activity undertaken in relation to the animal.

(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.



Animal Welfare Act 2006

CHAPTER 45

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

£9·00



Animal Welfare Act 2006

CHAPTER 45

CONTENTS

Introductory

1 Animals to which the Act applies
2 "Protected animal"
3 Responsibility for animals

Prevention of harm

4 Unnecessary suffering
5 Mutilation
6 Docking of dogs' tails
7 Administration of poisons etc.
8 Fighting etc.

Promotion of welfare

9 Duty of person responsible for animal to ensure welfare
10 Improvement notices
11 Transfer of animals by way of sale or prize to persons under 16
12 Regulations to promote welfare

Licensing and registration

13 Licensing or registration of activities involving animals

Codes of practice

14 Codes of practice
15 Making and approval of codes of practice: England
16 Making of codes of practice: Wales
17 Revocation of codes of practice

Animals in distress

18 Powers in relation to animals in distress
19 Power of entry for section 18 purposes
20 Orders in relation to animals taken under section 18(5)
21 Orders under section 20: appeals

Enforcement powers

22 Seizure of animals involved in fighting offences
23 Entry and search under warrant in connection with offences
24 Entry for purposes of arrest
25 Inspection of records required to be kept by holder of licence
26 Inspection in connection with licences
27 Inspection in connection with registration
28 Inspection of farm premises
29 Inspection relating to Community obligations

Prosecutions

30 Power of local authority to prosecute offences
31 Time limits for prosecutions

Post-conviction powers

32 Imprisonment or fine
33 Deprivation
34 Disqualification
35 Seizure of animals in connection with disqualification
36 Section 35: supplementary
37 Destruction in the interests of the animal
38 Destruction of animals involved in fighting offences
39 Reimbursement of expenses relating to animals involved in fighting offences
40 Forfeiture of equipment used in offences
41 Orders under section 33, 35, 37, 38 or 40: pending appeals
42 Orders with respect to licences
43 Termination of disqualification under section 34 or 42
44 Orders made on conviction for reimbursement of expenses
45 Orders for reimbursement of expenses: right of appeal for non-offenders

Scotland

46 Effect in Scotland of disqualification under section 34
47 Deprivation orders in connection with offence under section 46(2)
48 Seizure orders where disqualification breached: Scotland
49 Appeals against deprivation orders and seizure orders
50 Deprivation orders, seizure orders and interim orders: offences

General

51 Inspectors
52 Conditions for grant of warrant
53 Powers of entry, inspection and search: supplementary
54 Power to stop and detain vehicles
55 Power to detain vessels, aircraft and hovercraft

56 Obtaining of documents in connection with carrying out orders etc.
57 Offences by bodies corporate
58 Scientific research
59 Fishing
60 Crown application
61 Orders and regulations
62 General interpretation
63 Financial provisions
64 Minor and consequential amendments
65 Repeals
66 Transition
67 Extent
68 Commencement
69 Short title

Schedule 1 — Regulations under section 13
Part 1 — Licences for the purposes of the section
Part 2 — Registration for the purposes of the section
Part 3 — Supplementary
Schedule 2 — Powers of entry, inspection and search: supplementary
Schedule 3 — Minor and consequential amendments
Schedule 4 — Repeals

Animal Welfare Act 2006

2006 CHAPTER 45

An Act to make provision about animal welfare; and for connected purposes.
[8th November 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introductory

1 Animals to which the Act applies

(1) In this Act, except subsections (4) and (5), "animal" means a vertebrate other than man.

(2) Nothing in this Act applies to an animal while it is in its foetal or embryonic form.

R1

(3) The appropriate national authority may by regulations for all or any of the purposes of this Act—

(a) extend the definition of "animal" so as to include invertebrates of any description;

(b) make provision in lieu of subsection (2) as respects any invertebrates included in the definition of "animal";

(c) amend subsection (2) to extend the application of this Act to an animal from such earlier stage of its development as may be specified in the regulations.

(4) The power under subsection (3)(a) or (c) may only be exercised if the appropriate national authority is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering.

(5) In this section, "vertebrate" means any animal of the Sub-phylum Vertebrata of the Phylum Chordata and "invertebrate" means any animal not of that Sub-phylum.

2 "Protected animal"

An animal is a "protected animal" for the purposes of this Act if—

R1

(a) it is of a kind which is commonly domesticated in the British Islands,

(b) it is under the control of man whether on a permanent or temporary basis, or

(c) it is not living in a wild state.

3 Responsibility for animals

R2

(1) In this Act, references to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis.

(2) In this Act, references to being responsible for an animal include being in charge of it.

(3) For the purposes of this Act, a person who owns an animal shall always be regarded as being a person who is responsible for it.

R5

(4) For the purposes of this Act, a person shall be treated as responsible for any animal for which a person under the age of 16 years of whom he has actual care and control is responsible.

Prevention of harm

4 Unnecessary suffering

(1) A person commits an offence if—

(a) an act of his, or a failure of his to act, causes an animal to suffer,

(b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,

(c) the animal is a protected animal, and

(d) the suffering is unnecessary.

CA S1+2

(2) A person commits an offence if—

(a) he is responsible for an animal,

(b) an act, or failure to act, of another person causes the animal to suffer,

(c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and

(d) the suffering is unnecessary.

(3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—

(a) whether the suffering could reasonably have been avoided or reduced;

(b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;

(c) whether the conduct which caused the suffering was for a legitimate purpose, such as—

(i) the purpose of benefiting the animal, or

(ii) the purpose of protecting a person, property or another animal;

(d) whether the suffering was proportionate to the purpose of the conduct concerned;

(e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

5 Mutilation

(1) A person commits an offence if—

(a) he carries out a prohibited procedure on a protected animal;

(b) he causes such a procedure to be carried out on such an animal.

(2) A person commits an offence if—

(a) he is responsible for an animal,

(b) another person carries out a prohibited procedure on the animal, and

(c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.

CA S2.3 2.4. SEE ALSO V.S ACT. EXEMPTION OPERATIONS

(3) References in this section to the carrying out of a prohibited procedure on an animal are to the carrying out of a procedure which involves interference with the sensitive tissues or bone structure of the animal, otherwise than for the purpose of its medical treatment.

(4) Subsections (1) and (2) do not apply in such circumstances as the appropriate national authority may specify by regulations.

(5) Before making regulations under subsection (4), the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate.

(6) Nothing in this section applies to the removal of the whole or any part of a dog's tail.

6 Docking of dogs' tails

V S ACT 2005 NOT AN EXEMPTION OPERATION

(1) A person commits an offence if—

(a) he removes the whole or any part of a dog's tail, otherwise than for the purpose of its medical treatment;

(b) he causes the whole or any part of a dog's tail to be removed by another person, otherwise than for the purpose of its medical treatment.

(2) A person commits an offence if—

(a) he is responsible for a dog,

(b) another person removes the whole or any part of the dog's tail, otherwise than for the purpose of its medical treatment, and

(c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.

(3) Subsections (1) and (2) do not apply if the dog is a certified working dog that is not more than 5 days old.

(4) For the purposes of subsection (3), a dog is a certified working dog if a veterinary surgeon has certified, in accordance with regulations made by the appropriate national authority, that the first and second conditions mentioned below are met.

(5) The first condition referred to in subsection (4) is that there has been produced to the veterinary surgeon such evidence as the appropriate national authority may by regulations require for the purpose of showing that the dog is likely to be used for work in connection with—

(a) law enforcement,
(b) activities of Her Majesty's armed forces,
(c) emergency rescue,
(d) lawful pest control, or
(e) the lawful shooting of animals.

(6) The second condition referred to in subsection (4) is that the dog is of a type specified for the purposes of this subsection by regulations made by the appropriate national authority.

(7) It is a defence for a person accused of an offence under subsection (1) or (2) to show that he reasonably believed that the dog was one in relation to which subsection (3) applies.

(8) A person commits an offence if—

(a) he owns a subsection (3) dog, and
(b) fails to take reasonable steps to secure that, before the dog is 3 months old, it is identified as a subsection (3) dog in accordance with regulations made by the appropriate national authority.

(9) A person commits an offence if—

(a) he shows a dog at an event to which members of the public are admitted on payment of a fee,
(b) the dog's tail has been wholly or partly removed (in England and Wales or elsewhere), and
(c) removal took place on or after the commencement day.

(10) Where a dog is shown only for the purpose of demonstrating its working ability, subsection (9) does not apply if the dog is a subsection (3) dog.

(11) It is a defence for a person accused of an offence under subsection (9) to show that he reasonably believed—

(a) that the event was not one to which members of the public were admitted on payment of an entrance fee,
(b) that the removal took place before the commencement day, or
(c) that the dog was one in relation to which subsection (10) applies.

(12) A person commits an offence if he knowingly gives false information to a veterinary surgeon in connection with the giving of a certificate for the purposes of this section.

(13) The appropriate national authority may by regulations make provision about the functions of inspectors in relation to—

(a) certificates for the purposes of this section, and

(b) the identification of dogs as subsection (3) dogs.

(14) Power to make regulations under this section includes power—

(a) to make different provision for different cases, and

(b) to make incidental, supplementary, consequential or transitional provision or savings.

(15) Before making regulations under this section, the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate.

(16) In this section—

"commencement day" means the day on which this section comes into force;

"subsection (3) dog" means a dog whose tail has, on or after the commencement day, been wholly or partly removed without contravening subsection (1), because of the application of subsection (3).

7 Administration of poisons etc.

(1) A person commits an offence if, without lawful authority or reasonable excuse, he—

(a) administers any poisonous or injurious drug or substance to a protected animal, knowing it to be poisonous or injurious, or

(b) causes any poisonous or injurious drug or substance to be taken by a protected animal, knowing it to be poisonous or injurious.

(2) A person commits an offence if—

(a) he is responsible for an animal,

(b) without lawful authority or reasonable excuse, another person administers a poisonous or injurious drug or substance to the animal or causes the animal to take such a drug or substance, and

(c) he permitted that to happen or, knowing the drug or substance to be poisonous or injurious, he failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.

(3) In this section, references to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance.

8 Fighting etc.

(1) A person commits an offence if he—

(a) causes an animal fight to take place, or attempts to do so;

(b) knowingly receives money for admission to an animal fight;

(c) knowingly publicises a proposed animal fight;

(d) provides information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;

(e) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight;

(f) takes part in an animal fight;

(g) has in his possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used;

(h) keeps or trains an animal for use for in connection with an animal fight;

(i) keeps any premises for use for an animal fight.

(2) A person commits an offence if, without lawful authority or reasonable excuse, he is present at an animal fight.

(3) A person commits an offence if, without lawful authority or reasonable excuse, he—

(a) knowingly supplies a video recording of an animal fight,

(b) knowingly publishes a video recording of an animal fight,

(c) knowingly shows a video recording of an animal fight to another, or

(d) possesses a video recording of an animal fight, knowing it to be such a recording, with the intention of supplying it.

(4) Subsection (3) does not apply if the video recording is of an animal fight that took place—

(a) outside Great Britain, or

(b) before the commencement date.

(5) Subsection (3) does not apply—

(a) in the case of paragraph (a), to the supply of a video recording for inclusion in a programme service;

(b) in the case of paragraph (b) or (c), to the publication or showing of a video recording by means of its inclusion in a programme service;

(c) in the case of paragraph (d), by virtue of intention to supply for inclusion in a programme service.

(6) Provision extending the application of an offence under subsection (3), so far as relating to the provision of information society services, may be made under section 2(2) of the European Communities Act 1972 (c. 68) (powers to implement Community obligations by regulations) notwithstanding the limits imposed by paragraph 1(1)(d) of Schedule 2 to that Act on the penalties with which an offence may be punishable on summary conviction.

(7) In this section—

"animal fight" means an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting;

""commencement date" means the date on which subsection (3) comes into force;

"information society services" has the meaning given in Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market (Directive on electronic commerce);

"programme service" has the same meaning as in the Communications Act 2003 (c. 21);

"video recording" means a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image.

(8) In this section—

(a) references to supplying or publishing a video recording are to supplying or publishing a video recording in any manner, including, in relation to a video recording in the form of data stored electronically, by means of transmitting such data;

(b) references to showing a video recording are to showing a moving image reproduced from a video recording by any means.

Promotion of welfare

9 Duty of person responsible for animal to ensure welfare

(1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.

(2) For the purposes of this Act, an animal's needs shall be taken to include—

(a) its need for a suitable environment,

(b) its need for a suitable diet,

(c) its need to be able to exhibit normal behaviour patterns,

(d) any need it has to be housed with, or apart from, other animals, and

(e) its need to be protected from pain, suffering, injury and disease.

(3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular—

(a) any lawful purpose for which the animal is kept, and

(b) any lawful activity undertaken in relation to the animal.

(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

10 Improvement notices

(1) If an inspector is of the opinion that a person is failing to comply with section 9(1), he may serve on the person a notice which—

(a) states that he is of that opinion,

(b) specifies the respects in which he considers the person is failing to comply with that provision,

(c) specifies the steps he considers need to be taken in order to comply with the provision,

(d) specifies a period for the taking of those steps, and

(e) explains the effect of subsections (2) and (3).

(2) Where a notice under subsection (1) ("an improvement notice") is served, no proceedings for an offence under section 9(1) may be instituted before the end of the period specified for the purposes of subsection (1)(d) ("the compliance period") in respect of—

(a) the non-compliance which gave rise to the notice, or

(b) any continuation of that non-compliance.

(3) If the steps specified in an improvement notice are taken at any time before the end of the compliance period, no proceedings for an offence under section 9(1) may be instituted in respect of—

(a) the non-compliance which gave rise to the notice, or
(b) any continuation of that non-compliance prior to the taking of the steps specified in the notice.

(4) An inspector may extend, or further extend, the compliance period specified in an improvement notice.

11 Transfer of animals by way of sale or prize to persons under 16

(1) A person commits an offence if he sells an animal to a person whom he has reasonable cause to believe to be under the age of 16 years.

R4

(2) For the purposes of subsection (1), selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction.

(3) Subject to subsections (4) to (6), a person commits an offence if—
(a) he enters into an arrangement with a person whom he has reasonable cause to believe to be under the age of 16 years, and
(b) the arrangement is one under which that person has the chance to win an animal as a prize.

(4) A person does not commit an offence under subsection (3) if—
(a) he enters into the arrangement in the presence of the person with whom the arrangement is made, and
(b) he has reasonable cause to believe that the person with whom the arrangement is made is accompanied by a person who is not under the age of 16 years.

(5) A person does not commit an offence under subsection (3) if—
(a) he enters into the arrangement otherwise than in the presence of the person with whom the arrangement is made, and
(b) he has reasonable cause to believe that a person who has actual care and control of the person with whom the arrangement is made has consented to the arrangement.

(6) A person does not commit an offence under subsection (3) if he enters into the arrangement in a family context.

12 Regulations to promote welfare

R7

(1) The appropriate national authority may by regulations make such provision as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals.

R7

(2) Without prejudice to the generality of the power under subsection (1), regulations under that subsection may, in particular—
(a) make provision imposing specific requirements for the purpose of securing that the needs of animals are met;
(b) make provision to facilitate or improve co-ordination in relation to the carrying out by different persons of functions relating to the welfare of animals;
(c) make provision for the establishment of one or more bodies with functions relating to advice about the welfare of animals.

(3) Power to make regulations under subsection (1) includes power—

(a) to provide that breach of a provision of the regulations is an offence;
(b) to apply a relevant post-conviction power in relation to conviction for an offence under the regulations;
(c) to make provision for fees or other charges in relation to the carrying out of functions under the regulations;
(d) to make different provision for different cases or areas;
(e) to provide for exemptions from a provision of the regulations, either subject to specified conditions or without conditions;
(f) to make incidental, supplementary, consequential or transitional provision or savings.

(4) Power to make regulations under subsection (1) does not include power to create an offence triable on indictment or punishable with—
(a) imprisonment for a term exceeding 51 weeks, or
(b) a fine exceeding level 5 on the standard scale.

(5) Regulations under subsection (1) may provide that a specified offence under the regulations is to be treated as a relevant offence for the purposes of section 23.

(6) Before making regulations under subsection (1), the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate.

(7) In this section, "specified" means specified in regulations under subsection (1).

Licensing and registration

13 Licensing or registration of activities involving animals

(1) No person shall carry on an activity to which this subsection applies except under the authority of a licence for the purposes of this section.

(2) Subsection (1) applies to an activity which—
(a) involves animals for which a person is responsible, and
(b) is specified for the purposes of the subsection by regulations made by the appropriate national authority.

R 8

(3) No person shall carry on an activity to which this subsection applies unless registered for the purposes of this section.

(4) Subsection (3) applies to an activity which—
(a) involves animals for which a person is responsible, and
(b) is specified for the purposes of the subsection by regulations made by the appropriate national authority.

(5) Regulations under subsection (2) or (4) may only be made for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals.

(6) A person commits an offence if he contravenes subsection (1) or (3).

(7) The appropriate national authority may by regulations make provision about licences or registration for the purposes of this section.

(8) The appropriate national authority may by regulations repeal any of the following enactments (which impose licence or registration requirements in relation to activities involving animals)—

(a) section 1(1) of the Performing Animals (Regulation) Act 1925 (c. 38);
(b) section 1(1) of the Pet Animals Act 1951 (c. 35);
(c) section 1(1) of the Animal Boarding Establishments Act 1963 (c. 43);
(d) section 1(1) of the Riding Establishments Act 1964 (c. 70);
(e) section 1(1) of the Breeding of Dogs Act 1973 (c. 60).

(9) Before making regulations under this section, the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate.

(10) Schedule 1 (which makes provision about regulations under this section) has effect.

Codes of practice

14 Codes of practice

(1) The appropriate national authority may issue, and may from time to time revise, codes of practice for the purpose of providing practical guidance in respect of any provision made by or under this Act.

(2) The authority responsible for issuing a code of practice under subsection (1) shall publish the code, and any revision of it, in such manner as it considers appropriate.

(3) A person's failure to comply with a provision of a code of practice issued under this section shall not of itself render him liable to proceedings of any kind.

(4) In any proceedings against a person for an offence under this Act or an offence under regulations under section 12 or 13—

(a) failure to comply with a relevant provision of a code of practice issued under this section may be relied upon as tending to establish liability, and
(b) compliance with a relevant provision of such a code of practice may be relied upon as tending to negative liability.

15 Making and approval of codes of practice: England

(1) Where the Secretary of State proposes to issue (or revise) a code of practice under section 14, he shall—

(a) prepare a draft of the code (or revised code),
(b) consult about the draft such persons appearing to him to represent any interests concerned as he considers appropriate, and
(c) consider any representations made by them.

(2) If following consultation under subsection (1) the Secretary of State decides to proceed with a draft (either in its original form or with such modifications as he thinks fit), he shall lay a copy of it before Parliament.

(3) If, within the 40-day period, either House of Parliament resolves not to approve a draft laid under subsection (2), the Secretary of State shall take no further steps in relation to it.

(4) If, within the 40-day period, neither House resolves not to approve a draft laid under subsection (2), the Secretary of State shall issue (or revise) the code in the form of the draft.

(5) A code (or revised code) shall come into force on such day as the Secretary of State may by order appoint.

(6) Subsection (3) does not prevent a new draft of a code (or revised code) from being laid before Parliament.

(7) An order under subsection (5) may include transitional provision or savings.

(8) In this section, "the 40-day period", in relation to a draft laid under subsection (2), means—

(a) if the draft is laid before the Houses on different days, the period of 40 days beginning with the later of the two days, and

(b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,

no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

16 Making of codes of practice: Wales

(1) Where the National Assembly for Wales proposes to issue (or revise) a code of practice under section 14, it shall—

(a) prepare a draft of the code (or revised code),

(b) consult about the draft such persons appearing to it to represent any interests concerned as it considers appropriate, and

(c) consider any representations made by them.

(2) The Assembly may issue (or revise) a code either in the form of the draft prepared under subsection (1)(a) or with such modification as it thinks fit.

(3) A code (or revised code) shall come into force in accordance with its provisions.

(4) A code (or revised code) may include transitional provision or savings.

17 Revocation of codes of practice

(1) The appropriate national authority may by order revoke a code of practice issued by it under section 14.

(2) An order under subsection (1) may include transitional provision or savings.

(3) Before making an order under subsection (1), the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate.

(4) Subsection (3) does not apply in relation to an order revoking a code of practice in connection with its replacement by a new one.

Animals in distress

18 Powers in relation to animals in distress

(1) If an inspector or a constable reasonably believes that a protected animal is suffering, he may take, or arrange for the taking of, such steps as appear to him to be immediately necessary to alleviate the animal's suffering.

(2) Subsection (1) does not authorise destruction of an animal.

(3) If a veterinary surgeon certifies that the condition of a protected animal is such that it should in its own interests be destroyed, an inspector or a constable may—

(a) destroy the animal where it is or take it to another place and destroy it there, or

(b) arrange for the doing of any of the things mentioned in paragraph (a).

(4) An inspector or a constable may act under subsection (3) without the certificate of a veterinary surgeon if it appears to him—

(a) that the condition of the animal is such that there is no reasonable alternative to destroying it, and

(b) that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon.

(5) An inspector or a constable may take a protected animal into possession if a veterinary surgeon certifies—

(a) that it is suffering, or

(b) that it is likely to suffer if its circumstances do not change.

(6) An inspector or a constable may act under subsection (5) without the certificate of a veterinary surgeon if it appears to him—

(a) that the animal is suffering or that it is likely to do so if its circumstances do not change, and

(b) that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon.

(7) The power conferred by subsection (5) includes power to take into possession dependent offspring of an animal taken into possession under that subsection.

(8) Where an animal is taken into possession under subsection (5), an inspector or a constable may—

(a) remove it, or arrange for it to be removed, to a place of safety;

(b) care for it, or arrange for it to be cared for—

(i) on the premises where it was being kept when it was taken into possession, or

(ii) at such other place as he thinks fit;

(c) mark it, or arrange for it to be marked, for identification purposes.

(9) A person acting under subsection (8)(b)(i), or under an arrangement under that provision, may make use of any equipment on the premises.

(10) A veterinary surgeon may examine and take samples from an animal for the purpose of determining whether to issue a certificate under subsection (3) or (5) with respect to the animal.

(11) If a person exercises a power under this section otherwise than with the knowledge of a person who is responsible for the animal concerned, he must, as soon as reasonably practicable after exercising the power, take such steps as are reasonable in the circumstances to bring the exercise of the power to the notice of such a person.

(12) A person commits an offence if he intentionally obstructs a person in the exercise of power conferred by this section.

(13) A magistrates' court may, on application by a person who incurs expenses in acting under this section, order that he be reimbursed by such person as it thinks fit.

(14) A person affected by a decision under subsection (13) may appeal against the decision to the Crown Court.

CA S 37 Schedule 4

19 Power of entry for section 18 purposes

(1) An inspector or a constable may enter premises for the purpose of searching for a protected animal and of exercising any power under section 18 in relation to it if he reasonably believes—

(a) that there is a protected animal on the premises, and

(b) that the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer.

CA not restricted

(2) Subsection (1) does not authorise entry to any part of premises which is used as a private dwelling.

(3) An inspector or a constable may (if necessary) use reasonable force in exercising the power conferred by subsection (1), but only if it appears to him that entry is required before a warrant under subsection (4) can be obtained and executed.

(4) Subject to subsection (5), a justice of the peace may, on the application of an inspector or constable, issue a warrant authorising an inspector or a constable to enter premises for the purpose mentioned in subsection (1), if necessary using reasonable force.

(5) The power to issue a warrant under subsection (4) is exercisable only if the justice of the peace is satisfied—

(a) that there are reasonable grounds for believing that there is a protected animal on the premises and that the animal is suffering or is likely to suffer if its circumstances do not change, and

(b) that section 52 is satisfied in relation to the premises.

20 Orders in relation to animals taken under section 18(5)

CA S 3, 4

(1) A magistrates' court may order any of the following in relation to an animal taken into possession under section 18(5)—

(a) that specified treatment be administered to the animal;

(b) that possession of the animal be given up to a specified person;

(c) that the animal be sold;

(d) that the animal be disposed of otherwise than by way of sale;

(e) that the animal be destroyed.

(2) If an animal is taken into possession under section 18(5) when it is pregnant, the power conferred by subsection (1) shall also be exercisable in relation to any offspring that results from the pregnancy.

(3) The power conferred by subsection (1) shall be exercisable on application by—

(a) the owner of the animal, or

(b) any other person appearing to the court to have a sufficient interest in the animal.

(4) A court may not make an order under subsection (1) unless—

(a) it has given the owner of the animal an opportunity to be heard, or

(b) it is satisfied that it is not reasonably practicable to communicate with the owner.

(5) Where a court makes an order under subsection (1), it may—

(a) appoint a person to carry out, or arrange for the carrying out, of the order;

(b) give directions with respect to the carrying out of the order;

(c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;

(d) order a person to reimburse the expenses of carrying out the order.

(6) In determining how to exercise its powers under this section, the court shall have regard, amongst other things, to the desirability of protecting the animal's value and avoiding increasing any expenses which a person may be ordered to reimburse.

(7) A person commits an offence if he intentionally obstructs a person in the exercise of any power conferred by virtue of this section.

(8) If the owner of the animal is subject to a liability by virtue of section 18(13) or subsection (5)(d) above, any amount to which he is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

21 Orders under section 20: appeals

(1) Where a court makes an order under section 20(1), the owner of the animal to which the order relates may appeal against the order to the Crown Court.

(2) Nothing may be done under an order under section 20(1) unless—

(a) the period for giving notice of appeal against the order has expired, and

(b) if the order is the subject of an appeal, the appeal has been determined or withdrawn.

(3) Where the effect of an order is suspended under subsection (2)—

(a) no directions given in connection with the order shall have effect, but

(b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

(4) Directions under subsection (3)(b) may, in particular—

(a) appoint a person to carry out, or arrange for the carrying out, of the directions;

(b) require any person who has possession of the animal to deliver it up for the purposes of the directions;

(c) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;

(d) provide for the recovery of any expenses which are reasonably incurred in carrying out the directions.

(5) Where a court decides on an application under section 20(3)(a) not to exercise the power conferred by subsection (1) of that section, the applicant may appeal against the decision to the Crown Court.

(6) Where a court makes an order under section 20(5)(d), the person against whom the order is made may appeal against the order to the Crown Court.

R 10 *Enforcement powers*

22 Seizure of animals involved in fighting offences

(1) A constable may seize an animal if it appears to him that it is one in relation to which an offence under section 8(1) or (2) has been committed.

(2) A constable may enter and search premises for the purpose of exercising the power under subsection (1) if he reasonably believes—

(a) that there is an animal on the premises, and

(b) that the animal is one in relation to which the power under subsection (1) is exercisable.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling.

(4) Subject to subsection (5), a justice of the peace may, on the application of a constable, issue a warrant authorising a constable to enter and search premises, if necessary using reasonable force, for the purpose of exercising the power under subsection (1).

(5) The power to issue a warrant under subsection (4) is exercisable only if the justice of the peace is satisfied—

(a) that there are reasonable grounds for believing that there is on the premises an animal in relation to which an offence under section 8(1) or (2) has been committed, and

(b) that section 52 is satisfied in relation to the premises.

(6) In this section, references to an animal in relation to which an offence under section 8(1) or (2) has been committed include an animal which took part in an animal fight in relation to which such an offence was committed.

23 Entry and search under warrant in connection with offences

(1) Subject to subsection (2), a justice of the peace may, on the application of an inspector or constable, issue a warrant authorising an inspector or a constable to enter premises, if necessary using reasonable force, in order to search for evidence of the commission of a relevant offence.

(2) The power to issue a warrant under subsection (1) is exercisable only if the justice of the peace is satisfied—

(a) that there are reasonable grounds for believing—

(i) that a relevant offence has been committed on the premises, or

(ii) that evidence of the commission of a relevant offence is to be found on the premises, and

(b) that section 52 is satisfied in relation to the premises.

(3) In this section, "relevant offence" means an offence under any of sections 4 to 9, 13(6) and 34(9).

24 Entry for purposes of arrest

In section 17(1)(c) of the Police and Criminal Evidence Act 1984 (c. 60) (power of constable to enter and search premises for purpose of arresting a person for offence under specified enactments), at end insert—

"(v) any of sections 4, 5, 6(1) and (2), 7 and 8(1) and (2) of the Animal Welfare Act 2006 (offences relating to the prevention of harm to animals);".

25 Inspection of records required to be kept by holder of licence

(1) An inspector may require the holder of a licence to produce for inspection any records which he is required to keep by a condition of the licence.

(2) Where records which a person is so required to keep are stored in electronic form, the power under subsection (1) includes power to require the records to be made available for inspection—

(a) in a visible and legible form, or

(b) in a form from which they can readily be produced in a visible and legible form.

(3) An inspector may inspect and take copies of any records produced for inspection in pursuance of a requirement under this section.

26 Inspection in connection with licences

(1) An inspector may carry out an inspection in order to check compliance with—

(a) the conditions subject to which a licence is granted;

(b) provision made by or under this Act which is relevant to the carrying on of an activity to which a licence relates.

(2) An inspector may, for the purpose of carrying out an inspection under subsection (1), enter—

(a) premises specified in a licence as premises on which the carrying on of an activity is authorised;

(b) premises on which he reasonably believes an activity to which a licence relates is being carried on.

(3) Subsection (2) does not authorise entry to any part of premises which is used as a private dwelling unless 24 hours' notice of the intended entry is given to the occupier.

27 Inspection in connection with registration

(1) An inspector may carry out an inspection in order to check compliance with provision made by or under this Act which is relevant to the carrying on of an activity to which a registration for the purposes of section 13 relates.

The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals

24 September 2014

Independent Reviewer:
Stephen Wooler CB

Acknowledgements

I take this opportunity to record my thanks and appreciation to all who assisted in this review. External stakeholders and staff alike were generous with their time. Each brought his or her own valuable perspective and all were both open and frank.

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Abbreviations and acronyms

ACPO	*Association of Chief Police Officers*
AHVLA	*Animal Health and Veterinary Laboratories Agency*
AWA 2006	*Animal Welfare Act 2006*
CILEX	*Chartered Institute of Legal Executives*
CLO	*Chief Legal Officer*
CMHs	*Case Management Hearings*
CPIA 1996	*Criminal Prosecution & Investigation Act 1996*
CPS	*Crown Prosecution Service*
DEFRA	*Department for the Environment, Food and Rural Affairs*
EFRA	*Environment, Food and Rural Affairs*
LACORS	*Local Authorities Co-ordinators of Regulatory Services*
LACS	*League Against Cruel Sports*
NGO	*Non-Governmental Organisations*
PCMs	*Prosecution Case Managers*
POWA	*Protect Our Wild Animals*
PNC	*Police National Computer*
RCVS	*Royal College of Veterinary Surgeons*
RSPB	*Royal Society for the Protection of Birds*
RSPCA	*Royal Society for the Prevention of Cruelty to Animals*
RSPCA Council	*RSPCA Council of Trustees (a body of currently 21 persons elected democratically from the membership)*
SVS	*State Veterinary Service*
YOTs	*Youth Offending Teams*

Note: *During recent years the position of the Senior Lawyer within the RSPCA has been known variously as Director of Legal Services, Chief Legal Adviser and Chief Legal Officer (current). To avoid confusion the latter term has been used throughout this report.*

Contents

				Page
			Acknowledgements	2
			Abbreviations and acronyms	3
			Contents	4
			Index of tables and annexes	6
			Foreword	7
Chapter 1			**Executive summary** *(including summary of recommendations)*	8
Chapter 2			**Introduction**	28
	2.1		*Background*	29
	2.2		*Purpose and approach of the review*	32
	2.3		*Methodology*	33
	2.4		*Structure of report*	33
Chapter 3			**The overarching findings**	35
Chapter 4			**Overview of strengths and weaknesses in the overall enforcement arrangements; and the need for change**	40
	4.1		*Background*	40
	4.2		*Current position: prosecution*	42
	4.3		*Current position: investigation*	46
	4.4		*The need to change the operating environment*	50
	4.5		*Recommendation*	52
Chapter 5			**The role of the Inspectorate**	53
	5.1		Introduction	53
	5.2		The investigation process	55
		5.2.1	*Gaining access to premises/and or animals*	56
	5.3		Seizure and taking animals into possession	56
		5.3.1	*Seizure of evidence*	57
		5.3.2	*The substantive investigation*	58
		5.3.3	*Submission of report*	59
		5.3.4	*Perceptions of RSPCA enforcement*	60
		5.3.5	*RSPCA reliance on police powers*	63
	5.4		RSPCA arrangements for considering and responding to complaints	66
	5.5		The handling of animal sanctuary cases	68
	5.6		The way forward	69
	5.7		Recommendations	70
Chapter 6			**How the RSPCA discharges its prosecution functions**	71
	6.1		Introduction	71
	6.2		Case load and outcomes	71
	6.3		Organisation and ethos of the department	74
		6.3.1	*Separation of the functions: the Philips Principle*	75

		6.3.2	*Ethos*	77
		6.3.3	*The institution and conduct of proceedings – including applications of the Code for Crown Prosecutors and prosecution policy*	79
		6.3.4	*Evidential test*	80
		6.3.5	*Public interest test*	81
		6.3.6	*Relationship between public interest and charitable benefit*	84
	6.4		Checks and balances: the right of the Director of Public Prosecutions to intervene	84
	6.5		The approach to charging	87
	6.6		Case management	88
		6.6.1	*Prosecution disclosure*	91
	6.7		Relationship with the Inspectorate	93
	6.8		The business model for the Prosecutions Department	94
	6.9		Recommendations	95
Chapter 7			**The gathering of veterinary evidence**	98
	7.1		Certification	98
	7.2		The use of veterinary surgeons as experts	99
	7.3		Suffering	100
	7.4		Recommendations	102
Chapter 8			**Costs**	104
	8.1		Overview	104
	8.2		RSPCA claims for costs: the elements	105
	8.3		Cost of external lawyers	106
	8.4		Operating model	106
		8.4.1	*The level of external fees*	106
		8.4.2	*Proportionality and the wider impact of costs*	107
	8.5		Comments	108
	8.6		Recommendations	108
Chapter 9			**RSPCA involvement in cases under the Hunting Act 2004**	109
	9.1		Introduction	109
	9.2		Enforcement, legal and evidential issues	109
	9.3		Investigation and prosecution of offences under the Hunting Act 2004	111
	9.4		Approaches to the RSPCA	112
	9.5		RSPCA Prosecutions Department handling of the Heythrop Hunt case	113
		9.5.1	*The 2010–2011 Proceedings*	114

		9.5.2	*The 2011–2012 Proceedings*	115
		9.5.3	Overtures by the defence	116
	9.6		Commentary of the RSPCA handling on the Heythrop Hunt case	117
	9.7		Charitable benefit	118
	9.8		Learning points	119
	9.9		Other hunting cases	119
	9.10		The way forward	120
	9.11		Recommendation	122
Chapter 10			**Management and governance**	123
	10.1		Introduction	123
	10.2		Complaint handling	125
	10.3		Communication	125
	10.4		Recommendations	126
Chapter 11			**Conclusions**	127
			ANNEXES	
		1	*Amplification of the methodology adopted*	128
		2	*List of those individuals who assisted the review of the prosecution activity of the RSPCA*	131
		3	*Extracts from 2004/5 Parliamentary proceedings advanced as basis for undertaking*	134
		4	*Organisational chart of the Prosecutions Department*	138
		5	*Key provisions of the Hunting Act 2004*	139
		6	*Details of RSPCA hunt prosecutions other than the Heythrop case*	140

Tables

Table 1 *Does your local authority have appointed inspectors or staff members under the AWA/AHWSA?* *48*

Table 2 *In what capacity do appointed AWA/AHWSA staff members perform their duties?* *48*

Table 3 *Average percentage of appointed staff members dealing with companion animal welfare on a daily basis* *49*

Table 4 *Local authorities which have appointed staff and none are involved with companion animal welfare on a daily basis.* *49*

Table 5 *Prosecution Statistics 2010–2013* *72*

Table 6 *Prosecution Costs 2012–2013* *104*

Foreword

Since being founded in 1824, the RSPCA has established itself as the leading organisation in animal welfare in England and Wales and its influence has spread world-wide. The many facets of its activities include direct involvement in animal welfare, research, education and campaigning. But from its earliest days enforcement of the law has, as my terms of reference set out, been an integral component of its strategy for fulfilling its charitable purposes of promoting kindness and preventing and suppressing cruelty to animals. The Council's invitation to undertake a review of the Society's prosecution activity was therefore a great privilege.

Although the focus for the review was the Society's role as a prosecutor and the concerns that had been expressed about this function, there were many strands to those issues – some going to matters of principle and others relating to the quality of decision-making and the management of cases. It quickly became clear that they had to be examined in the wider context of the overall arrangements for the enforcement of animal welfare legislation in England and Wales. It was also essential to distinguish between those criticisms, mainly of longer standing, that went to the overall quality of RSPCA enforcement activity and those of more recent origin that were more specifically directed at its prosecutions relating to hunting activity.

The current role of the RSPCA has evolved largely outside the mainstream criminal justice system and owes more to history than any strategy. The unstructured and haphazard environment within which the RSPCA operates now means that the RSPCA role is poorly defined and its relationships with the public bodies with whom its work overlaps are unclear. Despite this and extensive criticism in the media and elsewhere, there can be no doubt that the RSPCA makes a major contribution and brings expertise that is too valuable to be lost. It also continues to enjoy substantial public support. Nonetheless, there are significant weaknesses. In particular, its prosecution role has failed to develop to accord with contemporary expectations of transparency and accountability – issues recognised by my terms of reference. It therefore needs to adapt.

My report therefore presents challenges not only to the RSPCA but also to government and the public authorities who share the responsibility for animal welfare. There is at present an undue readiness on their part to opt out of tackling animal welfare issues on the basis that the RSPCA will then pick up the task – and the cost. Its main recommendations propose that the Society seeks to re-position itself so as to achieve a close and more structured relationship with government and the other relevant public authorities on the basis that its role is formalised within a framework that provides the necessary accountability and transparency – with the Society being afforded the status and authority it needs to discharge an enforcement role in a manner that conforms with 21st century expectations. Such partnership would be consistent with arrangements found in other sectors and would not compromise the Society's status as an independent charity.

Although this re-positioning is the most vital there are other steps the RSPCA can and should take to strengthen its handling of investigation and prosecution work; and these are within its own gift. Its history of achievement over 190 years shows it has the capacity to change and adapt. My report is intended to signpost the way. Without such change, the Society will be vulnerable to those with a very narrow agenda that is not founded on legitimate concern.

Stephen Wooler

1 EXECUTIVE SUMMARY

1. The Council of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) decided on 12 December 2013 to commission a review of the manner in which the RSPCA discharges its prosecution role. It provided the following terms of reference:

> "Acknowledging that the RSPCA regards the prosecution of animal welfare offences in appropriate cases to be an integral component of its strategy for fulfilling its charitable purposes of promoting kindness and preventing and suppressing cruelty to animals, to review the RSPCA's arrangements for deciding whether to instigate private prosecutions on behalf of the RSPCA with particular regard to:
>
> (a) decisions taken whether or not to prosecute; and
>
> (b) the subsequent conduct of any criminal proceedings in relation to alleged offending;
>
> and to report on how far these accord with the standards of a reasonable, competent and objective prosecutor; to consider and report on concerns expressed about the RSPCA's prosecution function; and to identify any areas for improvement and make recommendations as to any changes the RSPCA should make or seek to bring about to achieve that improvement.
>
> In doing so, the Reviewer shall take into account the expectations and implications arising from the RSPCA's charitable status, including the relationships between its charitable purposes, the charitable benefits flowing from prosecutions and the prosecutorial assessment of wider public interest.
>
> The context for assessment is the Society's position as a private prosecutor conducting the majority of animal welfare cases in England and Wales. The report should strengthen public accountability and transparency for this work. Although the review does not extend to the RSPCA's investigative function, it should examine any such matters that have a bearing on the conduct of any subsequent prosecution instigated by the RSPCA."

2. It quickly became apparent that many of the rubbing points stem from a lack of structure and cohesiveness in the overall arrangements for the enforcement of animal welfare legislation. This made it impossible properly to address issues relating to the RSPCA's prosecution activity without looking at its wider operating environment. The report sets out the extent to which the RSPCA needs to re-position itself and revise its approach to reflect a changed environment and meet contemporary expectations, including transparency and readiness to account. Some of what is proposed can be achieved by the RSPCA itself; but important elements will be dependent on support and collaboration by government and public sector bodies.

Background to and the approach of the review

3. The RSPCA is a charity with a long prestigious history. It was founded in 1824 and received royal patronage in 1840. In addition to a wide range of other activities, it has a long history of prosecuting animal welfare offences. Despite lacking any official status (its inspectors have no statutory or common law powers) the RSPCA is very pro-active as a law enforcement agency and in practice operates as a specialist (private) police force with an associated prosecution role. It also operates in an unusual environment in that there is no public body within central or local government that has overall responsibility for the enforcement of animal welfare law.

4. The RSPCA's investigation and prosecution work combined with its campaigning and commercial activities along with other factors to attract significant criticism over some years including in the course of the Parliamentary proceedings leading to enactment of the Animal Welfare Act 2006. Public voicing of such criticism reached a crescendo after the RSPCA's prosecution of the Heythrop Hunt. In January 2013 Mr Simon Hart MP initiated a debate in the House of Commons about prosecutions brought by the RSPCA. The Charity Commission also received complaints about the campaigning and prosecuting activities of the RSPCA although these did not lead to any regulatory action.

5. HM Attorney General responded to the Parliamentary debate and subsequently suggested there could be advantage in an independent review although he stressed that it was a matter for the RSPCA Council.

6. Although the role of the RSPCA's Prosecutions Department was the main focus for the review, it also addressed wider strengths and weaknesses including its structure (compatibility with the Philips Principle), the development and application of policies and the management of its case work – including the publicly voiced criticisms. Addressing these matters inevitably required the review to consider the implications of the RSPCA's operating environment, in particular the combination of the reliance placed on it for law enforcement and the absence of any official status or authority. This is turn raised important issues about the relationship between the RSPCA and the police service and the form that assistance should take when the RSPCA wishes to gain access to premises, seize animals or question individuals. The report therefore inevitably extends beyond matters that relate solely to the Prosecutions Department and the RSPCA itself.

Overarching findings

7. Since the RSPCA was founded in 1824, its combination of direct welfare action, campaigning for law reform and enforcement of those laws has advanced animal welfare beyond anything its founders could have hoped for or dreamed of. During the course of the review RSPCA inspectors were involved in several high profile responses to welfare emergencies. Unsurprisingly, the responses to public consultation demonstrate a continuing high level of public support for the RSPCA despite recent criticisms. Good organisations continuously review their own performance and adapt to change, listening to and learning from feedback including criticism and complaints. It is in that spirit the RSPCA Council set up this review.

8. There are several aspects of the RSPCA's enforcement work where change is necessary in order to bring the Society in line with 21st century public expectations and to maintain confidence, particularly by providing accountability and improving transparency. It also needs to be more responsive to the increasing incidences of

complaints about some actions taken by the Inspectorate and concerns that some of its prosecutions have been inappropriately focussed where little would be achieved; and sometimes on some of the most vulnerable elements of society. The combination of criticism and a relentless media campaign has had an adverse, and in many respects disproportionate, impact on the Society's standing. Some changes of structure and ethos are needed within the organisation, although many of the problems identified by this review stem from the unsatisfactory infrastructure for enforcement of animal welfare law generally and this needs to be addressed in collaboration with others – government in particular.

9. Contemporary expectations, as reflected in judicial dicta, are that the power to prosecute should be exercised:

    - in an impartial and objective manner in accordance with policies that are clear and transparent;
    - free from the interference of executive government or other extraneous influence; and
    - by bodies that are accountable.

    The RSPCA is not a public body but the scale of its enforcement role and its relationship with the police and other bodies mean that it is *de facto* a prosecuting authority and should therefore meet the same standards.

10. Two problems arise: first, the Society's role in relation to enforcement of animal welfare law is insufficiently defined for it to develop an effective enforcement strategy. An area of particular sensitivity is its involvement with animal sanctuaries and rescues, some run by other charities that are not regulated. Secondly, any enforcement strategy must take account of the Society's campaigning, commercial and *de facto* regulatory roles that do not always sit comfortably with the role of prosecutor. There is an inevitable tension between the RSPCA's status and its very specific objectives as an animal welfare charity and the broader public policy considerations relevant to law enforcement. This is compounded by the 2006 extension of the ambit of the criminal law and the absence of any powers of official status on the part of the RSPCA relating to enforcement.

11. The RSPCA prosecutes approximately 80% of cases relating to animal welfare law. There is no other body which could take on the RSPCA's current role and its contribution is too valuable to be lost. The Society should seek to re-position itself through dialogue with government aimed at putting its work on a more structured and more publicly accountable basis through the conferring of proper authority and powers on the RSPCA as regards both investigation and prosecution. This should be within a framework of checks and balances including possibly a form of external scrutiny.

12. The RSPCA has historically been concerned to avoid any step that might compromise its independent charitable status. The review believes that the RSPCA should in future work more closely with government and public sector counterparts; this would not constitute a risk and would accord with the growing recognition of the value of partnerships as between the public, private and third sectors.

13. This re-positioning and other considerations may also require some self-imposed circumscription of the Society's prosecuting role if it is to avoid conflict with its commercial and campaigning activities. Specifically these would relate to cases involving animal sanctuaries and rehoming centres; cases relating to organisations

that have a commercial relationship with the RSPCA (e.g.Freedom Food accredited farms) and some hunting cases.

14. Such change would need to be reflected in more structured arrangements for governance and internal accountability that balance respect for independence in relation to prosecution policies and decision-making with the responsibilities of the trustees and in particular for ensuring that there is a charitable benefit flowing from all the Society's activities including the Prosecutions Department. Governance arrangements should also ensure more effective handling of complaints about the RSPCA's conduct. An independent element should be introduced for those complaints that cannot otherwise be satisfactorily resolved.

15. At the operational level, the Prosecutions Department performs well in terms of its case outcomes with 88.6% of persons charged in 2013 being convicted and 74.1% of offences charged resulting in conviction. The RSPCA enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed.

16. Nonetheless, there should be a strengthening of the Prosecutions Department whose key role at present is decision-making and the instruction of external solicitors for the care and conduct of cases. It should be reconstituted as a fully-fledged prosecuting office through the creation of an in-house capacity for end-to-end management of casework with more qualified lawyers, so as to strengthen the independent element. Prosecution decisions would become the responsibility of qualified solicitors and barristers. A more flexible business model could be more flexible and cost-effective whilst also creating new opportunities for Prosecution Case Managers to have a more hands on approach to some cases, including attendance at court to support counsel.

17. Matters relating to the RSPCA prosecution in 2012 of the Heythrop Hunt and other prosecutions under the Hunting Act 2004 were subsidiary to the wider concerns.

18. The starting point as regards such cases is that the law is the law until Parliament decides otherwise and should be upheld. The RSPCA found itself reacting to a thoroughly unsatisfactory situation where the evidence strongly indicated that it was "business as usual" for many hunts because enforcement of the 2004 legislation had become so difficult. The Society had not previously prosecuted any such cases but there was widespread scepticism as to the commitment of the police and CPS to do so. The prosecution was envisaged as a test case to see whether the legislation could be made to work effectively. The decision to bring proceedings on that basis cannot be criticised although there was a strong element of overkill so the costs were higher than they needed to be. The review proposes that the RSPCA should adopt a revised approach to its role placing more reliance on the police and the CPS (who have primary responsibility for enforcement of the Hunting Act 2004) whilst also pressing for changes to the law that would make enforcement possible without disproportionate cost.

Specific findings

Strengths and weaknesses of the current enforcement arrangements

19. The current role of the RSPCA has evolved largely outside the mainstream criminal justice system and owes more to history than any clear strategy. Its prosecution role is poorly defined and has failed to develop to accord with contemporary expectations of transparency and accountability. As the system of public prosecution developed in the 19th and 20th centuries, the RSPCA stood outside that change. It now stands alone as a non-public body with a substantial prosecution function.

20. The structure of the Prosecutions Department as a self-contained unit reporting to the RSPCA's Chief Legal Officer is intended to support the underlying principle that policies and individual decisions should be free from external influence. It is quite separate from the Inspectorate organisationally. For governance purposes it comes within the purview of the RSPCA Council but that has a more reactive role and does not extend to prosecution policy or individual decisions. Consequently, there is no external accountability for the Prosecutions Department and only limited internal accountability. Many of those who have contributed to the review expressed frustration that there was no effective avenue for addressing concerns or calling RSPCA prosecutors to account.

21. From an RSPCA perspective, the strength of the present arrangement is its strong influence over the manner in which laws are implemented including those where the substance has been strongly influenced by the Society. The strength from the public (and governmental perspective) is that it is getting a free service. It is also convenient for government departments who are able to distance themselves from some of the sensitive issues involved.

22. The main weakness is the lack of accountability. It featured in the 2004 considerations of the Environmental, Food and Rural Affairs Select Committee in its pre-legislative scrutiny of what became the 2006 Act**.** The Committee's reasoning is unclear as to why it should be acceptable to rely on the prosecuting role of the RSPCA when it deemed inappropriate to authorise that role. The effect on the public is no less and arguably more serious in that they are subjected to unaccountable authority.

23. The present position is not in the interests in either the RSPCA or the public. But the RSPCA should not abandon its prosecution activities – although some modification may be appropriate. Instead it should approach relevant government departments with a view to agreeing a basis whereby its prosecutions role is formalised and accredited as happens, for example, in Australia. It would undoubtedly require voluntary assumption by the RSPCA of duties that attach to public prosecuting authorities in terms of accountability. The main requirements would be the development of over arching policies and offence specific guidance to be published after full external consultation; greater transparency, internal guidance and practice and procedure manuals being made publicly available; and arrangements for the effective investigation of complaints with an appropriate escalation process.

24. The RSPCA should become more a part of the wider criminal justice community. Although it is responsible for approximately 83% of animal welfare prosecutions, it is by no means the only player. The review received clear evidence that the approach to enforcement varies significantly across the various agencies which include the

CPS, local authorities and AHVLA. There is a need for consistency of overall approach even though there are different factors in play in the various sectors. It is wrong that the likelihood of an individual being prosecuted, and the approach to the conduct of proceedings should depend on the attitude (or resources) of the particular prosecuting body.

25. Arrangements for the investigation of alleged animal welfare offences are also fragmented to the point of haphazard. Animal welfare issues arise in several sectors – the main ones being farm animals; companion animals; wild animals; markets and slaughter-houses; and animals in transport. Legislation provides for enforcement mainly by local authorities and those authorised by DEFRA (for England) and the Welsh Assembly (for Wales). The police also has wide ranging powers but limited involvement – mainly confined to dangerous dogs and those offences likely to be linked to wider criminal activities.

26. What happens in practice has changed little since the Animal Welfare Act 2006 which had the effect of substantially broadening the scope of the criminal law and creating substantial uncertainty. The whole structure of the act focuses extensively on local authorities for enforcement but both investigation and prosecution powers are discretionary. Central government proceeded on the assumption that, because local authorities had general regulatory responsibility for particular types of animals in specific situations, they were the appropriate bodies to take on a greatly expanded role. In fact, research demonstrates that in significant areas the 2006 Act would be largely ineffective except for the contribution of charitable NGOs such as the RSPCA.

27. The extent of the departure from what Parliament appears to have envisaged (as judged by the empowerment of local authorities to appoint inspectors and prosecute) is stark. In England just over 60% of local authorities had appointed inspectors for the purpose of the 2006 Act. Where appointments had been made, there was relatively little focus of resources on companion animal welfare. Indeed, over 50% of county councils in England and nearly 40% of other English local authorities said that they would **always** refer such matters to the RSPCA. A further 20% of local authorities would **nearly always** refer such matters to the RSPCA.

28. The lead department is DEFRA which sponsored the Animal Welfare Act 2006 but assert that they do not “own it”. That is undoubtedly correct in so far as DEFRA cannot be expected to undertake all aspects of implementation. Nonetheless it is reasonable to expect that clear and appropriate arrangements for enforcement would be in place. There was an attempt shortly after enactment of the 2006 Act to develop a protocol setting out the respective responsibilities of the various agencies concerned with animal welfare having regard to the broadening of the criminal law. It quickly ran into the sand, largely because only the RSPCA would accept any additional burden. Enforcement remained a criticism at the time of DEFRA’s 2010 post-legislation assessment. The present position is that the Society is utilising its charitable funds to discharge what is effectively a government function but with only limited recognition or reimbursement.

29. The review recommends that the RSPCA opens discussions with the government (DEFRA) with a view to restarting the early exercise to apportion responsibility. The RSPCA should seek a concordat identifying those aspects where it is to be the primary enforcement agency and seek appointment of suitably experienced RSPCA inspectors as inspectors for the purposes of the 2006 Act. For such discussion to have any prospect of success, the RSPCA would need to consider the appropriateness of its own position as regards some activities which might be inconsistent with a formal role in investigation and prosecution.

The role of the Inspectorate

30. The Inspectorate is the investigation arm of the RSPCA: what it undertakes and how it does it largely determines the scope and nature of the work undertaken by the Prosecutions Department. It is also the Inspectorate that has the greatest impact on the public. The investigative role of the Inspectorate is poorly defined and its work is not underpinned by any clear strategy. In practice, it is determined by a combination of the need to fill "the gaping hole" together with other priorities as from time to time determined by the Council. The role of the Inspectorate is therefore linked more closely than the Prosecutions Department to the wider objectives of the Society and its campaigns. This makes it difficult but even more important for the Prosecutions Department to convince observers that its decisions really are immune from the sort of extraneous factors mentioned in the Code for Crown Prosecutors.

31. It is wholly anomalous that the state appears to place such extensive reliance on a charity to enforce criminal legislation that directly impacts on the day to day lives of ordinary citizens. It is even more remarkable that powers of investigation and prosecution are conferred on public authorities who choose not to exercise them; but are not conferred on the RSPCA.

32. Such a scenario is ripe for disputes, confrontation and recriminations if an RSPCA inspector appears to have adopted a course beyond what is strictly lawful even with the assistance of police or an inspector authorised for the purposes of the Animal Welfare Act 2006. It may create an acrimonious background to any proceedings and the proceedings themselves may also be affected by impacting on the admissibility of evidence. Disputes may also extend to the continued retention of animals seized during the course of an investigation.

33. All stages of the investigation are affected by the absence of powers. RSPCA inspectors are dependent on the police for gaining access to premises and/or animals through the powers of entry vested in constables or by police application to the courts for warrants. They are similarly dependent on the police for seizure of and taking animals into possession; as well as for seizure of evidence. A particularly contentious issue may arise when an inspector wishes to interview a person about whom complaint has been made and that individual either declines to be interviewed or hands over a prepared statement making it clear that further questions will not be answered. Some inspectors may then request the police to effect an arrest under section 24(5)(e) of the Police and Criminal Evidence Act (to facilitate the prompt and effective investigation of an offence) so that RSPCA inspectors may attend the police station in order to conduct an interview in the custody suite.

34. There is a memorandum of understanding between the Association of Chief Police Officers (ACPO) and the RSPCA setting out in broadest terms the arrangements for collaboration and the principles which should be applied. There is no additional guidance from ACPO or elsewhere save that the RSPCA may have some understanding at local level although these tend to be of limited value. This appears to be a contributory factor in the increasing difficulties encountered by the operational RSPCA inspectors in obtaining assistance to check on the welfare of animals – whether by gaining access to premises, effecting seizures or obtaining search warrants. The RSPCA Prosecutions Department has responded by producing a booklet carried by inspectors entitled 'How can I gain lawful access to help the animals?'.

The foreword to the booklet comments:

> "...whether we like it or not, we must now face the fact that with the ever increasing burden on police resources, when you need to gain entry to premises to help an animal that is suffering or in distress, the police officers that you turn to will look to you for guidance on the available options more than ever before."

35. That situation is not one of the RSPCA's making but it does create significant risk and highlights the extent of police acquiescence. It is imperative that the RSPCA works together with ACPO to develop further operational guidance to assist constables and inspectors where the latter seek assistance in relation to possible welfare offences.

36. Issues that the guidance will need to address include:

    - Police officers responding to requests by the RSPCA for assistance generally have no knowledge of the circumstances and in most cases, no knowledge of the relevant legislation. In most instances they are reliant on direction from the RSPCA as to the steps to be taken.

    - There is an artificiality in a situation where legislation vests specific powers on the police to the exclusion of RSPCA inspectors but police officers who have no intention of carrying out an investigation exercise powers of search and seizure only to hand material to a third party with no official status (the RSPCA) and with no intention of themselves acting on it. There is a particular risk if it turns out that material seized included that which should not be – collateral intrusion occurs.

    - The safeguards, built in into legislation are rendered of no value because the police subsequently accept no responsibility for the seizures and simply refer queries and challenges to the RSPCA: whose actual role is no more than baillee on behalf of the police.

37. Despite the plaudits received from many quarters, the Inspectorate does attract criticism from a range of sources. The majority of concerns expressed by respondents about the RSPCA were directed towards the investigation. Whilst some are likely to be exaggerated, similar assertions emanated from such varied sources that they cannot simply be dismissed as unfounded. Moreover, the pejorative and judgemental tone of many preface reports submitted by inspectors is consistent with what many describe.

38. There is no direct evidence but it is reasonable to infer a link between many such complaints and the absence of any official status or power on the part of RSPCA inspectors. They are dependent on a combination of charm and assertiveness to gain access to premises. They also appear in uniform and with police style titles and it would be surprising if some at least did not trade on this – leaving individuals who have co-operated possibly feeling "had over" especially if the outcome has been the calling of the police to regularise a seizure. Additionally, knowledge of the ease in which they can get the police to do their bidding may encourage inspectors to imply more authority than they have. This review was concerned mainly with prosecution activity and more in-depth consideration of these issues is a matter for the Chief Inspectorate Officer and his senior staff.

39. Although it may seem curious in the face of such criticism to propose the conferring of statutory powers on RSPCA inspectors, the best way forward is a re-positioning whereby the RSPCA inspectors are given the tools to do the job but on the basis that current gaps in transparency and accountability are closed. A key aspect of this process would be improvement of the RSPCA's own complaints procedure. Seeking such official status would bring the RSPCA more in line with counterparts in many other countries such as Scotland, Australia and New Zealand.

Animal sanctuaries and rescue homes

40. The handling of animal sanctuary cases is intrinsically difficult and sensitive. Despite the "reasonable and competent person" test in the 2006 Act, there remains a significant subjective element in the context of sanctuaries and rescues when those concerned may be struggling to achieve the best they can with limited resources, skills and expertise. The resultant criticisms of RSPCA actions may be more damaging because they originate within the animal welfare community although in reality the quality of animal husbandry offered by such organisations varies from the excellent to the downright cruel.

41. There is a need for oversight of such institutions on a preventive basis but that task at present falls to the RSPCA using the blunt instrument of the criminal law – making the position doubly anomalous because the RSPCA itself operates such establishments and patronises many others. In January 2004, the Companion Animal Welfare Council (CAWC) published its 'Report on Companion Animal Welfare Establishments: sanctuaries, shelters and rehoming centres'. It concluded that such establishments should be publicly accountable for the standard of care provided and recommended regulation by a proportionate system of licensing and registration. The necessary provision was made in the Animal Welfare Act 2006 but has not been implemented.

42. An effective regime operating the sort of standards proposed by CAWC could substantially reduce the need for interventions through the criminal law. Where such intervention is necessary, the primary responsibility for enforcement should rest with the licensing/registration authority albeit with assistance from the RSPCA. This would avoid the situation whereby one charity might be appearing to regulate others and protect the RSPCA from suggestions of improper motivation.

Handling of complaints

43. The Society lacks a structured and effective mechanism for considering and responding to complaints. The national complaints procedure current in March 2014 for the Inspectorate seems rudimentary and simply provides for Chief Inspectors to reply to complainants either directly themselves or through a complaints co-ordinator writing on their behalf. The question and answer document also refers to the possibility of a more senior member of staff if the individual remains dissatisfied. There is, however, no guidance to ensure that investigation is thorough and impartial. There is no provision at any stage for an external element. Nor are there any arrangements for analysing the outcomes (with a view to learning) and no information was available as to the outcomes themselves. There is an urgent need for a more effective complaints procedure with an independent element.

How the RSPCA discharges its prosecution functions

44. The Prosecutions Department at present comprises an Acting Head of Society Prosecutions and a flexible complement of Prosecution Case Managers who are paralegals together with support staff and a Data and Costs Recovery Team. The Acting Head is not a solicitor or barrister although his predecessor was and the Society's intention is that the permanent appointee should be so qualified. The structure is intended to separate the investigation process from prosecution decision-making.

45. Critics assert that the role of the Prosecutions Department is inappropriate because the RSPCA is:

    - an organisation that both investigates and prosecutes; and
    - has other roles that are incompatible with its position as a *de facto* prosecuting authority.

    The current arrangements do achieve separation of functions insofar as prosecution decisions are not taken by those who investigate – but not in the same way as by the police and Crown Prosecution Service in different organisations. That of itself is not an insuperable impediment since many organisations combine investigation and prosecution. The key requirement is the separation of the two functions.

46. The more important considerations relate to the second head of criticism and the need for decisions to be taken objectively and impartially and free from any extraneous and improper influence; and for that to be seen to be so. These are more problematic because few other prosecutors have the level of campaigning and lobbying activity that the RSPCA does. Further potential for calling into question the objectivity and impartiality of RSPCA prosecutions arises from its open stance that some public authorities (including the courts who are frequently encouraged to tougher sentencing) are insufficiently robust in their enforcement of animal welfare laws.

47. This gives rise to a situation where, on any objective basis the RSPCA is best placed to undertake most of the prosecution work in terms of resources and technical expertise, but is compromised to some extent by its other roles. The difficulties can be overcome by some strengthening of the professional element within the Prosecutions Department and by moving incrementally to a position where all prosecution decisions are taken by or under the supervision of qualified solicitors and barristers. Some categories of case should be referred elsewhere. Such a change would also address some of the cultural issues identified within the Prosecutions Department. The oversight of experienced prosecutors who have forensic experience at the coal face would also assist in managing some of the difficult relationships with the more challenging defence practitioners who specialise in defending animal welfare cases.

48. On the operational level the Prosecutions Department performs well in terms of its case outcomes with 88.6% of persons charged in 2013 being convicted and 74.1% of offences charged resulting in conviction. The Prosecutions Department enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed.

49. A striking feature of the review has been the level of mistrust between PCMs and those who defend which can at times seem disproportionate. At the time of this

review the Chief Legal Officer was engaging with defence practitioners with a view to improving relationships.

50. The RSPCA has publicly espoused the Code for Crown Prosecutors. However, the document setting out the 'RSPCA approach to Crown Prosecution' is very basic. It is not accompanied by any supplementary guidance indicating how RSPCA prosecutors will weigh the factors most likely to arise in animal welfare cases; and it is not supported by any offence specific policy statements.

51. The assessment of the evidence was satisfactory in 90% of the cases where it was relevant. There were rather more cases where the review had concerns about the application of the public interest test. In nine cases within the RSPCA sample, individual prosecutions either did not seem necessary in the public interest or were commenced without full consideration.

52. It does not follow automatically that, because the public interest requires a prosecution, there will be a charitable benefit flowing from the RSPCA undertaking it. Whilst that is likely in the vast majority of the cases it deals with, Prosecution Case Managers need to be alert to those where the likely cost, novelty or other special factor requires more specific consideration of whether it is in the best interest of the charity to take the case forward. This is a topic that would benefit from guidance from the Prosecution Oversight Group.

53. During the House of Commons debate in January 2013, the Attorney General drew attention to the right of the Director of Public Prosecutions (as Head of the CPS) to intervene in any criminal proceedings on the basis that it offered a safeguard to defendants who could request the CPS to intervene in RSPCA cases if they felt that proceedings were unjustified.

54. There has been no case where the CPS has intervened to discontinue all charges but on two occasions the CPS has intervened and discontinued the main charges. There is a lack of clarity around the processes associated with such applications. It is not the practice of the CPS to provide to the RSPCA a copy of the request or details of the grounds of the application. It is therefore unsighted when responding to the CPS as to why the prosecution is alleged to be objectionable. It is important to develop a procedure whereby the CPS, if it believes intervention may be appropriate, affords the RSPCA the opportunity to address any concerns before any decision is taken and implemented. The Chief Legal Officer should make an urgent approach to the CPS with a view to agreeing a protocol.

55. A significant proportion of cases viewed involved numbers of charges which seemed disproportionate to the complexity and included defendants who did not have primary responsibility for the animals or the misconduct although they may have assumed some – possibly by assisting the owner. There is always a balance to be struck. The Prosecutions Department does not have any formal charging guidance to assist PCMs in presenting the case in the most precise and straightforward manner. This aspect of its work would benefit from further and more detailed consideration in order to identify an approach to charging which would be more straightforward while continuing to reflect the gravamen of the offending and not falling foul of the rules relating to duplicity.

56. The time case files take to reach the Prosecutions Department is too long and in most cases significantly in excess of the 21 day time limit from the time the case is commenced. Reports from inspectors usually contain all relevant evidence although

more information to assist the public interest aspect of decision-making is desirable. The structure of reports could be more user-friendly. Against this, the overall management of cases through the system is more effective and thorough than that found in most prosecuting authorities including the CPS. Case ownership by the PCMs is strong but recording of decisions and actions taken is poor. Oversight by the Head of Prosecutions is very light touch and the overall ethos does not provide effective internal accountability. The strong individual case ownership of PCMs persists even after cases have been assigned to an external solicitor for prosecution. They work on a strict solicitor/client relationship according to instructions given by the PCMs and are expected to report each stage of the process and take instructions on all significant decisions.

57. Prosecutors (including the RSPCA) of offences under the Animal Welfare Act 2006 benefit from a special regime instead of the usual six-month time limit imposed by section 127 of the Magistrates' Courts Act 1980. Section 31(1)(b) of the 2006 Act stipulates that proceedings must be brought within three years of the offence and within six months of the date when "the evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge". Section 31(2)(a) makes a certificate by the prosecutor conclusive evidence of the date when that arose. In the interests of consistency, the review recommends that such certificates should be signed by the Chief Legal Officer or the Head of Prosecutions.

58. The RSPCA approach to retention of case animals seems both rigid and expensive and gives rise to numerous complaints. The Prosecutions Department seems routinely to take decisions which seem in law to be for the police. PCMs assert that the police will not take them.

59. Prosecution disclosure has proved one of the most intractable problems in the criminal justice system for the past three decades. In the magistrates' courts there has been a constant struggle to strike the right balance between, on the one hand a system of full and effective disclosure and, on the other hand, proportionality in the construction of prosecution case files and the obligations placed on the prosecution. The most recent development has been publication in May 2014 by the Judicial Office of a report of a review commissioned by the Senior Presiding Judge.

60. RSPCA procedures for prosecution disclosure differ from those operated by the police and the CPS but the review is satisfied that, subject to one modification, they would meet the current requirements. However, implementation of the recommendations of a report commissioned by the Senior Presiding Judge published in May 2014 by the Judicial Office will require additional change. The review recommends three changes should ensure compliance with both current and future requirements. They are:

    1. The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.
    2. Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.
    3. The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.

61. Although the practice of certification being undertaken by the PCM differs from that pertaining elsewhere, it does have advantages in that the PCMs have more experience of the handling of such issues than individual inspectors whom each conduct a relatively small number of cases per year.

62. The review did receive adverse comments about prosecution disclosure but the experience of the Reviewer is that the incidence was no more than those routinely levelled at other prosecutors. As to the effectiveness of the RSPCA approach, the Reviewer would not have been able without disproportionate effort and resources to drill down into individual criticisms. Responsibility for compliance with both the initial duty of disclosure and the continuing duty rests firmly with the external solicitors responsible for the conduct of prosecutions. The RSPCA responsibility is to ensure that all potentially disclosable material is available to them. In most cases details as to the handling of disclosure issues would only be found on the working papers of the external solicitors and counsel which are not ordinarily returned to the RSPCA.

63. There is scope for beneficial change to the Prosecutions Department's business model and the manner in which it uses external lawyers. There are sound reasons of principle outlined earlier for the RSPCA to move incrementally to a position whereby all prosecution decisions are the responsibility of solicitors or barristers. Although that would entail additional expenditure on the staffing budget the review also believes that it would be cost-effective for the Prosecutions Department to build an in-house capacity for end-to-end conduct of cases and management oversight of the overall caseload. Consideration should be given to a more flexible business model enabling cases to be handled in the manner likely to be most cost effective for the particular case. The options include:

    - continued use of a local solicitor for "whole case conduct" as at present but on the basis of a more uniform structure for remuneration;

    - in-house preparation by an RSPCA prosecutor or PCMs with reliance on in-house prosecutors to conduct proceedings in the magistrates' courts where the nature of the case and geographical (cost) considerations make this suitable;

    - in-house preparation by PCMs with counsel instructed to cover initial and adjourned hearings including case management hearings. The PCM would attend trials.

    More detailed analysis of workflows and costings are required in order to develop a full business case. At the very least the arrangements would need to be self-financing but the current level of costs suggests significant scope for savings. Other advantages could include increased development opportunities for PCMs; closer oversight by senior managers in relation to high profile and sensitive cases; as well as providing paralegal staff with greater feel for cases through direct involvement with their ongoing management and attendance at court.

64. Consideration should also be given to arrangements for oversight of the Prosecutions Department based on a group which might be known as the Prosecution Oversight Group which could be chaired by the Chief Legal Officer and comprise the Head of Prosecutions Department, two members of the RSPCA Council, two external members with relevant professional experience (possibly one lawyer and one veterinary surgeon) together with the Chief Inspectorate Officer. An outline of how such a group might work is contained in the report.

Veterinary evidence

65. An aspect of case management that would benefit from attention both within the Inspectorate and the Prosecution Department is the gathering and deployment of veterinary evidence. There is scope for a greater role on the part of the Society's Chief Veterinary Officer in guiding three strands of work:

    - the establishment of a panel of accredited veterinary practitioners (with known specialisms where practicable) to provide a service to inspectors on the basis of an agreed service level and associated fee structure;

    - an approach to the Royal College of Veterinary Surgeons with a view to developing a common standard or guidance on the approach to assessment of suffering;

    - the development of a policy as to the extent of the Society's reliance on case vets as expert witnesses and as to the circumstances in which further expert evidence should be sought.

66. Suffering is a key issue in most cases. The absence of any binding legal definition or one adopted by the veterinary profession is compounded by the absence of any common approach to assessments of suffering. Some vets were clearly more cautious than others. Some would give a bare opinion whilst others would outline the symptoms and other factors leading to the assessment. Unlike some other issues (e.g. emaciation where body score techniques may be invoked) there was no commonality to the approach nor apparently a commonly recognised professional standard. The outcome tended to be for individual vets to adopt their own approach as to what constitutes suffering and expert evidence often reflected no more than personal opinion. So long as this situation prevails, cases where unnecessary suffering is in issue are likely to prove lucrative for lawyers and forensic veterinary witnesses and a source of ongoing contention and mutual criticisms.

Costs

67. The costs associated with RSPCA prosecutions are substantially higher than those in cases handled by the statutory prosecutors for two reasons: first, the inclusion of investigative costs within the prosecution costs; second, the reliance on external lawyers.

68. The review is satisfied that there is scope for savings although they cannot readily be quantified. The absence of any standard rates for external lawyers means that the Society is in many instances paying a much higher sum for the same service compared with another provider. Fees paid to counsel often seem in many instances to be above the market rate. The RSPCA cannot therefore be sure that it is obtaining value for money. Even so, its costs will inevitably remain higher. They have attracted comment from the senior judiciary as well as legal practitioners who described the resultant pressure on defendants to plead guilty. These considerations emphasise the importance of bearing down on costs at all stages. The potential pressure on defendants (who may genuinely believe they are not guilty) by being at risk of costs should not be lightly dismissed. A wider consideration is the extent to which individuals should face such different levels of claim depending on which agency has prosecuted.

69. The RSPCA Council must therefore have regard to the reputational as well as the financial implications of the level of costs involved in RSPCA prosecutions. As regards the latter, the point on which they need to be satisfied (in terms of charitable benefit) is that the costs to the charity is justified because it can deliver more effective enforcement than the public authorities can (or are prepared) to do. In the final analysis, that is more likely to come down to the question of proportionality as opposed to a 'yes' or 'no' answer.

Management and governance

70. Sound governance for prosecution functions within the public sector requires a careful balance between individual decision-making together with prosecution policy making and proper accountability. That accountability must resist the pressures of interest groups and the fickleness of public opinion/media whilst remaining sensitive and responsive to public underlying concerns. For the RSPCA the position is complicated by its charitable status and the additional considerations which flow from it.

71. The RSPCA Council, as Trustees of the Society has legal responsibilities for the overall activities of the Society and the manner in which it deploys its resources. For present purposes they are:

    - ensuring that there is charitable benefit flowing from all the Society's activities including prosecutions;
    - that its activities are affordable;
    - that its activities work to enhance and not diminish the reputation of the Society;
    - that its activities support its wider external relationships, including with Government.

    Trustee membership of the Prosecution Oversight Group (mentioned earlier) would enable a more effective discharge by the trustees of their responsibilities.

72. The report contains recommendations elsewhere for strengthening of oversight and accountability within the Prosecutions Department. The proposals require the RSPCA to review the management information collected in relation to prosecutions. At present it focuses on prosecutions outcomes and whilst that is fundamentally right, it should be supplemented by management information relating to reasons for withdrawal/discontinuance of cases; timeliness of the different stages of cases and the costs of cases. The value of the management information suggested is to enable trends to be monitored and changes investigated.

Complaints generally

73. The need for an effective complaints procedure is discussed earlier in this report in relation to the Inspectorate where it is of greatest relevance. It is not however confined to the Inspectorate and work to develop an effective regime for investigating and responding to complaint should aim to produce a system that can be adopted universally across the Society.

Communication

74. The RSPCA Council of Trustees would be right to infer from this report that there are many issues on which the RSPCA has a need to listen more closely to feedback about its approach and performance.

75. Publicity is very important for the RSPCA as a whole. The organisation is reliant on donations to carry out all its functions and cannot hide this. The work of the Prosecutions Department is valuable to the Society in this respect because it maintains its profile and some of the prosecutions are useful in reinforcing important messages to the public.

76. But publicity is an area where great care is needed on the part of prosecutors. Whether seeking to deliver particular messages or responding to enquiries, it is important that the tone remains consistent with the professional impartiality and objectivity expected of prosecutors.

77. It is unfortunate that some press statements have reflected some of the RSPCA's campaigning interest. From time to time press releases relating to prosecutions have been issued carrying what are routine logos/flyers soliciting donations. This would not have the approval of the Prosecutions Department. Even though unintended, the wrong impression can be created.

Conclusions

78. It would be easy to allow the unsatisfactory aspects of these findings about the RSPCA's investigation and prosecution activity to block the positive – which is also present in good measure. The RSPCA has carried on prosecutions to great effect for over 190 years. Despite the stinging criticisms of a protracted media campaign, it retains extensive public support. The reality is that society depends on the RSPCA to enforce a difficult aspect of the law. Even so, the current structures are outmoded. The RSPCA can no longer expect to operate as a specialist police force with an associated prosecution function without appropriate arrangements for accountability and transparency.

79. The RSPCA role in enforcement of animal welfare law needs to become part of a more coherent framework working rather more in partnership with the public authorities. It needs its role to be recognised and to be given the appropriate powers. Part of the accountability will be a more consultative approach with the public so that its policies and procedures are more attuned to the public on whose support it depends. It will also need to tailor its prosecution role to avoid any perception that the Society's other roles introduce inappropriate and extraneous factors into its decision - making and the conduct of cases. It must be more responsive to the feedback it receives and resist any inclination to dismiss criticism out of hand as unfounded.

80. The review cannot stress too strongly the crucial role that Government has in this. The RSPCA needs its support in discharging what is to all intents and purposes a public function. The fact that enforcement of animal welfare law is split between so many agencies is itself a reason for more structured and better co-ordinated arrangements so that all have a broadly similar approach and standards – allowing also for the undoubted differences that do also exist.

81. All this represents a substantial challenge but one that is well within the ability of an organisation that has achieved so much since its inception. The body of this report and its recommendations are intended to signpost the way forward.

Summary of recommendations

Overview of the RSPCA role: strengths, weaknesses and the need for change

1. *The RSPCA should open a dialogue with HM Government (DEFRA, the Ministry of Justice and the Attorney General's Office) seeking the development of a concordat placing the RSPCA's investigation and prosecutions activities on a formal basis. It should be based on the creation of arrangements for accountability and greater transparency and include the appointment of suitably experienced RSPCA inspectors as inspectors for the purposes of the Animal Welfare Act 2006.*

The RSPCA's enforcement role (investigation)

2. *The RSPCA should work with ACPO to develop further operational guidance to assist constables and inspectors in circumstances where the latter seek assistance, particularly through the exercise of police powers, in relation to possible animal welfare offences.*

3. *In relation to animal sanctuaries, the RSPCA should press HM Government (DEFRA) for implementation of a scheme of licensing and regulation along the lines proposed by the Companion Animal Welfare Council.*

4. *In relation to animal sanctuaries, if such a regime is implemented, where intervention through the criminal law is necessary, the primary role should rest with the licensing or registration authority with RSPCA assistance as necessary. In the meantime the RSPCA might invite the CPS to consider such cases.*

5. *The RSPCA should review the complaints procedure applicable to the Inspectorate with a view to ensuring that complaints are thoroughly investigated at the earliest opportunity with substantive feedback and legitimate concerns being addressed. Where the complainant remains dissatisfied there should be escalation to a higher level including an external element.*

How the RSPCA discharges its prosecution function

6. *In order to provide the degree of separation necessary to achieve confidence in the objectivity of decision-making and handling at all stages of cases, the Prosecutions Department should be established as a self-contained unit with its own discrete governance mechanism[1].*

[1] This might take the form of an oversight committee with external professional representation. Its membership and terms of reference would be constructed so as to accommodate the overarching responsibilities of the trustees but avoid intrusion into prosecution policy and specific casework.

7. *The appointment of the Head of Prosecutions should be undertaken by a panel comprising the Chief Legal Officer, an experienced criminal practitioner from independent practice, and an individual with senior management experience.*

8. *The RSPCA should adopt a policy statement outlining the manner in which the Code for Crown Prosecutors will be applied to animal welfare offences; and also develop a set of offence specific standards.*

9. *Prosecution decisions should be the responsibility of qualified barristers or solicitors.*

10. *A protocol should be developed as to matters which should be referred to the Head of Prosecutions for decision and advice.*

11. *Reasons for decision should be recorded on the file so as to indicate how the evidential and public interest tests of the Code for Crown Prosecutors have been applied in the particular case.*

12. *More information should be available to decision-makers to inform decisions relating to public interest.*

13. *Urgent steps are needed to reduce the time elapsing between the commission of offences and the receipt of a case file in the Prosecutions Department.*

14. *A system of early process based on abbreviated files should be developed and tested.*

15. *Certificates under section 31(2)(a) of the Animal Welfare Act 2006 should be signed by the Head of Prosecutions.*

16. *When considering public interest (in particular the need for a banning order) the risk of re-offending should be more thoroughly assessed and weighed against any human factors militating against prosecution.*

17. *The RSPCA should develop more consistent arrangements for liaison in appropriate cases between Social Services and Youth Offending Teams. There should be a presumption in favour of seeking advice from the relevant Youth Offending Team before taking a decision to prosecute a youth offender.*

18. *An exercise (as described at section 6.5) should be undertaken to create charging guidelines.*

19. *The Reviewer recommends the following changes in relation to prosecution disclosure which should ensure compliance with both existing requirements and the changes arising from the recent Judicial Office report:*

    a) *The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.*

b) *Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.*

c) *The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.*

20. *There should be a review of the business model to assess the case for greater use of in-house lawyers and develop a more structured approach to external fees.*

21. *Prosecution Case Managers should be vigilant to ensure a balance between constructive and supportive working with the Inspectorate and a degree of empathy that compromises objective consideration of the merits of challenge or adverse criticism.*

The gathering and presentation of veterinary evidence

22. *Inspectors should be formally instructed not to seek certification by a veterinary surgeon under section 18 of the Animal Welfare Act 2006 unless the vet has examined the animal(s) in question.*

23. *The RSPCA should take the lead in inviting the Royal College of Veterinary Surgeons and other practitioners to develop a common standard or guidance on the approach to assessment of suffering.*

24. *The RSPCA should establish a panel of accredited veterinary practitioners (with known specialisms where practicable) to be drawn upon by inspectors requiring examination of case animals. Vets on the panel should be expected to work within a fee structure and to a service level agreed with the RSPCA.*

25. *The RSPCA should develop a policy as to the extent of its reliance on case vets as expert witnesses; and as to the circumstances in which further expert evidence should be sought. Where further such evidence is to be sought, instructions to veterinary surgeons should be case specific and developed by or in collaboration with the Prosecutions Department.*

26. *The Society's Chief Veterinary Officer should take the lead in providing advice and guidance to the Inspectorate and the Prosecutions Department in relation to the issues identified in this chapter.*

Costs

27. *The review of the RSPCA Prosecutions Department business model recommended in Chapter 6 should include consideration of the use of in-house lawyers and direct instruction of counsel.*

28. *The level of fees paid to external lawyers should be reviewed in the light of changes in the market and to achieve a more consistent approach.*

The RSPCA involvement in hunting prosecutions

29. *RSPCA Council of Trustees needs to develop a policy on how far it will accept referrals relating to alleged hunting offences rather than direct individuals to the relevant police force.*

Management and governance

30. *Consideration should be given to the establishment of a Prosecution Oversight Group along the lines set out in the body of chapter 10.*

31. *The Society needs to place more emphasis on external communications. Its communications strategy should be reviewed to increase its emphasis on capturing and responding to feedback.*

32. *The Society should reflect a more measured approach on press releases relating to prosecution*

33. *The Society should ensure that the review of complaints handling relating to the Inspectorate develops proposals which can be applied across the organisation.*

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The independent review of the prosecution activity of the Royal Society for the Prevention of Cruelty to Animals

2 Introduction

The Council of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) decided on 12 December 2013 to commission a review of the manner in which the RSPCA discharges its prosecution role. It provided the following terms of reference:

> "Acknowledging that the RSPCA regards the prosecution of animal welfare offences in appropriate cases to be an integral component of its strategy for fulfilling its charitable purposes of promoting kindness and preventing and suppressing cruelty to animals, to review the RSPCA's arrangements for deciding whether to instigate private prosecutions on behalf of the RSPCA with particular regard to:
>
> (c) decisions taken whether or not to prosecute; and
>
> (d) the subsequent conduct of any criminal proceedings in relation to alleged offending;
>
> and to report on how far these accord with the standards of a reasonable, competent and objective prosecutor; to consider and report on concerns expressed about the RSPCA's prosecution function; and to identify any areas for improvement and make recommendations as to any changes the RSPCA should make or seek to bring about to achieve that improvement.
>
> In doing so, the Reviewer shall take into account the expectations and implications arising from the RSPCA's charitable status, including the relationships between its charitable purposes, the charitable benefits flowing from prosecutions and the prosecutorial assessment of wider public interest.
>
> The context for assessment is the Society's position as a private prosecutor conducting the majority of animal welfare cases in England and Wales. The report should strengthen public accountability and transparency for this work. Although the review does not extend to the RSPCA's investigative function, it should examine any such matters that have a bearing on the conduct of any subsequent prosecution instigated by the RSPCA."

This aspect of the RSPCA work is both substantial and important; the public depend heavily on the organisation for enforcement of animal welfare law. The invitation to conduct the review was therefore a privilege. When embarking on the task the review recognised that many issues relating to animal welfare can be emotive. Even so, the review was still struck by the degree of polarisation and set positions around many issues – not to mention difficult relationships even amongst those who should be united by the cause of animal welfare.

As the work progressed, it became apparent that many of the rubbing points stem from a lack of structure and cohesiveness in the overall arrangements for effective implementation and enforcement of animal welfare legislation. They have simply not kept up with the increasing scope of legislation and other social change, in particular public expectations as regards accountability and transparency. In many

respects they are fragmented and anomalous and rely to a large extent on the RSPCA discharging public responsibilities whilst remaining an independent charity with many other functions. This made it impossible properly to address issues relating to the RSPCA's prosecution activity without looking at its wider operating environment.

The public consultation linked with this report brought 270 responses. Some used the pro-forma provided online whilst others comprised short e-mails dealing with very specific points or cases. All were analysed and taken into account when reaching conclusions. However, the review had to focus on the overall position and to identify any changes needed. Although some cases have been used in anonymised form to illustrate particular points, the purpose of the review was not to comment on individual cases. Nonetheless, the contributions were of great assistance in building up the bigger picture.

The report sets out the extent to which the RSPCA needs to re-position itself and revise its approach to enforcement of animal welfare law to reflect a changed environment and meet contemporary expectations, including greater transparency and readiness to account. Some of what is proposed can be achieved by the RSPCA itself; but important elements will be dependent on support and collaboration by government and public sector bodies. Without that, many of the problems identified in this report are likely to persist.

2.1 ***Background***

The RSPCA is a charity whose objects are to promote kindness and to prevent or suppress cruelty to animals. It was founded in 1824 and received royal patronage in 1840. It is presently constituted under the Royal Society for the Prevention of Cruelty to Animals Acts of 1932, 1940 and 1958. Its activities include employing trained inspectors to investigate complaints of animal cruelty, suffering and poor welfare. The RSPCA prosecuted 1548 defendants in 2013 arising out of over 150,000 investigations conducted by its Inspectorate.

The RSPCA has a long history of prosecuting animal welfare offences, which can be traced back to the purposes for which it was founded by in 1824. They included enforcement of the Treatment of Cattle Act 1822 which Richard Martin MP (one of those who helped establish the Society) had sponsored and campaigned for. There was no police service and certainly no public prosecutor. Martin originally brought prosecutions himself (he was a barrister); he then employed his own inspector at Smithfield market, and then another – and it was these who were taken on the by Society for the Prevention of Cruelty to Animals (as it then was) and became their first inspectors. Thus the first RSPCA enforcement activities pre-dated the first modern police force.

The RSPCA receive the majority of complaints regarding breaches of animal related legislation. By far and away the greatest number arise under the Animal Welfare Act 2006. Where sufficient information and resources are available, the RSPCA investigates complaints using its own resources. Although the police also receive some such complaints, it is their practice to refer them to the RSPCA unless they involve wildlife crime or serious animal cruelty such as organised fighting or sexual offences; but they may choose to seek the assistance and expertise of the RSPCA in the course of investigation. Practice varies between individual police forces.

Public bodies with responsibilities for enforcement of animal related legislation include local authority Trading Standards Departments and the Animal Health and

Veterinary Laboratory Agency (AHVLA) (part of DEFRA). The total number of individuals prosecuted by those authorities in 2013 was 150[2].

Following an investigation by the RSPCA Inspectorate, a case file may be submitted to the RSPCA Prosecutions Department. Prosecution Case Managers (PCMs) consider each case against the twin evidential and public interest criteria contained in the Code for Crown Prosecutors. When the evidence is considered sufficient to provide a realistic prospect of conviction and it appears to be in the public interest to do so, criminal proceedings may be issued by the RSPCA laying an information leading to the issue of a summons.

The Prosecutions Department was established in 1993 following a review by Mr Richard Crabb, formerly Chief Crown Prosecutor for Kent. The RSPCA established a structure which sought to replicate the relationship between the police service and the Crown Prosecution Service whereby prosecution decision-making is separated from the investigation function in accordance with the 'Philips Principle' based on the findings of the Royal Commission on Criminal Procedure. It comprises a Head of Prosecutions and Prosecution Case Managers working under the supervision of the Society's Chief Legal Officer. Actual prosecutions are conducted by solicitors or barristers instructed on behalf of the RSPCA.

The environment within which the RSPCA operates is unusual in that there is no public body within central or local government that has overall responsibility for the enforcement of animal welfare law. Consequently, local authority Trading Standards Departments, AHVLA and the police each focus on matters linked to their specific interests or priorities. The position was considered by the House of Common Select Committee for the Environment, Food and Rural Affairs during its 2004 examination of the draft Animal Welfare Bill. It received evidence from the Association of Chief Police Officers:

> "At the moment almost all of the welfare work is done by the RSPCA with police support where required… Were the RSPCA, as a charity, to decide next week not to do this work any more none of the rest of us in the public service could pick it up. Animal welfare would not be furthered; it would be significantly disadvantaged."

The evidence submitted by the Local Authorities Co-ordinators of Regulatory Services (LACORS) was that:

> "…we work exceptionally closely with the RSPCA and we have a memorandum of understanding with them which has recently been drawn up. There are communication channels and everything else, but we do traditionally pass all the small animal welfare complaints to the RSPCA."

The Committee's report concluded at paragraph 258:

> "There appears to be no body other than the RSPCA with the requisite experience to undertake animal welfare prosecutions."

Despite such extensive reliance on the RSPCA for the enforcement of animal welfare law, it has no authority for investigation or prosecution other than those

[2] Local authorities are required by section 80 of the Animal Health Act 1981 to make annual returns of their enforcement activity to DEFRA. Although the statutory requirement relates specifically to proceedings under the 1981 Act, the guidance issued by DEFRA stipulates that all animal welfare proceedings should be included. Data provided by the Crown Prosecution Service (albeit compiled in a very different way) suggests a broadly similar incidence of proceedings instituted and reaching first hearings. By contrast, RSPCA concluded proceedings against 1,548 defendants in 2013. On this basis, the RSPCA was responsible for approximately 83% of animal related prosecutions in England and Wales in 2013.

enjoyed by every citizen. It is wholly dependent on the co-operation of the public and those against whom complaints are made save in circumstances where police or local authorities respond to requests for assistance by exercising powers vested in them such as powers of entry and search or obtaining and executing warrants for that purpose. Contrary to popular belief, the RSPCA has no power to take custody of any animal save with the consent of the owner. The police do have such powers (mainly under the Police and Criminal Evidence Act 1984 and the Animal Welfare Act 2006) and frequently exercise them when invited to do so by the RSPCA. In practice they then immediately place the animals into the care of the RSPCA. The RSPCA may also invite the police to exercise powers of search (with or without warrant) and arrest. The ramifications of this fall to be considered at some length in the report.

The RSPCA relies on what are described as 'private' prosecutions which is a potentially misleading term. Historically, all criminal proceedings in England and Wales commenced by the laying (in one form or another) of an information. Most are laid by individuals acting in an official capacity but successive statutes have made it clear that there is no impediment to any other person doing so. The position of those acting on behalf of the RSPCA is *sui generis.* Although it has no official status the RSPCA must by virtue of the volume of its case load and the manner in which it operates be regarded as a *de facto* prosecuting authority. There are however important distinctions. For example, the RSPCA does not enjoy access to the wide range of alternative disposals now available to most prosecutors. In many instances the purpose of proceedings instituted by the RSPCA is preventive as well as punitive in that securing a conviction is a prerequisite of obtaining an order that disqualifies an individual from owning or otherwise dealing with animals either permanently or for a specified period.

Notwithstanding its lack of official status, the RSPCA is very active as a law enforcement agency. It operates in practice as a specialist police force with an associated prosecution role. As such, it attracts certain obligations under the Police and Criminal Evidence Act 1984 and the associated codes. It also has a public commitment to take decisions about the institution of criminal proceedings by reference to the Code for Crown Prosecutors. The RSPCA also operates a non-statutory system of warnings and unofficial cautions as alternatives to prosecution. These aspects of its operational work have combined with its campaigning and commercial activities and other factors to attract significant criticism of the RSPCA across a wide range of bodies. Some point to the extent to which the RSPCA adopts the practices of public authorities (e.g. the use of uniforms; the similarity of titles within its Inspectorate to those of the police and the use of warnings and cautions) as inappropriate and misleading and they assert a need for greater transparency and accountability. Other concerns relate to alleged heavy handedness by the Inspectorate, the nature of the relationship with the police and veterinary professions leading to over zealous prosecution. The RSPCA role in relation to animal sanctuaries and rescue organisations is also a significant source of friction. One feature of the review was the extent to which concerns expressed about individual cases focused, when analysed, on matters relating to the investigation rather than the prosecution stage.

These challenges to the enforcement role of the RSPCA are not a recent phenomenon. The 'Self Help Group for Farmers, Pet Owners and Others

Experiencing Difficulties with the RSPCA[3]' was formed as long ago as 1989. Together with a number of other bodies it gave evidence to the House of Commons EFRA Select Committee criticising the RSPCA and opposing the grant of any specific powers – something the RSPCA has not hitherto sought. Nonetheless, the public voicing of such criticism has intensified – possibly coinciding with the RSPCA's successful campaign for a ban on fox hunting and reached a crescendo after its prosecution of the Heythrop Hunt. In January 2013, Mr Simon Hart MP initiated a debate in the House of Commons about prosecutions brought by the RSPCA. The Charity Commission also received complaints about the campaigning and prosecution activities of the RSPCA.

HM Attorney General responded to the Parliamentary debate in January 2013. He does not have any responsibility or superintendence role in relation to the RSPCA. Nonetheless, he does have an overall accountability to Parliament for prosecution arrangements in England and Wales. During subsequent engagements between the Attorney General's Office and the RSPCA, the Attorney General also suggested that there could be advantage in an independent review although he stressed that it was a matter for the Society's Council. Following consideration, the RSPCA initiated a scoping exercise which led to the decision in December 2013 to establish this review.

2.2 *Purpose and approach of the review*

The main focus of the review has been the Prosecutions Department and the extent to which its decision-making and conduct of criminal proceedings accorded with the expectations of a reasonable, competent and objective prosecutor. In addition, the review addressed wider strengths and weaknesses including the structure of the department (compatibility with the Philips Principle), the development and application of policies and the management of its casework.

Addressing these wider issues necessarily involved an assessment of matters touching on the criticisms and complaints outlined in the background section so as to provide reassurance where appropriate and identify changes necessary to address any shortcomings. It quickly became apparent that assessment of the prosecution function could not be properly undertaken without also considering the implications of the RSPCA's operating environment, in particular the combination of the reliance placed on it for law enforcement and the absence of any official status or authority. This in turn has raised important issues surrounding the relationship between the RSPCA and the police service and the form that assistance should take when the RSPCA wishes to gain access to premises, seize animals or question individuals.

Prosecution decision-making and the conduct of proceedings may also be affected by steps taken at the investigative stage in the gathering of evidence – and in particular veterinary evidence where the selection of vets and their approach to evidence has a major bearing. Nobody coming to this issue from outside the specialist animal welfare network could fail to note with some consternation the propensity for animal welfare prosecutions to be slow in commencement. A proportion become protracted and some contested cases take up disproportionate

[3] Self Help Group (SHG) was originally set up to provide support and legal advice to people being investigated or prosecuted by the RSPCA. It runs a helpline which provides general and legal advice for people who have run into difficulties in the field of animal welfare law. Usually this involves the RSPCA. It crosses the boundaries between criminal and civil law. It puts people in touch with solicitors who are experts in animal welfare law.

amounts of court time at substantial expense to the RSPCA and the taxpayer – not to mention the impact on court business generally. This report therefore inevitably extends beyond matters that relate solely to the Prosecutions Department.

2.3 *Methodology*

The main stages of the review comprised:

- Initial research.
- Gathering of background evidence.
- Taking evidence from external stakeholders.
- Examination of sample case files and management information as regards case load, volume and trends together with outcomes.
- A consultation exercise with a webpage and e-mail address established to enable interested parties to offer comments either generally or using individual cases as examples.
- Meetings to take evidence from RSPCA staff based on issues identified during the earlier stages.
- Development and discussion of emerging findings.
- Preparation of report.

A fuller description of the methodology is at annex 1. Throughout the consultation exercise, it was made clear to respondents that the review would welcome any concerns expressed being illustrated by reference to particular cases with a view to at least some of these cases being incorporated into the case sample referred to above. However, it was not appropriate or practical for the Reviewer to embark on dialogue with individual respondents about particular cases and issues or to act as intermediary with the RSPCA when grievances remained outstanding.

A list of those who have contributed is at annex 2.

2.4 *Structure of the report*

Chapter 3 contains the overarching findings.

Chapter 4 considers the strengths and weaknesses of the present position of the RSPCA in the overall enforcement arrangements and its historical context. It identifies the need for change and contains proposals for the RSPCA re-positioning itself.

Chapter 5 examines the role of the RSPCA Inspectorate and its influence on subsequent proceedings.

Chapter 6 looks more specifically at how the RSPCA discharges its prosecution role. This includes the separation of prosecution from investigation and other functions; the structure of the Prosecutions Department; its relationship with the Inspectorate; the application of the Code for Crown Prosecutors (including prosecution policy and decision-making); the RSPCA approach to charging; its case management and its use of external lawyers. It contains options for an alternative business model.

Chapter 7 deals with the gathering and presentation of veterinary evidence.

Chapter 8 examines issues relating to costs.

Chapter 9 looks at RSPCA involvement in cases under the Hunting Act 2004.

Chapter 10 reviews matters relating to management and governance including communications and the RSPCA approach to transparency and accountability.

Chapter 11 summarises the conclusions and recommendations.

3 Overarching findings

The RSPCA is a charity with a long and prestigious history. Since it was founded in 1824, animal welfare has advanced probably beyond anything its founders could have hoped for or dreamed of. That is a tribute to the Society's combination of direct welfare action, campaigning for law reform and enforcement of those laws. One indicator of that progress may be the contrast between the level of prosecutions at the end of the 19th century when the average was around 7,000 per year and the current rate of around 1,500–1,600 per year.

During the course of this review RSPCA inspectors were involved in several high profile responses to welfare emergencies: first in relation to the many seal pups stranded by the surge tides and storms affecting the East Coast of England at the turn of the year; secondly by mounting major rescue exercises for animals endangered by the flooding in the West Country, Thames Valley and elsewhere. Unsurprisingly, the responses to public consultation demonstrated a continuing high level of public support for the RSPCA despite recent media criticisms. Out of 290 responses, 181 expressed overall support for the RSPCA with 66 respondents linking that support specifically to its stance in relation to enforcement of the Hunting Act 2004. There were numerous neutral responses commenting on the perceived strengths and weaknesses. Some 63 respondents expressed concerns about the current role of the RSPCA with 27 linking them to specific cases. Interestingly, even its most ardent critics had to acknowledge its achievements.

Good organisations continuously review their own performance and adapt to change, listening to and learning from feedback including criticisms and complaints. It is in that spirit that the RSPCA Council set up this review. There are several aspects of its enforcement work where change is necessary to bring the Society in line with 21stcentury public expectations and to maintain confidence, particularly by providing accountability and improving transparency. It also needs to be more responsive to the increasing incidences of complaints about some actions taken by the Inspectorate and concerns that some of its prosecutions have been inappropriately focused where little would be achieved and sometimes on some of the most vulnerable elements of society. These, taken in conjunction with a relentless media campaign about its prosecution of offences committed by established hunts and persons connected with hunting have had an adverse and, in many respects disproportionate, impact on the Society's standing and the morale of some staff. Some changes of structure and ethos are needed within the RSPCA. That said, many of the problems identified by this review stem from the unsatisfactory infrastructure for enforcement of animal welfare law generally and need to be addressed in collaboration with others – government in particular.

Despite lacking any official status the RSPCA is very pro-active as a law enforcement agency and in practice operates as a specialist (private) police force with an associated prosecution role. It describes the latter as "private prosecutions" although the term has no real significance and is simply used now to denote proceedings brought by an individual in a private capacity or by a non-public organisation. It is a throwback to the days before police forces and public prosecutors when all investigations and prosecutions were handled in that way. Prosecution is the most intrusive power of the state and contemporary expectations are that it will be exercised:

- in an objective and impartial manner in accordance with policies that are clear and transparent;
- free from the influence of executive government or other extraneous influence; and
- by bodies that are publicly accountable.

The RSPCA is not a public body but the scale of its enforcement role and its relationship with bodies such as the police mean that it is *de facto* a prosecuting authority and should therefore meet those same standards.

Two problems arise: first, the Society's role in relation to enforcement of animal welfare law is insufficiently defined for it to develop an effective enforcement strategy; the legislation it seeks to enforce is common to the companion animal sector (which accounts for the majority of RSPCA activity) as well as farms, markets and boarding establishments etc where other agencies operate. The RSPCA also becomes involved with animal sanctuaries and rescues, some run by other charities that are not regulated.

Despite the commonality of welfare legislation[4], there are differences of approach between the relevant agencies that exceed what one would expect even allowing for some differences in expectation as between domestic and other animals depending on type, the purposes for which they are kept and how the animals have been conditioned. The RSPCA acknowledges that its approach to enforcement is often more robust than other agencies. However, that must be viewed in the wider context of the differences of circumstance and resources.

All agencies (Trading Standards, those covered by the DEFRA enforcement policy and the RSPCA) drew attention to the use of advisory and/or warning regimes to secure compliance before resorting to prosecution; and across the board this approach was regarded as successful. The RSPCA in particular drew attention to the fact that its 153,000+ investigations resulted in only 2,174 case files being submitted to the Prosecutions Department in 2013 and only 1,548 persons being charged. All those providing evidence to the review acknowledged that different agencies drew the line at which they would prosecute at different points. The Local Government Association acknowledged that resource constraints were a significant inhibiting factor for local authorities – particularly if boarding costs for animals might be involved. It could mean that prosecutions are not being brought in some cases where they are merited.

Second, any such strategy must take account of the Society's campaigning, commercial and *de facto* regulatory roles which do not sit comfortably with the role of prosecutor. Also there is an inevitable tension between the RSPCA's status and very specific objectives as an animal welfare charity and the broader public policy consideration relevant to law enforcement. Practices seem to have been based on the premise that "this is how we have always done it" with piecemeal evolution to reflect external change. This is compounded by the 2006 extension of the ambit of the criminal law and the absence of any powers or official status relating to enforcement.

[4] There are in excess of 300 pieces of legislation relating to animals as a whole.

This review could not assess the Society's prosecution activity in isolation from these issues. It concludes that in several respects the Society should seek to re-position itself through dialogue with government aimed at putting its work on a more structured and publicly accountable basis. There is no other body which could take on the RSPCA's current role and its contribution in terms of expertise and resources is huge; it is simply too valuable to be lost. In doing so, it is both furthering the rule of law and fulfilling Parliament's intent that animal protection legislation should be effectively implemented. It is also relevant that animal welfare is an issue of significant public concern – MPs consistently report its prominence amongst issues about which they receive representations. Arguably then, the Society is not only making a huge contribution to animal welfare, it is also fulfilling a very significant constitutional role.

The essence of any such arrangements would be the conferring of proper authority and powers on the RSPCA – as regards both investigation and prosecution within a framework that provides appropriate checks and balances. This accountability might provide for some form of periodic external scrutiny. Ideally, the RSPCA would in future work more closely with its public sector counterparts with appropriate associate links to organisations such as the Whitehall Prosecutors' Group. The RSPCA has historically been concerned to avoid any step that might compromise its independent charitable status. That is an important point but needs to be viewed in the context of the changing relationships between government and NGOs with growing recognition of the value of partnerships as between the public, private and third sectors. In addition, the public interest would be well served by the creation of overarching arrangements to improve the consistency of enforcement of animal welfare law across the various sectors. The broad experience of the RSPCA means that it has much to offer.

This approach accords with the outcome of the seminar hosted by the RSPCA in June 2014 which polled the view of the public, politicians and animal welfare experts. Forty per cent of those present thought the government should bear most responsibility for animal welfare with 30% focusing on the general public and 21% on those with a professional interest in animals such as farmers, retailers and breeders.

The re-positioning may also require some self-imposed circumscription of the Society's prosecuting role if it is to avoid conflict with its commercial and campaigning activities. Specifically these would relate to cases relating to animal sanctuaries and rehoming centres; cases relating to organisations that had a commercial relationship with the RSPCA (e.g. Freedom Food accredited farms) and (for different reasons) some hunting cases. If there were statutory regulation of sanctuaries and rehoming centres, the focus would move more to local authorities (assuming they were the regulator) to oversee the sector.

There should be a strengthening of the Prosecutions Department. Its key roles at present are decision-making and the instruction of external solicitors for the care and conduct of cases – albeit retaining a strong oversight. It should be reconstituted as a fully fledged prosecuting office by the creation of an in-house capacity for end to end management of casework with more qualified lawyers so as to strengthen the independent element. Prosecution decisions would become the responsibility of qualified solicitors and barristers. A more flexible business model could create new opportunities for prosecution managers to have a more hands-on approach to some cases including at court. It would retain existing arrangements for those cases where geographical considerations make the in-house approach non cost-effective.

Given the thrust of this review that the RSPCA prosecution activity should be measured by the standards applicable to public prosecuting authorities including as to accountability; and that the Society should seek to formalise the basis on which it discharges its function, more structured arrangements for governance and internal accountability will be necessary. They will need to balance respect for independence in relation to prosecution policies and decision-making with the legal responsibilities of the trustees and in particular for ensuring that there is a charitable benefit flowing from all the Society's activities viz the Inspectorate, Prosecutions Department, fundraising and campaigns.

Consideration should be given to arrangements for oversight of the Prosecutions Department based on a group which might be known as the Prosecutions Oversight Group which could be chaired by the Chief Legal Officer and comprise the Head of Prosecutions Department, two members of the RSPCA Council, two external members with relevant professional experience (possibly one lawyer and one veterinary surgeon) together with the Chief Inspectorate Officer. An outline of how such a group might work is at Chapter 5. The full terms of reference would require detailed consideration.

Governance arrangements should also ensure more effective arrangements for the handling of complaints about the RSPCA's own conduct. Recommendations later in this report include the introduction of an independent element for those complaints that cannot otherwise be satisfactorily resolved.

At the operational level, the Prosecutions Department performs well in terms of its case outcomes with 88.6% of persons charged in 2013 being convicted and 74.1% of offences charged resulting in conviction. The Prosecutions Department enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed.

It has proved difficult to identify any data that can be used as the basis for a like for like comparison between the RSPCA and other prosecutors as to the threshold at which the balance will step in favour of prosecution. The fact that the RSPCA is responsible for 83% of prosecutions relating to animals does not support any inference given the variable factors identified earlier – in particular the lack of resources available to local authorities. Indeed there is some evidence that cases that could be dealt with by other agencies are in fact referred to the RSPCA. Attempts to compare with other jurisdictions similarly fail because of differences in the way that data is recorded. The criticisms of prosecutions that have occurred in recent years have related mainly (but not exclusively) to the application of the public interest element of the Code for Crown Prosecutors. This review identified a need for better information in many cases as the basis for public interest decisions and also found that in too many cases the proceedings were either not in the public interest or the issue did not appear to have been adequately addressed. In some instances prosecution seemed disproportionate as regards some of those charged. Other possible factors included insufficient assessment of the risk of further offending before concluding that the public interest required a prosecution in order to achieve an order prohibiting the keeping of animals. In the final analysis, a key question is whether, in the case of each individual prospective defendant, prosecution would be a proportionate response having regarding to his or her particular role and circumstances.

It does not follow automatically that, because the public interest requires a prosecution, there will be a charitable benefit flowing from the RSPCA undertaking it. Whilst that is likely in the vast majority of the cases it deals with, Prosecution

Case Managers need to be alert to those where the likely cost, novelty or other special factor requires more specific consideration of whether it is in the best interest of the charity to take the case forward. This is a topic that would benefit from guidance from the Prosecution Oversight Group.

The review found that matters relating to the Society's prosecution in 2012 of the Heythrop Hunt under section 1 of the Hunting Act 2004 and other foxhunts were subsidiary to these wider concerns. They are dealt with in chapter 9 of the report. The starting point as regards such cases is that the law is the law until Parliament decides otherwise and should be upheld. CPS guidance in relation to the 2004 Act states that, providing the evidential test is met, the public interest will require a prosecution other than in exceptional circumstances.

The RSPCA found itself reacting to a thoroughly unsatisfactory situation where the evidence strongly indicated that it was "business as usual" for many hunts because enforcement of the 2004 legislation had become so difficult. It had not previously prosecuted any such cases but there was widespread scepticism as to the commitment of the police and CPS to investigating and prosecuting them. The proceedings were envisaged as a test case to establish whether the legislation could be made to work effectively against the key players in an organisation that appeared to be routinely flouting the law. The decision to bring proceedings on that basis cannot be criticised in principle although there was a strong element of overkill so that the costs were higher than they needed to be even in the context of a test case.

Although the RSPCA was right in principle to prosecute the Heythrop case, the experience from that case and others requires caution as to the way forward since any substantial case (i.e. one involving a course of conduct as opposed to a one-off event) is likely to be resource intensive even if costs were halved. A reasonable overall conclusion might be the 2004 Act is workable but only at a cost (in terms of gathering and evaluating evidence and case preparation) that may be disproportionate to what convictions achieve in terms of punishment and/or changing behaviours. Hunting continues to be prevalent. Fines for individual offences under section 1 of the Hunting Act 2004 have remained, over an eight year period, within the range of £200 to £850 with the exception being the Heythrop Hunt case where the hunt itself was fined £1,000 in respect of each of the four offences. The direct impact of prosecutions is therefore limited.

Against this background the review proposes a revised approach with the RSPCA bringing pressure to bear on the police and CPS (who together have primary responsibility for enforcement of the Hunting Act 2004) whilst also pressing for changes to the law that would make enforcement possible without disproportionate cost; that would necessarily be a long term objective. For the immediate future, the role of the RSPCA should be to assist in the building up of cases for presentation to the police and CPS. The Council should keep open the option for the RSPCA to resume prosecution in the event of a manifest failure by the public authorities to act.

The proposal that the RSPCA modify its own approach to hunting cases in favour of one that seeks to place more reliance for enforcement where it belongs – with the police and the CPS – is a pragmatic one not intended to offer comfort for those who have campaigned on behalf of hunting. The review does, however, recognise how effective and damaging that campaign has been to the RSPCA. It urges the RSPCA Council to act decisively in relation to the wider concerns identified in the report. At present the biggest risk to the RSPCA is that the two strands have become merged

and the wider and legitimate concerns described are harnessed to strengthen criticism of the RSPCA in relation to hunting in a manner that is unwarranted.

4 Overview of strengths and weaknesses in the overall enforcement arrangements; and the need for change

4.1 *Background*

The current role of the RSPCA in relation to enforcement of animal welfare law has evolved largely outside the mainstream criminal justice system and owes more to history than any clear strategy. The only strategy – such as it is – seems to be an ongoing assumption by the state that it can opt out of responsibility for the implementation and enforcement of animal protection legislation in important respects – particularly in relation to companion animals – because both the obligation and the cost will be picked up by the RSPCA. This is a chicken and egg situation: right from its origins the Society has undertaken this role because the state has not been adequately engaged; and the state has been content for the situation to continue because it would otherwise be required to fill the vacuum which would otherwise be created. In particular its prosecution role has failed to develop to accord with contemporary expectations of transparency and accountability and needs to adapt. In addition, its role is poorly defined. That is not intended as a criticism of the Society. A brief look at its history shows why.

The first prosecutions brought by the Society were in the 1820s and pre-dated the establishment of the United Kingdom's first police force, the Metropolitan Police. There simply was no system of public prosecution at that time. Prosecution was down to the injured party or other interested party. What the RSPCA did at that time was the norm. That remained the case until 1879 when the position of Director of Public Prosecutions was established but with a very limited remit confined to a handful of cases of great importance and difficulty. It was a somewhat tardy response to criticisms of the prosecution "system" as it then stood in the eighth report of the Criminal Law Commissioners (1845) who described the position thus:

> "The existing law…is by no means as effectual as it ought to be; the duty of prosecution is usually irksome, inconvenient and burdensome; the injured party would often rather forego the prosecution than incur expense of time, labour and money. When, therefore, the party injured is compelled by the magistrate to act as prosecutor, the duty is frequently performed unwillingly and carelessly…it happens but too often that prosecutions are conducted in a loose and an unsatisfactory manner from want of means and labour essential to a just and satisfactory enquiry. The intrusting the conduct (*sic*) of the prosecution to a private individual opens a wide door to bribery, collusion and illegal compromises."

Their recommendation was that "the direct and obvious course for remedying such defects would be the appointment of public prosecutors." That did not come about for 140 years!

The office of the Director of Public Prosecutions developed and expanded over the coming decades but always remained a small specialist office handling the most significant one or two percent of prosecutions. Police forces became responsible for investigating criminal offences and individual forces made ad hoc arrangements which ranged from employment of in-house lawyers through reliance on local authority prosecutors to police officers continuing to conduct their own individual cases with some forces utilising external solicitors to deal with more difficult cases.

The RSPCA stood outside such change. Mr Mike Radford[5] describes the formation of local branches of the RSPCA coupled with an expansion in its Inspectorate being reflected in the number of prosecutions brought by the Society, which practically doubled each decade from 1830 to 1900. The number of prosecutions rose from 1,357 in the decade 1830–1839 to 71,657 in the decade 1890–1899. He adds: "the decision to pursue prosecutions was always taken by the centre and they constituted an integral part of the RSPCA's campaigning strategy. It used the courts to establish precedents, to highlight the law's weaknesses as well as its strengths, to identify and publicise conduct towards animals that was no longer lawful, and to enhance its image and status, thereby encouraging further public support and contributions." Radford adds that by the end of the 19th century, the RSPCA could be regarded as a "quasi-governmental institution".

Much of Radford's description continues to chime with the RSPCA's contemporary approach, save that it would put more emphasis on its independent charitable status. Its campaigning zeal is unabated and has been influential in securing the enactment of two major pieces of legislation in the last decade. Publicity campaigns and fundraising activity routinely highlight cases it has handled. The Society does not shirk from criticism of government or other public bodies if it feels that their approach to animal welfare issues is insufficiently robust. There have been other important changes which effect the environment in which the RSPCA operates. The use of animals in transport, industry and commerce is now very rare. The importance of those sectors is reflected in a complaint in the RSPCA's annual report for 1895:

> "The doctrine of the sacredness of alleged rights of the citizen, the domicile and of private property is a British fetish, and is responsible for the closure of private places against Officers of the Society. A sealed door bars mines, slaughter houses and laboratories."

The latter two scenarios are now the subject of much regulation (including through the EU) with bodies such as local authority Trading Standards Departments and the AHVLA or the Home Office having the primary responsibility. Both domestic law and EU law have become more pervasive. The RSPCA is now more likely to be concerned with companion and domestic animals (including some more exotic varieties) kept at private residences and smallholdings – along with some animal sanctuaries and rescue centres. Even so, it still uses its freedom as an independent charity to act directly, campaign, and seek to "ginger up" enforcement in those fields.

4.2 *Current position: prosecution*

The establishment of the Crown Prosecution Service in 1986 marked a step change in the approach to prosecution. The Office of the Director of Public Prosecutions and local prosecution offices (where they existed) were all subsumed into one national body responsible for the conduct of all proceedings initiated by the police save for a handful of specified proceedings which could be dealt with by written guilty plea. Prosecutions were required to be conducted in accordance with the Code for Crown Prosecutors and with directions issued by the Director of Public Prosecutions.

[5] Animal Welfare Law in Britain – Regulation and Responsibility (published 2001).

The 1985 Prosecution of Offences Act did not preclude other organisations (whether public or private) or individuals from initiating criminal proceedings. However, other charitable bodies (such as the Royal Society for the Protection of Birds and the National Society for the Prevention of Cruelty to Children) which prosecuted some cases opted not to do so at all with the result that the RSPCA now stands alone as a non-public body with a substantial prosecution function. It is also right to record some important distinctions between these two organisations and the RSPCA. The police are much more engaged with wildlife – many police forces have specialist wildlife officers, and would therefore be more willing to pursue cases. Similarly with the NSPCC, relevant cases are much more likely to be taken up by the police and/or social services.

Enforcement of the criminal law is viewed as essentially a public function, not least because the power to prosecute is one of the most intrusive powers of the state (in whose name proceedings are brought). This puts a premium on accountability, at least for general principles and policies if not individual decisions. Indeed, there is now a legitimate expectation that individual decisions will be taken on the basis of properly established and consistent policies. The senior judiciary has recently let it be known that they would wish to see greater consistency in the application of the principles of the Code for Crown Prosecutors (which is binding on the CPS only although most others adopt it) on the part of other non-CPS prosecutors.

The whole issue of prosecutorial discretion was considered by the Administrative Court in Moss & Son Ltd v CPS [2012] EWHC3658. Having considered the circumstances of the particular case, the court went on to consider whether different considerations would apply to policies and decisions taken by the statutory prosecuting authorities (the DPP, Serious Fraud Office and Revenue & Customs Prosecuting Office etc) and those by a (public) body that was not wholly independent of executive government. They concluded:

> "for that and other constitutional reasons there should be clear arrangements which ensure that decisions on prosecution policy and the decision to prosecute are made by persons who can exercise their judgment entirely independently of the executive government or executive agency."

Whilst that dictum is helpful to the RSPCA as a body wholly outside government, the underlying principle (that prosecution policies and decisions should be free of extraneous influence) also raises issues of accountability and is likely to have implications for the relationship between prosecutions and the RSPCA's other activities. These are difficult to balance.

The structure of the Prosecutions Department as a self-contained unit reporting to the RSPCA's Chief Legal Officer is intended to support the underlying principle that policies and individual decisions should be free from external influence. It is quite separate from the Inspectorate organisationally. As an integral part of the RSPCA, the Prosecutions Department must for governance purposes come within the purview of the RSPCA Council but that does not extend to determination of prosecution policy or individual decisions. It is a more reactive role. The Reviewer sets aside for present purposes the extent to which the organisational culture may in practice be an extraneous factor. In actuality there is an absence of external accountability and only limited internal accountability. Many of those who contributed to the review expressed frustration that there was no effective avenue for addressing concerns or calling RSPCA prosecutors to account.

From an RSPCA perspective, the strength of the present arrangement is its strong influence over the manner in which laws are implemented including those where the substance has been strongly influenced by the Society e.g. the Animal Welfare Act 2006. The strength from the public (and governmental perspective) is that it is getting a free service. It is also convenient for the government departments who that are able to distance themselves from some of the sensitive issues involved.

The main weakness is the lack of accountability. The Administrative Court stressed independence from executive government but did not suggest that prosecutors should be publicly unaccountable. For those public bodies that prosecute, accountability may arise in three ways:

- Through the democratic process. That is likely to be through Parliament as regards the activities of national bodies or in the case of local authorities through their elected membership;
- Amenability to judicial review; or
- Media scrutiny supported by access to relevant information through the Freedom of Information legislation.

The RSPCA is largely outside any such accountability. Yet they would provide the Society greater legitimacy and enhanced public confidence in that the law was being applied consistently with known principles. The RSPCA is at present outside the Freedom of Information regime and that is beneficial since compliance can be resource intensive. Its readiness or otherwise to accept a measure of voluntary commitment[6] in this respect would be a good indicator of its appetite for greater accountability.

Prosecutorial accountability featured in the 2004 considerations of the EFRA Select Committee. Having noted the state's dependence on a charity for the funding and discharge of one of its fundamental responsibilities, it stated at paragraph 258:

> "We have considered the many submissions opposing the power of the RSPCA and other charities to institute private animal welfare prosecutions. The difficulty with removing this power is that there appears to be no body other than the RSPCA with the requisite expertise to undertake animal welfare prosecutions, particularly under the proposed clause 3[7]. Although we consider that a lack of accountability makes it inappropriate that the RSPCA should be appointed as an *authorised* prosecutor under the draft bill, **we consider that the RSPCA should be able to continue to institute private prosecutions on its own behalf."**

The extent of the inconsistency is highlighted by the final sentence of paragraph 61 of the report's conclusions:

> "We consider it wholly inappropriate that prosecution powers under the draft bill should be able to be exercised by any organisation other than the Police, the State Veterinary Service and Local Authorities";

yet the conclusion at 62 states:

> "We consider that the RSPCA should be able to continue to initiate private prosecutions on its own behalf."

[6] Experience shows that full compliance with Freedom of Information legislation can be costly and resource intensive. It would be inappropriate if the increased transparency came at disproportionate cost to charitable funds. There is a balance to be struck.

[7] Clause 3 is now section 9 of the 2006 Act.

The Committee's reasoning is unclear as to why it should be acceptable to rely on the prosecuting role of the RSPCA when it deemed it inappropriate to authorise that role. The effect on the public is no less and arguably more serious in that they are subjected to unaccountable authority.

The present position is not in the interests of either the RSPCA or the public. That does not mean the RSPCA should abandon its prosecution activities – although the review does recommend some modification later in this report. Instead, the RSPCA should approach the relevant government departments (mainly DEFRA, the Department of Justice and the Attorney General's Office) with a view to agreeing a basis whereby its prosecution role is formalised and accredited[8]. In practice, this would need to be undertaken in the context of the proposal made later in this report for a concordat with government to define more clearly the overall enforcement role of the RSPCA and ensure that it has the necessary tools to do the job. It would undoubtedly require voluntary assumption by the RSPCA of the duties that attach to public prosecuting authorities in terms of accountability and seek to associate itself more strongly with the wider criminal justice community. The steps required would most likely include:

- Ensuring that its work was governed by overarching policies and offence specific guidance developed and published after full external consultation. It is important that the enforcement of the criminal law is carried out by reference to standards and criteria that take proper account of public concerns and attitudes and are fully accessible;
- Transparency: it needs to be less defensive about its role and ensure that material such as performance information, internal guidance and practice and procedure manuals are made available to the same extent as would be required of a public authority; and
- Effective arrangements for the investigation of complaints with an appropriate escalation process – including an external element.

Within government there is a body known as the Whitehall Prosecutors' Group comprising representatives of the CPS and other non-CPS prosecutors that examines matters of general interest and provides a co-ordinating function. Mention was made earlier of the concern by the senior judiciary that there should be a more consistent approach to the application of the Code for Crown Prosecutors to non-CPS work. That is likely to be taken forward through that group. In the review's view, the scale of the RSPCA's prosecution activity and the public reliance on it make it appropriate for it to seek some form of associate membership of that group.

There are other reasons why the RSPCA should become more a part of the wider criminal justice community. Although it is responsible for approximately 83% of animal welfare prosecutions, it is by no means the only player. The CPS, local authorities and the AHVLA may all prosecute under the 2006 Act as well as specialist legislation. The DEFRA prosecuting role has now been subsumed into the CPS. The review received clear evidence that the approach to enforcement varies significantly across these agencies. There is a need for consistency of overall approach even though there are different factors in play in the various sectors. It is wrong that the likelihood of an individual being prosecuted, and the approach to the conduct of proceedings should depend on the attitude (or resources) of the

[8] The RSPCA in Australia is an example of prosecutions being carried on by a charity but on a properly regulated basis.

particular prosecuting body. That seems to be precisely the sort of concern underlying the wish of the senior judiciary to see more consistent application of the Code for Crown Prosecutors. It also means that any work by the RSPCA to develop offence specific guidance (e.g. in relation to the Animal Welfare Act 2006) could be out of kilter with other prosecutors unless suitably co-ordinated. That would not be in the public interest. Better alignment of approach could also have implications for the relevant public bodies (as well as the Society) since some would certainly need to raise their game and engage more. So far the willingness to tackle this need has not been universal. Indeed public authorities seem keen to distance themselves from these issues. But the problem should not be insoluble if the will is there.

4.3 *Current position: investigation*

Animal welfare issues rise in several sectors. The main ones are farm animals; companion animals; wild animals; markets and slaughterhouses and animals in transport. The RSPCA's charitable purposes relate to animal welfare rather than regulation of disease and hygiene. But, as expressed by the Local Government Association representatives, where there is a disease or hygiene issue, there is usually a welfare issue also, giving rise to extensive overlap. The legislation provides for enforcement by local authorities and those authorised by DEFRA (for England) and the Welsh Assembly (for Wales). The police also has wide ranging powers but limited involvement – mainly confined to dangerous dogs and those offences likely to be linked to wider criminal activity. They have a National Police Wildlife Unit which is proactive in relation to endangered species and unlawful trades. They work closely with the RSPB as well as the RSPCA.

In practice, it is extremely rare for police to deal with any animal cruelty or welfare issue even where the evidence is dropped into their lap and speedy investigation would be in the interest of justice. One case in the file sample related to two youths observed by members of the public setting a dog onto a captive rabbit so that it was killed and then thrown over a fence. Police attended and took possession of the carcass but rather than initiate an investigation, reported the matter to the RSPCA National Control Centre. In another case police investigating other criminality entered the premises of a suspect to search for evidence. They found the carcass of a dog which by its condition had most clearly been starved to death. The public interest would have been best served by a swift and focused investigation leading to early charge and disposal by the court. Instead, the individual was summonsed several months later by the RSPCA.

Local authorities (county council or unitary authority, trading standards departments) are likely to be proactive around farms, markets and slaughterhouses. District council (or unitary authority where appropriate) responsibilities are mainly confined to licensing of certain businesses such as boarding and riding establishments.

For the most part, these relatively narrow activities are based on legislative requirements that predate the Animal Welfare Act 2006. That legislation had the effect of substantially broadening the scope of the criminal law and creating substantial uncertainty. The whole structure of the Act focuses extensively on local authorities for enforcement but both investigation and prosecution powers are discretionary; that is of particular significance at a time when budget constraints mean that many local authorities are confining their activities to statutory obligations and declining to take on any discretionary responsibilities. Research by Dr Fiona

Cooke[9] found that the imposition of such significant powers and duties radically changed the role of local authorities in relation to companion animal work but with little thought given to the ability of local authorities to carry it out. Rather, central government proceeded on the assumption that, because local authorities had some general regulatory responsibility for particular types of animals in specific situations, they were the appropriate bodies to take on a greatly expanded role; and were adequately equipped to carry it out. There was an assumption that the 2006 reforms were merely extensions to the existing arrangements. For example, when the Animal Welfare Bill was published in draft, the Government simply stated that "as with existing animal welfare legislation, the new Act would be enforced by local authorities, SVS and the police"[10], without giving further consideration as to how this was to be carried out. The difficulty referred to earlier in developing coherent arrangements for enforcement was therefore wholly foreseeable. The main reason for government not couching the legislation in terms of a duty to enforce appears to have been the inevitability of demands from local government for additional resources which central government was not prepared to provide.

Dr Cooke's research went on to demonstrate that the enforcement of animal welfare legislation was a role that many local authorities were ill-equipped to take at the time the legislation was introduced. In significant areas, it would be largely ineffective except for the contribution of charitable NGOs such as the RSPCA.

The extent of the departure from what Parliament appears to have envisaged (as judged by its empowerment of local authorities to appoint inspectors and to prosecute) is stark. The research[11] shows that, across Great Britain, just over 60% of local authorities had appointed inspectors for the purposes of the Animal Welfare Act 2006. Take up varied between 100% of Scottish local authorities and English county councils with a much lower take up by other authorities. The breakdown is given below.

[9] University of Aberdeen: Animal Welfare Legislation and Local Authorities: unpublished.

[10] "Local Authority inspectors (the front line enforcers of licensing provisions) and the State Veterinary Service were consulted and have been involved in the development of the proposals contained within the Bill and its regulations and codes." DEFRA, launch of the draft Animal Welfare Bill (Crown Copyright July 2004) S50, P81.

[11] By a postgraduate student of the University of Aberdeen – Dr Fiona Cooke.

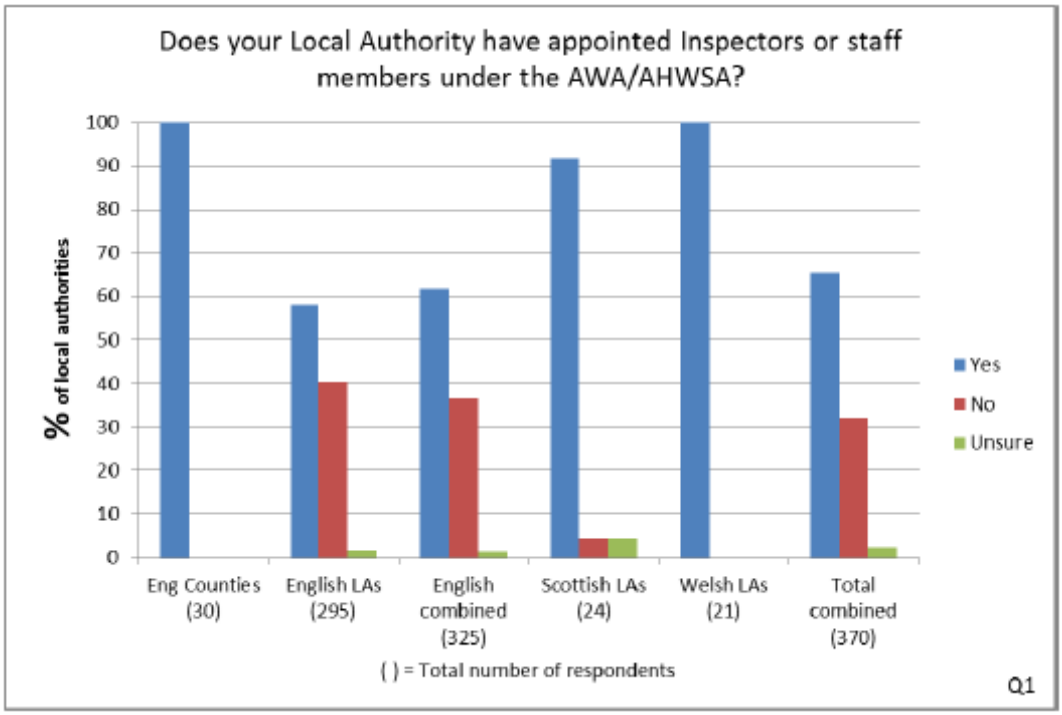


Table 1

There were extensive variations as between local authorities in relation to the deployment of inspectors appointed under the 2006 Act. The most predominant usage overall was in relation to licensed establishments although the English county councils all deployed inspectors for dealing with cases of cruelty to livestock; animal health and welfare on farms; and transport of animals.

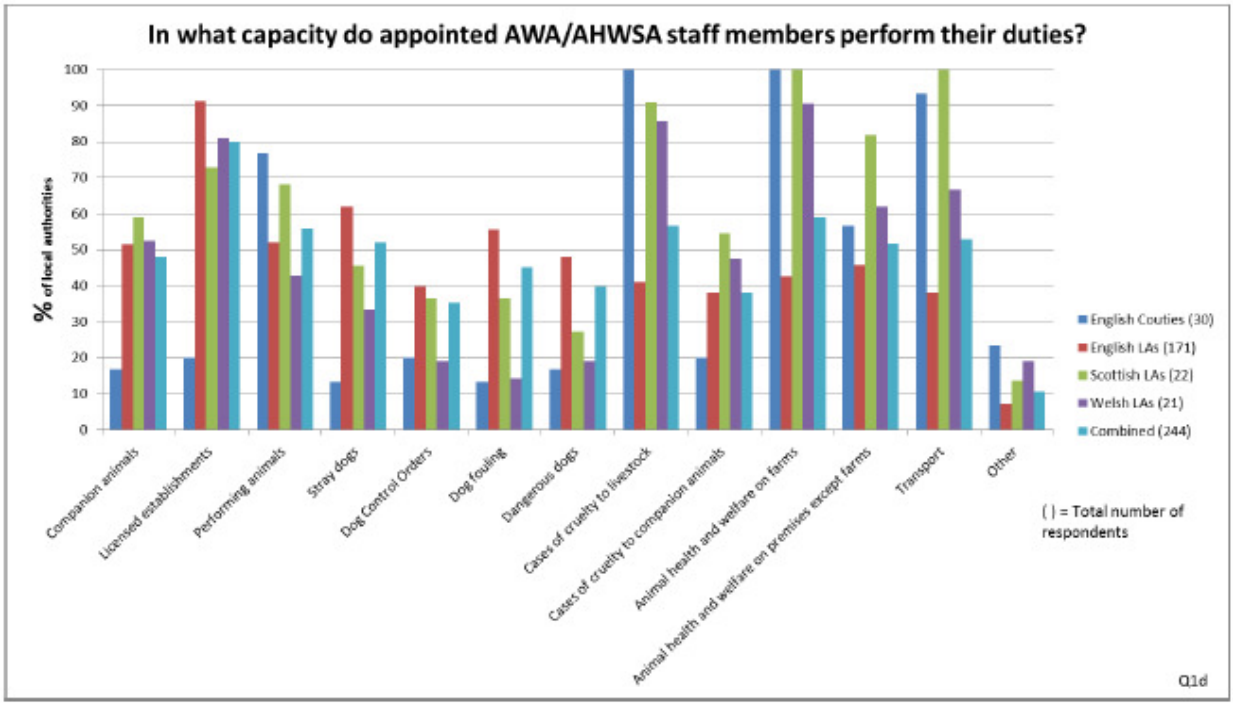


Table 2

By contrast the use of animal welfare inspectors in relation to companion animals is low even when there are appointed animal welfare inspectors. It is in English local

authorities (excluding county councils) where appointed inspectors deal most with companion animal welfare across Great Britain. Seventeen percent of appointed staff in English local authorities deal with companion animal welfare on a daily basis. The comparable figure across Great Britain is 11%. The relatively low figures may be due to lack of need in some areas; however, the researcher suggested that in view of the input of charities such as the RSPCA this is not the only reason.

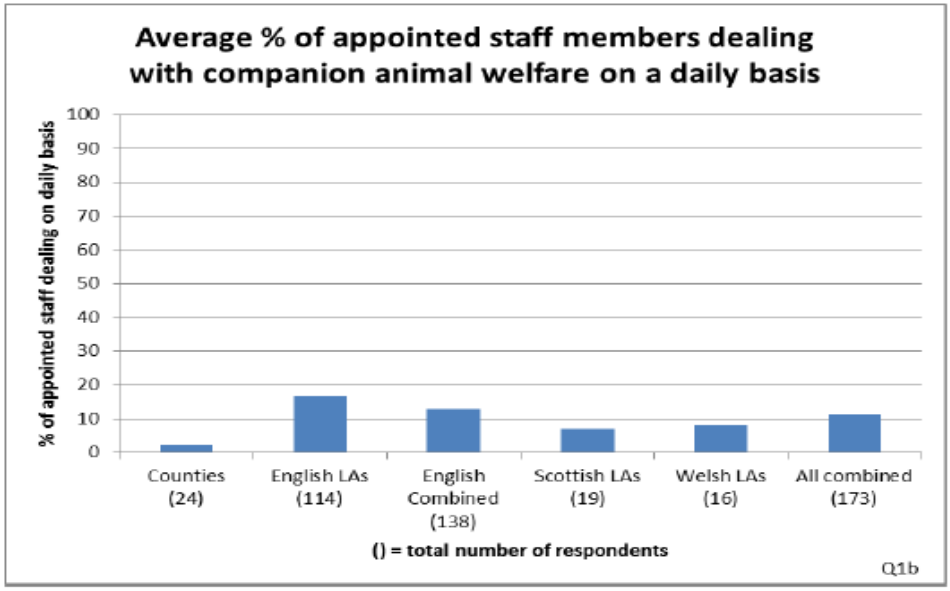


Table 3

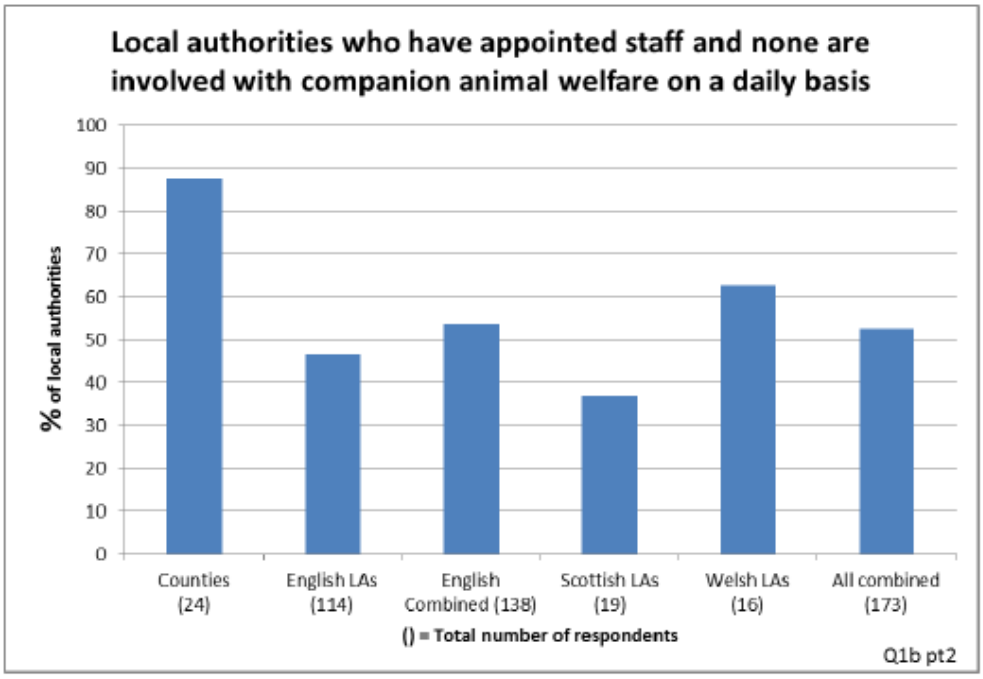


Table 4

The majority (73%) of local authorities responding to the research confirmed that the appointment of inspectors under the 2006 Act did allow statutory duties to be more effectively carried out. Where appointments were not made, the main reasons

were decisions by local authorities to prioritise only statutory duties (as opposed to a discretionary power under the 2006 Act) and resource issues generally.

A particularly interesting aspect of the research is the responses received from local authorities specifying the action taken on receiving reports of companion animal welfare issues. Nearly 40% of all local authorities in Great Britain (over 50% of county councils in England and nearly 40% of other English local authorities) said that they would **always** refer such matters to the RSPCA. A further 20% of local authorities would **nearly always** refer such matters to the RSPCA.

The reality is that without RSPCA action, there would be little enforcement. Dr Cooke concludes:

> "Some Local Authorities have chosen to disregard the 2006 legislation entirely while others have merely gone through the motion of adopting it without demonstrating any real commitment. In contrast there is a third group which has applied the legislation imaginatively and determinedly so as to improve vastly their services and also to develop new initiatives."

The AHVLA operates to safeguard animal health and welfare as well as public health, protect the economy and enhance food security through research, surveillance and inspection. It plans work to prevent and control animal disease across Great Britain through activities on farms and at markets and other livestock related premises.

The police and other public services mentioned may therefore all enjoy the extensive powers afforded to constables and inspectors (not to be confused with RSPCA inspectors) under the 2006 Act. Local authorities are specifically empowered but not required under the legislation to prosecute. As noted in the 'Background' approximately 17% of animal related prosecutions are conducted by public authorities with the remaining 83% being taken forward as "private prosecutions" by the RSPCA. The costs are borne by the RSPCA except to the extent that they succeed in recovering an element of the legal costs from convicted defendants and receive payments out of central funds (at the discretion of the courts) for the fees of expert witnesses.

Although witnesses from the RSPCA who gave evidence to the Select Committee indicated that they would be comfortable in continuing their enforcement activities without either the investigative or the prosecution powers contained in the Bill, the review recommends strongly that the RSPCA Council reconsider this position.

4.4 *The need to change the operating environment*

The enforcement of animal welfare legislation in England and Wales could be described as ill structured and haphazard. The lead department is DEFRA – they sponsored the Animal Welfare Act 2006 but assert that they do not "own it". That is undoubtedly correct in so far as DEFRA cannot be expected to undertake all aspects of implementation. Nonetheless, one would expect the department to accept responsibility for ensuring that clear and appropriate arrangements for enforcement of its legislation were in place. That does not appear to be so. There was an attempt shortly after enactment of the 2006 Act to develop a protocol setting out the respective responsibilities of the various agencies concerned with animal welfare having regard to the broadening of the criminal law. It quickly ran into the

sand – largely because all concerned were determined to accept no additional burden. The RSPCA was the exception.

The present position is that the RSPCA is utilising its charitable funds to discharge what is effectively a government function but with only limited recognition or reimbursement. Its prosecution role has attracted significant criticisms – some based on principle and others based on the manner in which the RSPCA is perceived as doing it. Some of the principled objections to its current role are difficult to counter, in particular its lack of accountability. Others relating to lack of transparency and the absence of clear and published prosecution policies are capable of being met by changes within the RSPCA itself. Similarly, the Reviewer is confident that where the review has found valid criticisms relating to the conduct of prosecutions, they can be satisfactorily addressed. It is important that weaknesses are addressed because the criticisms and associated media campaign have been damaging to the reputation of the RSPCA.

The review recommends that the RSPCA should open discussions with HM Government (DEFRA) with a view to restarting the exercise commenced shortly after implementation of the Animal Welfare Act 2006 to apportion responsibility for enforcement of the various aspects of the legislation to the relevant agencies. The RSPCA should seek a concordat with DEFRA identifying those aspects with animal welfare law where the RSPCA is to be the primary enforcement agency. For the reasons given in the following chapter, the RSPCA should ask DEFRA to appoint suitably experienced RSPCA inspectors as inspectors under the Animal Welfare Act 2006.

The review is aware that there have in the past been reservations on the part of the RSPCA that formalising its role might somehow compromise its independence or charitable status. It does not believe that would be the case. There are many precedents in contemporary public administration for partnerships between the public, private and third sectors. In any event, the RSPCA needs to operate in a collaborative manner with other enforcement agencies to ensure consistency of approach. The extended scope of the work and the situation described above make the current muddled arrangements unacceptable. The DEFRA post-legislative assessment submitted in December 2010 to the EFRA Committee (CM7982) concluded that the 2006 Act had met the objectives of harmonising farm and companion animal welfare and consolidating and simplifying animal welfare legislation. But it also acknowledged that one of the main criticisms remained enforcement. Respondents then had identified different standards of enforcement as problematic and suggested a need for greater clarity over which authorities are responsible for enforcing different parts of the Act.

For such discussion to have any prospect of success, the RSPCA would need to consider its own position as regards those activities (e.g. transport of live animals to slaughter) where the RSPCA believes that enforcement by public authorities has been insufficiently robust and therefore reserved its position to intervene. It is intrinsically undesirable that one enforcement body should be perceived as calling into question the adequacy of others. This can cause uncertainty and confusion to those affected. Although the RSPCA may see such a stance as part of its "campaigning role" it is inconsistent with the principle that enforcement generally and prosecution in particular should ordinarily be instituted and conducted according to established policies consistently applied by the public authorities.

The concordat should provide that the RSPCA will not seek to second guess the relevant prosecuting authority in relation to prosecution decisions although it would

not wish to be inhibited from instituting proceedings in rare circumstances where there has been a manifestly inappropriate failure by the relevant public authority to act. That eventuality remains the accepted rationale for retention of private prosecutions in the law of England and Wales.

4.5 ***Recommendation***

1 *The RSPCA should open a dialogue with HM Government (DEFRA, the Ministry of Justice and the Attorney General's Office) seeking the development of a concordat placing the RSPCA's investigation and prosecutions activities on a formal basis. It should be based on the creation of arrangements for accountability and greater transparency and include the appointment of suitably experienced RSPCA inspectors as inspectors for the purposes of the Animal Welfare Act 2006.*

5 Role of the RSPCA Inspectorate

5.1 *Introduction*

The Inspectorate is the investigation arm of the RSPCA: what it undertakes and how it does it largely determines the scope and nature of the work undertaken by the Prosecutions Department. If inspectors decide to investigate, then a case file will result; when the Inspectorate decides a matter should not be pursued, that is the end of the matter. As with the police, what the Inspectorate does at the investigative stage has a major bearing on what cases are likely to be prosecuted and the issues that may arise.

It is the Inspectorate that also has the greatest impact on the public: the RSPCA is more proactive than the public authorities; it maintains a 24-hour call centre and encourages the public to report suspected cruelty or neglect. Its inspectors respond to calls from members of the public (or even the police) expressing concerns about the welfare of animals. Information may be sparse and little known about the background or the motivation for the report. Depending on the circumstances, the inspector may have greater or lesser difficulty in securing access and making an assessment. It is at this stage that interpersonal skills are crucial since the initial contact may well set the tone for any ongoing relationship that results. RSPCA inspectors have no statutory powers or authority to assist in their work.

There are some 331 inspectors together with 86 animal collection officers and 58 animal welfare officers who operate mainly as individuals but may come together in teams for particular exercises such as the execution of search warrants. They are allocated their own geographical area operating within a regional structure under the line management of a Chief Inspector and Regional Superintendent. There is a group office in each of the group areas providing an administrative base and inspectors start and finish their shifts at home. They also spend time after certain shifts on call overnight to provide the 24-hour animal welfare service.

The cadre of inspectors includes a Special Operations Unit (SOU) that exists to deal with conduct that is more serious and more organised than would be appropriate to be handled by individual inspectors. Matters such as organised dog fighting, badger baiting and dealing with unlawful trades in birds and exotic species will typically come within its remit. It has also been responsible for the investigation of suspected illegal hunting activity. Where appropriate, the SOU liaises with the police (including Wildlife Crime Officers) and the Royal Society for the Protection of Birds.

The SOU is supported by an intelligence capacity which monitors a number of specialist sources in order to identify patterns of offending and enable the SOU resources to be targeted most effectively. There is extensive liaison with other animal welfare organisations. The intelligence unit also monitors the internet where details of questionable activity might be found or even video clips depicting the apparent commission of offences. The review was assured by the police that data protection considerations do not permit the passing of information from the Police National Computer (PNC) to the RSPCA save in circumstances covered by a specific agreement that enables previous convictions of individuals being prosecuted to be before the court.

RSPCA inspectors do not have any statutory or other powers. They are subject to initial training in a course that lasts some seven months leading to an NVQ – Level 3 diploma for RSPCA inspectors which has been developed by City & Guilds specifically for the RSPCA to train their animal welfare officers and inspectors. Its scope is impressive covering relevant legislation, animal welfare and husbandry, UK wildlife, farm animals and interviewing victims and witnesses. In practical terms it covers matters as diverse as understanding of "bad character" applications in criminal proceedings through to illegal traps used in relation to wildlife and the safe handling of firearms for the purpose of humane euthanasia.

Competition for appointment to the Inspectorate is keen although the profile of candidates has changed in recent years: many are now graduates with urban backgrounds where previously inspectors tended to come from rural backgrounds with practical experience. This places a premium on the quality of the training.

Cases emanate mainly from the RSPCA's National Control Centre but may be generated by its own intelligence led policing as described above. In 2013 inspectors investigated 153,770 complaints of alleged cruelty resulting in the issue of 76,810 non-statutory welfare improvement notices. There is no limit to the range of scenarios that may give rise to investigation provided that they fall within the overall objective of the RSPCA:

> "To promote kindness and to prevent or suppress cruelty to animals and do all such lawful acts as the Society may consider to be conducive or incidental to the attainment of those objects."[12]

The Chief Inspectorate Officer acknowledged that the investigative role of the RSPCA was ill defined; and there is little strategy. Maintaining consistency can be problematic within an organisation based on areas overseen by 35 Chief Inspectors (32 in England and three in Wales). This was echoed in interviews with PCMs, some of whom felt that overall case management would benefit from a clearer overview at line management level accompanied by a greater degree of local quality assurance and monitoring of case progression.

The statistics cited above demonstrate the extent of the work done by the Inspectorate. In practice, its range is largely determined by the very large gaps (some would say a gaping hole) left by the public authorities as regards enforcement of animal welfare legislation. In addition, the RSPCA attaches great importance to its freedom to become involved in all aspects of animal welfare such as farm animals, animals in transport or used for entertainment – especially if it feels the relevant public body does not take a sufficiently robust line (e.g. the transport of live animals). The extent of this involvement is likely to vary depending on the composition and views of the Council at any particular time. The difficulty arises in that the RSPCA may appear to be enforcing a higher standard than the relevant authority (which may have its own line of accountability) whilst both are committed to their own position and may base it on the principles of the Code for Crown Prosecutors. It does not always follow that public authorities get it right (especially when resources are scarce) and the important issue is that all agencies should be enforcing the legislation to an appropriate and proportionate standard.

It follows that the role of the Inspectorate is, in practice, determined by a combination of the need to fill "the gaping hole" together with other priorities as from

[12] Royal Society for the Prevention of Cruelty to Animals Act 1932.

time to time are determined by the Council. The role of the Inspectorate is therefore linked more closely than the Prosecutions Department to the wider objectives of the Society and its campaigns. This makes it difficult but even more important for the Prosecutions Department to convince observers that its decisions really are immune from the sort of extraneous factors mentioned in the Code for Crown Prosecutors.

This chapter now considers more detail as to the Inspectorate's arrangements for the enforcement of animal welfare legislation, the processes that are engaged; the criticisms that the Inspectorate encounters and an evaluation with particular reference to the inspectorate's relationship with the police service in the context of the exercise of statutory powers vested in constables. Special considerations also arise around the role of the RSPCA in relation to animal sanctuaries and rescues.

5.2 *The investigation process*

It is wholly anomalous that the state places such extensive reliance on a charity to enforce criminal legislation that directly impacts on the day today lives of ordinary citizens. It is even more remarkable that powers of investigation and prosecution are conferred on public authorities who choose not to exercise them; but are not conferred on the RSPCA.

Such a scenario is ripe for disputes, confrontation and recriminations. This is particularly so if an inspector appears to have adopted a course beyond what is strictly lawful even with the assistance of police or inspector authorised for the purposes of the Animal Welfare Act 2006. It may create an acrimonious background to any proceedings and the proceedings themselves may also be affected. The admissibility of any evidence obtained as a result of an unlawful act such as an entry to or search of premises where there was no power to do so may be subject to an application to have it ruled inadmissible under section 78 of the Police and Criminal Evidence Act 1984. Disputes may also extend to the continued retention of animals seized during the course of an investigation.

It is sufficient at this stage to flag up three issues:

- Police officers responding to requests by the RSPCA for assistance generally have no knowledge of the circumstances and in most cases little or no knowledge of the relevant legislation. In most instances they are reliant on direction from the RSPCA as to the steps to be taken.

- There is an artificiality in a situation where legislation vests specific powers on the police to the exclusion of RSPCA inspectors but police officers who have no intention of carrying out an investigation exercise powers of search and seizure only to hand material to a third party with no official status (the RSPCA) and with no intention of themselves acting on it. There is a particular risk if it turns out that material seized included that which should not be – collateral intrusion occurs.

- The safeguards, built in into legislation are rendered largely nugatory because the police subsequently accept no responsibility for the seizures and simply refer queries and challenges to the RSPCA: whose actual role is no more than baillie on behalf of the police.

All stages of the investigation are affected by the absence of powers and what follows is intended to give a flavour of the challenges faced:

5.2.1 **Gaining access to premises and/or animals**

The circumstances faced by inspectors are many and varied. The basic objective will usually be the same: to view any animals and assess whether the conditions in which they are maintained are suitable or there are health issues that may require immediate veterinary intervention. Quite often the co-operation of the owner of the property/animals or some other person present will be forthcoming and will be sufficient. Even that may be problematic if the owner subsequently believes that they were misled or deceived by the inspector either as to their status/powers or their intentions. The authority of a third party present at the premises to authorise admission may also subsequently be disputed. Where nobody is present an inspector may be able to view and assess animals that are in the open although this may lead to challenge on the basis of trespass.

In certain circumstances where the occupier has refused, an inspector may be able to secure access with the assistance of a third party such as a landlord who may consent. Otherwise, it is likely that he or she will need to call for the assistance of police. This may be exercised by a constable relying on powers under section 19 of the Animal Welfare Act 2006 or an application by the police to a magistrates' court for a warrant.

Section 19 of the 2006 Act enables a constable to enter premises other than a private dwelling to search for a protected animal if he reasonably believes that there is such an animal on the premises; and that the animal is suffering or, if the circumstance of the animal do not change, it is likely to suffer. The finding of an animal in such circumstances will trigger the power of seizure provided by section 18 of the Act.

Section 19 does not apply if any part of the premises appears to be a private dwelling. In such circumstances, the inspector may request that the police assist by applying for a search warrant. Certain conditions have to be fulfilled before a warrant will be issued. In summary, there is a prerequisite that the occupier has been informed of the decision to seek entry and apply for a warrant and has failed to allow entry; or the premises are unoccupied; or that it is inappropriate to inform the occupier of the decision to apply for a warrant because it would defeat the object of entering the premises, or entry is required as a matter of urgency. The last set of circumstances is the one most usually relied on.

It falls to the police to make the application with the supporting documentation being completed on the basis of information provided by the inspector. Thereafter, the execution is also a matter for the police although the warrant should stipulate those who are authorised to accompany them and assist the search.

5.3 ***Seizure and taking animals into possession***

Once again the inspector will be dependent on assistance from a constable who has various powers available that can be used to help animals once the officer is lawfully on the premises. These can be summarised as:
Section 18 of the Animal Welfare Act 2006 sets out the powers in connection with measures to alleviate animal suffering, take possession of animals (without limit on time) and the conditions for their destruction. In particular:

- Section 18(1) empowers a constable who reasonably believes that a protected animal is suffering to take or arrange for the taking of such steps as appear immediately necessary to alleviate the animal's suffering.
- Section 18(5) empowers a constable to take a protected animal into possession if a veterinary surgeon certifies that – a) it is suffering or b) it is likely to suffer if its circumstances do not change.
- Section 18(8) provides that where an animal is taken into possession under sub-section (5), a constable may – a) remove it, or arrange for it to be removed to a place of safety; b) care for it or arrange for it to be cared for.

The usual practice is for a constable on seizing an animal at the request of the RSPCA immediately to place it into the Society's care. However, the animal as a matter of law remains the responsibility of the police until dealt with in accordance with legal procedures.

5.3.1 **Seizure of evidence**

Section 19 of the Police and Criminal Evidence Act 1984 creates a general power to seize property under certain circumstances and is exercisable by a constable who is lawfully on any premises. The most relevant aspect of this provision for present purposes is section 19(3) which empowers a constable to "seize anything if he has reasonable grounds for believing that it is… evidence in relation to an offence he is investigating or any other offence; and that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed".

The judgment of the Court of Appeal in Scopelight Ltd v Chief Constable of Police for Northumbria and the Federation Against Copyright Theft Ltd [2009] EWACiv 1156 make clear the extent of this power. It is said at paragraph 21:

> "On the face of it, "any other offence" covers a range of conduct of enormous width, identified only by the fact that by common law or by statute, it is considered of sufficient significance to justify the imposition of a criminal sanction, whoever might be interested in prosecuting breach of the law to obtain such sanction through the court. Thus, if, while executing a search warrant for stolen goods, the police come across an assembly line of odometers being turned back or "clocked", or evidence of ill-treatment of animals, the warrant entitles them to seize that evidence even though prosecution of the former may fall to Trading Standards and of the latter the RSPCA. Many other examples could be given of where the police are not primarily interested (even if in the first example, the application of a false trade description might also be evidence of conspiracy to defraud) but which other organisations have the expertise and assume the responsibility for prosecuting if the evidence is made available to them. That, of course, assumes that it can be."

As regards the latter point, the Court of Appeal noted that section 22(1) of the 1984 Act enables a constable, subject to certain restrictions, to retain material seized as evidence "so long as is necessary in all circumstances". Subsequent sub-sections provide, without prejudice to the generality, for retention for use as evidence at a trial; or for forensic examination or other investigation in connection with an offence.

However there is a specific limitation (section 22(4)) that nothing may be retained for use as evidence at a trial or forensic examination etc if a photograph or copy would be sufficient for that purpose. That provision assumes significance in the context of the use of the Section 19 power to seize animals – dealt with later in this report.

The Court of Appeal then set out its approach to the phrase "anything which has been seized by a constable… may be retained so long as it is necessary in all the circumstances". The Court stated that this "required the police to consider each case on its own individual facts, at each stage of the process of investigation and prosecution". If the CPS is prosecuting in the case, whatever is required for forensic examination or the prosecution will obviously be retained but, even then, consideration will have to be given to ensuring that no more than is necessary for the case (either to pursue it or to rebut a potential defence) is kept. If a prosecution is not to be pursued by the CPS but some other public or private body wishes to pursue a private prosecution, the relevant circumstances include (but are not limited to): the identity and motive of the potential prosecutor; the gravity of the allegation along with the reasoning behind the negative decision of the CPS and thus the extent to which, in this case, the public have a legitimate interest in the criminal prosecution of this conduct; the police view of the significance of what has been retained; and any material fact concerning the proposed defendant. All this falls to be considered so that a balanced decision can be reached on whether retention is necessary "in all the circumstances". Such a decision would be capable of challenge on traditional public law grounds."

The RSPCA Prosecutions Department attaches considerable importance to this judgment as authority supporting certain working practices as between the police service and the RSPCA. However, the judgment was delivered in the context of material held by the police following execution of a search warrant for the purposes of a substantial investigation being undertaken by the police[13]. Officers seizing the material were lawfully present on the premises for the purposes of executing the warrant and that triggered section 19 of the 1984 Act. That is arguably a different situation from one where a police officer attends premises at the request of the RSPCA (but without any intention of himself carrying out a criminal investigation) and merely responds to a request from that organisation because its staff have no authority. It is not impossible that the Court of Appeal judgment in Scopelight[14] might be distinguished.

5.3.2 **The substantive investigation**

The majority of RSPCA investigations follow a fairly standard pattern. Having gained access (with or without police assistance), the RSPCA inspector will seek to examine any animals on the premises and the conditions in which they are maintained. If the inspector has cause for concern that one or more of the animals may be suffering or is likely to suffer if circumstances do not change, a veterinary surgeon will be asked to attend for a professional assessment with a view to certification under section 18(5) of the Animal Welfare Act 2006. Alternatively, the inspector may seek the consent of the animal's owner to take the animal for veterinary examination; or the inspector may, on occasion telephone a vet and seek certification over the telephone on the basis of information provided. If the veterinary surgeon issues a section 18 certificate, the inspector will usually seek police assistance in the form of a constable who will be invited to effect the seizure before immediately handling any seized animal into the care of the RSPCA and Section 18(8) of the 2006 Act. It will then be implicit that an offence has been committed and the inspector will seek to interview under caution all individuals who appear to have some responsibility for the animals in question. There may be

[13] The file was submitted by the police to the CPS who decided not to prosecute.

[14] Scopelight Ltd and Others -v- Chief Of Police for Northumbria and Others, QBD, Appeal from, (Bailii, [2009] EWHC 958 (QB)).

circumstances where no animal is assessed as suffering or likely to suffer but nonetheless conditions are deemed such as to contravene section 9 of the Animal Welfare Act 2006 (the duty of care). The inspector may then proceed by way of written advice/warning but in some circumstances may decide that an investigation is called for. In that situation also, the inspector will seek to interview under caution all those deemed to be responsible for the animals.

The RSPCA requirement that individuals submit to interview under caution gives rise to a grey area which may also prove highly contentious. This is another aspect of the RSPCA role where inspectors enjoy no powers whatsoever. But both good practice and the interests of justice require that an individual who is suspected of having committed a criminal offence (and may therefore be prosecuted) should be afforded the opportunity to put forward their case or explanation at an early stage. The Codes of Practice relating to the questioning of suspects apply not only to police officers but to all charged with the duty of investigation (e.g. store detectives, trading standards' officers and RSPCA inspectors) and the individual must therefore be cautioned at the outset to the effect that they are not obliged to answer any questions although (in summary) it may operate to their detriment if they choose not to do so. It must also be borne in mind that individuals cannot be required to incriminate themselves and there is therefore no right on the part of the RSPCA (or any other investigator) to require that answers be given in order to establish or strengthen their case.

Problems may arise when individuals (sometimes those more peripherally concerned with the animals in question) either decline to be interviewed or offer the inspector a pre-prepared statement indicating that they are not prepared to engage further. In such circumstances, it seems wholly appropriate that those concerned should be warned of the possible detriment. However, some PCMs and inspectors take the view that they should go further and invite the police to effect an arrest under section 24(5)(e) of the Police and Criminal Evidence Act 1984 (to facilitate the prompt and effective investigation of an offence) in order that RSPCA inspectors may attend the police station in order to conduct an interview in the custody suite.

The further actions by the inspector usually include the taking of statements from relevant witnesses (generally the police officers, the other RSPCA inspectors who may have been involved and any civilian witness) together with the commissioning of the necessary veterinary evidence. The report is then prepared for the Prosecutions Department at RSPCA Headquarters.

5.3.3 **Submission of report**

Once all the evidence has been gathered a report is prepared in standard form for submission to the Prosecutions Department. The overall quality of the reports is high in that they usually contain all the material necessary for the PCM to take a decision as to the sufficiency of the evidence to justify the institution of proceedings. On some occasions it is necessary for the PCM to call for further evidence to verify points or cover additional issues. It has to be said that the quality does exceed what a typical Crown Prosecutor might expect to receive from the police service and the review later considers the possibility of short-form report for some more straightforward cases where the RSPCA can be reasonably confident that a guilty plea will be entered at an early stage. There is scope for the format to be more user friendly with the material which is to form the basis of the prosecution case segregated from that material which is unlikely to form part of the prosecution case and other background information and documentation. Although PCMs had no criticisms of the format, that may reflect their limited role (i.e. taking the decision

whether to prosecute rather than the conduct of proceedings) and their familiarity with the format. Several external prosecuting solicitors commented that their first action on receipt of a file would be to separate out and re-organise the documentation.

Submissions to the Prosecutions Department are covered by a 'preface report' which sets out basic details of the persons complained of and the allegations together with additional background material the inspector feels may assist and his or her own comments. The factual content is however limited and most prosecuting authorities would, in my experience, expect a fuller summary of the facts to assist the prosecutor in assimilating the evidence. By contrast many reports contained 'from the heart' comments by the inspectors not only about the circumstances of the case but about the persons complained of. These frequently tended to be both personal and judgmental to an extent that could call into question the impartiality and professionalism of the inspector. That is something that line management should be alert to and discourage. By contrast, the review identified a need for more background factual information to be available to PCMs to assist with the public interest aspect of the decision whether to prosecute. A significant proportion of cases investigated by the RSPCA relate to individuals who may be elderly, vulnerable and from the lower socio-economic groups often with financial difficulties and somewhat chaotic lives. Such factors can only be properly taken into account if they are fully known to PCMs at the outset.

5.3.4 **Perceptions of RSPCA enforcement**

Champions of the RSPCA's enforcement role point to its expertise, experience and access to resources in a specialist area which is low (or no) priority for the police and CPS. Its supporters also emphasise its high rate of successful outcomes and readiness to pursue cases which might be regarded as too difficult by others. In addition, there is strong evidence that the police and the CPS lack the skills and expertise to take on such cases effectively or at all; and will continue to do so in the foreseeable future. Most commentators referred to the 97% figure used by the RSPCA for annual report purposes which focuses on cases that have been subject to specific judicial determination. The review analysis (section 6.2) adopted a basis more akin to that of the CPS which suggests that the percentage of defendants convicted over the four year period 2010 to 2013 was 91.8%.

Out of 290 responses to the public consultation 181 expressed overall support for the RSPCA with 66 respondents linking that support specifically to its stance in relation to enforcement of the Hunting Act 2004. There was also a group who very properly declared interest through employment or other association with the RSPCA. Some 63 respondents expressed concerns about the current role of the RSPCA with 27 linking them to specific cases. There were numerous neutral responses commenting on perceived strengths and weaknesses. Lack of accountability was a common theme. One individual with an academic background who had written a thesis on the need for the RSPCA to have increased powers of investigation and prosecution commented:

> "The problem with animal protection is that it is too political. Even within animal protection there are accusations if you claim to be animal welfare or animal rights. That is why the RSPCA receives so much criticism. There needs to be an independent body overseeing the work of the RSPCA. I suppose what I am suggesting is that the Society be regulated by a team of professionals in each specialist area to maintain a sense of authority, while perhaps initiating the creation of a separate investigatory body and modifying the department to include a team of in-house lawyers."

Another commentator and author of books on animal welfare proposed the creation of an Animal Ombudsman in conjunction with one independent body having overall control of enforcement of all animal welfare legislation. Whilst such proposals go further than the scope of this review its proposals are aimed at addressing the key issues relating to accountability and ensuring that extraneous considerations do not enter the process.

When analysed a large majority of the concerns were directed towards the investigation process. The most common complaint was that inspectors were looking to find fault, over zealous, hostile and/or arrogant in their dealings with persons complained of. Recurring themes included trespass on premises, lack of openness when seeking co-operation, improper use of seizure together with unnecessary retention of and lack of information about or access to seized animals including where euthanasia was involved. Whilst some are likely to be exaggerated, similar assertions emanated from so many different situations and individuals with such differing backgrounds that they cannot simply be dismissed as unfounded. Also, the pejorative and judgmental tone of quite a number of preface reports submitted by inspectors is consistent with what many describe. Suggestions by some witnesses that over zealousness on the part of inspectors might be fostered by inappropriate incentives in the RSPCA systems of appraisal and award were not borne out. There was however some evidence from within the RSPCA to the effect that some line managers might have put more emphasis on that than they should. It is inevitable that line managers will be concerned to ensure that inspectors have used their time effectively. The review is satisfied that if there has been over emphasis in some instances, it is not a general occurrence.

A high proportion of investigations are carried out in a fully satisfactory manner. The following two examples from cases coming to attention during the review reflect well on the Society.

An elderly lady owned a number of dogs, cats and birds. She lived in premises characterised by approximately two feet of rubbish on all surfaces so that the whole place was unhygienic. Even so, all except one of the animals were healthy. They had received veterinary treatment although details were refused.

The fundamental problem was that the house was not a suitable environment. Other interventions were able to address that. The RSPCA collaborated and a phased approach to the return of the animals to the improved conditions was agreed. Once this was achieved, an adult written caution was given in the light of assurances that the improved environment would be maintained.

Such an outcome fully met the animal welfare objective of the RSPCA and was sensitive to the individual's needs.

In another case an elderly person owned a dog which was consistently overweight to the point of being a risk to its welfare. The dog was removed and supervised treatment and dietary regime controlled its weight. On return to the owner, the problem recurred – in the view of the RSPCA because the individual was unable to resist feeding it. No criminal proceedings were instituted but an application made to the court under section 20 of the Animal Welfare Act 2006 for directions. In the event, agreement was reached for the animal to be returned on the basis of a monitoring agreement. This was not without difficulty but at the time of the review the desired objective seems to have been achieved.

Conversely the following three examples represent situations handled by the RSPCA in a manner which may well have reflected the letter of the law but brought down on the individuals concerned consequences that would be regarded as disproportionate to the point of harsh by many reasonable individuals.

A mature lady described as "of low intelligence" was prosecuted for causing unnecessary suffering. An inspector had attended her house and found five dogs – four of which were in reasonable condition. The fifth was elderly and in poor condition being wrapped in a blanket in a dog basket, unable to stand. When spoken to, the owner accepted the RSPCA suggestion that it should be put to sleep and signed the necessary consent. The inspector immediately took the dog to a vet for that purpose but refused the owner any assistance to get there.

The decision about euthanasia was one which should have been made with veterinary advice rather than by the inspector. Moreover, the report of the subsequent proceedings described how in giving evidence the inspector "at times" came across as uncaring and hostile regarding the defendant in that the District Judge asked if she made any attempts to hold the euthanasia until [the defendant] could be there, or even ring her before putting the dog down or return in her van to transport her to the vets. She simply kept repeating that she had signed the consent form and was told that she could make her own way there if she had wanted to. This did come across as a bit lacking of understanding or compassion and the District Judge appeared unimpressed. The defendant was acquitted in the following terms:

> "No doubt [the dog] was reaching the end of his life and his state must have been distressing. The RSPCA acted in the best interests of the dog. The vet relied upon the consent form of which I make no criticism. I am persuaded that [the dog] was well cared for, he was fed and kept relatively clean, he had no bed sores and was kept within his human family and pack. The treatment could fall foul of section 9, but I cannot be sure there was suffering never mind unnecessary suffering."

The acquittal did not prompt any critical appraisal of the decision to prosecute. Rather, internal correspondence reflected an outright rejection of the judgment.

A successful business man living in a rural village built up (as a hobby) a herd of specialist cattle that he maintained to a high standard in a field near his house in the village. Following the failure of his business in the wake of the banking crisis he was obliged to move but continued to maintain the herd with arrangements through others in the village to make checks.

One cow calved but a glitch in the arrangements meant that it was unobserved for two days. It collapsed and was subject to fly strike and infestation.

When the distressed cow was seen, the RSPCA was called and it was destroyed with the agreement of the owner. The owner was distraught. Yet a full criminal investigation was undertaken including interview under caution, adding to the owner's distress. It was submitted to RSPCA Headquarters on the basis that offences under the Animal Welfare Act 2006 were disclosed albeit an adult written caution was recommended. In the event the PCM correctly recognised that the evidence would not support a prosecution.

This was the situation where a realistic early assessment would have recognised the episode as straightforward misfortune thereby saving the RSPCA considerable effort and the individual distress.

A couple who had owned and perfectly maintained a horse for many years were subject to a criminal investigation because of events at the very end of its life. The animal was clearly ailing but was being regularly checked and treated as necessary by the owners following instructions from the vet. They had concluded that the time had come for the animal to be put to sleep and had contacted their own vet to make the necessary arrangements. The case hinged on a gap between checking the animal at around 9am one morning and the animal falling before the attendance of the vet. That prompted a notification to the RSPCA who attended at lunchtime.

The couple co-operated fully and provided an account as to the handling by their vet. But there was a very pressurised interview which appeared designed to elicit a confession that the animal should have been put to sleep sooner.

The position was exacerbated by the time taken (six months) by the RSPCA to reach a decision not to prosecute. That was the only realistic decision but it is questionable whether matters should have gone that far.

The individuals were concerned by the conduct of the Inspectorate as regards the removal of their animal after it had been put to sleep and the refusal of access to it. Their complaints to the RSPCA appeared to fall on deaf ears.

This points to a need for the Inspectorate to reassess the effectiveness of its quality control taking account of the reputational damage that may be occasioned by even a modest proportion of poorly handled cases. The issue of formal complaints is dealt with later at chapter 5.4.

5.3.5 **RSPCA reliance on police powers**

The above describes the convoluted steps which have to be gone through if an RSPCA inspector wishes to gain access to premises to take possession of an animal. They are intended to provide safeguards in what is a sensitive area as the courts have said:

> "Search and seizure under statutory instruments constitute fundamental infringements of the individual's immunity from interference by the state with his property and privacy – fundamental human rights. Where there is a public interest which requires some impairment of those rights, Parliament legislates to permit such impairment".[15]

There is a memorandum of understanding between the Association of Chief Police Officers (ACPO) and the RSPCA setting out in broadest terms the arrangements for collaboration and the principles which should be applied. ACPO confirmed that any arrangements for day to day operational collaboration tend to be determined at local level. There is no additional guidance from ACPO or elsewhere[16]. This appears to be a contributory factor in the increasing difficulties encountered by the operational RSPCA inspectors in obtaining assistance to check on the welfare of animals – whether by gaining access to premises, effecting seizures or obtaining search warrants. The RSPCA Prosecutions Department has responded by producing a booklet carried by inspectors entitled 'How can I gain lawful access to help the animals?'. The foreword to the booklet comments:

[15] Sir Nicolas Brown-Wilkinson in Marcel and others v Commissioner of Metropolitan Police [1992] CH225.

[16] The RSPCA may have understandings at local level with some forces but they were only of limited effect and value.

> "whether we like it or not, we must now face the fact that with the ever increasing burden on police resources, when you need to gain entry to premises to help an animal that is suffering or in distress, the police officers that you turn to will look to you for guidance on the available options more than ever before.".

That situation is not one of the RSPCA's making but it does create significant risk. This risk is especially so in circumstances where aspects of the procedure may have been by-passed: the file sample contained examples of animals taken into possession by an inspector and then presented at a police station for the action to be ratified. On another occasion an animal was removed with consent for the purpose of taking it to a vet but in fact it was taken to the police station and seizure requested.

There is a distinction between circumstances where the police have carried out an investigation or positively assisted another organisation as opposed to simply allowing their powers to be used. There is a need for work to clarify some of the uncertain areas and provide better guidance on the use of powers and subsequent decision-making. Particular difficulty can arise when animals are seized (as is sometimes the case) under provisions other than the Animal Welfare Act 2006. For example, in a recent high profile case, section 17(1)(e) of the Police and Criminal Evidence Act 1984 was invoked to break into a property in order to seize a cat considered to be at risk because of unsuitable conditions. The provision enables a constable to enter and search any premises for the purposes of "saving life or limb or preventing serious damage to property" but RSPCA and the police service guidance indicate that animals can be property and link the issue to criminal damage. The rationale seems to be that the owner would damage their own cat in the absence of seizure!

Section 19 of the Police and Criminal Evidence Act (which relates to the seizure of material which may be evidence to an offence) has on occasion been used to seize animals. However, that triggers a different regime (section 22 of the 1984 Act) and any decisions about retention fall to be made by the police rather than the RSPCA on a fully considered case by case basis as set out in the Scopelight judgement referred to earlier. Animals are not usually produced as evidence and photography is usually sufficient for that purpose. Section 22 does not relate to the welfare of the animal and difficulties can then arise if there is a wish to retain on welfare grounds, especially if the animal is not assessed as suffering.

It was common ground amongst those contributing to the review that animals and property seized by constables under statutory powers remain the responsibility of the police even when physically passed to the RSPCA – the latter held them to the order of the police. It also seemed common practice for decisions about retention or return to be taken without reference to the police. Case files examined contained numerous examples of letters from defence solicitors raising these issues and often receiving a firm refusal without any consultation with the police.

Seizure of material for evidential reasons also represent a risk for the police service if it includes material (possibly of a personal nature) which is not material to any RSPCA matter but is passed to them. Such collateral intrusion can only be avoided by careful scrutiny of material before it is handed over. This does not seem to occur.

ACPO themselves cited an example of fighting dogs seized by the police after darting by the RSPCA. No proceedings were brought because the suspect could not be traced. The RSPCA caused the dogs to be put down on the basis of its own

procedure. Although this would probably have been the outcome in any event, this had left the police vulnerable in the event that somebody had come along and sought to claim the dogs.

These examples further illustrate the extent of the misconceptions that surround the RSPCA. It is common for members of the police service and local authorities to believe that the RSPCA is an official law enforcement body with its own powers.

The extent of the misunderstanding is eloquently demonstrated by a letter sent in early 2014 by a police force to a member of the public who complained that animals owned by her had been unlawfully removed as part of an exercise targeted at another individual. It read:

> "With regards to the second part of your complaint, the work by XXXXX Police was carried out at the request of the RSPCA via warrant and at Section 27 of the Animal Welfare Act (sic). If you have a complaint with regards to this matter you should forward this in writing to the RSPCA."

The conclusion that flows from the above is that police involvement with the RSPCA in many cases is purely nominal and in many instances amounts to rubber stamping RSPCA actions without the safeguards which should be applicable. The Animal Welfare Act 2006 was presented to Parliament on the basis that powers would be exercised either by constables or inspectors appointed under the Act by DEFRA or local authorities (which RSPCA inspectors are not). Both the police and the local authorities have proper complaints procedures which culminate in independent external bodies, the IPCC and the Local Government Ombudsman, providing a safeguard for those investigated. "Piggy backing" on police powers by-passes those safeguards, especially when there is in reality no police involvement or interest in the case.

All of these matters have implications for the trial process although the review was assured by the Prosecutions Department that it was not aware of any instances where this has been so. This suggests a reluctance to grasp the issue. For example, one of the cases in the random file sample related to the acquittal of three individuals following a decision by the District Judge to exclude under section 78 of the Police and Criminal Evidence Act 1986 all the evidence derived from a search. The judgment recorded the fact that the police had obtained a warrant and were authorised to be accompanied by RSPCA officers. It went on:

> "Yes, the police apply and supervise any seizures and are there to ensure good order. But it is quite clear from the evidence that I have heard this operation and the execution of the warrant was being led by xxxxxxx of the RSPCA.
>
> It is my view, having heard evidence over the last three days, the evidence was obtained as a result of an illegal search. I therefore have discretion whether to exclude evidence obtained following that illegal search under Section 78 PACE. I have to assess the effect of admitting the evidence on the fairness of the proceedings".

The judgment noted that there "were flagrant disregards of the codes of practice" and concluded:

> "I have decided to refuse the admission of the evidence and deploy Section 78 in this particular case. The RSPCA made no enquiries as to the parameters and simply exceeded them without any regards to the safeguards set out in codes B & C of the codes of practice."

5.4 *RSPCA arrangements for considering and responding to complaints*

A frequently recurring theme in the submissions received in response to public consultation and in discussion with defence solicitors was the unresponsiveness of the RSPCA to complaints lodged.

At the suggestion of the Chief Legal Officer, I met two individuals and a retired lawyer who looked after their interests in order to discuss the background to the obtaining and execution of a search warrant at a small animal sanctuary which they had and continue to run. In the event, no prosecution ensued. The resentment of the couple running the sanctuary arose because they had enjoyed sound relationships over a period of time with the local RSPCA inspector who had invariably been afforded proper access to the premises; and who had provided advice which had been largely complied with. They had made an appointment for him to visit the premises the day after the warrant was executed. Personal circumstances necessitated a short deferment. Although the execution of a search warrant invariably involves a substantial presence because of the need for the police and RSPCA inspectors executing it to be accompanied by veterinary surgeons, animal welfare officers and transport (together possibly with experts), the particular case was exacerbated by the unnecessary attendance of staff from the local branch and the local media had also been invited. The legality of the warrant was questioned because a prerequisite is satisfying the court that access is otherwise likely to be refused; the giving of notice would defeat the purpose of the warrant; or there is urgency. It is unlikely that the court, if properly apprised of the facts, would have found the test satisfied. However, there is no conclusive evidence on that point.

Following further enquiries from within the Prosecutions Department, there was a meeting at which the RSPCA had to acknowledge that its handling had not been appropriate. The Prosecutions Department reported the issues to the Regional Manager and Regional Superintendent in circumstances that led the owners of the sanctuary reasonably to believe that a disciplinary investigation would follow. They were disappointed some time later to learn that had not happened.

The RSPCA itself at present seems to lack any structured and effective mechanism for considering and responding to complaints. However, things are said to have been better in the past. The former Chief Executive of the RSPCA, Jackie Ballard, wrote in a recent publication[17]: "Complaints are an early warning system":

> "When I worked at the RSPCA we received many complaints and had staff dedicated to responding to them; in fact we took part in a Charity Commission study in complaint handling (Cause for Complaint, 2006) and were used as an example of a charity with a defined national complaints procedure."

[17] Third Sector, 30th April 2014.

She went on to make three points:

> "It's easy to become defensive when someone complains about your organisation, and to dismiss complainants as "the green ink brigade" or people who expect too much. The better and more difficult thing to do is to see the complaints procedure as a learning tool and an early warning system providing useful management information. Rather than looking for a member of staff to blame when complaints are received, the managers should look at what lessons can be learned and which processes needed to be changed.
>
> An organisation that responds well to complaints can enhance its reputation with donors, service users or customers. It can also save time if a named person takes ownership of the complaint when received and sees it through to conclusion, rather than passes the complainant around the organisation ensuring that the person who made the complaint gets more and more disgruntled.
>
> One of the wisest pieces of advice I had been given in the past was to remember that "*every contact leaves a trace"*. Whether someone is complaining or praising our organisation, they will remember (and probably tell others) how we responded."

In short, there is no organisation where things never go wrong. The good organisation is the one that is prepared to recognise when things go wrong; put it right; and ensure that lessons are learned.

The national complaints procedure current in March 2014 seems rudimentary and simply provides for Chief Inspectors to reply to complainants either directly themselves or through a complaints co-ordinator writing on their behalf. The question and answer document also refers to the possibility of a more senior member of staff if the individual remains dissatisfied. There is however, no guidance to ensure that investigation is thorough and impartial. There is no provision at any stage for an external element.

The RSPCA as an organisation received 1,735 complaints in 2013 which reflected a drop over each of the two previous years. However, the number attributable to inspectorate operations rose between 2011 and 2013 to 624 (36% of complaints received). The target for reply is 80% within 33 days and the regional achievements within the Inspectorate ranged between 61.4% and 77.5%.

There are no arrangements for analysing the outcomes (with a view to learning) and no information was available as to the outcomes themselves. The HR Department reported that there had been no case where an external complaint had resulted in any disciplinary action against an inspector.

An area of concern that arose frequently during the review was the apparent unresponsiveness of the RSPCA towards those whose animals had been seized and, although it was apparent from case files that some inspectors did endeavour to facilitate some access after seizure, this did not appear to be the norm. The national procedure in relation to those complaining about lack of contact from an inspector whilst a case file is being compiled was a brief response as follows:

> "Due to the ongoing nature of our investigation we cannot comment or address your concerns at this time. You will hear from the investigating officer in due course when our enquiries have been completed.
> Yours sincerely
> Inspectorate Department."

Cases vary greatly in their nature and that approach may well be justified in a proportion. But many involve individuals with long standing and loving attachment to their animals where any short-coming is likely to be one of omission and may well have been relatively short term. In 2013 1,198 of the 3,237 suspects reported to the Prosecutions Department were not subject to proceedings. Given the length of time that typically elapses between seizure of animals and the decision whether to prosecute, such a blanket refusal to communicate inevitably risks friction or acrimony.

5.5 *The handling of animal sanctuary cases*

There were four such cases considered by the review. Three were in the random file sample and the fourth was drawn to the review's attention. In addition, the self-help group stressed the degree of concern and apprehension felt by individuals running small sanctuaries in relation to RSPCA activity. They believed that they were targeted. Similar concerns were expressed by a number of those responding to the public consultation. There was no direct evidence to substantiate that assertion but the review is mindful of the case described at 5.4 where there was significant evidence to suggest that some animus between the sanctuary and a local RSPCA Branch (not the Inspectorate) had influenced the handling.

Such cases are intrinsically difficult because, although the 2006 legislation is couched in terms of a "reasonable and competent person" there remains a significant subjective element especially in the context of sanctuaries and rescues when those concerned may be struggling to achieve the best they can with limited resources, skills and expertise. The review excludes for present purposes situations commonly referred to as "hoarding" where the motivations of those concerned are likely to be very different.

In one particular case (which attracted adverse comment for the RSPCA from both sides), the reporting inspector commented:

> "If ever there were a case for regulation this is it".

The essential point seemed to be the need for ongoing oversight of such institutions on a preventative basis. There are no arrangements for regulation of rescues, rehoming centres and animal sanctuaries (referred to generically as companion animal welfare centres). This is unsatisfactory and dealing with them can be a source of friction between the RSPCA and the organisations concerned.

The resultant criticisms may be more damaging because they originate within the animal welfare community although in reality the quality of animal husbandry offered by such organisations varies from the excellent to the downright cruel.

There is no standard companion welfare establishment. At one end of the spectrum are those which are essentially a one person operation, funded from that person's own resources. At the other, there are establishments operated by well known national animal welfare charities (including the RSPCA itself). Most establishments rely to a greater or lesser extent on the public for their funding (and many are registered charities). Some establishments focus on certain types of animals while others seek to cater for a wide range of species.

Good motivation is not a justification for the poor welfare standards sometimes encountered. However, the treatment of animals within companion animal welfare centres is subject only to the criminal provisions of the Animal Welfare Act 2006 that apply generally to domestic and captive wild animals. This is anomalous given the statutory regimes that regulate, for example, dog breeders, riding establishments, pet shops and boarding establishments for cats and dogs. In reality, oversight of such establishment falls to the RSPCA having no authority beyond the blunt instrument of the criminal law – making the position doubly anomalous because the RSPCA operates such establishments and patronises many others.

In January 2004, the Companion Animal Welfare Council (CAWC) published a report its 'Report on Companion Animal Welfare Establishments: sanctuaries, shelters and rehoming centres'[18]. It concluded that such establishments should be publicly accountable for the standard of care provided and recommended regulation by a proportionate system of licensing and registration. The necessary provision was made in the Animal Welfare Act 2006 but has not been implemented.

An effective regime operating the sort of standards proposed by CAWC should substantially reduce the need for interventions through the criminal law. Where such intervention is necessary, the primary responsibility for enforcement should rest with the licensing/registration authority albeit with assistance from the RSPCA. This would avoid the situation whereby one charity might be appearing to regulate others and protect the RSPCA from suggestions of improper motivation.

5.6 *The way forward*

There is wide acceptance that the RSPCA is a very effective organisation with extensive achievements in improving animal welfare through a range of activities including the investigation and prosecution of animal welfare offences. However, the role of the RSPCA is no longer sufficiently defined. Practices seem to be based on "this is how we have always done it" with piecemeal evolution to reflect external change. This has been compounded by the 2006 extension of the ambit of the criminal law and the absence of any powers or official status relating to enforcement. Despite the plaudits received from many quarters – and there was extensive support for the role of the RSPCA in the responses to my public consultation – it has continued to attract extensive criticism from a range of sources and these are damaging to the reputation of the Society as well as to the morale of the staff. There is no direct evidence but it is reasonable to infer a link between many such complaints and the absence of any official status or power on the part of RSPCA inspectors. They are dependent on a combination of charm and assertiveness to gain access to premises. They appear in uniform and with police style titles and it would be surprising if some at least did not trade on this – leaving individuals who have co-operated possibly feeling "had over" especially if the outcome has been the calling of the police to regularise a seizure. Also, knowledge of the ease in which they can get the police to do their bidding may encourage inspectors to imply more authority than they have.

Although it may seem curious in the face of such criticism to propose the conferring of statutory powers on RSPCA inspectors, the review believes firmly that the way forward is a re-positioning whereby the RSPCA inspectors are given the tools to do the job but on the basis that current gaps in transparency and accountability are closed. If the RSPCA Council is minded to seek such re-positioning, it should

[18] http://www.cawc.org.uk/sites/default/files/CAWCRepsanctuaries.pdf

consider the appropriate basis for doing so. Seeking such official status would bring the RSPCA more in line with counterparts in many other countries such as Scotland, Australia and New Zealand.

In short, the current arrangements for enforcement of the criminal law by the RSPCA need to be adjusted to meet 21st century expectations of public administration. RSPCA investigations need to be formalised on the basis of proper authority.

5.7 ***Recommendations***

1. *The RSPCA should work with ACPO to develop further operational guidance to assist constables and inspectors in circumstances where the latter seek assistance, particularly through the exercise of police powers, in relation to possible animal welfare offences.*

2. *The RSPCA should press HM Government (DEFRA) for implementation of a scheme of licensing and regulation along the lines proposed by the Companion Animal Welfare Council.*

3. *If such a regime is implemented, where intervention through the criminal law is necessary, the primary role should rest with the licensing or registration authority with RSPCA assistance as necessary. In the meantime the RSPCA might invite the CPS to consider such cases.*

4. *The RSPCA should review the complaints procedure applicable to the Inspectorate with a view to ensuring that complaints are thoroughly investigated at the earliest opportunity with substantive feedback and legitimate concerns being addressed. Where the complainant remains dissatisfied there should be escalation to a higher level including an external element.*

6 How the RSPCA discharges its prosecution function

6.1 *Introduction*

Chapter 4 reviewed the history and development of the RSPCA's enforcement role and described the sort of outward facing changes necessary to place the RSPCA on a proper basis as a de facto prosecuting authority. The starting point is that the Prosecutions Department performs soundly in terms of its case outcomes and enjoys good standing before the courts for the effective manner in which its cases are presented. Its staff are well motivated, conscientious and highly committed. The issues that have led to criticism in recent years arise from perceived over-reliance on prosecution as part of the enforcement strategy and lack of objectivity in the decision-making processes as the result of its continuing close identification with the Inspectorate and other interests of the RSPCA.

This chapter examines the internal structure and work of the Prosecutions Department and assesses how far its decision-making and the conduct of proceedings accord with those of a responsible and fair-minded prosecutor. It first describes the caseload and outcomes before considering the organisation and ethos of the Prosecutions Department and how it accords with the Philips Principle; subsequent sections consider the processes by which decisions are made and recorded; the application of the Code for Crown Prosecutors and prosecution policy (including the "undertaking" to Parliament in relation to section 9 of the 2006 Act); delays; the use of external solicitors and alternative ways of working. It concludes that there is an urgent need for the Prosecutions Department to be strengthened by the employment of qualified solicitors and barristers to provide broader experience and leadership, an in-house capacity for end-to-end conduct of cases and management oversight of the overall caseload. Some categories of cases should be left to other agencies. Consideration should be given to strengthening the separation of the prosecution function by establishing a discrete governance mechanism for the Prosecutions Department with an independent element which remains consistent with the overarching responsibilities of the trustees but avoids improper intrusion into prosecution policy and specific casework.

6.2 *Caseload and outcomes*

The 2,174 case files received by RSPCA Prosecutions department in 2013 resulted in the prosecution of 1,548 defendants of whom 1,371 (88.6%) were convicted of one or more offences. These outcomes are not as favourable as previous years. The percentage of defendants convicted over the four-year period from 2010 to 2013 was 91.8%.

The proceedings in 2013 related to 5,345 alleged offences and 3,961 convictions were secured (74.1%). The percentage of offences charged resulting in conviction over the four year period from 2010 to 2013 was 72.5%.

A more detailed breakdown of the outcomes is contained in the table contained on the next page.

Prosecution Statistics 2010-2013

	2013		2012		2011		2010	
Investigation by Inspectors	153,770		150,833		159,759		159,686	
Cases reported to Prosecutions Dept	2,174		2093		2018		1830	
Persons reported to Prosecutions Dept	(3,354)		(3181)		(3036)		(2771)	
Persons charged	1,548	46,15%	1677	52.71%	1454	47.89%	1204	43.45%
(Offences)	(5,345)		(5759)		(4401)		3377	
Persons convicted	1,371	88.56%	1552	92.54%	1341	92.20%	1086	90.20%
(Juveniles included in above)	(17)	1.09%	(28)	1.66%	(24)	1.65%	(24)	2.20%
(Convictions secured)	(3,961)	74.10%	(4168)	72.40%	(3114)	70.75%	(2441)	72.30%
Persons pleaded guilty (no trial)	1128	72.86% of all persons charged	1255	74.83%	1121	77.10%	894	74.30%
(Offences - from the persons pleaded guilty)	(3,055)	57.15% of all offences charged	(3161)	54.88%	(2538)	57.70%	(1992)	59.00%
Persons convicted after trial who had pleaded not guilty	287	61.85% of all PNG (inc defendants where proceedings wholly withdrawn /discontinued). 90.09% of all PNG going to contest	319	71.8% of all PNG. (90.6% of all PNG going to contest).	246	68.5% of all PNG. (90.8% of all PNG going to contest).	216	64.7% of all PNG. (88.5%) of all PNG going to contest.)
Offences for which convictions obtained following not guilty pleas	(906)	16.95% of all offences charged	(990)	17.19%	(613)	13.92%	(460)	13.62%
Persons where all charges discontinued or withdrawn before or at trial	148	9.3% of all persons charged	92	5.48% of all persons charged.	88	6.05% of all persons charged.	90	7.47% of all persons charged.
Charges withdrawn or no evidence offered.	1,248	23.3% of all charges	1462	25.40%	1144	26.00%	815	24.13%
Persons wholly acquitted at trial (ie all charges dismissed)	29	1.8% of all persons charged. 9.20% of all PNG going to contest	33	1.90% of all persons charged. 9.4% of all PNG going to contest.	25	1.70% of all persons charged. 9.2% of all PNG going to contest.	28	2.30% of all persons charged. 11.5% of all PNG going to contest.
(No case to answer included in above)	6	20.68% of the persons wholly acquitted at trial	9	27.27%	5	20.00%	data unavailable	
(Offences)	125	2.33%	64	1.11%	89	2.02%	88	2.60%
Persons Cautioned	729	21.73%	525	16.50%	540	17.78%	472	17.03%
(Offences)	(1,152)		(729)		(780)		(595)	
No Proceedings	1,204	35.89%	974	46.53%	951	47.12%	981	53.60%

The headline percentages differ from that sometimes used by the RSPCA. As the note to the 2013 Annual Prosecution Report clarifies, that percentage concentrates on case outcomes where there has been a judicial determination and therefore excludes defendants whose cases were wholly discontinued or withdrawn. The table above is intended to show more clearly the breakdown of outcomes. It accords with the manner in which the CPS maintains its data although comparisons with CPS outcome have only limited validity.

The CPS national outcomes statistics are published on a monthly basis. However, the volumes are so large that the fluctuations are small. The CPS percentage of successful outcomes on a national basis for April 2014 at 83.9% was marginally on the low side and lower than the comparable RSPCA figure. During 2013 the typical monthly percentage for the CPS was fractionally under 85%.

There are three main factors that limit the validity of comparisons:

- The CPS figures include “administrative finalisations” (typically around two percent) which in reality are not outcomes at all. They represent cases where defendants have absconded and warrants remain unexecuted or summonses have been issued but could not be served because the defendants were not traceable. There is no such element in RSPCA data.

- Some cases may be charged by the police without reference to the CPS. A substantial proportion of cases also come to the CPS at an early stage where investigations are complete but for operational reasons (e.g. the need to seek a remand in custody) an initial decision has to be taken. There is an increased risk in such circumstances that the full file may not support the proposed charges and so the fact of withdrawal reflects less on the quality of the initial decision than one which is taken with the benefit of a fully concluded investigation. The latter is the usual position in RSPCA cases.

- The CPS national figures mask very substantial variations in the rate of successful outcomes for different types of offence. At one end of the spectrum, sexual offences and offences against the person have a conviction rate which, on a monthly basis, is typically in the range of 72% to 75%. By contrast, the conviction rates for drugs offences hovers around 93% to 97%. There is no reliable way of determining for comparison purposes with which broad category animal welfare offences should be compared.

Taking all these factors into account, the fairest conclusion is that underlying RSPCA performance in terms of prosecution outcomes is at least as good as the CPS and probably three or our percentage points better.

The only other broadly satisfactory comparator from which the review was able to obtain data was the Health and Safety Executive (HSE). In 2013, HSE prosecuted 597 cases, an increase of 45 from the previous year. A conviction was secured against at least one offence in 568 of those cases – a conviction rate of 95%.

Considerable caution must be exercised in drawing conclusions as to trends in the number of prosecutions (said by some RSPCA critics to be rising sharply) and in comparisons with other jurisdictions.

The 2,174 case files received in 2013 reflects a gradual increase of approximately 2.5% per annum from 2018 cases in 2011. Not all case files result in prosecution

but the Reviewer found this was probably the best indicator of trends. This gradual increase follows a steep rise between 2010 and 2011 from 1,830 to 2,018 (10%). Even so the 2011 figure remains remarkably similar to the 2,042 cases received as long ago as 1992. That also followed a period of sharp increases from 1,454 cases in 1988. These fluctuations transcend the introduction of the 2006 legislation and illustrate an underlying volatility in case loads.

Commentators have made comparisons between the work of the RSPCA and the Scottish Society for the Prevention of Cruelty to Animals (SSPCA). The SSPCA are clear that a proportion of cases prosecuted by the RSPCA would not be put forward by them for prosecution. One explanation advanced is the greater emphasis that the SSPCA considers that it places on education. Equally, it has been suggested that the SSPCA submit only the more serious cases because it has to compete for scarce resources within the Procurator Fiscal Service. The Crown Office was quick to reassure that there is no such filter. The RSPCA itself, whilst believing that it has the balance right, does acknowledge that there are scenarios where it would wish to see more enforcement activity and would itself be more inclined to prosecute than other agencies.

It has not been possible to test the position reliably by reference to data. In 2013 the SSPCA dealt with 66,000 incidents. Within that 20,111 related to investigations of alleged cruelty or abandonment. They gave rise to 157 prosecutions (0.23% of incidents and 0.78% of investigations and abandonments). The RSPCA points to its 2013 outcomes of 153,770 investigations giving rise to the prosecution of 1,548 defendants (1%). However, the Reviewer concludes that likely differences as to what triggers investigation in the two organisations limits the inferences that can safely be drawn.

In most other jurisdictions, prosecutions are carried on by the state law enforcement bodies. However, there is a comparator available in Australia where (Australian) RSPCA inspectors are authorised by the various State/Territory Governments to enforce animal welfare legislation[19]. This is the sort of arrangement that might usefully be explored as between the UK Government and the RSPCA. In 2012–13 Australian RSPCA inspectors investigated 49,861 complaints of cruelty reported by members of the public relating mainly to dogs, cats and equines. The Australian RSPCA laid 1,040 charges and finalised 358 prosecutions of which 343 were successful. As with Scotland, this represents a lower rate of prosecution activity per capita even allowing for the different sizes of population. But the many other variable factors militate against drawing any firm conclusions.

6.3 *Organisation and ethos of the Department (including the Philips Principle)*

The Prosecutions Department was created in its present form following the report by Richard Crabb in 1993 (see Chapter 2.1). It comprises a Head of Society Prosecutions together with a deputy together with a flexible complement of five Senior Prosecution Managers and Prosecution Case Managers together with six legal support assistants and a Data and Costs Recovery Team comprising a manager and staff of three. The Prosecution Communications Officer reports direct to the Head of Society Prosecutions. The structure is set out in the organogram at annex 4.

[19] Except in the Northern Territories where enforcement is the sole responsibility of the Territory Government.

Prior to the creation of the Prosecutions Department, cases had been referred upwards within the Inspectorate to four Legal Chief Superintendents who considered the papers and decided whether to initiate proceedings. When a prosecution was launched, the local inspector would engage a solicitor locally but the brief would emanate from the relevant Legal Chief Superintendent. Legal Chief Superintendents had the benefit of advice where necessary from a Senior Assistant Solicitor within the Legal Services Directorate. Legal Chief Superintendents reported, in a command sense, to the Chief Inspectorate Officer although they were "functionally accountable" to the Chief Legal Officer i.e. deferred to him on legal matters. The Crabb Review recommendations included:

- a Chief Prosecuting Solicitor should be appointed to head the new Prosecutions Department;
- the work of the Legal Chief Superintendents should be undertaken by lawyers;
- the Legal Chief Superintendents should eventually be redeployed.

Not all the above recommendations were implemented. A Head of Prosecutions was appointed and was succeeded in 2007 by a barrister who remained in post until 2012. At the time of the review, the Deputy Head of Prosecutions (a former Legal Chief Superintendent who had remained as a Senior Prosecution Case Manager) was Acting Head of Prosecutions. Although he brings a wealth of experience to the post, he is not a solicitor or barrister. The Head of Prosecutions reports to the Chief Legal Officer. A review of RSPCA structures generally was in progress during the review. It is important that the head of the Prosecutions Department should not report to anybody other than the Chief Legal Officer. There were effectively five Prosecution Case Managers in post at the outset of the review: one was a former police officer and the remaining four were former inspectors. Two left during the course of the review and, at the time of writing, one has yet to be replaced.

6.3.1 **Separation of the functions: the Philips Principle**

Critics assert that the role of the Prosecutions Department is inappropriate because the RSPCA is:

- an organisation that both investigates and prosecutes; and
- has other roles that are incompatible with its position as a *de facto* prosecuting authority.

The arrangements described above do provide separation of functions insofar as prosecution decisions are not taken by those who investigate. It was clear too that Prosecution Case Managers strongly assert their operational independence that prosecution decisions are for them alone and nobody else within the RSPCA. But, they do not accord with the Philips Principle as regards the separation of investigation and prosecution into different organisations in the same way as between the police and Crown Prosecution Service.

The lack of organisational separation is not an insuperable impediment to the RSPCA's prosecution role. There remain many other organisations whose responsibilities combine investigation and prosecution. Local authorities are a prime example. Other examples include the Health and Safety Executive and Transport for London. These are both public bodies. Each has clear and published statements of prosecution/enforcement policy. The Department for Business Innovation and

Skills (BIS) also owns and enforces a range of legislation relating to fraudulent trading and insolvency. It maintains general guidelines often based on financial thresholds, balancing prosecution against other disposals such as proceedings for company director disqualification (including by consent). Most have clearly defined arrangements for separating out the prosecution decision and ensuring that it is either taken by a suitably experienced lawyer or in some cases (e.g. Health and Safety Executive) by an administrator wholly unconnected with the investigation[20]. This may require careful handling – especially in circumstances (as with BIS) where statute vests the power to prosecute in the Secretary of State. It is therefore possible for the RSPCA to build on the existing arrangements in order to achieve similar safeguards but the current reliance on so many former inspectors within the Prosecutions Department does not sit comfortably with the Philips Principle.

The more important considerations relate to the second head of criticism and the need for decisions to be taken objectively and impartially and free from any extraneous and improper influence; and for that to be seen to be so. These are more problematic because, whereas all the organisations mentioned have policy responsibilities and other overarching activities, few have the level of campaigning and lobbying activity that the RSPCA does. Indeed, the activity of the RSPCA was an important driver in bringing about enactment of the Animal Welfare Act 2006 and the Hunting Act 2004 The former dominates its current work whilst the latter has recently seen several important and high profile prosecutions. In addition, the RSPCA remains heavily involved in campaigns which touch on the areas of law with which the RSPCA concerns itself – the transport of live animals and the badger cull, with prosecutions for badger interference being frequent. Moreover, the RSPCA statement of its strategic objectives until 2024 is an ambitious commitment to further improvement of animal welfare likely to involve significant changes in social attitudes.

Further potential for calling into question the objectivity and impartiality of RSPCA prosecutions arises from its open stance that some public authorities (including the courts who are frequently encouraged to tougher sentencing) are insufficiently robust in their enforcement of animal welfare laws. For example, as recently as March 2014 the RSPCA said in a press statement that it continued:

> "…to have concerns on the inspection regime undertaken by Government veterinarians and believe our presence adds another layer of enforcement which is sorely needed in this trade."

This stance could be taken to imply that the RSPCA would wish a different standard to be applied than that of the public authorities Some would also infer that its application of the Code for Crown Prosecutors would also be likely to differ. Whilst the review found some instances where the application of the Code was flawed, that does sometimes occur in all prosecuting authorities. There is no direct evidence of extraneous influence but it is the perception that is crucial to public confidence. In addition, there is inevitability that the culture of the organisation will become imbued in the approach of the PCMs.

Prosecution Case Managers see no difficulty with the present arrangements, asserting that they are scrupulous in deciding each case fairly on its individual merits. Their bona fides is unquestionable. But the crucial question must surely be

[20] Health and Safety Inspectors have statutory rights of audience and may therefore present their own cases in court. The role of the independent decision-maker is therefore important.

whether a reasonable and informed third party would be confident as to the impartiality and objectivity of decision-making.

This gives rise to a situation where, on any objective basis the RSPCA is best placed to undertake most of the prosecution work in terms of resources and technical expertise, but is compromised to some extent by its other roles. Even so, the difficulties can be overcome by some adjustment to the structure of the Prosecutions Department. Some categories of case should be referred elsewhere.

The review concludes that the time has come to complete the process started by the Crabb Review. The RSPCA should move incrementally to a position where all prosecution decisions are taken by or under the supervision of qualified solicitors and barristers. The first step will be to appoint a new Head of Prosecutions who should once again be a solicitor or barrister. The appointment should be undertaken by a panel comprising the Chief Legal Officer, an experienced criminal practitioner from independent practice, and an individual with senior management experience. The individual chosen should have substantial experience not only in conducting prosecutions but in managing a prosecution authority – or a division of one. There are other business reasons for a change of modus operandi that would place more reliance on in-house lawyers and the options are canvassed later in this chapter.

Arrangements for governance of the Prosecutions Department are considered in Chapter 10.

6.3.2 **Ethos**

The starting point is that the Prosecutions Department currently has the benefit of a team who are dedicated, conscientious and experienced within their specialist sphere. Each is mindful that the raison d'être of the Prosecutions Department is to take decisions independently of the Inspectorate. This they achieve with great authority taking a firm grip on cases for which they are responsible. Prosecution Case Managers work on the basis that they are capable of making sole decisions in the vast majority of cases without referral. There is informal dialogue between colleagues for dissemination of information about developments and broad consistency as regards charging practice, policy and case management but no instructions as to what matters need to be referred to the Head of Prosecutions. This makes for strong individual case ownership including once it has been assigned to an external solicitor for prosecution. They work on a very clear solicitor /client relationship according to the instructions given by the Prosecution Case Manager and are expected to report at each stage of the process and take instructions on all significant decisions relating to the conduct of the case. The corollary of this approach is minimal internal accountability.

Despite the authority that it displays towards the Inspectorate, there is great empathy between the two units. This was confirmed in file examination where it was frequently reflected in the tone of the exchanges between PCMs and inspectors. PCMs routinely advise inspectors during the investigative stage in relation to the exercise of powers and the gathering of evidence. In one sense, this simply reflects best practice within the CPS where difficult investigations are the subject of ongoing advice and guidance. However, the modest compass of RSPCA work and the fact that a PCM is directly linked to a geographical group of inspectors means that the relationship inevitably becomes less detached than in a large organisation with a wide range of cases. Sir Richard Buxton[21] identified the risk that a private

[21] The Private Prosecutor as a Minister of Justice: [2009] Crim. L. R. 427.

prosecutor such as an interest group dedicated to the suppression of particular forms of allegedly criminal conduct "will almost by definition have a personal interest in the outcome of the case".

There are variations of style even within the relatively small Prosecutions Department. But the overall handling of prosecutions is robust and the ethos of the Prosecutions Department does not welcome challenge or criticism. There is a tendency to dismiss any contrary view without meaningful consideration. It is unusual for external solicitors to question the sufficiency of the evidence although all indicated they would do so in appropriate cases. On the two occasions within the review's file sample that an external solicitor raised doubts, the PCM demurred but was persuaded to seek an opinion from counsel who on each occasion confirmed that the evidence was insufficient. In one case the Society remained reluctant and a conference was held which was prefaced by the PCM telling counsel: "I am here to convince you the advice is wrong."

These considerations reinforce the desirability that the Society should move towards a position where qualified solicitors or barristers with broad prosecution experience are responsible for the decision whether to prosecute. Many of the cases are quite tricky even though the offences are purely summary. They frequently raise sensitive public interest considerations. Costs tend to be relatively high giving rise to the judgement as to proportionality. A number have high profile. Some are suitable for handling by paralegals working under the auspices of a qualified lawyer. PCMs point to the recent return of responsibility for some minor cases from the CPS to the police but the type of cases handled by the RSPCA are different in quality to those currently being handled by police evidence review officers. The oversight of experienced prosecutors who have forensic experience at the coal face would also assist in managing some of the difficult relationships with the more challenging defence practitioners who specialise in defending animal welfare cases.

A striking feature of the review has been the level of mistrust between PCMs and those who defend which can at times seem disproportionate. There are undoubtedly some practitioners whose lack of efficiency is frustrating and who are uncompromising in the way they test the prosecution case – often deploying the same arguments in different magistrates' courts. In some instances the memos and correspondence internally and with some external solicitors could be read as indicating an unhealthy animus. That is inappropriate and any irritation must be tempered by recognition that it is their role when defending to test the prosecution case. At the time of this review the Chief Legal Officer was engaging with defence practitioners with a view to improving relationships.

It is also fair to record that senior managers within the RSPCA had identified and were beginning to address the need for changes to improve greater accountability and transparency around its role; as well as consistency. The decision to commission this review might be viewed as part of that process. The Chief Legal Officer in particular is keen to nurture a prosecution unit that is better aligned to modern practice with stronger links to the professions.

6.3.3 The institution and conduct of proceedings – including application of the Code for Crown Prosecutors and prosecution policy

The RSPCA has publicly espoused the Code for Crown Prosecutors. However, the document setting out the "RSPCA approach to Crown Prosecution" is very basic. In particular:

- it is not accompanied by any supplementary guidance indicating how RSPCA prosecutors will weigh the factors most likely to arise in animal welfare cases; and
- it is not supported by any specific policy statements although some preliminary work has been undertaken.

The Animal Welfare Act 2006 substantially expanded the scope of the criminal law. Despite its "reasonable terms" it has a strong element of subjectivity. Moreover, many commentators have acknowledged that the preponderance of ill-treatment is through neglect rather than positive cruelty. A significant proportion of the cases considered by PCMs relate to individuals who are elderly, vulnerable (including with mental health issues) and with the chaotic lives associated with poor socio-economic background. It is important that such factors be weighed in a consistent manner. The development of supplementary guidance relating to the application of the Code and specific offences should become a priority so that similar scenarios are approached in a similar manner. Prosecution policy is most likely to command public confidence if it is developed through wide public consultation. In circumstances where the breadth of the offence leaves much to prosecutorial discretion, it is important that citizens should know with some certainty what is likely to lead to prosecution. Examples are not difficult to find.

The best example of the need for a clear, published, and transparent policy arises from the enactment of section 9 of the Animal Welfare Act 2006. It is contended by some defence practitioners that the RSPCA is bound by an undertaking given in 2004 to Parliament that amounts to a self-denying ordnance not to prosecute under section 9 without having first served notice on the individual concerned with a view to improvement. An alleged breach led to strong judicial criticism[22] although the RSPCA does not regard itself as having given any such undertaking.

The review has, with the assistance of a defence counsel specialising in animal welfare law who kindly provided a set of references to the evidence (a mix of written memoranda and oral hearings) of the Environmental Food and Rural Affairs Select Committee said to amount to the undertaking. I am grateful to counsel but do not consider the sequence of events can properly be described as an undertaking. Something much clearer and more direct would be required to amount to a binding commitment to Parliament. Rather, RSPCA officials provided evidence to the pre-legislative scrutiny[23] of a draft bill as to the Society's likely approach to enforcement of a new and wide welfare offence. Thereafter,

[22] Judge Griggs at Exeter Crown Court: September 2013: RSPCA v Hadley: "We are concerned in this case that the RSPCA have prosecuted in what appears to be direct contradiction to the safeguards they made to the Parliamentary committee when the statute was considered that they would not prosecute for a welfare offence without due warning." Per Exeter Express and Echo.

[23] This was a new procedure introduced in the early 2000s whereby Government published a draft bill and the Select Committee examined it with public consultation and submissions. The draft bill would then be revised by Government before being introduced as a Bill to undergo the usual legislative scrutiny – including Committee stages in both Lords and Commons.

the Bill was revised to include provision for improvement notices but without any requirement for a prosecutor to serve such a notice before proceeding in relation to the welfare offence. Annex 5 sets out the evidence before the EFRA Select Committee said to constitute the undertaking. Put simply, the statements made there are too remote from the legislation as enacted to constitute an undertaking – irrespective of the fact that one would expect anything amounting to an undertaking to Parliament to be in rather clearer and more formal terms; and not two years before the legislation was enacted. Also such statements could not be expected to bind indefinitely and irrespective of any changes in circumstances.

The high water mark of the argument is a written memorandum by the RSPCA in relation to what was then clause 3 of the draft bill. The substance was re-iterated on several occasions. The RSPCA asserts that it does broadly represent its current approach and only exceptionally would it bring proceedings for the welfare offence alone[24] without first giving a warning and opportunity to improve. There were three cases in the review's file sample where that was not the case although it was unclear why they were deemed exceptional. Although not amounting to an undertaking, there was a clear statement of intent by the RSPCA and it would be to everybody's advantage for the RSPCA to have a clearly stated and published position on this issue. The RSPCA in 2010 did revise its position on veterinary evidence in the light of experience to that point; and the review endorses that approach which is consistent with its own view that expert evidence should not be introduced unnecessarily.

By way of further example, the review highlighted as needing special care those cases involving neglect of an animal which is out of character and other animals well looked after. Some PCMs felt that demonstrating the ability to look after other animals well makes the neglect of another a greater crime because the individual must have a clear perception of the failure to provide proper and necessary care and attention. Others implied that failing an animal at the end of its life can be more serious. Clear and transparent statements as to how such issues are approached would ensure that the public knew what is expected of them.

The RSPCA is not the only prosecutor in relation to 2006 Act offences. The appropriate course would be for the RSPCA to initiate an exercise to develop supplementary guidance and an offence specific case work standards. Other relevant prosecutors (in particular the CPS) should be invited to participate.

6.3.4 **Evidential test**

During the course of the review, 62 files selected by the RSPCA on the basis of a criteria set by the Reviewer were examined. They included examples of cases involving guilty pleas as well as contested cases and included some where the decision had been to administer a caution or take no proceedings. A further 16 files were called for by the Reviewer.

The assessment of the evidence was satisfactory in 90% of the cases where it was relevant. Two cases selected by the RSPCA involved situations where the advice was simply that no formal investigation was justified.

The evidential test can represent a low threshold given the broad terms of the 2006 Act. It contains no actual definition of suffering save that it includes both physical and mental suffering. The only precedent is in Scottish law which makes it clear that it can include distress etc for even a very short period. Consequently, the words

[24] In the Hadley case (footnote 19) the original charges included the more serious offence of causing unnecessary suffering.

used in the veterinary statement are inevitably critical to the assessment of decisions about evidential sufficiency whenever suffering is an issue. A stock phrase in preface reports is often: "the vet will support suffering in respect of x for y weeks…". Findings appear elsewhere about veterinary evidence. But it is appropriate to emphasis here the importance that veterinary evidence should be available at the earliest possible moment consistent with thoroughness and care needed not to strain the evidence. These issues are dealt with later (Chapter 7).

There were five cases where the review considered that the evidential test had not been properly applied. In two cases there had been insufficient analysis of the quality of the evidence with one case also raising issues as to legalities of seizure. In each case the prosecuting solicitor had raised doubts and persuaded the RSPCA to seek advice from counsel who confirmed that the evidence was insufficient. In the third case it was clear from the outset that there would be a serious issue as to causation. The initial instinct of the PCM seemed against proceedings but further veterinary opinion (far from strong) was obtained and proceedings launched. In the event, the prosecution failed on a submission of no case to answer although that related in part to other evidential factors which could not have been foreseen. In the fourth case, the principal charge was under section 1 of the Hunting Act 2006 in circumstances where the appropriate course would have been to proceed on the basis of offences relating to interference with badgers where the evidence was strong. The main charge was abandoned shortly before trial causing irritation to the court. In the fifth case, proceedings were launched on the basis of an unrealistic assessment as to the likelihood of critical evidence being admitted. It was not and the prosecution failed.

There were two further cases that caused the review serious concern. In one the CPS intervened to discontinue the main charges on the basis that there was insufficient evidence; that was a legitimate conclusion in relation to the charges as drafted and the problem lay in the earlier handling of the case and the selection of charges. In the other, the PCM did not adequately consider the nature of the likely defence. The defendant was acquitted after a District Judge had heard all the evidence – although the outcome might have been a learning point, it was simply dismissed as perverse.

Five of the above cases were within the RSPCA element of the sample whilst the remaining two were cases drawn to the attention of the review.

6.3.5 **Public interest test**

The review acknowledges that the application of the public interest test to animal welfare cases can often be difficult. It also has serious implications for all concerned – the prospective defendant(s), the animal(s) and the Society which may be criticised if its actions appear either heavy-handed or an inadequate response to the situation.

The mischief at which most animal legislation is directed is the prevention of current and potential suffering. That is likely to be an important factor when weighing the public interest in most cases. But the factors are many and diverse reflecting the range of cases and circumstances that face the RSPCA. This will include the nature of any prior involvement of inspectors. A delicate balance may often have to be struck between the legitimate interests of the individual(s) and the animal(s).

Even allowing for these difficulties, the proportion of cases where the consideration of the public interest test was flawed was too high.

There are two striking features:

- PCMs are often required to take decisions on the basis of quite sparse information; the amount of information available on case files to inform decisions about the public interest is limited. It is very important that decisions relating to youth offenders, the elderly or vulnerable individuals should be taken on the basis of the fullest possible information particularly in regard to the risk of re-offending which should be assessed thoroughly.

- The predominance of the concern to secure orders for deprivation and disqualification.

The focus on securing deprivation and disqualification orders can eclipse consideration of important human factors (e.g. mental illness). Prosecution Case Managers point out that the prevention of suffering constitutes a part of the Society's charitable objectives. That does not mean that prosecutions should be brought where the public interest does not require it. Whilst there are many cases where securing disqualification is important, there are also cases where the need is rather less clear cut. More sophisticated risk assessment as to the likelihood to the further mistreatment of animals would be appropriate in certain categories of case.

The courts have a wide discretion whether or not to make deprivation and/or disqualification orders although reasons for not doing so must be given in open court and (in the case of a magistrates' court) recorded in the register. The position therefore contrasts to the position under the previous legislation (section 3 of the Protection of animals Act 1911) which required the court to be satisfied before imposing a deprivation order that the animal, if left with the owner, was likely to be exposed to further cruelty. It does not seem to the review that anything in the 2006 Act **requires** the court to make either a deprivation or disqualification order in circumstances where there is no or little likelihood of further offending. It is important to recognise that deprivation and disqualification orders are intended for the purpose of animal protection; they are distinct and separate from any fine or term of imprisonment and not to be regarded as part of the penalty. It follows that where the circumstances as a whole do not render a prosecution in the public interest, the seeking of either disqualification or deprivation alone should not tip the balance in favour of prosecution when there is no reason to suppose repetition is likely. Scenarios might include those where suffering has been confined to the end of life phase of an otherwise well looked after animal or where the neglect is out of character and other animals are well looked after. This is an aspect of enforcement that would benefit from a clear and transparent statement of policy developed after appropriate consultation.

There were rather more cases where the review had concerns about the application of the public interest test. In nine cases within the RSPCA sample, individual prosecutions either did not seem necessary in the public interest or were commenced without full consideration – notably where there did not appear to be liaison as regards youth offenders. There were at least three such cases in the random sample as regards the latter.

The RSPCA as an organisation developed an Intervention Programme. Its advisers point to the reduction in the number of youth offender prosecutions in 2013 as

evidence, if sustained, of the effectiveness of the programme. It includes the development of online and interactive resources and other focused interventions to be used by Youth Offending Teams (YOTs) and the Probation Service in conjunction with offenders responsible for animal cruelty or neglect. The RSPCA trains staff of these organisations but is not directly involved in delivery.

It is important that appropriate consideration be given to the possibility of diversion in all cases involving youth offenders with a presumption that advice will be sought from the relevant YOT as to whether the criteria for diversion is met. There may be circumstances where the PCM concludes that seeking advice from a YOT would not be justified. In such cases, the conclusion and the reasoning should be recorded.

File examination also showed a tendency for inspectors and PCMs to cast the net wide so as to include all who might be fixed with some legal responsibility for the relevant animal even where the interests of justice would be adequately served by proceeding against the individual with primary responsibility. Examples in the file sample included a youth charged with his mother, and a mentally ill woman charged with her partner who had owned the animal for many years prior to the relationship. In each case the public interest would have been served by the prosecution of the primary offender.

In a further case, a 79 year old man was prosecuted for offences relating to an excessive number of dogs kept in unsatisfactory conditions at the house where he lived with his daughter. The daughter owned the dogs and was responsible for acquiring the dogs in the numbers she did and the conditions in which they were maintained. She worked by day and relied on her father to look after them as best he could. The investigating inspector described the 79 year old as being fully co-operative and having only one eye and some arthritis in his hands. Despite this, she noted:

"He cannot remember the warning notice issued by… He is an elderly man and has got arthritis. He was not responsible for veterinary care, worming or grooming. He spent his days mopping up after the dogs and trying to keep the environment as clean as he could."

In addition the report said:
"There is no doubt he worked very hard to try to keep the house as clean as possible, he was fighting a losing battle as the numbers had got completely out of hand."

The PCM's memo did not properly address public interest. The father received a conditional discharge and a banning order, but it was difficult for the Reviewer to envisage further offending by the father (as opposed to his daughter whose role was the dominant one and who received a suspended sentence). It was difficult to see any public interest served by the proceedings against the elderly father.

Undue weight may also attach to a refusal to sign over animals which the RSPCA wish to take into their possession. There seems to be a presumption that, where suffering or neglect is established, prosecution will be in the public interest unless the individual has not only signed over the animals but also demonstrated complete remorse. In reality, the human factors may be more complicated. There appears to be a case for some wider use of proceedings under section 20 of the 2006 Act as an alternative to prosecution. Indeed, the assessment of the public interest might be less difficult if the RSPCA had available to it a wider range of disposals than is possible at present. That is a possibility to be addressed if, as the review

recommends elsewhere, the RSPCA's enforcement activities are placed on a formal footing with appropriate accountability.

The likely cost of a prosecution is also a relevant factor that must be weighed along with others such as the seriousness of the alleged offences, the role and responsibility of the alleged offender and his/her personal circumstances and attitude – as well as the likelihood of further offending. PCMs sometimes need to focus more explicitly on whether prosecution is a proportionate response in the circumstances of the particular case.

6.3.6 **Relationship between public interest and charitable benefit**

Proportionality can extend beyond the likely costs of the prosecution and the personal circumstances of the prospective defendant to include the question of charitable benefit. The overarching principles to be considered by the trustees when considering whether enforcement activity should be undertaken in relation to specific aspects of animal welfare are considered at chapter 10. However, such considerations may also be applicable to individual cases. This is a manifestation of the duty (vested in the trustees but all staff should have regard to it) to act prudently in the best interests of the charity to secure charitable outcomes. It includes both value for money and aspects of detriment (e.g. lost opportunity costs) and harm particularly if the prosecution could take the Society into contentious areas of policy where reputational issues would arise. In short, it does not automatically follow that, because the public interest requires a prosecution, there will be a charitable benefit in the RSPCA undertaking the case.

In the vast majority of cases handled by the RSPCA, there is unlikely to be a tension. If the circumstances require a prosecution and there is no public authority prepared to take it on or with the skills and resources to do so effectively, there is likely to be charitable benefit. Prosecution Case Managers should be alert for those cases where the likely costs will be high in relation to the mischief involved or where there is a novel element so that guidance may be sought from the Head of Prosecutions and/or the Chief Legal Officer. Assuming that a Prosecution Oversight Group along the lines proposed in this report, it would be appropriate for that group to provide formal guidelines to assist the Head of Prosecutions.

6.4 ***Checks and balances: the right of the Director of Public Prosecutions to intervene***

Section 6 of the Prosecution of Offences Act 1985, in establishing the Crown Prosecution Service (which has a duty to assume responsibility for proceedings instituted by the police) preserved the right of other individuals and organisations to institute and carry on criminal proceedings[25]. It also empowered the Director of Public Prosecutions (as head of the CPS) to intervene and take over any such proceedings – whether to carry them on or to discontinue them.

[25] Section 6: Prosecutions instituted and conducted otherwise than by the Service.
(1)Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.
(2)Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.

When the House of Commons debated the role of the RSPCA in Westminster Hall on 29 January 2013 the then Attorney General recognised the value of the provision as a safeguard and explained:

> "The CPS will always consider a request to exercise that power and take over such a private prosecution, including from defendants, and has received requests in relation to some RSPCA cases. I will come back to that in a moment. The approach that the CPS will take in such cases is published on its website. It will review the case in accordance with the full code test contained in the Code for Crown Prosecutors and consider first whether there is sufficient evidence to provide a realistic prospect of conviction, and if there is, whether a prosecution is in the public interest. It will also consider whether there is a particular need for the CPS to take over the prosecution, either to stop it or to continue it. That is entirely a decision for the CPS. The DPP's policy is that a private prosecution should be taken over and stopped if, upon review of the case papers, either the evidential sufficiency stage or the public interest stage of the full code test is not met. The Supreme Court has recently upheld the DPP's policy on private prosecutions in the case of Gujra."[26]

Although requests by defendants for the CPS to intervene in RSPCA cases are quite rare the incidence has increased as the result of greater awareness of the procedure. In 2012 and 2013 there were two such occurrences in each year. There has been no case where the CPS has intervened to discontinue all charges but on two occasions the CPS has intervened and discontinued the main charges with the result that the RSPCA itself decided not to pursue the remaining matter. The review considered those cases. The reasoning of the CPS was not wholly clear in either case and this left an unsatisfactory taste – especially since a separate reference (in another CPS area) produced a different outcome in a case that raised the same issues. The review believes that the procedure adopted by the CPS is procedurally flawed and does not accord with the principles of natural justice.

The practice of the CPS on receipt of a request for intervention is to request a copy of the papers from the prosecutor (RSPCA) and consider whether the case meets the evidential and public interest tests of the Code for Crown Prosecutors. If not, the CPS may intervene to discontinue. The RSPCA response is to co-operate fully with the supply of case papers and will occasionally, if it has not already done so, instruct counsel to provide an opinion as to the evidential sufficiency which is also made available to the CPS. However, it is not the practice of the CPS to provide to the RSPCA a copy of the request or details of the grounds of the application. The RSPCA therefore finds itself tilting at a windmill in that it is unsighted as to why the prosecution is alleged to be objectionable. There appears to be no procedure whereby the CPS, if it believes intervention may be appropriate, affords the RSPCA the opportunity to address any concerns. The first the RSPCA learns is when a decision has been taken and communicated to the defendant. The procedure need not be a protracted one but the least to be expected is that the RSPCA prosecutor should know the basis of the request for intervention and have the opportunity to address it and any other points that the CPS may consider material even if not identified by the applicant. In one instance, a case was discontinued on the basis that certain charges were bad for duplicity. The RSPCA had no opportunity to invite the CPS to consider a relevant authority from the Administrative Court which was the basis of their approach; and the position was compounded when a different area of the CPS took a different view in almost identical circumstances.

[26] http://www.bailii.org/uk/cases/UKSC/2012/52.html

The arrangements are in urgent need of review and the RSPCA's Chief Legal Officer should make an urgent approach to the CPS with a view to agreeing a protocol. There may be reluctance on the part of the DPP to do so but there are compelling reasons for doing so. Although routinely described as "private prosecutions", RSPCA cases are brought by the body relied on by the state to do so; a significant number will have started life as complaints to the police which the police have then referred on to the RSPCA. In addition, the Attorney General's endorsement of the procedure as a form of safeguard makes it likely that such requests will increase.

Lest it be suggested that the RSPCA should anticipate the possible concerns by reference to the CPS approach to such cases, it is to be noted that this is an aspect of criminal law where the CPS itself has no published guidance. This reflects its limited involvement in animal welfare cases. It also invites the question as to what yardstick the CPS adopts in such a specialist area – particularly as regards public interest. This report identifies elsewhere a need for a more consistent approach on the part of those responsible for prosecutions in this area. Even though the DPP is not attracted to the concept of a jointly developed policy, the RSPCA does need to have policies that it can apply with confidence.

The arrangements also seem anomalous in another respect. The CPS guidance on intervention in prosecutions seems to draw a distinction between "private prosecutors" and other prosecuting authorities. It clearly regards the RSPCA as being in the former category although it goes on to define a prosecuting agency as:

> "A prosecuting authority includes, but is not limited to, an entity which has a statutory power to prosecute."

The general guidance is disapplied as regards other prosecuting agencies with a much more robust test being applied. The principle as regards exercise of the power to intervene is expressed as follows:

> "The CPS has a statutory duty under section 3(2)(a) Prosecution of Offences Act 1985 (the Act) to take over proceedings instituted by or on behalf of the police. However, the CPS also has discretion to take over proceedings in any other case under section 6(2) of the Act.
>
> Prosecutions are regularly brought by other prosecuting agencies where the body concerned has a particular expertise or statutory interest. In general the CPS will neither wish nor need to intervene in such cases."

When dealing with the question of active intervention, the guidance states:

> In certain circumstances, the CPS will take the initiative and intervene in a private prosecution conducted by a body which regularly institutes criminal proceedings and which is recognised as possessing a particular expertise about matters in respect of which it prosecutes. It will be very unusual for the CPS to intervene in such a case, but the wider public interest may on rare occasions support intervention particularly where: [examples not material to present issue].

This scenario invites the question as to why the RSPCA is regarded as sufficiently expertise for the state to rely on it so extensively yet treated differently to other such prosecutors for the purposes of intervention. This report does make criticisms elsewhere of some aspects of RSPCA performance but this is an issue that has to be decided on principle. The current position is likely to prove problematic if, as seems possible, increasing numbers of defendants invite the CPS in effect to

second guess the RSPCA on its application of the Code for Crown Prosecutors. It reinforces the need for the role of the RSPCA in the enforcement of animal welfare law to be clearly defined with the establishment of properly structured accountability.

6.5 *The approach to charging*

Section 6 of the Code for Crown Prosecutors provides guidance on the selection of charges. It states that prosecutors should select charges which:

- reflect the seriousness and extent of the offending supported by the evidence;
- give the court adequate powers to sentence and impose appropriate post-conviction orders; and
- enable the case to be presented in a clear and simple way.

A significant proportion of cases viewed involved numbers of charges which seemed disproportionate to their complexity. This does not mean that the Reviewer is unaware of the pitfalls that can arise through complaints of duplicity etc. In striking the balance, due regard must be had to the adverse effects of cases becoming protracted and delayed. Several practitioners commented critically on this issue including some who prosecuted.

In addition, charges may extend to those who do not have primary responsibility for the animals or the misconduct but may have assumed some responsibility. Examples given earlier have included a mentally ill partner and a youth son. It is right to acknowledge that in some instances charges were withdrawn at a later stage, particularly if the primary offender had entered an acceptable plea. But it is important that public interest decisions look at individual circumstances from the outset.

Multiple charges relating to the same animal may consist of section 4 offences (suffering) with several charges each based on a different condition or omission (for example: section 4 charges in relation to a seriously emaciated animal might be supplemented by charges alleging causing suffering through failure to provide veterinary attention for things such as skin condition or flea infestation). The gravamen of the case is likely to be the starvation and, provided there is no suggestion that the skin condition or flea infestation contributed to the starvation, such charges would add little.

The position may be compounded if section 9 is also charged – possibly with multiple charges each specifying breaches of different aspects of the requirements (diet, environment etc) and different headings of the DEFRA Animal Welfare Codes. The position may be further complicated where there are multiple animals even though the precedents do allow for specifying more than one animal in a charge.

The Prosecutions Department does not have any formal charging guidance to assist PCMs in presenting the case in the most concise and straightforward manner. Although there may be informal consultation, each PCM tends to have his own approach. There is a tendency also for PCMs to maximise the number of section 4 (suffering) charges. This is an aspect of Prosecutions Department work which would benefit from further and more detailed consideration (possibly with the assistance of counsel experienced in the conduct of animal welfare cases) in order to identify the optimum approach to charging which would be more straightforward

whilst continuing to reflect the gravamen of the offending conduct and not falling foul of the rules relating to duplicity.

The exercise should seek to mitigate the adverse effects of multiple charges which seem to be:

- Inevitably lengthening cases and possibly complicating them by increasing the scope for expert evidence to get bogged down.

- Opening up the scope to challenge at both the veterinary and the legal level (exacerbated in some instances by the format of some veterinary statements).

- Delay: stripping cases to their element and focusing on the strongest charges could reduce delay, attract more guilty pleas, reduce veterinary costs and reduce the costs of boarding animals.

The old adage: "first, worst and last" has much to commend it. It hardly needs to be said that the exercise should seek broad consistency of approach but not become a straitjacket.

6.6 *Case management*

Steps are needed to reduce the time case files take to reach the Prosecutions Department. It routinely exceeds the 21 day limit (from the time the case is commenced) stipulated in the Director of Operations memorandum of 12 January 2011. Recent internal research showed that the average time taken for a case file to reach the Prosecutions Department from the Inspectorate during the 90 days up to 1 December 2013 was 57 days from the time the case was raised – usually involving the seizure of animals. Performance varied widely between Inspectorate groups in the range of 27.9 days to 99.5 days. This indicates that, to a considerable degree, the problem is about people management since systemic issues would be likely to impact more uniformly.

Avoidable delay is unsatisfactory in any prosecution but especially so in relation to animal welfare cases where it inevitably drives up costs because of the need to care for case animals pending the proceedings and is not conducive to their welfare. Their interests are usually best served by early settlement of their long-term situation. Costs vary between species but total animal welfare costs (boarding and veterinary) for 2013 were £4.7 million. The review believes that, in addition to focusing on the timeliness of the file building within the Inspectorate, there is likely to be scope for efficiency savings from two sources:

- Improving the gathering of veterinary evidence (which is different from veterinary welfare costs) through more structured arrangements for engaging the services of vets; service level agreements which incorporate established timescales for the process and confining the use of expert veterinary evidence to where it is really necessary. This aspect is dealt with more fully in the next chapter.

- Giving consideration to a move away from the present 'one size fits all' approach under which case files are submitted only once the evidence is sufficient to sustain a contested case. In fact, 72.9% of defendants pleaded guilty in 2013 – albeit by no means all at the earliest opportunity. Speeding up

the early stages of the process and getting cases before the courts sooner could avoid the need to prepare all files to the standard required for a contest.

Most prosecuting agencies have such an arrangement. It would require early presentation to the Prosecutions Department of a report identifying the offences alleged to have been committed together with the basic evidence necessary to support the elements of the offence and background material necessary to inform the public interest aspect of the decision. It is axiomatic that the file would be sufficiently detailed for the prosecutor to open the facts to the court if a guilty plea was forthcoming. It is to be assumed for this purpose that, in the reasonably near future, the RSPCA will move to a system that gives inspectors access to e-mail, something they presently lack. Where the prosecutor is satisfied that the Code test has been met, the proceedings would be instituted by summons with as early a return date as possible. Where a not guilty plea is entered, the case would be prepared for contest in the usual way.

Although the review received representations from some members of the Inspectorate in favour of such an approach, PCMs expressed strong reservations – citing mainly that animal welfare cases frequently turn on some fine nuances of veterinary evidence. In addition some expressed concern that, where a not guilty plea is entered, the outstanding evidence gathering would not be undertaken according to the necessary timetable. The review recognises that there are aspects of the proposal that would not be straightforward. However, it is likely that such arrangements would fit more easily into the more flexible operating model suggested later in this chapter with in-house lawyers available to handle decision-making and ongoing requests for advice. It is therefore recommended that a system of early process based on abbreviated files is developed and tested in selected areas by the Prosecutions Department once it has the benefit of in-house solicitors and barristers – also recommended later in this chapter. There is undoubtedly some risk but the present situation whereby cases typically reach court some three or four months after the occurrence of the relevant events is untenable.

Prosecutors (including the RSPCA) of offences under the Animal Welfare Act 2006 benefit from a special regime instead of the usual six month time limit imposed by section 127 of the Magistrates' Courts Act 1980. Section 31(1)(b) of the 2006 Act stipulates that proceedings must be brought within three years of the offence and within six months of the date when "the evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge". Section 31(2)(a) makes a certificate by the prosecutor conclusive evidence of the date when that arose. Judicial rulings have confirmed that for this purpose the prosecutor is the individual taking the decision (i.e. the PCM in the case of the RSPCA) and not the organisation.

Two consequences flow. First, it opens up the possibility of an artificially long time limit if there is a delay in papers reaching the prosecutor - however unjustified the delay. The review was assured that PCMs do not allow investigators to rely on the provision in this way. Secondly, some fine and often subjective judgements are needed as to the point at which the evidence might be regarded as sufficient. A prosecutor may have evidence on which a case could properly be brought but feel that it would be better to seek further evidence before proceedings so as to provide the strongest possible case.

In the interests of consistency, the review recommends that such certificates should be signed by the Chief Legal Officer or the Head of Prosecutions.

The Prosecutions Department benefits from the services of a cadre of experienced and highly committed PCMs who bring efficiency and professionalism to their work. The management of prosecutions conducted by the RSPCA is clearly more effective and thorough than found in most other prosecuting authorities including the CPS. However, the PCMs are mainly paralegals[27] (with most either having or studying for CILEX qualifications) rather than solicitors or barristers. This alone makes it appropriate that their work should be effectively supervised by a qualified Head of Prosecutions (section 6.3 above) irrespective of the additional need for good governance and accountability.

There are no structured arrangements as regards supervision or documented operating practices and procedures. Most supervision is informal with PCMs exercising their own judgment as to the circumstances in which they should refer cases upwards or seek advice. Clarity would be an advantage to all concerned and this should be addressed.

Recording of decisions and actions was poor. Although files may contain manuscript jottings by PCMs, there is usually no formal assessment of the evidence against the elements of the offence. Rather, the gist of the PCMs thinking may be recorded in a memorandum to the case inspector which conveys the decision about what, if any, charges should be preferred. The focus tends to be on the decision and on procedural issues rather than on the reasoning. This is not just a bureaucratic point. Prosecution is a serious matter and the reasons for decisions which have a real impact on individuals' lives should be properly recorded. CPS managers have placed considerable store on this issue over the years – albeit not always with the level of success desired.

It is rarely possible to ascertain from looking at a file whether or not the Head of Prosecutions has had any input or not. This reflects the same general lack of recording. At present, this is confined to the occasional file note. Files have no section for the routine recording of steps taken and this should be addressed. A protocol should be developed as to matters which should be referred to the Head of Prosecutions for decision and advice. Also, reasons for decisions should be recorded on the file so as to indicate how the evidential and public interest tests of the Code for Crown Prosecutors have been applied.

The Prosecutions Department does not retain a copy of the file when a local solicitor is instructed to conduct proceedings. This can make effective dialogue cumbersome, especially if the solicitor seeks guidance or a decision on a significant issue.

The RSPCA approach to retention of case animals seems both rigid and expensive. This attitude is behind a huge number of the complaints received. The Prosecutions Department seems routinely to take decisions about detained animals which in law are for the police. Prosecution Case Managers assert that the police will not take them. If correct, that confirms the need for clearer and more structured working arrangements with the police service as proposed earlier. It is not clear that steps taken are all absolutely necessary.

[27] Those who have achieved fellowship of CILEX point out that they have practising certificates and are entitled to describe themselves as lawyers.

6.6.1 **Prosecution disclosure**

The review prefaces its comments on this topic by noting that the whole issue of prosecution disclosure has proved one of the most intractable problems in the criminal justice system for the past three decades. Mistakes in handling disclosure have precipitated the collapse of several major trials; in the magistrates' courts there has been a constant struggle to strike the right balance between, on the one hand a system of full and effective disclosure and, on the other hand proportionality in the construction of prosecution case files and the obligations placed on the prosecution.

The most recent development has been the publication in May 2014 by the Judicial Office of the report of a review commissioned by the Senior Presiding Judge. This alone is likely to require change in RSPCA procedures. As explained by the Senior Presiding Judge in his foreword to the report:

> "the heavy frontloading placed upon the prosecution (both police and CPS) must be acknowledged but, if applied correctly, the benefits to all, prosecution, defence and court, should not be underestimated".

Those comments would be equally applicable to the RSPCA as investigator and prosecutor. The most significant change is to require that in contested cases the schedule of unused material (or a report that states the exercise has taken place, together with any disclosable material if applicable) should be provided to the prosecutor such that it can be served at the first hearing, once the not guilty plea has been confirmed.

The procedure presently operated by the RSPCA does not accord strictly with the regime stipulated in the Criminal Procedures & Investigations Act 1996 and associated codes; and does not readily lend itself to the above. RSPCA investigators are not at any stage required to produce a list of unused material as envisaged by the Code.

Paragraph 6.2 stipulates that should be: "material which may be relevant to an investigation, which has been retained in accordance with this Code, and **which the disclosure officer believes will not form part of the prosecution case,** must be listed on a schedule". The emphasis is that of the review.

RSPCA procedures presently involve the inclusion in the case file of a copy of all the material which has been generated in the course of the investigation. No attempt is made to distinguish between that which will form part of the prosecution case and that which is truly "unused material".

Other differences are:

- The list is produced at the outset (i.e. prior to submission of the case file to the Prosecutions Department) rather than at the point where a not guilty plea is entered which, in RSPCA cases, can be a while later. There is a risk that it may have been overtaken by events.
- Certification whether there is disclosable material is by the PCM rather than the investigator.

The thinking behind the RSPCA procedures is that all material should be placed fully into the arena at the earliest moment to as to be available for consideration by the prosecuting solicitor who is responsible for the discharge of the statutory procedures. Some disadvantages have to be acknowledged:

- it is not always helpful to the defence to have a list of "unused material" when the majority of what appears may not belong there;
- it reflects the position at the time it came to the PCM and things may have moved on.

The Reviewer also has an anxiety based on the fact that file examination showed practically no cases where the material was certified as disclosable, PCMs might be taking too restrictive a view – albeit in good faith. An issue frequently mentioned by external practitioners related to the treatment of the many photographs routinely taken during the course of RSPCA investigations. The Prosecutions Department acknowledge that those selected to be adduced as part of the prosecution evidence are those that best support the prosecution case. The remainder will by definition be less supportive and it is a matter of degree as to how far that goes before they might be viewed as undermining or assisting the defence. In addition, investigators and prosecutors will not always appreciate whether something in the photograph might have significance for the defendant. On balance, the Reviewer would prefer to see such photographs assessed as disclosable. There should not be any significant practical or resource implications since the RSPCA routinely has electronic copies available should they be requested. It is simply a matter of being proactive rather than reactive.

The Reviewer did receive numerous adverse comments about prosecution disclosure but the experience of the Reviewer is that the incidence was no more than those routinely levelled at other prosecutors. Indeed the report published by the Judicial Office records (paragraph 66) – that a common theme was the prevalence of prosecution late or non compliance with its initial and/or continuing disclosure obligations. Paragraph 57 makes it clear that it is not uncommon for no schedule to have been served by the date of the summary trial. The comments in the Judicial Office report related to the generality of prosecutions rather than the RSPCA.

In terms of the effectiveness of the RSPCA approach, the Reviewer would not have been able without disproportionate effort and resources to drill down into individual criticisms. Responsibility for compliance with both the initial duty of disclosure and the continuing duty rests firmly with the external solicitors responsible for the conduct of prosecutions. The RSPCA responsibility is to ensure that all potentially disclosable material is available to them. In addition, it is important that sensitive material should not only be listed to assist the prosecuting solicitor but either copied to the solicitor or summarised in a manner that places him or her in a position fully to discharge the duty of continuing review which arises under section 7 of the Criminal Procedure & Investigations Act 1996. It requires ongoing consideration and disclosure of unused material as necessary until trial takes place or any sentence hearing takes place post trial. This is regardless of whether the defence provides a defence statement. If such a statement is served, then the prosecution must respond within 14 days.

The Reviewer recommends the following changes which should ensure compliance with the changes arising from the recent report:

1. The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.

2. Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.

3. The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.

Although the practice of certification being undertaken by the PCM differs from that pertaining elsewhere, it does have advantages in that the PCMs have more experience of the handling of such issues than individual inspectors whom each conduct a relatively small number of cases per year.

Generally, there is scope for improvement in the structure of Inspectorate reports and supporting documentation received from inspectors to make it more user-friendly for the prosecution process. It follows a format developed in January 2011 and does ensure that all relevant documentation and information is provided to PCMs. Nothing should be held back from the Prosecutions Department. It does not adequately separate out the material likely to form the basis of the prosecution from the background material. This is compounded within the Prosecutions Department by simply adding subsequent documentation to the file. Some prosecuting solicitors commented that the first thing they do on receipt of a prosecution file is to sort it into component parts. The RSPCA is of course paying for that process!

6.7 ***Relationships with the Inspectorate***

There is a clear understanding between the Prosecutions Department and the Inspectorate as to their respective roles in decision-making. This does not preclude inspectors setting out forthright views (usually in the preface report) – especially when they are keen to see a prosecution instituted. Although PCMs are firmly in charge of the decision-making, they clearly share a common set of values with inspectors. Advice is routinely provided as to additional steps needed to strengthen the evidence or complete gaps in the evidential chain. This may well focus on peripheral defendants where, for example, there may be issues as to the extent that responsibility has been assumed for all or some of the animals.

The process frequently also includes feedback/commentary on the conduct of the investigation and the quality of the file submitted. This frequently includes fulsome praise for commitment where difficulties have been encountered along with more technical advice about investigative issues (e.g. the basis on which police have been invited to exercise powers of seizure or the manner in which interviews have been conducted) and any shortcomings in relation to RSPCA documentation.

There probably needs to be closer scrutiny of the manner in which police powers have been invoked and its potential impact on the admissibility of evidence.

PCMs are responsible for geographical areas and therefore acquire familiarity with the work of those inspectors. Such guidance and feedback is right in principle although some might emanate more appropriately from line management. (The evidence received was that line management within the Inspectorate is of variable quality). It is important that the combination of shared values (particularly evident when commenting on case outcomes) and close working relationships do not create a degree of empathy which might undermine the purpose of separating the prosecution decision-making from investigation. When faced with adverse

outcomes, both the PCMs and inspectors should be willing to review the handling of the case to see whether things might have been done differently; all too frequently, comments were either critical or dismissive.

6.8 *The business model for the Prosecutions Department*

When considering issues relating to the overall structure of the Prosecutions Department, the review concluded that the RSPCA should move incrementally to a position where all prosecution decisions are the responsibility of qualified solicitors and barristers. Although that will entail additional expenditure on the staffing budget the review also believes that it would be cost-effective for the Prosecutions Department to build an in-house capacity for end-to-end conduct of cases and management oversight of the caseload.

The first step should be to appoint a permanent Head of Prosecutions. The individual chosen should have substantial experience not only in conducting prosecutions but in managing a prosecution authority – or a division. Expertise is needed in the development and implementation of policy as well as the implementation of common systems and processes.

All cases considered by the Prosecutions Department are at present handled in the same manner. Following consideration by the relevant PCM and provision of any further evidence or information requested by him, a decision is taken whether to institute proceedings. Charges are drafted by the PCM and the necessary information forwarded to the investigating officer for laying at court. The PCM then writes a standard letter (but adapted to the circumstances) instructing the prosecuting solicitor who covers the area concerned. The file is sent to the prosecuting solicitor who then assumes full responsibility for the management of the case albeit reporting at every stage and seeking instructions on any significant issue. By the end of that process, the PCM has devoted significant time to the case and usually has it at his fingertips.

Much of the value of the work may be lost in that the prosecuting solicitor must again become familiar with the entirety of the case. That might be unavoidable but need not be so if the initial review was to be undertaken by an in-house lawyer who then presented the case in court. Whilst the use of in-house lawyers would not eliminate the risk of duplication (it frequently occurs within the CPS for example), it could reduce the resultant costs. The modest number of cases conducted by the RSPCA would make it easier to schedule lawyer time; and the associated support work would remain in-house. At present the work may be further replicated if counsel is instructed by an external solicitor either in the first instance or on appeal. Again, bringing work in-house could be beneficial.

Scrutiny of the invoices submitted suggests that many routine administrative tasks (e.g.warning witnesses and serving documentation) are routinely being undertaken by relatively high fee earning staff. This may not be cost effective.

The RSPCA needs to consider and evaluate other business models. Is it appropriate to pay at partner and other fee-earner rates for work that can often be done in-house and/or by paralegals? The two models which might have most potential are:

a) The employment of one or more in-house lawyers to oversee prosecutions and themselves conduct those that are sufficiently proximate to be cost-effective.

b) Conduct of cases being retained at RSPCA Headquarters with PCMs continuing to take decisions but under the direction of lawyers and then (as experienced paralegals) instructing and attending on counsel to conduct cases.

There may be scope to combine the two options above as reflected elsewhere in this report. The geographical distribution of the Society's work may render different options more cost-effective for some venues, thus requiring a flexible approach.

More detailed analysis of workflows and costings is required in order to develop a full business case. At the very least the arrangements would need to be self-financing but the current level of costs, £3.7 million paid to external lawyers in 2013, suggests significant scope for savings. Other advantages could include increased development opportunities for PCMs; closer oversight by senior managers in relation to high profile and sensitive cases; as well as providing paralegal staff with greater feel for cases through direct involvement with their ongoing management and attendance at court.

In order to ensure best value for money any direct instructions of counsel should be based on a comparison exercise undertaken to benchmark RSPCA fees to be paid to counsel against those paid by CPS and Legal Aid. The outcome should be a table of norms which would be the starting point for negotiation in individual cases. This might need in some cases to be higher than the CPS to ensure appropriate calibre – albeit lower than at present.

In the light of other recommendations, it will be necessary to ensure capacity within any new structures for initiatives such as the development of an overarching policy on prosecutions to guide application of the Code for Crown Prosecutors to animal welfare cases; offence specific guidance (to be developed in partnership with other relevant prosecuting authorities) and a prosecution procedures manual to cover all aspects of practice including the management of prosecution disclosure of unused material.

6.9 ***Recommendations***

1. *In order to provide the degree of separation necessary to achieve confidence in the objectivity of decision-making and handling at all stages of cases, the Prosecutions Department should be established as a self-contained unit with its own discrete governance mechanism[28].*

2. *The appointment of the Head of Prosecutions should be undertaken by a panel comprising the Chief Legal Officer, an experienced criminal practitioner from independent practice, and an individual with senior management experience.*

3. *The RSPCA should adopt a policy statement outlining the manner in which the Code for Crown Prosecutors will be applied to animal welfare offences; and also develop a set of offence specific standards.*

[28] This might take the form of an oversight committee with external professional representation. Its membership and terms of reference would be constructed so as to accommodate the overarching responsibilities of the trustees but avoid intrusion into prosecution policy and specific casework.

4. *Prosecution decisions should be the responsibility of qualified barristers or solicitors.*

5. *A protocol should be developed as to matters which should be referred to the Head of Prosecutions for decision and advice.*

6. *Reasons for decision should be recorded on the file so as to indicate how the evidential and public interest tests of the Code for Crown Prosecutors have been applied in the particular case.*

7. *More information should be available to decision-makers to inform decisions relating to public interest.*

8. *Urgent steps are needed to reduce the time elapsing between the commission of offences and the receipt of a case file in the Prosecutions Department.*

9. *A system of early process based on abbreviated files should be developed and tested.*

10. *Certificates under section 31(2)(a) of the Animal Welfare Act 2006 should be signed by the Head of Prosecutions.*

11. *When considering public interest (in particular the need for a banning order) the risk of re-offending should be more thoroughly assessed and weighed against any human factors militating against prosecution.*

12. *RSPCA should develop more consistent arrangements for liaison in appropriate cases between the RSPCA and Social Services and Youth Offending Teams. There should be a presumption in favour of seeking advice from the relevant Youth Offending Team before taking a decision to prosecute a youth offender.*

13. *An exercise (as described at section 6.5) should be undertaken to create charging guidelines.*

14. *The Reviewer recommends the following changes in relation to prosecution disclosure which should ensure compliance with both existing requirements and the changes arising from the recent Judicial Office report:*

    - *The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.*

    - *Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.*

    - *The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.*

15. *There should be a review of the business model to assess the case for greater use of in-house lawyers and develop a more structured approach to external fees.*

16. *Prosecution Case Managers should be vigilant to ensure a balance between constructive and supportive working with the Inspectorate and a degree of empathy that compromises objective consideration of the merits of challenge or adverse criticism.*

7 The gathering of veterinary evidence

Veterinary evidence is central to both investigation and prosecution in most animal welfare cases.

7.1 *Certification*

At the investigation stage, the certificate of a veterinary surgeon is required before animals can be seized under section 18(5) of the Animal Welfare Act 2006. The veterinary surgeon must be satisfied either that the animal is suffering or that it is likely to suffer if its circumstances do not change. RSPCA inspectors are therefore likely to be accompanied by a vet when it is anticipated that seizure of animals may be appropriate; where the need for a vet is not foreseen, one will usually be summoned.

The certification process is an important one since it is the legal basis for an indefinite and often lengthy retention of the animals with little scope for owners to challenge the position. Animals can be retained that have not been assessed as suffering but have been seized as "likely to suffer if circumstances do not change" even where the circumstances may since have changed for the better.

The norm is for the veterinary surgeon to attend. That is right and proper having regard to the serious implications of the certification both for the animal and the individuals concerned. However there are cases when the certificate is issued over the telephone or otherwise on the basis of a conversation with the inspector. The legal basis of this is not clear. The Administrative Court in Gray v RSPCA [2013] EWHC 509 (Admin) considered circumstances where a vet was in attendance but the number of animals so great that it was impractical to issue written certificates in relation to each one before seizure occurred. It ruled that certificates must be in writing but found that for other reasons associated with the circumstances of the case the seizures were lawful.

In any event, certification by a vet not present at the scene would seem inconsistent with the principles of certification promulgated by the Royal College of Veterinary Surgeons. Principle 1 states:

> "A veterinarian should be asked to certify only those matters which are within his own knowledge, can be ascertained by him personally or are the subject of a supporting certificate from another veterinarian who does have personal knowledge of the matters in question and is authorised to provide such a supporting document. Matters not within the knowledge of a veterinarian and not the subject of such supporting certificate but known to other persons e.g. the farmer, the breeder, or the truck driver, should be the subject of a declaration by those persons only."

This is an issue on which there should be consistency and the prudent course would be for the RSPCA to adopt a policy that section 18 certification should always be based on physical examination of the relevant animal(s). The Reviewer was told that telephone certification is now discouraged. That should be placed on a formal basis.

7.2 *The use of veterinary surgeons as experts*

A striking feature of the review was the extent to which animal welfare cases based on relatively uncomplicated (and sometimes undisputed) factual scenarios could give rise to protracted and very costly proceedings as magistrates or a District Judge grappled with the conflicting opinions of veterinary witnesses.

Veterinary evidence falls into two broad categories:

First there is the 'case vet' who is asked to examine animals whether at a surgery or on site and, having assessed them, to set out his or her findings and the treatment necessary. That role is usually referred to as a 'professional' witness. Second, it may be appropriate to instruct an expert to give 'expert opinion/evidence' which is used and admitted where the court needs assistance due to a lack of necessary expertise. The expert witness's overriding duty is to the court, even if they are called and paid for by one of the parties to the case. This leads to an expert witness sometimes being referred to as 'independent' though the expert witness is instructed, paid and called by a particular party. What it means in practice is that the expert remains the witness of the party calling him or her but must acknowledge the overriding duty to the court to give objective evidence even when it is not in the interests of the party by whom he or she is called. The RCVS offers guidance linked to its code for professional conduct as to the substantive content of an expert report. Although a different format is likely to be required for criminal proceedings than for civil proceedings, its substance remains valid.

There may be overlap when a case vet is also asked to give an opinion based on his or her findings. That overlap can be complicated where the case vet is asked to go further and provide an opinion based on reading all the witness statements and other evidence which may well include any statement under caution made by the defendant. This can create a tension because it is unusual for a witness of fact to have access to the evidence of other witnesses or parties in the case. The role of the veterinary practitioner can become even more opaque if his or her report goes on effectively to opine on the guilt or otherwise of the defendant. The review case sample contained several such examples, one of which could have served as a skeleton argument for the Crown. Cases of alleged unnecessary suffering offer a good example of where veterinary surgeons may go beyond what is appropriate. It is certainly the role of the vet to give evidence as to the state of the animal and the nature and extent of the suffering that may flow – the difficulties in that respect are dealt with below. It may also be appropriate to assist the court by indicating how easily any suffering might have been prevented or alleviated but it does not necessarily follow that the issue of necessity is within the vet's expertise.

Expert evidence could be used more sparingly and focused more on specific issues where the court is likely to need assistance either because of the technicality of the issues involved or in order to interpret the facts. The tendency (on both sides) in animal welfare cases is to invite the vets to opine generally on whether offences have been made out whereas that is the very issue for the court to decide. The majority of issues in animal welfare cases are capable of being determined by the tribunal having regard to the facts established by the evidence and the relevant law including any applicable Code of Practice.

A contributory factor may be the manner in which veterinary surgeons are instructed by the RSPCA. They at present receive a standard letter of instruction from the investigating inspector. It is easier for all parties concerned, including the court,

when expert opinion is focused on those matters where it is truly necessary. Inspectors are discouraged from providing any a further steer or guidance as to the issues lest that be interpreted as in some way coaching or priming a witness. Such caution is understandable given the scepticism of some veterinary or legal practitioners towards vets instructed by the RSPCA. This review found nothing to call their integrity or bona fides into question. Nonetheless, in presentational terms it has to be acknowledged that most vets have an ongoing business relationship with the Society and an ongoing client commitment; they are therefore independent only in the sense that their expert status places upon them and their overriding duty to the court even though the relationship is not as structured as might be expected.

There is a strong case for addressing this by creating a system of formal accreditation linked to a service level agreement and to common standards in a manner analogous to other forensic providers would be beneficial. There would also be advantage in many cases if the RSPCA (through the Prosecutions Department) were to assist the investigator by providing a customised letter of instruction.

7.3 ***Suffering***

A further factor contributing to the propensity of animal welfare cases to become protracted is the difficultly which arises as regards the assessment of suffering. There is no statutory definition or established case law as regards England and Wales. Some practitioners adopt the definition contained within the Oxford English Dictionary. That defines suffering as "the bearing or undergoing of pain, distress or tribulation"; with tribulation being given a definition of "a condition of great affliction, oppression or misery".

Legal practitioners sometimes seek assistance from a Scottish authority – Patchett v McDonald. The case is not binding on English courts but stated:

> "The argument presented by the appellant appeared to assume that in the context the words "unnecessary suffering" was synonymous with the words "unnecessary pain".
>
> "I take leave to doubt this. In my opinion, the primary meaning of 'unnecessary suffering' in such a context imports the idea of the animal undergoing, for however brief a period unnecessary pain, distress or tribulation".

Although several learned papers have been written, suffering has never been formally defined by the veterinary profession and in fact is not a term that is used by the veterinary profession in routine clinical work although many pet owners will ask veterinary surgeons when considering end of life decisions whether, in the view of the vet, the animal is suffering. Definitions which have been advanced include:

- "A set of negative emotions such as fear, pain, and boredom and recognised operationally as states caused by negative reinforcement".[29]
- "Suffering is observable symptoms in response to any adverse stimuli to which an animal has been unable to adapt".[30]

[29] Professor Marian Dawkins (Oxford University) The Science of Animal Suffering.

[30] Dr Colin Vogel: contribution to British Veterinary Forensic Law Association Seminar June 2012.

The latter definition has been robustly rejected by some vets, especially those associated with the RSPCA. They have particular difficulty with the reliance on observable symptoms. However, at Brighton Crown Court in 2014 Judge Griffith-Jones QC suggested in the case of RSPCA v Gething that to be sure an animal is suffering there must be some behaviour clearly related to an adverse experience. Once again, that ruling has only persuasive value and is not binding.

The absence of an accepted legal definition or one adopted by the veterinary profession means that expert veterinary evidence relating to suffering may be no more than a personal view. This is compounded by the absence of any common approach to assessments of suffering. Some vets were clearly more cautious than others. Some would give a bare opinion whilst others would outline the symptoms and other factors leading to the assessment. Unlike some other issues (e.g. emaciation where body score techniques may be invoked) there was no commonality to the approach and appeared to be no commonly recognised professional standard.

So long as this situation prevails, cases where unnecessary suffering is in issue are likely to prove lucrative for lawyers and forensic veterinary witnesses and a source of ongoing contention and mutual criticisms.

Given the absence of any commonality across the veterinary profession as to either the definition or the approach (and they are different) to suffering and the difficulties which can arise when vets are asked to give evidence as to both fact and opinion, it may be better for the RSPCA whenever possible to rely on case vets to confine their assessment and opinion to those based on the symptoms and conditions they have observed. Where the RSPCA believes that the court will need further expert evidence to assist it in determining the question of suffering or some other issue more tailored instructions should be drawn up with the assistance of the Prosecutions Department for that to be done. Such an approach will require a speeding up of the processes by which cases come to the Prosecutions Department. The issue of delay generally is dealt with elsewhere.

Some additional concerns emerged from the review's examination of files:

- The RSPCA maintains no panel of vets or system of accreditation. It is for individual inspectors to identify vets in the neighbourhood who are willing to undertake RSPCA work. That is not always straightforward because many vets do not welcome the potential disruption to their practice and others are positively disinclined to involvement in any form of litigation. The absence of a structured approach does exacerbate the absence of commonality. And critics point to the risk that inspectors requiring veterinary assistance will make their first approach to a vet who, on the basis of past experience, is less likely to be cautious in the assessment. The creation of a panel working to a service level agreement and a set of common standards would reduce the scope for such scepticism.

- Such an arrangement would ensure clarity as to the form and timeliness of veterinary reports to be provided and could benefit greatly on the timeliness of decisions and thus the expeditious progression of cases.

- The absence of a structured approach has resulted in some remarkably inexperienced vets being put forward as 'experts' because they have been

asked to give evidence which is both factual and opinion. The Prosecutions Department points out that some recently qualified vets have an advantage over the more experienced in that their knowledge base is more up to date. However, the approach suggested above whereby case vets might confine their evidence to matters based on their own observations would assist in relation to this issue.

- The RSPCA does not appear to have any clear approach or policy as to the circumstances which it would seek a second expert opinion as opposed to relying on the case vet.

- Veterinary evidence appears to be used in circumstances and in a manner beyond what is necessary, particularly in relation to section 9 offences. Veterinary experts frequently provide statements which contain opinion going way beyond veterinary matters on which they have expertise. It is not uncommon to find veterinary experts expressing an opinion that the owner of an animal has been guilty of a particular criminal offence. With respect to the veterinary profession, that is a matter for the court. As said earlier, some veterinary statements read more like a skeleton argument for the Crown. In fairness, it should be added that many forensic veterinary surgeons who work with defence practitioners are equally guilty. Indeed, one such practitioner commented to the review that it was "his duty to find weaknesses in the prosecution case". With respect, the duty of an expert is to provide evidence on matters likely to assist the court.

The Reviewer noted the limited role of the RSPCA's Chief Veterinary Officer in relation to these matters. His primary function seems to be to advise the Society as regards scientific issues relating to its policy consideration, its own husbandry practices and guidance to the public. Given the importance of veterinary evidence to the Society's prosecution role, it would seem appropriate for the Chief Veterinary Officer to take the lead or be involved in an advisory capacity in addressing some of the issues raised in this chapter. They go not only to the role of the Prosecutions Department but to achieving a better overall handling of animal welfare cases through the criminal justice process. In addition, the RSPCA faces frequent challenges from a cadre of forensic veterinary practitioners who specialise in defending proceedings brought by the RSPCA. Addressing some of the concerns outlined above should reduce some of the scope for challenge.

7.4 ***Recommendations***

1 *Inspectors should be formally instructed not to seek certification by a veterinary surgeon under section 18 of the Animal Welfare Act 2006 unless the vet has examined the animal(s) in question.*

2 *The RSPCA should take the lead in inviting the Royal College of Veterinary Surgeons and other practitioners to develop a common standard or guidance on the approach to assessment of suffering.*

3 *The RSPCA should establish a panel of accredited veterinary practitioners (with known specialisms where practicable) to be drawn upon by inspectors requiring examination of case animals. Vets on the panel should be expected to work within a fee structure and to a service level agreed with the RSPCA.*

4 *The RSPCA should develop a policy as to the extent of its reliance on case vets as expert witnesses; and as to the circumstances in which further expert evidence should be sought. Where further such evidence is to be sought, instructions to veterinary surgeons should be case specific and developed by or in collaboration with the Prosecutions Department.*

5 *The Society's Chief Veterinary Officer should take the lead in providing advice and guidance to the Inspectorate and the Prosecutions Department in relation to the issues identified in this chapter.*

8 Costs

8.1 *Overview*

The total cost to the RSPCA of prosecutions in 2013 was £11,318k. The table below sets out the breakdown together with comparable figures for 2012.

RSPCA Prosecution costs		
	2013 *0'000*	**2012** *0'000*
Direct costs *(Staff, solicitors, expert witnesses & photographic costs)*	5,577	6,190
Support costs	367	380
Animal welfare, boarding and veterinary costs	5,374	4,681
Totals	**11,318**	**11,251**
The direct costs can be broken down further:		
Prosecutions Department	*881*	*913*
Expert witnesses	*948*	*898*
Fees paid to external lawyers	*3,747*	*4,379*

Table 6 figures from page 24, Notes to the Accounts:
RSPCA Trustees Report and Accounts 2013.

The expenditure relates to proceedings against 1,548 individuals in relation to 5,345 alleged offences. All the offences were summary. 72.9% of those charged pleaded guilty and overall 88.6% were convicted of some or all of the offences.

Although the animal welfare costs make up nearly half of the overall costs, this chapter is concerned with the direct costs, in particular the expenditure on external legal services. The report identifies at Chapter 6.6 some aspects of the case management processes that can create upward pressure on costs. They relate to delay in the obtaining of veterinary evidence and the approach to file building.

The level of costs is important for three reasons:

- first, the RSPCA needs to be confident that it is receiving best value for money. That is especially important for a charity that is discharging a function that would ordinarily be funded out of the public purse;
- second, the Code for Crown Prosecutors identifies as one of the factors relevant to consideration of the public interest whether a prosecution would be a proportionate response. Decisions should not be taken on the basis of costs alone but they are a relevant factor.
- Third, the level of costs incurred by the RSPCA is seen as higher than those of other prosecutors for comparable cases and many consider that the level of prosecution costs has the potential to impact adversely on the overall fairness of proceedings.

8.2 *RSPCA claims for costs: the elements*

The Prosecutions Department includes a Cost Recovery and Data Team formed in 2008 with a staff of four. One of its functions is to provide prosecuting solicitors with copies of all invoices relating to the case to ensure they seek as large as possible cost order at the conclusion of the case. The standard elements are:

- Investigation costs: the recorded time of the investigating inspector are charged at the relevant hourly rate to form the basis of this claim.
- Prosecutions Department costs: the Prosecutions Department claims a standard £100 for its role in management of the proceedings.
- External legal costs: these are claims by reference to the invoices submitted by the prosecuting solicitor.
- Welfare costs: these are costs associated with the boarding and veterinary treatment of animals who are the subject of the criminal proceedings.

Many cases involve the calling of veterinary surgeons and sometimes other expert witnesses. These are collated separately since they are the only aspect of the prosecution costs which may be recovered from central funds provided the court so directs. The sum thus recovered in 2013 was £431,451.

It is wholly appropriate that a charity such as the RSPCA should wish to recover as much as possible of its expenditure. Trustees might be regarded as failing in their duty if they did not do so. However, this approach inevitably means that claims will be substantial[31] – although it is ultimately for the court to decide what proportion, if any a convicted defendant should bear.

The RSPCA is probably more pro-active than other prosecutors in pursuing enforcement of costs. Since the creation of the Costs Recovery Team in 2008, the total amount recovered has increased by 41.2% from £659,716 to £1,121,198 including the sums ordered to be paid out of central funds. This has been achieved by the use of the ordinary powers open to all prosecutors but deployed more effectively. Typically, the RSPCA Cost Recovery Team will monitor the payment of smaller debts owed by defendants, liaising with courts where debtors default and providing assistance to court to take enforcement action to ensure future payments are made. In the case of larger debts, checks may be made to ascertain whether there are assets which might be used to secure them. Despite the RSPCA's more determined approach in pursuing enforcement of costs through the courts, criticisms suggesting routine forcing of the sale of properties to recover costs are not borne out. The number of final charging orders held by the RSPCA at the time of the review was 12 – ranging over the period from 2004 to 2012 and securing a total amount of £864,684.

[31] RSPCA costs are unlikely to be less than around £1,400 for a guilty plea at first hearing in a relatively straightforward case involving no animal welfare costs; and can range up to several hundred thousand pounds in a complex case with high animal boarding and veterinary costs. The average cost of a guilty plea in 2011 was said to be around £1,200.

8.3 *Costs of external lawyers*

The relatively high level of costs incurred may in part be attributable to the model operated by the RSPCA as well as the actual level of fees for some solicitors and counsel.

8.4 *Operating model*

The review recommends at section 6.8 consideration be given to three options for an alternative operating model. More detailed work is needed on costings but it is reasonable to suppose that cost savings would be achievable.

8.4.1 The level of external fees

Prosecuting solicitors representing the RSPCA are remunerated on the basis of a rate agreed with each individual firm – there is no standard rate. The charges range from **£90 per hour** to **£190 per hour**, with **£150** being a typical mid-range fee for a partner. These variations do not reflect any geographical pattern and some firms on the periphery of London offer more competitive rates than provincial counterparts. By comparison, the CPS would pay agents instructed to handle a list of cases in the magistrates' court at a **daily** rate of **£200**; for contested cases expected to last up to three days, the amount payable increases to **£250 per day**. These rates include preparation.

The review would not wish to rely on an unduly simplistic comparison because it is well known that the modus operandi of the CPS allows little time for agents to prepare (although this is charged separately by RSPCA solicitors) and the calibre is variable. The difference in the costs of magistrates' courts advocacy can be stark as regards the higher level of fee earners.

The CPS remunerate counsel in the Crown Court on the basis of a system of graduated fees whereby individual fees are determined by reference to a matrix based on the nature of the offence, the volume of evidence and the duration. Using cruelty to a person under 18 years (a category B offence) as a comparator, counsel conducting a contested case with up to 500 pages of evidence would attract a brief fee of **£1,000** and a **daily** rate for subsequent days of **£480**. A category C case such as failing to keep a dog under proper control thereby causing injury would attract a Brief fee of **£580** and a **daily** rate of **£430**.

By contrast, paperwork available to the review suggested that payments to counsel of between **£800** and **£1,200 per day** would not be uncommon in relation to cases that, although sensitive and tricky, would be unlikely to meet the criteria for category B above. Whilst some distinction usually exists between publicly funded and privately funded work, the differences do seem substantial. Moreover, the market at the Criminal Bar has changed in recent years and it is likely that the RSPCA could find good calibre counsel prepared to undertake the work more cost effectively.

There was a review of the panel of solicitors in 2009/2010 resulting in some revisions and reductions. However, the agreed rate for each firm continues usually to reflect its private client rate (albeit usually with a charity discount) and the variations are sometimes greater than one would expect for procurement of what is effectively the same service on a national basis. There does not appear to have been a real appreciation of how far the market has moved in relation to criminal work in recent years.

8.4.2 **Proportionality and the wider impact of costs**

It is inevitable that RSPCA costs will be higher than those of the statutory prosecutors given the basis on which they are assessed: there is judicial authority[32] for the proposition that when the same organisation both investigates and prosecutes, the 'prosecution costs' may also include those arising from investigation. There is also separate statutory provision in the Animal Welfare Act 2006 as regards claims for the welfare and veterinary costs of animals taken into possession. The RSPCA is therefore by no means alone in putting forward claims on this basis. Local authorities and the Health and Safety Executive also routinely do so.

CPS policy is also to apply for costs against convicted defendants unless the particular circumstances of a case mean that such an application would lack merit or an order for costs would be impractical. Claims for costs are made on the basis of national scales that provide guidance as to the average costs incurred in a wide range of cases. Individual claims may be adjusted to reflect the particular circumstances such as witness expenses and other specific costs. For an average case in a magistrates' court involving a summary offence the range would be from £85 (for proof in absence or an early guilty plea) to £775 in relation to a summary trial. Allowance must be made for the fact that the CPS has the benefit of economies of scale with advocates being present at court as a matter of routine; and also that the time CPS lawyers and agents are able to devote to preparation is more limited. Nonetheless, some of the differences seem large. Relatively straightforward guilty pleas in the review file sample attracted legal costs ranging from just over £1,400 to £1,800. One was a guilty plea and sentencing at first hearing; the second (and most expensive) related to an unrepresented defendant who pleaded guilty at first hearing and was sentenced on a later date. The third case involved the entry of a plea at the second effective hearing. For these purposes, investigation and animal welfare costs have to be ignored.

Efforts to find suitable benchmarks have had only limited success. Insofar as a comparison has been possible, the level of fees charged by those firms in the middle of the range is broadly comparable with those charged in relation to regulatory prosecutors (as opposed to general).

The level of claims for costs by the RSPCA has attracted comment from the senior judiciary as well as legal practitioners who described the resultant pressure on defendants to plead guilty – especially those who do not qualify for legal aid and, if acquitted, may only recover costs on a legal aid basis, thus being heavily out of pocket. Such comments seem mainly based on the fact that animal welfare offences are universally summary only and fall to be equated in terms of gravity with the more routine work of the magistrates' courts such as domestic violence, wounding and assault as well as violent and/or aggressive public disorder. The use of the scale approach merely emphasises the difference as regards contested cases.

PCMs are mindful of the level of costs involved in animal welfare cases although some seemed to view them as simply inevitable. Others emphasised the extent to which unnecessary challenges (and sometimes delays) by the defence could escalate costs in a matter which put pressure on the Society.

[32] R v Associated Octel Ltd (1997) 1 Cr App R (S) 435 [http://www.magistrates-association-temp.org.uk/dox/Costing%20the%20Earth%20for%20MA%20with%20cover.pdf]

These considerations emphasise the importance of bearing down on costs at all stages. It is also too easy to dismiss the potential pressure on defendants (who may genuinely believe they are not guilty) by being at risk of costs. PCMs specifically rejected the notion of any real pressure on the basis that the courts would only award costs in line with the defendants' ability to pay – this making the issue irrelevant except to the RSPCA.

Consideration of costs as an element of the public interest factor in individual cases is dealt with elsewhere in this report (section 6.3.5).

A further wider consideration is the extent to which individuals should face such different levels of claim depending on which agency has prosecuted. The RSPCA Council must therefore have regard to the reputational as well as the financial implications of the level of costs involved in RSPCA prosecutions given the way that they impact both on defendants and the RSPCA budget. As for the latter, the point on which the RSPCA Council needs to be satisfied (in terms of charitable benefit) is that the costs to the charity is justified because it can deliver more effective enforcement than the public authorities can (or are prepared) to do. In the final analysis, that is more likely to come down to the question of proportionality as opposed to a "yes" or "no" answer.

8.5 ***Comments***

Most of this is not new. It is pertinent to note that the 1993 Prosecutions Department Review undertaken by Richard Crabb (formerly Chief Crown Prosecutor for Kent) commented then as to the modus operandi and the use of external lawyers. His conclusions included:

1. The work of the Legal Chief Superintendents (equivalent of today's PCMs) should be undertaken by lawyers. He added "The time has not yet arrived when all prosecutions should be dealt with in-house although the new unit which I recommend should make a start with carefully selected cases. This subject should be reviewed in five years."

2. The fees charged by prosecuting solicitors varied enormously with insufficient scrutiny of bills. Authorisation was based on whether they 'look right'.

3. In addition, it was recommended that greater use of the Bar should be considered with the comment:

   > "There are also a number of Barristers' chambers who would be particularly interested in undertaking this work, at competitive rates, and here again the Chief Prosecution Solicitor would be able to negotiate competitive terms with them and brief them in appropriate cases."

8.6 ***Recommendations***

1 The review of the RSPCA Prosecutions Department business model recommended in Chapter 6 should include consideration of the use of in-house lawyers and direct instruction of counsel.

2 The level of fees paid to external lawyers should be reviewed in the light of changes in the market and to achieve a more consistent approach.

9 RSPCA involvement in hunting prosecutions

9.1 *Introduction*

This section is deliberately positioned towards the end of the report. Earlier sections have dealt with important issues of principle and policy regarding the RSPCA approach to prosecutions and the environment in which it operates. They have persisted over a number of years and substantially pre-date the RSPCA involvement in cases arising from hunting activity on which they have only a limited bearing. Nonetheless, the prosecution of the Heythrop Hunt and other later hunting cases do raise some important issues albeit of a different nature.

The evidence reviewed leaves no room for doubt that, despite the 2004 legislation, traditional fox hunting remains "business as usual" in many parts of the country. Extensive flouting of the law risks bringing Parliament, the police and prosecuting authorities into disrepute. Widely publicised criticism of the RSPCA over the costs of the Heythrop Hunt case undoubtedly caused it reputational damage even though the prosecution itself was fully justified. Two further consequences are likely: first, public confidence is damaged when the authorities appear unable to uphold criminal law; secondly, there is a risk of public disorder and violence as the result of confrontations between on the one hand followers and supporters of hunting, and on the other hand those who seek to protest or gather evidence of suspected illegality.

The Prosecutions Department of the RSPCA afforded the review full access to all its papers relating to cases arising out of hunting activity, including those subject to representations from bodies such as the Countryside Alliance. This enabled the review to consider both the overall picture and specific cases – in particular to look for any evidence of political or other improper motivation. There was none. The review considered the overall approach of the Prosecutions Department to these cases and the quality of decision-making and case handling. Overall, the quality of the work was sound and professional even though there were some mistakes and lessons have been learned as to how things might be done differently in future – particularly as regards costs.

9.2 *Enforcement: legal and evidential issues*

Parliament legislated in 2004 to prohibit the hunting of wild mammals (including foxes) with dogs save in very limited circumstances. Annex 5 sets out the main provision of the Act together with the exemptions.

Enforcement of the legislation was never going to be easy, and its terms make enforcement very resource intensive – whoever undertakes the task. ACPO guidance on the enforcement of the Hunting Act 2004, comments:

> "Although the Act is short this approach has created a rather complicated legal framework which seems likely to be under test in the courts for some time to come."

Section 11(2) of the 2004 Act makes clear that hunting with dogs includes engaging alone or participating with others in the pursuit of a wild mammal where a dog is used in that pursuit. Hunting is an **intentional** activity and there can be no such thing as unintentional hunting. The terms "engage or participate" mean to take an active or direct part in the hunting for a mammal, as distinct from observing it. Given

the structure of hunts formally affiliated to the Masters of Foxhounds Association, the evidential implications can be significant. While a hunt is out in the country, it will be under the control of the Field Master. He directs the hunting and makes any necessary decisions, such as the direction of the hunt. There is also a Huntsman (usually a hunt employee) who, under the direction of the Field Master, is responsible for handling the hounds, assisted by the whippers-in. Those who follow a hunt, (including those on horseback) for the sake of observing the hunt are not technically hunting. Merely being a part of the gathering of a hunt is not a criminal offence.

It follows that the evidential burden on the prosecution is a substantial one; it is required to prove that specific individuals engaged or participated in a pursuit along with the fox hounds. This leaves it open to suspects to argue that, although they were following or associated with the hunt, they were not in pursuit of any fox but merely observing the acts of those involved in the hunt.

The legislative complexity is inevitably open to exploitation by those determined to continue fox hunting notwithstanding the legislation. Where the prosecution is able to prove that a pursuit occurred involving fox hounds, it is likely to be asserted that the pursuit was accidental and/or the hounds had spontaneously picked up the scent of a fox whilst following an artificial trail laid for the purpose of trail hunting.

The task of prosecutors became even more difficult following the decision of the Administrative Court in the joined cases of DPP v Anthony Wright; and the Queen (on the Application of Scott, Heard and Summerskill) v Taunton Dene Magistrates' Court [2009] EWHC105 (Admin). It was ruled that searching for an as yet unidentifiable wild mammal did not constitute hunting. Proving that members of a hunt were knowingly engaged in an exercises to flush out any fox who might be in the area did not fall within the ambit of the offence.

Securing the evidence necessary to mount effective prosecutions under the Hunting Act 2004 in respect of mainstream fox hunting activity therefore requires far more than merely sending a team of police officers to take the names and addresses of those at the hunt gathering. The evidence required is such that it is unlikely to be achieved through police presence and observations alone since behaviours would then be likely to change. In practice, most hunt prosecutions depend on the evidence obtained by non-governmental organisations (e.g. League Against Cruel Sports (LACS)) or other groups of hunt monitors who share a determination to see the law upheld. Such dependence brings its own difficulties in that evidence is then susceptible to challenge on the grounds of partiality. This is true whoever may be the prosecutor. As recently as June 2014 the Countryside Alliance wrote to the Attorney General to complain about the "disgraceful way that the CPS was conducting a prosecution for hunting because it was adducing evidence from a pressure group" (Western Daily Mail, 18 June).

Hunts who are affiliated to the Master of Foxhounds Association (MFA) continue to meet regularly during the winter months. Their activities can only be legal if they have adopted the practice of trail hunting which involves the laying of an artificial scent (made to resemble fox scent) some time before the hunt sets out from its gathering. Some hunts may well adopt that approach which is wholly lawful. However, the picture that emerged from the evidence contained within the case files was of a cat and mouse game between hunting participants and supporters and those endeavouring to gather evidence through observations and recording made

from public highways, footpaths and vantage points overlooking the private land on which hunting activity invariably takes place.

One notable feature of the files was the frequency with which hunts appeared to be accompanied by terrier-men usually mounted on quad bikes specially adapted with cages or containers to carry terrier dogs. Their use was routine in traditional fox hunting because of their suitability for flushing out foxes that had gone to ground. There is however no role for them in a lawful trail hunt. The explanation that may be offered was that they are present solely to flush out any foxes that might accidentally be found and chased by fox hounds (whilst lawfully following a trail) causing them to go to ground. In such circumstances they would be flushed out to be shot in accordance with the exemption provided under the Hunting Act. Perhaps the most apt description of such an explanation came from his Honour Judge Pert at Leicester Crown Court when dismissing appeals by individuals convicted under the Hunting Act and the Protection of Badgers Act in relation to offences associated with the Ferne Hunt. He commented: "It may be that they [hunt supporters] feel the day will come when this [Hunting] Act is repealed and they may be correct but the law is the law. Their conduct amounted to cynical subterfuge. They used a trail hunt as a cover."

9.3 *Investigation and prosecution of offences under the Hunting Act 2004*

Primary responsibility for enforcement of the Hunting Act 2004 rests with the police service. The ACPO guidance effective from December 2010 contains the following significant points:

- Whilst the Government have indicated an intention to hold a free vote on whether to consider a repeal, the Act as it stands is the law of the land and as such we in the police are under a duty to enforce it.
- It is worth reminding readers that this duty to enforce is of course subject to the absolute necessity for the police to act impartially in this very controversial field – our duty is to the law, not to one lobby group or another.
- The general duty to enforce the law is of course subject to the normal discretion of Chief Constables who are required to balance resources and priorities; the Hunting Act is no exception to this principle.
- Gathering evidence of offending behaviour has proved a difficult task for the police, and with available resources it is likely to remain so. The police will accept initial evidence gathered by members of the public who are often organised for this purpose. In this very emotionally charged area it is not to be surprised to find that some organisations involved in such activities feel police investigations after receipt of evidence have not always been conducted in a professional and proficient manner. Any police investigations of the Act should be both professional and proportionate and are likely to be subject to detailed scrutiny.
- A number of organisations have staff, members or supporters who have been trained to some extent in evidence gathering techniques. As with any other case, the police will accept and deal with the evidence of any criminal offence but should not form a partnership with any organisation or an individual or individuals within or acting on behalf of or in support of any organisation which might be taken as encouraging or initiating surveillance of hunting activity. The police cannot accept

any responsibility for the admissibility of the evidence gathered in such circumstances which if challenged would be a matter for the court in due course.

- The police service has successfully developed techniques to assist in evidence assessment to avoid acrimonious, time consuming, frustrating and ultimately fruitless activities. These techniques will be more consistently applied in future. In certain circumstances the police may consider undertaking surveillance or related activity in order to prevent or detect offences under the Hunting Act 2004. In doing so regard will always be given to the requirements of the Regulation of Investigatory Powers Act 2000.

That approach is unexceptionable and if applied consistently across all police forces would provide a sound basis for effective enforcement of the Hunting Act 2004. However, the reality has proved rather patchy with the appetite for police forces to become involved in investigations relating to established hunts fluctuating over the years. In the early years, it was the LACS who took the initiative; at that stage the RSPCA received nothing to justify full investigation and prosecuted no cases relating to fox hunting. Between 2006 and 2008, LACS prosecuted some four such cases using external solicitors instructed for the purpose. The outcomes were mixed.

Following a review of its approach, the LACS decided to pull back from prosecution. Whilst they continued to use their own professional staff for investigations, their long term plan was to encourage the statutory agencies or the RSPCA to take cases forward based on evidence gathered by LACS investigators. This reflected an assessment that the task of routine prosecution was too great for a charity such as the LACS which had only modest income. Although heartened by the convictions they had achieved, they recognised the determined and well funded nature of the opposition.

Information provided by the LACS shows that four prosecutions were initiated during 2009 and 2010 based on their evidence. Convictions were recorded in three cases with an acquittal in the fourth. A further case was dealt with by a police caution.

9.4 *Approaches to the RSPCA*

During this period the RSPCA also received referrals from a number of organisations whose members were involved in monitoring hunt activity. Hunt monitors sought assistance from the RSPCA in the form of guidance as to the adequacy and type of evidence required. The hunt monitors had become disillusioned by their lack of success in persuading the police to act on video footage that had been submitted with a view to investigation and prosecution and which they thought contained cogent evidence. At a subsequent meeting, the then Head of Prosecutions and a Senior PCM provided general advice as to the evidential requirement i.e. not only that there was a pursuit of a fox by hounds but also the identities of specific individuals whose behaviours indicated that they were participating in that pursuit.

The hunt monitors indicated that they might already have such footage relating to the Heythrop Hunt in the 2010–2011 season and invited the RSPCA Prosecutions Department to review a selection of that material. The Head of Prosecutions quickly appreciated the potential evidential value of some of the material and that the hunt monitors might be relevant witnesses. That dialogue was therefore terminated and

the RSPCA Inspectorate invited to conduct a formal investigation. It is pertinent to note at this point that the decision to investigate the Heythrop Hunt substantially preceded the appointment of Gavin Grant as Chief Executive of the RSPCA. He has been widely portrayed in the media as the driving force behind the prosecution.

9.5 *RSPCA Prosecutions Department handling of the Heythrop Hunt case*

The Reviewer had the benefit of reading the case file in full together with the discussion with several members of the prosecutions team as well as the defence solicitors. In addition, the Countryside Alliance identified this case as one giving particular concern to them for the following reasons:

- Political – Cameron's local hunt, MP for Witney.
- POWA[33] passed footage to RSPCA.
- Long planned. Prosecuting solicitors present at a Hunting Act case in January 2011.
- Two defendants pleaded guilty as they could not have afforded to defend themselves because of the length of trial.
- Ridiculous number of summonses. 40 of 52 dropped.
- RSPCA spent £326,980.23 to bring the prosecution – Judge called the amount of money "staggering". Subsequent RSPCA complaint against Judge rejected[34].

Countryside Alliance submission to the Independent Review.

The Heythrop Hunt case differed from many others handled by the RSPCA in two respects.

- Firstly, it arose out of the approach from the hunt monitors for general advice about the collection of evidence. That was in no way inappropriate and the Head of Prosecutions was astute in terminating the dialogue once it became clear that there were matters which justified a formal investigation and they were potential witnesses.

- Secondly, it was clear because the case represented new ground for the RSPCA, that the investigators would require far more guidance from the Prosecutions Department during the investigation than would ordinarily be the case. That was especially so as regards the identification of a suitable expert and the gathering of expert evidence. The Prosecutions Department was itself on something of a learning curve and contacted CPS Leicestershire which was conducting proceedings against the Ferne Hunt arising out of evidence collected by the LACS. The sharing of experience and good practice between prosecutors is quite common place. This appears to be the basis of the third limb of the concerns expressed by the Countryside Alliance about the RSPCA presence at a hunting case in January 2011. The innuendo is quite unfounded.

[33] Protect Our Wild Animals (http://www.powa.org.uk/about.html)

[34] The Reviewer felt it right to record the concerns of the Countryside Alliance in the terms submitted. However, the RSPCA has categorically stated that it did not as an organisation, make any complaint. Its understanding is that some supporters, including one trustee (in a personal capacity) did so.

It is important to note that there were in fact two separate sets of proceedings relating to individuals associated with the Heythrop Hunt which subsequently merged. The first related to the 2010–2011 hunting season with proceedings being confined to the professional huntsman employed by the Heythrop Hunt. The second proceedings arose out of activities in the 2011–2012 hunting season against the same huntsman, three other individuals and the Heythrop Hunt itself as a corporate body.

9.5.1 ***The 2010–2011 Proceedings***

Extensive preliminary work was undertaken. Professor Stephen Harris examined the hunt monitors' footage to assist in interpreting some of the activities depicted. Specifically, an expert would be able to recognise differences in conduct associated with the pursuit of a fox rather than a pre-laid trail. Similarly, an expert would understand and interpret the communications between members of the hunt and the significant but different uses of the horn and/or whip to call the hounds to particular activities such as flushing a fox out of cover. It would be for investigators to establish the exact provenance of the relevant footage, relate it to the geography of the area (through mapping where necessary) aided by the recollection of witnesses and their notes. Frequently, observers produced several items of footage showing the same conduct from different vantage points and it was necessary to cross-reference and assess the overall picture. All this evidence would need to be embodied in witness statements.

It became clear during this process that, in addition to the footage handed to the RSPCA for the purposes of advice, the hunt monitors possessed extensive footage covering successive meetings of the Heythrop Hunt during that season and earlier. From that point, the case began to expand. The additional material needed to be viewed by investigators, prosecutors and the expert from two perspectives:

- To ascertain whether it strengthened the case in relation to matters already under investigation or disclosed further potential offences; and
- Whether it contained any contra indications. The Prosecutions Department was mindful that all the available material needed to be sifted (irrespective of whether it appeared helpful to the prosecution) since in the event of contested proceedings, any material that could undermine the prosecution case or assist the defence would have to be disclosed.

Although the normal practice of the RSPCA Prosecutions Department is to take decisions on proceedings in-house and then instruct external lawyers, it was decided in this case to obtain external advice first. That reflected the sensitivity of the case and recognition that it was likely to be contested aggressively and publicly. In the event, it was decided to instruct a City firm whose expertise in litigation had impressed the RSPCA. They would in turn instruct counsel. This necessarily took time and on 2 August 2011 a summons was issued against the Huntsman of the Heythrop Hunt for two offences alleged to have been committed on 7 February 2011 and 14 March 2011. The case was prepared for trial and that included a proposed application to admit similar fact evidence/evidence of previous misconduct. That was scheduled to be determined on 3 August 2012 at Oxford Magistrates' Court. In the event, the second set of proceedings had by then been instituted and, for reasons that appear below the application was not heard. Instead the first prosecution was discontinued and the case focused on the 2011–12 season matters.

9.5.2 **The 2011–12 Proceedings**

The hunt monitors had continued to attend, observe and record the meets of the Heythrop Hunt during the 2011–2012 season. Possibly because the monitors were now more attuned to the type of evidence required, the substantial further footage passed to the RSPCA proved sufficient when analysed to support charges against different combinations of defendants in relation to seven different hunt meetings spread across the period from November 2011 to March 2012.

The provision of this additional material did not obviate the need for the RSPCA to continue its preparation for the trial of the Huntsman who had pleaded not guilty in the first set of proceedings. It did however, complicate the position: it necessarily took a considerable time for the prosecution team to analyse all the further footage. They needed to consider whether they should seek to combine any further proceedings with the extant proceedings or seek two separate trials. There were also issues as to the extent to which evidence relating to earlier hunting seasons might also be admissible in relation to any proceedings relating to the 2011–2012 season. There was considerable time pressure because the earliest offences would have become statute barred by early May 2012. In the event, the decision was taken to proceed on a total of 57 charges. The prosecution alleged a course of continuing conduct involving 10 separate incidents of unlawful pursuit spread across seven dates but not all involving every defendant.

A priority from the prosecution perspective was to secure directions from the court as to the sequencing of the two sets of proceedings and whether all charges in the second proceedings were to be tried together. That would determine the manner in which the evidence would be marshalled and presented for trial.

Reference is made above in the context of the first proceedings to the need to co-ordinate and cross reference the evidence from different sources relating to the same charge. That assumed even greater importance in the second proceedings given the greater number of defendants and charges. The resultant material also had to be agreed with the defence. It involved complicated technical work which had to be outsourced and was done under the directions of the legal team as to the requirements for court presentation purposes. The logistical challenge was a substantial one, not least because the prosecution needed to secure the agreement of the defence to the edited compilations. These processes added significantly to the costs.

The proceedings were listed for a Case Management Hearing at Oxford Magistrates' Court on 3 August 2012. The prosecution successfully contended that all 57 summonses in the second proceedings should be tried together because they had in common the same factual basis and were likely to involve the same or substantially the same issues both in law and fact.

It was also accepted that the second set of proceedings would be tried first. The initial position of the RSPCA was that, even though it was unlikely to be in the public interest to require a second trial, a final view should await the conclusion of the proceedings in relation to the 2011–2012 summonses. Further consideration however, led to the conclusion that case management would be best served by withdrawing those proceedings at an early stage and that was done at the hearing at Oxford Magistrates' Court on 3 August 2012. It is unfortunate and unjust that a

sensible decision taken for very good reasons should subsequently have been characterised as a failed prosecution in some quarters. The second proceedings were set down for trial to commence in December 2012 with an estimated 35 days being required for trial.

9.5.3 **Overtures by the defence**

In November 2012, some three months after the initial Case Management Hearing and following a further hearing on the 7 November 2012 the defence approached the prosecution on a without prejudice basis to propose a global settlement whereby Heythrop Hunt Ltd together with its Huntsman and a master would each plead guilty to four offences contrary to section 1 of the Hunting Act 2004. This represented four separate occasions. It was the first indication that the whole case would not be vigorously contested. The offer was dependent on the prosecution offering no evidence in relation to all other charges and not inviting the court to consider or make any orders other than those relating to fines and costs; (i.e. there would be no question of forfeiture of hunt property). The plea was to be tendered on the basis of excessive enthusiasm on particular occasions rather than a pre-planned breach of the Hunting Act. The defence also stipulated that, although it recognised that the prosecution would not accept the basis of plea, it would not invite the court to embark on a hearing to determine any factual issues (a Newton hearing).

Whilst the RSPCA considered the evidence was more than capable of leading to the conviction of all of the accused of all accusations on the summonses, the RSPCA considered the public interest would best be served by reaching a settlement (but not accepting the basis of the "excessive enthusiasm") as the guilty pleas adequately reflected the criminality engaged by the summonses as a whole.

At the subsequent hearing in December 2012, District Judge Pattinson fined the master £450 for each of the four offences; and the Huntsman £250 for each offence. The Hunt itself (a corporate body) was fined £1,000 for each offence. The two individual defendants were each ordered to pay prosecution costs of £2,500 and the Hunt £15,000. The RSPCA costs amounted to £326,980.23 as against defence costs said in court to be £35,000.

He also noted that the cost to the RSPCA of bringing the prosecution was £326,980.23 which he described as "staggering". District Judge Pattinson went on to say:

> "Members of the public may feel that RSPCA funds can be more usefully employed. It is not for me to express an opinion but I merely flag it up but I do find it to be a quite staggering figure, especially as I was told by Mr Mott that the defence costs for all five defendants were in the region of £35,000 – so that's not much more than one tenth of the prosecution costs."

What followed can only be described as a propaganda war with the RSPCA being widely criticised for appearing to incur disproportionate costs. The RSPCA for its part reaffirmed its commitment to enforcing a law that it considers integral to its charitable purposes to "prevent or suppress cruelty to animals". The war of words also included complaints to the Charity Commission and a Parliamentary debate. The Charity Commission said in January 2013 that they did not consider that the trustees had breached their duty of prudence in the case of this prosecution. It was accepted that the use of funds was a matter for the trustees of the RSPCA having

regard to its charitable purposes and the relevant charity law. In fact proper governance had been in place throughout the case with the trustees ensuring that there were charitable benefits. To complete the picture it should be recorded that the Office of Judicial Complaints concluded in relation to the complaint made by the trustee that District Judge Pattinson had been entitled to comment on the level of costs incurred by the prosecution; but he should not have expressed views on whether the funds might have been better used by the Society.

9.6 *Commentary on the RSPCA handling of the Heythrop Hunt case*

The Reviewer has no doubt that the Heythrop Hunt case was appropriately brought. Even so, the RSPCA must accept the criticism that the overall cost was much too high even allowing for the difficulties referred to earlier of the resource intensive nature of the preparatory work. This was the result of overkill both as to the resources deployed and, in some respects, the scope of the case. Notwithstanding the importance of the prohibition of hunting to the RSPCA's charitable objectives, there should have been greater awareness that the Society was dealing with offences punishable with a maximum fine of £5,000. And earlier prosecutions had signalled likely penalties towards the lower end of the range.

The Reviewer found nothing to support the contention of the Countryside Alliance that the prosecution was political, and that the Heythrop Hunt was targeted because it operated within the Parliamentary constituency of the Prime Minister; and there were suggestions that he had in the past been associated with the Hunt. The Reviewer is confident that the ethos of the Prosecutions Department is such that considerations of this nature, if advanced, would have been robustly rejected as irrelevant.

The Heythrop Hunt had been a subject for attention by hunt monitors long before the RSPCA became involved. This had led to a police investigation and a previous prosecution arising out of the activities of the Heythrop Hunt. Those proceedings were the responsibility of the CPS who subsequently discontinued them in circumstances which are not clear. It may well have been attributable to a review of the evidence following the judgement of the Administrative Court in DPP v Wright referred to earlier.[35] It was the outcome of the previous proceedings relating to the Heythrop Hunt together with the perceived police reluctance to act on other complaints resulted in the disillusionment which caused POWA to approach the RSPCA.

Although the RSPCA decision to investigate (and subsequently prosecute) was not politically motivated, it is undoubtedly the case that the proceedings quickly assumed a political dimension. That would have been so even if the prosecution had related to the activities of a different hunt. It is an inevitable consequence of the controversy which surrounded enactment of the Hunting Act 2004 and the continuing opposition to it. In practice, any attempt to enforce the legislation is likely to be characterised as political by those who seek its repeal and irrespective of who brings the proceedings.

[35] The outcome had also engendered suspicion because a discontinuance came quite shortly after an exchange of correspondence between Mr David Cameron MP and the then Attorney General. Attempts by individuals external to the RSPCA to gain access to that correspondence reliant on Freedom of Information legislation have proved unsuccessful.

Governance arrangements within the RSPCA are designed to ensure maximum independence of prosecution decision-making. The day to day management of the RSPCA's affairs is normally delegated to employed staff under the direction of the RSPCA's Chief Executive. But the trustees bear ultimate responsibility for the actions of the charity. In particular, they have a responsibility to ensure that they are entirely satisfied with the criteria for prosecutions and the associated costs as well as with the appropriate level of objective oversight and supervision. They also have a responsibility to consider the risks to the charity of reputational damage arising from adverse publicity.

The balance between respecting independence in prosecution decisions and proper governance is a delicate one but in some ways may be seen to echo the statutory responsibility of the Attorney General for superintendence of independent prosecuting authorities such as the CPS and the Serious Fraud Office. That is very much an arms-length relationship now governed by the protocol established in 2009 which makes it clear that even the Attorney General has no power to direct the DPP as regards decisions in individual cases. The initial consideration by the Prosecutions Department and its decision to invite the Inspectorate to undertake an investigation were rightly taken without involvement from other parts of the organisation.

The role of senior officers outside the Prosecutions Department was to authorise the expenditure involved in obtaining the necessary advice and, if appropriate, instituting and conducting the proceedings. The decision was within the scope of delegated authority and the Chief Executive was later able to assure the Charity Commission that the trustees had been repeatedly updated and discussed the ongoing proceedings against the Heythrop Hunt following decisions taken by the Prosecutions Department.

9.7 ***Charitable benefit***

In assessing the operation of the governance arrangements around this case, it is important to appreciate the distinction between the "public interest" test applicable to prosecutions and the concept of charitable benefit. The former is an integral part of the twin test prescribed in the Code for Crown Prosecutors and stipulates that proceedings should only be instituted where "prosecution is required in the public interest". Charitable benefit goes further and means that the proposed course of action must be in the "best interests of carrying out the charitable objects both now and in the future". It is therefore possible that a prosecution may be required in the public interest but that it would not be in the interests of a charity to pursue it; the proportionality of the likely costs may well be a likely factor. The fact that the Heythrop case was viewed as a test case would also be a significant factor. The Charity Commission recognises both the width of the discretion possessed by trustees and also that the bringing of test cases relevant to their purposes is a legitimate activity for charities.

The level of expenditure can give rise to issues. It is understood that the Charity Commission is currently considering some work with a view to guidance on such strategic litigation. Clarifying the law can be of benefit – so the RSPCA may well have been able to demonstrate charitable benefit from the Heythrop Hunt case even if it had been unsuccessful.

It is important that the RSPCA should take on board the learning points that arise from circumstances that enabled a successful prosecution to become such a publicity disaster for the Society. There are no easy answers. Although there was scope for the investigation and prosecution to be more tightly focused and for costs to be reduced, it was always going to be an expensive exercise if the full extent of the offending was to be placed before the court. Even if the costs had been reduced by 50%, many reasonable people would still regard that as disproportionate expenditure to secure convictions for summary offences attracting a maximum penalty of £5,000 fine – and in practice rather lower penalties.

Further comment is made on the relationship between public interest and charitable benefit in the part of this report (Chapter 10) dealing with governance more generally.

9.8 *Learning points*

The Prosecutions Department has made it clear that they have already begun to apply some of the lessons learnt in the Heythrop Hunt case to cases referred to them involving other hunts. In particular, subsequent prosecutions have had a narrower scope and have been taken forward with smaller more specialist teams. The following section of the report analyses the outcomes.

Perhaps the most important learning point is for the RSPCA Council of Trustees in terms of the need to ensure that, whilst respecting the independence of the Prosecutions Department, there should be closer oversight of both the reputational and financial risks to the Society associated with prosecutions under the Hunting Act 2004. The extent of that risk is well illustrated by the dilemma that faced the prosecution team when considering whether to accept the pleas offered by the defence. It also demonstrates that prosecutions may assume a political dimension even though the prosecution has no political motivation. That is a reality that all prosecutors, including the CPS, have to face. Not accepting the proposed plea could have made the RSPCA look very unreasonable, especially if the defendants were to plead on the first day of the trial. Pressing on with the case would therefore give rise to substantial risk – especially if the outcome was adverse. Similarly, there was recognition that acceptance of the pleas would give rise to a major PR battle as it did. The effect of the dilemma was to give the RSPCA itself a direct interest in the decision whether or not to accept the plea. It is to the credit of the RSPCA that it accepted the advice of leading counsel. The public interest was well served by the acceptance of the pleas and the avoidance of a contested trial lasting 35 days.

In answer to the criticisms levelled by the Countryside Alliance, the decisions to mount an investigation based on footage received from hunt monitors and subsequently to institute proceedings against the Heythrop Hunt were fully justified. There was no political motivation. However, the costs incurred were in the event disproportionate and probably higher than they needed to be. It is important that the RSPCA should learn lessons from this case about the scoping and resourcing of such exercises; nor should they be surrounded by organisational publicity that has the potential to undermine its own Prosecutions Department.

9.9 *Other hunting cases*

There tend to be two distinct types of offending under the Hunting Act 2004. Firstly there are those offences committed by traditional ‘red-coat’ hunts in the traditional

(and now illegal way); secondly there are those committed by individuals who derive pleasure from hunting, and killing various types of wild animals in a variety of ways. Official statistics do not distinguish between these categories and do not therefore assist in any assessment of the effectiveness of the Act as regards the first category of offending.

File examination included six cases in addition to the Heythrop Hunt case where the RSPCA had been asked to consider proceedings. In three cases the evidence was clearly insufficient.

The RSPCA initiated proceedings for offences under section 1 of the Hunting Act 2004 in each of the other three cases. In no case did the Society have the benefit of external legal advice prior to the commencement of proceedings. Changes of personnel meant that the cases could not be allocated to either of the individuals who had been so closely involved in the Heythrop Hunt case although the Senior PCM responsible for it was available to give overall advice in his capacity of Acting Head of Prosecutions Department. Of the three cases, one resulted in a guilty plea to the Hunting Act offence; the second resulted in a guilty plea to offences under the Protection of Badgers Act 1992 and the withdrawal of the Hunting Act offence; the third case was withdrawn in its totality. Details of the cases are contained in annexe 6.

9.10 ***The way forward***

The RSPCA Council of Trustees will need to consider how to position the Society in relation to the future enforcement of the Hunting Act 2004.

The starting point must be that the law is law until Parliament says otherwise and it should be upheld. The CPS guidance in relation to the Hunting Act 2004 states that, providing the evidential test is met the public interest will require a prosecution other than in exceptional circumstances.

Despite that, the present situation is currently unsatisfactory. The volume of footage available leaves the objective viewer in no doubt on the balance of probabilities that it is “business as usual” for many hunts because enforcement is so difficult. Such widespread and public disregard for the law is likely to bring Parliament and the criminal justice system into disrepute.

The situation arises because of the limited enforcement by the public authorities of the relevant provisions of the Hunting Act 2004. Primary responsibility for investigation and prosecution rests with the police and the CPS. The stated position of ACPO referred to earlier is the perfectly proper one and was reaffirmed to the review. However, it was also emphasised that policing priorities are a matter for individual Chief Constables in conjunction with their local Police and Crime Commissioner. Priorities are therefore likely to vary on a national basis.

The preponderance of evidence indicated continuing widespread scepticism as to the commitment of the police and the CPS to the investigation and prosecution of alleged offences of hunting. Many suggested that the police and CPS did not have the necessary resources and skills. That was borne out by the one relevant CPS case observed by the Reviewer which was very poorly prepared and drew comment from the defences that it would have been more effectively conducted by the RSPCA. By contrast organisations such as LACS reported greater willingness on the part of police forces to engage when presented with evidence that had been

marshalled by professional investigators. All concerned commented that penalties imposed tended to be low in comparison with the maximum available.

The RSPCA did not involve itself in hunting cases before the Heythrop Hunt case. That case and the others mentioned above were all dealt with on an individual case basis. RSPCA Council of Trustees now needs to develop a policy on how far it will accept referrals relating to alleged hunting offences rather than direct individuals to the relevant police force.

There can be no doubt that the prosecution of offences under the Hunting Act 2004 fall within the RSPCA's charitable objectives. However, there are already publicly funded agencies (the police service and the CPS) who have primary responsibility. The RSPCA Council would therefore need to ensure that it could demonstrate some charitable benefit through any extension of its role to include routine intervention by the RSPCA in this field. It might not fall to be assessed in the same way as a test case such as the Heythrop Hunt. The main considerations are likely to be:

- Would such activity on a routine basis be in the best interests of the charity?
- Would it represent prudent use of resources?
- Have the trustees had regard to all relevant risks including financial and the risk of reputational damage?

The RSPCA cannot point to a situation (as with much animal welfare) where there are **no** enforcement activities. The CPS (acting on evidence emanating from the LACS) has had two relatively recent successes in relation to the Ferne Hunt (Leicestershire) and the Middleton Foxhounds (Yorkshire) and there are proceedings pending against the Devon and Somerset Staghounds – also based on evidence from the LACS. Demonstrating charitable benefit might therefore be dependent on showing that there would be better enforcement through RSPCA intervention either through an increase in the number of cases being investigated and prosecuted; or that the RSPCA was able to do a better job. In that context there is no organisation with a strong record of successful prosecutions under the 2004 Act relating to fox hunting activities. A prosecution of the Weston and Hanwell Harriers in early 2014 was unsuccessful because the District Judge, confronted with the conflicting expert opinions, was unable to determine which was the more reliable. This serves to illustrate the difficulty of such cases.

Hunting cases come in different shapes and sizes but experience so far indicates that any substantial case (i.e. one involving a course of conduct as opposed to a one-off event) is likely to be resource intensive. A reasonable overall conclusion might be the 2004 Act is workable but only at a cost (in terms of gathering and evaluating evidence and case preparation) that may be disproportionate to what convictions achieve in terms of punishment and/or changing behaviours. Hunting continues to be prevalent. Fines for individual offences under section 1 of the Hunting Act 2004 have remained over an eight year period within the range of £200 to £850 with the exception being the Heythrop Hunt case where the hunt itself was fined £1,000 in respect of each of the four offences. The direct impact of prosecutions is therefore limited.

This assessment seems likely to remain valid even with what the RSPCA has learned from the hunting cases so far undertaken about the value of stronger and more focused cases built up in a more cost effective way. Having said that, the

LACS point towards some indicators that hunts are finding it more difficult to operate – meets are no longer advertised and tend to occur away from public places. If the RSPCA trustees concur with the above assessment they may wish to consider an approach that draws on the RSPCA skills as a campaigning organisation to:

1. Put pressure on the police and CPS to ensure that the investigation and prosecution of breaches of the Hunting Act 2004 is more effective. This might include lobbying of Police and Crime Commissioners to raise the priority of illegal hunting. One approach could be to utilise RSPCA investigative experience to filter material derived from monitoring and present it to the police for full investigation of those cases that have real potential. There is evidence to such that cases which reach the police in a better prepared state are more likely to be taken forward.

2. Campaign for changes to the law that would make proper enforcement possible without disproportionate cost. This would necessarily be a longer term objective. It is clear from the disinclination of the present Government to proceed with the free vote on hunting legislation provided for in its last election manifesto that it would not support such a proposal.

Whilst the RSPCA would not generally be involved in such cases, it would always be open to the Society to step in with a private prosecution in the event of further failures by the public authorities to act. That was what in effect happened in the Heythrop case and is the traditional justification for the right to bring private prosecutions.

Finally, the Reviewer received a thoughtful proposal from within the RSPCA Inspectorate suggesting that a more collaborative approach might be tried with the hunting community. The essential ingredient would be a dialogue (possibly through the Master of Foxhounds Association) that would encourage hunts acting lawfully towards openness and transparency that could draw away the unwelcome attention they might otherwise receive. Such a constructive approach is commended, it is worth further consideration but would be unlikely to prove effective with those organisations determined to continue traditional as opposed to trail hunting.

9.11 ***Recommendation***

1. *The RSPCA Council of Trustees needs to develop a policy on how far it will accept referrals relating to alleged hunting offences rather than direct individuals to the relevant police force.*

10 Management and governance

10.1 *Introduction*

Sound governance for prosecution functions within the public sector requires a careful balance between on the one hand independence in individual decision-making and prosecution policy making and, on the other hand, proper accountability. That accountability must be sufficiently sophisticated to resist the pressures of interest groups and the fickleness of public opinion/media whilst sensitive and responsive to public underlying concerns.

The review would suggest that the scale of the RSPCA prosecution activity requires a similar approach. However the position is complicated by the Society's charitable status and the additional considerations which flow from it.

The current arrangements do respect the independence of the Prosecutions Department as regards decision-making in particular cases. A budget for the Prosecutions Department is set by the Council annually and, in line with most organisations, the Prosecutions Department has found constraints in recent years. The RSPCA Council receives reports advising on on-going high cost cases to aid their monitoring and supervision of the Prosecutions Department's work.

The balance is a delicate one. The RSPCA Council, as Trustees of the Society, has legal responsibilities for the overall activities of the Society and the manner in which it deploys its resources. The manifestation of these responsibilities seems for present purposes to fall under four broad headings:

- Ensuring that there is charitable benefit flowing from all the Society's activities, including prosecutions.
- That its activities are affordable.
- That its activities work to enhance and not diminish the reputation of the Society.
- That its activities support its wider external relationships, including Government.

In addition there is a legitimate view that the Council can make a proper contribution to the development of the public interest aspect of prosecution policies – albeit with final responsibility resting with the Prosecutions Department.

The arrangements for achieving this are at present limited. The position was noted in the Crabb Report which contained in recommendation (4) that there should be a prosecution policy committee comprising a small group of Council members (possibly two together with a co-opted member) who would meet senior officials of the Society from time to time together with the Chief Legal Officer and the Chief Prosecuting Solicitor to provide guidance. A memorandum dated October 1993 from the then Director General of the RSPCA[36] established a Prosecutions Review

[36] Major General Peter Davies.

Committee comprising senior officials (but no members of Council) to provide oversight for cases of particular novelty, sensitivity, policy significance or likely to have a high profile. That arrangement no longer operates.

The thrust of this report has been that the RSPCA prosecution activity should be measured by the standards applicable to public prosecuting authorities including as to accountability; and that the Society should seek to formalise the basis on which it discharges its function. That points also to more structured arrangements for internal accountability. This might be achieved by a variant of the proposal contained in the Crabb Report which the Reviewer believes to have been focused too much on individual cases.

Consideration should therefore be given to arrangements for oversight of the Prosecutions Department based on a group which might be known as the Prosecutions Oversight Group which could be chaired by the Chief Legal Officer and comprise the Head of Prosecutions Department, two members of the RSPCA Council, two external members with relevant professional experience (possibly one lawyer and one veterinary surgeon) together with the Chief Inspectorate Officer. The full terms of reference would require detailed consideration.

Broadly speaking, the review envisages quarterly meetings based on a report by the Head of Prosecutions. This would include information about performance together with commentary on underlying trends and emerging issues. In addition to case work performance, the group would monitor expenditure against budget. Other functions of the group would be to ensure the development of appropriate prosecution policies and comment on them – with a particular reference to the public interest aspect of decision-making. The Head of Prosecutions' report should flag up those cases which, because of the anticipated expenditure, their novelty or high profile might impact on the responsibilities of the RSPCA Council. It would be proper but exceptional, for the Head of Prosecutions to seek views about the public interest dimension of a particular case. But this would be appropriate so long as the final decision rested with the Head of Prosecutions. Prosecutors do not have a monopoly on wisdom as far as public interest considerations are concerned.

The overall nature of the arrangement would be aimed at strengthening the current accountability in line with proposals elsewhere in the report. The process could be more thorough than would be feasible within a body as large as the RSPCA Council. The Council members on the Prosecution Oversight Group would simply report back periodically. The review believes that such an arrangement would enable a more effective discharge by the trustees of their responsibilities. To take account of the relationship between public interest and charitable benefit, it is possible to envisage a situation either in relation to a particular case or category of casework where the evidential and public interest tests were fully met but the Prosecution Oversight Group (or exceptionally Council itself) might conclude that it could not be justified on charitable benefit grounds. This might be because it was deemed more appropriate for the burden to fall on public funds rather than charitable funds which could be used to better effect.

The report contains recommendations elsewhere for the strengthening of oversight and accountability within the Prosecutions Department. The proposals set out above would require the RSPCA to review the management information collected in relation to prosecutions. It focuses at present on prosecution outcomes and that is fundamentally right. That should be supplemented by management information relating to the reasons for withdrawal/discontinuance of cases; timeliness of the

different stages of cases; and the costs of cases. Chapter 6 of this report sets out the difficulties of establishing a suitable benchmark given the quite specialist nature of the RSPCA's work and the review does not suggest the setting of targets. The value of the management information suggested is to enable trends to be monitored and changes investigated.

10.2 *Complaint handling*

The need for an effective complaints procedure is discussed earlier in this report in relation to the Inspectorate where it is of greatest relevance. It is not however confined to the Inspectorate and work to develop an effective regime for investigating and responding to complaint should aim to produce a system that can be adopted universally across the Society.

10.3 *Communication*

The RSPCA Council of Trustees would be right to infer from this report that there are many issues on which the RSPCA has a need to listen more closely to feedback about its approach and performance. It should require its communications department to review its strategy so as to put more emphasis on this. Publicity is very important for the RSPCA as a whole. The organisation is reliant on donations to carry out all its functions and cannot hide this. The work of the Prosecutions Department is valuable to the Society in this respect because it maintains its profile and some of the prosecutions are useful in reinforcing important messages to the public. It is therefore wholly appropriate that there should be a strong interaction between the Prosecutions Department and the Communication Division of the RSPCA on matters which reflect genuine public interest.

Equally, great care is needed on the part of prosecutors when dealing with matters of publicity. It has a purpose but, whether seeking to deliver particular messages or responding to enquiries, it is important that the tone remains consistent with the professional impartiality and objectivity expected of prosecutors. It is important that prosecutors should not appear triumphalist or unduly judgmental. Care is necessary that acquittals are not called into question. The review noted some press releases that seemed unduly emotive. This is a particularly difficult area in which to strike the right balance; but it is vital to do so, especially at the present time when the Society has no shortage of critics.

Some press statements relating to enforcement work have reflected some of the RSPCA's campaigning interests. It is unfortunate that from time to time press releases relating to prosecutions have been issued carrying what are routine logos/flyers soliciting donations. This would not have the approval of the Prosecutions Department. Even though unintended, the wrong impression can be created.

The tone of some of the press handling by the RSPCA and subsequent correspondence following the Heythrop Hunt case was unfortunate. They emanated from outside of the Prosecutions Department and could have been calculated to fuel the political climate which had developed around the case. That could only make the future task of the Prosecutions Department more difficult. Matters coming to the attention of the Reviewer included the drafting of a press release to follow the tendering of the guilty pleas which was couched in highly emotive language that had nothing to do with the proceedings and concluded:

> "The vast majority of people love animals and respect the law. They can help the RSPCA and protect our wildlife and bring criminals to justice by donating to the RSPCA Legal Fighting Fund (to help us bring those who abuse animals to justice): to give £3 now text …."

A supporter of the RSPCA who contacted the review drew attention to the uncompromising terms of a letter he had received from the RSPCA in response to his indication that, following the Heythrop Hunt case, he had cancelled his direct debit. In it the RSPCA wrote:

> "Improving animal welfare through education, campaigning and enforcing the law, is as relevant today as it was in 1824 when the RSPCA was created. You cannot put a price on justice and the overwhelming majority of people in this country are opposed to hunting – it is time for those who still take part in this illegal activity to stop".

It continued:

> "Preventing cruelty and helping animals most in need remain the RSPCA's absolute priorities".

The respondee commented:

> "The response that the RSPCA were on a mission to stamp out illegality and punish law breakers is not the same. As a charity I think they should have taken into account the net happiness of animals/value for money. Closing down illegal operations at huge cost may provide a sense of satisfaction for some but I feel differently. The phrase "you cannot put a price on justice" (para 2) is both emotive and uncritical; lack of resources create new forms of injustice. Therefore resources have to be managed in an objective way and should be conserved".

Every contact with an organisation leaves a trace. It is therefore important that the RSPCA should not send out messages that suggest a culture of uncompromising zeal that is incompatible with its role as a prosecutor. It is not the reality but such tone almost invites that perception.

10.4 ***Recommendations***

1 *Consideration be given to the establishment of a Prosecution Oversight Group along the lines set out in the body of this chapter*

2 *The Society needs to place more emphasis on external communications. Its communications strategy should be reviewed to increase its emphasis on capturing and responding to feedback.*

3 *The Society should reflect a more measured approach on press releases relating to prosecution*

4 *The Society should ensure that the review of complaints handling relating to the Inspectorate develops proposals which can be applied across the organisation.*

11 Conclusions

It would be easy to allow the unsatisfactory aspects of these findings about the RSPCA's investigation and prosecution activity to block the positive – which is also present in good measure. The RSPCA has carried on prosecutions to great effect for over 190 years. Despite the stinging criticisms of a protracted media campaign, it retains extensive public support. The reality is that society depends on the RSPCA to enforce a difficult aspect of the law. Even so, the current structures are outmoded. The RSPCA can no longer expect to operate as a specialist police force with an associated prosecution function without appropriate arrangements for accountability and transparency.

The RSPCA role in enforcement of animal welfare law needs to become part of a more coherent framework working rather more in partnership with the public authorities. It needs its role to be recognised and to be given the appropriate powers. Part of the accountability will be a more consultative approach with the public so that its policies and procedures are more attuned to the public on whose support it depends. It will also need to tailor its prosecution role to avoid any perception that the Society's other roles introduce inappropriate and extraneous factors into its decision-making and the conduct of cases. It must be more responsive to the feedback it receives and resist any inclination to dismiss criticism out of hand as unfounded.

The review cannot stress too strongly the crucial role that Government has in this. The RSPCA needs its support in discharging what is to all intents and purposes a public function. The fact that enforcement of animal welfare law is split between so many agencies is itself a reason for more structured and better co-ordinated arrangements so that all have a broadly similar approach and standards – allowing also for the undoubted differences that do also exist.

All this represents a substantial challenge but one that is well within the ability of an organisation that has achieved so much since its inception. The body of this report and its recommendations are intended to signpost the way forward.

Recommendations are to be found at the end of the chapters that they refer to and a summary of recommendations is provided at the end of the Executive Summary.

ANNEXES

1. Amplification of the methodology adopted

This note provides additional information about the main stages of the review by reference to the stages described at Chapter 1.3 of the report.

1. Initial research and gathering background information:

This phase involved the Reviewer in legal and other research to develop in-depth knowledge of specialist animal welfare law and familiarity with the culture and working processes of both the Prosecutions Department and the Inspectorate insofar as the latter is relevant to the prosecution process. It included review of evidence taken by the Environment, Food and Rural Affairs committee of the House of Commons during the pre-legislative stage of the Animal Welfare Bill and its passage through Parliament; identifying relevant interest groups; and assessing the distribution of responsibilities relating to animal welfare across the public and non-governmental sectors with particular reference to enforcement. Suitable comparators were identified where possible. This phase also included a logistical dimension such as the development of questionnaires and the establishment of the necessary infrastructure for communication and the public consultation exercise.

2. Evidence form external stakeholders:

This was gathered through a combination of face-to-face interviews, telephone conversations, written representations and questionnaires.

Meetings were held with officials from the government departments with relevant responsibilities. These included the Department for the Environment, Food and Rural Affairs which has overall responsibility for animal welfare issues and the Attorney General's Office which has a general accountability to Parliament for prosecutions in England and Wales. It was important to establish the stance of each although positive contributions from central government were somewhat limited.

Input was received from members of the judiciary and members of the legal and veterinary professions. The former included solicitors and barristers who have prosecuted on behalf of the RSPCA as well as defence practitioners. The latter included vets who have worked for both the RSPCA and been instructed on behalf of defendants.

In order to obtain an assessment of the work of the Prosecutions Department, the review identified the 10 firms that handled the greatest number of RSPCA cases in 2013 and meetings were held with the relevant partner. The next ten firms were asked to complete questionnaires.

Representatives of the Crown Prosecution Service and other smaller prosecutor provided information about their operations – in particular the separation of prosecution and investigation and the safeguards to ensure the integrity of decision-making.

At the operational level, discussions were held with the police service (ACPO and the Head of the National Wildlife Crime Unit) and representatives of local government. Meetings with representatives of the Scottish Society for the Prevention of Cruelty to Animals and the Royal Society for the Protection of Birds also provided valuable comparisons.

3. A public consultation exercise:

It was important to afford the many interest groups and individuals associated with animal welfare an opportunity to contribute to the review and in particular to describe their experiences. They are a very diverse group.

A webpage was established that enabled individuals to complete a questionnaire covering their views as to the appropriate roles for the RSPCA in investigation and prosecution and comment on their performance. An additional e-mail address enabled interested parties to send comments and submissions. A total of 290 responses were received through these channels in addition to a number of written submissions and other representations on behalf of interested organisations and some members of Parliament. A few were followed up with individual meetings and telephone calls.

4. Examination of case files and management information:

The Prosecutions Department received 2,093 cases in 2012 and this resulted in 1585 individuals being prosecuted and 525 cautioned. No action was taken in relation to 974 individuals. This was the latest data available at the commencement of the review. The review initially proposed to examine 100 cases representing approximately 5% of the caseload. This would have been a relatively large file sample and constructed so as to provide a representative sample by reference to:

- each category of potential offence;
- a proportionate mix of decisions to prosecute; caution; and take no further action;
- a proportionate mix of contested and guilty plea cases;
- criticisms made of individual cases.

In the event, a total of 78 files were read comprising 62 selected in accordance with the criteria set out above and a further 16 that were called for by the Reviewer in response to matters drawn to his attention. The decision to reduce the file sample was taken when the Reviewer concluded that a consistent pattern was emerging and reading additional files would not add to what had been learned.

5. Identification of key issues:

A note was prepared for the benefit of the Reviewer in order to shape the approach to discussions with RSPCA managers and staff and focus discussions.

6. Interviews with RSPCA managers and staff to explore the issues identified during phases 2, 3 and 4:

All staff of the Prosecutions Department were afforded the opportunity to contribute through a series of individual or group meetings. Any individual who did not feel comfortable with a group meeting was able to opt for a private meeting.

The Reviewer held meetings with:

- the Chief Legal Officer, the Chief Inspectorate Officer and the Chief Veterinary Officer;
- other senior managers in the RSPCA including managers within the Inspectorate;
- members of the Council.

By the relevant stage of the review, the positions of Chief Executive and Deputy Chief Executive were both vacant.

7. Development and discussion of emerging findings:

In accordance with usual practice in a review of this nature, managers were provided with details of the emerging findings as a basis for discussion and comment.

8. Drafting of report and discussion:

This report has been finalised following discussion of the draft report with chief officers of the RSPCA. Their comments were taken into consideration and, where they were accepted, the report now reflects that.

2. List of those individuals who assisted the review of the prosecution activity of the RSPCA

Evidence and assistance was received from the following members and staff of the RSPCA.

Richard Ryder (RSPCA Trustee)
Christina Tomlinson (RSPCA Trustee)
Ray Ings (RSPCA Trustee)
Chris Laurence (RSPCA Trustee)
District Judge David Thomas (in his capacity as a former Trustee)
John Bryant (former Trustee)

Ray Goodfellow (Chief Legal Officer)
Michael Flower (Acting Head of Prosecutions)
Terry Stroud (Senior Prosecution Case Manager)
Phil Wilson (Senior Prosecution Case Manager)
Andy Shipp (Senior Prosecution Case Manager)
Hamish Rogers (Prosecution Case Manager)
Dave Long (Prosecution Case Manager)
Jason Fletcher (Senior Prosecution Case Manager)

Sally Case (Former Head of Prosecutions)
Rachel Newman (Former Head of Prosecutions and now Deputy Chief Executive of the League Against Cruel Sports)

Sue Collin (Manager: Costs Recovery and Data Team)
Fiona Squires (Costs Recovery Officer)
Leyla Edwards (Costs Recovery Officer)
Sue Grogan (Data Officer)

Kevin Degenhard (Chief Inspectorate Officer)
James Yeates (Chief Veterinary Officer)
Dermot Murphy (Staff Officer: Inspectorate Department)
Richard Seddon (Learning and Development)
Barry Fryer (Chief Superintendent: Special Operations Unit)
Mark Martin (Intelligence Manager: Special Operations Unit)

Mike McCahon (Inspectorate Services)
Fiona Gerhard (Inspectorate Services)

David Bowles (Head of External Relations)
David Cowdrey (Head of Communications)

In addition, the following either made themselves available for meetings, telephone discussion or submitted written comments:

Governmental and public bodies:

Susan Ellis (DEFRA)
Christopher Burke (DEFRA)

Kenneth Dibble (Chief Legal Adviser: Charity Commission)
Peter Clarke (Charity Commission)

John Turvill (Attorney General's Office)
Kevin McGinty (Attorney General's Office)

Alison Saunders CB QC (Director of Public Prosecutions)
Jim Brisbane (Chief Operating Officer: CPS)
Simon Clements (CPS)
Barry Hughes (Chief Crown Prosecutor: CPS South West)
Arsha Gosine (CPS)
Keith Milburn (CPS)

Sara Shaw (Head of Wildlife and Environmental Crime Unit, Crown Office, Edinburgh)

Deputy Chief Constable Gareth Pritchard (ACPO)
PC Keith Evans (ACPO adviser)
Nevin Hunter (Head of UK National Wildlife Crime Unit)
Jon Palfrey (Retired Wildlife Crime Officer)

Mark Bowering (Department for Business, Innovation and Skills)

Peter McNaught (Health and Safety Executive)
Katherine Cooper (Health and Safety Executive)

Stephanie Young (on behalf of the Local Government Association).
Mark Berry (on behalf of the Local Government Association).
Robert Jervis-Gibbons (on behalf of the Local Government Association)

Solicitors prosecuting on behalf of the RSPCA:

Andrew Wiles (Chancellors Lea Brewer of Bexleyheath)
Paul Brown (Freeman Brown of Selby)
Kevin Campbell (Freeman Johnson of Durham)
David Nichols (Harris Cuffaro & Nichols of Old Harlow)
Kevin McCole (Headleys of Lutterworth)
Janita Patel (JP Law of Bedford)
Andrew Davidson (Lupton Fawcett Denison Till of Leeds)
Denise Jackman (McKeags of Gosforth)
Judith Curry (McKeags of Gosforth)
Nicholas Sutton (Nicholas Sutton Solicitors of Birmingham)
John Ellwood (Tilly Bailey & Irvine of Hartlepool)

Twenty other prosecuting solicitors completed questionnaires at the request of the review.

Members of the judiciary and other legal practitioners:

Lord Thomas of Cwmgiedd (Lord Chief Justice)
H. H. Judge Nicholas Hillyard QC (Common Serjeant of London)

Richard Atkins (Knights, Solicitors of Tunbridge Wells)
Jeremy Cave (Counsel)
Jamie Foster (Clarke Willmott, Solicitors of Taunton)
Timothy Hayden (Clarke Willmott, Solicitors of Taunton)
Sara George (a barrister now with Stephenson Harwood, London)
Peter Glenser (Counsel)
Sara-Lise Howe (Counsel)
Jonathan Rich (Counsel)
Timothy Ryan (Warners, Solicitors of Tonbridge)
Noel Sweeney (Counsel)

Veterinary profession**:**

Dr David Martin
Dr Colin Vogel

Other organisations:

Sir Barney White-Spunner (Countryside Alliance)
Tim Bonner (Countryside Alliance)
Peter O'Rourke (Federation Against Copyright Theft)
Dr Mike Clarke (Royal Society for the Protection of Birds)
Bob Elliot (Royal Society for the Protection of Birds)
Darren Moorcroft (Royal Society for the Protection of Birds)
Chris Boyce (British Bird Council)
Anne Kasica (Self-Help Group for Farmers, Pet Owners and Others Experiencing Difficulties with the RSPCA (SHG)).
Ernest Vine (SHG)
Stuart Earley (Scottish Society for the Prevention of Cruelty to Animals)
Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)

Individuals, MPS and academics:

Professor Mike Radford (University of Aberdeen)
Dr Fiona Cooke (University of Aberdeen)
Mr William Pumfrey
Simon Hart MP
Shailesh Vara MP
Jim Shannon MP

In addition, many submissions were received by way of response to the public consultation. Such responses have been treated as confidential unless the individual or organisation has specifically indicated otherwise.

3. Extracts from 2004/5 Parliamentary proceedings advanced as the basis on an undertaking

Section 6.3.3 of the report draws attention to contentions made by defence practitioners that the RSPCA is bound by an undertaking to Parliament that limits the circumstances in which proceedings may be brought under section 9 of the Animal Welfare Act 2006. This note identifies the material that appears to be relied upon in support of that contention; and the context in which it was generated. The review concluded that the statements made are too remote from the legislation eventually enacted to constitute a binding undertaking. They also lack the formality and certainty to be expected in a formal undertaking. It also comments that it would be to the advantage of all concerned for the RSPCA to have a clearly stated and published position on the point.

The context of the statements made by the RSPCA was the pre-legislative scrutiny given by the EFRA Select committee to a draft Animal Welfare Bill placed before the Committee in 2004. The Committee took written and oral evidence from many sources before producing a report. DERA, who sponsored the legislation, then produced a response and their Minister introduced a revised bill into Parliament. The revised bill then went through the ordinary legislative process.

The original draft bill introduced (as clause 3) what is now in substance section 9 of the Animal Welfare Act 2006 – a preventive provision that places an obligation upon keepers of animals to ensure their welfare. The absence of any supplementary provisions and concerns expressed that the new offence significantly lowered the threshold of criminality, caused the RSPCA to propose two safeguards in relation to the new offence. The **written memorandum from the RSPCA dated 24 August 2004** (Evidence to EFRA Committee page 13) described at paragraph 19 the high rate of compliance in relation to advice given by RSPCA inspectors and went on to state at paragraph 20:

> "In order to ensure that the offence is relied on by the RSPCA only where appropriate, we intend to abide by two important safeguards and we recommend that they be incorporated into s3. First, we will not prosecute anyone under s3 unless they have first been advised in writing of how they have failed to meet their animal's welfare needs and been given a reasonable period in which to remedy their failure. Only if they ignore the advice and persist in failing to ensure the animal's welfare would we prosecute them.
>
> Second, we will not prosecute anyone under s3 unless we have first obtained the evidence of a veterinarian or other appropriate expert to the effect that the animal in question's welfare needs are not being met. We understand that the government intends to create a national database listing individuals who are experts in the care of particular species and we anticipate that they, as well as vets, would be appropriate experts."

In their oral evidence on **7 September 2004, Ms Jackie Ballard, Dr Arthur Lindley and Mr Michael Flower stated on behalf of the RSPCA** (Evidence page 25):

> "We have also emphasised in our submission the need to introduce two safeguards and I hope this will go some way to convincing the Committee that the RSPCA is specifically not looking for new powers and we actually do want to safeguard the public more than is already on the face of the Bill. We want to put two new safeguards into the welfare offence so that it is seen to be fair and the public know

what is expected of them. The first is that no prosecution should be brought unless the animal keeper has first been told which of the five principles in clause 3(4) he/she has breached, in what way the breach can be remedied and how quickly. We believe this information should be given in writing. Secondly, we believe that no prosecution should be brought under the welfare offence without veterinary evidence that the animal's welfare needs have not been met."

Michael Flower (Evidence page 27 Q57) confirmed the RSPCA approach would be preventive:

"What we hope is that the welfare offence will create a regime of prevention rather than prosecution. We do not believe that the police are going to be called in on a frequent basis to exercise powers under the Bill."

The RSPCA submitted a **further memorandum dated 11 October 2004** (Evidence page 33) which stated at paragraph 7 and 8:

"7. Prosecution under the welfare offence would theoretically be able to occur without warning. However, the RSPCA has made it clear that we will prosecute only under two conditions:

- that the person has first been advised that they have failed to meet the animal's needs; and
- that a veterinary surgeon or other appropriate expert has given evidence that the welfare of the animal is not being met.

8. We believe that these safeguards will assist the courts in their assessment. We are happy to reiterate to the EFRA Committee our commitment to those two conditions."

The issue was the subject of further oral evidence from the RSPCA (Michael Flower and David Bowles) on 14 October 2004 as follows:

David Bowles (Evidence 363 at Q932):

"We have said that we think there will probably be an extra 100 or so prosecutions to begin with because as the duty of care welfare offence comes into effect that will increase, but in the long term what we should see happen is that the number of cruelty case prosecutions declines because the duty of care will be a precautionary approach, and we should see through the duty of care a more educational outlook being enforced by this legislation, so people should understand what they are doing before they get a pet animal and that should improve the conditions they are kept in."

Michael Flower (Evidence 365 at Q941):

"In terms of role and inspection, no. I do not believe it does because as I have mentioned we already receive a huge number of complaints each year, and it transpires that a very small percentage of those complaints result in an offence of cruelty being detected; so it therefore follows that in the remainder there may be a welfare or a perceived welfare issue as far as the complainant is concerned, and that gives our inspectors the ability to address an animal's welfare needs by way of advice and education which is how we achieve the majority of our direct animal welfare work at the moment. The significance of Clause 3 is that the advice and instructions an inspector may be able to give to an owner will now be backed up by, if you like, the threat of sanctions. Rather than our inspectors just acting in an advisory way hoping that someone will follow that advice, there will be a positive incentive for someone to do so to avoid falling foul of the law."

The Minister for Nature, Conservation and Fisheries at DEFRA (Mr Bradshaw) gave oral evidence to the EFRA Committee on 27 October 2004 and stated the government view that it should not be compulsory for any of those enforcing the welfare offence to always serve an improvement notice before prosecuting since in some circumstances that would not be appropriate.

The RSPCA submitted **a further supplementary memorandum dated 4 November 2004 (Evidence P369**) referring specifically to the Minister's evidence and sought to clarify the RSPCA position. It said (inter alia):

> "As we have already explained, we already operate a welfare assessment scheme whereby if our inspectors believe that an animal's welfare needs are not being met, but the failure falls short of cruelty (for which we would prosecute), they leave the animal owner a written form explaining what the problem is. We should emphasise that we do not serve these notices in relation to the existing cruelty offence and that would not change if the Animal Welfare Bill becomes law. The notices are only used in poor welfare conditions.
>
> Since we intend to continue serving these notices if the Animal Welfare Bill introduces a new welfare offence, we recommended to the Committee that it might be a useful safeguard if the service of such a notice was made a prerequisite to the bringing of a prosecution for the new welfare offence."

The memorandum then refers to the Minister's evidence and in particular the suggestion of a regime analogous to the Welfare of Farmed Animals (England) Regulations 2000 which created a discretion (on the part of the State Veterinary Service, as it then was) to issue improvement notices: the key difference was that failure to comply was of itself an offence. The RSPCA memorandum continued:

> "In our view this gives too much power to the enforcer who, in effect, drafts the wording of the offence. We believe that the commission of the welfare offence should depend on the wording of the Bill as interpreted by the courts, and not the wording of an improvement notice drafted by an RSPCA, local authority or DEFRA inspector. In addition, we believe this provision would lead to satellite litigation to determine whether improvement notices had been properly drafted and properly served and this would unnecessarily complicate an area of the law which ought to be simple."

The Animal Welfare Bill:

In the event, the draft Bill evolved further before being formally introduced as a Bill and during the course of the legislative process was amended further.

The Bill did incorporate the welfare offence. It also contained additional provisions conferring on those appointed as inspectors under its provisions discretionary powers to serve improvement notices as an incentive mechanism to owners who were deemed not to be meeting their animal's welfare needs.

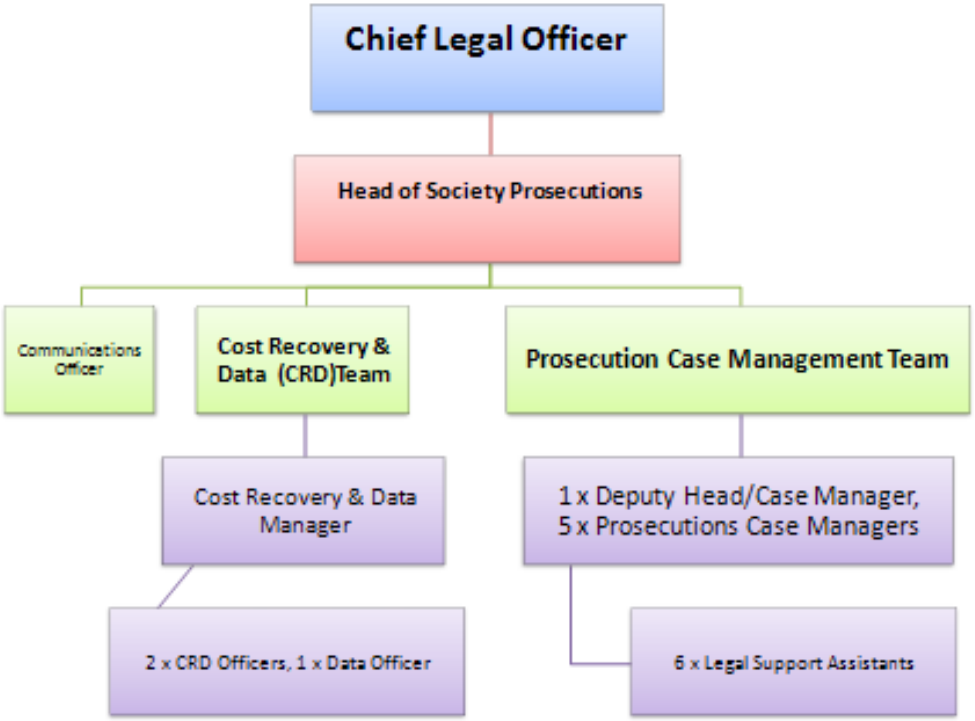
The EFRA Committee considered the Bill and took evidence leading to its further report in the 2005–2006 Session (HC683). A written memorandum from the RSPCA (Evidence 65) reaffirmed the value of the preventive scheme and confirmed that it believed the need for prosecutions would reduce if it was backed by the potential for legal proceedings.

The Animal Welfare Act 2006:
The welfare offence became section 9 of the 2006 Act. The legislation fell short of making an improvement notice compulsory but did act as a bar to proceedings in those circumstances where a notice had been served and complied with. Importantly, the ability to serve improvement notices was restricted by the legislation to inspectors appointed under the 2006 Act – not RSPCA inspectors.

RSPCA position:
The RSPCA told the review that it must have full regard to the government's view and the law as it stands. It is the RSPCA position that in the vast majority of cases non-statutory warning notices are issued prior to prosecution where proceedings relate only to welfare offences; the RSPCA would depart from that in exceptional circumstances.

The RSPCA position as regards veterinary evidence has been mainly to rely on veterinary evidence although during the period of post-legislative assessment in 2010 the RSPCA reported to DEFRA that, although all section 9 cases in the first two years had been based on expert evidence, the Society did not believe that would always be necessary in future.

4. Organisation chart of the Prosecutions Department



5. Key provisions of Hunting Act 2004

Section 1 of the Hunting Act 2004 provides:

"A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt".

By virtue of section 4 of the Act, it is a defence for a person charged under section 1 to show that he reasonably believed that the hunting was exempt. The terms of the exemption are set out in Schedule 1 to the Act. The only exemption relevant for present purposes is the stalking or flushing of a wild mammal which would otherwise cause serious damage to livestock. It only applies where it is carried out by a landowner or person with his authority using no more than two dogs (which must not be below ground) with steps being taken to ensure that the wild mammal is shot dead by a competent person at the earliest possible moment. The exemption is intended to provide a lawful means of pest control for farmers and other landowners.

Section 6 prescribed a penalty on summary conviction of a fine not exceeding level 5 on the Standard Scale – at present £5,000.

6. Details of RSPCA hunt prosecutions other than the Heythrop case

1. The Seavington Hunt: the Hunt was the subject of monitoring by the International Fund for Animal Welfare (IFAW) when it met at Ashcombe Barn in January 2013. The defendant was a huntsman whose role was to control the hunt and hounds. The direct evidence of observers together with video footage tracked his actions as the pack was guided toward the scent of a fox that had bolted. Following this pursuit, the hounds were seen to mark an area around a bank and the defendant was observed telephoning for terrier-men who arrived shortly afterwards and began digging out the bank – although the fox was not found. The Huntsman pleaded guilty and was fined £500 with a further £500 prosecution costs. The abundance of direct evidence and the tight focus of the case were key factors in the successful outcome.

2. Avonvale Hunt: the RSPCA instituted proceedings against four members of the Avonvale Hunt for contraventions of the Protection of Badgers Act 1992 by interfering with a badger sett. Hunt monitors were not involved. Local residents had observed the hunt in the vicinity of the badger sett and noted that attempts were being made to dig it out. Charges were also preferred against the four huntsmen and a master for hunting a fox in contravention of the 2004 Act. The basis of that charge was not wholly clear from a reading of the papers but appeared to rest on an inference that the hounds had followed a scent before marking the ground. That assessment was over optimistic and the proceedings should have been confined to the badger sett offences which attracted guilty pleas by the principal offenders. The Hunting Act charges were withdrawn. However, it is fair to record that a request by the defence that the CPS intervened under Section 6 of the Prosecution of Offences Act 1985 was declined (see Checks and balances section 6.4).

3. The Ledbury Hunt: the RSPCA commenced proceedings against a member of the Ledbury Hunt following observations undertaken by staff of the LACS. The decision appears to have been taken after the footage was considered by an expert who identified a fox apparently in flight and the monitor witness confirmed an ability to identify a huntsman. However, the prosecuting solicitor instructed by the RSPCA raised doubts about the adequacy of the evidence. When those doubts persisted, counsel was instructed and advised that the quality of the footage and the identification did not afford a realistic prospect of conviction, the case was withdrawn.

---End---



The RSPCA's response to the Wooler review of its prosecution activity

September 2014

1. Introduction

1. The RSPCA is the principal prosecutor of animal cruelty legislation in England and Wales partially for historical reasons, as the Society was established nearly a decade before the first police force. This has led to misconceptions amongst the public, legislators and indeed other enforcement agencies about the role of the Society, its powers and even the uniform and ranking of its inspectors. In 2013, the RSPCA received 153,770 complaints of alleged cruelty from the public with approximately one percent being dealt with by prosecution. This represented 83 percent of all animal welfare prosecutions, the remainder being dealt with by the police, local authorities and the Animal Health and Veterinary Laboratories Agency (AHVLA). The vast majority of all prosecutions concerning companion animals were dealt with by the RSPCA.

2. The prosecution regime in England and Wales has changed considerably since the Society's formation; the position of Director Public Prosecutions was not established until 55 years after the RSPCA and the Crown Prosecution Service (CPS) only created 162 years after the RSPCA. The number of RSPCA prosecutions has declined from some 7,000 a year in the late 19th century to less than 1,550 in 2013. Although there was an increase in prosecutions on the back of the Animal Welfare Act 2006, which the Society anticipated, the number of prosecutions taken in 2013 was similar to those taken in 1989.

3. There has been an increasing public expectation that enforcement bodies will be transparent and accountable. The RSPCA recognises that requirement and the need to respond accordingly. The RSPCA is therefore committed to providing accountability and transparency in relation to its enforcement role that is reflective of that expectation and felt it both appropriate and timely to commission an authoritative and independent review of its prosecution activity. This comes in the background of critical comment by some members of the public and a sustained period of criticism from certain sectors of the media, which has been particularly prevalent since the RSPCA's successful prosecution of the Heythrop Hunt in December 2012. Despite that, the review makes it clear that the RSPCA maintains extensive public support.

4. This document provides the RSPCA's initial response to the review conducted independently by Stephen Wooler, the former Chief Inspector of HM Crown Prosecution Service Inspectorate. We thank Stephen Wooler for the breadth of his review, his insight and carefully thought-through conclusions, and his involvement of interested parties and public consultation in drawing the evidence together. The review gathered 290 responses of which 62 percent were supportive of the prosecutions work and 21 percent expressing concerns with it.

5. A fundamental finding of the review is that there is a lack of a defined Government strategy for the enforcement of animal welfare legislation in England and Wales, a situation that was not rectified by the introduction of the Animal Welfare Act 2006. This has resulted in some perceived differences of approach to enforcement from the statutory and non-statutory bodies.

6. The review both recognises and highlights the invaluable work that the Society undertakes, not only in making a huge contribution to animal welfare but also fulfilling a significant constitutional role. However, the RSPCA finds itself in a difficult position with the police and local authorities not having the personnel, budget or priority to focus on animal welfare. This results in those agencies being content to hand enforcement issues over to the RSPCA to deal with. The review states that without the RSPCA there would be little enforcement with regard to the welfare of companion animals. However, with this responsibility comes a recommendation that the Society now needs to become part of the wider criminal justice community. This would mean ensuring the Society has overarching policies and offence specific guidelines, as far as is possible, and is transparent and less defensive about its work, and has effective arrangements for dealing with complaints made about its inspectors and other staff.

7. The primary purpose of the review was to assess prosecution decisions (both positive and negative) and subsequent conduct of any proceedings so as to determine how far these accord with the standards of a reasonable, competent and objective prosecutor. It is important to stress the review concludes that the Prosecutions Department performs well in terms of its case outcomes; that the RSPCA enjoys good standing before the courts for the effective manner in which its cases are presented; that its staff are well motivated, conscientious and highly committed; that underlying RSPCA performance in terms of prosecution outcomes is at least as good as the CPS and probably three or four percentage points better; that there is no other body which could take on the RSPCA's current role which is too valuable to be lost and that the management of prosecutions conducted by the RSPCA is clearly more effective and thorough than found in most other prosecuting authorities including the CPS. With regard to the application of the Code for Crown Prosecutors, the file sample tested in the review showed that the assessment of the evidence was largely satisfactory. Whilst acknowledging that the application of the public interest test to animal welfare cases can often be difficult, the review considered the proportion of cases where consideration of the public interest test was flawed was too high and the review makes a number of observations that will help the RSPCA address this.

8. The review draws a number of conclusions and makes recommendations, as set out at the end of the relevant chapters (and at the end of the executive summary). The review's recommendations can be broadly defined as those that relate to internal changes – and so are within the RSPCA's control, and those which are dependent on the agreement of other agencies. Some of

these relate to the wider context of enforcement of animal welfare legislation in England and Wales where there is a fragmented division (described as "haphazard" in the review) of responsibility between public bodies and the RSPCA, a private charity, which has undertaken a voluntary role in enforcing this legislation over the last 190 years in furtherance of its charitable purposes.

9. In commissioning the review, the RSPCA has sought to identify how the RSPCA can carry out its investigative and prosecution functions even more efficiently and effectively, for the public benefit, in a manner consistent with 21st-century expectations for accountability and transparency. The review identifies a way forward for the RSPCA but notes that some key points will hinge on the Government's approach.

10. The review has considered representations received from those who suggest that the RSPCA should abandon its long-standing prosecution role altogether and that its inspectors should simply refer cases to the CPS. They point to the example of the SSPCA in Scotland (where cases are referred to the Crown Office and Procurator Fiscal Service) and other charities in England such as the NSPCC and RSPB which have already relinquished their traditional, but significantly more limited, prosecution function. The RSPCA does not consider these examples to be analogous and the review affirms the valuable role the RSPCA plays in "filling the gaping hole" in the enforcement of animal welfare legislation in England and Wales: it does not recommend the RSPCA abandoning its prosecution role, rather it is implicit that it should not and it is recommended that its enforcement role should become part of a more coherent regulatory framework.

11. The review suggests the RSPCA may need to re-align its prosecution role in some areas, having regard to the charity's wider work. For example, the review notes that the handling of animal sanctuary cases is intrinsically difficult and sensitive. The review considers that an effective licensing system for animal sanctuaries could reduce the need for interventions through the criminal law, and avoid the situation where one charity appears to regulate others, with the inevitable tensions that can give rise to.

12. The review provides an assessment of the RSPCA's involvement in hunting prosecutions and considers why these have proved problematic for reasons largely outside the RSPCA's control. The review comments that the evidence reviewed leaves no doubt that despite the introduction of the Hunting Act 2004, "traditional fox hunting remains 'business as usual' in many parts of the country", and comments that extensive flouting of the law risks bringing Parliament, the police and prosecuting authorities into disrepute. The RSPCA currently investigates complaints about alleged illegal fox hunting which are referred to it by hunt monitors and the review recommends that the RSPCA develops a policy on how far it will accept such referrals in the future rather than directing the complaints to the police. It also suggests the RSPCA considers an approach whereby it puts pressure on the police and CPS to

ensure that the investigation and prosecution of breaches of the Hunting Act 2004 is more effective, whilst also campaigning for changes in the law to make proper enforcement of this legislation less problematic.

13. The RSPCA has taken only a very small number of prosecutions against traditional 'red coat' hunts. The review considered these cases and provides an in-depth analysis of the high-profile prosecution against the Heythrop Hunt. The review concluded the prosecution was fully justified and was not politically motivated. The review also concluded the overall cost of the case was much too high but acknowledged that the resource intensive nature of the preparatory work had added significantly to these costs. The RSPCA accepts the criticism regarding the high costs of the Heythrop case and has already implemented lessons learned in subsequent hunting prosecutions which have been conducted at vastly reduced expense.

14. The RSPCA has no statutory powers to assist it in its enforcement activities and has to rely on others, notably the police, to exercise powers (eg powers of entry) in appropriate circumstances on its behalf. For years, the RSPCA has considered this process to be a safeguard, in view of its own status as a private body. The review looks at this situation from a different angle and suggests that a lack of powers (and resulting lack of accountability) may actually be responsible for much of the dissatisfaction that has been aired. The review suggests working with the Association of Chief Police Officers (ACPO) on developing further operational guidance to assist RSPCA inspectors and police constables. It also recommends that RSPCA inspectors become "Inspectors" as defined in the Animal Welfare Act and so able to exercise powers under the Act. We will discuss this recommendation with Government.

15. The review suggests a number of changes to strengthen the RSPCA's internal processes and governance of its prosecution function (such as a new oversight committee with some external professional representation). The review concludes that the RSPCA's role in enforcement of animal welfare law needs to become part of a more coherent framework working closer in partnership with the public authorities. These and other recommendations which concern the operation and management of the Prosecutions Department will require a detailed examination of the current business model, and evaluation of the suggested alternatives, before further decisions can be made. We will pay special attention to those areas where the review concludes that current practice should be modified or requires strengthening.

16. The review recommends an enhanced complaints procedure which should include an external element. The RSPCA accepts this and will review its current procedure with a view to determining how it can be improved.

17. The review recommends a more harmonised approach to the use of veterinary expertise and recommends discussion with the Royal College of Veterinary Surgeons (RCVS) to determine whether a common standard on

the approach to assessing suffering can be agreed. This suggestion will be taken forward with the RCVS and other expert bodies.

18. We recognise there is significant public interest in this review. We are therefore publishing Mr Wooler's complete report together with our initial response.

19. In section 2 below, we provide a summary of the initial actions we are taking in response to the review's 33 recommendations. We will report back in 18 months' time on progress in implementing the recommendations that have been accepted and we will explain our reasoning in any instances where we may decide to take a different approach. We have already established an internal steering committee to coordinate this work. In the immediate future, we plan to discuss the outcome of the review with our regulator, the Charity Commission, and with relevant parts of the Government and other statutory enforcement bodies.

20. FInally, we take this opportunity to record our own thanks and appreciation, alongside those of Mr Wooler, to all who have assisted and given evidence to this review and, in particular, to our own committed staff who work tirelessly in furtherance of animal welfare.

Michael Tomlinson, Chair
For and on behalf of the RSPCA Council

29 September 2014

2. RSPCA response to recommendations of the review

Overview of the RSPCA role: strengths, weaknesses and the need for change

1. *The RSPCA should open a dialogue with HM Government (DEFRA, the Ministry of Justice and the Attorney General's Office) seeking the development of a concordat placing the RSPCA's investigation and prosecutions activities on a formal basis. It should be based on the creation of arrangements for accountability and greater transparency and include the appointment of suitably experienced RSPCA inspectors as inspectors for the purposes of the Animal Welfare Act 2006.*

The RSPCA agrees its investigation and prosecution activities would benefit from formal recognition and we are opening a dialogue with Government on these matters.

The RSPCA's enforcement role (investigation)

2. *The RSPCA should work with ACPO to develop further operational guidance to assist constables and inspectors in circumstances where the latter seek assistance, particularly through the exercise of police powers, in relation to possible animal welfare offences.*

3. *In relation to animal sanctuaries, the RSPCA should press HM Government (DEFRA) for implementation of a scheme of licensing and regulation along the lines proposed by the Companion Animal Welfare Council.*

4. *In relation to animal sanctuaries, if such a regime is implemented, where intervention through the criminal law is necessary, the primary role should rest with the licensing or registration authority with RSPCA assistance as necessary. In the meantime the RSPCA might invite the CPS to consider such cases.*

5. *The RSPCA should review the complaints procedure applicable to the Inspectorate with a view to ensuring that complaints are thoroughly investigated at the earliest opportunity with substantive feedback and legitimate concerns being addressed. Where the complainant remains dissatisfied there should be escalation to a higher level including an external element.*

We agree further and more detailed operational guidance would be beneficial concerning the exercise of police powers when assisting RSPCA inspectors and we will be discussing the review's findings with ACPO.

We agree there is a case for the effective regulation of animal sanctuaries. This is a matter we will take up with Government. In the meantime, we acknowledge the sensitivity highlighted by the review and will discuss the recommendation with the CPS.

We accept the concerns expressed regard our complaints procedure and are considering what steps can be taken to improve the position.

How the RSPCA discharges its prosecution function

6. *In order to provide the degree of separation necessary to achieve confidence in the objectivity of decision-making and handling at all stages of cases, the Prosecutions Department should be established as a self-contained unit with its own discrete governance mechanism.*

7. *The appointment of the Head of Prosecutions should be undertaken by a panel comprising the Chief Legal Officer, an experienced criminal practitioner from independent practice, and an individual with senior management experience.*

8. *The RSPCA should adopt a policy statement outlining the manner in which the Code for Crown Prosecutors will be applied to animal welfare offences; and also develop a set of offence specific standards.*

9. *Prosecution decisions should be the responsibility of qualified barristers or solicitors.*

10. *A protocol should be developed as to matters which should be referred to the Head of Prosecutions for decision and advice.*

11. *Reasons for decision should be recorded on the file so as to indicate how the evidential and public interest tests of the Code for Crown Prosecutors have been applied in the particular case.*

12. *More information should be available to decision-makers to inform decisions relating to public interest.*

13. *Urgent steps are needed to reduce the time elapsing between the commission of offences and the receipt of a case file in the Prosecutions Department.*

14. *A system of early process based on abbreviated files should be developed and tested.*

15. *Certificates under Section 31(2)(a) of the Animal Welfare Act 2006 should be signed by the Head of Prosecutions.*

16. *When considering public interest (in particular the need for a banning order) the risk of re-offending should be more thoroughly assessed and weighed against any human factors militating against prosecution.*

17. *The RSPCA should develop more consistent arrangements for liaison in appropriate cases between Social Services and Youth Offending Teams. There should be a presumption in favour of seeking advice from the relevant Youth Offending Team before taking a decision to prosecute a youth offender.*

18. *An exercise (as described at section 6.5 [of the review]) should be undertaken to create charging guidelines.*

19. *The Reviewer recommends the following changes in relation to prosecution disclosure which should ensure compliance with both existing requirements and the changes arising from the recent Judicial Office report:*

    a. *The investigating inspector should prepare a list of unused material which excludes that which it is expected that the prosecution will rely upon; and keep that list updated throughout the proceedings to reflect additional material and other changes in circumstances.*

    b. *Certification as to the existence of disclosable material should be carried out on the basis of a review which occurs at the point where a not guilty plea is indicated.*

    c. *The prosecuting solicitor should be provided with a copy of the sensitive material or a description sufficient to enable him or her to discharge the duty of continuing review.*

20. *There should be a review of the business model to assess the case for greater use of in-house lawyers and develop a more structured approach to external fees.*

21. *Prosecution case managers should be vigilant to ensure a balance between constructive and supportive working with the Inspectorate and a degree of empathy that compromises objective consideration of the merits of challenge or adverse criticism.*

We are initiating a review of the Prosecutions Department's business model and internal management structure in order that recommendations 6–21 are given detailed consideration. The RSPCA's current refocusing of its work and organisational structure requires a coordinated response.

The gathering and presentation of veterinary evidence

22. *Inspectors should be formally instructed not to seek certification by a veterinary surgeon under Section 18 of the Animal Welfare Act 2006 unless the vet has examined the animal(s) in question.*

23. *The RSPCA should take the lead in inviting the Royal College of Veterinary Surgeons and other practitioners to develop a common standard or guidance on the approach to assessment of suffering.*

24. *The RSPCA should establish a panel of accredited veterinary practitioners (with known specialisms where practicable) to be drawn upon by inspectors requiring examination of case animals. Vets on the panel should be expected to work within a fee structure and to a service level agreed with the RSPCA.*

25. *The RSPCA should develop a policy as to the extent of its reliance on case vets as expert witnesses; and as to the circumstances in which further expert evidence should be sought. Where further such evidence is to be sought, instructions to veterinary surgeons should be case specific and developed by or in collaboration with the Prosecutions Department.*

26. *The Society's Chief Veterinary Officer should take the lead in providing advice and guidance to the Inspectorate and the Prosecutions Department in relation to the issues identified in this chapter [of the review].*

The RSPCA's Chief Veterinary Officer is opening discussions with the Royal College of Veterinary Surgeons and other expert bodies in relation to these issues. We are going to address the other recommendations in this section alongside the review of the RSPCA's business model for its prosecution activity.

Costs

27. *The review of the RSPCA Prosecutions Department business model recommended in Chapter 6 [of the review] should include consideration of the use of in-house lawyers and direct instruction of counsel.*

28. *The level of fees paid to external lawyers should be reviewed in the light of changes in the market and to achieve a more consistent approach.*

We are including these issues in the review of the Prosecutions Department business model.

The RSPCA involvement in hunting prosecutions

29. *RSPCA Council of Trustees needs to develop a policy on how far it will accept referrals relating to alleged hunting offences rather than direct individuals to the relevant police force.*

The RSPCA will discuss this recommendation with the ACPO and the CPS and, in the light of this, will develop a policy relating to its involvement in hunting prosecutions.

Management and governance

30. *Consideration be given to the establishment of a prosecution oversight group along the lines set out in the body of chapter 10 [of the review].*

31. *The Society needs to place more emphasis on external communications. Its communications strategy should be reviewed to increase its emphasis on capturing and responding to feedback.*

32. *The Society should reflect a more measured approach on press releases relating to prosecution.*

33. *The Society should ensure that the review of complaints handling relating to the Inspectorate develops proposals which can be applied across the organisation.*

We will discuss the review's recommendation for the establishment of an oversight group with the Charity Commission.

We will carry out a review of our communications strategy, and develop best practice guidelines for the press team when dealing with prosecution cases.

We accept the concerns expressed regarding our complaints procedure and are considering what steps can be taken to improve the position.

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THE REPORT ON COMPANION ANIMAL WELFARE ESTABLISHMENTS: SANCTUARIES, SHELTERS AND RE-HOMING CENTRES

Prepared by

THE COMPANION ANIMAL WELFARE COUNCIL

14 January 2004

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Page No.

CHAIRMAN'S FOREWORD 4

CONCLUSIONS AND PRINCIPAL RECOMMENDATIONS 6

SECTION A: 11

1. INTRODUCTION 11
   1.1 Companion Animal Welfare Council 11
   1.2 The Background to the Report 11
   1.3 The Purposes of the Report 12
   1.4 Scope of the Report 13
   1.5 The Council's Approach 13

2. COMPANION ANIMAL WELFARE ESTABLISHMENTS 14
   2.1 Companion Animal Welfare Establishments and Displaced Animals 14
   2.2 What Companion Animal Welfare Establishments Do 15
   2.3 The Characteristics of a Companion Animal Welfare Establishment 17

3. THE CARE OF DISPLACED ANIMALS 17
   3.1 The Appropriate Immediate Response to a Displaced Animal 17
   3.2 The Meaning of Long Term Care 19
   3.3 Euthanasia 19
   3.4 The Provision of Long Term Care 20

4. WILD ANIMALS 21

SECTION B: 23

5. INTRODUCTION (Animal Welfare) 23

6. THE NEEDS OF COMPANION ANIMALS 24
   6.1 Definition of Animal Needs 24
   6.2 Meeting Immediate Needs 25
   6.3 The Practicality of Standards and Their Application 26
   6.4 Assessment of Welfare 26
   6.5 Resource and Animal Based Indices 27
   6.6 An Assessment System 28

Page No.

7 HEALTH and DISEASE 30
7.1 Veterinary Health Plans 31
7.2 Nominated Veterinary Surgeon – designation and duties 31
7.3 Animal Welfare Officer – designation and duties 32

8 ESTABLISHMENT POLICY 32
8.1 General Policy 32
8.2 Animal Welfare Policy 33
8.3 Behaviour and Temperament Assessment 34
8.4 Re-Homing Policy 34
8.5 Euthanasia Policy 34
8.6 Veterinary Procedures Policy 35

SECTION C: 36

9 REGULATION 36
9.1 General Observations 36
9.2 The Purpose of Regulation 37
9.3 The Definition of a Companion Animal Welfare Establishment 39
9.4 Licensing of Companion Animal Welfare Establishments 42
9.5 Registration of Companion Animal Welfare Establishments Not Otherwise Required to be Licensed 43
9.6 Responding to Complaints and Concerns about Unregistered Premises 44
9.7 Support for Regulation Mechanisms 45

SECTION D: 46

10 OWNERSHIP OF DISPLACED ANIMALS 46

SECTION E 49

11 Appendix I - Membership of the Companion Animal Welfare Council 49
12 Appendix II - The Role and Constitution of the Companion Animal Welfare Council 50
13 Appendix III - Summary of the Results of the Call for Evidence 53
14 Appendix IV - Summary of the Oral Evidence 56
15 Appendix V – Acknowledgements 58

CHAIRMAN'S FOREWORD

The Companion Animal Welfare Council (CAWC) has pleasure in publishing its Report on Companion Animal Welfare Establishments: Sanctuaries, Shelters and Re-Homing Centres.

The Report deals with animal welfare in what are commonly known as sanctuaries, animal homes and re-homing centres, which vary from what are essentially domestic premises to large charitable institutions, and which take in and care for companion animals that are lost or abandoned. Furthermore, it deals with the issue of animal ownership when animals stray or become lost for whatever reason. These institutions, large or small, provide an essential social service, reuniting owners with lost pets, re-homing unwanted animals, and taking responsibility for animals which might otherwise become feral, breed indiscriminately, cause accidents or nuisance and which, most importantly, would suffer unnecessarily without the care provided by such establishments. However, despite their contribution and importance, companion animal welfare establishments are not subject to any animal protection legislation other than the requirement not to treat animals cruelly.

More than 20 recommendation are made, including the case for regulation, ownership of displaced companion animals, animals subject to legal proceedings, standards of care, need for research on care standards, definition of welfare establishments, policies for long term care, regulation and the means by which this would be administered and enforced.

There is a wealth of information in this Report that has never before been assembled in such detail. Although compiled by a CAWC Working Party, the Report has been approved by the whole Council of CAWC.

Copies of the Report will be available at the Launch, which is being hosted by Mr Roger Gale MP, who has had a strong interest in animal welfare for many years and until recently was Chairman of the All Party Group on Animal Welfare in the Houses of Parliament.

The Companion Animal Welfare Council has as its principal objectives:

(a) the provision of advice on the welfare of companion animals and the publication of its findings;

(b) the furtherance of the fuller understanding of companion animal welfare and of the role of companion animals in society;

(c) the assessment of existing legislation affecting the welfare of companion animals, and the making of recommendations regarding amendments or additions thereto.

In the furtherance of these objectives, the Council:

- undertakes independent and objective studies of companion animal welfare issues and identifies where further information is required;
- prepares and publishes reports thereon;

- makes available information and research data which it has obtained, in order to enable Parliamentary legislation on companion animal welfare issues to be drafted and debated on an informal basis;
- is open to requests for objective views, advice and the carrying out of independent studies on issues concerned with the welfare of companion animals.

Each CAWC Working Party issues a 'Call for Evidence' to potentially interested organisations, and following the receipt of submissions, major contributors are asked to attend a meeting to discuss key issues identified and other matters they may wish to raise. A draft interim report is prepared and submitted to participating organisations for further comment (a process that may be repeated), after which a draft Final Report is produced by the Working Group (not all members of which have to agree with the final conclusions). The draft Final Report is then submitted to CAWC Council for consideration and, ultimately, approval.

CAWC is an independent organisation launched in 1999 and funded through a charitable trust, the Welfare Fund for Companion Animals (WFCA). Funding is derived from companion animal welfare charitable organisations. Membership of CAWC is on an individual basis, according to the expertise of the Council member, and not on the basis of representation of the supporting animal welfare charities.

CAWC functions for companion animals in a similar way that the Farm Animal Welfare Council (FAWC) does for farm animals and that the Zoos Forum does for zoo animals, although it does not receive Government support, as occurs for FAWC and the Zoos Forum.

I commend this Report on 'Companion Animal Establishments: Sanctuaries, Shelters and Re-Homing Centres'. It brings together evidence from a wide range of individuals and organisations. Interim drafts of the Report have been scrutinised similarly by these bodies. The recommendations resulting from these consultations are submitted as a basis for action at the local and central Government levels and by private and voluntary bodies concerned with the welfare of companion animals.

This is the third major report published by the Companion Animal Welfare Council. The other two were 'The Identification and Registration of Companion Animals' and 'The Welfare of Non-Domesticated Animals Kept for Companionship'. Information about these reports may be obtained from the address below.

Lord Soulsby of Swaffham Prior
Chairman, Companion Animal Welfare Council

20 December 2003

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Companion Animal Welfare Council

Animal Welfare in Companion Animal Welfare Establishments

CONCLUSIONS and PRINCIPAL RECOMMENDATIONS

1. **The Council has chosen to use the term 'companion animal welfare establishments' to refer to the undertakings which are the subjects of this report. In part, this is because it is convenient to adopt a collective term in preference to the variety of names currently applied to such establishments.** More particularly, however, we prefer 'companion animal welfare establishments' to terms such as 'sanctuary', 'animal home' or 'rescue centre' because we think it more accurately reflects their purpose and function. (2.1.1)

2. **No matter what the form, size or ethos of a companion animal welfare establishment, the Council believes that its overriding duty is to secure the highest possible standard of welfare for the animals in its care, and that public policy should reflect this.** It takes priority over every other consideration: whether it is non-profit making, charitable, or operated for profit, is irrelevant, as are the motives of those responsible for its operation. It follows that however well motivated a person or organisation may be, and no matter how restricted their resources, neither a well placed intention to help animals nor a shortage of funds can ever justify an inadequate standard of welfare. The Council strongly refutes any suggestion that motivation can provide an excuse for compromising animal welfare. (2.1.7)

3. **In order to safeguard welfare, the Council has concluded that each and every companion animal welfare should be publicly accountable for the standard of care that it provides. (2.1.8)**

4. A number of different adjectives are used to describe animals taken in by the establishments we refer to collectively in this report as 'companion animal welfare establishments': stray, lost, abandoned, unwanted, problem, inappropriate, difficult, incompatible to name but a few. **The Council has concluded that it is useful to replace these with a single term, which encompasses them all, by describing the usual outcome: the animal is 'displaced from its usual place of keeping' and such animals are referred to as 'displaced animals'. (2.1.2)**

5. **Irrespective of the nature of the particular companion animal welfare establishment, the Council has identified four common functions, at least three of which apply to every establishment. (2.2.1)**

    i. **First, a companion animal welfare establishment must always provide for the immediate needs of animals committed to its care.** We consider that every establishment is under a duty to alleviate immediate animal suffering and to maintain a high standard of welfare in relation to every animal for which it accepts responsibility. (2.2.2)

    ii. **Second, a companion animal welfare establishment should provide for the long-term care of those animals that are not immediately reunited with**

their owner or keeper, or cannot be placed with a new keeper. This may be undertaken by the establishment itself or, alternatively, an animal may be transferred to a different establishment that is better able to look after it or find it a new home. In the case of some establishments, this function extends to the provision of lifetime care for animals. (2.2.3)

iii. An establishment may or may not be capable of providing for the lifetime needs of animals but any limitation in this respect should not prejudice the achievement of the first function identified above. Indeed, it is important to distinguish between the first and second functions in this regard. The responsibility inherent in the former entails preventing animal suffering, but it does not extend to providing lifetime care for all animals. **In the view of the Council, arranging euthanasia as a means of preventing further suffering may be a legitimate function of a companion animal welfare establishment. In our judgement, by accepting responsibility for displaced companion animals, an establishment should not have imposed upon it a responsibility to provide for the lifetime needs of any animal.** (2.2.4)

iv. **Third, a companion animal welfare establishment should seek to reunite involuntarily or accidentally displaced animals with their keepers.** Indeed, some will regard this as the paramount social benefit provided by companion animal welfare establishments, since it mitigates the distress owners or keepers might suffer as a result of losing their companion animal. Animal welfare should, however, take precedence over this function. Accordingly, establishments should not have imposed upon them requirements to keep an animal for periods which either exceed its ability to provide for the animal's needs or which are prejudicial to the animal's welfare. (2.2.5)

v. Fourth, a companion animal welfare establishment may attempt to find a new place of permanent keeping for a displaced animal. This is usually described as "re-homing" and that term is used here, although it may not be entirely appropriate in respect of equines and some other species. Re-homing should be governed by a relevant policy (see Section 8.4). However, notwithstanding the importance of re-homing, the Council wishes to reiterate its view that the duty to prevent animal suffering should take precedence. **In the interests of its welfare, any animal not re-homed within such a period that the establishment is able to provide adequately for its needs may require to be transferred elsewhere, or possibly euthanased.** (2.2.7)

6. To keep animals to high standards of welfare, it is necessary to have detailed knowledge of their physical and behavioural needs and this should be fully brought to bear in their husbandry. Whilst there have been many advances in knowledge of the physical and behavioural needs of the commonly kept companion animals, caution is needed and it cannot be assumed that this information is complete. Even for the commonly kept species, it is likely that there are improvements to be made. **It should be a duty for all establishments to maintain and update knowledge concerning the needs of animals in their care.** (6.1.4)

7. **The Council considers that before a regulatory structure could be established, a set of flexible standards would need to be agreed, based in the first instance on informed**

consensus. One method of evolving such standards is to draw up a list of specialists (including companion animal welfare establishment operators) in the field of animal care, for the species under consideration, and seek their opinion. The experts would be consulted to determine, in the light of present knowledge, the major welfare concerns relevant to the particular species in a particular environment or husbandry system and what outcomes are necessary to assure good welfare. Outcomes, essentially derived from the Five Freedoms, include amongst other things acceptable measures of health, including minimum incidence of disease; behavioural measures including absence of abnormal behaviour such as stereotypy and evidence of expected behaviour and social interaction appropriate to the species. This would provide the starting point for a common standard. Once the principal welfare concerns were agreed, and the beneficial welfare outcomes defined, flexible standards for the delivery of the desired outcomes would be set for each area of concern. The list of standards would be circulated to a wider group to determine their relevance and practicality of application. (6.6.4)

8. **The Council is aware that standards may need to be assessed and that they should be clear and unambiguous. In using the term 'flexible', we mean that the outcomes of standards should be universal, but that the means of achieving the outcomes may vary between establishments. In developing a set of standards, we would prefer this approach to be adopted. The Council believes that it would be particularly helpful to have codes of practice to guide the development of standards within an establishment** (6.6.5)**.**

9. **Once a consensus standard was agreed for each species, in the longer-term, it would be desirable to commission specific research: to develop animal based indices and use these to test the welfare outcomes of companion animal welfare establishments using the consensus standards.** The Council is clear that standards alone cannot guarantee good welfare and that direct observation of animals is the only way to ensure that a standard delivers the outcomes and thus good welfare. (6.6.6)

10. Good health is desirable and contributes to good welfare if the disease or injury which is to be prevented or treated is thought to cause pain or distress. (7.1.1). **The health of animals in a companion animal welfare establishment requires a policy to limit the importation and spread of disease, to avoid injury and to treat individual cases of illness or injury.** Isolation or segregation of incoming animals, parasite control, vaccination and barrier medicine need to be considered along with an effective system for ensuring ill or injured animals are seen promptly by a veterinary surgeon. (7.1.2)

11. The day-to-day management of ill or injured animals which are insufficiently affected to require hospitalisation may require specific skills on the part of the manager or other staff member employed in the establishment. **The designation of an animal welfare officer to ensure that animals are properly cared for is recommended.** (7.1.3)

12. Named veterinary surgeons are appointed to oversee the health and welfare of animals used in research establishments. **The use of a similar designation (nominated veterinary surgeon) is recommended for a veterinary surgeon appointed to oversee health and welfare in companion animal establishments.** (7.2.1)

13. **There should be a standard policy for all establishments, which covers the short term care of animals.** The policy should take account of the veterinary health plan and the welfare and temperament evaluation protocols. (8.2.1)

14. **The Council draws attention to the need for a clear policy, which sets out how establishments provide for long-term animal care. When such care is provided on the premises, the policy should refer to the animal welfare and husbandry plan based on animal welfare needs.**

    i. The plan should ensure delivery of the resources necessary to achieve the desired outcomes. (8.2.2) The development of the animal welfare and husbandry plan should be the responsibility of the nominated veterinary surgeon, the animal welfare officer and the manager of the establishment as appropriate, guided by the standard and codes of practice. (8.2.3)
    ii. Monitoring of individual animal behaviour should be a requirement of all companion animal welfare establishments. The necessary indices to allow a meaningful assessment need further development. Temperament evaluation of incoming animals is particularly important as part of a behavioural assessment. (8.3.1)

    iii. Establishments which receive displaced animals should have a policy for returning animals to their original owners or keepers and for re-homing in the event that the original keeper cannot be found. (8.4.1)

    iv. Establishments should have a policy with regard to euthanasia. (8.5.1)

    v. Establishments should have a transparent policy covering the extent to which individual animals receive veterinary treatment for specific conditions. (8.6.1)

15. **The Council is persuaded of the desirability of introducing statutory regulation, and recommends that provision for this is included in the Animal Welfare Bill that DEFRA is presently drafting. If enacted, the Act will apply only to England and Wales. The Council therefore calls on the Scottish Executive and those charged with the government of Northern Ireland to consider introducing similar legislation in their respective jurisdictions.** (9.1.8)

16. **We are firmly of the view that companion animal welfare establishments should be defined exclusively by reference to their function.** Accordingly, throughout the report we have referred to a companion animal welfare establishment to be a place which:
    (1) receives companion animals which for whatever reason have become displaced from their usual place of keeping; and
    (2) provides for their immediate needs; and
    (3) carries out one or more of the following in relation to such animals:
        (a) the provision of long-term or lifetime care;
        (b) re-homing;
        (c) arranging euthanasia of those animals whose needs cannot otherwise be adequately met.

        (9.3.7)

17. **There is a need to distinguish between, on the one hand, the person who is running a companion animal welfare establishment from their home and, on the other, the 'ordinary' companion animal keeper who may happen to have a substantial number of animals, many (indeed, all) of which were formerly displaced. Whether a person is**

holding himself out to receive displaced animals will be a question of fact, to be determined according to the particular circumstances. However, it will clearly not include those who adopt or re-home an animal from a companion animal welfare establishment, nor do we think it should extend to the person who may occasionally directly take in a displaced animal. (9.3.16)

18. We recognise that there are many people who hold themselves out to receive displaced animals into their homes who are entirely responsible, provide a high standard of care, and make a very significant contribution to animal welfare. The Council readily acknowledges the good that is done by many individuals and smaller organisations, and it is evident that without their contribution the larger establishments would be unable to cope with the many displaced animals that need care. **The last thing we wish is to see their work undermined by the imposition of an unnecessarily bureaucratic and expensive regulatory regime. We therefore recommend a two-tier scheme of regulation that we consider will satisfactorily address this issues** (9.3.17). (Licensing and Registration are discussed in Sections 9.4 and 9.5)

19. **During the course of its investigation, the Council has identified three issues concerning the ownership of displaced animals that it considers need to be addressed** (10.1)**.** (The issues are discussed in Section 10).

SECTION A

Introduction, Definitions and Recommendations on the Role of Companion Animal Welfare Establishments.

1. INTRODUCTION

1.1 Companion Animal Welfare Council

1.1.1 The Companion Animal Welfare Council (CAWC) was established in 1999.

1.1.2 The Council has as its principle objectives:

(i) the provision of advice on the welfare of companion animals and the publication of its findings;
(ii) the furtherance of the fuller understanding of companion animal welfare and the role of companion animals in society; and
(iii) the assessment of existing legislation affecting the welfare of companion animals, and the making of recommendations regarding amendments or additions thereto.

1.1.3 In furtherance of these objectives, the Council is charged to:

(i) undertake independent and objective studies of companion animal welfare issues and identify where further information is required;
(ii) prepare and publish reports thereon;
(iii) make available information and research data that it has obtained, in order to enable Parliamentary legislation on companion animal welfare issues to be drafted on an informed basis;
(iv) to be open to requests for objective views, advice and carrying out of independent studies on issues concerned with the welfare of companion animals.
(v) Seek to contribute to public debate.

1.1.4 This is the fifth report that the Council has published. Further details about CAWC and its work may be found in Appendices 1 and 2 to this report.

1.2 The Background to the Report

1.2.1 Since the foundation in 1861 of 'The Home for Lost and Starving Dogs', which was to become the Battersea Dogs' Home, the establishment of homes and centres dedicated to taking in, looking after and wherever possible, re-homing unwanted or otherwise displaced companion animals has become a central element of society's response to the protection of animals in the United Kingdom.

1.2.2 It is self-evidently the case that there continues in existence an extensive network of such undertakings. Yet, it is impossible to say exactly how many are presently operating, since no central record is kept. Indeed, they are not subject to any formal mechanism of public accountability or regulation. Accordingly, it is not only the scale of the sector which is

unknown; so too is the standard of care and welfare that it is providing. Operators may be constrained by law in relation to matters such as planning, noise pollution and nuisance generally, but so far as the treatment of the animals in their care is concerned, they have no legal duty beyond that which applies generally to domestic and captive wild animals: namely to refrain from treating them cruelly.

1.2.3 This is something of an anomaly, as there are statutory schemes that regulate, for example, dog breeders, riding establishments, pet shops and boarding establishments for dogs and cats.

1.2.4 Furthermore, the absence of any formal regulation of those who take in and care for displaced animals has given rise to concern in some quarters about the treatment of some animals and their standard of welfare. In particular, it is alleged that some organisations and individuals, albeit from the best of intentions, accept responsibility for animals which they do not have the resources or knowledge to look after properly.

1.2.5 The European Convention on Pet Animals (1987, ETS 125) does provide for regulation of animal sanctuaries by the state, but successive UK Governments have declined to ratify the Convention.

1.2.6 An attempt to address the situation was made in 2001, when Ian Cawsey, MP, introduced into Parliament the Animals Sanctuaries (Licensing) Bill. The Bill received its First Reading on 18 July 2001, but, like so many Private Members' Bills, made no further progress. It did, however, focus attention on the issue, and when DEFRA subsequently launched its consultation on the desirability of a new Animal Welfare Bill, it expressly invited comments on the question of whether animal sanctuaries should be licensed (DEFRA Consultation Letter on an Animal Welfare Bill, 2 January 2002). Of the submissions it subsequently received, 124 respondents commented on this matter, the vast majority of whom (84%) supported the introduction of a licensing scheme (DEFRA, 'The Consultation on an Animal Welfare Bill. An Analysis of the Replies, August 2002). When the Department announced that it intended to proceed with drafting the Bill, the responsible Minister, Elliot Morley MP, specifically cited raising the age at which children can buy pets unaccompanied by an adult and the licensing of animal sanctuaries to be "two examples of useful steps, so that those responsible for animals are fully aware of what they are taking on" (DEFRA Press Release, 413/02 16 October 2002).

1.2.7 It is against this background that the present report has been drawn up and published.

1.3 The Purposes of the Report

1.3.1 This report has been produced in response to general concerns about perceived variations in the standards of welfare, at premises where displaced animals are taken in and cared for, which we refer to as 'companion animal welfare establishments'.

1.3.2 On the basis of evidence it has received, the Council has concluded that there is currently limited objective evidence of poor welfare in companion animal welfare establishments. The Council recognises, however, that there is a significant level of concern. The root of the problem is the absence of a generally accepted system for measuring and assessing the quality of care and standards of welfare in companion animal welfare establishments. This makes it extremely difficult to measure and compare the ability of any particular management system to deliver good welfare as an outcome.

1.3.3 The Council is therefore persuaded that there is an urgent need to develop flexible standards and procedures for companion animal welfare establishments based on animal needs. To this end, the report presents some general recommendations, but the Council believes that standards and procedures should be evolved within each establishment. This

should be achieved by applying a consistent form of assessment based on animal needs, using direct animal observation, with the assistance of professional staff who are trained to recognise those needs.

1.3.4 Accordingly, the primary purpose of the report is to produce, so far as possible, a set of generic recommendations based on principles of good animal welfare which every type of companion animal welfare establishment might reasonably be expected to implement.

1.3.5 The second purpose is to avoid prescriptive standards for companion animal welfare establishments. Rather, the Council has sought to identify principles whose application it considers will enable standards and procedures intended to ensure the welfare of individual animals to be set by the establishments themselves, in consultation with their professional advisors.

1.3.6 The third purpose is to identify a regulatory system that is capable of ensuring good animal welfare without, at the same time, being unduly onerous in respect of cost and administration.

1.4 Scope of the Report

1.4.1 The report focuses principally on what we refer to as 'companion animal welfare establishments', which encompasses establishments variously described as 'sanctuaries', 'animal homes', 're-homing centres', 'rescue centres', 'shelters' and 'rest homes'. We also consider the situation where individuals take in and look after displaced animals on a less formal basis.

1.4.2 Wherever possible, the report applies to all species kept as companion animals, including dogs, cats, horses and other equids, rabbits and other mammals kept as companion animals, birds, amphibians and reptiles. However, some paragraphs are more relevant to some species than to others.

1.4.3 The Council is aware that wild animals are frequently taken into companion animal welfare establishments, either as dependant juveniles or after injury or disease. While such animals are not companion animals, and do not formally fall within the Council's jurisdiction, the report includes a section in which they are considered. Similarly, establishments may take in and care for farm animals and a range of non-domestic species. In the view of the Council, the conclusions and recommendations of the report are generally applicable to these non-companion species.

1.5 The Council's Approach

1.5.1 Companion animal welfare establishments vary considerably in size and character. A small establishment, for example, may adopt a very different approach to the care of animals from that of a larger establishment. In writing the report, the Council made a conscious decision not to pre-judge the ability of different types of establishment properly to look after animals in their care.

1.5.2 It is all too easy to assume we know the resources that will provide the best welfare for animals in our care, but their needs vary greatly. All animals require food, water, shelter and exercise, the nature of which is generally known. However, most domestic animals also have distinct social and other behavioural needs. These may be general to the particular species. For example, animals that have been most recently domesticated, such as cats, may not be particularly sociable, but retain behavioural needs that are ancestral to the species, such as the opportunity to prowl or hunt. Generalisations may therefore be made based on the needs of the species. However, the Council is mindful that it will often

be crucial to have due regard to a displaced animal's previous experience, lifestyle and relationship with people and other animals, because these give rise to specific and individual requirements which must be taken into account if its welfare is to be safeguarded. Accordingly, in drawing up its recommendations, the Council has placed considerable emphasis on the importance of identifying and meeting the needs of individual animals. Because of these individual needs, the Council has approached the subject of standards in companion animal welfare establishments from the perspective of properly identifying animals' needs, rather than defining only the resources necessary to keep animals alive.

1.5.3 Concern about the standards of animal welfare in some companion animal welfare establishments has led to calls from some quarters for greater regulation. The Council is in sympathy with this view. It has concluded that some form of regulation is desirable, but that it must be proportionate and its purpose should be to promote and secure a high standard of animal welfare.

2. COMPANION ANIMAL WELFARE ESTABLISHMENTS

2.1 Companion Animal Welfare Establishments and Displaced Animals

2.1.1 The Council has chosen to use the term 'companion animal welfare establishments' to refer to the undertakings which are the subject of this report. In part this is because it is convenient to adopt a collective term in preference to the variety of names currently applied to such establishments. More particularly, however, we prefer 'companion animal welfare establishments' to terms such as 'sanctuary', 'animal home' or 'rescue centre' because we think it more accurately reflects their purpose and function.

2.1.2 Similarly, a number of different adjectives are used to describe animals taken in by the establishments we refer to collectively in this report as 'companion animal welfare establishments': stray, lost, abandoned, unwanted, problem, inappropriate, difficult, incompatible, to name but a few. The Council has concluded that it is useful to replace these with a single term, which encompasses them all, by describing the usual outcome: the animal is 'displaced from its usual place of keeping' and such animals are referred to as 'displaced animals'.

2.1.3 There are a variety of circumstances in which companion animals become separated from their owners or keepers and are thereby displaced from their usual place of keeping. Such displacement may be involuntary or accidental: a companion animal may be lost by its owner or keeper as a consequence, for example, of escaping, straying, or becoming disorientated in a strange place or following an accident. Such a situation will generally cause both the animal and keeper considerable distress, and the latter will usually take steps to trace and become reunited with their companion. In many cases, however, the situation is the direct consequence of the keeper's indifference and irresponsibility. In others, separation is voluntary and deliberate, such as when an owner formally transfers ownership of an animal over to a companion animal welfare establishment (generally referred to as 'signing the animal over') because they no longer want the responsibility for it, or are unable to continue to look after it. Such circumstances may also result in the animal being abandoned. Animals may also be held in companion animal welfare establishments after having been seized under the authority of statute, pending the outcome of enquiries and any ensuing legal proceedings.

2.1.4 Irrespective of why companion animals come to be displaced from their usual place of keeping, it is self-evident that at any given time a very substantial number of animals are affected. The existence of establishments, which are able to receive and care for them, is therefore regarded to be a public good and is a recognition that responsibility for displaced companion animals is not restricted to the owner or keeper, but extends to society at large.

2.1.5 Companion animal welfare establishments can therefore be seen to make an important contribution to the community. Clearly, their principal role is to protect the interests of those animals that come into their care, but this is not their only social function. In addition, they:

- assist in reuniting owners and keepers with their displaced animals;
- provide an important source of animals for those seeking a new companion;
- help protect public health and public safety by taking in animals, many of which would become feral and go on to breed indiscriminately;
- prevent injury and disease;
- reduce public nuisance caused by stray animals; and
- promote responsible animal ownership by providing advice and education on such issues as neutering, responsible pet ownership and animal identification.

2.1.6 There is, however, no standard companion animal welfare establishment. They vary considerably, and take a number of forms. At one end of the spectrum are those which are essentially a one-person operation, funded from that person's own resources. At the other, there are establishments operated by well-known national animal welfare charities. Most establishments rely to a greater or lesser extent on the public for funding (and many are registered charities). Some establishments focus on certain types of animals, such as "dogs' homes", while others seek to cater for a wide range of species.

2.1.7 Regardless of their differences, the Council is firmly of the view that they all have one thing in common. No matter what the form, size or ethos of a companion animal welfare establishment, the Council believes that its overriding duty is to secure the highest possible standard of welfare for the animals in its care, and that public policy should reflect this. It takes priority over every other consideration: whether it is non-profit making, charitable, or operated for profit, is irrelevant, as are the motives of those responsible for its operation. It follows that however well motivated a person or organisation may be, and no matter how restricted their resources, neither a well placed intention to help animals nor a shortage of funds can ever justify an inadequate standard of welfare. The Council strongly refutes any suggestion that motivation can provide an excuse for compromising animal welfare.

2.1.8 Furthermore, in order to safeguard welfare, the Council has concluded that each and every companion animal welfare establishment (as defined elsewhere in this report) should be publicly accountable for the standard of care that it provides.

2.2. What Companion Animal Welfare Establishments Do

2.2.1 Irrespective of the nature of the particular companion animal welfare establishment, the Council has identified four common functions, at least three of which apply to every establishment.

2.2.2 First, a companion animal welfare establishment must always provide for the immediate needs of animals committed to its care. We consider that every establishment is under a duty to alleviate immediate animal suffering and to maintain a high standard of welfare in relation to every animal for which it accepts responsibility.

2.2.3 Second, a companion animal welfare establishment should provide for the long-term care of those animals that are not immediately reunited with their owner or keeper, or cannot be placed with a new keeper. This may be undertaken by the establishment itself or, alternatively, an animal may be transferred to a different establishment that is better able to look after it or find it a new home. In the case of some establishments, this function extends to the provision of lifetime care for animals.

2.2.4 An establishment may or may not be capable of providing for the lifetime needs of animals but any limitation in this respect should not prejudice the achievement of the first function identified above. Indeed, it is important to distinguish between the first and second functions in this regard. The responsibility inherent in the former entails preventing animal suffering, but it does not extend to providing lifetime care for all animals. For this reason, in the view of the Council, arranging euthanasia as a means of preventing further suffering may be a legitimate function of a companion animal welfare establishment. In our judgement, by accepting responsibility for displaced companion animals, an establishment should not have imposed upon it a responsibility to provide for the lifetime needs of any animal.

2.2.5 Third, a companion animal welfare establishment should seek to reunite involuntarily or accidentally displaced animals with their keepers. Indeed, some will regard this as the paramount social benefit provided by companion animal welfare establishments, since it mitigates the distress owners or keepers might suffer as a result of losing their companion animal. Animal welfare should, however, take precedence over this function. Accordingly, establishments should not have imposed upon them requirements to keep an animal for periods which either exceed its ability to provide for the animal's needs or which are prejudicial to the animal's welfare.

2.2.6 In particular, the Council is concerned that animals which are the subject of legal proceedings are too often kept in establishments for unacceptably long periods, which may compromise both their immediate welfare and their prospect of being successfully returned to a domestic environment. The Council recognises that the need to gather evidence, prepare a case, decide whether proceedings should be initiated, together with the importance of protecting the interests of the accused - including the opportunity to appeal - and the pressure on the criminal justice system, can all result in considerable delay between the alleged offence being identified and the resolution of proceedings. Nevertheless, the Council is concerned that the interests of the animal(s) involved are not formally recognised by the criminal justice system. The Council recommends that consideration should be given to an accelerated procedure in cases involving a companion animal which has been seized and which has not been signed over by the owner, consistent with the requirements of justice. Alternatively, consideration should be given to providing the courts with the power to make an order for the disposal of such animals before the completion of proceedings, as is already the case in England and Wales in relation to animals kept for a commercial purpose by virtue of the Protection of Animals (Amendment) Act 2000.

2.2.7 Fourth, a companion animal welfare establishment may attempt to find a new place of permanent keeping for a displaced animal. This is usually described as "re-homing" and that term is used here, although it may not be entirely appropriate in respect of equines and some other species. Re-homing should be governed by a relevant policy (See section 8.4). However, notwithstanding the importance of re-homing, the Council wishes to reiterate its view that the duty to prevent animal suffering should take precedence. In the interests of its welfare, any animal not re-homed within such period that the establishment

is able to provide adequately for its needs may require to be transferred elsewhere, or possibly euthanased.

2.3 The Characteristics of a Companion Animal Welfare Establishment

2.3.1 We discuss a formal definition of a companion animal welfare establishment below in section 9.3**.** However, based on the foregoing discussion of functions, we regard a companion animal welfare establishment to be a place which:

- receives companion animals which for whatever reason have become displaced from their usual place of keeping;
- provides for their immediate needs; and
- carries out one or more of the following in relation to such animals:
  - (i) the provision of longer-term or lifetime care;
  - (ii) re-homing;
  - (iii) arranging euthanasia of those animals whose needs cannot otherwise be adequately met.

2.3.2 A companion animal welfare establishment may be owned and managed by a public or private organisation or by an individual person. It may be a commercial, non-profit, or charitable organisation.

2.3.3 Veterinary hospitals and surgeries, including those operated by the PDSA, Blue Cross and RSPCA, are not to be regarded as companion animal welfare establishments.

2.3.4 The Council is aware that confusion may arise as to whether a person who assumes responsibility for displaced animals in their own home, keeping them as their own companions, is operating a relevant establishment. We are conscious that citizens have the freedom generally to enjoy as they see fit the company of companion animals on their own property, provided that they do not cause a statutory nuisance, and that some people exercise this freedom by choosing to keep a large number of animals, some of which may have been displaced animals when they were taken in. Our approach has been to make a distinction between this situation – the person who may from time to time, but infrequently, provide a home for a displaced animal – which we do not consider constitutes a companion animal welfare establishment, and a person who holds themselves out to receive displaced animals. We regard the latter as prima facie evidence of a relevant establishment. Nevertheless, the Council recognises that in practice, there will be circumstances in which it will be difficult to make this distinction. Our recommendations as to how this issue might be satisfactorily resolved, together with other matters concerned with the regulation of companion animal welfare establishments are discussed further below in section C.

3. THE CARE OF DISPLACED ANIMALS

3.1 The Appropriate Immediate Response to a Displaced Animal

3.1.1 Companion animal welfare establishments are a central focus of the community's response to public concern for displaced companion animals.

3.1.2 In many cases, a member of the public who comes across an animal which appears to be abandoned, injured, lost, or otherwise displaced, is unsure how to respond, and may seek help and advice.

3.1.3 In such a situation, they should have available to them clear and accurate information about what action they should take, and whom they should contact. This information should be available through local services such as the local authority dog warden service; the police; animal welfare organisations, such as the RSPCA, the Scottish SPCA, USPCA, Blue Cross, Dogs Trust (formerly the National Canine Defence League), Battersea Dogs Home; veterinary surgeons; pet shops; companion animal welfare establishments in the local area; and other appropriate public information services.

3.1.4 All those who are likely to be contacted by concerned members of the public should be given specific training in the appropriate information to provide. This is particularly important, for example, in respect of cats, which may enjoy freedom to roam and appear to be lost, even though they are familiar with the area. Also, the responsibilities of local authority dog wardens in respect of displaced dogs should be made known (see section D).

3.1.5 Once it is established that an animal is, or may be, displaced, the first priority must be to provide for its immediate needs. Any person, organisation or other body involved in whatever capacity in capturing, or otherwise taking control of, such an animal is thereby accepting responsibility for securing those needs. If they cannot themselves make the appropriate provision, they should make every effort to contact someone who can. In the case of dogs, this will be the local authority dog warden or, if they are not available, the police. In respect of other species, a companion animal welfare establishment or other animal welfare charity will generally be the most appropriate body to contact.

3.1.6 Except in the case of an animal voluntarily given over to it, a companion animal welfare establishment should, upon receipt of a displaced animal, take reasonable steps to reunite it with its owner or keeper. In the case of dogs, the local authority dog warden is responsible for establishing ownership, where this is possible, but there is no such provision in respect of other species. Reasonable steps will include examining it to establish whether it has any form of identification, including scanning for a microchip, and liasing with relevant authorities, such as the police, veterinary surgeons and the local dog warden service. Where an establishment does not possess its own microchip scanner, it should make arrangements to gain access to one as and when necessary. It may be possible to do this through the co-operation of the dog warden or local veterinary practice. If the condition of the animal is so poor that it would appear to have been involved in baiting or fighting, abused, badly neglected, or abandoned, the police, the RSPCA, USPCA or the Scottish SPCA should be alerted.

3.1.7 When an animal is taken into care by a companion animal establishment, its immediate needs should be assessed. Generally, a period of 10-14 days is considered necessary to determine those needs, (the preliminary period) but this may vary depending on the animal's individual needs. Immediate needs will necessarily require an evaluation of the animal's health and its behavioural response to being cared for within the companion animal welfare establishment. These requirements are discussed below in sections 6.2, 7.1 and 8.2 as part of the establishment's veterinary health plan and animal welfare policy. Subsequently, the establishment has a responsibility to provide for the long-term needs of the animal (sections 3.2 and 3.4)

3.2 The Meaning of Long Term Care

3.2.1 In paragraph 3.1.7 we drew a distinction between providing immediate care for displaced animals, which all establishments should do, and providing long-term or lifetime care. 'Long-term care' is defined as the provision of the animal's needs for any period exceeding the preliminary period, including the necessity, because the animal's previous experience is often unknown, for an extended period to assess its health status, environmental needs and behaviour.

3.2.2 Many of the existing terms presently used to describe what we have called a companion animal welfare establishment, such as 'sanctuary', and 'home' may imply a commitment to lifetime care. In the Council's view, the period for which any animal is kept should not be prescribed by an establishment, except where this is dictated by a law. (Our views on animals kept subject to legal proceedings were expressed in paragraph 2.2.6). Rather, it should be a matter of judgement the exercise of which will reflect the individual animal's needs relative to its biology, together with consideration of its particular characteristics such as age, experience, temperament, health and behaviour. For example, an aged animal, which has enjoyed a lifetime bond with one owner, might not enjoy a reasonable quality of life in an establishment that did not offer a similar individual bond.

3.2.3 Because the needs of each individual animal are different, the Council is of the view that, except where an animal has to be kept while legal proceedings take their course, or in order to meet the legitimate interests of its identifiable owner, there should be no imposition of minimum periods of care in any particular establishment, either through external regulation or internal establishment policy.

3.2.4 When an animal has to be kept for extended periods by law, meeting longer-term needs might include re-housing the animal in a more suitable place.

3.3 Euthanasia

3.3.1 There are those who believe that an apparently 'healthy' animal should never be euthanased, and if such a displaced animal cannot otherwise be re-homed, it should be allowed to live out its natural life in the care of a companion animal welfare establishment. The Council respects this view, and fully accepts that there are circumstances in which particular animals can enjoy a high standard of welfare and a good quality of life at an establishment over a long period. However, the Council is firmly of the view that animal welfare is more than the sum of physical health and freedom from disease. Other factors, particularly the animal's behavioural needs, which include the expression of social behaviour, have a profound effect on its welfare. The environment provided in an establishment may be entirely capable of maintaining life and health but unable adequately to meet its other needs, especially those relating to behaviour. Indeed, the ability of an establishment to provide long-term care is much more likely to be constrained by behavioural welfare concerns than by issues of physical health.

3.3.2 It follows that, even though an establishment has the resources necessary to maintain an animal's physical health, there may nevertheless be a limit on its ability to provide adequate long-term care for it when behavioural and psychological welfare is taken into account. It may be possible to resolve this problem by moving the animal to a different establishment which is better equipped to meet its long term needs. The Council recognises, however, that there may be circumstances in which it is in the best interests of an animal to be euthanased, even though it may be considered 'healthy' in the physical sense.

3.4 The Provision of Long Term Care

3.4.1 Implicit in defining companion animal welfare establishments by reference to function is an acceptance that all establishments should take reasonable steps to provide for the long-term care of any animal for which they accept responsibility. Where an establishment has itself limited facilities to cater for the long-term needs of an animal, this may be achieved by finding a suitable new keeper; contacting other establishments with more suitable facilities for long-term care; or arranging euthanasia. Reaching the most appropriate decision depends, however, on effective decision-making protocols being in place.

3.4.2 Indeed, our view is that the quality of decision-making within an establishment will always have a major impact on the standard of welfare, and this is particularly so when considering issues of long-term care.

3.4.3 Good decisions need accurate information, and all companion animal welfare establishments, regardless of size, should have procedures for the individual evaluation of welfare of each and every animal in its care. We discuss animal welfare assessment further in section B, but it is important to emphasise that assessing the state of the animal's welfare by direct observation of its behaviour is crucial in making these judgements. Decisions about an animal's future – whether this involves ongoing care, moving the animal to a more suitable facility, seeking a new keeper, or arranging euthanasia – should always be based on such an assessment.

3.4.4 Rather than imposing on establishments a particular policy in relation to long term care and euthanasia, the Council believes it would be more desirable for each companion animal welfare establishment to determine its own policy in relation to these issues, but be required publicly to state its policy in order that members of the public may make an informed decision in choosing whether to support an establishment by donation or other means.

3.4.5 Where experience shows that an establishment's facilities are not generally suitable for lifetime care of some animals, and where the establishment's operators do not aim to keep animals indefinitely, the policy should state the provisions that will be implemented when an assessment shows that an animal is not coping adequately with its environment. Conversely, when an establishment's policy is expressly to provide long-term care, it should be able to show that animal needs can be properly met to support its policy.

3.4.6 From the foregoing, it is evident that expressing a policy based on function is in our view much more important than adopting particular terms or definitions, which in practice may be both mechanical and arbitrary.

3.4.7 Some establishments which aim to provide long-term care will accept animals from those that do not. Similarly, some establishments will take from others animals that the latter are having difficulty in re-homing. The Council recommends that the policy of companion animal welfare establishments in this matter should be made known, in order to facilitate the exchange of animals, where this is in their best interests. This paragraph applies particularly to equines, exotic or non-domesticated animals kept as companions, and other animals requiring special care for which an establishment has limited facilities or expertise.

3.4.8 The policy should be made available to all those involved in placing displaced animals, such as local authorities, the police, other companion animal welfare establishments, and relevant public bodies and organisations including DEFRA. Similarly, each of these bodies should themselves have a clear and publicly-stated policy, detailing the establishments to which they hand over displaced animals that come into their custody.

3.4.9 Where local authorities or the police have a contractual relationship with a companion animal welfare establishment, the contract should clearly specify the capacity of the establishment and its relevant policies.

3.4.10 As a general principle, only in a case of extreme emergency, and as a temporary measure justified exclusively on the ground of animal welfare should a companion animal welfare accept more animals than its facilities are designed for. For this reason, 'open contracts' are undesirable, and the Council believes should be avoided.

4. WILD ANIMALS

4.1 Wild animals are taken into captivity for a variety of reasons: they may be injured or diseased; abandoned when immature; or captured as part of an elective program of control or relocation.

4.2 Companion animal welfare establishments may be asked to receive wild animals and indeed, some establishments make it widely known that they are willing to take them in, care for them and in some cases rehabilitate them back to the wild. (The British Wildlife Rehabilitation Council publishes standards for rehabilitation and it should be noted that there are laws that prohibit the release of certain species into the wild). Because the term is so widely used, we refer to establishments that predominantly take in wild species as 'wild animal sanctuaries'.

4.3 Strictly, the welfare of wild species falls outside the Council's jurisdiction. However, we believe that it is appropriate for us to comment briefly in the present context, as wild animals taken into care are not only effectively displaced from their usual environment, but are also often taken in by establishments which are the subject of this report.

4.4 The Council believes that wild animals suffer fear and distress when they are displaced from their usual environment and kept either in wild animal sanctuaries or companion animal welfare establishments, unless specific provisions are made for their care and welfare.

4.5 We are opposed to the practice of putting wild animals which have no previous experience of domestication into wild animal sanctuaries or companion animal establishments unless:

- immediate relief of pain and fear is possible;
- an assessment is undertaken to determine the risks likely to cause the animal further fear, pain and distress;
- a series of controls are put in place to avoid the risks identified, to the satisfaction of a suitable qualified person, for example a veterinary surgeon or other person with extensive experience of wild animal behaviour.

In the event that the risks cannot be controlled, and the animal is unfit to return to its usual environment, we believe that there is a strong case for considering whether euthanasia is the preferable option.

4.6 Where the animal is returned to its usual environment, full account should be taken of the criteria necessary for successful rehabilitation. Only where there are overwhelming reasons why the animal cannot be so returned to its usual environment, and there is no suitable alternative environment which allows full expression of its normal behaviour, and to which it can reasonably be expected to adapt, should keeping the animal be kept in long-term captivity be considered.

4.7 The Council believes there are very few companion animal welfare establishments or wild animal sanctuaries that have the facilities to allow wild animals to adapt successfully to

long term care and which also allow full expression of normal behaviour, and consequently, we consider that it will generally be in the best interests of injured and abandoned wild animals to be euthanased.

SECTION B

Animal Welfare and Animal Needs

5. INTRODUCTION (Animal Welfare)

5.1 Companion animals are often highly sociable and express complex behaviour, which is why people enjoy their company and keep them as companions. Those species commonly kept which do not require highly specialised environments, are adaptable, and are kept in places as diverse as city flats and rural cottages, reflecting the diversity of environments of their keepers. However, individual animals of a particular species have needs common to the species, such as freely available potable water, as well as specific individual needs that reflect learning and experience. Common needs of species, whether physical, as in the example given of water, or behavioural, such as the need to exercise or interact with others of their own species are often well known and relatively easily provided. However individual needs are sometimes difficult to determine. For example, an individual may share the common need of its species for water but may also need to drink more frequently, through age or disease. Social behaviour will reflect experience: an animal with bad experiences of certain other animals may become frightened if kept in proximity to them. An animal kept in an environment with others of its own species may become distressed if subsequently kept in isolation. The term animal welfare tries to capture these sentiments but is commonly used to describe a number of ethical concerns. Three of these have been defined (Fraser, D., Weary, D.M., Pajor, EA. & Milligan, B.N. (1997) A scientific conception of animal welfare that reflects ethical concerns. Animal Welfare 6, 187-205.

- (1) That animals should lead natural lives through the development and use of their natural adaptations and capabilities;
- (2) that animals should feel well by being free from prolonged and intense fear, pain and other negative states and by experiencing normal pleasures and;
- (3) that animals should function well, in the sense of satisfactory health, growth and normal functioning of physiological and behavioural systems.

These three concerns are interdependent. An animal's natural adaptations and capabilities underlie all aspects of its biology and form the basis of physical and psychological responses to changes in its welfare.

5.2 When discussing and assessing animal welfare, it is important to be clear which framework is being referred to and why. Concern (2), the quality of subjective feelings is a central issue and one that most closely addresses the concerns in the foregoing discussion. However, feelings cannot be measured and their existence cannot be proved, so that inferences about them are all that can be made, based on biological characteristics that we observe directly.

5.3 Concern (3) equates to health, which is an integral component of welfare. Animals in poor health have often suffered from compromised welfare. If animals do not have satisfactory growth or 'normal functioning of physiological or behavioural systems' their health is clearly not optimal. The term welfare is not necessary to encompass concern (3) because the terms 'health' and 'disease' suffice. Suboptimal health may cause poor welfare but not always and although some diseases cause pain, discomfort and other unpleasant feelings, not all do.

5.4 Concern (1) may be more aesthetic than a welfare concern. If the animal feels well (2) and is healthy (3) then any judgement about 'natural' in respect of its lifestyle and environment might reflect the expectations and feelings of the human observer, rather than having any relevance to the feelings, and thus welfare, of the animal. This concern fails, in some respects, to acknowledge the adaptability of many companion animals. This is particularly true when companion animal welfare establishment resources are designed from assumptions made by their operators and it is important to recognise the importance of individual behaviours. In some domestic species, which have a long history of domestication and where there has been extensive control of reproduction, such as the dog, the behaviour of an individual will reflect the breed characteristics, which may be far removed from the ethology of the ancestral species, the Wolf. Conversely, in a recently domesticated species such as the cat, behaviour will more closely approximate that of the 'natural' species, the African Wild Cat.

5.5 We accept as the central concern of animal welfare that animals should feel well (concern 2). How an animal feels is affected to a considerable degree by experience, and experience and health are more directly relevant to the immediate assessment of an individual's welfare in any particular environment. For example, a particular companion animal welfare establishment will (usually) be an unfamiliar environment to a newly received animal. However, if the animal is in good health and thus able to function normally, it will use its experience to evaluate its environment and then respond. It follows that the immediate needs of animals received into companion animal welfare establishments relate to health and an evaluation of the animal's response to its environment, whereas in the longer-term, knowledge of the biology and behavioural motivations of each species is important in providing them with the type of environment(s) to which they are best able to adapt. Putting this statement into the context of a companion animal welfare establishment, when animals arrive, assumptions about their previous experience cannot be relied upon and judgement of their immediate needs requires an assessment of the individual in the establishment. Its health and response to the new environment are important. However, in providing for longer-term care, more general knowledge of the needs of the breed or species is important in making decisions about the environment to which an animal might be expected to accept or adapt to. The knowledge gained from the initial observations is, however, of great importance in determining how the animal is managed as an individual in the environment deemed suitable for its longer-term care. The Council accepts that some standardisation is inevitable in the provision of resources deemed suitable, but animals are not standardised and individual needs should be taken account of.

6. THE NEEDS OF COMPANION ANIMALS.

6.1 Definition of Animal Needs

6.1.1 What do animals need to ensure their good welfare? They have a variety of physical needs, for example supplies of water and suitable food and an appropriate thermal environment.

6.1.2 There is evidence that there is a need to perform certain behaviours, even when the behaviour is irrelevant in the captive or domesticated environment. Carnivorous mammals such as cats, which are closer ethologically to the African Wild Cat, may have a behavioural need to travel and show hunting related activity, which became 'wired' into

them because these behaviours gave an evolutionary advantage in knowing their territory and where and how they could catch prey. Animals may need to perform such behaviour even when in an environment in which no benefit is derived from it and animals may suffer if they are not allowed to perform the behaviour. Horses have a strong motivation to invest significant periods of time in foraging even though their nutrition needs can be met in a stabled environment. Horses deprived of activity may develop stable vices or stereotypies.

6.1.3 Many animals, particularly those kept as companion animals have social needs. It is unsurprising that most animals, which form companion bonds with man have well developed social behaviour when in an environment shared with their own species. Social needs are a sub-set of behavioural needs but ones with particular relevance to companion animals. However, an understanding of species-specific behaviour is again imperative: close contact with other (unknown) cats is a common cause of distress in cats within companion animal welfare establishments.

6.1.4 To keep animals to high standards of welfare, it is necessary to have detailed knowledge of their physical and behavioural needs and this should be fully brought to bear in their husbandry. Whilst there have been many advances in knowledge of the physical and behavioural needs of the commonly kept companion animals, caution is needed and it cannot be assumed that this information is complete. Even for the commonly kept species, it is likely that there are improvements to be made. It should be a duty for all establishments to maintain and update knowledge concerning the needs of animals in their care.

6.2 Meeting Immediate Needs

6.2.1 Most animals received by companion animal welfare establishments will be displaced from a familiar environment and routine. Some will have been displaced for some time and will have adapted in varying degrees to a feral existence.

6.2.2 On entering a companion animal welfare establishment, animals will usually be distressed and frightened by the change of environment and routine. Providing for their immediate needs in these circumstances is a challenge for establishments and their success in this area may have a profound impact on the future well-being of animals brought into their care. Sedation or measures to reduce anxiety may be desirable on veterinary advice and the veterinary health plan (section 7.1) should include advice on anxiety and fear management.

6.2.3 As noted in the introduction to this section, the effect of an individual animal's past experience on its present welfare state will need to be taken into account. Individuals will vary considerably in their previous experiences and this could have a profound effect on how they cope with life in a companion animal welfare establishment. For example, the experience of an animal poorly socialised with people will be very different from one that has had extensive socialisation and which is thus better able to cope with routine handling. Similar considerations apply to the animal's experience with other animals of the same or different species. Although the experiences of the animal may be unknown, its reaction to events within the establishment will provide useful insight.

6.2.4 Animals' individual temperaments will also determine how they behave in response to stress or events. Establishments should be able to evaluate temperament both to ensure that the animal's needs are met and to ensure that any decision regarding its longer-term care is properly informed.

6.2.5 The Council considers that the impact of the establishment on each animal received will reflect the individuality of that animal. Although some generalisations related to the nature and biology of the species can be made, the effect of being put into the establishment needs to be assessed on each animal and each animal, being an individual, must act as its own control in any assessment of its welfare state. Thus, any measures of the animal's responses need to be compared over time: on arrival and at later set times to allow values to be compared. This would indicate whether the animal's welfare had changed during this period. Any change would be directly related to life in the establishment.

6.2.6 The rate at which an animal adapts (or fails to adapt) to the establishment will be a product of its own nature, temperament and experience and of certain characteristics of the establishment, such as the provision of resources that enable normal coping responses or the predictability of the management routine. For example, some animals may need to be able to hide or express other coping behaviours characteristic of the species.

6.2.7 The repeated assessment of a range of different animals will give a measure of the degree to which the establishment enables animals to adapt and its effectiveness in carrying out this function.

6.3 The Practicalities of Standards and Their Application

6.3.1 To ensure that welfare needs are met, standards may be developed and one approach is to recognise the value of the 'Five Freedoms', a well-known and widely used guide to welfare needs:

- Freedom from hunger and thirst
- Freedom from fear and distress
- Freedom from injury and disease
- Freedom to express most normal behaviour
- Freedom from discomfort

The principle that these enshrine is: if an animal's needs are met, its welfare will be ensured as far as can be achieved.

6.3.2 A common criticism of standards is that they concentrate only on the physical environment. For example, a standard may define the size of enclosure for an animal, its surface finish, temperature and lighting level, but will not necessarily include any observation of the animal's behaviour in the enclosure. The correct physical environment is important but does not guarantee good welfare.

6.3.3 Although the most reliable welfare assessment protocols involve a combination of behavioural and physiological measures, the latter have a limited application in companion animal welfare establishments. In practical terms, behavioural measures are more easily obtained as they are less invasive and do not require habituation to the sampling procedure. There are also established scales for the behavioural assessment of dogs and cats. However, overall confidence in using behavioural measures increases when academic studies show that physiological measures correlate with behavioural measures.

6.4 Assessment of Welfare

6.4.1 As there is no possibility of direct access to animal feelings it is impossible to know for certain how they feel. Inferences are all that can be made based on knowledge of the organisation and function of the animal's nervous system, its biological state, both

physical and behavioural, its experiences and cautious extrapolation of our experiences of pleasant and unpleasant feelings (rational anthropomorphism).

6.4.2 Under research conditions, attempts to measure welfare state typically involve triangulation, the assessment of three or more indices to reach overall judgement:

- Behaviour (signs of pain, fear and distress and positive signs)
- Physiological state (e.g. hormone levels associated with the behaviour.)
- Health state (presence or absence of the signs of disease or injury likely to cause pain or distress.)

6.4.3 Under field conditions, approaches to welfare assessment can be direct, using animal based indices and indirect, using resource based indices. Resource based indices are characteristics of the environment (e.g. food and water availability, appropriate thermal environment, suitable bedding etc.) and animal based indices are characteristics of the animals themselves (e.g. shivering, particular posture, lameness, vocalisation, withdrawal). Resource based indices are easy to check, easily measurable and quantifiable. Animal based indices may involve subjective judgements but this is acceptable if those making the judgements are trained and able to produce consistent observations. Both resource and animal based indices should aim to produce an outcome, which will be derived from the Five Freedoms.

Table 1

Examples of outcomes, animal based indices and resource indices

Animal based indices	Resource based indices	Outcome
1. Animals in good body condition (condition score applied)	Supplies of food and water available (Prepared under hygienic conditions.)	- Well fed and hydrated animal in optimum condition
2. Incidence of (specified) disease or injury within agreed limits.	Comprehensive veterinary care	- Healthy animal free from avoidable disease or injury.
3. Response to handler assessed	Design of enclosure allows interaction. Knowledgeable handler	- Normal social interaction free from fear

From the table, it will be noted that the animal based indices are the indicators of the animal's health and welfare whilst the resource based indicators are necessary to achieve the desired outcome. However, providing the resources does not guarantee the outcome (for example an animal supplied with adequate food might not eat or may have a parasite burden). Consequently, the animal based indices are necessary to ensure that resource provision delivers the desired outcome. This removes the criticism that any assessment system is an act of faith alone.

6.5 Resource and Animal Based Indices

6.5.1 Most of the larger charities which operate companion animal welfare establishments hold standards of operation. For the most part, these cover physical resource requirements,

although some standards acknowledge the need for environmental enrichment and expression of behaviour. However, such standards as exist are generally aimed at those establishments which re-home animals, and are, for the most part, derivatives of standards which have been held and used for many years. These standards do not generally address the issue of long-term care. The Association of Cats and Dogs Homes (based at the Battersea Dogs Home) makes available a document intended to help those wishing to start or operate a companion animal welfare establishment; copies are publicly available. The Council's view is that standards for companion animal welfare establishments need to be reviewed.

6.5.2 Animal based indices have been developed for a number of species. However, to date, there is no universal welfare assessment system that uses animal-based as well as resource-based indices that is generally accepted or in use for companion animals. This is a significant deficiency.

6.6 An Assessment System

6.6.1 As has been noted in the foregoing paragraphs, most assessment systems in companion animal applications use physical resource based standards. There has been little development of animal-based indices for use in companion animals outside the laboratory sector. Because resource-based indices are easy to measure and quantify, they are usually the basis of statutory and self-assessment protocols. However, the effectiveness of resource-based standards in delivering good welfare has not been determined.

6.6.2 A reliance on resources as the measure of good welfare can produce conflicting views. An observation from the evidence was that some individuals thought that large establishments with a high investment in resources did not necessarily produce better welfare than smaller establishments, which used fewer resources. However, some operators of large establishments were critical of smaller 'sanctuaries' that did not provide, in their view, adequate resources. Some parties were critical of the 'institutional' nature of larger establishments which, in their view, did not provide for the behavioural needs of the animals in care whereas larger establishments would be quick to defend their environmental enrichment and interactive programmes, designed to meet some of the animals' behavioural needs.

6.6.3 Any regulation of companion animal welfare establishments would necessarily require a fair and proportionate assessment system and a credible set of standards. To be effective in promoting good animal welfare, the standards would need to take account of the outcomes intended to result from their application. Furthermore, a standard would need to be sufficiently flexible to allow interpretation because of the great diversity of establishments already referred to. A significant difficulty facing any move towards regulation is the absence of any measure of the welfare outcomes delivered by particular resources and practices. We simply do not know whether animal welfare is better provided for by any particular set of resources, practices or standards and thus we cannot resolve the issues raised in 6.6.2.

6.6.4 The Council considers that before a regulatory structure could be established, a set of flexible standards would need to be agreed, based in the first instance on *informed consensus*. One method of evolving such standards is to draw up a list of specialists (including companion animal welfare establishment operators) in the field of animal care, for the species under consideration, and seek their opinion. The experts would be consulted to determine, in the light of present knowledge, the major welfare concerns relevant to the particular species in a particular environment or husbandry system and

what outcomes are necessary to assure good welfare. As discussed, outcomes, essentially derived from the Five Freedoms, include amongst other things acceptable measures of health, including minimum incidence of disease; behavioural measures including absence of abnormal behaviour such as stereotypy and evidence of expected behaviour and social interaction appropriate to the species. This would provide the starting point for a common standard. Once the principal welfare concerns were agreed, and the beneficial welfare outcomes defined, flexible standards for the delivery of the desired outcomes would be set for each area of concern. The list of standards would be circulated to a wider group to determine their relevance and practicality of application.

6.6.5 The Council is aware that standards may need to be assessed and that they should be clear and unambiguous. In using the term 'flexible', we mean that the outcomes of standards should be universal, but that the means of achieving the outcomes may vary between establishments. In developing a set of standards, we would prefer this approach to be adopted. For example, the standards should require that animals exercise sufficiently to satisfy their physical and behavioural needs. How establishments satisfy this requirement will vary. On the one hand, a rurally-based companion animal welfare establishment might allow dogs to run free on secure open meadow-land, whereas, on the other hand, an urban-based establishment might use dog-walkers to meet the requirement. In both cases, the requirements of the standards ought to be met, but it is worth noting that direct animal assessment, used to confirm the desired outcome, would, following this example, need to show that the dogs were physically fit and free from abnormal behaviour that might be expected to result from inadequate exercise. Furthermore, the direct assessment of animals would help to determine the suitability of either system for long-term care. In defining what we mean by flexibility, we hold the view that companion animal welfare establishments should take responsibility for delivering beneficial animal welfare outcomes. For this reason, we recommend in section 6.6 that each establishment should use the agreed consensus standard for each species in its care, and in consultation with its professional advisors, agree how the requirements of the standard should be met within that particular establishment. The Council believes that it would *be particularly helpful to have codes of practice to guide the development of standards within an establishment*.

6.6.6 Once a consensus standard was agreed for each species, in the longer-term, it would be desirable to commission specific research: to develop animal based indices and use these to test the welfare outcomes of companion animal welfare establishments using the consensus standards. The Council is clear that standards alone cannot guarantee good welfare and that direct observation of animals is the only way to ensure that a standard delivers the outcomes and thus good welfare. As a further example, a standard could require the inclusion of enrichment in a cat enclosure; only observation would indicate that the cat used the resources provided. Similarly, a standard might require that dogs spend a minimum period of time each day in play and social activity with handlers. Only observation would indicate whether the dog was showing normal interactive behaviour. Acceptable ranges would need to be set for animal based indices, which test the outcomes of the standards.

6.6.7 The standard, as used in any establishment, would need to be regularly reviewed and updated on the basis of the assessment of outcomes. The absence of research should not prejudice the setting of standards based on consensus consultation in the first instance.

6.6.8 In summary, what should be clear is that standards would need to be sufficiently flexible to allow them to be adapted to each individual establishment. However, the outcomes, which determine the animal's welfare state would not change. Standards should not be overly prescriptive, so that each establishment would retain the flexibility to meet the

outcome requirements in ways appropriate to its size and function. However, all establishments should have a duty of care to assess the effectiveness of their standards, in delivering the desired common outcomes, by direct assessment of animals in their care.

6.6.9 Notwithstanding the above discussion and the need for research to refine animal based indices, many observations are common sense and with experience, most animal carers can make meaningful assessments provided they understand the outcome desired. For example, the standard might require the "provision of wholesome food of appropriate type and in quantities and at intervals appropriate to the animal's needs". The operator would need to ensure that the animal was eating, exhibiting normal feeding behaviour and showing normal body condition.

6.6.10 Some resource-based standards should be held in common for all establishments (such as the example of food given above). As stated, the operator's obligation is to assess the animals in his or her care to ensure that the desired outcomes are achieved. Some resources will not be held in common. For example, an establishment aiming to offer lifetime care may need additional resources, such as those relating to environmental enrichment, whereas it may be acceptable for one aiming to re-home animals within a few weeks to be equipped differently. It should be the responsibility of the establishment in consultation with its professional advisors to apply those standards appropriate to its stated functions, meet the requirements of the standards and to evaluate their effectiveness in delivering the desired outcomes.

6.6.11 The discussion on animal welfare has focused on the physical and psychological needs of individual animals. Any discussion of animals as individuals must take account of temperament. Temperament describes the outward manifestation of the 'personality' of the animal. Animals may suffer significant stress when introduced to a companion animal establishment and this may affect their behaviour according to their temperament. Previous experience may be significant and dogs may show evidence of stress during the first few weeks after entering an establishment. For some, the stress may be significant for up to 8 weeks. Even after previous experience of establishments, dogs may show significant stress when introduced to a new establishment. Preliminary studies show that cats also become stressed when introduced to establishments.

6.6.12 Temperament assessment is important in providing for the immediate needs of animals brought into establishments, because the way that an animal reacts to stress and the way that this is expressed as behaviour will have a direct impact on its welfare in the establishment. For example, an anxious animal may need to hide in order to cope; a gregarious animal may soon become bored if deprived of attention. Furthermore, an understanding of temperament is important in evaluating the longer-term behavioural needs and thus welfare of an individual animal. Any assessment system should incorporate evaluation of temperament as well as measures of physical and mental health. Temperament assessment is important in evaluating the suitability of animals for re-homing. For example, a gregarious animal would not adapt well to a home where it would be left alone for long periods. Temperament evaluation of dogs was reviewed in "Assessing Dog Temperament" (UFAW 1998).

7. HEALTH AND DISEASE

7.1 Veterinary Health Plans

7.1.1 Good health is desirable and contributes to good welfare if the disease or injury which is to be prevented or treated is thought to cause pain or distress.

7.1.2 The health of animals in a companion animal welfare establishment requires a policy to limit the importation and spread of disease, to avoid injury and to treat individual cases of illness or injury. Isolation or segregation of incoming animals, parasite control, vaccination and barrier medicine need to be considered along with an effective system for ensuring ill or injured animals are seen promptly by a veterinary surgeon.

7.1.3 The day-to-day management of ill or injured animals which are insufficiently affected to require hospitalisation may require specific skills on the part of the manager or other staff member employed in the establishment. The designation of an animal welfare officer to ensure that animals are properly cared for is recommended. The Council is mindful that some establishments are essentially one-person operations and as such, we do not intend to suggest onerous requirements. There is no reason why an owner-operator could not be designated as the person responsible for animal welfare. However, the Council also feels strongly that any person designated as being responsible for animal welfare has a duty to ensure that he or she is adequately informed, experienced or trained to enable them to carry out their responsibilities properly.

7.1.4 Access to resources, such as isolation areas, treatment rooms and recovery or convalescence areas may be required. These may be provided by arrangement with a veterinary surgeon or on the establishment's own premises.

7.2 Nominated Veterinary Surgeon – designation and duties.

7.2.1 Named veterinary surgeons are appointed to oversee the health and welfare of animals used in research establishments. The use of a similar designation (nominated veterinary surgeon) is proposed for a veterinary surgeon nominated to oversee health and welfare in companion animal establishments. Where an organisation employs a veterinary surgeon with responsibility for the standards of operation of a companion animal welfare establishment, it should be acceptable for that person to be designated as the nominated veterinary surgeon. The Council is also aware that there are occasions when a veterinary surgeon might not be the most appropriate person to act as a nominated advisor, for example when the animals received are unusual exotic species.

7.2.2 The first duty of the nominated veterinary surgeon should be to develop a veterinary health plan for the establishment. The plan should be based on a risk assessment taking account of: the establishment's size; the species kept; throughput of animals; care policy; and function. The plan should take account of the issues listed in 7.1.2. In addition, the nominated veterinary surgeon should make a number of scheduled monitoring and advisory visits to the establishment. For some (smaller) establishments, it may be reasonable to carry out monitoring at the time of a call out or routine visit. Regulation could require mandatory visits by the nominated veterinary surgeon; this is discussed below in Section C**.**

7.2.3 The second duty of the nominated veterinary surgeon should be to ensure the provision of emergency veterinary care at all times for animals in the establishment.

7.2.4 The third duty of the nominated veterinary surgeon should be to ensure the provision of resources listed in 7.1.4.

7.2.5 The fourth duty of the nominated veterinary surgeon should be to assess the competence and where necessary to recommend training for designated person(s) (animal welfare officers) employed in the establishment and responsible for the assessment of animal

behaviour, other animal needs, including resources and day-to-day care of convalescent animals or those undergoing treatment in the establishment.

7.2.6 The nominated veterinary surgeon should assist the companion animal establishment in developing the standards for the establishment as discussed in paragraph 8.2.3. He or she should also assist the animal welfare officer and establishment operator to draw up the animal welfare and husbandry plan.

7.3 Animal Welfare Officer – designation and duties

7.3.1 All companion animal welfare establishments should nominate an animal welfare officer. The designated person should receive training for the post as recommended by the nominated veterinary surgeon. Training should include specific instruction in the behaviour and ethology of the species kept in the establishment. Some smaller establishments may be managed by a small number of people with substantial experience in animal husbandry. The nominated veterinary surgeon may consider that such experience satisfies the need for 'training'. However, it is recommended that as a minimum qualification for animal welfare officers larger establishments should require NVQ animal care level 3 in some or all of: Group A – animal care; Group E – Boarding; Group F – Animal Welfare; Group G – Animal Breeding. The animal welfare officer should be permanently attached to the companion animal welfare establishment.

7.3.2 Larger companion animal welfare establishments often have a high staff turnover and staff training is disrupted if this is the case. The Council considers this to be a most serious problem, which the sector needs to address. Staff development programmes and career structure are important considerations in this respect.

7.3.3 The animal welfare officer should be responsible for developing and implementing an animal welfare and husbandry plan (see 8.2.3 below) and for putting the veterinary health plan into practice under the supervision of the nominated veterinary surgeon. The animal welfare and husbandry plan, agreed with the nominated veterinary surgeon and operator, should include the application of the welfare standards and assessment of welfare.

7.3.4 The animal welfare officer should be responsible for the day-to day care of animals receiving treatment from the nominated veterinary surgeon or a veterinary surgeon acting on his or her behalf. The officer should ensure that the procedures specified by the veterinary surgeon are carried out, subject to the constraints of the Veterinary Surgeons Act as amended.

8. ESTABLISHMENT POLICY

8.1 General Policy

In section A, the Council drew attention to the desirability of policies to define what establishments do, rather than relying on particular terms such as 'sanctuary'. In its policy, and guided by the standards developed in conjunction with its professional advisors, each establishment should state clearly the numbers of animals of each species for which it has the resources necessary to keep them properly and to meet their needs. Resources should include space and equipment and also sufficient, adequately trained and experienced staff. The overall numbers of animals should not be exceeded. However, in multi-species establishments, some flexibility may be acceptable, using spare capacity for one species to allow extra capacity for another, provided that the requirements of the nominated

veterinary surgeon and animal welfare officer are met. (For example an equine animal establishment may successfully place donkeys into space usually assigned to horses).

8.2 Animal Welfare Policy

8.2.1 There should be a standard policy for all establishments, which covers the short term care of animals. The policy should take account of the veterinary health plan and the welfare and temperament evaluation protocols.

8.2.2 The Council has drawn attention to the need for a clear policy, which sets out how establishments provide for long-term animal care. When such care is provided on the premises, the policy should refer to the animal welfare and husbandry plan based on animal welfare needs. The plan should ensure delivery of the resources necessary to achieve the desired outcomes.

8.2.3 The development of the animal welfare and husbandry plan should be the responsibility of the nominated veterinary surgeon, the animal welfare officer and the manager of the establishment as appropriate. The plan should refer to the resource requirements of the standards agreed for that establishment. Following the example from paragraph 6.6.5, the requirements of the standard for the exercise needs of dogs were to be met by using dog-walkers or open-field exercise. In either case, the animal welfare and husbandry plan would specify the frequency of exercise; the requirements for the safety of both handlers, dogs and other animals; and the assessment of the animals to show that the desired outcomes were being achieved.

8.2.4 Some establishments provide cages, pens or stalls for animals, which contain few resources for social interaction or the performance of specific behaviour. Others provide a programme of social interaction, with people or other animals and enrich the environment to allow the exercise of some types of behaviour. The likely ability of each system to provide for the long-term care of an animal, during which its needs are met, should be determined by welfare assessment. As noted in Section B, assessments using both animal and resource-based indices are not fully developed, but nevertheless, the Council thinks it is likely that some establishments in the first category will not be suitable for the long-term care of some species of animal, whereas those in the second category may adequately meet animal needs for longer periods. The establishment's policy should reflect the results of any welfare assessment using direct animal observation.

8.2.5 The policy should indicate what resources including staff time and social activity with other animals are provided. The assessment protocol should be used to guide the development of resources and thus policy in any companion animal welfare establishment, particularly for those that wish to extend the average length of stay.

8.2.6 The policy should set out the establishment's intentions with regard to the average length of animal care it aims to work towards and the measures that it has in place to ensure that the welfare of the animals in its care are protected**.** However, whilst the design and provision of resources will aim to deliver average outcomes, animal welfare concerns must apply to individual animals.

8.2.7 The animal welfare officer should be familiar with and apply the animal based indices to monitor the welfare of animals in longer-term care. Absence of expected behaviour, or development of abnormal behaviour should indicate a need to act in the interests of the animal's welfare, by arranging for it to move to a more suitable environment, where that is in the animal's best interests, or by arranging euthanasia, under veterinary control. Similarly, other animal needs should be incorporated into an animal husbandry plan and monitored.

8.3 Behaviour and Temperament Assessment

8.3.1 Monitoring of individual animal behaviour should be a requirement of all companion animal welfare establishments. The necessary indices to allow a meaningful assessment need further development. Temperament evaluation of incoming animals is particularly important as part of a behavioural assessment.

8.3.2 Ensuring the day-to-day observations necessary for monitoring animals in longer-term care should ultimately be a responsibility of the establishment's nominated veterinary surgeon through the animal welfare officer. As a part of his or her duties, the nominated veterinary surgeon should ensure that the training and competence of the animal welfare officer is adequate to permit regular welfare monitoring.

8.3.3 The animal welfare officer or other authorised person (as determined by the establishment manager during absence of the animal welfare officer) should notify the nominated veterinary surgeon in the event that an animal is exhibiting signs of poor welfare. The officer should ensure that any decision regarding the long-term future of the animal is only made after consultation with a qualified veterinary surgeon, usually the nominated veterinary surgeon.

8.4 Re-homing Policy

8.4.1 Establishments which receive displaced animals should have a policy for returning animals to their original owners or keepers and for re-homing in the event that the original keeper cannot be found.

8.4.2 All establishments should endeavour to find a permanent home for displaced companion animals. This will usually be achieved by re-homing. The establishment should have a policy for re-homing animals encompassing the criteria that are taken into account in selecting a new keeper. These should include consideration of the suitability of the environment to which the animal will be re-homed; the ability of the proposed new keeper to provide for the animal's needs; and the likely social needs of both animal and keeper.

8.4.3 Temperament evaluation is also important in matching potential new keepers to individual animals. A substantial amount of work has been carried out in this respect for dogs. Where appropriate, all establishments which re-home animals should evaluate the temperament of animals to ascertain their likely suitability for re-homing.

8.4.4 There should be a policy to cover after-care of re-homed animals including a transfer of veterinary and other relevant records. The primary objective of the policy should be to protect the welfare of the animal by ensuring as far as possible that its needs are met in the new home.

8.5 Euthanasia Policy

8.5.1 Establishments should have a policy with regard to euthanasia.

8.5.2 Euthanasia should be carried out only by, or in exceptional circumstances on the advice of a veterinary surgeon.

8.5.3 The veterinary surgeon should recommend euthanasia when an animal is showing signs or symptoms of a disease or other condition likely to cause ongoing pain or suffering or where treatment or other intervention would cause unacceptable distress. Euthanasia should also be recommended when an animal is showing behaviour which indicates that its needs are not being met and where relocation to a more suitable environment is not feasible or would cause unacceptable suffering.

8.5.4 As stated in Section 3.4 the establishment should make its long-term care policy transparent. If ongoing assessment were to indicate that the establishment was generally unsuitable for providing lifetime care, then the establishment should make it clear that animals exhibiting behaviour which showed that their needs were not being met (and where rehoming or movement to a more suitable establishment was not possible) would be euthanased.

8.5.5 Establishments should have a transparent policy for the disposal of animal remains.

8.6 Veterinary Procedures Policy

8.6.1 Establishments should have a transparent policy covering the extent to which individual animals receive veterinary treatment for specific conditions.

8.6.2 Veterinary treatment can be expensive and in the absence of insurance, some establishments cap the treatment costs for any individual animal. Even when the treatment of the animal can be accomplished, with due regard for its welfare within budget, the establishment may still make a subjective judgement regarding the likely long-term future of the animal. An older or less sociable animal might be difficult to re-home and the establishment's management may decide that the investment in that animal is not justified.

8.6.3 The Council's view is that whatever policy the establishment adheres to, it should be completely transparent, so that members of the public can make informed choices when they choose to support or make use of the establishment. Irrespective of the detail of the policy, the establishment's management must ensure that animal welfare is not compromised and if a decision is made to euthanase an animal rather than treat it, that decision should be made before any procedure other than sedation or pain relief is carried out.

SECTION C

The Case for Regulation

9. REGULATION

9.1 General Observations

9.1.1 There is presently no legal regulation of companion animal welfare establishments, notwithstanding that such schemes exist for dog breeding establishments, riding establishments, pet shops and animal boarding establishments. Indeed, there is no legal obligation on the operators of companion animal welfare establishments over and above the general provisions relating to cruelty. In particular, there are no welfare requirements, specifying how animals ought to be treated. The only qualified exception is under the Dogs Act 1906 and the Environmental Protection Act 1990, both of which impose a duty on the police and a local authority having charge of a stray dog to 'cause the dog to be properly fed and maintained' while it is detained (ss 3 (8) and 149 (9) respectively). However, this provision ceases to apply once the dog is disposed of (for example, by selling or gifting it to a companion animal welfare establishment), because it is no longer formally detained.

9.1.2 By way of contrast, the European Convention on Pet Animals (1987, ETS 125), provides that any person who operates, or intends to operate, what in the Convention is called ‘an animal sanctuary’, must make this known to a designated state authority. Such a declaration is required to stipulate: the species of companion animal that is to be kept; the person responsible and his knowledge; and a description of the premises and equipment. The establishment is only permitted to operate if:

i. the person responsible has the knowledge and abilities required for the activity, either as a result of professional training or of sufficient experience with companion animals; and
ii. the premises and equipment are such as to provide accommodation, care and attention which take account of the ethological needs of the animal in accordance with its species and breed, in particular
    a. give it suitable and sufficient food and water;
    b. provide it with adequate opportunities for exercise; and
    c. take all reasonable measures to prevent its escape.

9.1.3 If the state is not satisfied that these conditions are adequately met, it must recommend measures and, if necessary for the welfare of the animals, prohibit the commencement or continuation of the activity (Articles 4 and 8). Unfortunately, successive Governments have declined to ratify the Convention, and it has no impact on law in the United Kingdom.

9.1.4 As we pointed out in the Introduction to this Report, on the basis of the evidence it has received, the Council has concluded that there is currently limited objective evidence of poor welfare in companion animal welfare establishments. The Council recognises, however, that there is a significant level of concern, and it believes that appropriate steps should be taken to ensure high standards of welfare are consistently maintained in *all* companion animal welfare establishments.

9.1.5 The Council has outlined in the preceding pages of this Report measures which it considers to be necessary for the promotion of high standards of welfare, and it has concluded that, if these are to be effectively adopted, implemented, and monitored, some form of external regulation is essential.

9.1.6 We are also conscious that many, possibly the great majority, of companion animal welfare establishments rely on public support to continue their work. A significant number, but not all, are registered charities. If registered in England and Wales, such organisations are accountable to the Charity Commission. However, the Commission is primarily concerned with issues such as efficiency and propriety; it has neither the responsibility nor the resources to evaluate the quality of care that is provided. Charities registered in Scotland and Northern Ireland are presently subject to even less stringent oversight. The Council therefore takes the view that external regulation can make an important contribution in promoting accountability, transparency, and public confidence.

9.1.7 Furthermore, the Council is mindful that, regardless of whatever shortcomings there may be in the present statutory schemes, Parliament has acknowledged the desirability of introducing statutory regulation for other types of establishments where substantial numbers of companion animals are kept. Such legislation is intended principally to protect the animals that fall within its scope, and it would seem logical that similar measures should be introduced for the benefit of displaced animals. This is especially the case when one considers that animals may be kept at companion animal welfare establishments in significantly greater numbers than, for example, many dog breeding establishments, and for a much longer period than a cat or dog would normally stay at an animal boarding establishment.

9.1.8 For the reasons outlined above, the Council is persuaded of the desirability of introducing statutory regulation, and recommends that provision for this be included in the Animal Welfare Bill that DEFRA is presently drafting. If enacted, the Act will apply only to England and Wales. The Council therefore calls on the Scottish Executive and those charged with the government of Northern Ireland to consider introducing similar legislation in their respective jurisdictions.

9.1.9 Having expressed our support for regulation, it is important to emphasise the issue that such regulation is intended to address. Namely, as was apparent in the evidence submitted to us: a widespread concern for the welfare of animals in some establishments, especially with regard to the health, behavioural and social needs of those animals.

9.2 The Purpose of Regulation

9.2.1 The Council is therefore of the view that the primary purpose of introducing regulation of companion animal welfare establishments is to ensure that animal welfare is protected. The Council considers that this can best be achieved by requiring every companion animal welfare establishment to:

(i) Draw up a standard of operations that, among other relevant information, should identify the species that the establishment holds itself out to accept into care, and the maximum number of each species that it is properly equipped to look after at any one time.

(ii) Appoint a nominated veterinary surgeon as an advisor. The nominated veterinary surgeon's responsibilities should include: preparation, in conjunction with the operator, of a veterinary health plan; certifying the competence, either through training or experience, of the animal welfare

officer; and visiting the establishment at intervals, the regularity of which should be determined by reference to the size and operational characteristics of the particular establishment; development of the establishment's standards of operation; and approval of the animal husbandry plan. The Council recognises that there are some circumstances in which a veterinary surgeon is not necessarily the only – or, indeed, the most – appropriate person to give advice. For example, there are professionals with considerable experience of animal welfare who might reasonably be called upon to help develop standards and plans, notwithstanding that they are not veterinary surgeons. Similarly, particular and very specific specialist knowledge may be required, especially in relation to exotic species. When appropriate, the nominated veterinary surgeon should seek, and take account of, relevant advice from such sources.

(iii) Appoint an animal welfare officer. The person appointed must have satisfied the nominated veterinary surgeon that they possess the necessary competence, either through training or experience, to carry out their duties under the regulatory scheme. The animal welfare officer should understand the establishment's standards of operation, and use these as a basis for producing both a plan and an operations manual focusing on animal husbandry within the establishment. The plan must be approved by the nominated veterinary surgeon. Provided they satisfy the foregoing criteria, it should be acceptable for the animal welfare officer also to be the owner or operator of the establishment. When appropriate, the animal welfare officer should be responsible for staff training.

(iv) Draw up a veterinary health plan. The plan should set out: the measures to be taken to protect the establishment from imported disease and to ensure disease control within it; the protocols for vaccination, parasite control, and other prophylactic measures; the management of illness and injury; the availability of isolation and separation facilities, and their proper use; the provision of emergency care; and the keeping of medical records.

(v) Draw up an animal husbandry plan and a manual of operations, both of which should be based on the establishment's standards of operation. The plan should include information relating to: the immediate care and assessment of incoming animals; feeding regimes; water provision; grooming; bathing; cleaning schedules; environmental control; the provision of comfort through appropriate bedding, exercise play, and access to facilities necessary for the animals' social and behavioural needs; vermin control; waste disposal; the monitoring of animals by day and night; security and escape prevention measures; and emergency procedures and contingencies. It is desirable that a record is kept of all these activities.

(vi) Meet its legal obligations in respect of environmental health, employment, health and safety, and other relevant matters.

(vii) Employ adequate staff to ensure the welfare of animals in its care.

(viii) Publish its policy in relation to re-homing, treatment, long-term care, and euthanasia.

(ix) Keep a record of every animal entering or leaving the establishment, and every animal that either dies or is euthanased while in the establishment's care.

9.2.2 In furtherance of the above, we recommend that:

(a) Every establishment be subject to an annual assessment. This should be carried out as part of either the licensing scheme or registration (see sections 9.4 and 9.5 below).

(b) The operator of every establishment should have imposed on them an express duty to ensure the welfare of the animals in their care. We understand that DEFRA is presently considering the inclusion of such a duty in its Animal Welfare Bill, which would apply to the owners and keepers of all companion animals. If such a duty were to be modelled on that already in force in relation to animals kept for farming purposes, it would require owners and keepers 'to take all reasonable steps to ensure the welfare of the animals under their care; and to ensure that the animals are not caused any unnecessary pain, suffering or injury'. If such a measure is introduced in respect of companion animals generally, it will, of course apply to those who operate companion animal welfare establishments. We consider, however, that it is entirely appropriate that operators should be placed under a more demanding duty than the 'ordinary' keeper or owner of a companion animal. We therefore propose that the operator of a companion animal welfare establishment be placed under a duty to take every appropriate step to ensure the welfare of the animals under their care; and to ensure that the animals are not caused any unnecessary pain, suffering or injury.

(c) In order to meet the duty outlined in the previous paragraph, we envisage that the operator of a companion animal welfare establishment would be required to demonstrate that the establishment is working to an accepted standard, and to ensure that, in the context of their own establishment, the standard achieves the desired animal welfare outcomes.

(d) Each establishment must operate to standards derived from a consensus standard for the species, adapted in consultation with the nominated veterinary surgeon or other professional advisors, to ensure that the needs of animals in the establishment are met. Codes of practice should be drawn up to inform the development and application of these standards.

(e) In the longer-term, research will be necessary to provide the means of assessing the effectiveness of the standards in delivering desirable animal welfare outcomes. Operators should ensure that standards are revised regularly as appropriate.

(f) Establishments should have animal welfare and husbandry training programmes for all staff (to include employees and volunteers) who interact with animals.

9.3 The Definition of a Companion Animal Welfare Establishment

9.3.1 We stated in the Introduction that we have chosen to use the term 'companion animal welfare establishments' to refer to the undertakings that are the subject of this report. We explained that, in part, this is because it is convenient to adopt a collective term in preference to the variety of names currently applied to such establishments. More

particularly, however, we prefer 'companion animal welfare establishments' to terms such as 'sanctuary', 'animal home' or 'rescue centre' because we think it more accurately reflects their purpose and function.

9.3.2 Attempts to define undertakings which we describe as 'companion animal welfare establishments' tend to focus, at least in part, on the number of animals which they keep. Thus, the European Convention for the Protection of Pet Animals defines an 'animal sanctuary' to be 'a non-profit making establishment where pet animals may be kept in substantial numbers.'

9.3.3 Similarly, the Animal Sanctuaries (Licensing) Bill proposed that the term 'animal sanctuary' should mean:

> "Any premises at which ten or more animals, or in the case of equines, four, are kept for the purpose of protection, rehabilitation, rest or re-homing other than:
>
> (a) any establishment at which any animal is kept and the use of the establishment for that purpose is licensed in accordance with any other enactment;
>
> (b) any premises owned or operated by a local authority and used for the detention or care of any animal by that authority in the exercise of its functions under any enactment."

The Bill also exempted from its scope premises: used for the care and treatment of animals by a veterinary surgeon; used for the keeping of animals under the Animal Health Act 1981; or where food or shelter is provided for an animal, where the animal is free to enter or leave the land.

9.3.4 The rationale for defining what constitutes a companion animal welfare establishment, at least in part, by reference to the number of animals kept is that it provides a straightforward and objective threshold which would have to be met before the regulatory scheme applied, and it has been suggested to the Council that we should adopt a similar approach.

9.3.5 The Council has given very careful consideration to the preferred approach to this issue. We appreciate the attraction of defining an establishment at least in part by reference to the number of animals that it keeps. However, in view of the range of species of animals which establishments take in, and the variation in the nature of establishments themselves, we have concluded that to base the definition on numbers is not only undesirable, it is in our view unworkable. We consider that it would be arbitrary in its effect, or incredibly unwieldy if provision were to be made for different species, or both.

9.3.6 There is a further important consideration that has influenced the Council's approach. It is this: in the evidence which was presented to us, concern was expressed about welfare standards in situations where individuals take in and adopt displaced animals, generally keeping them in their own homes, in circumstances where they cannot be cared for properly. We accept that a person may accumulate a number of otherwise unwanted animals from the best of intentions, but, as we have already pointed out, we are concerned with animal welfare, not intention. To this end, we have concluded that the regulatory regime must encompass the irresponsible collector of waifs and strays, regardless of their motivation, and, ideally, allow early intervention to prevent a problem escalating. We are not convinced that specifying particular numbers of animals in the definition of a companion animal welfare establishment would assist in facilitating such a response. Moreover, we are clear that there is no direct correlation between the number of animals that a person keeps, and the standard of care that they provide.

9.3.7 We are firmly of the view that companion animal welfare establishments should be defined exclusively by reference to their function. Accordingly, throughout the report we have referred to a companion animal welfare establishment to be a place which:

(1) receives companion animals which for whatever reason have become displaced from their usual place of keeping; and
(2) provides for their immediate needs; and
(3) carries out one or more of the following in relation to such animals:

(a) the provision of long-term or lifetime care;
(b) re-homing;
(c) arranging euthanasia of those animals whose needs cannot otherwise be adequately met.

9.3.8 The term 'companion animal' should for these purposes be defined to include: domestic dogs; cats; rabbits; small mammals and exotic pets, including reptiles, amphibians, birds and fish; horses; donkeys; mules; domestic poultry; pigs and ovine animals kept as domestic pets; falcons or other birds of prey usually kept in domestication; and wild mammals, amphibians, reptiles, fish and birds taken into care as result of injury or abandonment.

9.3.9 We recommend that it should be the operator of the companion animal welfare establishment who is held accountable in law under the proposed regulatory scheme.

9.3.10 For these purposes, we propose that the meaning of 'operator' should be 'a person who holds themselves out (i) to receive displaced animals; and (ii) to carry out the functions of a companion animal welfare establishment as set out in paragraph 9.3.10 above.

9.3.11 We consider that this definition, turning as it does, first, on a person holding themselves out to receive displaced animals, and secondly, on that person carrying out certain functions, meets the important point that there must be some distinction between on the one hand, the operator of a companion animal welfare establishment and, on the other, a person who may take in a displaced animal from time to time, and who may already keep a number of animals.

9.3.12 We consider that a companion animal welfare establishment may be operated by an organisation or by an individual person. If it is an organisation, it may be either commercial or charitable in character, or be a public body. In accordance with normal legal usage, the term 'person' applies to all these.

9.3.13 We should make the point that a person who re-homes or fosters an animal from a companion animal welfare establishment does not fall within this definition, because the animal is no longer displaced, having already been taken in by the establishment from which it has been obtained.

9.3.14 The definitions we propose for a companion animal welfare establishment and an operator are both deliberately wide. We consider this to be necessary in order to reflect the diversity of establishments.

9.3.15 We are conscious that a perennial danger of regulation is that it is too wide in its scope, or too demanding in its impact, and thereby has a detrimental impact that was not intended. Given our proposed definition of a companion animal welfare establishment, two issues arise, and they both concern what might be described as the less formal end of the sector, especially where the animals are kept in or at a person's home.

9.3.16 First, there is a need to distinguish between, on the one hand, the person who is running a companion animal welfare establishment from their home and, on the other, the 'ordinary'

companion animal keeper who may happen to have a substantial number of animals, many (indeed, all) of which were formerly displaced. We consider that we have addressed this point by our proposed definition of the operator of a companion animal welfare establishment. Whether a person is holding himself out to receive displaced animals will be a question of fact, to be determined according to the particular circumstances. However, it will clearly not include those who adopt or re-home an animal from a companion animal welfare establishment, nor do we think it will extend to the person who may occasionally directly take in a displaced animal.

9.3.17 Second, we recognise that there are many people who hold themselves out to receive displaced animals into their homes who are entirely responsible, provide a high standard of care, and make a very significant contribution to animal welfare. The Council readily acknowledges the good that is done by many individuals and smaller organisations, and it is evident that without their contribution the larger establishments would be unable to cope with the many displaced animals that need care. The last thing we wish is to see their work undermined by the imposition of an unnecessarily bureaucratic and expensive regulatory regime. We therefore recommend a two-tier scheme of regulation that we consider will satisfactorily address this issue.

9.4 Licensing of Companion Animal Welfare Establishments

9.4.1 We propose that every operator of a companion animal welfare establishment who is also a registered charity, a commercial organisation, or a public body, should be licensed by the local authority in whose area the establishment is situated.

9.4.2 We estimate that this would apply to more than 350 establishments in England and Wales. The Dog Rescue Pages (www.dogpages.org.uk) list around 1000 establishments in the UK as a whole, including Northern Ireland and Scotland, although some of these are not registered charities.

9.4.3 For the avoidance of doubt, it would be the operator (for example, the relevant charity) that would be licensed rather than the establishment itself. The licence would provide the operator with the necessary authority to operate the establishment. A registered charity, commercial organisation, or public body that operated an establishment for which they had not been granted a licence would be guilty of an offence. Special arrangements would need to be made for any companion animal welfare establishment operated by a local authority.

9.4.4 The relevant legislation would need to make provision for the procedure where an application for an initial licence was submitted, and the procedure for the renewal of a licence. We also envisage that there would be provision for the revocation of an existing licence. A licence would be issued subject to conditions; some of these would be standard conditions, laid down in either secondary legislation or, alternatively, a code of practice. Local authorities should also be given a discretionary power to attach their own conditions to licences.

9.4.5 Transitional arrangements would need to be put in place in respect of existing establishments.

9.4.6 We consider that, in addition to assisting the promotion of high standards of welfare in such establishments, the regulation of registered charities would contribute to greater accountability and transparency of organisations that are raising funds from the general public and securing significant financial benefits as a result of their status. Well-run charities would have nothing to fear from this situation, but it would assist in identifying any organisation that was falling below accepted standards.

9.4.7 Each establishment would be subject to an inspection at the time of an initial application for a licence, and annually thereafter. The local authority would appoint the person carrying out the inspection, taking account of the species kept and any possible conflicts of interest.

9.4.8 The local authority would be empowered, subject to appeal, to refuse to issue a licence if the operator did not have the necessary planning consents or failed to satisfy the conditions required either by the legislation or by the local authority in the exercise of its discretion.

9.4.9 The licence would state the maximum number of animals of each species that the establishment may keep in care at any time.

9.4.10 The licence would require records to be kept of animals received, animals in care, and animals that leave the establishment (with the reason for departure). Details of persons bringing animals to the establishment or taking them into care would also be kept. The records would note the species, age, sex and general description of each animal. Records would be kept for a prescribed period.

9.4.11 If such a procedure had not already been carried out, every animal taken into care would, where such a method is available, be permanently identified using a microchip or other means appropriate to the species. The identity would be used in all records.

9.4.12 The licence would require the appointment of a nominated veterinary surgeon, and a suitably qualified or experienced animal welfare officer. The latter person might also be the operator of the establishment.

9.4.13 The establishment would be required to comply with a standard of operations, including specific requirements for each species kept, as approved by the nominated veterinary surgeon or other professional advisor. The standard would specify desirable welfare outcomes and the resources necessary to achieve those outcomes, including the provision of staff. The nominated veterinary surgeon and establishment operator will be guided by a code of practice for the species to be kept.

9.4.14 The minimum frequency of attendance at the establishment by the nominated veterinary surgeon would be specified using the code of practice as a guide.

9.4.15 The operator of an establishment would be placed under a duty to take every appropriate step to ensure the welfare of the animals under their care; and to ensure that the animals are not caused any unnecessary pain, suffering or injury. In order to comply with this duty, the operator would be required to demonstrate that the establishment was working to an accepted standard, and to ensure that in the context of their own establishment, the standard achieves the desired animal welfare outcomes.

9.4.16 At the very minimum, the accepted standard would incorporate the development of a veterinary health plan and an animal husbandry plan; the keeping of appropriate records; and the assessment of the welfare of animals in care to ensure that the welfare outcomes are being achieved by the resources and practices specified by the standards and plans.

9.4.17 Each establishment should have available a policy document stating the species accepted, the facilities for long term care, euthanasia policy and re-homing policy.

9.5 Registration of Companion Animal Welfare Establishments Not Otherwise Required to be Licensed

9.5.1 As was stated above, the Council considers that regulation should extend to the all those who hold themselves out to take in and care for displaced animals. Establishments that are not operated by a registered charity, a commercial organisation, or a public body, will tend to be less formal, more diverse and, generally, less well resourced. However,

the animals which are kept at such establishments are just as worthy of statutory protection as are those kept at larger undertakings. The number of such establishments is unknown, but certainly exceeds several hundred and includes small sanctuaries, animal homes attached to, or part of, the owners' homes, small holdings acting as animal homes, and smaller versions of the charitable sector establishments.

9.5.2 If the proposed Animal Welfare Bill is enacted, and if it contains a general duty on the owners and keepers of animals to take reasonable steps to ensure the welfare of animals under their care, this would go a long way to address the problem of poor welfare standards in some small establishments. However, he Council is not persuaded that it would be sufficient to address the problem.

9.5.3 The Council recommends, therefore, that such establishments should be subject to registration by the local authority in whose area they are situated. Subject to the provisions of the legislation, it would be within the authority's discretion to determine whether a person was operating a companion animal welfare establishment, and, if so, to decide whether they were required to be registered.

9.5.4 The Council recommends that when the regulatory scheme is introduced, all such establishments should be encouraged to register. Registration would enable the authority to make available codes of practice and written advice. The registration would apply to the premises and would be transferable on notification of a change of ownership. The establishment would require an initial visit from a local authority officer. In the first instance, the officer would determine whether the premises required to be registered. If so, the operator would receive advice on their duty of care, including the need to nominate a veterinary advisor (who would normally be a member of the veterinary practice of which they were already a client) or, depending on the species kept, other professional advisor, and arranging for an annual advisory visit. The owner or operator would also be advised to apply standards of operation, using the codes as a guide, and to develop veterinary and animal husbandry plans. The nomination of the owner, operator or other suitably qualified or experienced person as an animal welfare officer would also be advised. At the time of the annual visit, the nominated veterinary advisor would, if satisfied with the standard of welfare, make an annual report that the local authority would be empowered to request in the event of a complaint. The report would confirm: that in the opinion of the veterinary surgeon or other person, animals in the establishment were healthy and well cared for, that facilities and procedures for the short term care of received animals were satisfactory, and that the needs of animals in long-term care were being met.

9.5.5 In the event that a complaint was received from a third party, the local authority would visit the establishment and decide if further action was necessary, as discussed below.

9.5.6 A local authority could, subject to appeal, refuse to register premises that it considered unsuitable on grounds such as public nuisance, a failure to obtain necessary permissions, or other specified reasons, such as a court order forbidding the operator from keeping animals.

9.6 Responding to Complaints and Concerns about Unregistered Premises

9.6.1 Although it would be in their own interests to contact the local authority and take advice, some owners or operators will inevitably determine that they do not satisfy the criteria for registration as a companion animal welfare establishment. It is also possible that members of the public or others might become concerned when displaced animals are received and kept at particular unregistered premises.

9.6.2 Where a local authority had reason to believe that premises were being used for taking in and keeping displaced animals, an officer could either gain entry with the agreement of the owner or occupier or the premises or under the authority of a court order.

9.6.3 In the event that the local authority officer was satisfied that the premises were being used to receive and care for displaced animals, and that the animals in care appeared to be well looked after, he or she would, if appropriate, and subject to appeal, register the premises. Alternatively, the officer could determine that, although there was prima facie evidence of a companion animal welfare establishment, it should be exempt from the need to register. If advice was needed, the officer would provide information or give sources of information to the owner or operator.

9.6.4 An owner or operator would commit an offence if he or she operated an unregistered or companion animal welfare establishment.

9.6.5 As noted in the foregoing paragraphs, when a local authority officer responded to complaints or concerns, he or she would, in the first instance visit the premises concerned to assess the situation and validity of the complaint. If the complaint appeared to be justified, the first requirement would be to protect animal welfare. In the case of a registered establishment, the officer would ask to see the most recent report compiled by the nominated veterinary advisor and would, if deemed necessary, obtain further information by calling in expert veterinary advice, appropriate to the facilities and species kept. If, in the opinion of the professional advisor, animals were suffering unnecessarily, the provisions of existing (or new) animal welfare legislation would apply.

9.6.6 Throughout, the Council's approach to regulation of this diverse group, through registration, aims to impose the least burden on establishments performing a valuable and effective service to the community. We are confident that most operators have the animals' interests at heart and we view registration as a means of protecting the interests of committed people. The role of the local authority is essentially advisory, to ensure that operators know their obligations, are able to show a duty of care and are informed by codes of practice and other relevant information. However, the Council is also aware that some operators, essentially a minority, fall far short of the standards expected rightly by others in the sector and members of the public. For this reason, the Council believes that the local authorities must be given powers to take action where there is evidence of poor welfare.

9.6.7 The local authority officer would need specific training in the operation of companion animal welfare establishments, animal welfare and animal health.

9.7 Support for Regulation

9.7.1 For regulation to be effective, supporting research and development is necessary.

9.7.2 The Council recommends that a working group should be established for each companion animal species to consult and develop the consensus standards and codes of practice. Such groups exist for some species on an informal basis and these already include some companion animal welfare establishment operators and other interest groups amongst their membership.

9.7.3 Research should be commissioned to develop a practical welfare assessment protocol for species kept in establishments, to guide the development of standards and to inform the work of animal welfare officers.

SECTION D

Animal Ownership

10 OWNERSHIP OF DISPLACED ANIMALS

10.1 During the course of its investigation, the Council has identified three issues concerning the ownership of displaced animals that it considers need to be addressed. Co-incidentally, during the preparation of this report, David Amess, MP, introduced in September 2003 a Private Members Bill, the "Stray Animals Bill" which sought to address some of these issues. (Hansard, House of Commons 17 Sept 2003, col. 878). The Bill was neither printed, nor did it advance to Second Reading, before the end of the Parliamentary Session.

The First Issue:

10.2 The Council is concerned that ownership of unidentified displaced animals is often unclear.

10.3 **Dogs.**

10.3.1 Statute specifies that where a stray dog which has been seized by a police officer has not been claimed after seven days, 'the chief officer of police, or any person authorised by him in that behalf may cause the dog to be sold or destroyed in a manner to cause as little pain as possible' (Dogs Act 1906 s 3(3)). Where a dog is sold in accordance with this provision, ownership clearly passes by implication to the purchaser. However, where no such transaction takes place, it is not clear that ownership similarly passes. Section 3(7) of the same Act makes provision for the police to 'dispose of any dog seized under this section by transferring it to an establishment for the reception of stray dogs', providing the establishment keeps a register available to the public of dogs which it has received. It is submitted, however, that this 'transfer' refers to placing the dog in the establishment for all or part of that period between seizure and the decision permanently to dispose of the dog and does not amount to a formal transfer of ownership.

10.3.2 In contrast, where a stray dog is seized by an officer of a local authority, such as a dog warden, and it remains unclaimed, statute specifies that the local authority may dispose of it in one of three ways:

(i) By selling it or giving it to a person who will, in the opinion of the authority, care properly for the dog;

(ii) By selling or giving it to an establishment for the reception of stray dogs; or

(iii)By destroying it in a manner to cause as little pain as possible.

10.3.3 Most importantly, the same legislation expressly provides that where a local authority disposes of a dog to a person acting in good faith either by selling it or giving it away, then 'the ownership of the dog is vested in the recipient' (Environmental Protection Act 1990, s 149(6), (7)).

10.3.4 The Environmental Protection Act 1990 (s 150) or, in the case of the police, the Dogs Act 1906 allows a member of the public who hands over a stray dog to a local authority or to the police to keep the dog if it remains unclaimed (see also, the Environmental Protection (Stray Dogs) Regulations S1 1992/288).

10.3.4 The Council is of the view that the relevant provisions require clarification and amendment. At the very least, they should be consolidated and amended to introduce consistency.

10.4 **Species other than dogs.**

10.4.1 Although there is legislation relating specifically to dogs, the Council takes the view that the issue of ownership is relevant to every type and species of animal that is taken in by a companion animal welfare establishment.

10.4.2 The situation with regard to the ownership of displaced animals of other species is also unclear. Accordingly, we recommend that appropriate provisions formally confirming ownership should be enacted in respect of other species.

10.5 The Council recommends that the law be changed to allow companion animal welfare establishments to become the legal owners of unidentified displaced animals of any species received into their care, after a specified period, which in any event should not be less than seven days. The presumption should be that a responsible owner would ensure that their animal is identified or would make every effort to find it if lost.

10.6 Clearly it is imperative that the legitimate interests of the original owner should be protected. In this regard, the Council considers that the owner who has taken the trouble to identify their animal so that they can be traced (for example by means of micro-chipping or tattooing) should be placed in a better position than the owner of an unidentified animal. This could be achieved, for example, by, first, requiring the establishment to take reasonable steps to reunited an animal with its owner when the latter can be identified; and, second, by allowing a longer period (such as fourteen days rather than seven) before the animal could be disposed of. Such a policy would seem not only equitable, but might also encourage and promote voluntary animal identification. (The CAWC report on Animal Identification refers specifically to these issues).

The Second Issue:

10.7 The Council is aware that when an animal is re-homed, many establishments purport to retain ownership of it. The precise arrangements vary, but they may include an expectation that the person re-homing the animal will make a donation (often a specific amount is suggested), and will also accept a range of duties and obligations in respect of the animal, but the establishment will continue to claim certain rights over the animal.

10.8 We are advised that, at least in some situations, although the form of such an agreement suggests that the establishment is still the owner, the substance of the arrangement actually amounts to a transfer of ownership.

10.9 We understand that establishments may wish to reclaim the animal if its new home is unsatisfactory. However, we think that this concern does not prevent a formal transfer of ownership, subject to a clause in the agreement to the effect that, if specified circumstances arise during an express period from the time of the agreement, ownership will revert to the establishment.

10.10 Similarly, we understand that establishments may not wish to be regarded as selling or trading companion animals. In the past, the distinction has been of legal significance, because if they were regarded to be selling animals they may fall within the meaning of a ‘pet shop’ contained in the Pet Animals Act 1951. This issue could be addressed as part of the proposed Animal Welfare Bill.

10.11 We think it important that all concerned are clearly aware of who, in law, owns an

animal, and we recommend that the operator of every establishment examines its procedures and paperwork to establish whether or not ownership is transferred when an animal is re-homed.

The Third Issue:

10.12 Where an establishment genuinely does retain ownership of a re-homed animal, we think that it is incumbent on the establishment to fulfil its legal and moral responsibilities as owner. It is already the case under the Protection of Animals Acts that the owner of an animal may be deemed to have permitted cruelty if they fail to take reasonable steps to prevent their animal suffering unnecessarily. We anticipate that under the proposed Animal Welfare Bill it will be proposed that the duty on the owner will extended to taking reasonable steps to ensure the welfare of their animal.

10.13 Regardless of the legal duty, however, we recommend that where a companion animal welfare establishment retains ownership of an animal which is no longer kept at the establishment, it should have in place (as some operators already do) a meaningful system of monitoring and recording the condition and welfare of the animal.

SECTION E

APPENDIX 1

MEMBERSHIP OF THE COMPANION ANIMAL WELFARE COUNCIL

- Companion animals in health and social care institutions.
- Legislation on Companion Animals.
- Un-regulated companion animal services in relation to training, exercising and care.
- Phenotypic Modification through selective breeding of application of modern biotechnology, and the welfare of companion animals.

Appendix 1 Membership of the Companion Animal Welfare Council

The following are presently members of the Council:

Chairman Lord Soulsby of Swaffham Prior

Deputy Chairman Dr James Kirkwood
Chairman of Non-Domesticated Animals Working Party

Treasurer Mr Ronald Mochrie

Professor Sam Ahmedzai
Chairman of the Working Party on Companion Animals in Health and Social Care Institutions

Mrs Sue Bell

Ms Barbara Cooper
Chairman of the Working Party to Review Un-regulated Companion Animal Services in Relation to Training, Exercising and Care

Ms Anne Docherty

Lady Fretwell

Professor Neil Gorman

Mr Michael Herrtage

Mr Lou Leather
Chairman of the Working Party on the Identification and Registration of Companion Animals

Dr Anne McBride

Mr Mike Radford

Chairman of the Working Party on Legislation on Companion Animals

Mr John Rogerson

Dr Peter Scott

Mr Bill Swann
Chairman of the Working Party on Companion Animal Establishments: Sanctuaries, Shelters And Re-Homing Centres

Adviser to the Council: Professor Sir Colin Spedding

Secretariat: Mrs Cynthia Baldock

APPENDIX II

THE ROLE AND CONSTITUTION OF THE COMPANION ANIMAL WELFARE COUNCIL

BACKGROUND TO THE ESTABLISHMENT OF CAWC

In 1993 the late Lord Houghton of Sowerby had promoted the idea of establishing a new advisory committee, financed from non-government sources, to be called the Dog Control and Welfare Council. Lord Houghton wished to model this Council on the lines of the Farm Animal Welfare Council in that it would be recognized as an independent advisory body with its membership being appointed by the Government.

Following extensive discussions its was agreed to broaden the remit to include all companion animals, not just dogs. Subsequently, representatives of a number of companion animal welfare organizations, members of both Houses of Parliament, and other interested parties, elected a Steering Committee under the Chairmanship of Lord Soulsby of Swaffham Prior. The Committee comprised the following members:

Mrs Clarissa Baldwin, NCDL
Mr Peter Davies, RSPCA
Mr Roger Gale MP
Dr Andrew Higgins, Animal Health Trust
Mr Lou Leather, Pet Advisory Committee
Dr Alastair Porter, Blue Cross
Sir Colin Spedding, Farm Animal Welfare Council
Dr Elisabeth Svendsen, MBE, The Donkey Sanctuary
Mr Paul de Vile, BVA
The Baroness Wharton

The Companion Animal Welfare Council was established in 1999.

THE FUNDING OF CAWC

It was originally envisaged that the Government, in particular the Home Office, might help in the formation and running of CAWC, in the same way that DEFRA (formerly MAFF) does with the Farm Animal Welfare Council. However, this was not possible, so it was decided that the Council should be established, after which time it was hoped to have proved its worth and the Government would give its support.

In order to ensure complete independence from those animal welfare bodies which have agreed initially to fund the Council, a Charitable Trust – the Welfare Fund for Companion Animals - was set up to receive and hold funds to support the activities of the Council.

The aims and objects of WFCA are ‘the collection and distribution of funds for the Companion Animal Welfare Council’. The Trustees of the WFCA have been appointed by way of

nominations by the Institute of Chartered Accountants, the Royal College of Veterinary Surgeons and the Law Society, and comprise as follows:

Mr Anthony Bate
His Honour Frederick Beezley
The Baroness Fookes of Plymouth DBE
Mr Tim Hayward MA FCA
Mr John Hird MRCVS
The Lord Slynn of Hadley

The Honorary Secretary/Administrator of WFCA is Dr Elizabeth D Svendsen, MBE.

WFCA allocates funds to the Council in order for it to carry out relevant work. It does not, however, have any influence on how the Council chooses to use the funds.

The Appointment of Members of CAWC

The Steering Committee agreed that the Council must be seen to be totally independent, and for this reason an Appointments Committee of eminent individuals was set up to select twelve experts in particular fields of animal welfare to form the Council. These were chosen from a total of thirty-eight names put forward by the Steering Committee.

As and when vacancies have arisen of the Council, the Appointments Committee has selected new members from amongst those names that are submitted to it.

The Appointments Committee comprises

Sir James Armour, CBE, FRCVS
Sir Christopher Paine, DM, FRCP, FRCR
The Baroness Mallalieu
Sir David Williams, QC DL

CAWC's Previous Reports, Responses and Submissions

The Council has previously published the following reports, responses and submissions:

- The Report on the Identification and Registration of Companion Animals – published in October 2002

- The Report on the Welfare of Non-Domesticated Animals Kept for Companionship – published in July 2003

- The Response of the Companion Animal Welfare Council to Defra's Consultation Letter on an Animal Welfare Bill – published in April 2002

- Animal Welfare: the Need for Legislative Reform. A submission by the Companion Animal Welfare Council to the Scottish Executive – published in July 2003

The Council's Current Work Programme

The Council presently has working groups on the following topics:

- Companion animals in health and social care institutions.
- Legislation on Companion Animals.
- Un-regulated companion animal services in relation to training, exercising and care.
- Phenotypic Modification through selective breeding of application of modern biotechnology, and the welfare of companion animals.

A Seminar will be held on 25 February 2004 to discuss 'Methods of welfare assessment for companion animals – to be taken forward as a tool kit for companion animals', and whether CAWC should set up a working party on this topic.

APPENDIX III

Review of the Written Evidence

Responses

67 written responses, answering the specific questions raised by CAWC, were received in response to the call for evidence sent to 300 organisations or individuals. Of these, 29 were received from local authorities; 16 from companion animal establishments; 12 from animal welfare organisations; 7 from professional bodies and 3 from other organisations. (Some animal welfare organisations also operate establishments; the response was categorised according to the Department in the organisation submitting the response.)

	Local Authorities	**Animal Homes**	**Animal Welfare Bodies**	**Profession Bodies**	**Others**
Question 1	There is a need for a standard definition: 29/29	There is a need for a standard definition: 16/16	Need for a definition: 12/12. Animal numbers as basis for definition: 2/12	There is a need for a standard definition: 7/7. On an animal numbers basis: 1/4	There is a need for a standard definition: 3/3
Question 2 Standards	Standards should be set: 29/29. Establishments should be licensed: 25/29	Standards should be set: 16/16 Establishments should be licensed: 11/16. Establishments should be regulated: 3/16	Standards should be set: 12/12. Establishments should be licensed: 12/12	Standards should be set: 7/7. Establishments should be licensed: 4/7	Standards should be set: 3/3 Establishments should be licensed: 1/3
Question 3 Species	Standards should be set for all species. 14/14	Standards should be set for all species. 16/16	Standards should be set for all species. 12/12	Standards should be set for all species. 7/7	Standards should be set for all species. 3/3
Question 4 Restriction	Restriction to species for which facilities available: 14/14	Absolute restriction: 2/16 Restriction to species for which facilities available: 13/16	Absolute restriction: 1/12 Restriction to species for which facilities available: 11/12	Absolute restriction: 1/7 Restriction to species for which facilities available: 3/7	Not responded to
Question 5 Size	Not responded to 25/29. Enclosure size should be stated: 2/29	Minimum sizes of enclosures should be set: 6/16 Size should be set by animal's needs: 12/16	Minimum sizes of enclosures should be set: 5/12 Size should be set by animal's needs: 10/12	Minimum size of enclosure should be set: 1/7 Size should be set by animal's needs: 7/7	Not responded to
Question 6 Veterinary	Veterinary inspection as licensing condition: 22/29	Veterinary inspection as licensing condition: 10/16 Veterinary health plan: 12/16	Veterinary inspection as licensing condition: 12/12 Veterinary health plan: 10/12	Veterinary inspection as part of licensing: 7/7 Veterinary health plan: 7/7	Veterinary inspection as part of licensing: 1/3
Question 7 Authority	Local Authority 22/29	Local Authority 11/16	Local Authority 11/12	Local Authority 7/7	Local Authority 1/3
Question 8 Costs	To be met by licensee: 12/29. To come from registration scheme profits: 4/29	To be met by licensee: 6/16 To come from central Government2/16 To come from registration profits: 2/16	To be met by licensee: 8/12 To come from central Government1/12 To come from registration profits: 1/12	To be met by licensee: 3/7	Not responded to.

Question 9 Id	Permanent id such as microchip: 7/29 Not responded to 19/29	Permanent id: 12/16. No id: 2/16	Permanent id: 10/12	Permanent id: 7/7	Not responded to
Question 10 Staff	Staff should be qualified 5/29 Not responded to: 19/29 Experience of staff most important: 8/29	Staff should be qualified 10/16 Experience of staff most important: 12/16	Staff should be qualified 11/12 Minimum age: 2/12 Experience of staff most important: 8/12	Staff should be qualified 7/7	Not responded to
Question 12 Cruelty	General concerns: 25/29	General concerns: 16/16	General concerns: 12/12. Specific instances 2	General concerns 7/7 Specific instances 7	General concerns 3/3

No responses were received to Question 11 (Regulation of Companion Animal Establishments overseas.)

Summary of Evidence

From the responses, there appear to be general concerns for animal welfare in companion animal establishments. Respondents generally favoured the application of standards through regulation and a majority favoured licensing as the form of regulation. The space made available for animals was considered to be important. A veterinary inspection was seen as necessary for the grant of a license and a majority thought that licenses should be restricted to species for which the establishment has facilities. Staff training and experience was thought to be important. Animal identification was considered to be necessary.

Where there was not general agreement was in regard to the funding of a licensing scheme. Some thought that the Government should pay this for, others that the licensee should pay. Several respondents suggested that the profits from any animal registration scheme should be used to pay for licensing.

Further Evidence

Written evidence that did not answer the specific points on the call for evidence was received from 3 individuals. All expressed general concerns for the welfare of animals in establishments.

Organisations that submitted written evidence:

BVA Animal Welfare Foundation
Cats Protection
ILPH
NEWC
Pet Advisory Committee
PDSA
RSPCA
SSPCA
The Blue Cross
The Rabbit Charity
Universities Federation for Animal Welfare
USPCA

BEVA

BSAVA
British Veterinary Association
Feline Advisory Bureau
The British Rabbit Council
The Governing Council of the Cat Fancy

University of East Anglia School of Law

British Wildlife Rehabilitation Council
WA Rangers Association Inc
World Parrot Trust

Birmingham City Council
Cherwell District Council
Copeland Borough Council
Dundee City Council
East Devon District Council
Epping Forest District Council
Fenland District Council
Forest of Dean Council
Guildford Borough
Manchester City Council
Medway Council
Melton Borough Council
Mid Beds District Council
Mole Valley District Council
Oldham Metropolitan Borough
Pembrokeshire County Council
Portsmouth City Council
Powys (Local Authority)
Rochford District Council
Sheffield City Council
Southampton City Council
South Holland District Council
Staffordshire Moorlands District Council
Test Valley District Council
Thurrock Council
Walsall Metropolitan Borough Council
Weymouth and Portland Borough Council
Wrexham County Borough
Wychavon District Council

Ashbourne and District Animal Welfare Society
Battersea Dogs Home
Birmingham Dogs Home
Donkey Sanctuary
Farplace Animal Rescue
Jersey Animals' Shelter
Kit Wilson Trust for Animal Welfare
Manchester and District Home for Lost Dogs
Millstream Animal Shelter
NCDL
Redwings Horse Sanctuary
St Tiggywinkles Wildlife Hospital Trust
Sheffield Dog Rescue
The Home of Rest for Horses
Warnham Animal Sanctuary
Wild Bird and Animal Rescue Society

APPENDIX IV

Seminar to Gather Oral Evidence on 'Standards and Controls for Rescue Establishments and Sanctuaries'

6 October 2000

1. Delegates Attending:

Note: Delegate designation and organisation represented were current at the date of the seminar.

1.1 **CAWC:** Dr James Kirkwood; Professor Neil Gorman; Dr Anne McBride; Mr Mike Radford; Dr Peter Scott; and Sir Colin Spedding.

1.2 **Local Authorities:** Mr Mark Berrill (Animal Welfare Officer, Mansfield District Council; Mr Kevin Cope (Animal Welfare Officer, Epping Forest District Council); Ms Denise Paffett (Animal Welfare Technician, Test Valley Borough Council); and Mr Graham Taylor (Senior Animal Welfare Officer, Birmingham City Council).

1.3 **Animal Welfare Establishments:** Ms Clarissa Baldwin (Chief Executive, National Canine Defence League (NCDL) - now known as the Dogs Trust); Mr Paul DeVile (Chief Veterinary Officer, NCDL); Mr Mike Flynn (Chief Inspector, SSPCA); Mr Steve Goody (Director of Companion Animal Welfare, Blue Cross); Mr David Harding (Veterinary Advisor, USPCA); Mr Nick LaHive (Head of Animal Establishments, RSPCA); Mr David Mountford (Head of Equine Operations, ILPH); and Mrs Rhona Simms (Cats Protection).

1.4 **Animal Welfare Organisations:** Mr Nigel Harcourt-Brown (Veterinary Surgeon specialising in exotic species); and Mr Roger Scammel (Council member, BEVA).

2. Conclusions of the Seminar

The following paragraphs are a summary of the key conclusions of four working groups, which reported back to the seminar, after general discussion. A full report of the oral evidence is available on request.

Local authorities receive 'substantial numbers' of complaints from the public, concerning rescue homes and sanctuaries, alleging nuisance and poor welfare of the animals in care. Public awareness of animal rescue has increased dramatically following recent television programs and newspaper articles focusing on animal homes and animal rescue.

2.2 There are no powers of entry available to local authorities to premises thought to be sanctuaries or rescue establishments and where companion animals might be kept in inadequate conditions. Consequently, officers of the authority cannot take any preventative measures.

2.3 Current legislation is used by some local authorities to license rescue establishments in their areas, depending on the functions carried out. However, most investigations follow complaints of nuisance such as noise or smell. Relevant bylaws are

sometimes used to take action against establishments, although these are not specific to rescue homes and sanctuaries.

2.4 There are instances where animal welfare organisations, particularly the larger national organisations, 'pick up the pieces' when rescue homes or sanctuaries take in too many animals and cannot cope.

2.5 Legislation should cover rescue establishments and sanctuaries. Other types of establishment (boarding, breeding and retail) are covered by existing legislation.

2.6 Current legislation could be extended to license rescue establishments. However, delegates were divided on this issue, and some contended that new legislation was needed.

2.7 Legislation should cover all establishments irrespective of their size.

2.8 Delegates agreed either that local authorities should enforce legislation, or a regulatory body should be set up for the purpose of licensing sanctuaries and animal rescue homes. Local authorities may not have the knowledge to assess animal welfare and inspect establishments on their own.

2.9 The Charity Commission should have powers to refuse charitable status to organisations that did not adequately provide for the welfare of animals in their care.

2.10 Clear definitions of sanctuaries and rescue establishments should be developed. Clear definitions of multiple pet owners who may take in stray or lost animals from time to time and small rescue establishments should also be developed. Financial input from the public is one way of making the distinction between rescue establishments and what are essentially pet owners who may choose to keep larger numbers of animals, some of which may have been strays, but who do not aim to provide animal rescue facilities. The numbers of animals entering and leaving an establishment ('throughput') was also suggested as a basis for the definitions of rescue homes and sanctuaries, as was the average number of animals kept.

2.11 A nominated veterinary surgeon, with experience and expertise relevant to the animals taken in, should be assigned to each rescue establishment.

2.12 Codes of practice should be introduced both to help the development of legislation and to support it.

2.13 Rescue establishments that take in exotic species or wildlife have particular requirements depending on the needs of the species taken in.

2.14 All establishments should produce a mission statement, a policy describing the care and accommodation provided and business plans.

APPENDIX V

Acknowledgements

CAWC would like to thank the following for their valuable contributions to this report:

Dr Matt Leach and Rachel Casey, University of Bristol, Department of Veterinary Science.
Nick LaHive, consultant in the management of animal welfare establishments
Tony Tyler, International League for the Protection of Horses

Rescue and Re-homing of Companion Animals

Companion Animal Welfare Council

June 2011

www.cawc.org.uk

The Companion Animal Welfare Council

The Companion Animal Welfare Council (CAWC) has as its principal objectives:

(a) the provision of advice on the welfare of companion animals and the publication of its findings;
(b) the furtherance of the fuller understanding of companion animal welfare and of the role of companion animals in society;
(c) the assessment of existing legislation affecting the welfare of companion animals, and the making of recommendations regarding amendments or additions thereto.

In the furtherance of these objectives, the Council will:

- undertake independent and objective studies of companion animal welfare issues and identify where further information is required;
- prepare and publish reports thereon;
- make available information and research data that it has obtained, and if appropriate, to enable Parliamentary legislation on companion animal welfare issues to be drafted and debated on an informal basis;
- be open to requests for objective views, advice and the carrying out of independent studies on issues concerned with the welfare of companion animals.

CONTENTS

Summary of Conclusions and Recommendations
1. Introduction
2. Terminology
3. Scope and specific methods adopted by the working group
4. Scale of the problem
5. Welfare
6. Ethical matters relating to re-homing
7. Re-homing companion animals
7. 1 Re-homing dogs
7.2 Re-homing cats
7.3 Re-homing ferrets
7.4 Re-homing rabbits
8. Legal Aspects of re-homing
9. Conclusions and Recommendations
10 Acknowledgements
11 Working group membership

APPENDIX
Summary of findings of research conducted by Rita Lewis, 2008, on *The Pedigree Dog – Welfare Ethics versus Aesthetics,* MSc Thesis, University of Southampton

BIBLIOGRAPHY

Summary of Conclusions and Recommendations

Conclusions:

- This Report does not seek legislation with regard to re-homing organisations, believing that, if rigorously enforced, the Duty of Care sections of the Animal Welfare Act 2006 and the Animal Health and Welfare (Scotland) Act 2006 will provide sufficient legal protection for the animals involved in the rescue and re-homing process.
- It is noted that whilst the majority of re-homing organisations are rightly aware of a need to protect confidential information regarding the surrendering owners, there are instances where there is a more general culture of confidentiality. This leads to withholding information regarding the animal's history and breeding background, thus limiting the ability to provide for the animal's welfare and that of others.
- The provision of guidelines for prospective owners or custodians should, in all cases, contain details of specific needs, as well as potential behavioural problems, which experience has shown to be a characteristic of the individual, species or breed.
- There is a need for an appraisal of policies involving euthanasia. It is not sufficient to allow a re-homing organisation or a breed society which covers this function to authorise euthanasia without a sound ethical basis. In cases where euthanasia is performed for non-therapeutic reasons, then adequate consultation and transparency regarding the decision and choice regarding the method of euthanasia is strongly recommended.
- Executive committees of re-homing organisations should include a veterinary surgeon wherever practical, but at a minimum should include access to appropriate veterinary advice.
- Relinquishment following adoption is frequently attributed to behavioural problems, especially with cats and dogs. This speaks of an urgent need to focus on strategies to combat post-adoptive behavioural issues.
- There is an urgent need for informed discussion about aggression, in particular canine aggression, and about the qualifications required for behavioural assessors and advisors about standardisations, validity and value assessments in rescue, and about solutions to the problems raised by aggressive animals.

There is a compelling case for various rescue organisations and canine breed societies to explore methods of cooperating and sharing information and resources. The emergence of social networking sites, such as Facebook, which are sharing information regarding rescued animals, is a welcome development. To this end, proposals to form a Breed Rescue and Re-homing Alliance are strongly endorsed. By joining together, rescuers and volunteers could develop credible methods of self-regulation which might reduce the need for future legislation.

Recommendations

- ***Assessment and selection of suitable animals for re-homing.***

Not all animals are suitable for re-homing. The objective should be to ensure that decisions whether or not to re-home are based on sound evidence and judgement.

- ***Preparation of the animals for life in their new homes.***

The objective should be to prevent welfare problems by assessment of the animal's state of health, its temperament, response to different environments and stimuli, and level of training and socialization. Where necessary the animal should be given an appropriate programme of training and behavioural assessment. If there is a prospect of benefit, a rehabilitation programme should be initiated. The collection and dissemination of information regarding the animal is essential to a successful re-homing strategy. This should be provided in writing for the

new owner. The wellbeing of the animal and respect for the prospective owner's capacity for autonomous decision making are inseparably linked with the provision of adequate information.

- ***Assessment of prospective new homes and owners.***

Guidelines for suitable homes and owners are essential for the welfare of the animal. The objective is to find a suitable match: to find the right home for the right reason. Of essential importance is awareness that each animal and each person involved are individuals and must be treated as such. It is, however, important to recognise that whilst these guidelines should be thorough and designed with the welfare of the animal in mind, they should not be applied too rigidly.

- ***Advice given to prospective owners.***

Advice given to prospective owners should be comprehensive, reliable, objective and well informed. Advice on training, socialisation and social referencing of dogs, and other species, is essential for their wellbeing and successful re-homing.
Withholding vital information regarding the animal's history, temperament, and health is detrimental to its welfare. In addition, it may lead to the re-homing organisation putting the owners in jeopardy of a criminal record if lack of information means that they do not meet the individual animal's needs, or are not made aware of behaviour which may lead to legal contraventions.

- ***Knowledge and communication skills of the staff and volunteer assistants within the re-homing organisation.***

The animal-owning population is diverse. It is important to recognise that gaining information from relinquishers or providing advice, however relevant and well informed, requires suitable communication skills and an appreciation of customer care.

- ***Follow-up procedures after re-homing.***

It is important to have thorough follow-up procedures after re-homing, so that the animal's welfare is not compromised during the early stages of settling in to its new home. Where resources permit these may be via the organisation's own staff, or via local experts.

1. Introduction

In April 2008, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) reported that the number of pets relinquished by owners in the UK increased by almost 25% in the previous year, raising concern that animals are the latest victims of a '*throwaway society*' (Elliott, 2008) exacerbated by the current financial situation. In April 2009 the RSPCA reported a 57% rise in relinquished animals in England and Wales with animals dealt with by the charity rising from 7,347 in 2007 to 11,586 in 2008. Statistics supplied by Dogs Trust for the year ending March 31 2010 include: 121,693 stray/abandoned dogs dealt with by UK local authorities; 51% of dogs reunited with their owner; 11% rehomed by local authority; 25% passed to welfare organisations, and 5% put to sleep. This does not add up to 100% as some were still in care at the year end.

In May 2008, a Cats Protection survey of their 29 adoption centres revealed a 77% increase in unwanted cats during the first four months of 2008 compared with the same period the previous year. Informal discussions between the Working Group and representatives from six leading re-homing organisations in the UK revealed a uniformly upward trend involving admissions of cats and dogs over the past three years.

The following extract from a letter sent to the Working Group in May 2009, is highly representative of comments from staff in re-homing organisations.

> *The situation was bad before the credit crunch but getting worse by the day. We need legislation to stop the over-breeding of companion animals in the UK. Thousands of young, fit, healthy dogs are dying every year in the pounds simply because they are surplus to requirement. We need an affordable spay-neuter program not an execution program to get rid of surplus. As a nation of supposed animal lovers, I think we are failing man's best friend.*

These remarks draw attention to an inescapable fact: that for many of the thousands of '*surplus*' animals that are not re-homed, decisions will be taken to euthanase them. A dilemma facing re-homing organisations is that of using resources to maintain standards of welfare for animals in their centres against the risks of falling standards of care should numbers increase. This Report recognises that there is no simple answer to this problem, no ethical principle that can be trotted out to resolve it, and that any solution must lie in the direction of a fundamental shift in society's attitude to companion animals. Are we, as the writer of the above letter suggests, failing our animal companions while re-homing organisations, with whatever resources they may have, are responding to society's failings?

There are many reasons why animals are abandoned or surrendered to re-homing organisations, which include economic hardship and the widely reported rising costs of pet food and veterinary care. According to research published in the *Telegraph*, veterinary bills are rising by 12% each year and more than half of Britain's vets were forced to kill a pet cat or dog over the past five years because owners could not afford treatment. Almost 90 per cent of vets across the country admitted they had experienced cases of treatment for animals being rejected by owners because it was too expensive (Hough, 24 Feb.2010).

Other reasons for relinquishing animals are changes in the structure of the human family, pregnancy or bereavement, owner's illness, allergies to animals among family members, loss of employment, change of employment to a more time-consuming job, or when one or more parent returns to full-time employment. Employment issues can lead to accommodation issues: re-possession of the family

home, a change of home to premises where pets are prohibited, or an inability to cope with the animal. Many dogs that are relinquished, for example, are said to require levels of care and control beyond the expectations of the owners, often associated with perceived problem behaviour. The most common source of the problem is said to be a tendency of many people to obtain pets when they lack the time, resources, or basic knowledge of the animal's needs. For some relinquished animals it may also be that the 'novelty has worn off".

Lack of knowledge of an animal's needs may accompany lengthy preparation and consideration regarding the choice of pet. This may seem absurd, but people may allow the positive aspects to exclude consideration of the negative aspects. People who would steadfastly insist that they would never buy on impulse, having met responsible breeders or staff in re-homing organisations, and listened to their advice, may still fail to recognise the extent of commitment. On the other hand there are cases involving impulse obtaining of companion animals which do not result in problems and relinquishment. Anecdotal sources and evidence from individuals who have contacted the Working Group, reveal instances where an impulsive decision has led to a determination to acquire sufficient knowledge to meet welfare requirements and much more.

A further problem is the number of animals that are returned to the re-homing organisations. A major factor here is behavioural problems, especially from cats and dogs. This might involve escaping from the premises, house soiling, destructive behaviour and problems with family members or with other pets. Many re-homing organisations are becoming increasingly aware of the need to develop sophisticated training strategies to deal with behavioural problems that may appear following adoption.

Every animal passing through a re-homing organisation should have been assessed to determine which kind of home it is best suited for. Studies on the re-homing of dogs have indicated that behavioural assessment and attempts to match the owner with the dog have a significant impact on return rates (Diesel *et al*, 2008). Many re-homing organisations will interview and carry out home checks, but guidelines and practice with regard to home assessment may vary. In some cases home checks are not deemed to be necessary and may not be conducted because of the costs incurred or for logistical reasons. In most cases prospective owners will be required to submit a completed questionnaire and be interviewed with regard to their suitability for the animal in question. In some cases the questionnaires are comprehensive and aimed at eliciting detailed information with regard to the capabilities of the prospective owners, and producing a fairly precise match between them and the personality and characteristics of the animal, but in other cases it appears to be on an *ad hoc* basis. Assessment methods vary, but the general objective is to find a match that will suit the prospective owner's life style. For example, a puppy or a kitten will require more attention than older dogs and cats, which may be more tolerant and adapt more easily to family life.

Prospective owners will require information about the animal and may be assisted with general guidelines concerning grooming, health care, mental stimulation, housing, exercise, training, and legal requirements for pet owners.

This Report examines guidelines and protocols for re-homing animals in terms of how these meet the welfare needs of the companion animals concerned.

2. Terminology

2.1 The term *'re-homing organisation'* has been employed to refer to organisations or groups of individuals who are engaged in accepting animals with the purpose of re-homing them. Although the term *'Companion Animal Welfare Establishments'* (CAWC 2004) can be legitimately employed for *re-homing organisations*, it is felt that since this inquiry extends to organisations where there are no established premises and to breed societies where there may be conflicting concepts of welfare, such as the '*welfare of the breed*' or the '*welfare of the individual animal*', it is better to adopt a neutral expression.

2.2 The expression '*re-homing process'* refers to the six identifiable aspects of re-homing which will form the basis of the Council's recommendations in section 9.

1. Assessment and selection of suitable animals for re-homing.
2. Preparation of the animals for life in their new homes.
3. Assessment of prospective new homes and owners.
4. Advice given to prospective owners.
5. Knowledge and communication skills of the staff in the re-homing organisation.
6. Follow up procedures after re-homing.

2.3 The terms *'owner'* or *'prospective owner'* refer to the person or family who might provide a home for the animal.

Where the *re-homing organisation* retains ownership of the animal throughout its life, this is usually explained in the contract accepted by the prospective owners. In such cases the term *'custodian'* will be employed. *Re-homing organisations* that retain ownership have responsibilities under the Animal Welfare Act 2006 and Animal Health and Welfare (Scotland) Act 2006.

3. Scope and Specific Methods Adopted by the Working Group

3.1 Scope

To investigate the policies and underlying rationales of rescue organisations with respect to:
re-homing; fostering; support provided for long-term care; reasons for neutering and euthanasia.

3.2 Method

1. To produce an ethical framework suitable for the assessment of the welfare of animals engaged in the re-homing process (see Lamb, 2010).
2 To acquire information from web sites of rescue organisations regarding their protocols for the admission of animals into the re-homing process, selection of suitable homes and support provided following re-homing.
3. To acquire information by questionnaire to dog breed societies concerning their policies regarding showing or breeding from animals obtained from re-homing organisations.
4. To collect data from interviews with the executives of re-homing organisations. This will cover figures for admissions, criteria used for staff appointments, and training given to staff and volunteers.

4. Scale of the Problem

Companion animal rescue and re-homing involves a vast network of committed individuals and organisations working in a non-commercial environment. These range from the large well known charitable organisations, such as the RSPCA, the Scottish SPCA, Dogs Trust, The Blue Cross, Wood Green Animal Shelters, Manchester & District Home for Lost Dogs, People for Animals Care Trust

(PACT), Battersea Dogs and Cats Home, and Teckels Animal Sanctuary, to the many hundreds of general re-homing organisations which concentrate on a range of animals, to the specific or single species re-homing organisations, such as CAVY, Rabbit Re-home, The National Ferret Welfare Society, The British Federation of Ferret Welfares, Cats Protection, Birdline, or the single breed rescue societies for dogs and cats.

Despite differences of size and specialisation there is a significant degree of cooperation in many areas between the breed clubs, the major charities, and within the Association of Dogs and Cats Homes (ADCH), which organises an annual Conference attended by 250 delegates and provides a code of practice for re-homing organisations. The ADCH is an effective forum based upon contact and cooperation, with membership including over 50 re-homing organisations.

Although the ADCH is playing an important role in bringing together re-homing organisations the report recommends further cooperation involving individuals and groups of individuals involved at a grass roots level within their respective breed societies. Of interest here are the various canine breed rescue officials whose efforts are usually limited to particular breeds and function as officers within their respective breed societies. In some cases this involves a duplication of very scarce resources and skills and isolation of officers. To this end we envisage an alliance of breed rescue workers which will involve cooperation beyond the respective boundaries of breed societies.

Although there is no central register of all individuals involved in the rescue or re-homing of companion animals it is safe to estimate that the number of committed and caring individuals and organisations amounts to many thousands.

Whereas the larger organisations may have dedicated kennels and professionally trained staff, most of the smaller organisations have no premises or kennels, and operate with lay administrators (often based within their homes) assisted by a network of volunteers (where experience and knowledge may vary) also working from their own homes in their spare time, with animals in foster homes, waiting to be re-homed, or collected from the previous owners. Many re-homing organisations are run by charities and are supported by donations, bequests, and fund raising activities, and in some cases by fees charged for boarding kennels and catteries. Several re-homing organisations face financial hardship, and many survive mainly through the fund raising efforts of supporters.

5. Welfare

There are many concepts of welfare, which may include various forms of social welfare and the welfare of specific groups such as child welfare. In general usage concepts of '*welfare*' refer to mental and physical health, happiness, comforts, benefits, prosperity, and are bound up with various physical and psychological features. Concepts of welfare extend also to the state of being of living animals which is captured by the expression '*wellbeing*'. This Report will concentrate on concepts of welfare relating to animals.

For organisations representing many species of companion animals and the canine breed societies, the term '*welfare*' is frequently employed to refer to rescue and re-homing practices, and officials and their assistants with responsibility for the re-homing process are described as '*Welfare Officers'*. Members of these organisations speak of the '*welfare system'*, of animals '*entering welfare'*, and of '*raising funds for welfare'*. In these instances it is clear that the term '*welfare*' refers to animals being rescued and re-homed. Although welfare is the most fundamental component of the re-homing process, by equating welfare with re-homing, other activities supported by these societies might not be seen to be relevant to the welfare needs of the animals. Such activities include breeding requirements, showing, and competing in working events (CAWC, 2006, 2008). Potential for

confusion can be generated if definitions are unclear; for example, the '*welfare of the breed*' may refer to maintenance of breed standards rather than the welfare of particular animals.

It is important to recognise different applications of the concept of '*welfare*', especially when organisations that provide care for animals enter into dialogue with organisations representing animal welfare scientists. For the layperson '*welfare*' is a concept associated with health, prosperity and wellbeing, but welfare scientists have adopted concepts of welfare which are considered relevant to quantifiable approaches to animal health and welfare. Several CAWC studies have produced rigorous animal-related definitions of welfare (CAWC 2004, 2006, 2009). These definitions recognise that whilst concepts of welfare embrace both physical and mental aspects of animal life, the primary welfare interest lies in the quality of animals' experienced feelings.

One important aspect of this Report is to recognise that an understanding of welfare considerations in the context of re-homing animals will be driven by ethical criteria. The Report accepts a holistic conception of welfare, which embraces elements of both mental and physical health, and it is stressed that in the context of re-homing, meeting requirements for the animal's physical and mental wellbeing, its needs and wants, must be the primary ethical objective.

6. Ethical matters relating to re-homing

Underpinning any discussion of ethical matters concerning re-homing animals must be an awareness of the fact that every animal and every potential owner or custodian is a unique individual, and must be treated as such. An appropriate ethical approach to re-homing animals would address the limitations of animal welfare science, which focuses on quantifiable and measurable indicators of welfare, and provide an additional focus on aspects of ethical theory known as 'care ethics' (see Lamb, 2010).

Re-homing animals involves an engagement with moral discourse and making value judgements in every stage of the process. There will be value judgements bound up with the welfare of the animals involved in the re-homing process, together with a moral assessment of previous and prospective owners. This suggests that criteria for re-homing should be driven by ethical considerations. Whilst animal welfare science may focus on the mental and physical state of the animal in the various stages of the rescue process, it may have little input into ethical considerations, which are not reducible to quantifiable procedures. People involved in the re-homing process are obliged to base their decisions on a combination of practical inquiries and ethical criteria. Most re-homing organisations require that potential owners will not only provide good homes but that they will care about the animals whose wellbeing they are entrusted to protect. Very often assessments of prospective owners will be in terms of well-established ethical principles, commonsense intuitions, rule of thumb, and may be drawn from personal experience or anecdotal sources. Value judgements in the re-homing process will not only relate to perceptions of the animal's welfare; they will extend to notions of integrity and dignity, as exemplified by the kind of requirements upheld by the British Federation of Ferret Welfares that '*the ferret is allowed to act naturally and to express its own character as a ferret without being demeaned or degraded, i.e. by being dressed up in weird costumes and the like*'. Additionally, ethical criteria will be applied to the moral assessment of prospective owners, their families and network of social connections. Inevitably, the assessment of prospective owners, response to interviews and questionnaires will extend to an appraisal of their moral standing.

7. Re-homing Companion Animals

7. 1 Re-homing Dogs

According to data from the Pet Food Manufacturers Association (2011) there are around 8 million dogs in the United Kingdom. Dogs may enter the re-homing process because they have been relinquished by owners who sign them over to the re-homing organisation, or because they have been rescued as strays. Given that dogs can live fifteen years or more, the objective is to find a permanent, caring and loving home. Some dogs will re-home more easily into a home where there are other dogs. Others may encounter problems in adjusting to other dogs. In some cases it may be advisable to re-home dogs together, rather than split up a pair or group, which would thus reduce the incidence of behavioural problems relating to separation. Some dogs would benefit from re-homing into a quiet home. Some have a notorious habit for escaping, which may be an identifiable characteristic of a breed. And there may be individuals who will attempt to escape no matter how much comfort their new home provides. Prospective owners should be advised about these potential problems and may need to be advised about fencing.

Many dogs are relinquished because of behavioural problems. In some cases remedial action may involve little more than recognising and addressing problems arising from the lack of understanding shown by the relinquishing owner. In other cases, no matter what the cause, behavioural problems can be serious and potentially dangerous to humans and other animals. Dogs with a known record of aggression towards people and other animals will require specialist assessment and, if decisions are taken to re-home them, extra care will be required in the assessment of the prospective owner. All of this may raise practical problems; the skill, experience and professional status of the assessors may vary considerably.

Methods of assessment and finding a suitable match are very important factors in successful re-homing. Unrealistic expectations of adopting owners and behavioural problems are frequently cited as a significant reason for the failure of re-homing. A study conducted on 5,750 dogs that were re-homed by Dogs Trust in 2005, indicated that out of the 14.7% adoptions that had failed within six months, behavioural problems were cited as the main reason in 60% of those returned (Diesel *et al*, 2008). However, as Diesel *et al* (2008) point out, successful adoption can be linked to a range of factors including socialisation of puppies, seeking behavioural advice, and attending training classes.

One significant factor in selection for re-homing is the size of the dog, with a preference usually indicated towards small dogs and puppies (Diesel *et al*, 2007). Large and giant dogs have a higher incidence of re-homing problems, which may be due to a number of factors, such as the cost of food and veterinary care, insurance, and the fact that, if they have a tendency towards destructiveness, they can do more damage than smaller dogs. Likewise, a large dog with aggressive tendencies is a greater threat to human safety than a smaller animal with aggressive tendencies. Expectations regarding the behaviour of the puppies of large or giant breeds can be unrealistic, as it is frequently assumed that they will display the maturity of adult dogs of a similar size. Many people will put up with a small dog running around their legs whereas they can be knocked over and injured by a giant displaying the same normal canine friendly greetings. Behaviour that is tolerated in smaller puppies may not be acceptable, even by many dog-friendly people who frequently expect giant puppies or adolescents to behave like mature adults. This can be an acute problem when a giant breed is re-homed in a family where there are smaller dogs. Rough and tumble puppy play between a giant and a medium-sized dog, even when the former is displaying all the appropriate submissive signals, can convey the impression that the big dog is bullying the smaller one.

The costs of re-homing incurred by the organisation are high. They may include veterinary treatment, vaccination, worming and other health matters; also transport costs, temporary living (kennelling,

cleaning), premises, and food. Although it is frequently said that no charge is made for rescued animals, a donation to the society might be expected, and in some cases guidelines with respect to the anticipated donation can be very explicit and precise. The distinction between making a donation and paying a fee for an animal is far from clear. Potential owners should expect to pay for the animal. Bichon Frise Rescue requires a donation of £100 for each dog. An anticipated donation to Border Collie Trust, for example, will vary between £80 and £150, depending on factors such as the age of the dog, with the higher expectation for puppies. As Border Collie Trust point out, this is much less expensive than purchasing from a breeder.

7.1. Re-homing dogs with behavioural problems

Many re-homing organisations place certain limits on accepting dogs with a record for aggressive behaviour. Following a screening of the Channel 4 television programme (2006), *It's Me or the Dog*, featuring a Black Cocker Spaniel which was destroyed for aggression, there were complaints from various parties who maintained that the animal should have been re-homed. Speaking on behalf of the Cocker Spaniel Breed Club Rescue, the Club Chair said that '*it was not its policy to take on aggressive dogs*', adding, '*we would not take in a biting dog – people who want to re-home their dogs have to sign a form saying it has not bitten anyone. If we re-homed such a dog and it did bite someone who would take responsibility?*' (*Dog World*, 2006: 3) This position is widely shared among canine breed re-homing organisations.

Aggression to humans and other dogs is a specific feature with regard to decisions to relinquish a dog and raises problems concerning re-homing. Whilst some of the major re-homing organisations, such as Dogs Trust and PACT, have a no euthanasia policy and are prepared to accept dogs with behavioural problems, many organisations do not. Although many re-homing organisations will not accept dogs with a record of aggression, definitions of aggression may vary considerably. Dogs that have been re-homed and go on to display behavioural indicators of aggression (however these are defined and interpreted) may be returned to the organisation or euthanased with the authority of the re-homing organisation.

This Report notes that understanding about aggression in animals in general, and dogs in particular, are rife with ignorance, misguided theories, and lack of diagnostic skills and development of appropriate remedial action. There is a need for informed discussion about the assessment and management of aggression. Many dogs and bitches are neutered to prevent aggression, killed with little understanding of the underlying causes of the aggressive behaviour and there is widespread ignorance of appropriate ways of responding to the problem.

7.1.3 Behavioural problems arising out of the re-homing process

Moving to a new home can be a stressful time for a dog, with varying levels of stress often relating to the age of the animal, the environment, the new owner's experience with dogs, and the presence or absence of other dogs or animals in the new home. Experience in the previous environment is highly significant; a dog that has not been adequately socialised and socially referenced (McCune et al, 1995) in its previous home is more likely to display behavioural problems. Other signs of stress may include failure to eat, sleep or play properly, inappropriate urination and defecation, becoming withdrawn, repetitive behaviour such as chasing their own tails and excessive licking of one or more limbs, which may result in the area becoming raw and infected.

The extent of the problem can be inferred from a study of Australian dog owners who had recently taken their pets to a new home (Seksel, *et al*, 2001). This study found that 47% of owners reported signs of anxiety in their pets, of which 23% were reported to have engaged in excessive vocalisation;

15% had changes in their elimination patterns; 13% over-groomed, and 20% attempted to escape. Bearing in mind that these dogs had experienced continuity with their previous owners, it is highly probable that a complete rupture with their previous physical environment may have initiated behavioural disorders.

In the case of re-homed dogs it is advisable to expect behavioural disorders associated with the move. In addition, separation-related factors, such as insecure attachments to their new owners, may follow separation from previous owners (Taylor, 2005: 41).

7.1.4 Canine breed societies

Most canine breed societies re-home dogs that have either been relinquished or abandoned as strays. Some of these organisations, such as Border Collie Trust, have dedicated kennels and full time staff. Others are conducted by volunteers working from their homes. Although it must be recognised that these volunteers work hard and display enthusiasm and dedication, this latter group is a matter for concern with regard to a number of features.

i. Canine breed societies involved in rescue and re-homing are dedicated to the welfare of the animals for which they have responsibility. However, in several cases there is a need for greater transparency with regard to decision-making regarding the allocation of dogs, decisions to authorise euthanasia, and ethical codes regarding breeding practices. Several canine breed societies appear defensive and reluctant to communicate with the outside world (Lewis, 2008). Despite widespread attention to welfare concerns with pedigree dogs only seven breed societies responded to the Associate Parliamentary Group for Animal Welfare (2009) request for either written or oral evidence and despite massive publicity there were only 58 submissions from breed societies to the Bateson Independent Inquiry into Dog Breeding (2010). This reluctance to communicate could be attributed to the fact that they are voluntary organisations whose members have little time available, but there are institutional explanations for this apparent inwardness; the constitutions of several breed societies are overburdened with requirements for confidentiality, which may not always exist for the purpose of protecting individual rights to privacy. Officers appointed by these societies with responsibility for re-homing are likely to be subject to the confidentiality requirements imposed by the executives. It is therefore difficult to elicit information from them regarding rescue and re-homing protocols.

ii. Although it is widely accepted that breed societies, specializing in one particular breed, are best suited for dealing with re-homing in that breed, this view has to be challenged. A declared interest in a specific breed is not a guarantee that the welfare needs of particular animals will be recognised and adequately catered for during the re-homing process. At the very least, information regarding experience and specialist knowledge ought to be provided by these societies. In some cases this information is readily available, as in the case of the Rottweiler Welfare Association who informed the Working Group of members and trustees with over 30 years experience with their breed. However, in some cases, the appointment of rescue officials seems not to follow specific criteria, but is a consequence of failing to attract willing applicants with sufficient time to devote to the post. Given that ultimate authority in several of these societies stems from an executive committee which very often consists of breeders and internally appointed breed show judges, with little expertise beyond the recognition of breed standards and a commitment to uphold them, and where matters of etiquette involved in showing can supersede ethical commitments to welfare, there is no guarantee that rescue officers will have adequate skills and be appropriately supported, supervised and instructed in their tasks.

iii. Recognizing the need for greater cooperation across breed specific boundaries several volunteers within breed rescue organisations are seeking ways of cooperating at grass roots level. There is no

reason why skills and experience obtained with assisting with the rescue and re-homing of one breed cannot be transferred to another breed, whilst acknowledging possible differences in temperament and behavioral tendencies specific to particular breeds. Under increasing conditions of economic hardship this grass roots cooperative approach is likely to continue, although at a formal level it may encounter resistance from the executives of several breed societies.

In response to a conference on rescue and re-homing, the merits of cooperation are under discussion (see the conclusion of this Report). The advantages of a formal structure would be to provide help and a means of cooperating with other rescue officials; provide assistance with staff training; share information and ideas regarding policy and procedures; evolving widely discussed policy regarding micro-chipping, neutering, euthanasia, and coping with behavioural issues.

7.2 Re-homing Cats

According to the PDSA Animal Wellbeing Report 2011 there are around 11.9 million pet cats in the UK with many homes owning more than one cat. Estimates suggest that there are six million households with a cat. The average life span of a cat is 12-16 years, but it is not unusual for some cats to reach 20 years or more. Food is relatively cheap, but veterinary bills and cattery fees must be considered. There are thousands of cats, all over Britain, waiting to be re-homed. Cats are usually relinquished because the owners have moved house and pets are not allowed in the new residence; changes in family circumstances such as pregnancy, death, bereavement, illness or divorce; allergic reactions by family members; or moving into residential care. There may have been problems with neighbours, the cat has become pregnant, exhibited behavioural problems, or simply brought to a centre because it has been found abandoned.

Cats Protection was formed in 1927 and is now the UK's leading feline welfare charity. It has a network of 256 voluntary run branches and 29 adoption centres. Cats Protection re-homes and re-unites 55,500 cats and kittens each year and provides cat care information through publications, a website and a national helpline. Owners seeking to relinquish their cat are advised to contact their local branch or adoption centre and are advised to plan early as there is considerable demand for spaces in the pens. Cats Protection, like most re-homing organisations, operate with a neutering policy but will not euthanase a healthy cat and will take steps to find a suitable home. However, once relinquished no details of the cat's new home will be released to the former owners.

Prospective owners are advised of the extent of the commitment, which can be for some twenty years or more, and will involve veterinary costs, including vaccinations, throughout the animal's life. For the prospective owner the re-homing process begins with a call to the adoption centre or branch to seek an appointment, an interview, and they must then provide information on a questionnaire. If everything proceeds satisfactorily a visit to the adoption centre will follow and an opportunity to speak with a member of staff or volunteer about the re-homing procedures. A home visit will be undertaken before a final decision is taken. Although no charge is made, a donation of about £50 (or more) is expected towards the work of the charity. Cats Protection maintain a Helpline for general advice, but once a cat has been re-homed, owners are advised to contact the adoption centre or the Branch for further advice.

The practice of abandoning cats reveals an increasing trend. Figures from the RSPCA show that half of the 7,347 animals rescued from the streets in 2007 were cats. This is particularly disturbing because cats have traditionally been thought of as relatively easy to care for. They can be let out into a garden without supervision whereas dogs require daily exercise usually under supervision. The RSPCA is concerned that people are ready to give up their pets for trivial reasons. One owner told an inspector: '*My cat doesn't match my new carpet*.' Another said: '*I've just bought a new leather sofa and I don't want the cat to scratch it*' (Elliott, 2008).

Like dogs, cats are prone to the effects of stress in response to changing circumstances, such as the loss of its home, and this might manifest as urine spraying, over-grooming, and in several cases engaging in pica or '*wool sucking*' (chewing or sucking on wool or blankets), and self-mutilating activities.

Abandoning any companion animal is both cruel and illegal. Anyone thinking of relinquishing a cat can obtain advice, which may help to remove the problem that may have prompted the owners to consider relinquishing it. For example, experts within Cats Protection can provide advice on behavioural problems, on whether cats can accompany owners who are emigrating, as well as offering advice on allergies, hygiene, and addressing fears that cats may have an adverse effect on human pregnancy and childbirth. It is recommended that re-homing is undertaken by a re-homing organisation, rather than the owner attempting to re-home the animal, and reject the kind of advert – frequently seen in veterinary practices and pet shops – where cats are offered '*Free to a Good Home*', as this involves a '*high risk factor*' for behavioural problems developing.

The Cats Protection website provides lists of re-homing organisations throughout the country, including societies specialising in pedigree cats. Cat re-homing organisations seek to find a suitable match, conduct interviews with prospective owners, and in some cases will provide costs of continuous veterinary care. Like most re-homing organisations Cats Protection prioritise neutering as an essential aspect of re-homing. However, among the re-homing organisations there are various approaches to euthanasia; some will destroy unwanted animals, whereas others, such as Cats Protection, operate with a non-destruction policy.

7.3 Re-homing Ferrets

Ferrets are popular companion animals; they are not wild animals but domesticated members of the *Mustelidae* family, which includes stoats, weasels and otters. It is difficult to give an accurate figure on the number of ferrets in the UK. Estimates range from a million to far higher. They are sometimes used as working animals, flushing rabbits out of burrows, and there are ferret shows, and ferret racing events, but in many cases they are maintained as lively and playful pets. Re-homing organisations for ferrets offer advice and support for ferret owners which cover dietary and environment needs, veterinary care and post adoption support.

The National Ferret Welfare Society (NFWS) is a nationwide organisation devoted to improving the health and welfare of both working and pet ferrets. They publish a regular newsletter available to members, containing useful articles related to ferrets and their close relative the native polecat. The NFWS helps experienced and first time owners by giving advice and information regarding health, diet, vaccinations, housing requirements and all other general enquiries regarding ferrets. The Society has a large database of ferret/animal sanctuaries that have ferrets all needing good homes and in many instances is able to point prospective owners in the direction of a '*rescue'* in their area. The sanctuaries all operate under their own individual rules and stipulate their own requirements regarding re-homing; the NFWS cannot be held responsible for a re-homing centre's policy. In special cases the Society will volunteer the cost of a post mortem where the ferret's death appears to be abnormal; this is for research purposes only and the results are published in the newsletters, on the NFWS website and any related articles, or to inform veterinary surgeons.

7.4 Re-Homing Rabbits

According to the Rabbit Rehome website every year 33,000 rabbits are handed into rescue centres and many more are re-homed privately. Most re-homing organisations accepting and re-homing

rabbits also provide facilities for guinea pigs, gerbils, hamsters, mice, and chinchillas. All are self-funded, raising finance from a variety of sources, such as magazine subscriptions, newsletter, appeals, and fundraising. A national database of rabbit rescue and re-homing organisations is maintained by Rabbit Rehome, which is not a re-homing organisation itself, but will put relinquishing owners and prospective owners in contact with re-homing organisations. In most cases the rabbit re-homing organisations will require a home visit prior to release of the animal.

The re-homed rabbit will require considerable care and companionship, with humans and other rabbits; it is not recommended to keep rabbits with guinea pigs, and size variation within a rabbit population may require careful management. Care is also required when introducing a new rabbit to those already in residence. Rabbits require considerable living space – most homes on sale in pet shops are too small – and access to daily exercise, ideally in a large grassy area. They will need grooming and a clean environment. It is advisable to discuss neutering with a veterinary surgeon, and annual Myxomatosis/Viral Haemorrhagic Disease vaccinations (costing on average, £30-£40 a year) are essential.

Rabbit Rehome works with 35 rescue centres and many rabbit-loving individuals. It provides advice on re-homing, and the location of re-homing organisations and contacts. Advice is also provided on adopting rabbits, welfare, behavioural problems, and finding temporary foster homes. Its aims as stated in the website are reproduced below:

Although our main aim is to put potential adopters in contact with those currently caring for rabbits in need of homes. We also aim to:

1. *Raise awareness of the unwanted rabbits available in rescues*
2. *Assist members of the public in finding homes for their unwanted pets*
3. *Work towards solving the problems that cause rabbits to become unwanted*
4. *Support the work of rescue centres.*

7.5 Behavioural advice for animals

Animals of all species are frequently relinquished because of problem behaviour, for example self-mutilation, destructive or noisy behaviour or perceived or actual aggressive behaviour. An essential aspect of the re-homing process is accurate assessment of the motivations and triggers for such behaviours and thus the implementation of appropriate rehabilitation and behaviour modification programmes. Such programmes may begin whilst the animal is in the direct care of the re-homing organisation and will certainly need to be continued when it is re-homed. This means providing suitable advice and support to new owners in order for the welfare of the individual animal, its owners, the public and other animals not to be compromised.

8. Legal Aspects of re-homing

There are several laws that relate to animal ownership regarding the behaviour of the human, e.g. the Animal Welfare Act 2006 and the Animal Health and Welfare (Scotland) Act 2006, or the behaviour of the animal, e.g. Animals Act (1971). The responsibility for the animal's welfare and behaviour lies with the keeper and the owner, who may not be the same person. Where the owner of an animal is the re-homing organisation, in that they can choose to take back the animal, there are likely to be legal obligations on that organisation to ensure that the keeper – the adopter – is given sufficient advice of the highest standard on the care and management of the animal. This would include advice on training and behaviour and sources of help.

The consequences of not doing so, or not doing so in written format, may be court action which can be damaging to the people involved and the future of such organisations; and thus to the welfare of current or future animals that pass through that organisation.

It thus behoves organisations to ensure their staff are adequately and appropriately trained.

9. Conclusions and Recommendations

9.1 This Report is primarily descriptive rather than prescriptive. It does not seek legislation with regard to the re-homing organisations, believing that, if rigorously enforced, the Duty of Care sections of the Animal Welfare Act 2006 and the Animal Health and Welfare (Scotland) Act 2006 will provide sufficient legal protection for the animals involved in the rescue and re-homing process.

9.2 It is concluded that the imposition of bureaucratic structures over a primarily voluntary undertaking, motivated out of a sense of compassion, would be counter-productive. Nevertheless, this Report notes, with approval, steps taken towards a more efficient use of resources and skills among volunteers and organisers where cooperation between different re-homing organisations is evolving. The use of social networking sites such as Facebook in order to facilitate cooperation among re-homing organisations in the establishment of objectives, sharing training experience and regular communication, can be extended to present a coherent policy strategy. As communication and cooperation improves, the possibility for self-regulation might indicate that legislation for rescues could be reduced.

9.3 It is noted that whilst the majority of re-homing organisations are rightly aware of a need to protect confidential information regarding the surrendering owners, there are instances where there is a more general culture of confidentiality. This leads to withholding information regarding the animal's history and breeding background, thus limiting the ability to provide for the animal's welfare and that of others. Such examples might include a lack of transparency with regard to the practices of certain breeders.

9.4 The provision of guidelines for prospective owners or custodians should, in all cases, contain details of specific needs, as well as potential behavioural problems, which experience has shown to be a characteristic of the individual, species or breed.

9.5 There is a need for an appraisal of policies involving euthanasia. It is not sufficient to allow a re-homing organisation or a breed society which covers this function, to authorise euthanasia without a sound ethical basis. In cases where euthanasia is performed for non-therapeutic reasons, adequate consultation and transparency regarding the decision is strongly recommended.

The Report recognises that euthanasia can be a response to circumstances where health and/or welfare are irreversibly and severely compromised and when it is not possible to meet animals' needs.

However, the Report also recognises that the moral objective of re-homing organisations is to provide a good quality of life for as many animals as possible, and that the moral basis of '*no kill*' policies is derived from the ideal that a healthy companion animal, enjoying a good standard of welfare and quality of life, should be entitled to live out its natural life. The report notes with regret that many abandoned and unwanted companion animals are euthanized because of lack of resources or in line with legislation that requires euthanasia after a certain time limit. This may be a necessary

lesser evil but it is not an ethically desirable policy and is incompatible with the moral principles underpinning re-homing organisations (Lamb, 2010).

Serious attention should therefore be given to proposals to euthanase animals. It is recommended that such decisions should not be taken by an individual, but after consideration and discussion, with evidence that alternatives have been assessed. Responsibility must ultimately rest with an executive authority, acting within the remit of the re-homing organisation's agreed code of practice. This will be of particular importance in cases where euthanasia is considered in response to behavioural problems. Thus, the veterinary surgeon or executive authority involved should have appropriate training in animal behaviour.

It is recognised that each re-homing organisation may have evolved their own ethical position with regard to euthanasia, and insofar as it is compatible with recognisable standards of welfare, and subject to revision in the light of moral, veterinary and behavioural knowledge, there should be no impediments to their adopted procedures. However, it is recommended that each re-homing organisation should be required to state clearly what its ethical position is with regard to euthanasia and with methods of performing euthanasia, so that members of the public may have sufficient information to choose whether or not to provide support for the organisation. This information should be presented in considerable detail to avoid ambiguous interpretations of the re-homing organisation's policy.

Euthanasia is a topic which evokes considerable interest from welfare organisations, re-homing organisations, professionals and the lay public. The subject of euthanasia is primarily moral and philosophical, and solutions to moral problems cannot be determined exclusively by technical means. Although it is broadly agreed that there are certain conditions where depleted quality of life is indicative of recourse to euthanasia, it must be stressed that competence in addressing the moral issues involved in euthanasia is not restricted to professionals in the animal sciences.

9.6 Executive committees of re-homing organisations should include a veterinary surgeon wherever practical, but at a minimum should include access to appropriate veterinary advice. It should be noted that veterinary surgeons might have a wider role than the provision of therapy, as frequently they may be the only people to see the animal prior to relinquishment, and their contribution to a behavioural evaluation may be significant.

9.7 Relinquishment following adoption is frequently attributed to behavioural problems, especially with cats and dogs. This speaks of an urgent need to focus on strategies to combat post adoptive behavioural issues, which may require input from various sources, including veterinary surgeons, behaviourists and trainers. Wherever possible a behavioural assessment committee should be instigated. These already function within re-homing organisations with dedicated kennels and full time staff, but it is recommended that re-homing officers within, for example, single species or breed societies, should be assisted by an assessment committee.

9.8 There is an urgent need for informed discussion about aggression, in particular canine aggression, and about the qualifications required for behavioural assessors and advisors about standardisations, validity and value assessments in rescue, and about solutions to the problems raised by aggressive animals.

9.9 Information from re-homing organisations indicates support for micro-chipping, and the Working Group has not encountered any opposition to this practice.

9.10 Recommendations regarding the welfare of animals in the re-homing process are as follows:

1. Assessment and selection of suitable animals for re-homing.

Not all animals are suitable candidates for re-homing. The objective here should be to ensure that decisions whether or not to re-home should be based on sound evidence and judgement.

i. Many re-homing organisations employ policies which exclude aggressive animals, with a record of aggression towards humans or other domestic animals. Others accept aggressive animals. If these animals are accepted, advice based upon reliable evidence may be required before decisions are taken with regard to re-homing, and this advice may be required during all stages of the re-homing process and even beyond it.

ii. Given that reliance upon expert advice is essential to the wellbeing of the animal, other animals and its human companions, the quality of this advice is important. However, there is no consensus as to the appropriate standard of this advice and a range of skills may be employed, from veterinary surgeons (with or without behavioural expertise), ASAB certified clinical animal behaviourists or members of other recognised organisations, local dog trainers (who may or may not have externally recognised qualifications), specialists in the species or particular breed, and a variety of volunteers with a general interest in animal rescue and welfare. The current work of the recently convened (2010) Animal Behaviour and Training Council (ABTC) is noted as a positive step forward in this area.

iii. Given the fact that behavioural problems are the most cited reasons for re-homing failures, there is a pressing need to develop sophisticated training and behaviour plans for individual animals to combat the problems that led to previous relinquishment and to ensure that it is not repeated following re-adoption.

iv. In some cases temperament tests are conducted on a relinquished dog. It is not always clear whether these provide valid indicators of temperament. Nor is it clear whether they are performed by qualified experts, or enthusiasts with varying degrees of expertise and experience. It is not even clear as to the criteria for the role of a '*qualified expert'*. Additionally, there is always the possibility that temperament testing on relinquished dogs is invariably compromised to some extent by the rescue centre environment, which many animals will find stressful and consequently adopt patterns of behaviour, such as withdrawal, thereby concealing their personalities.

v. Behavioural assessment is an important tool, especially when making life and death decisions or formulating strategies for future re-homing, but it must be recognised that it is not a fully accurate tool for the prediction of future behaviour and that this is an area where further studies are urgently required.

vi. Initial assessment may indicate that the animal is of a nervous disposition and may require considerable time and effort to assist it in settling down in its new environment. Many animals experience stress when moving into a new environment which may require specialist attention and support for the new owners. Few guidelines for re-homing acknowledge stress, how to identify and overcome it. Cats may be stressed in the shelters and withdraw or reduce their capacity to interact with visitors, thus making it harder to find homes for them. This might be combated with environmental enrichment, including play, toys, handling and grooming. A dog that is suffering from stress may become fearful and potentially aggressive. At a minimal level new owners should be forewarned of potential problems following re-homing, and that it is not uncommon for re-homed

cats and dogs to exhibit lethargy and anorexia for a day or two, which may be followed by more boisterous behaviour within a couple of weeks when they feel confident in their new environment.

vii. The age of the animal is often considered to be an important factor. As a rule, it is assumed that young animals are more likely to adapt to a new home, although older animals can adapt and be re-homed successfully. Consequently generalisations about the age of the animal and its potential for successful re-homing should not be applied too rigidly; each animal and each person providing a home must be treated as individuals.

2. Preparation of the animals for life in their new homes.

The objective should be to prevent welfare problems by assessment of the animal's state of health, its temperament, response to a different environment, and level of training and socialization. Where necessary the animal should be introduced to an appropriate programme of training and behavioural assessment. If there is a prospect of benefit a rehabilitation programme should be initiated. The collection and dissemination of information regarding the animal is essential to a successful re-homing strategy. This should be in written format to allow for later referral by the owner. The wellbeing of the animal and respect for the prospective owner's capacity for autonomous decision making are inseparably linked with the provision of adequate information.

i. The re-homing organisation should collect information regarding the animal's state of health, and must provide the prospective owner with this information. It should also provide appropriate veterinary care, including vaccination and worming, if these are needed. The provision of relevant information is bound up with ethical principles that require respect for the autonomy of the prospective owner, as an exercise of choice over a range of options in the animal's best interest must be made on the basis of accurate information.

ii. Of considerable benefit is the employment of a care plan for each animal entering the re-homing organisation. This care plan should contain details of the animals' state of health, dietary needs, exercise requirements, temperament, and other requirements that will be relevant to its future care. Structuring such a plan around the five welfare needs, as laid out in the Animal Welfare Act 2006, would help ensure that no relevant considerations are overlooked. Prospective owners should be invited to discuss this care plan with a member of staff from the re-homing organisation.

iii. Most re-homing organisations have policies regarding neutering of animals. Prospective owners or custodians should be made aware of this policy and its underlying rationale. This is even more essential if the organisation insist that the prospective owner must undertake to arrange for neutering.

iv. In cases where the animal has very limited experience of the environment (social referencing), appropriate exposure to relevant visual, tactile, and aural experiences may be required. This will be important when re-homing ex-laboratory animals, but there are instances where the surrendering owner has not provided such experience. Exposure to a variety of experiences may be a sensible precondition if going to a home where there are children, other animals, and a different type of environment, but it is worth stressing that many animals are very adaptable and respond well to a caring environment.

v. One of the main reasons for unsuccessful attempts to re-home is inadequate socialisation. The re-homing organisation should therefore assess the level of socialisation the animal has experienced with people and other animals, and no matter how short its stay with the organisation, steps should be taken to either introduce the socialisation process, or continue with a process that has already started.

vi. In cases where a pregnant bitch has been surrendered and the puppies are born under the care of the re-homing organisation it is important that the need for good socialisation and exposure to a variety of stimuli (social referencing) is met during those formative weeks.

vii. Depending on the length of stay with the re-homing organisation/ temporary foster home, it may be important to embark on a training programme. During its stay with the organisation it is highly desirable, when re-homing dogs, to assess the animal's training level and proceed with a suitable training programme. The quality of the trainer and advice on training will be a crucial factor in determining a successful re-homing and future welfare of the animal (see CAWC, 2008).

viii. Information should be collected, wherever possible, with regard to the animal's temperament, personality, health, history of socialisation, previous contact with children and other animals and range of environmental experiences and responses to environmental stimuli, as well as training and known commands and tricks. It must be recognised that many thousands of animals entering the re-homing process are strays, often found abandoned and at the point of rescue little information as to their history will be available. Any information obtained should be as accurate as possible, and not exaggerated or sentimentalised, but objective and transparent. This will involve consultation with experts and others with suitable experience, in order to avoid decisions based on questionable theories and inferences.

ix. Wherever possible, when re-homing a dog, it is beneficial if the dog makes contact with the prospective owners, their family and even their pets, on neutral territory. Although this is not always possible and convenient, several re-homing organisations may have access to open land.

3. Assessment of prospective new homes and owners.

Guidelines for suitable homes and owners are essential for the welfare of the animal. The objective is to find a suitable match, to find the right home for the right reason. Of essential importance is awareness that each animal and each person involved are individuals and must be treated as such. It is, however, important to recognise that whilst these guidelines should be thorough and designed with the welfare of the animal in mind, they should not be applied too rigidly.

i. The assessment of prospective new homes and owners involves making value judgements regarding the lifestyle and suitability of those intending to provide a home for the animal. These judgements might be based on interviews, questionnaires, home visits, and will certainly be influenced by the level of experience, attitudes and beliefs, of those conducting the assessment. It is therefore important that assessors adopt an approach whereby the welfare of the animal in question has greater priority than beliefs relating to the image of the particular species or breed that the organisation may wish to endorse. Moreover, confronted with a set of rigid demands and requirements, such as access to a garden, many potential owners who are otherwise capable of providing a caring environment might be dissuaded and end up obtaining an animal from a source that provides lower welfare standards.

ii. In some cases interviews and detailed questionnaires may provide adequate means of assessing prospective owners. Some re-homing organisations emphasize the importance of home checks, whereas others point out that these are not always possible for logistical reasons.

iii. Bearing in mind that the assessment of prospective new homes and owners is one of the most essential aspects of successful re-homing, assessment protocols and practice can sometimes be over-protective. This can have a negative impact on the outcome. An overly robust initial screening programme for prospective owners can actually eliminate potentially good owners whose

'*shortcomings*' may well be corrected with constructive advice. As the Laboratory Animal Science Association (LASA) (2000) Report observes:

Too great a rigour in this respect will severely limit the number of suitable homes that can be found. It is therefore important to recognise that the more restraints and caveats used to define the suitability of home and prospective owners, and for that matter the suitability of the animals themselves, the more difficult it will be to identify candidates.

Although this advice was provided for re-homing laboratory animals, it applies equally to all re-homing procedures. Whilst care must be taken to locate suitable homes, and achieve a suitable match, a sensible policy of broad guidelines, aimed at the animal's overall wellbeing, is best. In this respect numerous requirements regarding the prospective life style of the animal, which reflect the overall ideals of a specific society/organisation involved in re-homing, may actually limit the number of suitable homes.

(Useful resources in this respect are the *Housing Provider Resource – practical guidelines on pet management for housing provider* (2007) A Pathway and Pet Advisory Committee Publication, available from the Pets Advisory Committee website (www.petadvisory.org.uk/pac.php?id=8); and Dono, J (ed) (2005) *Older People and Pets – A Comprehensive Guide* (2005) published by SCAS (Society for Companion Animal Studies).

iv. In some cases an over-protective attitude to re-homing may produce curious restrictions on the re-homing process. Newfoundland rescues, for example, have been prohibited by the breed society from appearing on television. When one television company planned to film the training of a rescued Newfoundland dog, the society wrote a complaint to the Director General of the BBC (Lamb, 2007). The reason advanced was that publicity would attract the wrong kind of potential owner.

v. Other restrictions might be bound up with degrees of either prejudice or misunderstanding of the capabilities of potential owners. To consider a specific example: the age of a prospective owner might feature in selection criteria, as age might be considered relevant for the provision of exercise for the animal. This not only breaches ethical principles of justice, criteria such as this cannot be pinned down with any degree of accuracy, as the fitness of humans is a variable that is not totally dependent upon age.

vi. Nevertheless, it is essential that assessment of potential dog owners should address their ability to manage the dog with regard to exercise, house training and basic obedience – such as teaching the dog to sit and recall. In more detail, responses to questions on how to respond to behavioural problems, such as separation anxiety, fearfulness, and destructive behaviour; even questions on canine calming (appeasement) signals and body language, might indicate a need for suitable instruction before making a decision to allocate a dog.

4. Advice given to prospective owners.

Advice given to prospective owners should be comprehensive, reliable, objective and well informed. Advice on training, socialisation and social referencing of dogs, and other species, is essential for their wellbeing and successful re-homing.

Withholding vital information regarding the animal's history, temperament, and health, is detrimental to its welfare. In addition, it may lead to the re-homing organisation putting the new owners in jeopardy of a criminal record if lack of information means that they do not meet the individual animal's needs, or are not made aware of behaviours which may lead to legal contraventions.

Re-homing organisations should carefully re-examine their commitments to confidentiality with respect to the interests of the surrendering owner. It is recommended that re-homing organisations develop protocols for passing of information relating to welfare concern to the relevant individuals.

i. It is important that advice given to prospective owners is clear and properly understood. They must be given information regarding costs, insurance, be informed about neutering policies, and be strongly advised to microchip the animal. Prospective owners must understand the temperament of the individual/species/breed, its requirements, and possible response to training. It is important to dispel myths: for example, giant breeds like the Newfoundland or St Bernard, are not large cuddly toys requiring little exercise and stimulation. Rats are highly intelligent animals, requiring stimulation and companionship. All pet animals are completely dependent upon their human owners for protection, nourishment and stimulation, and these needs must be fully understood by the prospective owners.

ii. The advice should be realistic. First time owners may need advice regarding house training, preparing an adequate environment, and basic management of the animal. With dogs, advice on participation in training classes and availability of assistance with behavioural problems is a significant factor in the success of re-homing and it is strongly recommended that re-homing organisations emphasise that prospective owners engage in appropriate training classes. More experienced owners will need information regarding the level of training already experienced by the animal. This might appear obvious, yet can be a minefield, with misleading advice based on hearsay and anecdotal sources, leading to serious behavioural problems (see CAWC, 2008).

iii. Prospective owners must be provided with as full and accurate history of the animal as possible. This can raise problems, such as a conflict of interests and loyalties, which must be addressed. Several breed societies involved in rescue and re-homing may face a conflict between the interests of the animal and loyalties to the surrendering owner or original breeder of the animal, either of which may be eminent members of the breed society. Rules might be adapted to protect the anonymity of the breeder or surrendering owner which may rightly protect an individual's right to confidentiality but may also preclude the dissemination of a satisfactory level of information about the animal and its particular history. It should, however, be noted that information regarding temperament and behaviour from the surrendering owner might not always be objective and reliable and that the assessment from previous owners should be seen as a starting point to be superseded by information from veterinary and behavioural sources.

5. Knowledge and communication skills of the staff and volunteer assistants within the re-homing organisation.

The animal owning population is diverse in terms of ethnicity, learning differences and physical and sensory impairments. It is important to recognise that gaining information from relinquishers or providing advice, however relevant and well informed, requires suitable communication skills and an appreciation of customer care.

Communication skills can vary tremendously, and several re-homing organisations place emphasis on the abilities of its officers and volunteers to provide suitable advice to prospective owners. In one survey, for example, the Working Group asked six large re-homing organisations to indicate how much importance they placed on good communication skills when selecting staff and volunteers. Each of the six rated such skills as either "important" or "very important".

Lack of communication skills can contribute to failure in the re-homing process. Continuing professional development, such as conferences, seminars and training workshops on this subject can be helpful. It is noteworthy that many re-homing organisations invite speakers with expertise in animal welfare to address their Annual General Meetings. Even a few sheets of printed guidelines could be circulated to volunteers, outlining basic communication skills, such as instructions to avoid being too judgemental or critical. The animal owning population is diverse in terms of ethnicity, learning differences and physical and sensory impairments. It is important to recognise that gaining information from relinquishers or providing advice, however relevant and well informed, requires suitable communication skills and an appreciation of customer care. This is to the benefit of the welfare of the individual animal and to the humans concerned.

Wherever possible, booklets, or DVDs providing details of care might be offered to prospective owners, with the additional option of organised discussions or seminars, internet discussion groups, with representatives from the re-homing organisation, successful re-homing owners, and other potential owners.

The presentation of the re-homing organisation to the public is a vital aspect of communication. The premises themselves, the atmosphere in the centre, convey an important message about care and companionship, which must not be underestimated. And even if there are no dedicated premises the presentation of the initial meeting place to discuss re-homing may be a means of communicating the significance of adoption.

6. Follow-up procedures after re-homing.

It is important to have thorough follow-up procedures after re-homing, so that the animal's welfare is not compromised during the early stages of settling in to its new home. Where resources permit these may be via the organisation's own staff, or via local experts.

It is also important that the re-homing organisation is prepared to accept the animal in the event of an unsuccessful re-homing.

Sound follow-up procedures require knowledge of the animal's needs and an ability to communicate advice to the new owners. Follow up counselling should be supportive and not seen as policing. Trust and mutuality is essential. If we acknowledge the complexity of the human personality it has to be admitted that this may not be easy to achieve in many cases. Only too often this problem is circumvented by societies who limit re-homed animals to a chosen few, who are deemed to be acceptable to the society. This can have two drawbacks; first, these owners might be over-taxed, feeling pressured into accepting rescue animals, and second it clearly limits the scope of potentially good owners and homes.

This speaks of a need to establish suitable protocols relating to follow-up procedures. Ideally, initial follow-up communication should be between two to seven days after adoption, in order to respond to possible settling in problems. At a minimum, new owners should be aware of a named person and have a telephone number of someone who can provide advice. The length of time for follow-up procedures may vary according to the particular needs of the animal concerned and the level of care provided by the new owners. But the emphasis must always be on teamwork, rather than supervision.

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Thanks also, on behalf of the chair of the Working Group, to the hundreds of individual owners of rescued companion animals who have given oral evidence whilst actively engaged in shows, competitions and animal activities throughout the country, who have spoken with pride and affection, and shared photographs, of the animals for whom they have provided permanent and loving homes, often overcoming great difficulties in caring for previously abused, unwanted and maltreated animals.

11. Working group membership

Chair, Dr David Lamb

Membership

Mrs Sue Bell

Dr Anne McBride

Dr June McNicholas

Research Assistant, Sarah Matthews

APPENDIX

Summary of Research conducted by Rita Lewis, 2008, on *The Pedigree Dog – Welfare Ethics versus Aesthetics*, MSc Thesis, University of Southampton.

Those wishing further information regarding this work, or copies of the complete thesis should contact Dr Anne McBride, School of Psychology, University of Southampton, Highfield, Southampton SO17 1BJ, UK

The domestic dog *Canis familiaris* has been selectively bred by humans for thousands of years and exhibits a greater morphological diversity than any other single species (Clutton-Brock, 1999). Initially the selective breeding of dogs was primarily to satisfy functional requirements; however, with the inception of dog shows in the mid 19th century, the aesthetic quality of these animals was soon to have a bearing on breeding practices (The Kennel Club, 2003). Dog breeders have produced animals which are morphologically far removed from their progenitor the wolf, but in doing so some dogs appear to have paid a high price, as selective breeding has led to the existence of over 350 known diseases and conditions in pedigree dogs (Gough and Thomas, 2005).Whilst the UK Kennel Club, and many breed clubs, recognise there is a need to ensure both the physical and behavioural health of pedigree dogs (Kisco, 2007) many breed standards are still linked to specific problems.

By adapting Beauchamp and Childress'(1994) four principles of bioethics: (beneficence; non-malificence; autonomy and justice) to welfare ethics, this study evaluated whether the practice of selectively breeding pedigree dogs to meet Kennel Club breed standards was compatible with those principles. The study was unique in gathering and evaluating the ideas regarding welfare ethics from the people who set the breed standards, in consultation with the Kennel Club, against which pedigree dogs are judged and to which they must conform. Thus, the secretaries of each major breed club in the UK (n=158) were contacted via post asking if the club would participate.

The postal pack contained a questionnaire of both open and closed questions, providing quantitative data on areas such as number and reproductive status of dogs owned by club members, details of temperament, aptitude or physical tests carried out on breeding stock, and whether they were mandatory. Qualitative data was gathered relating to the club's rules and code of ethics: when they were last changed, in what way and the rationale for the change, and whether the club considered the Animal Welfare Act 2006 would have any effect on the rule book, code of ethics or breed standard.

In order to evaluate breeders' ideas regarding ethics, the questionnaire was designed to investigate the current practices of breed clubs and in addition to this, breed club secretaries were asked to return any published rule books and codes of ethics.

An initial pilot questionnaire was sent to the 9 imported breeds listed in the Kennel Club Yearbook 2006-7. These were chosen as they were a distinct group within the yearbook and, although small in number could indicate if the questionnaire was appropriate, easy to complete, and provide the information required for the study. The pilot questionnaire had a response rate of 33% and, as there were no major changes required, the results from these were included in the final analysis. A total of 158 questionnaires were sent out to the club secretaries of major breed clubs also listed in the Yearbook.

There were 39 useable questionnaires received for the main study, which with the addition of the 3 pilot questionnaires, meant that the analysis was conducted on 42 questionnaires (25%) of the survey population. All seven Kennel Club groups were represented in the questionnaires returned. 22 ethical codes / rule books were supplied.

Whilst a disappointingly low return rate, this was a substantially larger sample of breed societies than contributed to the Associate Parliamentary Group for Animal Welfare (2009) request for either written or oral evidence (n = 7) and was comparable to the 58 submissions from breed societies to the Bateson Independent Inquiry into Dog Breeding (2010).

A thematic analysis was carried out on the content of the code of ethics received from any breed club and any responses to open questions in the questionnaire. Statistical analysis was carried out on the closed questions within the questionnaire. After examination of the rule books, apart from any codes of ethics contained within, they were mostly excluded from the study as they pertained to general administrative issues which were outside the remit of the study. However, five clubs had made changes to their rule books that were relevant and these were included in the qualitative analysis.

A brief summary of results considered pertinent to this CAWC report are given below.

Clubs were asked what the original and current function of the breed was. 38% (n=16) stated the original function was companionship, and 86% (n=36) stated it was the current function of the breed.

Clubs were asked when they had last amended their code of ethics / rule books and why. A majority of the breed clubs (n=25) had reviewed their ethical codes in the previous 2 years. 13 clubs had made changes, one in 1986 (change in breed standard regarding height of dog); 3 relating to the minimum age and number of litters for bitches (2002, 2007); 1 to 'clarify breeding responsibilities' (2006); 5 regarding screening stock for defects such as eye problems or epilepsy (2005, 2006, 2007), 1 regarding commercial breeding (2007); 1 enabling the attendance of puppies at shows for socialisation (2007) and 1 (2007) with a mandatory requirement that members meet the legal requirements of the Animal Welfare Act.

Interestingly, 82% of screening tests were listed by breed clubs as voluntary, rather than mandatory, suggesting there is a potential problem in improving the health of breeds. Likewise, when asked how the UK Animal Welfare Acts 2006 (AWA) may affect the breed standards, no club could foresee the AWA affecting their breed standards and only one made a comment, stating "The Kennel Club standards do not relate directly to welfare". Only 9 clubs considered that their rules or code of ethics would be affected by the provisions of the Animal Welfare Act (2006) and the Animal Health and Welfare (Scotland) Act 2006.

With respect to rescue dogs, there was variation in how these were included in the pedigree clubs activities. 91% (n=38) of clubs allowed rescue dogs to take part in club activities such as club and breed shows and matches, with 20 clubs including them in Kennel Club shows. 62% (n=26) stated they would not breed from rescue dogs, with the prime reasons being a lack of registration papers and the dogs being of unknown background, and that many rescue dogs are neutered. Of the 16 clubs who stated they would allow breeding from rescue dogs, 8 gave no details, 4 had the caveat that the dog had to have registration papers, 1 insisted on papers and appropriate health screening and 3 stated the breed had too small a gene pool to preclude breeding from rescue animals.

Conclusions: Many breeds of domestic dog in the UK today fulfil the role of companions and/or show dogs compared to their original working functions. This has allowed aesthetics and conformation to breed standards to become more important than physical abilities. Some breed standards perpetuate morphological extremes which can lead to reduced welfare. Some breed clubs have mandatory requirements for screening for breed specific conditions, but the majority leave the decision to individual breeders as a freedom of choice. The emphasis appears to be on meeting breed standards rather than improving health, thus the findings indicate that breed standards do not satisfy ethical principles of beneficence and non-maleficence. By insisting that individual animals of a breed

all look the same, breed standards do not account for the uniqueness and autonomy of the individual. Finally, the provisions of the UK Animal Welfare Acts currently are not considered by breed clubs to be relevant to breed standards. This is surprising given the provisions of the Act to have a duty of care to protect animals from pain, suffering, injury and disease and to have the ability to perform normal behaviours.

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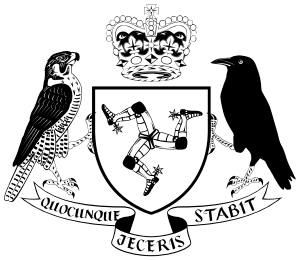
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VETERINARY SURGEONS ACT 2005

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VETERINARY SURGEONS ACT 2005

Index

Section		Page
1	Restriction of practice of veterinary surgery by unqualified persons	5
2	Exemptions	5
3	Use of descriptions as to professional status	6
4	Evidence of registration	6
5	Notice of death of veterinary surgeons	7
6	Orders	7
7	Veterinary surgery: definition	7
8	Interpretation	7
9	Amendments and repeals	8
10	Short title and commencement	8
SCHEDULE 1		**9**
EXEMPTIONS FROM RESTRICTIONS ON PRACTICE OF VETERINARY SURGERY		9
SCHEDULE 2		**12**
AMENDMENT OF ENACTMENTS		12
SCHEDULE 3		**12**
REPEAL OF ENACTMENTS		12
ENDNOTES		**13**
TABLE OF LEGISLATION HISTORY		13
TABLE OF RENUMBERED PROVISIONS		13
TABLE OF ENDNOTE REFERENCES		13

Isle of Man

Ellan Vannin

VETERINARY SURGEONS ACT 2005

Received Royal Assent:	*15 March 2005*
Announced to Tynwald:	*15 March 2005*
Commenced:	*20 September 2005*

AN ACT to make provision for restricting the practice of veterinary surgery by unqualified persons; and for connected purposes.

1 Restriction of practice of veterinary surgery by unqualified persons

(1) No individual shall practise, or hold himself or herself out as practising, or as being prepared to practise, veterinary surgery unless that individual is registered in the Register of Veterinary Surgeons (in this Act a registered individual is referred to as a "**veterinary surgeon**").

(2) Any individual who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 3 months, or to both.

(3) This section is subject to section 2 and Schedule 1.

2 Exemptions

(1) Section 1 does not prohibit —

(a) the doing of anything specified in Part I of Schedule 1 and not excluded by Part II of that Schedule;

(b) the carrying out or performance of any minor treatment, test or operation specified in an order made by the Department, so long as any conditions specified in the order are complied with;

(c) the carrying out or performance of any treatment, test or operation by a fully registered person within the meaning of the *Medical Act 1985* or a registered dentist within the meaning of the *Dental Act 1985* at the request of a veterinary surgeon;

(d) the carrying out of any procedure duly authorised under Part II of the *Cruelty to Animals Act 1997*;

(e) the performance by a fully registered person within the meaning of the *Medical Act 1985* of an operation on an animal for the

purpose of removing an organ or tissue for use in the treatment of human beings.

(2) The Department may by order amend Schedule 1.

(3) The Department may by order exempt from section 1 the carrying out or performance of any veterinary treatment, test or operation prescribed by the order, subject to compliance with prescribed conditions, by students of veterinary surgery of any prescribed class.

3 Use of descriptions as to professional status

(1) If any individual who is not for the time being a veterinary surgeon, takes or uses the title of veterinary surgeon or any name, title, addition, or description calculated to lead to the belief that the individual is a veterinary surgeon, that individual shall be guilty of an offence.

(2) Without prejudice to subsection (1), if any person uses any description in connection with —

(a) any business carried on by that person, or

(b) any premises at which such a business is carried on,

being in either case a description calculated to lead to the belief that the person, or any individual acting for the purposes of the business, possess any veterinary qualifications which they do not in fact possess, that person shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 3 months, or to both.

4 Evidence of registration

(1) A copy of the Register of Veterinary Surgeons for the time being purporting to be printed and published in pursuance of the U.K. Act shall be evidence in all cases (until the contrary be made to appear) that the individuals named in the copy are on the Register of Veterinary Surgeons.

(2) The absence of the name of any individual from such a copy shall be evidence (until the contrary be made to appear) that such individual is not on the Register.

(3) In the case of any person whose name does not appear in such a copy, a certified copy under the hand of the Registrar of the Royal College of Veterinary Surgeons of the entry of the name of such person in the said Register, shall be evidence that such person is on the said Register.

5 Notice of death of veterinary surgeons

(1) A registrar of deaths, on receiving notice of the death of any veterinary surgeon shall as soon as practicable transmit by post to the Department a certificate of the death, with the particulars of time and place of death.

(2) On receipt of a certificate under subsection (1), the Department shall —

(a) notify the Registrar of the Royal College of Veterinary Surgeons; and

(b) reimburse the registrar of deaths for the cost of such certificate and transmission.

6 Orders

(1) The Department shall consult with the Royal College of Veterinary Surgeons before making any order under this Act.

(2) Orders under this Act shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the orders are laid or at the next following sitting fails to approve them, the orders shall cease to have effect.

(3) This section does not apply in respect of an order under section 10(2).

7 Veterinary surgery: definition

(1) In this Act, "**veterinary surgery**" means, subject to subsection (2), the art and science of veterinary surgery and medicine and, without prejudice to the generality of the foregoing, includes —

(a) the diagnosis of diseases in, and injuries to, animals including tests performed on animals for diagnostic purposes;

(b) the giving of advice based upon such diagnosis;

(c) the medical or surgical treatment of animals; and

(d) the performance of surgical operations on animals.

(2) "**Veterinary surgery**" does not include —

(i) the doing of anything specified in Part I of Schedule 1 and not excluded by Part II of that Schedule;

(ii) any minor treatment, test or operation specified in an order made by the Department under section 2(1)(b), so long as any conditions specified in the order are complied with;

(iii) any treatment, test, operation or procedure specified in section 2(1)(c) to (e).

8 Interpretation

In this Act —

"**animals**" means all species other than man;

"**the Department**" means the Department of Environment, Food and Agriculture;[1]

"**prescribed**" means prescribed by the Department;

"**Register of Veterinary Surgeons**" means the register of veterinary surgeons kept under the U.K. Act;

"**U.K. Act**" means the *Veterinary Surgeons Act 1966* (an Act of Parliament) as that Act has effect from time to time and includes any instrument of a legislative character that re-enacts or replaces that Act with or without amendments;

"**veterinary surgeon**" has the meaning given by section 1(1).

9 Amendments and repeals

(1) The enactments specified in Schedule 2 are amended in accordance with that Schedule.

(2) The enactments mentioned in column 1 of Schedule 3 are repealed to the extent specified in column 3 of that Schedule.

10 Short title and commencement

(1) This Act may be cited as the Veterinary Surgeons Act 2005.

(2) This Act shall come into force on such day as the Department may by order appoint and different days may be so appointed for different provisions and for different purposes.[2]

SCHEDULE 1

EXEMPTIONS FROM RESTRICTIONS ON PRACTICE OF VETERINARY SURGERY

Sections 1(3) and 2(1)(a)

PART I - TREATMENT OR OPERATIONS WHICH MAY BE GIVEN OR CARRIED OUT BY UNQUALIFIED PERSONS

1. Any minor medical treatment given to an animal by its owner, by another member of the household of which the owner is a member or by a person in the employment of the owner.

2. (1) Any medical treatment or any minor surgery (not involving entry into a body cavity) given, otherwise than for reward, to any animal to which this paragraph applies by the owner of the animal or by a person engaged or employed in caring for the animal.

(2) This paragraph applies to —

(a) animals kept for the production of food, wool, skin or fur, or for use in the farming of land; and

(b) horses.

3. The rendering in an emergency of first aid for the purpose of saving life or relieving pain or suffering.

4. (1) The performance by any person of or over the age of 18 of any of the following operations, that is to say —

(a) the castration of male livestock by any means;

(b) the docking of the tail of a lamb;

(c) the amputation of the dew claws of a dog before its eyes are open.

(2) In sub-paragraph (1)(a), 'livestock' means any animal kept for the production of food, wool, skin or fur, or for use in the farming of land.

5. (1) The performance, by any person of the age of 17 undergoing instruction in animal husbandry, of any operation mentioned in paragraph 4(1)(a) or (b) and the disbudding of a calf by any such person or by a person of or over the age of 18 undergoing such instruction, if, in each case, either of the following conditions is complied with —

(a) the instruction in animal husbandry is given by a veterinary surgeon and the operation is performed under his or her direct personal supervision;

(b) the instruction in animal husbandry is given under the direction of a recognised institution and the operation is performed under the direct personal supervision of a person appointed by the institution.

(2) In sub-paragraph (1), 'recognised institution' means the Isle of Man College when acting jointly with, or on behalf of, the Department in providing any instruction or course of instruction.

6. (1) Any medical treatment or any minor surgery (not involving entry into a body cavity) to any animal by a veterinary nurse if the following conditions are complied with —

(a) the animal is, for the time being, under the care of a veterinary surgeon and the medical treatment or minor surgery is carried out by the veterinary nurse at his or her direction;

(b) the veterinary surgeon is the employer or is acting on behalf of the employer of the veterinary nurse; and

(c) the veterinary surgeon directing the medical treatment or minor surgery is satisfied that the veterinary nurse is qualified to carry out the treatment or surgery.

(2) In sub-paragraph (1), 'veterinary nurse' means a nurse whose name is entered in the list of veterinary nurses maintained by the Royal College of Veterinary Surgeons.

7. (1) Any medical treatment or any minor surgery (not involving entry into a body cavity) to any animal by a student veterinary nurse if the following conditions are complied with —

(a) the animal is, for the time being, under the care of a veterinary surgeon and the medical treatment or minor surgery is carried out by the student veterinary nurse at his or her direction and in the course of the student veterinary nurse's training;

(b) the treatment or surgery is supervised by a veterinary surgeon or veterinary nurse and, in the case of surgery, the supervision is direct, continuous and personal; and

(c) the veterinary surgeon is the employer or is acting on behalf of the employer of the student veterinary nurse.

(2) In this paragraph —

'approved training and assessment centre' means a centre approved by the Royal College of Veterinary Surgeons for the purpose of training and assessing student veterinary nurses;

'student veterinary nurse' means a person enrolled under bye-laws made by the Royal College of Veterinary Surgeons for the purpose of undergoing training as a veterinary nurse at an approved training and assessment centre or a veterinary practice approved by such a centre;

'veterinary nurse' means a nurse whose name is entered in the list of veterinary nurses maintained by the Royal College of Veterinary Surgeons.

PART II – EXCLUSIONS FROM PROVISIONS OF PART I

Nothing in section 2(1)(a) shall authorise —

(a) the castration of a male animal being —

(i) a horse, pony, ass or mule,

(ii) a bull, boar or goat which has reached the age of 2 months,

(iii) a ram which has reached the age of 3 months, or

(iv) a cat or dog;

(b) the removal (otherwise than in an emergency for the purpose of saving life or relieving pain or suffering) of any part of the antlers of a deer before the velvet of the antlers is frayed and the greater part of it has been shed;

(c) the desnooding of a turkey which has reached the age of 21 days;

(d) the removal of the combs of any poultry which have reached the age of 72 hours;

(e) the cutting of the toes of a domestic fowl or turkey which has reached the age of 72 hours;

(f) the performance of a vasectomy or the carrying out of electro-ejaculation on any animal kept for the production of food, wool, skin or fur, or for use in the farming of land;

(g) the removal of the supernumerary teats of a calf which has reached the age of 3 months;

(h) the dehorning or disbudding of a sheep or goat, except the trimming of the insensitive tip of an ingrowing horn which, if left untreated, could cause pain or distress; or

(i) the docking of lambs' tails after their first week of life.

SCHEDULE 2

AMENDMENT OF ENACTMENTS

Section 9(1)

[Sch 2 amends the following Acts —

Riding Establishments (Inspection) Act 1968 q.v.

Animal Boarding Establishments (Isle of Man) Act 1973 q.v.

Misuse of Drugs Act 1976 q.v.

Poisons Act 1979 q.v.

Jury Act 1980 q.v.

Breeding of Dogs and Cats Act 1981 q.v.

Statute Law Revision Act 1986 q.v.

Wildlife Act 1990 q.v.

Cruelty to Animals Act 1997 q.v.

Medicines Act 2003 q.v.]

SCHEDULE 3

REPEAL OF ENACTMENTS

Section 9(2)

[Sch 3 repeals the following Act wholly —

Veterinary Surgeons Act 1949

and the following Acts in part —

Riding Establishments (Inspection) Act 1968

Animal Boarding Establishments (Isle of Man) Act 1973

Misuse of Drugs Act 1976

Poisons Act 1979

Jury Act 1980

Breeding of Dogs and Cats Act 1981

Statute Law Revision Act 1986

Wildlife Act 1990

Cruelty to Animals Act 1997

Medicines Act 2003.]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

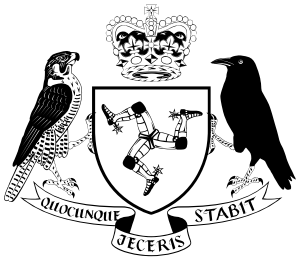
Table of Renumbered Provisions

Original	Current

Table of Endnote References

[1] Definition of 'the Department' substituted by SD155/10 Sch 3.

[2] ADO (whole Act) 20/9/2005 (SD688/05).



Isle of Man

Ellan Vannin

AT 5 of 1997

CRUELTY TO ANIMALS ACT 1997

Isle of Man

Ellan Vannin

CRUELTY TO ANIMALS ACT 1997

Index

Section **Page**

PART I – GENERAL PREVENTION OF CRUELTY **7**

1 Offences of cruelty 7
2 Provisions supplementary to section 1 8
3 Power of court to order animals to be killed 9
4 Power of court to deprive owner of animal 10
5 Power of court to disqualify persons 10
6 Breach of disqualification order 11
7 Animals in pinfolds 11
8 Use of dogs for purposes of draught 12
9 Injured animals 12
10 Interpretation: Part I 13

PART II – PROTECTION OF ANIMALS USED FOR SCIENTIFIC PROCEDURES **13**

Preliminary ***13***

11 Protected animals 13
12 Regulated procedures 14

Personal and project licences ***15***

13 Prohibition of unlicensed procedures 15
14 Personal licences 16
15 Project licences 16

Designated establishments ***18***

16 Scientific procedure establishments 18
17 Breeding and supplying establishments 19
18 Fees 20
19 Consultation 20
20 Conditions 20
21 Variation and revocation 22
22 Right to make representations 22
23 Suspension in cases of urgency 23

Additional controls 24
24 Re-use of protected animals ... 24
25 Killing animals at conclusion of regulated procedures ... 24
26 Prohibition of public displays ... 25
27 Neuromuscular blocking agents ... 25
28 Animal undergoing excessive suffering: power of Department, etc ... 25
Miscellaneous provisions 25
29 Guidance, codes of practice, etc ... 25
30 Penalties for contraventions ... 26
31 False statements ... 27
32 Protection of confidential information ... 27
33 Prosecutions ... 28
34 Interpretation of Part II ... 28

PART III – GENERAL AND SUPPLEMENTARY 28
35 Spring traps ... 28
36 Possession of appliances for use in fighting of domestic fowl ... 29
37 Enforcement of Act ... 29
38 Offences by bodies corporate ... 29
39 Orders ... 29
40 Expenses ... 30
41 Interpretation ... 30
42 Amendments ... 30
43 Transitional provisions and repeals ... 30
44 Short title and commencement ... 30

SCHEDULE 1 31
EXCEPTED OPERATIONS 31

SCHEDULE 2 32
STANDARD METHODS OF HUMANE KILLING 32

SCHEDULE 3 33
ANIMALS TO BE OBTAINED ONLY FROM DESIGNATED BREEDING OR SUPPLYING ESTABLISHMENTS 33

SCHEDULE 4 34
ENFORCEMENT OF ACT 34

SCHEDULE 5 36
AMENDMENT OF ENACTMENTS 36

SCHEDULE 6 36
TRANSITIONAL AND SAVING PROVISIONS 36

SCHEDULE 7 **37**

ENACTMENTS REPEALED 37

ENDNOTES **39**

TABLE OF LEGISLATION HISTORY 39

TABLE OF RENUMBERED PROVISIONS 39

TABLE OF ENDNOTE REFERENCES 39

Isle of Man

Ellan Vannin

CRUELTY TO ANIMALS ACT 1997

Received Royal Assent:	*15 July 1997*
Passed:	*15 July 1997*
Commenced:	*1 May 1998*

AN ACT to consolidate with amendments certain enactments relating to the prevention of cruelty to animals; to make new provision with respect to the protection of animals used for scientific procedures; and for connected purposes.

PART I – GENERAL PREVENTION OF CRUELTY

1 Offences of cruelty

Any person who —

(a) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal; or

(b) causes or procures or, being the owner, permits any animal to be so treated; or[1]

(c) by intentionally or unreasonably doing or omitting any act, or causing or procuring any act or omission —

(i) causes any unnecessary suffering to any animal; or

(ii) being the owner, permits any unnecessary suffering to be so caused; or[2]

(d) conveys or carries, or causes or procures, or being the owner, permits to be conveyed or carried, any animal in such a manner or position as to cause the animal unnecessary suffering; or[3]

(e) causes or assists at the fighting or baiting of any animal; or

(f) keeps, uses or manages, or acts or assists in the management of, any premises or place, for the purpose, or partly for the purpose, of fighting or baiting any animal; or

(g) permits any premises or place to be kept, used or managed for any such purpose; or

(h) receives, or causes or procures any person to receive, money for the admission of any person to any such premises or place; or[4]

(i) keeps or uses any equipment or other thing for the purpose, or partly for the purpose, of fighting or baiting any animal; or

(j) wilfully and without any reasonable cause —

(i) administers, or causes or, being the owner, permits the administration of, any poisonous or injurious drug or substance to any animal; or

(ii) causes any such drug or substance to be taken by any animal; or

(k) without prejudice to Part II, subjects, or causes or procures or, being the owner, permits, any animal to be subjected to any operation without due care and humanity; or[5]

(l) without prejudice to Part II, uses, or causes to be used or, being the owner of the animal, permits to be used, any prescribed device by means of which an animal is caused discomfort or pain, or is immobilised; or

(m) being the owner, or having the control or charge, of any animal, without reasonable cause, abandons it, whether permanently or not, in circumstances likely to cause the animal unnecessary suffering; or

(n) causes or, being the owner, permits any animal to be so abandoned,

shall be guilty of an offence of cruelty within the meaning of this Part and shall, subject to section 2(2), be liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.[6]

2 Provisions supplementary to section 1

(1) For the purposes of section 1, an owner shall be deemed to have committed cruelty within the meaning of this Part if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal from such cruelty.

(2) Where an owner is convicted of permitting cruelty within the meaning of this Part by reason only of having failed to exercise such care and supervision as is mentioned in subsection (1), he shall not be liable to custody without the option of a fine.

(3) If any operation to which this subsection applies is performed on any animal without the use of an anaesthetic so administered as to prevent any pain during the operation, that operation shall be deemed for the purposes of section 1(k) to be an operation which is performed without due care and humanity.

(4) Subsection (3) applies to any operation, with or without the use of instruments, which involves interference with the sensitive tissues or the bone structure of an animal to which that subsection applies, but does not apply to —

(a) the making of injections or extractions by means of a hollow needle; or

(b) an operation specified in Schedule 1.

(5) The Department of Environment, Food and Agriculture (in this Act referred to as 'the Department') may by order amend the ages specified in paragraph 4 of Schedule 1.[7]

(6) Section 1 shall not apply to —

(a) the ringing, tagging or marking of an animal, or the application of any other humane procedure for the sole purpose of enabling an animal to be identified if it causes only momentary pain or distress and no lasting harm;

(b) the doing of any act in the course of killing, or the preparation for killing, of any animal as food for human consumption, unless the killing or preparation for killing is accompanied by the infliction of unnecessary suffering to the animal;

(c) the doing of any act which is declared to be an exempt act by order made by the Department.

(7) In section 1(l), **"prescribed device"** means an electrical, electronic or mechanical device which is prescribed by order made by the Department.

3 Power of court to order animals to be killed

(1) Subject to the provisions of this section, where the owner of any animal is convicted of an offence under section 1 in respect of any animal, the court before which he is convicted may, if it is satisfied that it would be cruel to keep the animal alive —

(a) order that the animal shall be killed; and

(b) may assign the animal to any suitable person for that purpose.

(2) Where an animal is assigned to any person pursuant to subsection (1), that person shall, as soon as possible, kill the animal, or cause the animal to be killed in his presence, without unnecessary suffering.

(3) No order shall be made under subsection (1), unless the owner of the animal agrees to the order being made, except upon the evidence of a veterinary surgeon.[8]

(4) Where a court makes an order under subsection (1), in respect of any animal, it may further order that the owner of the animal shall pay any reasonable expenses incurred in killing the animal, and those expenses

shall be recoverable summarily as a civil debt from the owner by the person who incurred the expenses.

4 Power of court to deprive owner of animal

Where the owner of any animal is convicted of an offence under section 1 in respect of the animal, the court before which he is convicted may, if it thinks fit, in addition to, or in substitution for, any other punishment order that —

(a) the owner shall be deprived of the ownership of the animal; and

(b) the animal shall be disposed of in such manner as the court considers proper.

5 Power of court to disqualify persons

(1) Where a person is convicted of an offence under section 1, the court before which he is convicted may, if it thinks fit, in addition to, or in substitution for, any other punishment order him to be disqualified, for such period as it thinks fit, from having the custody of any animal or of any animal of a kind specified in the order.

(2) Where a court has ordered the disqualification of any person pursuant to subsection (1), it may, if it thinks fit, suspend the operation of the order —

(a) for such period as it thinks necessary for enabling arrangements to be made for the custody of any animal to which the disqualification relates; or

(b) pending an appeal.

(3) Subject to subsection (5), a person who is disqualified by virtue of an order under subsection (1) may, at any time after the expiration of —

(a) one year from the date of the order; or

(b) two thirds of the period of the disqualification,

whichever is the later, and from time to time, apply to the court by which the order was made to remove the disqualification.

(4) On any application under subsection (3), the court may, as it thinks proper, having regard to —

(a) the character of the applicant and his conduct subsequent to the making of the order;

(b) the nature of the offence for which he was convicted; and

(c) any other circumstances of the case,

either —

(i) direct that, as from such date as may be specified in the direction, the disqualification be removed or that the order

be so varied so as to apply only to animals of a kind specified in the direction; or

(ii) refuse the application.

(5) Where, on an application under subsection (3), the court directs the variation of an order under subsection (1) or refuses the application, no further application under subsection (3) shall be entertained if made within one year from the date of the direction or, as the case may be, the refusal.

6 Breach of disqualification order

Any person who has the custody of any animal in contravention of an order under section 5(1) is guilty of an offence and shall be liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding, £2,500, or to both.

7 Animals in pinfolds

(1) Where an animal is impounded or confined in any pinfold and continues to be so confined without fit and sufficient food and water for more than 6 successive hours, the keeper of the pinfold shall supply the animal with fit and sufficient food and water during such period as the animal continues to be confined in the pinfold.

(2) The owner of any animal supplied with food and water by the keeper of a pinfold pursuant to subsection (1) shall, before the animal is removed from the pinfold, pay to the keeper of the pinfold the reasonable cost of the food and water and in default of payment, such cost shall be recoverable summarily as a civil debt from the owner by the keeper of the pinfold.

(3) If the keeper of the pinfold fails to comply with subsection (1), he is guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(4) If any animal is impounded or confined in any pinfold without fit and sufficient food and water for more than 6 successive hours, any person may enter the pinfold for the purpose of supplying the animal with food and water.

(5) This section shall apply in respect of a detained animal as though the place of detention were a pinfold and as though —

(a) where the occupier of the place of detention of the animal has not been informed of the detention, the person who detained the animal or caused it to be detained;

(b) where the occupier of the place of detention has been informed of the detention, the occupier,

were the keeper of the pinfold.

(6) In this section —

'detained animal' has the same meaning as in section 12 of the *Pinfolds Act 1963*;

'pinfold' includes a Government Pinfold and any other establishment for the reception of stray animals.

8 Use of dogs for purposes of draught

Any person who uses, or causes or, being the owner permits to be used, any dog for the purpose of drawing, or helping to draw, any vehicle on any public highway is guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

9 Injured animals

(1) If a constable finds any animal so severely injured, so diseased or in such a physical condition that, in his opinion, having regard to the means available for removing the animal, there is no possibility of removing it without cruelty, he shall, if the owner is absent or refuses to consent to the killing of the animal, at once summon a veterinary surgeon.[9]

(2) Where a veterinary surgeon, who is summoned pursuant to subsection (1), certifies that the animal is so injured, so diseased, or in such a physical condition that it is cruel to keep it alive, the constable may, without the consent of the owner, kill the animal, or cause it to be killed —

(a) with such instruments or appliances;

(b) with such precautions; and

(c) in such manner,

as to inflict as little suffering as practicable and, if the killing takes place on a public highway, the constable shall remove, or cause to be removed, the carcase from the highway.[10]

(3) Where a veterinary surgeon summoned pursuant to subsection (1) certifies that the animal can be removed without cruelty, the person in charge of the animal shall cause it to be removed forthwith with as little suffering as possible; and, if that person fails to do so, the constable may, without the consent of that person, forthwith cause the animal to be so removed.[11]

(3A) Without prejudice to subsections (1) to (3), if a constable finds any animal which is so injured or diseased or is in such physical condition that, in the constable's opinion —

(a) there is an immediate need to remove the animal; and

(b) it is possible to remove it without cruelty,

he may direct the person in charge of the animal to cause it to be removed forthwith with as little suffering as possible; and, if that person fails to do so, the constable may, without the consent of that person, forthwith cause the animal to be so removed.[12]

(4) Any expenses reasonably incurred by a constable in carrying out the provisions of this section (including the expenses of any veterinary surgeon summoned pursuant to subsection (1), whether the animal is killed pursuant to this section or not) may be recovered summarily as a civil debt from the owner by the Chief Constable.[13]

10 Interpretation: Part I

In this Part "**owner**" includes a person having charge of an animal.

PART II – PROTECTION OF ANIMALS USED FOR SCIENTIFIC PROCEDURES

Preliminary

11 Protected animals

[P1986/14/1]

(1) Subject to the provisions of this section, "**a protected animal**" for the purposes of this Part means any living animal.

(2) Any such animal its foetal, larval or embryonic form is a protected animal only from the stage of its development when —

(a) in the case of a mammal, bird or reptile, half the gestation or incubation period for the relevant species has elapsed; and

(b) in any other case, it becomes capable of independent feeding.

(3) The Department may by order —

(a) restrict the definition of protected animal so as to exclude invertebrates of any description;

(b) alter the stage of development specified in subsection (2);

(c) make provision in lieu of subsection (2) as respects any animal which becomes a protected animal by virtue of an order under paragraph (a).

(4) For the purposes of this section an animal shall be regarded as continuing to live until the permanent cessation of circulation or the destruction of its brain.

(5) In this section 'invertebrate' means any animal not of the Sub-phylum Vertebrata of the Phylum Chordata.

12 Regulated procedures

[P1986/14/2]

(1) Subject to the provisions of this section, "**a regulated procedure**" for the purposes of this Part means any experimental or other scientific procedure applied to a protected animal which may have the effect of causing that animal pain, suffering, distress or lasting harm.

(2) An experimental or other scientific procedure applied to an animal is also a regulated procedure if —

(a) it is part of a series or combination of such procedures (whether the same or different) applied to the same animal; and

(b) the series or combination may have the effect mentioned in subsection (1); and

(c) the animal is a protected animal throughout the series or combination or in the course of it attains the stage of its development when it becomes such an animal.

(3) Anything done for the purpose of, or liable to result in, the birth or hatching of a protected animal is also a regulated procedure if it may as respects that animal have the effect mentioned in subsection (1).

(4) In determining whether any procedure may have the effect mentioned in subsection (1) the use of an anaesthetic or analgesic, decerebration and any other procedure for rendering an animal insentient shall be disregarded; and the administration of an anaesthetic or analgesic to a protected animal, or decerebration or any other such procedure applied to such an animal, for the purposes of any experimental or other scientific procedure shall itself be a regulated procedure.

(5) The ringing, tagging or marking of an animal, or the application of any other humane procedure for the sole purpose of enabling an animal to be identified, is not a regulated procedure if it causes only momentary pain or distress and no lasting harm.

(6) The administration of any substance or article to an animal by way of a medicinal test on animals is not a regulated procedure if the substance or article is administered in accordance with a Community authorisation or UK authorisation.[14]

(7) In subsection (6), 'medicinal test on animals' means an investigation or series of investigations consisting of any of the following —

(a) the administration of a medicinal product or veterinary medicinal product of a particular description to one or more animals, where there is evidence that medicinal products or veterinary medicinal products of that description have effects which may be beneficial to, or otherwise advantageous in relation to, that animal or those animals, and the product is administered for the purpose of

ascertaining whether, or to what extent, it has those or any other effects, whether advantageous or otherwise;

(b) the administration of a medicinal product or veterinary medicinal product to one or more animals in circumstances where there is no such evidence as is mentioned in paragraph (a), and the product is administered for the purpose of ascertaining whether, or to what extent, it has any effects relevant to a purpose mentioned in section 1(1) or 31 of the *Medicines Act 2003*;

(c) the administration of any substance or article, other than a medicinal product or veterinary medicinal product, to one or more animals for the purpose of ascertaining whether it has any effects relevant to a purpose mentioned in the said section 1(1) or 31(1), whether there is evidence that it has effects which may be beneficial to, or otherwise advantageous in relation to, that animal or those animals or not.[15]

(8) Killing a protected animal is a regulated procedure only if —

(a) it is killed for experimental or other scientific use;

(b) the place where it is killed is a designated establishment; and

(c) the method employed is not one appropriate to the animal under Schedule 2.[16]

(9) In subsections (6) and (7), 'Community authorisation', 'medicinal product', 'UK authorisation' and 'veterinary medicinal product' have the same meanings as in the *Medicines Act 2003*.[17]

(10) In this section references to a scientific procedure do not include references to any recognised veterinary, agricultural or animal husbandry practice.[18]

(11) Schedule 2 may be amended by order made by the Department.

Personal and project licences

13 Prohibition of unlicensed procedures

[P1986/14/3]

No person shall apply a regulated procedure to an animal unless —

(a) he holds a personal licence qualifying him to apply a regulated procedure of that description to an animal of that description;

(b) the procedure is applied as part of a programme of work specified in a project licence authorising the application, as part of that programme, of a regulated procedure of that description to an animal of that description; and

(c) the place where the procedure is carried out is a place specified in the personal licence and the project licence.

14 Personal licences

[P1986/14/4]

(1) A personal licence is a licence granted by the Department qualifying the holder to apply specified regulated procedures to animals of specified descriptions at a specified place or specified places.

(2) An application for a personal licence shall be made to the Department in such form and shall be supported by such information as it may reasonably require.

(3) Except where the Department dispenses with the requirements of this subsection, any such application shall be endorsed by a person who —

(a) is himself the holder of a personal licence or a licence treated as such a licence by virtue of Schedule 6; and

(b) has knowledge of the biological or other relevant qualifications and of the training, experience and character of the applicant;

and the person endorsing an application shall, if practicable, be a person occupying a position of authority at a place where the applicant is to be authorised by the licence to carry out the procedures specified in it.

(4) No personal licence shall be granted to a person under the age of 18 years.

(5) A personal licence shall continue in force until revoked but the Department shall review each personal licence granted by it at intervals not exceeding 5 years and may for that purpose require the holder to furnish it with such information as it may reasonably require.

15 Project licences

[P1986/14/5]

(1) A project licence is a licence granted by the Department specifying a programme of work and authorising the application, as part of that programme, of specified regulated procedures to animals of specified descriptions at a specified place or specified places.

(2) A project licence shall not be granted except to a person who undertakes overall responsibility for the programme to be specified in the licence.

(3) A project licence shall not be granted for any programme unless the Department is satisfied that it is undertaken for one or more of the following purposes —

(a) the prevention (whether by the testing of any product or otherwise) or the diagnosis or treatment of disease, ill-health or abnormality, or their effects, in man, animals or plants;

(b) the assessment, detection, regulation or modification of physiological conditions in man, animals or plants;

(c) the protection of the natural environment in the interests of the health or welfare of man or animals;

(d) the advancement of knowledge in biological or behavioural sciences;

(e) education or training otherwise than in primary or secondary schools;

(f) forensic enquiries;

(g) the breeding of animals for experimental or other scientific use.

(4) In determining whether and on what terms to grant a project licence the Department shall weigh the likely adverse effects on the animals concerned against the benefit likely to accrue as a result of the programme to be specified in the licence.

(5) The Department shall not grant a project licence unless it is satisfied that the applicant has given adequate consideration to the feasibility of achieving the purpose of the programme to be specified in the licence by means not involving the use of protected animals.

(6) The Department shall not grant a project licence authorising the use of cats, dogs, primates or *equidae* unless it is satisfied that animals of no other species are suitable for the purposes of the programme to be specified in the licence or that it is not practicable to obtain animals of any other species that are suitable for those purposes.

(7) Unless revoked and subject to subsection (8), a project licence shall continue in force for such period as is specified in the licence and may be renewed for further periods but (without prejudice to the grant of a new licence in respect of the programme in question) no such licence shall be in force for more than 5 years in all.

(8) A project licence shall terminate on the death of the holder but if —

(a) the holder of a certificate under section 16 in respect of a place specified in the licence; or

(b) where by virtue of subsection (2) of section 16 the licence does not specify a place in respect of which there is such a certificate, the holder of a personal licence engaged on the programme in question,

notifies the Department of the holder's death within 7 days of its coming to his knowledge the licence shall, unless the Department otherwise directs, continue in force until the end of the period of 28 days beginning with the date of the notification.

Designated establishments

16 Scientific procedure establishments

[P1986/14/6]

(1) No place shall be specified in a project licence unless it is a place designated by a certificate issued by the Department under this section as a scientific procedure establishment.

(2) A certificate under this section shall not be issued in respect of any place which is not —

(a) an establishment which is operated by a Department or a Statutory Board; or

(b) an establishment which the Department, after consultation with the Department of Education and Children, is satisfied is a bona fide educational establishment.[19]

(3) An application for a certificate in respect of a scientific procedure establishment shall be made to the Department in such form and shall be supported by such information as it may reasonably require.

(4) A certificate shall not be issued under this section —

(a) except to a person occupying a position of authority at the establishment in question; and

(b) unless the application nominates for inclusion in the certificate pursuant to subsection (5) a person or persons appearing to the Department to be suitable for that purpose.

(5) A certificate under this section shall specify —

(a) a person to be responsible for the day-to-day care of the protected animals kept for experimental or other scientific purposes at the establishment; and

(b) a veterinary surgeon, or other suitably qualified person to provide advice on their health and welfare;[20]

and the same person may, if the Department thinks fit, be specified under both paragraphs of this subsection.

(6) If it appears to any person specified in a certificate pursuant to subsection (5) that the health or welfare of any such animal as is mentioned in that subsection gives rise to concern he shall —

(a) notify the person holding a personal licence who is in charge of the animal; or

(b) if there is no such person or it is not practicable to notify him, take steps to ensure that the animal is cared for and, if it is necessary for it to be killed, that it is killed by a method which is appropriate under Schedule 2 or approved by the Department.

(7) In any case to which subsection (6) applies the person specified in the certificate pursuant to paragraph (a) of subsection (5) may also notify the person (if different) specified pursuant to paragraph (b) of that subsection; and the person specified pursuant to either paragraph of that subsection shall also notify the Chief Veterinary Officer of the Department.

(8) A certificate under this section shall continue in force until revoked.

17 Breeding and supplying establishments

[P1986/14/7]

(1) A person shall not in any place breed for use in regulated procedures (whether there or elsewhere) protected animals of a description specified in Schedule 3 unless that place is designated by a certificate issued by the Department under this section as a breeding establishment.

(2) A person shall not at any place keep any such protected animals which have not been bred there but are to be supplied for use elsewhere in regulated procedures unless that place is designated by a certificate issued by the Department under this section as a supplying establishment.

(3) An application for a certificate in respect of a breeding or supplying establishment shall be made to the Department in such form and shall be supported by such information as it may reasonably require.

(4) A certificate shall not be issued under this section unless the application nominates for inclusion in the certificate pursuant to subsection (5) a person or persons appearing to the Department to be suitable for that purpose.

(5) A certificate under this section shall specify —

(a) a person to be responsible for the day-to-day care of the animals bred or kept for breeding at the establishment or, as the case may be, kept there for the purpose of being supplied for use in regulated procedures; and

(b) a veterinary surgeon, or other suitably qualified person to provide advice on their health and welfare;[21]

and the same person may, if the Department thinks fit, be specified under both paragraphs of this subsection.

(6) If it appears to any person specified in a certificate pursuant to subsection (5) that the health or welfare of any such animal as is mentioned in that subsection gives rise to concern he shall take steps to ensure that it is cared for and, if it is necessary for it to be killed, that it is killed by a method which is appropriate under Schedule 2 or approved by the Department.

(7) In any case to which subsection (6) applies the person specified in the certificate pursuant to paragraph (a) of subsection (5) may also notify the person (if different) specified pursuant to paragraph (b) of that subsection; and the person specified pursuant to either paragraph of that subsection shall also notify the Chief Veterinary Officer of the Department.

(8) A certificate under this section shall continue in force until revoked.

(9) Schedule 3 may be amended by order made by the Department.

18 Fees

[P1986/14/8]

The holder of a certificate issued under section 16 or 17 shall pay such periodical and other fees to the Department as may be prescribed under the *Fees and Duties Act 1989*.

19 Consultation

[P1986/14/9]

(1) Before granting a licence or issuing a certificate under this Act the Department may consult such persons as it thinks appropriate.

(2) Where the Department proposes to consult anyone it shall notify the applicant of that fact, and shall have regard to any representations made by the applicant.

20 Conditions

[P1986/14/10]

(1) Subject to the provisions of this section, a licence or certificate under this Part may contain such conditions as the Department thinks fit.

(2) The conditions of a personal licence shall include —

(a) a condition to the effect that the holder shall take precautions to prevent or reduce to the minimum consistent with the purposes of the authorised procedures any pain, distress or discomfort to the animals to which those procedures may be applied; and

(b) an inviolable termination condition, that is to say a condition specifying circumstances in which a protected animal which is being or has been subjected to a regulated procedure must in every case be immediately killed by a method appropriate to the animal under Schedule 2 or by such other method as may be authorised by the licence.

(3) The conditions of a project licence shall, unless the Department considers that an exception is justified, include a condition to the effect —

(a) that no cat or dog shall be used under the licence unless it has been bred at and obtained from a designated breeding establishment; and

(b) that no other protected animal of a description specified in Schedule 3 shall be used under the licence unless it has been bred at a designated breeding establishment or obtained from a designated supplying establishment; and

(c) that no vertebrate of an endangered species shall be used under the licence;

but no exception shall be made from the condition required by paragraph (a) unless the Department is satisfied that no animal suitable for the purpose of the programme specified in the licence can be obtained in accordance with that condition and no exception shall be made from the condition required by paragraph (c) unless the Department is satisfied that the use of animals of the species in question will be in conformity with the Council Regulation and that the purposes of the programme of work specified in the licence are either research aimed at preservation of the species in question or essential bio-medical purposes where the species in question exceptionally proves to be the only one suitable for those purposes.

(4) In subsection (3) —

"endangered species" means a Class A species within the meaning of the *Endangered Species Act 2010*[22]; and

"essential bio-medical purposes" has the same meaning as in Council Directive No 86/609/EEC, and in subsection (3) 'the Council Regulation' means Council Regulation (EEC) No 3626/82 as amended by Commission Regulation (EEC) No 869/88 and Commission Regulation (EEC) No 1970/92.

(5) If the conditions of a personal licence permit the holder to use assistants to perform, under his direction, tasks not requiring technical knowledge nothing done by an assistant in accordance with such a condition shall constitute a contravention of section 13.

(6) The conditions of a certificate issued under section 16 shall include a condition prohibiting the killing otherwise than by a method which is appropriate under Schedule 2 or approved by the Department of any protected animal kept at the establishment for experimental or other scientific purposes but not subjected to a regulated procedure or required to be killed by virtue of section 25; and the conditions of a certificate issued under section 17 shall include a condition prohibiting the killing otherwise than by such a method of an animal of a description specified in Schedule 3 which is bred or kept for breeding or, as the case may be, kept at the establishment for the purposes of being supplied for

use in regulated procedures but not used, or supplied for use, for that purpose.

(7) The conditions of a certificate issued under section 16 or 17 shall include conditions requiring the holder of the certificate —

(a) to secure that a person competent to kill animals in the manner specified by conditions imposed in accordance with subsection (6) will be available to do so; and

(b) to keep records as respects the source and disposal of and otherwise relating to the animals kept at the establishment for experimental or other scientific purposes or, as the case may be, bred or kept for breeding there or kept there for the purposes of being supplied for use in regulated procedures.

(8) Breach of a condition in a licence or certificate shall not invalidate the licence or certificate but shall be a ground for its variation or revocation.

21 Variation and revocation

[P1986/14/11]

A licence or certificate under this Part may be varied or revoked by the Department —

(a) on the ground mentioned in section 20(8);

(b) in any other case in which it appears to the Department appropriate to do so; or

(c) at the request of the holder.

22 Right to make representations

[P1986/14/12]

(1) Where the Department proposes —

(a) to refuse a licence or certificate under this Part; or

(b) to vary or revoke such a licence or certificate otherwise than at the request of the holder,

it shall serve on the applicant or the holder a notice of its intention to do so.

(2) The notice shall state the reasons for which the Department proposes to act and give particulars of the rights conferred by subsection (3).

(3) A person on whom a notice is served under subsection (1) may make written representations and, if desired, oral representations to a person appointed for that purpose by the Department if before such date as is specified in the notice (not being less than 28 days after the date of service) he notifies the Department of his wish to do so.

(4) The holder of a licence or certificate who is dissatisfied with any condition contained in it may, if he notifies the Department of his wish to

do so, make written representations and, if desired, oral representations to a person appointed for that purpose by the Department; but the making of such representations shall not affect the operation of any condition unless and until it is varied under section 21.

(5) The person appointed to receive any representations under this section shall be a person who holds or has held judicial office in the Island or an advocate of at least 10 years standing and the Department may, if it thinks fit, appoint a person with scientific or other appropriate qualifications to assist the person receiving the representations in his consideration of them.

(6) The person appointed to receive any such representations shall after considering them make a report to the Department; and the Department shall furnish a copy of the report to the person who made the representations and take it into account in deciding whether to refuse the application or to vary or revoke the licence or certificate, as the case may be.

(7) The Department may by order make rules with respect to the procedure to be followed in the making and consideration of representations under this section, including provision requiring any such representations to be made within a specified time.

(8) A notice under this section may be served either personally or by post.

23 Suspension in cases of urgency

[P1986/14/13]

(1) If it appears to the Department to be urgently necessary for the welfare of any protected animals that a licence or certificate under this Act should cease to have effect forthwith it shall by notice served on the holder suspend its operation for a period not exceeding 3 months.

(2) If during that period a notice of proposed variation or revocation of the licence or certificate is served under section 22 but at the end of that period —

(a) the time for notifying the Department under subsection (3) of that section has not expired; or

(b) representations are to be or are being made in accordance with that subsection; or

(c) such representations have been made but the Department has not received or has not completed its consideration of the report of the person to whom the representations were made,

it may by notice served on the holder further suspend the licence or certificate until it is able to decide whether to vary or revoke it but no further suspension shall be for longer than 3 months at a time.

(3) A notice under this section may be served either personally or by post.

Additional controls

24 Re-use of protected animals

[P1986/14/14]

(1) Where a protected animal —

(a) has been subjected to a series of regulated procedures for a particular purpose; and

(b) has been given a general anaesthetic for any of those procedures and allowed to recover consciousness,

it shall not be used for any further regulated procedures.

(2) Subsection (1) shall not preclude the use of an animal with the consent of the Department if —

(a) the procedure, or each procedure, for which the anaesthetic was given consisted only of surgical preparation essential for a subsequent procedure; or

(b) the anaesthetic was administered solely to immobilise the animal; or

(c) the animal is under general anaesthesia throughout the further procedures and not allowed to recover consciousness.

(3) Where a protected animal —

(a) has been subjected to a series of regulated procedures for a particular purpose; but

(b) has not been given a general anaesthetic for any of those procedures,

it shall not be used for any further regulated procedures except with the consent of the Department.

(4) Any consent for the purposes of this section may relate to a specified animal or to animals used in specified procedures or specified circumstances.

25 Killing animals at conclusion of regulated procedures

[P1986/14/15]

(1) Where a protected animal —

(a) has been subjected to a series of regulated procedures for a particular purpose; and

(b) at the conclusion of the series is suffering or likely to suffer adverse effects,

the person who applied those procedures, or the last of them, shall cause the animal to be immediately killed by a method appropriate to the

animal under Schedule 2 or by such other method as may be authorised by the personal licence of the person by whom the animal is killed.

(2) Subsection (1) is without prejudice to any condition of a project licence requiring an animal to be killed at the conclusion of a regulated procedure in circumstances other than those mentioned in that subsection.

26 Prohibition of public displays

[P1986/14/16]

(1) No person shall carry out any regulated procedure as an exhibition to the general public or carry out any such procedure which is shown live on television for general reception.

(2) No person shall publish a notice or advertisement announcing the carrying out of any regulated procedure in a manner that would contravene subsection (1).

27 Neuromuscular blocking agents

[P1986/14/17]

No person shall in the course of a regulated procedure —

(a) use any neuromuscular blocking agent unless expressly authorised to do so by the personal and project licences under which the procedure is carried out; or

(b) use any such agent instead of an anaesthetic.

28 Animal undergoing excessive suffering: power of Department, etc

[P1986/14/18(3)]

If the Department or a veterinary officer of the Department considers that a protected animal is undergoing excessive suffering it or he may require it to be immediately killed by a method appropriate to the animal under Schedule 2 or by such other method as may be authorised by any personal licence held by the person to whom the requirement is addressed.

Miscellaneous provisions

29 Guidance, codes of practice, etc

[P1986/14/21]

(1) The Department may publish information to serve as guidance with respect to the manner in which it proposes to exercise its power to grant licences and certificates under this Part and with respect to the conditions which it proposes to include in such licences and certificates.

(2) The Department may issue codes of practice as to the care of protected animals and their use for regulated procedures and may approve such codes issued by other persons.

(3) The Department may consult with any person before altering any information under subsection (1) or issuing, approving, altering or approving any alteration in any code issued or approved under subsection (2).

(4) A failure on the part of any person to comply with any provision of a code issued or approved under subsection (2) shall not of itself render that person liable to criminal or civil proceedings but —

(a) any such code shall be admissible in evidence in any such proceedings; and

(b) if any of its provisions appears to the court conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(5) The Department shall lay before Tynwald —

(a) copies of any information published or code issued by it under subsection (1) or (2) and of any alteration made by it in any such information or code; and

(b) copies of any code approved by it under subsection (2) and of any alteration approved by it in any such code.

(6) The Department shall in each year publish and lay before Tynwald information with respect to the use of protected animals in the previous year for experimental or other scientific purposes.

30 Penalties for contraventions

[P1986/14/22]

(1) Any person who contravenes section 13 (prohibition of unlicensed procedures) shall be guilty of an offence and liable —

(a) on conviction on information, to custody for a term not exceeding 2 years or to a fine or to both;

(b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(2) Any person who, being the holder of a project licence —

(a) procures or knowingly permits a person under his control to carry out a regulated procedure otherwise than as part of the programme specified in the licence; or

(b) procures or knowingly permits a person under his control to carry out a regulated procedure otherwise than in accordance with that person's personal licence,

shall be guilty of an offence and liable to the penalties specified in subsection (1).

(3) Any person who —

(a) contravenes section 17(1) or (2), 24, 25, 26 or 27; or

(b) fails to comply with a requirement imposed on him under section 28,

shall be guilty of an offence and liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £2,500 or to both.

(4) A person shall not be guilty of an offence under section 13 or 27(a) by reason only that he acted without the authority of a project licence if he shows that he reasonably believed after making due enquiry, that he had such authority.

31 False statements

[P1986/14/23]

(1) A person is guilty of an offence if for the purpose of obtaining or assisting another person to obtain a licence or certificate under this Part he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(2) A person guilty of an offence under this section shall be liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £2,500 or to both.

32 Protection of confidential information

[P1986/14/24]

(1) A person is guilty of an offence if otherwise than for the purposes of discharging his functions under this Part he discloses any information which has been obtained by him in the exercise of those functions and which he knows or has reasonable grounds for believing to have been given in confidence.

(2) A person guilty of an offence under this section shall be liable —

(a) on conviction on information, to custody for a term not exceeding 2 years or to a fine or to both;

(b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(3) No offence is committed under this section where information is disclosed for the purposes of section 16 by the Department to the Department of Education and Children or vice versa.[23]

33 Prosecutions

[P1986/14/26]

(1) No proceedings for an offence under this Part shall be commenced in the Island except by or with the consent of the Attorney General.

(2) Notwithstanding section 75 of the *Summary Jurisdiction Act 1989*, a complaint relating to a summary offence under this Part may be so tried if the complaint is made at any time within 3 years after the commission of the offence and within 6 months after the date on which evidence sufficient in the opinion of the Attorney General to justify the proceedings comes to his knowledge.

(3) For the purposes of subsection (2) a certificate of the Attorney General as to the date on which such evidence as is there mentioned came to his knowledge shall be conclusive evidence of that fact.

34 Interpretation of Part II

[P1986/14/3O(2)]

In this Part —

"**designated**", in relation to an establishment, means designated by a certificate under section 16 or 17;

"**Manx ship**" has the same meaning as in the *Merchant Shipping Registration Act 1991*;

"**personal licence**" means a licence granted under section 14;

"**place**" includes any place within the seaward limits of the territorial waters of the Island, including any vessel which is a Manx ship;

"**project licence**" means a licence granted under section 15;

"**protected animal**" has the meaning given in section 11 but subject to any order under subsection (3) of that section;

"**regulated procedure**" has the meaning given in section 12.

PART III – GENERAL AND SUPPLEMENTARY

35 Spring traps

[1966/1]

(1) Subject to subsection (3), a person shall be guilty of an offence under this subsection if either —

(a) for the purpose of killing or taking animals, he uses, or knowingly permits the use of, any spring trap; or

(b) he sells, or exposes or offers for sale, any spring trap with a view to its being used for a purpose which is an offence under paragraph (a); or

(c) he has any spring trap in his possession for a purpose which is an offence under paragraph (a) or (b).

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding £1,000.

(3) Subsection (1) shall not apply to traps of any description which are designed or adapted solely for the destruction of rats or mice.

36 Possession of appliances for use in fighting of domestic fowl

[P1952/59/1]

(1) If any person has in his possession any instrument or appliance designed or adapted for use in connection with the fighting of any domestic fowl, he shall, if the court be satisfied that he had it in his possession for the purpose of using it or permitting it to be used in that connection, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,500.

(2) Where any person is convicted of an offence under this section, the court may order any instrument or appliance in respect of which the offence was committed to be destroyed or dealt with in such other manner as may be specified in the order.

37 Enforcement of Act

Schedule 4 shall have effect for the enforcement of this Act and for the other matters specified in that Schedule.

38 Offences by bodies corporate

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

39 Orders

No order under this Act (except an order under section 44) shall come into operation unless it has been approved by Tynwald.

40 Expenses

Without prejudice to sections 3(4), 7(2) and 9(4) and paragraph 2(2) of Schedule 4, any expenses incurred by the Department, or by any constable, in the operation of this Act shall be defrayed out of money provided by Tynwald.

41 Interpretation

In this Act —

"**animal**" means an animal of any kind or species other than man;

"**cat**" includes kitten;

"**the Department**" has the meaning given by section 2(5);

"**dog**" includes bitch and puppy;

"**fowl**" includes cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guinea fowl, peacock, peahen, swan and pigeon;

"**goat**" includes kid;

"**horse**" includes colt, filly, foal, gelding, mare, pony and stallion;

"**Part**" includes any Schedule introduced by any provision of that Part;

"**pig**" includes boar, hog, sow and piglet;

"**sheep**" includes ewe, lamb and ram;

"**veterinary surgeon**" has the meaning given by section 1(1) of the *Veterinary Surgeons Act 2005*.[24]

42 Amendments

The enactments mentioned in Schedule 5 shall be amended in accordance with that Schedule.

43 Transitional provisions and repeals

(1) The transitional provisions and savings in Schedule 6 shall have effect.

(2) The enactments mentioned in Schedule 7 are repealed to the extent specified in the third column of that Schedule.

44 Short title and commencement

(1) This Act may be cited as the Cruelty to Animals Act 1997.

(2) This Act shall come into force on such day as the Department may by order appoint and different days may be so appointed for different provisions and for different purposes.[25]

SCHEDULE 1

EXCEPTED OPERATIONS

Section 2(4) and (5)

1. Any experiment duly authorised under Part II.

2. The rendering in emergency of first aid for the purpose of saving life or relieving pain.

3. The amputation of the dew claws of a dog before its eyes are open.

4. (1) The castration of a male animal specified in the following table before it has reached the age so specified, that is to say —

bull	2 months
Sheep	3 months
goat	2 months
pig	1 month

(2) Sub-paragraph (1) shall not apply to the castration of an animal by using a rubber ring or other device to constrict or restrict the flow of blood to the scrotum unless the device is applied within the first week of life.

(3) Sub-paragraph (1) shall not apply to the castration of an animal by using a device known as a Burdizzo or a device having a similar effect, unless the device is applied within the first week of life.

5. Any minor operation performed by a veterinary surgeon, being an operation which, by reason of its quickness or painlessness, is customarily so performed without the use of an anaesthetic.[26]

6. Any minor operation, whether performed by a veterinary surgeon or by some other person, being an operation which is not customarily performed only by such a surgeon.[27]

7. (1) Paragraphs 5 and 6 shall not in any circumstances permit —

(a) the castration of a male animal (but without prejudice to the circumstances in which castration is permitted by paragraph 4);

(b) the de-horning of cattle;

(c) the dis-budding of calves, except by means of chemical cauterisation applied within the first week of life; or

(d) the docking of lambs' tails by using a rubber ring or other device to constrict the flow of blood to the tail, unless the device is applied within the first week of life.

(2) In this paragraph, 'cattle' means bulls, bullocks, cows, heifers and calves.

8. Nothing in this Schedule shall authorise the performance of any operation by a person under the age of 18 years, unless he has attained the age of 16 years and is supervised by a person who has attained the age of 18 years.

SCHEDULE 2

STANDARD METHODS OF HUMANE KILLING

Sections 12, 16, 17, 20, 25(1) and 28

Method	Animals for which appropriate
A. Animals other than foetal, larval and embryonic forms	
1. Overdose of anaesthetic suitable for the species-	
(i) by injection	(i) All animals.
(ii) by inhalation	(ii) All animals up to 1 kg body weight reptiles, diving birds and diving mammals.
(iii) by immersion. (Followed by destruction of the brain in cold-blooded vertebrates and by exsanguination or by dislocation of the neck in warm blooded vertebrates except where rigor mortis has been confirmed).	(iii) Fishes Amphibian up to 250g bodyweight.
2. Dislocation of the neck.(Followed by the destruction of the brain in fishes).	Rodents up to 500g bodyweight other than guinea-pigs. Guinea-pigs and lagomorphs up to 1 kg bodyweight. Birds up to 3 kg bodyweight. Fishes up to 250g bodyweight.
3. Concussion by striking the back of the head. (Followed by exsanguination or dislocation of the neck in rodents and birds and destruction of the brain in fishes).	Rodents up to 1 kg bodyweight. Birds up to 250g bodyweight. Fishes.
4. Decapitation followed by destruction of the brain.	Cold-blooded vertebrates.
5. Exposure to carbon dioxide in a rising concentration using a suitable technique followed by exsanguination or by dislocation of the neck except where rigor mortis has been confirmed.	Rodents over 10 days of age up to 11/2 kg bodyweight. Birds over 1 week of age up to 3 kg bodyweight.
B. Foetal, larval and embryonic forms	
1. Overdose of anaesthetic suitable for the species	
(i) by injection	(i) All animals. (ii) Fishes Amphibia.

Method	**Animals for which appropriate**
(ii) by immersion.	
2. Decapitation.	Mammals.
C. Invertebrates	
1. Overdose of anaesthetic suitable for species.	
(i) by immersion	(i) Aquatic species, Annelids, molluscs, helminths.
(ii) by exposure to vapour.	(ii) Insects, Arachnids, Annelids.
2. Rapid freezing.	All susceptible invertebrates.
3. Boiling.	All invertebrates.
4. Rapid crushing.	Small insects, Arachnids, and aquatic species.
5. Decapitation.	Cephalopod molluscs.
6. Pithing.	Octopoda.
7. Sectioning of ventral nerve cords/ central nervous system.	Molluscs, Crustaceans.

SCHEDULE 3

ANIMALS TO BE OBTAINED ONLY FROM DESIGNATED BREEDING OR SUPPLYING ESTABLISHMENTS

Sections 17 and 20

Mouse

Rat

Guinea-pig

Hamster

Rabbit

Dog

Cat

Primate

Any bird of the species Coturnix coturnix (quail).

SCHEDULE 4

ENFORCEMENT OF ACT

Section 37

Powers of constable

1. A constable may arrest without warrant any person whom he has reasonable grounds for believing to be guilty of an offence under section 1.

2. (1) Where a person having charge of a vehicle or animal is arrested by a constable pursuant to paragraph 1, that constable, or any other constable, may take charge of the vehicle or animal and deposit the same in a place of safe custody pending the determination of the proceedings or until the court before which the proceedings are brought otherwise directs.

(2) The costs of detaining a vehicle or animal pursuant to sub-paragraph (1), including the reasonable costs of any veterinary treatment, where such treatment is required, shall, in the event of a conviction for an offence under section 1 in respect of an animal —

(a) except where the owner of the animal is so convicted, be recoverable summarily as a civil debt from that owner by the prosecutor;

(b) where the owner of the animal is so convicted, be part of the costs of the case.

Powers of entry

3. (1) If a constable has reasonable grounds for believing —

(a) that an offence under section 1 has been or is being committed in respect of an animal in any place (including a dwelling); and

(b) that there is an immediate need to reduce the suffering of the animal,

he may enter that place, if need be by such force as is reasonably necessary, for the purpose of locating the animal and taking such action as is necessary to reduce its suffering.

(2) A constable entering premises under sub-paragraph (1) may take with him a veterinary surgeon or such other persons as he thinks necessary.[28]

(3) On leaving unoccupied premises that a constable has entered under sub-paragraph (1) he shall leave them as effectually secured against trespassers as he found them.

(4) Any person who intentionally obstructs a constable in the exercise of his powers under this paragraph shall be guilty of an offence and liable on summary

conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

4. (1) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that an offence under section 1 or Part II has been or is being committed at any place (including a dwelling), he may issue a warrant authorising a constable to enter that place if need be by such force as is reasonably necessary, to search it and to require any person found there to give his name and address.

(2) A warrant under this paragraph may authorise a constable to be accompanied by a veterinary surgeon and shall require him to be accompanied by an officer of the Department if the place in question is a designated establishment for the purposes of Part II.[29]

(3) On leaving unoccupied premises that a constable has entered under a warrant issued under this paragraph he shall leave them as effectually secured against trespassers as he found them.

(4) Any person who —

(a) intentionally obstructs a constable or an officer in the exercise of his powers under this paragraph; or

(b) refuses on demand to give his name and address or gives a false name or address,

shall be guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

Summonses to employers

5. Where proceedings are instituted for an offence under section 1 against the driver or conductor of any vehicle, the court before which the proceedings were instituted may issue a summons directed to the employer of the driver or, as the case may be, of the conductor requiring the employer, if it is in his power to do so, to produce the driver or, as the case may be, the conductor at the hearing of the case.

6. Where proceedings are instituted for an offence under section 1 in respect of any animal, the court before which the proceedings were instituted may issue a summons directed to the owner of the animal requiring him to produce the animal at, or (if so stated in the summons) at any time before, the hearing of the case, so that the animal may be inspected by the court.

7. (1) Where —

(a) an employer fails, without reasonable cause, to comply with a summons under paragraph 5; or

(b) an owner fails, without reasonable cause, to comply with a summons under paragraph 6,

he shall be guilty of an offence and shall be liable —

(i) to a fine not exceeding £500;

(ii) to pay the costs of any adjournment resulting from his failure to comply with the summons.

(2) It shall be a defence to a charge of having failed to comply with a summons under paragraph 6, for the person charged to satisfy the court before which the proceedings against him are brought that the production of the animal pursuant to the warrant could not have been effected without cruelty to the animal.

SCHEDULE 5

AMENDMENT OF ENACTMENTS

Section 42

[Sch 5 amends the following Acts —

Riding Establishments (Inspection) Act 1968 q.v.

Animal Boarding Establishments (Isle of Man) Act 1973 q.v.

Summary Jurisdiction Act 1989 q.v.]

SCHEDULE 6

TRANSITIONAL AND SAVING PROVISIONS

Section 14, 43(1)

Existing licences

1. Any licence which immediately before the coming into force of Part II is in force under the Cruelty to Animals Act 1945 (in this Schedule referred to as 'the 1945 Act') shall until such date as it would have expired under that Act be treated for the purposes of this Act as if it were a personal licence.

Current experiments

2. Any experiment or series of experiments which is lawfully in progress under the 1945 Act immediately before the coming into force of Part II shall be treated for the purposes of Part II as authorised by a project licence.

Existing certificates

3. A person shall not by virtue of paragraphs 1 or 2 be entitled to do anything which would have been unlawful under the 1945 Act without such a certificate as is mentioned in paragraph (2) or (3) of the proviso to section 3 of that Act or in section 5 of that Act unless immediately before the coming into force of Part II he holds the appropriate certificate under that Act.

Registered premises

4. Until such date as the Department may direct there shall be treated as a designated scientific procedure establishment for the purposes of this Act any place registered under the 1945 Act or approved by the Department.

SCHEDULE 7

ENACTMENTS REPEALED

Section 43(2)

[Sch 7 repeals the following Acts wholly —

Cruelty to Animals Act 1925

Cruelty to Animals Act 1945

Cruelty to Animals Act 1955

Cruelty to Animals (Abandonment) Act 1960

Cruelty to Animals (Anaesthetics) Act 1965

Cruelty to Animals (Spring Traps) Act 1966

Cruelty to Animals (Spring Traps) Act 1967

Cruelty to Animals (Spring Traps) Act 1971

and the following Acts in part —

Pinfolds Act 1963

Animal Offences Act 1976

Fines Act 1986

Transfer of Governor's Functions Act 1992

Statute Law Revision Act 1992.]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

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[1] Para (b) amended by Agriculture (Miscellaneous Provisions) Act 2003 s 3.
[2] Para (c) amended by Agriculture (Miscellaneous Provisions) Act 2003 s 3.
[3] Para (d) amended by Agriculture (Miscellaneous Provisions) Act 2003 s 3.
[4] Para (h) amended by Agriculture (Miscellaneous Provisions) Act 2003 s 3.
[5] Para (k) amended by Agriculture (Miscellaneous Provisions) Act 2003 s 3.
[6] S 1 amended by Agriculture (Miscellaneous Provisions) Act 2003 s 3.
[7] Subs (5) amended by SD155/10 Sch 3.
[8] Subs (3) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[9] Subs (1) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[10] Subs (2) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[11] Subs (3) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[12] Subs (3A) inserted by Police Powers and Procedures Act 1998 Sch 4.
[13] Subs (4) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[14] Subs (6) substituted by Medicines Act 2003 Sch 3.
[15] Subs (7) inserted by Medicines Act 2003 Sch 3.
[16] Original subs (7).
[17] Subs (8) inserted by Medicines Act 2003 Sch 3.
[18] Original subs (8).
[19] Para (b) amended by SD155/10 Sch 10.
[20] Para (b) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[21] Para (b) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[22] Definition of "endangered species" substituted by Endangered Species Act 2010 Sch 4.

[23] Subs (3) amended by SD155/10 Sch 10.
[24] Definition of 'veterinary surgeon', previously definition of 'veterinary practitioner' and 'veterinary surgeon', substituted by Veterinary Surgeons Act 2005 Sch 2.
[25] ADO (whole Act) 1/5/1998 (SD200/98).
[26] Para 5 amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[27] Para 6 amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[28] Subpara (2) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.
[29] Subpara (2) amended by Veterinary Surgeons Act 2005 Schs 2 and 3.

ANIMAL HEALTH ACT 1996

WELFARE OF FARMED ANIMALS ORDER 2002

CONSOLIDATED VERSION FOR INFORMATION ONLY
PLEASE REFER TO STATUTORY DOCUMENTS FOR DEFINITIVE ORDERS

In exercise of the powers conferred on the Department of Agriculture, Fisheries and Forestry by section 29 of the Animal Health Act 1996**(a)** and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. This Order may be cited as The Welfare of Farmed Animals Order 2002 and shall come into force on 1 March 2002.

Interpretation and application

2. (1) In this Order -

"animal" means any animal (including fish, reptiles or amphibians) bred or kept for the production of food, wool, skin or fur or for other farming purposes;

"authorised officer" means a veterinary officer or a veterinary surgeon or any other person for the time being authorised by the Department for the purposes of this Order;

"battery cage" means an enclosed space intended for laying hens in a battery system;

"battery system" means an arrangement of cages in rows or tiers or rows and tiers;

"calf" means a bovine animal up to six months old;

"keeper" means any natural or legal person responsible for animals, whether on a permanent or temporary basis including during transportation or at a market;

(a) 1996 c.22

" "laying hen" means a hen of the species *Gallus gallus* which has reached laying maturity and is kept for production of eggs not intended for hatching;";

" "litter" means any friable material enabling the hens to satisfy their ethological needs;

"nest" means a separate space for egg laying, the floor component of which may not include wire mesh that can come into contact with the birds, for an individual hen or for a group of hens;"; "pig" means an animal of the porcine species of any age, kept for breeding or fattening;

"statutory welfare code" means a code for the time being issued under section 30 of the Animal Health Act 1996; and

" "usable area" means an area, other than any nesting area, used by laying hens at least 30 cm wide with a floor slope not exceeding 14% and with headroom of at least 45 cm;";

"zootechnical treatment" has the meaning given by Article 1(2)(c) of Directive 96/22/EEC**(b)** concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists.

(2) This Order shall apply to animals except -

(a) animals living in the wild;

(b) animals whilst at, and animals solely intended for use in, competitions, shows, cultural or sporting events or activities;

(c) experimental or laboratory animals; or

(d) any invertebrate animals.

(3) Part 1 of Schedule 6 shall have effect for the purpose of the interpretation of Schedule 6.

(4) In this Order any reference to an instrument of the European Community is to that instrument as amended at the time this Order is made.

(b) OJ No. L125, 23.5.96, p. 3

Duties on owners and keepers of animals

3. (1) Owners and keepers of animals shall take all reasonable steps -

(a) to ensure the welfare of the animals under their care; and

(b) to ensure that the animals are not caused any unnecessary pain, suffering or injury.

(2) Owners and keepers of animals (other than fish, reptiles and amphibians) shall take all reasonable steps to ensure that the conditions under which the animals are bred or kept comply with the requirements set out in Schedule 1.

(3) In deciding whether the conditions under which animals are being bred or kept comply with the requirements set out in Schedule 1, the owner and keeper of the animals shall have regard to their species, and to their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge.

~~**Additional duties on owners and keepers of laying hens kept in battery cages**~~

~~4. Owners and keepers of laying hens kept in battery cages shall ensure that, in addition to the requirements set out in Schedule 1, the conditions under which the birds are kept comply with the requirements set out in Schedule 2.~~

"**5. Additional duties on owners and keepers of poultry (other than those kept in the systems referred to in Schedules 3A, 3B and 3C)**

Owners and keepers of poultry (other than those kept in the systems referred to in Schedules 3A, 3B and 3C) shall ensure that, in addition to the requirements set out in Schedule 1, the conditions under which the birds are kept comply with the requirements set out in Schedule 3.";

"**5A. Additional duties on owners and keepers of laying hens**

Owners and keepers of establishments with more than 350 laying hens shall ensure that, in addition to the requirements set out in Schedule 1, the conditions under which the birds are kept comply with the requirements set out in Schedules 3A, 3B, 3C and 3D.";

Additional duties on owners and keepers of calves confined for rearing and fattening

6. Owners and keepers of calves confined for rearing and fattening shall ensure that, in addition to the requirements set out in Schedule 1, the conditions under which the animals are kept comply with the requirements set out in Schedule 4.

Additional duties on owners and keepers of cattle

7. Owners and keepers of cattle shall ensure that, in addition to the requirements set out in Schedule 1, the conditions under which the animals are kept comply with the requirements set out in Schedule 5.

Additional duties on owners and keepers of pigs

8. Owners and keepers of pigs shall ensure that, in addition to the requirements set out in Schedule 1, the conditions under which the animals are kept comply with -

(a) the requirements set out in Part II of Schedule 6; and

(b) the requirements set out in Parts III, IV, V or VI of Schedule 6 (as the case may be) applicable to the particular category of pig being kept.

Additional duties on owners and keepers of rabbits

9. Owners and keepers of rabbits shall ensure that, in addition to the requirements set out in Schedule 1, the conditions under which the animals are kept comply with the requirements set out in Schedule 7.

Statutory welfare codes

10. (1) Any person who employs or engages a person to attend to animals shall ensure that the person attending to the animals -

(a) is acquainted with the provisions of all relevant statutory welfare codes relating to the animals being attended to;

(b) has access to a copy of those codes while he is attending to the animals; and

(c) has received instruction and guidance on those codes.

(2) Any person who keeps animals, or who causes or knowingly permits animals to be kept, shall not attend to them unless he has access to all relevant statutory welfare codes relating to the animals while he is attending to them, and is acquainted with the provisions of those codes.

Powers of an authorised officer

11. Where an authorised officer considers that animals are being kept in a way which is likely to cause unnecessary pain, suffering or injury, or in any other way in contravention of any provision of this Order, he may serve a notice on the person appearing to him to be in charge of the animals requiring that person, within the period stated in the notice, to take any action that the authorised officer considers to be reasonably necessary to ensure compliance with this Order and the authorised officer shall give his reasons for requiring that action to be taken.

Offences

12. (1) A person who, without lawful authority or excuse -

(a) contravenes or fails to comply with any provision of this Order;

(b) fails to comply with a notice served under article 11 within the time specified in the notice;

(c) makes any entry in a record, or gives any information for the purposes of this order which he knows to be false in any material particular or, for those purposes, recklessly makes a statement or gives any information which is false in any material particular; or

(d) causes or permits any of the above,

shall be guilty of an offence under the Animal Health Act 1996

(2) In any proceedings against an owner or keeper of animals for a failure to comply with article 3(1) or 3(2) (as read with article 3(3)), the owner or keeper, as the case may be, may rely on his compliance with any relevant recommendation contained in a statutory welfare code as tending to establish his compliance with the relevant article.

Revocations

13. The Welfare of Livestock Regulations 1996 (**c**) are revoked.

(c) S.D. No. 182/96

articles 3(2), 3(3), 4, 5, 6, 7, 8 and 9

SCHEDULE 1

GENERAL CONDITIONS UNDER WHICH FARMED ANIMALS MUST BE KEPT

Staffing

1. Animals shall be cared for by a sufficient number of staff who possess the appropriate ability, knowledge and professional competence.

Inspection

2. (1) Subject to sub-paragraph (3), all animals kept in husbandry systems in which their welfare depends on frequent human attention shall be thoroughly inspected at least once a day to check that they are in a state of well-being.

(2) Subject to sub-paragraph (3), animals kept in systems other than husbandry systems in which their welfare depends on frequent human attention shall be inspected at intervals sufficient to avoid any suffering.

(3) Notwithstanding sub-paragraphs (1) and (2), in the following cases, it shall be sufficient for the purposes of this paragraph to comply with the following specific provisions -

(a) in the case of laying hens kept in all systems, paragraph 1 of Schedule 3D;";

(b) in the case of calves, paragraphs 3 and 4 of Schedule 4; and

(c) in the case of pigs, paragraph 2 of Schedule 6.

3. Where animals are kept in a building adequate lighting (whether fixed or portable) shall be available to enable them to be thoroughly inspected at any time.

4. Where any animals (other than poultry) are kept in a building they shall be kept on, or have access at all times to, a lying area which either has well-maintained dry bedding or is well-drained.

5. Any animals which appear to be ill or injured -

(a) shall be cared for appropriately without delay; and

(b) where they do not respond to such care, veterinary advice shall be obtained as soon as possible.

6. (1) Where necessary, sick or injured animals shall be isolated in suitable accommodation with, where appropriate, dry comfortable bedding.

(2) Notwithstanding sub-paragraph (1), in the case of calves and pigs for the purposes of this paragraph the following specific provisions shall be complied with -

(a) in the case of calves, paragraph 5 of Schedule 4; and

(b) in the case of pigs, paragraph 3 of Schedule 6.

Record keeping

7. A record shall be maintained of -

(a) any medicinal treatment given to animals; and

(b) the number of mortalities found on each inspection of animals carried out in accordance with any of the following provisions -

(i) in the case of laying hens kept in all systems, paragraph 1 of Schedule 3D;".

(ii) in the case of calves, paragraph 3 or 4 of Schedule 4;

(iii) in the case of pigs, paragraph 2 of Schedule 6; or

(iv) in any other case, paragraph 2 of this Schedule.

8. The record referred to in paragraph 7 shall be retained for a period of at least three years from the date on which the medical treatment was given, or the date of the inspection, as the case may be, and shall be made available to an authorised officer when carrying out an inspection or when otherwise requested by such person.

Freedom of movement

9. The freedom of movement of animals, having regard to their species and in accordance with established experience and scientific knowledge, shall not be restricted in such a way as to cause them unnecessary suffering or injury.

10. Where animals are continuously or regularly tethered or confined, they shall be given the space appropriate to their physiological and ethological needs in accordance with established experience and scientific knowledge.

Buildings and accommodation

11. Materials used for the construction of accommodation, and, in particular for the construction of pens, cages, stalls and equipment with which the animals may come into contact, shall not be harmful to them and shall be capable of being thoroughly cleaned and disinfected.

12. Accommodation and fittings for securing animals shall be constructed and maintained so that there are no sharp edges or protrusions likely to cause injury to them.

13. Air circulation, dust levels, temperature, relative air humidity and gas concentrations shall be kept within limits which are not harmful to the animals.

14. Animals kept in buildings shall not be kept in permanent darkness.

15. Where the natural light available in a building is insufficient to meet the physiological and ethological needs of any animals being kept in it then appropriate artificial lighting shall be provided.

16. Animals kept in buildings shall not be kept without an appropriate period of rest from artificial lighting.

Animals not kept in buildings

17. Animals not kept in buildings shall, where necessary and possible, be given protection from adverse weather conditions, predators and risks to their health and shall, at all times, have access to a well-drained lying area.

Automatic or mechanical equipment

18. All automated or mechanical equipment essential for the health and well-being of the animals shall be inspected at least once a day to check that there is no defect in it.

19. Where defects in automated or mechanical equipment of the type referred to in paragraph 18 are discovered, these shall be rectified immediately, or if this is impossible, appropriate steps shall be taken to safeguard the health and well-being of the animals pending the rectification of such defects including the use of alternative methods of feeding and watering and methods of providing and maintaining a satisfactory environment.

20. Where the health and well-being of the animals is dependent on an artificial ventilation system -

(a) provision shall be made for an appropriate back-up system to guarantee sufficient air renewal to preserve the health and well-being of the animals in the event of failure of the system; and

(b) an alarm system (which will operate even if the principal electricity supply to it has failed) shall be provided to give warning of any failure of the system.

21. The back-up system referred to in paragraph 20(a) shall be thoroughly inspected and the alarm system referred to in paragraph 20(b) shall each be tested at least once every seven days in order to check that there is no defect in the system, and, if any defect is found (whether when the system is inspected or tested in accordance with this paragraph or at any other time), it shall be rectified immediately.

Feed, water and other substances

22. Animals shall be fed a wholesome diet which is appropriate to their age and species and which is fed to them in sufficient quantity to maintain them in good health, to satisfy their nutritional needs and to promote a positive state of well-being.

23. No animals shall be provided with food or liquid in a manner, nor shall such food or liquid contain any substance, which may cause them unnecessary suffering or injury.

24. All animals shall have access to feed at intervals appropriate to their physiological needs (and, in any case, at least once a day), except where a veterinary surgeon acting in the exercise of his profession otherwise directs.

25. All animals shall either have access to a suitable water supply and be provided with an adequate supply of fresh drinking water each day or be able to satisfy their fluid intake needs by other means.

26. Feeding and watering equipment shall be designed, constructed, placed and maintained so that contamination of food and water and the harmful effects of competition between animals are minimised.

27. No other substance, with the exception of those given for therapeutic or prophylactic purposes or for the purpose of zootechnical treatment shall be administered to animals unless it has been demonstrated by scientific studies of animal welfare or established experience that the effect of that substance is not detrimental to the health or welfare of the animals.

Breeding procedures

28. (1) Subject to sub-paragraph (2), natural or artificial breeding or breeding procedures which cause, or are likely to cause, suffering or injury to any of the animals concerned shall not be practised.

(2) Sub-paragraph (1) shall not preclude the use of natural or artificial breeding procedures that are likely to cause minimal or momentary suffering or injury or that might necessitate interventions which would not cause lasting injury.

29. No animals shall be kept for farming purposes unless it can reasonably be expected, on the basis of their genotype or phenotype, that they can be kept without detrimental effect on their health or welfare.

Electrical immobilisation

30. No person shall apply an electrical current to any animals for the purposes of immobilisation.

article 4 **SCHEDULE 2**

ADDITIONAL CONDITIONS UNDER WHICH LAYING HENS KEPT IN BATTERY CAGES MUST BE KEPT

1. All cages must comply with the following requirements –

(a) the cage area, measured in a horizontal plane, for each laying hen shall be not less than –

(i) 1000 cm^2 where one hen is kept in the cage;

(ii) 750 cm^2 where two hens are kept in the cage;

(iii) 550 cm^2 where three hens are kept in the cage; and

(iv) 450 cm^2 where four or more hens are kept in the cage;

(b) the minimum cage area for each laying hen shall be capable of being used without restriction and may include the area where the non-waste deflection plate (otherwise known as the egg guard) is placed so long as that area is capable of being so used;

(c) a feed trough of a length not less than 10 cm multiplied by the number of hens in the cage and capable of being used without restriction shall be provided;

(d) except where nipple drinkers and drinking cups are provided, the cage shall have a continuous drinking channel which shall not be less than 10 cm multiplied by the number of hens in the cage, and capable of being used without restriction;

(e) where drinking points are plumbed in, there shall be a minimum of two nipple drinkers or two drinking cups within reach of the cage;

(f) the height of the cage, for 65% of its area, shall be not less than 40 cm, and, for the remainder of the area, shall be not less than 35 cm (the height being obtained by a vertical line from the floor to the nearest point in the roof and the area being obtained by multiplying 450cm^2 by the number of birds kept in the cage);

(g) the floor of the cage shall be constructed so as to support adequately each of the forward facing claws of each foot; and

(h) the slope of the floor shall not exceed 14% or 8 degrees, when made of rectangular wire mesh, and 21.3% or 12 degrees for other types of floor.

2. Battery cages shall be designed, constructed and maintained in such a way as to prevent any injury or unnecessary suffering to laying hens to the extent possible in the existing state of technology.

3. The design and size of the cage opening must be such that laying hens can be put in or taken out without causing injury or unnecessary suffering.

4. The cages must be suitably equipped and maintained to prevent escape.

5. Except where therapeutic or prophylactic treatment demands otherwise, all laying hens shall have access to adequate, nutritious and hygienic feed each day in sufficient quantity to maintain them in good health and to satisfy their nutritional needs, and to adequate fresh drinking water at all times.

6. The laying hens shall be cared for by personnel with adequate knowledge and experience of the production system used.

7. The flock or group of laying hens shall be inspected thoroughly at least once a day and a source of light (whether fixed or portable) shall be available which is strong enough for each bird to be seen clearly.

8. Accommodation comprising more than three tiers of cages shall not be used unless suitable devices or measures make it possible to inspect thoroughly all tiers without difficulty.

9. (1) When laying hens do not appear to be in good health or show behavioural changes, steps shall be taken to establish the cause and appropriate remedial action shall be taken.

(2) Where remedial action is required to be taken under sub-paragraph (1) above, consideration shall be given to the following types of action –

(a) treatment;

(b) isolation;

(c) culling;

(d) correction of environmental factors; and

(e) any other form of remedial action which might be necessary.

(3) If the cause of the health or behavioural problems referred to in sub-paragraph (1) above is traced to an environmental factor in the production unit which it is not essential to remedy immediately, remedial action shall be taken as soon as practicable and in any event when the accommodation is next emptied and before the next batch of laying hens is put in.

10. (1) Every time all the cages housed together are emptied they shall be thoroughly cleansed and disinfected before the next batch of laying hens is put in.

(2) While the cages are occupied, the surfaces and all equipment shall be kept satisfactorily clean.

article 5

SCHEDULE 3

ADDITIONAL CONDITIONS UNDER WHICH POULTRY (OTHER THAN THOSE KEPT IN THE SYSTEMS REFERRED TO IN SCHEDULES 3A, 3B AND 3C) MUST BE KEPT

Where any poultry (other than those kept in the systems referred to in Schedules 3A, 3B and 3C) are kept in a building they shall be kept on, or have access at all times to, well-maintained litter or to a well-drained area for resting.

Article 5A

SCHEDULE 3A

NON-CAGE SYSTEMS

1. All newly built or rebuilt non-cage systems of production for keeping laying hens and all such systems of production brought into use for the first time, shall comply with the requirements of this Schedule.

2. On and after 1st January 2007, all non-cage systems of production for keeping laying hens shall also comply with the following requirements.

3. All systems must be equipped in such a way that all laying hens have –

(a) either –

(i) linear feeders providing at least 10 cm per bird; or

(ii) circular feeders providing at least 4 cm per bird; and

(b) either –

(i) continuous drinking troughs providing 2.5 cm per hen; or

(ii) circular drinking troughs providing 1 cm per hen,

and, in addition, where nipple drinkers or cups are used, there shall be at least one nipple drinker or cup for every 10 hens. Where drinking points are plumbed in, at least two cups or two nipple drinkers shall be within reach of each hen;

(c) at least one nest for every seven hens. If group nests are used, there must be at least 1 m^2 of nest space for a maximum of 120 hens;

(d) perches, without sharp edges and providing at least 15 cm per hen. Perches must not be mounted above the litter and the horizontal distance between perches must be at least 30 cm and the horizontal distance between the perch and the wall must be at least 20 cm; and

(e) at least 250 cm^2 of littered area per hen, the litter occupying at least one third of the ground surface.

4. The floors of installations must be constructed so as to support each of the forward-facing claws of each bird's foot.

5. In addition to the requirements of paragraphs 2 and 3 –

(a) if systems are used where the laying hens can move freely between different levels –

(i) there shall be no more than four levels;

(ii) the headroom between the levels must be at least 45 cm;

(iii) the drinking and feeding facilities must be distributed in such a way as to provide equal access for all hens; and

(iv) the levels must be so arranged as to prevent droppings falling on the levels below; and

(b) if laying hens have access to open runs -

(i) there must be several popholes giving direct access to the outer area, at least 35 cm high and 40 cm wide and extending along the entire length of the building; and in any case, a total opening of 2 m must be available per group of 1,000 hens; and

(ii) open runs must be of an area appropriate to the stocking density and to the nature of the ground, in order to prevent any contamination, and equipped with shelter from inclement weather and predators and, if necessary, appropriate drinking troughs.

6. Subject to paragraph 7, the stocking density must not exceed nine laying hens per square metre of usable area.

7. Where on 3rd August 1999 the establishment applied a system where the usable area corresponded to the available ground surface, and the establishment is still applying this system when the Welfare of Farmed Animals (Amendment) (Poultry) Order 2004 come into force, a stocking density of 12 hens per square metre is authorised until 31st December 2011.

Article 5A

SCHEDULE 3B

CONVENTIONAL CAGES

1. On and after 1st July 2004 all conventional (unenriched) cage systems shall comply with the following requirements –

(a) at least 550 cm^2 per hen of cage area, measured in a horizontal plane, which may be used without restriction, in particular not including non-waste deflection plates liable to restrict the area available, must be provided for each laying hen. However where the non-waste deflection plate is placed so as not to restrict the area available for the hens to use, then that area may be included in the measurement;

(b) a feed trough which may be used without restriction must be provided. Its length must be at least 10 cm multiplied by the number of hens in the cage;

(c) unless nipple drinkers or drinkings cups are provided, each cage must have a continuous drinking channel of the same length as the feed trough mentioned in sub-paragraph (b). Where drinking points are plumbed in, at least two nipple drinkers or two cups must be within reach of each cage;

(d) cages must be at least 40 cm high over at least 65% of the cage area and not less than 35 cm at any point; the area being obtained by multiplying 550 cm^2 by the number of birds kept in the cage;

(e) floors of cages must be constructed so as to support each of the forward-facing claws of each foot of each bird. Floor slope must not exceed 14% or 8° when made of rectangular wire mesh and 21.3% or 12° for other types of floor; and

(f) cages shall be fitted with suitable claw-shortening devices.

2. On and after 1st July 2004 no person shall build or bring into service for the first time any cage system referred to in paragraph 1 for the keeping of laying hens.

3. On and after 1st January 2012 no person shall keep any laying hen in any cage system referred to in paragraph 1.

Article 5A

SCHEDULE 3C

ENRICHED CAGES

1. All cage systems (other than those referred to in Schedule 3B) shall be enriched to comply with the requirements of this Schedule.

2. Laying hens must have –

(a) at least 750 cm^2 of cage area per hen, 600 cm^2 of which shall be usable; the height of the cage other than that above the usable area shall be at least 20 cm at every point and no cage shall have a total area that is less than 2000 cm^2;

(b) a nest;

(c) litter such that pecking and scratching are possible; and

(d) appropriate perches allowing at least 15 cm per hen;

3. A feed trough which may be used without restriction must be provided. Its length must be at least 12 cm multiplied by the number of hens in the cage.

4. Each cage must have a drinking system appropriate to the size of the group; where nipple drinkers are provided, at least two nipple drinkers or two cups must be within the reach of each hen.

5. To facilitate inspection, installation and depopulation of hens there must be a minimum aisle width of 90 cm between tiers of cages and a space of at least 35 cm must be allowed between the floor of the building and the bottom tier of cages.

6. Cages must be fitted with suitable claw-shortening devices.

Article 5A

SCHEDULE 3D

CONDITIONS APPLICABLE TO ALL SYSTEMS

1. All hens must be inspected by the owner or the person responsible for the hens at least once a day.

2. The sound level shall be minimised. Constant or sudden noise shall be avoided. Ventilation fans, feeding machinery or other equipment shall be constructed, placed, operated and maintained in such a way that they cause the least possible noise.

3. All buildings shall have light levels sufficient to allow all hens to see one another and be seen clearly, to investigate their surroundings visually and to show normal levels of activity. Where there is natural light, light apertures must be arranged in such a way that light is distributed evenly within the accommodation.

After the first days of conditioning, the lighting regime shall be such as to prevent health and behavioural problems. Accordingly it must follow a 24-hour rhythm and include an adequate uninterrupted period of darkness lasting, by way of indication, about one third of the day, so that the hens may rest and to avoid problems such as immuno-depression and ocular anomalies. A period of twilight of sufficient duration ought to be provided when the light is dimmed so that the hens may settle down without disturbance or injury.

4. Those parts of buildings, equipment or utensils which are in contact with the hens shall be thoroughly cleansed and disinfected regularly and in any case every time depopulation is carried out and before a new batch of hens is brought in. While the cages are occupied, the surfaces and all equipment shall be kept satisfactorily clean. Droppings must be removed as often as necessary and dead hens must be removed every day.

5. Cages must be suitably equipped to prevent hens escaping.

6. Accommodation comprising two or more tiers of cages must have devices or appropriate measures must be taken to allow inspection of all tiers without difficulty and facilitate the removal of hens.

7. The design and dimensions of the cage door must be such that an adult hen can be removed without undergoing unnecessary suffering or sustaining injury.

8. No person shall mutilate any laying hen.”.

article 6

SCHEDULE 4

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF CALVES CONFINED FOR REARING AND FATTENING

Accommodation

1. (1) No calf shall be confined in an individual stall or pen after the age of eight weeks unless a veterinary surgeon certifies that its health or behaviour requires it to be isolated in order to receive treatment.

(2) The width of any individual stall or pen for a calf shall be at least equal to the height of the calf at the withers, measured in the standing position, and the length shall be at least equal to the body length of the calf, measured from the tip of the nose to the caudal edge of the tuber ischii (pin bone), multiplied by 1.1.

(3) Individual stalls or pens for calves (except for those isolating sick animals) shall have perforated walls which allow calves to have direct visual and tactile contact.

(4) For calves kept in groups, the unobstructed space allowance available to each calf shall be -

(a) at least 1.5 square metres for each calf with a live weight of less than 150 kg;

(b) at least 2 square metres for each calf with a live weight of 150 kg or more but less than 200 kg; and

(c) at least 3 square metres for each calf with a live weight of 200 kg or more.

(5) Each calf shall be able to stand up, turn around, lie down, rest and groom itself without hindrance.

(6) Subject to sub-paragraphs (7) and (8), each calf that is kept on a holding on which two or more calves are kept shall be able to see at least one other calf.

(7) Sub-paragraph (6) shall not apply to any calf that is kept in isolation on a holding on veterinary advice.

(8) For the purpose of calculating the number of calves being kept on a holding in order to determine whether sub-paragraph (6) applies, no account shall be taken of any calf that is being kept in isolation on that holding on veterinary advice.

Transitional provisions for accommodation

2. (1) Until 1st January 2004, sub-paragraphs (1), (3) and (4) of paragraph 1 shall not apply in relation to accommodation in use before 1st January 1998.

(2) Until 1st January 2004, in the case of accommodation brought into use after 1st January 1994 but before 1st January 1998 -

(a) where calves are housed in groups, each calf of 150 kg or more live weight shall have at least 1.5 square metres of unobstructed floor space, and

(b) where a calf is housed in an individual stall or pen, the stall or pen shall have at least one perforated wall which enables the calf to see other animals in neighbouring stalls and pens unless isolated for veterinary reasons.

Inspection

3. All housed calves shall be inspected by the owner or keeper of the calves at least twice a day to check that they are in a state of well-being.

4. Calves which are kept outside shall be inspected by the owner or keeper of the calves at least once a day to check that they are in a state of well-being.

5. Where necessary, sick or injured calves shall be isolated in suitable accommodation with dry comfortable bedding.

Tethering

6. (1) Calves shall not be tethered, with the exception of group-housed calves which may be tethered for a period of not more than one hour when being fed milk or milk substitute.

(2) Where tethers are used in accordance with the preceding sub-paragraph, they shall not cause pain or injury to the calves and shall be inspected regularly and adjusted as necessary to ensure a comfortable fit.

(3) Each tether shall be designed to avoid the risk of strangulation or pain or injury and allow the calf to lie down, rest, stand up and groom itself without hindrance.

Artificially lit buildings

7. Where calves are kept in an artificially lit building then, subject to paragraphs 14 and 16 of Schedule 1, artificial lighting shall be provided for a period at least equivalent to the period of natural light normally available between 9.00 a.m. and 5.00 p.m.

Cleaning and disinfection

8. (1) Housing, stalls, pens, equipment and utensils used for calves shall be properly cleaned and disinfected to prevent cross-infection and the build-up of disease-carrying organisms.

(2) Faeces, urine and uneaten or spilt food shall be removed as often as necessary to minimise smell and to avoid attracting flies or rodents.

Floors

9. Where calves are kept in a building, floors shall -

(a) be smooth but not slippery so as to prevent injury to the calves;

(b) be so designed as not to cause injury or suffering to calves standing or lying on them;

(c) be suitable for the size and weight of the calves; and

(d) form a rigid, even and stable surface.

Bedding and lying area

10. (1) All calves shall be provided with appropriate bedding.

(2) All calves shall be kept on, or at all times have access to, a lying area which is clean, comfortable and well-drained and which does not adversely affect the calves.

(3) All housed calves and calves kept in hutches or temporary structures shall be kept on, or at all times have access to, a lying area which is well-maintained with dry bedding.

Bovine colostrum

11. Each calf shall receive bovine colostrum as soon as possible after it is born and in any case within the first six hours of life.

Additional dietary requirements

12. (1) All calves shall be provided with food which contains sufficient iron to ensure a blood haemoglobin level of at least 4.5mmol/litre.

(2) A minimum daily ration of fibrous food shall be provided for each calf over 2 weeks old, the quantity being raised in line with the growth of the calf from a minimum of 100 g at 2 weeks old to a minimum of 250 g at 20 weeks old.

Muzzling

13. Calves shall not be muzzled.

Feeding

14. (1) All calves shall be fed at least twice a day.

(2) Where calves are housed in a group and do not have continuous access to feed, or are not fed by an automatic feeding system, each calf shall have access to food at the same time as the others in the feeding group.

Drinking water

15. (1) Subject to sub-paragraph (2), all calves shall be provided with a sufficient quantity of fresh drinking water each day.

(2) Calves shall be provided with fresh drinking water at all times -

(a) in hot weather conditions, or

(b) when they are ill.

article 7

SCHEDULE 5

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF CATTLE

1. Where any lactating dairy cows or any cows which are calving are kept in any roofed accommodation they shall have access at all times to a well-drained and bedded lying area.

2. Where any cows which are calving are kept in a building, they shall be kept -

(a) in a pen or a yard which is of such a size as to permit a person to attend the cows, and

(b) separate from other livestock other than calving cows.

articles 2(3) and 8 **SCHEDULE 6**

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF PIGS

PART I

INTERPRETATION

1. In this Schedule -

"boar" means a male pig after puberty, intended for breeding;

"gilt" means a female pig intended for breeding after puberty and before farrowing;

"piglet" means a pig from birth to weaning;

"rearing pig" means a pig from ten weeks to slaughter or service;

"sow" means a female pig after the first farrowing; and

"weaner" means a pig from weaning to the age of ten weeks.

PART II

GENERAL ADDITIONAL CONDITIONS

Inspection

2. All pigs shall be inspected by the owner or keeper of the pigs at least once a day to check that they are in a state of well being.

3. Where necessary, sick or injured pigs shall be isolated in suitable accommodation with dry comfortable bedding.

Tethering

4. No person shall tether or cause to be tethered any pig except while it is undergoing any examination, test, treatment or operation carried out for any veterinary purpose.

5. (1) Where the use of tethers is permitted in accordance with paragraph 4, they shall not cause injury to the pigs and shall be inspected regularly and adjusted as necessary to ensure a comfortable fit.

(2) Each tether shall be of sufficient length to allow the pigs to move as stipulated in paragraph 6(2) below and the design shall be such as to avoid, as far as possible, any risk of strangulation, pain or injury.

Accommodation

6. (1) A pig shall be free to turn round without difficulty at all times.

(2) The accommodation used for pigs shall be constructed in such a way as to allow each pig to -

(a) stand up, lie down and rest without difficulty;

(b) have a clean place in which it can rest; and

(c) see other pigs, unless the pig is isolated for veterinary reasons.

7. (1) The dimension of any stall or pen shall be such that the internal area is not less than the square of the length of the pig, and no internal side is less than 75% of the length of the pig, the length of the pig in each case being measured from the tip of its snout to the base of its tail while it is standing with its back straight.

(2) This paragraph shall not apply in relation to a female pig for the period between seven days before the predicted day of her farrowing and the day on which the weaning of her piglets (including any piglets fostered by her) is complete.

(3) A person shall not be guilty of an offence in accordance with article 13(1) of contravening or failing to comply with this paragraph by reason of the keeping of a pig in a stall or pen -

(a) while it is undergoing any examination, test, treatment or operation carried out for veterinary purposes;

(b) for the purposes of service, artificial insemination or collection of semen;

(c) while it is fed on any particular occasion;

(d) for the purposes of marking, washing or weighing it;

(e) while its accommodation is being cleaned; or

(f) while it is awaiting loading for transportation,

provided that the period during which it is so kept is not longer than necessary for that purpose.

(4) A person shall not be guilty of an offence in accordance with article 13(1) of contravening or failing to comply with this paragraph by reason of the keeping of a pig in a stall or pen which the pig can enter or leave at will, provided that the stall or pen is entered from a stall or pen in which the pig is kept without contravention of this paragraph.

Artificially lit buildings

8. Where pigs are kept in an artificially lit building then, subject to paragraphs 14 and 16 of Schedule 1, artificial lighting shall be provided for a period at least equivalent to the period of natural light normally available between 9.00 a.m. and 5.00 p.m.

Prevention of fighting

9. (1) If pigs are kept together, measures shall be taken to prevent fighting which goes beyond normal behaviour.

(2) Pigs which show persistent aggression towards others or are victims of such aggression shall be isolated or kept separate from the group.

Cleaning and disinfection

10. (1) Housing, pens, equipment and utensils used for pigs must be properly cleaned and disinfected as necessary to prevent cross-infection and the build-up of disease-carrying organisms.

(2) Faeces, urine and uneaten or spilt food must be removed as often as necessary to minimise smell and avoid attracting flies or rodents.

Lying area

11. (1) Where pigs are kept in a building they shall be kept on, or have access at all times to, a lying area which is clean, comfortable and does not adversely affect them, and either has well-maintained dry bedding or is well-drained.

(2) Where bedding is provided, this must be clean, dry and not harmful to the pigs.

Floors

12. Where pigs are kept in a building, floors shall -

(a) be smooth but not slippery so as to prevent injury to the pigs;

(b) be so designed as not to cause injury or suffering to pigs standing or lying on them;

(c) be suitable for the size and weight of the pigs; and

(d) form a rigid, even and stable surface.

Feeding

13. (1) All pigs must be fed at least once a day.

(2) Where pigs are housed in a group and do not have continuous access to feed, or are not fed by an automatic feeding system, each pig must have access to the food at the same time as the others in the feeding group.

Drinking water

14. All pigs shall be provided with an adequate supply of fresh drinking water each day.

Environmental enrichment

15. In addition to the measures normally taken to prevent tail-biting and other vices and in order to enable them to satisfy their behavioural needs, all pigs, taking into account environment and stocking density, shall have access to straw or other material or object suitable to satisfy those needs.

Prohibition on the use of the sweat-box system

16. Pigs shall not be kept in an environment which involves maintaining high temperatures and high humidity (known as the "sweat-box system").

PART III

BOARS

17. Boar pens shall be sited and constructed so as to allow the boar to turn round and to hear, see and smell other pigs, and shall contain clean resting areas.

18. The lying area shall be dry and comfortable.

19. The minimum pen size for an adult boar shall be six square metres, except that a larger area shall be provided when pens are used for service.

PART IV

SOWS AND GILTS

20. Gilts and sows between weaning their piglets and the perinatal period shall, where necessary, be treated against external and internal parasites.

21. If they are placed in farrowing crates, pregnant sows and gilts shall be thoroughly clean.

22. Gilts and sows between weaning their piglets and the perinatal period shall be provided with a clean, adequately drained, comfortable lying area and shall, if necessary, be given suitable nesting material.

23. During farrowing, an unobstructed area behind the sow or gilt shall be available for the ease of natural or assisted farrowing.

24. Farrowing pens where sows are kept loose must have some means of protecting the piglets, such as farrowing rails.

PART V

PIGLETS

25. If necessary, piglets shall be provided with a source of heat and a solid, dry and comfortable lying area away from the sow where all of them can rest at the same time.

26. Where a farrowing crate is used, the piglets shall have sufficient space to enable them to suckle without difficulty.

27. Neither tail docking nor tooth clipping shall be carried out routinely but only when there is evidence, on the farm, that injuries to sows' teats or to other pigs' ears or tails have occurred as a result of not carrying out these procedures.

28. Where tooth clipping appears necessary, this shall only be carried out within seven days of birth.

29. Piglets shall not be weaned from the sow at an age of less than three weeks unless the welfare or health of the dam or piglets would otherwise be adversely affected.

PART VI

WEANERS AND REARING PIGS

30. Pigs shall be placed in groups as soon as possible after weaning. They shall be kept in stable groups with as little mixing as possible.

31. The unobstructed floor area available to each weaner or rearing pig reared in a group shall be at least -

(a) 0.15 square metres for each pig where the average weight of the pigs in the group is 10 kg or less;

(b) 0.20 square metres for each pig where the average weight of the pigs in the group is more than 10 kg but less than or equal to 20 kg;

(c) 0.30 square metres for each pig where the average weight of the pigs in the group is more than 20 kg but less than or equal to 30 kg;

(d) 0.40 square metres for each pig where the average weight of the pigs in the group is more than 30 kg but less than or equal to 50 kg;

(e) 0.55 square metres for each pig where the average weight of the pigs in the group is more than 50 kg but less than or equal to 85 kg;

(f) 0.65 square metres for each pig where the average weight of the pigs in the group is more than 85 kg but less than or equal to 110 kg; and

(g) 1.00 square metre for each pig where the average weight of the pigs in the group is more than 110 kg.

article 9

SCHEDULE 7

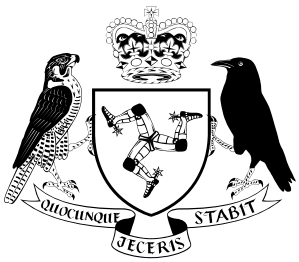
ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF RABBITS

1. Any hutches or cages in which any rabbits are kept shall be -

(a) of sufficient size to allow the rabbits to move around and to feed and drink without difficulty and to enable all the rabbits kept in them to lie on their sides at the same time, and

(b) of sufficient height to allow the rabbits to sit upright on all four feet without having their ears touching the top of the hutch or cage.

2. Where any rabbits are kept in any accommodation which is exposed to the weather, suitable steps shall be taken so as to ensure that the rabbits have access to shelter from the action of the weather (including direct sunlight).



Isle of Man

Ellan Vannin

AT 10 of 1968

RIDING ESTABLISHMENTS (INSPECTION) ACT 1968

Isle of Man

Ellan Vannin

RIDING ESTABLISHMENTS (INSPECTION) ACT 1968

Index

Section **Page**

1 Licensing of riding establishments....5
2 Inspection of riding establishments....8
3 Offences....9
4 Penalties....10
5 Appeals....10
6 Interpretation....11
7 [Repealed]....12
8 Short title and commencement....12

SCHEDULE **13**

PROVISIONS AS TO APPEALS UNDER SECTION ONE OR SECTION FOUR OF THIS ACT 13

ENDNOTES **15**

TABLE OF LEGISLATION HISTORY 15

TABLE OF RENUMBERED PROVISIONS 15

TABLE OF ENDNOTE REFERENCES 15

Isle of Man

Ellan Vannin

RIDING ESTABLISHMENTS (INSPECTION) ACT 1968

Received Royal Assent:	*8 May 1968*
Passed:	*18 June 1968*
Commenced:	*18 June 1968*

AN ACT to prohibit the keeping of a riding establishment except under the authority of a licence granted in accordance with the provisions of this Act and providing for the inspection thereof.

GENERAL NOTES

1. The maximum fines in this Act are as increased by the *Criminal Justice (Penalties, Etc.) Act 1993* s.1.

Act 1993 s 1.

2. References to a Board of Tynwald are to be construed in accordance with the *Government Departments Act 1987* s 7.

1 Licensing of riding establishments

[1964/1; 1970/32/2]

(1) No person shall keep a riding establishment except under the authority of a licence granted in accordance with the provisions of this Act.

(2) The Department may on application being made for that purpose by a person who is an individual over the age of eighteen years or a body corporate, on payment of a fee of £207, grant a licence to that person to keep a riding establishment at such premises within the Isle of Man as may be specified in the application:

Provided that such individual or body corporate appears to the Department to be suitable or qualified, either by experience in the management of horses or otherwise, to be the holder of such a licence and that such licence shall be of no effect or, as the case may be, shall cease to have effect if the person to whom it is granted is or becomes disqualified under section 5 of the *Cruelty to Animals Act 1997*, from having the custody of animals.[1]

(3) In determining whether to grant a licence for the keeping of a riding establishment by any person at any premises the Department shall in particular (but without prejudice to their discretion to withhold a licence on any grounds) have regard to —

(a) whether that person appears to them to be suitable and qualified, either by experience in the management of horses or by being the holder of an approved certificate or by employing in the management of the riding establishment a person so qualified, to be the holder of such a licence; and

(b) the need for securing —

(i) that paramount consideration will be given to the condition of the horses and that they will be maintained in good health, and in all respects physically fit and that, in the case of a horse kept for the purpose of its being let out on hire for riding or a horse kept for the purpose of its being used in providing instruction in riding, the horse will be suitable for the purpose for which it is kept;

(ii) that the feet of all horses are properly trimmed and that, if shod, their shoes are properly fitted and in good condition;

(iii) that there will be available at all times, accommodation sufficient for horses which are to be kept stabled, and suitable as respects construction, size, number of occupants, lighting, ventilation, drainage and cleanliness and that these requirements be complied with not only in the case of new buildings but also in the case of buildings converted for use as stabling;

(iv) that in the case of horses maintained at grass there will be available for them at all times during which they are so maintained adequate pasture and shelter and water and that supplementary feeds will be provided as and when required;

(v) that horses will be adequately supplied with suitable food, drink and (except in the case of horses maintained at grass, so long as they are so maintained) bedding material, and will be adequately exercised, groomed and rested and visited at suitable intervals;

(vi) that all reasonable precautions will be taken to prevent and control the spread among horses of infectious or contagious diseases and that veterinary first aid equipment and medicines will be provided and maintained in the premises;

(vii) that appropriate steps will be taken for the protection and extrication of horses in case of fire and, in particular, that the name, address and telephone number of the licence

holder or some other responsible person will be kept displayed in a prominent position on the outside of the premises and that instructions as to action to be taken in the event of fire, with particular regard to the extrication of horses, will be kept displayed in a prominent position on the outside of the premises;

(viii) that adequate accommodation will be provided for forage, bedding, stable equipment and saddlery;

(ix) that saddlery and other equipment used for the riding of horses will be kept in such a condition as not to cause danger to riders or other persons or danger or suffering to horses;

(x) that protective headgear will be provided for all riders, and advice given by clearly visible notices and otherwise as to the need to wear such headgear;

(xi) that, where necessary, suitable warning devices are available for both horses and persons leading and riding them, and advice given by clearly visible notices and otherwise as to the need to use such devices on roads during the hours of darkness;

(xii) that, where groups of horses are ridden or led on roads, they should be supervised by a sufficient number of experienced persons aged 16 years or over who the holder of the licence is satisfied are competent to do so;

(xiii) where instruction in riding is provided in return for payment, that a suitable place is available for that instruction;

and shall specify such conditions in the licence, if granted by them, as appear to the Department necessary or expedient in the particular case for securing all the objects specified in paragraph (b).[2]

(3A) Without prejudice to subsection (2) or (3), every licence granted under this Act after the 31st March 1986 shall be subject to the following conditions, namely —

(a) a horse found on inspection of the premises by an authorised officer to be in need of veterinary attention shall not be returned to work until the holder of the licence has obtained at his own expense and has lodged with the Department a veterinary certificate that the horse is fit for work;[3]

(b) no horse will be let out on hire for riding or used for providing instruction in riding without supervision by a responsible person of the age of 16 years or over, unless (in the case of a horse let out for hire for riding) the holder of the licence is satisfied that the hirer of the horse is competent to ride without supervision;

(c) the carrying on of the business of a riding establishment shall at no time be left in the charge of any person under 16 years of age;

(d) the licence holder shall hold a current insurance policy which insures him against liability for any injury sustained by those who hire a horse from him for riding and those who use a horse in the course of receiving from him, in return for payment, instruction in riding and arising out of the hire or use of a horse as aforesaid and which also insures such persons in respect of any liability which may be incurred by them in respect of injury to any person caused by, or arising out of, the hire or use of a horse as aforesaid;

(e) a register shall be kept by the licence holder of all horses in his possession whose permanent lateral incisor teeth have not erupted and which are usually kept on the premises, and shall be available for inspection by an authorised officer at all reasonable times.[4]

(4) Any such licence shall come into operation on the day on which it is granted and shall continue in operation until and including the thirty-first day of March then next ensuing and shall then expire.

(5) In the event of the death of a person who immediately before his death was keeping a riding establishment at any premises under the authority of a licence granted under this Act, that licence shall be deemed to have been granted to his personal representatives in respect of those premises and shall remain in force for the remainder of the then current period:

Provided that the Department may from time to time on the application of those representatives, extend or further extend the period granted by the said licence if the Department are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that there are no circumstances making it undesirable.[5]

(6) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence; and if any condition to which a licence under this Act is subject by virtue of subsection (3) or (3A) is contravened or not complied with, the person to whom the licence is granted shall be guilty of an offence.[6]

(7) Any person aggrieved by the refusal of the Department to grant or renew a licence under the provisions of this Act, or by any condition specified in a licence by virtue of subsection (3), may appeal to the tribunal constituted under the provisions of section five of this Act.[7]

2 Inspection of riding establishments

[1964/2]

(1) The Department shall, subject to the provisions of this section, authorise in writing any such person as the following, namely an official of the Department who is a veterinary surgeon, to inspect at periods of at least

every six months, any such premises in the Isle of Man as the following, that is to say —

(a) any premises where they have reason to believe a person is keeping a riding establishment;

(b) any premises as respects which a licence granted in accordance with the provisions of this Act is for the time being in force; and

(c) any premises in respect of which an application for a licence has been made.[8]

(2) Any person authorised under this section may, on producing his authority if so required, enter at all reasonable times any premises which he is authorised under this section to enter and inspect them and any horses found thereon or anything therein for the purpose of making a report to the Department —

(a) as to whether a riding establishment is being kept on the premises; and

(b) the condition of any horses found thereon.[9]

(3) Any person who —

(a) wilfully obstructs or delays any person in the exercise of his powers of entry or inspection conferred by subsection (2) above; or

(b) with intent to avoid inspection under this section, conceals, or causes to be concealed, any horse maintained by the riding establishment,

shall be guilty of an offence under this Act.

3 Offences

[1970/32/3]

If any person —

(a) lets out on hire, uses for riding instruction or for demonstration purposes any horse which is in such a condition that the purpose for which it is being used would be likely to cause suffering; or

(aa) lets out on hire for riding or uses for the purpose of providing, in return for payment, instruction in riding or for the purpose of demonstrating riding any horse whose permanent lateral incisor teeth have not erupted or any mare heavy with foal or any mare within 3 months after foaling;[10]

(b) supplies for a horse let out on hire by him riding equipment which suffers from a defect, apparent on inspection, which is likely to cause an accident to the rider or suffering to the horse; or

(c) fails to provide such curative care as may be suitable, if any, for a sick or injured horse which is kept by him with a view to its being

let out on hire, used for riding instruction or for demonstration purposes; or

(d) in keeping a riding establishment, knowingly permits any person who is disqualified under this Act from keeping a riding establishment to have control or management of the establishment; or

(e) with intent to avoid inspection under section two of this Act, conceals or causes to be concealed any horse maintained by the riding establishment,

he shall be guilty of an offence under this Act.

4 Penalties

(1) Any person guilty of an offence under any provision of this Act other than section two (3) hereof shall be liable on summary conviction to a fine not exceeding £2,500.[11]

(2) Any person guilty of an offence under section two (3) of this Act shall be liable on summary conviction to a fine not exceeding £1,000.[12]

(3) Where a person is convicted of any offence under this Act or of any offence under section 6 of the *Cruelty to Animals Act 1997*, the Department may cancel any licence held by him under this Act and may, whether or not he is the holder of such a licence, disqualify him from keeping a riding establishment for such period as the Department thinks fit.[13]

(4) If the Department has ordered the cancellation of a person's licence or his disqualification in pursuance of the last foregoing subsection, the Department may, if it thinks fit, suspend the operation of the cancellation or disqualification until the expiration of the time for appealing against conviction or for appealing under the next following subsection or, if any such appeal is entered, until the determination thereof.[14]

(5) Any person aggrieved by the decision of the Department under subsection (3) of this section may appeal to the tribunal constituted under the provisions of section five of this Act.[15]

5 Appeals

(1) There shall be constituted an appeal tribunal to be called the Riding Establishments Appeal Tribunal and to consist of a chairman and two other members appointed from time to time in accordance with the *Tribunals Act 2006*.[16]

(2) The provisions as to appeals set forth in the Schedule to this Act shall apply to appeals to the tribunal under section one or section four of this Act.

6 Interpretation

(1) References in this Act to the keeping of a riding establishment shall, subject to the provisions of this section, be construed as references to the carrying on of a business of keeping horses for either or both of the following purposes, that is to say, for the purpose of their being let out on hire for riding, or for the purpose of their being used in providing, in return for payment, instruction in riding, but not as including a reference to the carrying on of such a business in a case where the premises where the horses employed for the purposes of the business are kept, are occupied by or under the management of any Board of Tynwald or of Her Majesty's Government in the Isle of Man or any department thereof.

(2) For the purposes of this Act a person keeping a riding establishment shall be taken to keep it at the premises where the horses employed for the purposes of the business are kept.

(3) In this Act the following words and expressions have the meanings hereinafter respectively assigned to them, that is to say —

"**approved certificate**" means —

(a) any of the following certificates issued by the British Horse Society, namely, assistant instructor's certificate, instructor's certificate and fellowship;

(b) fellowship of the Institute of the Horse;

(c) any other certificate for the time being prescribed by order of the Department;[17]

"**authorised officer**" means a person authorised by the Department under section 2;[18]

"**Board**" [Repealed][19]

"**Department**" means the Department of Environment, Food and Agriculture;[20]

"**horse**" includes any mare, gelding, pony, foal, colt, filly or stallion and also any ass, mule or jennet;

"**premises**" includes land;

"**tribunal**" means the Riding Establishments Appeal Tribunal constituted under the provisions of section five of this Act;

"**veterinary practitioner**" [Repealed][21]

"**veterinary surgeon**" has the meaning given by section 1(1) of the *Veterinary Surgeons Act 2005*;[22]

7 [Repealed][23]

8 Short title and commencement

(1) This Act may be cited as the Riding Establishments (Inspection) Act, 1968.

(2) This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys.

SCHEDULE

PROVISIONS AS TO APPEALS UNDER SECTION ONE OR SECTION FOUR OF THIS ACT

Section 5

1. The Department shall assign to the tribunal a clerk of the tribunal.[24]

2. Notice of an appeal signed by the appellant or by his agent on his behalf and stating the general grounds of the appeal shall be given by him to the clerk of the tribunal and also to the Department.[25]

3. A notice of appeal shall be given within 14 days after the date on which the appellant has received notice of the decision of the Department in respect of which he is aggrieved or, where he has appealed against a conviction for an offence under this Act or under section 6 of the *Cruelty to Animals Act 1997*, within 14 days after the date of the determination of that appeal.[26]

4. On receiving notice of an appeal the clerk of the tribunal shall enter the appeal and give notice to the appellant and to the Department of the date, time and place fixed for the hearing.[27]

5. An appellant may at any time, not less than two clear days before the date fixed for the hearing, abandon the appeal by giving notice in writing to the clerk of the tribunal and to the Department and, in the event of any such abandonment, the tribunal may order the appellant to pay to the Department such costs as appear to the Department to be just and reasonable in respect of the expenses properly incurred by the Department in connection with the appeal before notice of the abandonment was given to the Department.[28]

6. Any member or officer of the Department may appear and be heard at the hearing of an appeal.[29]

7. The tribunal may from time to time adjourn the hearing of an appeal.

8. On the hearing of an appeal the tribunal may either dismiss the appeal or give to the Department such directions as the tribunal thinks fit as respects the licence which is the subject of the appeal, which directions shall be carried into effect by the Department.[30]

9. On the determination of an appeal the tribunal may make such order as to payment of costs as the tribunal thinks fit, or may fix a sum to be paid by way of costs in lieu of directing a taxation thereof and any costs ordered to be paid by the tribunal may be recovered summarily as a civil debt and shall not be recoverable in any other manner.

10. The tribunal may —

(a) by summons require any person to attend at such time and place as is set forth in the summons, to give evidence or to produce any documents in his custody or under his control which are relevant to the subject matter of the appeal;

(b) take evidence on oath, and for that purpose the chairman of the tribunal may administer oaths or may, instead of administering an oath, require the person examined to make and submit a declaration of the truth of the matter in respect of which he is examined; and

(c) by order require any person who appears to the tribunal to have knowledge of the subject matter of the appeal, to furnish in writing or otherwise such particulars in relation thereto as the tribunal may require and, where necessary, to attend before the tribunal and give evidence on oath.

11. Subject as aforesaid, the tribunal shall regulate its own procedure.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

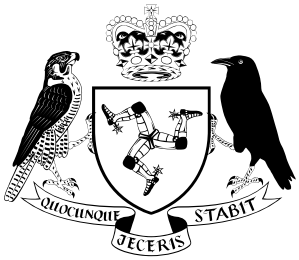
Table of Renumbered Provisions

Original	Current

Table of Endnote References

[1] Subs (2) amended by GC121/86, by Cruelty to Animals Act 1997 Sch 5 and by SD63/13.
[2] Subs (3) substituted by Riding Establishments Act 1986 s 1 and amended by GC121/86.
[3] Para (a) amended by GC121/86.
[4] Subs (3A) inserted by Riding Establishments Act 1986 s 1.
[5] Subs (5) amended by GC121/86.
[6] Subs (6) amended by Riding Establishments Act 1986 s 1.
[7] Subs (7) amended by Riding Establishments Act 1986 s 1 and by GC121/86.
[8] Subs (1) amended by GC121/86 and by Veterinary Surgeons Act 2005 Schs 2 and 3.
[9] Subs (2) amended by GC121/86.
[10] Para (aa) inserted by Riding Establishments Act 1986 s 2.
[11] Subs (1) amended by Riding Establishments Act 1986 s 2.
[12] Subs (2) amended by Riding Establishments Act 1986 s 2.
[13] Subs (3) amended by GC121/86 and by Cruelty to Animals Act 1997 Sch 5.
[14] Subs (4) amended by GC121/86.
[15] Subs (5) amended by GC121/86.
[16] Subs (1) amended by Tribunals Act 2006 Sch 3.
[17] Definition of "approved certificate" inserted by Riding Establishments Act 1986 s 3 Para (c) amended by GC121/86.
[18] Definition of "authorised officer" inserted by Riding Establishments Act 1986 s3 and amended by GC121/86.
[19] Definition of "Board" repealed by GC121/86.

[20] Definition of "Department" inserted by GC121/86 and amended by SD155/10 Sch 3.
[21] Definition of "veterinary practitioner" repealed by Veterinary Surgeons Act 2005 Schs 2 and 3.
[22] Definition of "veterinary surgeon" substituted by Veterinary Surgeons Act 2005 Sch 2.
[23] S 7 repealed by Riding Establishments Act 1986 s 3.
[24] Para 1 amended by GC121/86.
[25] Para 2 amended by GC121/86.
[26] Para 3 amended by GC121/86 and by Cruelty to Animals Act 1997 Sch 5.
[27] Para 4 amended by GC121/86.
[28] Para 5 amended by GC121/86.
[29] Para 6 amended by GC121/86.
[30] Para 8 amended by GC121/86.



Isle of Man

Ellan Vannin

AT 27 of 1981

BREEDING OF DOGS AND CATS ACT 1981

Isle of Man

Ellan Vannin

BREEDING OF DOGS AND CATS ACT 1981

Index

Section **Page**

1 Licensing of breeding establishments....5
2 Inspection of breeding establishments....7
3 Offences and disqualifications....8
4 Interpretation....8
5 [Repealed]....9
6 Transitional provision....9
7 Short title and commencement....9

SCHEDULE **11**

ENDNOTES **13**

TABLE OF LEGISLATION HISTORY 13

TABLE OF RENUMBERED PROVISIONS 13

TABLE OF ENDNOTE REFERENCES 13

Isle of Man

Ellan Vannin

BREEDING OF DOGS AND CATS ACT 1981

Received Royal Assent: *24 November 1981*
Passed: *15 December 1981*
Commenced: *1 January 198¹2*

AN ACT to regulate the commercial breeding of dogs and cats; to provide for inspection of premises at which dogs and cats are bred and for control over the transportation of puppies and kittens; and for purposes connected with those matters.

GENERAL NOTE: The maximum fines in this Act are as increased by the *Fines Act 1986* and by the *Criminal Justice (Penalties, Etc.) Act 1993* s 1.

1 Licensing of breeding establishments

[P1973/60/1]

(1) No person shall keep a breeding establishment for animals except under the authority of a licence granted in accordance with the provisions of this Act.

(2) The Department of Environment, Food and Agriculture may, on application being made to them for that purpose by a person who is not for the time being disqualified —

(a) under this Act, from keeping a breeding establishment for animals; or

(b) under the Animal Boarding Establishments (Isle of Man) Act 1973 from the boarding of animals; or

(c) under the *Cruelty to Animals Act 1955*, from having the custody of any animal; or

(d) under the Pet Animals Act 1951 (an Act of Parliament), from keeping a pet shop; or

(e) under the Protection of Animals (Cruelty to Dogs) Act 1933 (an Act of Parliament), from keeping a dog; or

(f) under the Protection of Animals (Cruelty to Dogs) (Scotland) Act 1934 (an Act of Parliament), from keeping a dog; or

(g) under the Protection of Animals (Amendment) Act 1954 (an Act of Parliament), from having the custody of animals; or

(h) under the Animal Boarding Establishments Act 1963 (an Act of Parliament) from the boarding of animals; or

(i) under any enactment of any of the Legislatures of the British Islands or of the Republic of Ireland, from keeping or having the custody of an animal,

and on payment of such fee as may be prescribed under the *Fees and Duties Act 1989* grant a licence to that person to keep a breeding establishment for animals at such premises in the Island as may be specified in the application and subject to compliance with such conditions as may be specified in the licence.[2]

(3) In determining whether to grant a licence for the keeping of a breeding establishment for animals by any person at any premises, the Department shall in particular (but without prejudice to their discretion to withhold a licence on other grounds) have regard to the need for securing —

(a) that the animals will at all times be kept in accommodation suitable as respects construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness;

(b) that the animals will be adequately supplied with suitable food, drink and bedding material, adequately exercised, and (so far as necessary) visited at suitable intervals;

(c) that all reasonable precautions will be taken to prevent and control the spread among animals of infectious or contagious diseases;

(d) that appropriate steps will be taken for the protection of the animals in case of fire or other emergency;

(e) that all appropriate steps will be taken to secure that the animals will be provided with suitable food, drink and bedding material and adequately exercised when being transported to or from the breeding establishment;

(f) that the licensee or another person responsible for the supervision of the premises resides in proximity to the premises;

and shall specify such conditions in the licence, if granted by it as appear to the Department necessary or expedient in the particular case for securing all the objects specified in paragraphs (a) to (e) of this subsection.[3]

(4) Any person aggrieved by the refusal of the Department to grant such a licence, or by any condition subject to which such a licence is proposed to be granted, may appeal to a court of summary jurisdiction; and the court

may on such an appeal give such directions with respect to the issue of a licence or, as the case may be, with respect to the conditions subject to which a licence is to be granted as it thinks proper.[4]

(5) Any such licence shall (according to the applicant's requirements) relate to the year in which it is granted or to the next following year. In the former case, the licence shall come into force at the beginning of the day on which it is granted, and in the latter case it shall come into force at the beginning of the next following year.

(6) Subject to the provisions hereinafter contained with respect to cancellation, any such licence shall remain in force until the 31st December of the year to which it relates and shall then expire.

(7) Subject to subsection (8), in the event of the death of a person who is keeping a breeding establishment for animals at any premises under the authority of a licence granted under this Act, that licence shall be deemed to have been granted to his personal representatives in respect of those premises and shall, notwithstanding subsection (6) (but subject to the provisions hereinafter contained with respect to cancellation), remain in force until the end of the period of three months beginning with the death and shall then expire.

(8) The Department may from time to time, on the application of those representatives, extend or further extend the said period of three months if the Department is satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.[5]

(9) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence; and if any condition subject to which a licence is granted in accordance with the provisions of this Act is contravened, the person to whom the licence was granted shall be guilty of an offence.

2 Inspection of breeding establishments

[P1973/60/2]

(1) A veterinary officer of the Department may inspect (subject to compliance with such precautions as the Department may specify to prevent the spread among animals of infectious or contagious diseases or to any other directions of the Department) any premises in the Island as respects which an application for a licence under this Act has been made, or, a licence granted in accordance with the provisions of this Act is for the time being in force, and any such veterinary officer may, on producing his authority if so required, enter any such premises at all reasonable times and inspect them and any animals found thereon or any thing therein, for the purpose of ascertaining whether the application is a suitable application or an offence has been or is being committed against this Act.[6]

(2) Any person who wilfully obstructs or delays any such veterinary officer in the exercise of his powers of entry or inspection under this section shall be guilty of an offence.

3 Offences and disqualifications

[P1973/60/3]

(1) Any person guilty of an offence under any provision of this Act other than section 2 shall be liable on summary conviction to a fine not exceeding £5,000.

(2) Any person guilty of an offence under section 2 shall be liable on summary conviction to a fine not exceeding £2,500.

(3) Where a person is convicted of any offence under this Act or of any offence under the *Cruelty to Animals Act 1925* or of any offence under the Acts mentioned at section 1(2)(b) or (c), the court by which he is convicted may cancel any licence held by him under this Act, and may, whether or not he is the holder of such a licence, disqualify him from keeping a breeding establishment for animals for such period as the court thinks fit.

(4) Where a person is convicted of any offence under any Act mentioned in section 1(2), at paragraphs (d) to (h), or under any corresponding enactment of any of the Legislatures of the British Islands or of the Republic of Ireland, a court of summary jurisdiction may, on the petition of the Department, take the same action in respect of such person as it could have taken under subsection (3) had that person been convicted before it of an offence against an enactment mentioned in that subsection. For the purposes of this subsection a certificate purporting to be signed by or on behalf of the Clerk of the Court before whom the person was convicted shall be prima facie evidence of such conviction.[7]

(5) A court which has ordered the cancellation of a person's licence, or his disqualification, in pursuance of subsections (3) or (4) may, if it thinks fit, suspend the operation of the order pending an appeal.

4 Interpretation

[P1973/60/5]

(1) Subject to subsection (2), references in this Act to the keeping by any person of a breeding establishment for animals shall be construed as references to the carrying on by that person at premises of any nature (including a private dwelling) of a business of breeding animals with a view to their being sold in the course of such business whether by the keeper thereof or by any other person.

(2) Nothing in this Act shall apply to the keeping of an animal at any premises in pursuance of a requirement imposed under, or having effect by virtue of, the *Isle of Man Diseases of Animals (Prevention) Act 1948*.

(3) In this Act —

"**animal**" means a cat or dog;

"**the Board**" [Repealed][8]

"**breeding establishment**" means any premises (including a private dwelling) where more than two female animals are kept for the purpose of breeding for sale;

"**the Department**" has the meaning given by section 1(2);[9]

"**veterinary officer of the Department**" means a veterinary surgeon in the service of the Department;[10]

"**veterinary practitioner**" [Repealed][11]

"**veterinary surgeon**" has the meaning given by section 1(1) of the *Veterinary Surgeons Act 2005*;[12]

5 [Repealed][13]

6 Transitional provision

[P1973/60/6]

Notwithstanding anything in this Act, a person who, immediately before the date of the commencement of this Act, was keeping a breeding establishment for animals at any premises, and who is not disqualified as mentioned in section 1(2), shall be entitled to keep such an establishment at those premises without a licence under this Act —

(a) for the period of ninety days beginning with that date; and

(b) if before the expiration of that period he applies for a licence under this Act in respect of those premises, until the licence is granted or finally refused or the application is withdrawn.

7 Short title and commencement

(1) This Act may be cited as the Breeding of Dogs and Cats Act 1981.

(2) This Act shall come into operation on 1st January 1982.

SCHEDULE[14]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

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[1] See section 7(2).

[2] Ed. note: The fee payable on the grant of a licence under subs (2) is £60 effective 1/5/2011 see SD153/11 art 4(a).
Subs (2) amended by GC 121/86, by Agriculture (Miscellaneous Provisions) Act 2000 s 3 and by SD155/10 Sch 3.

[3] Subs (3) amended by GC121/86.

[4] Subs (4) amended by GC121/86.

[5] Subs (8) amended by GC121/86.

[6] Subs (1) amended by GC121/86.

[7] Subs (4) amended by GC121/86.

[8] Definition of "the Board" repealed by GC121/86.

[9] Definition of 'the Department' inserted by GC121/86.

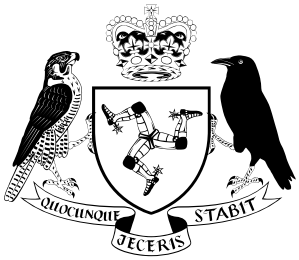
[10] Definition of "veterinary officer of the Department" (previously "veterinary officer of the Board") amended by GC121/86 and by Veterinary Surgeons Act 2005 Schs 2 and 3.

[11] Definition of "veterinary practitioner" repealed by Veterinary Surgeons Act 2005 Schs 2 and 3.

[12] Definition of "veterinary surgeon" substituted by Veterinary Surgeons Act 2005 Sch 2.

[13] S 5 repealed by Agriculture(Miscellaneous Provisions) Act 2000 s 3.

[14] Sch repealed by Agriculture (Miscellaneous Provisions) Act 2000 s 3.



Isle of Man

Ellan Vannin

AT 9 of 1973

ANIMAL BOARDING ESTABLISHMENTS (ISLE OF MAN) ACT 1973

Isle of Man

Ellan Vannin

ANIMAL BOARDING ESTABLISHMENTS (ISLE OF MAN) ACT 1973

Index

Section		Page
1	Licensing of boarding establishments for animals	5
2	Inspection of boarding establishments for animals	7
3	Offences and disqualifications	8
4	Power of Department or police to prosecute	8
5	Interpretation	9
6	[Repealed]	9
7	Short title and commencement	9

ENDNOTES	**11**
TABLE OF LEGISLATION HISTORY	11
TABLE OF RENUMBERED PROVISIONS	11
TABLE OF ENDNOTE REFERENCES	11

Isle of Man

Ellan Vannin

ANIMAL BOARDING ESTABLISHMENTS (ISLE OF MAN) ACT 1973

Received Royal Assent: *18 April 1973*
Passed: *16 May 1973*
Commenced: *16 May 1973*

AN ACT to regulate the management and operation of boarding establishments for dogs and cats.

GENERAL NOTE: The maximum fines in this Act are as increased by the *Fines Act 1986* and by the *Criminal Justice (Penalties, Etc.) Act 1993* s 1.

1 Licensing of boarding establishments for animals

[1963/1]

(1) No person shall keep a boarding establishment for animals except under the authority of a licence granted in accordance with the provisions of this Act.

(2) Subject to the provisions of this section the Department may, on application being made to them for that purpose, by a person who is not for the time being disqualified —

(a) under this Act, from keeping a boarding establishment for animals; or

(b) under section 5 of the *Cruelty to Animals Act 1997*, from having the custody of any animal; or[1]

(c) under the Pet Animals Act 1951 (an Act of Parliament), from keeping a pet shop; or

(d) under the Protection of Animals (Cruelty to Dogs) Act 1933 (an Act of Parliament), from keeping a dog; or

(e) under the Protection of Animals (Cruelty to Dogs) (Scotland) Act 1934 (an Act of Parliament), from keeping a dog; or

(f) under the Protection of Animals (Amendment) Act 1954 (an Act of Parliament), from having the custody of animals; or

(g) under any enactment of any of the Legislatures of the British Islands or of the Republic of Ireland, from keeping or having the custody of an animal,

and on payment of such fee as may be prescribed under the *Fees and Duties Act 1989*, grant a licence to that person to keep a boarding establishment for animals at such premises in the Isle of Man as may be specified in the application and subject to compliance with such conditions as may be specified in the licence.[2]

(3) In determining whether to grant a licence for the keeping of a boarding establishment for animals by any person at any premises, the Department shall in particular (but without prejudice to their discretion to withhold a licence on other grounds) have regard to the need for securing —

(a) that animals will at all times be kept in accommodation suitable as respects construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness;

(b) that animals will be adequately supplied with suitable food, drink and bedding material, adequately exercised, and (so far as necessary) visited at suitable intervals;

(c) that all reasonable precautions will be taken to prevent and control the spread among animals of infectious or contagious diseases, including the provision of adequate isolation facilities;

(d) that appropriate steps will be taken for the protection of the animals in case of fire or other emergency;

(e) that a register be kept containing a description of any animals received into the establishment, date of arrival and departure, and the name and address of the owner, such register to be available for inspection at all times by an officer of the Department, veterinary surgeon or veterinary practitioner authorised under section 2(l) of this Act;[3]

and shall specify such conditions in the licence, if granted by them, as appear to the Department necessary or expedient in the particular case for securing all the objects specified in paragraphs (a) to (e) of this subsection.[4]

(4) For the purpose of facilitating the exercise by the Department of its duties under the last foregoing subsection the Department shall, before granting any licence under this section, cause the premises to be inspected by an officer of the Department, [or] veterinary surgeon authorised in writing by the Department for such purpose and shall consider a report on such premises to be submitted to it by the person making the inspection.[5]

(5) Any person aggrieved by the refusal of the Department to grant such a licence, or by any condition subject to which such a licence is proposed to be granted, may appeal to a court of summary jurisdiction; and the court may on such an appeal give such directions with respect to the issue of a licence or, as the case may be, with respect to the conditions subject to which a licence is to be granted as it thinks proper.[6]

(6) Any such licence shall come into operation on the day on which it is granted and, subject to the provisions hereinafter contained with respect to cancellation, shall continue in operation until and including the thirty-first day of March then next ensuing and shall then expire.

(7) In the event of the death of a person who is keeping a boarding establishment for animals at any premises under the authority of a licence granted under this Act, that licence shall be deemed to have been granted to his personal representatives in respect of those premises and shall, notwithstanding subsection (6) of this section (but subject to the provisions hereinafter contained with respect to cancellation), remain in force until the end of the period of three months beginning with the death and shall then expire.

Provided that the Department may from time to time, on the application of those representatives, extend or further extend the said period of three months if the Department are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.[7]

(8) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence; and if any condition subject to which a licence is granted in accordance with the provisions of this Act is contravened or not complied with, the person to whom the licence was granted shall be guilty of an offence.

2 Inspection of boarding establishments for animals

[1963/2]

(1) The Department may authorise in writing any of its officers or any veterinary surgeon to inspect (subject to compliance with such precautions as the Department may specify to prevent the spread among animals of infectious or contagious diseases) any premises as respects which a licence granted in accordance with the provisions of this Act is for the time being in force, and any person authorised under this section may, on producing his authority if so required enter any such premises at all reasonable times and inspect them and any animals found thereon or any thing therein, for the purpose of ascertaining whether an offence has been or is being committed against this Act.[8]

(2) Any person who wilfully obstructs or delays any person in the exercise of his powers of entry or inspection under this section shall be guilty of an offence.

3 Offences and disqualifications

[1963/3]

(1) Any person guilty of an offence under any provision of this Act other than the last foregoing section shall be liable on summary conviction to a fine not exceeding £1,000.

(2) Any person guilty of an offence under the last foregoing section shall be liable on summary conviction to a fine not exceeding £500.

(3) Where a person is convicted of any offence under this Act or of any offence under Part I of the *Cruelty to Animals Act 1997* the court by which he is convicted may cancel any licence held by him under this Act, and may whether or not he is the holder of such a licence, disqualify him from keeping a boarding establishment for animals for such period as the court thinks fit.[9]

(4) Where a person is convicted of any offence under the Animal Boarding Establishments Act 1963 or under the Protection of Animals Act 1911 or the Protection of Animals (Scotland) Act 1912 or the Pet Animals Act 1951 (all such Acts being Acts of Parliament) or under any corresponding enactment of any of the Legislatures of the British Islands or of the Republic of Ireland, a court of summary jurisdiction may, on the petition of the Department, take the same action in respect of such person as it could have taken under subsection (3) of this section had that person been convicted before it of an offence against an enactment mentioned in that subsection. For the purposes of this subsection a certificate purporting to be signed by or on behalf of the Clerk of the Court before whom the person was convicted shall be prima facie evidence of such conviction.[10]

(5) A court which has ordered the cancellation of a person's licence, or his disqualification, in pursuance of either of the last two foregoing subsections may, if it thinks fit, suspend the operation of the order pending an appeal.

4 Power of Department or police to prosecute

[1963/4]

The Department or any officer of police may institute proceedings for any offence under this Act.[11]

5 Interpretation

[1963/5]

(1) References in this Act to the keeping by any person of a boarding establishment for animals shall, subject to the following provisions of this section, be construed as references to the carrying on by him at premises of any nature (including a private dwelling) of a business of providing accommodation for other people's animals:

Provided that —

(a) a person shall not be deemed to keep a boarding establishment for animals by reason only of his providing accommodation for other people's animals in connection with a business of which the provision of such accommodation is not the main activity; and

(b) nothing in this Act shall apply to the keeping of an animal at any premises in pursuance of a requirement imposed under, or having effect by virtue of, the Diseases of Animals (Prevention) Acts 1948 to 1971.

(2) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say: —

"**animal**" means any dog or cat;

"**Board**" [Repealed][12]

"**Department**" means the Department of Environment, Food and Agriculture.[13]

"**Isle of Man Supplementary Veterinary Register**" [Repealed][14]

"**Supplementary Veterinary Register**" and "**Register of Veterinary Surgeons**" [Repealed][15]

"**veterinary practitioner**" [Repealed][16]

"**veterinary surgeon**" has the meaning given by section 1(1) of the *Veterinary Surgeons Act 2005*.[17]

6 [Repealed][18]

7 Short title and commencement

(1) This Act may be cited as the Animal Boarding Establishments (Isle of Man) Act 1973.

(2) This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

[1] Para (b) amended by Cruelty to Animals Act 1997 Sch 5.

[2] Subs (2) amended by GC48/86, by GC121/86 and by Agriculture (Miscellaneous Provisions) Act 2000 s 3.

Ed. note: The fee payable on the grant of a licence under subs (2) is £60 effective 1/5/2011 see SD153/11 art 4(a).

[3] Para (e) amended by GC121/86.

[4] Subs (3) amended by GC121/86.

[5] Subs (4) amended by GC121/86 and by Veterinary Surgeons Act 2005 Schs 2 and 3.

[6] Subs (5) amended by GC121/86.

[7] Subs (7) amended by GC121/86.

[8] Subs (1) amended by GC121/86 and by Veterinary Surgeons Act 2005 Schs 2 and 3.

[9] Subs (3) amended by Cruelty to Animals Act 1997 Sch 5.

[10] Subs (4) amended by GC121/86.

[11] S 4 amended by GC121/86.

[12] Definition of 'Board' repealed by GC121/86.

[13] Definition of 'Department' inserted by GC121/86 and amended by SD155/10 Sch 3.

[14] Definition of 'Isle of Man Supplementary Veterinary Register' repealed by Veterinary Surgeons Act 2005 Schs 2 and 3.

[15] Definition of 'Supplementary Veterinary Register' and 'Register of Veterinary Surgeons' repealed by Veterinary Surgeons Act 2005 Schs 2 and 3.

[16] Definition of 'veterinary practitioner' repealed by Veterinary Surgeons Act 2005 Schs 2 and 3.

[17] Definition of 'veterinary surgeon' substituted by Veterinary Surgeons Act 2005 Sch 2.

[18] S 6 repealed by Statute Law Revision Act 1997 Sch 2.

Department for Environment, Food and Rural Affairs

Scottish Government

Welsh Government

EU pet travel scheme: changes from 29 December 2014

Information for pet owners

Changes to the pet travel scheme will come into effect on 29 December 2014. This guidance explains what's changing and why.



The changes are mainly designed to strengthen enforcement across the EU, increase levels of compliance and improve the security and traceability of the pet passport.

The changes give effect to a new EU pet travel Regulation (576/2013).

If you already have a passport for your pets, you do not need to get a new one.

The pet travel scheme

The main requirements of the scheme will stay the same. All dogs, cats and ferrets travelling with their owner will still require:

- microchipping
- vaccination against rabies
- a blood test 30 days after vaccination (if returning or travelling from an unlisted third country)
- a pet passport issued by an authorised vet (or third country certificate issued by an official vet)
- a waiting period after primary vaccination and prior to travel:
    - 21 days if travelling from another EU country or a listed third country
- a waiting period following blood sampling
    - 3 months if travelling from for unlisted third countries
- treatment against the EM tapeworm (dogs only)

There are exceptions to some of these preparations in certain circumstances. If you are planning to travel with your pet you must read the detailed guidance at: www.gov.uk/pet-travel-information-for-pet-owners

What's changing and what you have to do

The key changes affecting pet owners are outlined below:

1. A new pet passport

A new style pet passport will be introduced from 29 December 2014.

However **if you already have a passport for your pet you do not need to get a new one. Existing passports will remain valid for the lifetime of the pet** (or until all the treatment spaces are filled).

The new style passport will include laminated strips designed to cover those pages with the pet's details, microchip information and each rabies vaccination entry. This will help prevent anyone tampering with this information once it has been completed by a vet.

The vet issuing the pet passport will also need to fill in their details on a new 'Issuing of the passport' page and must make sure that all their contact details are included when they certify vaccinations and treatments.

The UK pet passport will also now include a unique passport number printed on every page .

These changes will improve the traceability and security of the pet passport and enable us to contact the vet who issued the passport if anything goes wrong.

2. The introduction of checks across the EU

If you travel with your pet in the EU you may be asked for your pet's passport when entering other countries. This is because all EU countries are required to carry out some checks on pet movements within the EU.

You must make sure that your pet is fully compliant with the rules of the EU pet travel scheme before you leave the UK. In particular, you must wait 21 days from the date of your pet's primary rabies vaccination before you travel (the day of vaccination counts as day 0 not day 1). Your vet can advise you on this point. If you have a new style pet passport they will put a 'valid from' date in the primary vaccination entry; this will be the earliest date you can travel.

All pets entering Britain on approved routes will continue to be checked by the carriers either prior to boarding (for rail or sea) or upon entry (air).

3. A new minimum age for rabies vaccination

From 29 December 2014 your pet must be at least 12 weeks old before you can get it vaccinated against rabies for the purposes of pet travel.

These rules will be the same across the EU and help pet checkers carry out compliance checks. It will also prevent very young pets being moved across the EU.

4. New rules for those travelling with more than five pets

If you have more than five pets and wish to travel with them within the EU and/or return to the UK (unless you are going to a show or competition) you will need to comply with additional rules. These include:

- travelling from a registered premises
- using an authorised transporter and
- registering the movement on the TRACES system

If you are travelling from outside the EU you will also need to enter through a Border Inspection Post.

Shows and competitions

If you are travelling with more than five pets (aged over six months) and can present written evidence that they are registered to attend a show, competition or sporting event (or training for such an event) you do not need to comply with these extra rules and can continue to travel under the EU pet travel scheme.

The evidence you provide will need to **show at least the name of the event, together with the address and date(s) it is taking place**. You may also be asked to sign a **declaration confirming that you are eligible to make use of this exemption**. This requirement may change – we're consulting on some of these details – so you should check the website for up to date information before you travel.

5. Requirements for pets entering the UK/EU by air

If you are entering the UK (or another EU country) by air on a flight that began outside the EU it may not be possible for you to physically accompany your pet, for example because it is necessary for your pet to be carried in the hold of the aircraft or you are unable to travel on the same flight.

In such cases you will need to sign a declaration confirming that you do not intend to sell or transfer ownership of your pet. **You must travel within 5 days of your pet's movement**.

6. Clearer definition of cat, dog and ferret

The new EU Regulation specifically states that the only species of pet animal that can travel under the EU pet travel rules are:

- *Canis lupis familiaris* – domestic dog
- *Felis silvestris catus* – domestic cat
- *Mustela putorius furo* – ferret

The reason for this change is to make sure that wild animals can't be moved under rules designed for pet travel.

This change will not affect the majority of pet owners. However, if your pet is a hybrid (such as a Bengal or Savannah cat, or a Wolfdog) then you must seek advice from the Animal Health and Veterinary Laboratories Agency before you travel. They will advise you on the import requirements for your pet. See 'Contact us' below.

Don't forget...

- Your pet must receive the correct treatments in the correct order. In particular, **your pet must have been microchipped before it receives its rabies vaccination**. If your pet was vaccinated before being microchipped then it will need to be re-vaccinated after the microchip is inserted.
- If you take your pet abroad it may be exposed to diseases which we do not have in the UK. We recommend you consult your vet about your pet's health and fitness to travel before you take it abroad. Ask your vet for advice on the appropriate treatments for the part of the world you are travelling to.
- The pet travel rules apply to all dogs, cats and ferrets travelling with their owners (including assistance and guide dogs). You are responsible for ensuring your pet meets all the rules for entering the UK under the pet travel scheme. **Make sure you have had the procedures carried out in the correct order and that your pet's documentation is correctly completed. If you do not, your pet may not be able to enter the country or may have to be quarantined on arrival. This will mean delay and cost you money.**
- If you are bringing a dog, cat or ferret into the UK in order to **sell** it or pass it to a new owner (e.g. for **rehoming**) , you cannot travel under the pet travel scheme. Instead you must comply with the rules of the Balai Directive. Further information is available: www.defra.gov.uk/animal-trade/imports-non-eu/iins/live-animals/iins-other-animals-balai/iin-bllv-5/
- Stringent penalties are in place for those that break the pet travel rules in order to bring animals into the UK illegally. Pets that are non-compliant pose a potentially serious risk to both animal and human health. Anyone with information relating to illegal activity should contact their local Trading Standards office.

Contact us

For further information on any of the changes outlined above or for enquiries relating to pet travel, please contact the Pet Travel Scheme helpline:

- Telephone: 0370 241 1710
  Monday to Friday, 8am to 6pm (closed on bank holidays)
- Email: pettravel@ahvla.gsi.gov.uk

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Jaques, Stuart

From: Ronan, Richard (MHK)
Sent: 09 December 2014 19:24
To: Jaques, Stuart
Subject: Fwd: Fur Products
Attachments: 32 Christian Road.docx; ATT00001.htm

FYI

Richard Ronan

Member of the House of Keys for Castletown
Minister of the Department of Environment, Food and Agriculture
Thie Slieau Whallian,
Foxdale Road, St John's,
Isle of Man, IM4 3AS

Tel: 01624 685964 Mobile: 497293
E-mail: richard.ronan@gov.im

Sent from my iPad

Begin forwarded message:

From: sarah lee <slwfab@hotmail.com>
Date: 2 December 2014 12:06:32 GMT
To: "Ronan, Richard MHK" <richard.ronan@gov.im>
Subject: Fur Products

To all Members of Tynwald.

With the influx of Europeans to the Island who generally have no ethics regarding animal cruelty and suffering.

I am deeply concerned (under the supervision of a European Manager) about the products stocked at Tynwald Mills and the compromisation of the Manx identity and ethos regarding animals which is ultimately kind, compassionate and enlightened.

I would also like a definitive answer as to when the laws and legislation regarding animal welfare is going to be brought in-line with UK legislations.

S. Watterson

32 Christian Road

Douglas

Isle of Man

IM9 2NB

1/12/14

Dear Agnieska Sitarek/ Matthew McSeveney,

I am writing to express my outright disgust at the amount of real fur products you have stocked this season.

Are you at all aware of the way animals are bred, kept and killed to decorate an item of clothing?

It is horrific, barbaric and inhumane.

There is no place in an ethical First World society or 21st Century living for real fur products. Especially as it has been scientifically proven, without doubt, the intelligence and emotions animal's posses. I suggest (if you have the guts to do so) you watch a PETA video showing how animals are kept and killed for fur.

I am horrified that a retailer in the Isle of Man, a place which loves cares for and is aware of the plight of animals at the hands of humans, stocks such products. I am disgusted that you profit from the suffering and abuse of animals.

The least you can do is to make customers fully aware of how fur is produced so that they may make a fully informed decision.

I have sent copies of this letter to all Manx MHKs, the Manx press, Facebook and Twitter and will be actively urging people to boycott Tynwald Mills.

Sincerely

S. Watterson

Open Letter to Tynwald

Dear MHKs,

Litter - As I drive round the Island and to and from school I am disgusted with the amount of litter on streets, roads and hedgerows. Especially in the last 12 months.

It seems endemic.

Given that tax payers fund street cleaning and refuse collection and that the beaches are cleaned for free by Beach Buddies. Given that 98% of the population work, where is the money actually going to? Not on regular Street, road side or hedgerow cleaning that seems obvious.

Litter is a health and safety issue, a threat to wildlife and an eyesore.

Where are the Government adverts and campaigns urging people to recycle, pick up litter, and look after their countryside and beaches? It does not take much to muster the effort to do so nor cost much to put such adverts in place.

Why not use inmates at the prison to do 'community service' and earn their keep and clean hedgerows and beaches instead of having cooking lessons?

Driving Standards - On a related subject in connection with Manx roads. I have been horrified this year at the amount of animals killed on Manx roads, cats, polecats, rabbits, chickens, ducks, crows, ravens, seagulls, hedgehogs.

Where are the police campaigns urging safe driving? At safe speeds? Within set limits?

Where are the police spot checks on roads? The standards of driving on the Island are generally atrocious.

Police are virtually non-existent on Manx roads except at TT week, why is that?

Campaigns seem non-existent except at TT week, why is that?

Why not criminalise the killing of a cat or dog? People pour time, money and love in to their animals, which are essentially family members and are then expected to just accept the killing of a pet due to bad driving, why is that?

The UK funds such campaigns, awareness strategies and education programmes, why not the Isle of Man.

After all you certainly don't seem to spend money keeping laws up to date and in-line with UK laws, unless it seems, to benefit the financial community.

Sarah Watterson

The simple existence of such a colony is, in the perspective of Animal Health, a significant disease risk to the neighbouring farms in normal circumstances and a very serious risk to the Island as a whole in epidemic disease situations.

The reasons for this are:-

1) They can carry and transmit a number of diseases both to other animals and to people;
2) The population cannot be gathered;
3) They cannot be inspected or regularly supervised;
4) They are spreading over an ever increasing area;
5) They are naturally adept at overcoming practically any obstacle and cannot be restricted to an enclosure.

To give but one example, the past Foot and Mouth investigations on farms in the area found many lesions of orf, the physical distribution of which was highly suspicious of spread by outside factors. Goats are a susceptible species and, given the epidemiological characteristics of this disease, are highly likely to both contract it, and spread it further given their ranging area.

Quite apart from the unnecessary pain and distress caused to the lambs involved, it has similar effects on the goats. Living in a feral colony is not synonymous with a welfare utopia, in fact it can be quite the opposite with open sores, chronic footrot, disease lesions, even broken limbs being untreated. Such events taking place on a farm would immediately attract strident criticism, and rightly so.

Support for the continued growth of this colony is, in my opinion, misplaced as this can only increase, both the number of farms coming into contact with these disease vectors, and the number of goats affected with untreated painful conditions. Unchecked growth also has the distinct possibility of increasing the likelihood of these animals becoming involved in road traffic incidents; they are already being more commonly seen on roads, and a serious accident would question why the population had not been controlled earlier.

The Department's concern over these goats has very little to do with the complaints of local farmers. The reasons for restricting or even eliminating such a population are already obvious and do form part of some of the complaints. However the Department has no powers to directly care for these animals. Such powers fall to their owners, and being ownerless to the landowner. It <u>does</u> lie within the landowners power to destroy such animals by lawful humane means or treat them (if it were possible, which it generally is not).

Fencing such animals out is not normally feasible given the species characteristics, and would again only serve to force the population to roam further.

Reducing the population to a manageable number in an attempt to restrict their range and reduce the herds internal competition for resources, hence raising their general health standard (overpopulation leads to disease, malnutrition and suffering for the weaker individuals in a feral herd) appears the most sensible course.

Manx National Insurance Fund and therefore any reduction in the amounts paid will not result in savings to General Revenue.

The Hon. Member will be aware that the Isle of Man has a long-standing Social Security Reciprocal Agreement with the UK covering National Insurance funded benefits. The Island is therefore required to have the same qualifying conditions and to pay the same rates of benefit in relation to all benefits funded by National Insurance Contributions. As a consequence the Department of Social Care (DSC), which is responsible for paying state retirement pensions, would be unable to treat public sector employees differently from other employees under the current agreement.

Given the many variables that need to be taken into account when calculating an individual's entitlement to the state retirement pension it is not possible to forecast what savings there might be to the Manx National Insurance Fund if public sector employees where no longer entitled to receive it. In the next 10 years upwards of 1320[1] public sector workers will reach state retirement pension age, the resources and time need to accurately calculate this number of entitlements means that neither Treasury nor the DSC can provide this information. Additionally, staff now have some flexibility over when they retire and this would introduce more uncertainty into any calculation. However what I can say is that where an individual has been employed as a public sector employee for the whole of their working life they would be entitled at state retirement pension age to a weekly basic pension of £110.45 plus a Manx Pension Supplement of £53.75, making a total pension of £164.20 per week.

Finally as the Hon. Member will be aware my Department along with DSC have embarked on a comprehensive review of the National Insurance and benefits system currently operating in the Island. This review is due to be completed in the summer of 2014 and will examine how all future benefits may be funded and who should be entitled to them.

Hon W E Teare MHK
Minister for the Treasury

[1]The number of individuals who were employed as public sector workers during the 2011-12 tax year and who will reach state pension age in the next 10 years, as shown on the National Insurance system.

ENVIRONMENT, FOOD AND AGRICULTURE

2.8. Puppy importation – Current legislation and guidelines

The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Environment, Food and Agriculture:

What animal welfare issues arise in connection with importation of puppies to the Island; what current legislation and guidelines govern such importation, especially where disease could be an issue; and if he will publish in consultation with other organisations an information bulletin containing advice on buying puppies, especially if they are imported?

Answer: Generally no welfare issues arise with the importation of puppies, as they are imported by, or on behalf of, their owner. All puppies should be of sufficient age and maturity to be separated from their mother, and either continuously monitored, or placed in a commercially available transport box.

The Pet Travel Scheme legislation applies to dogs imported from outside the UK and information on this is available at https://www.gov.uk/take-pet-abroad. There is free movement of dogs between the UK and the Island.

My Department has already published advice from the Chief Veterinary Officer on the purchasing of puppies, which I reproduce below:

> 'The very best advice that can be given is for prospective owners to "see the puppy with its mother and litter mates". This enables prospective purchasers to judge the conditions in which the puppy is kept, the behavioural predisposition of the mother and the socialisation of the litter mates. Additionally, this gives the opportunity for prospective purchasers to discuss any health scheme tests that may have been carried out on the dam and sire before breeding. Buying a puppy "sight unseen" is not advisable – unless you know the breeder concerned and have a solid previous relationship with them.
> In addition, it would be very prudent to consider:
>
> - how large the dog will be when full grown
> - the owner's ability to provide sufficient regular (daily) exercise
> - whether the accommodation is big enough for the time the dog is likely to spend alone
> - the cost of neutering, vaccinating and feeding the chosen breed or cross breed
> - Whether the parents have been tested for known inherited problems for that particular breed (and to see the certified results)'

While the above will not ensure every purchase is completely risk free, it will seriously reduce the chances of problems occurring. Such actions would also greatly reduce the business of 'puppy farmers' compared to responsible breeders.

I would hope that all relevant Manx organisations would agree with this advice.

2.9. Puppy farms –
Current policy; planned legislation

The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Environment, Food and Agriculture:

What his Department's policy is on puppy farms; and what plans he has to introduce legislation in the near future which would restrict the importation of puppies from puppy farms?

Answer: My Department controls the breeding of dogs in the Isle of Man under powers provided by the Breeding of Dogs and Cats Act 1981. Premises are inspected at least annually and more frequently if required. I hope to introduce further legislation on the welfare of pets and companion animals; however, it would be difficult if not impossible to introduce control on the importation of dogs based upon their origin. Controls on breeding should be placed at the point of origin, as we have done; distinguishing dogs by their type of origin would be impossible.

COMMUNITY, CULTURE AND LEISURE

2.10. Isle of Man Steam Railway –
Dining experience kitchen costs

The Hon. Member for Onchan (Mr Hall) to ask the Minister for Community, Culture and Leisure:

What the (a) upfront; and (b) continuing costs of providing the dining experience kitchen are; whether there are plans to provide another passenger car with extra facilities; and, if so, what

The INDEPENDENT

Canadian woman jailed after stopping car for ducks and causing two deaths

Emma Czornobaj, 25, was also given 240 hours community service and a 10-year driving ban

Jack Simpson

Friday, 19 December 2014

A woman in Canada has been jailed for 90 days for causing the deaths of two people when she stopped her car on the side of highway to help a group of ducks cross the road.

Emma Czornobaj, 25, was also given 240 hours community service and a 10-year driving ban as she heard her sentence in Quebec's Superior Court in Montreal on Thursday.

Earlier this year, Czornobaj was convicted on two counts of criminal negligence and two counts of dangerous driving after causing the deaths of Andre Roy, 50, and his 16 -year-old daughter Jessie.

In June 2010, Czornobaj had stopped her car on the side of a provincial highway to the south of the city when she saw a group of small ducks trying to cross the road. The self-proclaimed animal lover told the court that she did not see the ducklings' mother anywhere and planned to take them home.

Roy and his daughter Jessie were riding behind Czornobaj but were unable to brake in time and collided with the stationary vehicle.

Both died shortly afterwards.

The prosecution was asking for a nine-month prison sentence, 240 hours community service and a five-year driving ban.

The defence argued that as this was Czornobaj's first offence, there was no "criminal intent" and 240 hours community service was enough.

She will now serve her 90 days imprisonment intermittently over weekends.

According to the wife and mother of the two victims, she was pleased with the sentence handed out and said that the family could finally move on.

She said: "This will help us go on with our lives with a positive attitude, rather than a negative attitude."