

The Animal Welfare Act 2006: what it means for wildlife

The aim of this information note is to provide guidance on the sections of the Animal Welfare Act 2006 that may apply to wildlife whether through wildlife management techniques and procedures or while working with wildlife, such as in the course of research projects. This note should not be used as a substitute for the legislation or its explanatory notes. For details of how to access the Act and explanatory notes see *Further information* at the end of this leaflet.

What is the Animal Welfare Act?

The Animal Welfare Act 2006 was enacted in England and Wales in April 2007. It applies to actions taken on the land and all inland waters and estuaries in England and Wales, but not the sea.

It applies to 'animals', which are defined in the Act as a vertebrate other than man. It does not currently apply to invertebrates or to foetal or embryonic forms of animals.

The Act brings together and updates legislation to promote the welfare of vertebrate animals, and primarily relates to those that are owned or held captive.

It also repeals certain Acts, such as the *Abandonment of Animals Act* (1960), and sections of old legislation such as the *Protection of Animals Act* (1911).

The Act makes owners and keepers of animals responsible for ensuring that the following basic needs of their animals are met:

- A suitable environment (how animals are housed).
- A suitable diet (what animals have to eat and drink).

- To be able to exhibit normal behaviour patterns.
- To be housed with, or apart from, other animals (as applicable to the needs of the species).
- To be protected from pain, injury, suffering and disease.

Does it apply to wild animals?

Yes it can do. Although the Act focuses on domestic animals, it also applies to wild animals while they are being held captive, and can apply to certain wild animals when living free in the wild.

'Protected Animals' under the Act are defined as:

1. Animals that are commonly domesticated in the British Islands

Although this most obviously applies to domestic pets and livestock and to stray dogs and feral cats (but not the true wild cat), it also applies to other feral animals that may be considered wild, such as feral pigeons, geese, goats, mink and wild boar – on the basis that they originated from domestic stock.

Or:

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2. *Animals under the control of man*

This applies to any wild animal if it is held captive or restrained, permanently or temporarily, by man's actions. For example when held in an enclosure, pen or cage trap, during transportation, while caught in a net (including a mist net) or snare, or while held in the hand.

Or:

3. *Animals not living in a wild state*

This does not apply to wild animals as such but includes animals which may no longer be under the control of man but are not yet truly living wild, such as animals that have escaped from captivity in a zoo or circus.



While in the hand this Bechstein's bat is protected under the Act (John Black)

Responsibility for animals

The Act also identifies a responsibility for animals in that a person is 'responsible' for an animal where, on a permanent or temporary basis, they have assumed responsibility for the animal's day-to-day care or for its care for a specific purpose.

For example, a pest controller who holds an animal in a cage trap is 'responsible' for that animal (as well as it being a 'protected animal' under the Act). The owner of an animal will always be regarded as being 'responsible' for it.

Anyone undertaking wildlife management or working with wildlife should be aware of the provisions of this Act.

Anyone acting under a licence issued by Natural England is expected to comply with all relevant animal welfare legislation, including the Animal Welfare Act 2006.

What are the offences under the Act?

- Unnecessary suffering (Section 4).
- Mutilation (Section 5).
- Docking of dogs' tails (Section 6).
- Administration of poisons etc. (Section 7).
- Fighting etc. (Section 8).
- Duty of person responsible for animal to ensure welfare (Section 9).
- Transfer of animals by way of sale or prize to persons aged under 16 years (Section 11).

The following sections of the Act may apply to wildlife

Unnecessary suffering (section 4)

Offences

1. An act or a failure to act that causes a 'protected animal' to suffer unnecessarily when the person involved knew, or ought reasonably to have known, that the act or failure to act would have caused unnecessary suffering or been likely to do so.
2. The person concerned is 'responsible' for the animal and permitted, or failed to take reasonable steps to prevent, an act or failure to act by another person which caused unnecessary suffering to a 'Protected Animal'.

Considerations regarding whether suffering was unnecessary

- Whether the suffering could reasonably have been avoided or reduced.
- Whether the conduct which caused the suffering was in compliance with other legislation, provisions of a licence or code of practice.

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- Whether the conduct that caused the suffering was for a legitimate purpose, for example, benefiting the animal; protecting a person, property or other animal.
- Whether suffering was proportionate to the purpose of the conduct concerned.

It is understood that a court should take all of the above considerations into account. For example, where legitimate pest control activities entail an animal suffering, a court may consider:

- Whether this was in compliance with relevant legislation and for a legitimate purpose and proportionate to that purpose.
- The extent to which the suffering could reasonably been avoided or reduced.

Relevance to wildlife

Animals subject to management or pest control techniques will in many cases be protected under the Act because they are under the control of man (eg caught in a net, cage trap or the hand) or are of a kind commonly domesticated (eg feral pigeon, feral mink).

Where suffering inevitably occurs in the course of such operations, it is advised that it is unlikely that an offence would be committed provided that the appropriate regulations, licence conditions, guidance or codes of conduct were complied with.

Certain pest control techniques have already been subject to challenge under the Act by concerned parties, such as the use of spikes to deter feral pigeons from building ledges or the use of electric shock devices.

Any new wildlife management procedures that may be proposed are particularly likely to be subject to challenge under the Act. Ultimately, it will be for a court to decide whether an offence has been committed, subject to the considerations listed above.

It is the responsibility of each person relying on a licence issued by Natural England to use appropriate equipment (eg trap, net, firearm and ammunition).

They must also ensure that they are competent to use such equipment so as to avoid causing unnecessary suffering.

Specific examples

Checking cage traps

Under legislation such as the Wildlife and Countryside Act 1981 (the 1981 Act), there is no legal requirement to check live capture cage traps. General licences issued under the 1981 Act specify checking times as a condition, and organisations such as the British Association for Shooting and Conservation (BASC) have produced their own guidelines for checking traps.

Under the Animal Welfare Act, leaving an animal in a cage trap without food, water or shelter for a period of time, so causing it to suffer unnecessarily, may be an offence, especially if the period of time it was left untended exceeded that of any relevant licence conditions or guidelines.

Decoy birds

The Act reinforces the need to provide decoy birds kept under licence in cage traps such as Larsen traps with adequate food, water and shelter.

Conditions relating to the use of decoy birds are provided in our General Licences at www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/generallicences.aspx

Prosecutions under this section of the Act have been successfully brought against users of Larsen traps who neglected to provide sufficient food, water and shelter for decoy birds, resulting in the death of some of the birds.

Use of live prey species as decoys.

This technique may be used only under a Wildlife and Countryside Act (1981) licence to assist in the capture of birds of prey for ringing or marking for the purpose of research and/or conservation. The technique could cause the decoy (prey) species to suffer as a result of its proximity to a natural predator.

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The practice is considered acceptable in certain situations under the Animal Welfare Act provided that all the following criteria are satisfied:

- the licence is issued for a genuine purpose (ie as listed in Section 16 of the Wildlife & Countryside Act);
- there is no alternative means of capturing the bird of prey;
- the cage trap is under constant direct supervision while it is in use;
- the decoy is removed and released as soon as the predator is caught; and
- is not used more than once.

Licences permitting the use of live decoys are assessed on their individual merits and only where the licensed activity would be of benefit to the bird of prey or its conspecifics is use of the technique authorised.

Any animal used as a decoy is also subject to Section 9 of the Act, *Duty of person responsible to ensure animal welfare* (see below).

Mutilation (section 5)

Mutilation under the Act means a procedure which involves interference with the sensitive tissues or bone structure of a 'protected animal', other than for the purpose of medical treatment.

Offences

1. To carry out a prohibited procedure on a 'protected animal' or to cause one to be carried out.
2. The person concerned is 'responsible' for the animal on which another person carries out a 'prohibited procedure', and no reasonable steps (eg supervision), given the circumstances, were taken to prevent that from happening.

Relevance to wildlife

This section particularly applies to techniques that may be used on wild animals for conservation and wildlife research. In order to carry out these techniques the animal has to be restrained in some way (even if it is only being held in the hand) and is therefore 'under the control of man'.

Techniques that do not penetrate living tissue such as ringing, use of collars, attachment of radio tags by harness or glue and wing-clipping by cutting the primary feathers of a bird's wing are not regarded as mutilations.

Many identification techniques commonly used for wildlife are technically mutilations but are permitted under the Act under the *Mutilations (Permitted Procedures) (England) Regulations 2007*, as Amended 2008.

These include: ear clipping/notching/tipping, branding, micro-chipping, tattooing and the insertion of tracking devices. Wing and web-tagging of non-farmed birds for the purposes of conservation (including education and captive breeding programmes) and (wing-tagging only) for the purpose of research are also permitted.



Wing tagging is permitted for the purpose of research (Duncan Orr-Ewing)

Rendering a bird permanently flightless by pinioning (the removal of the metacarpal bone and phalanges of one wing) is permitted on non-farmed birds when they are aged up to 9 days, but if the procedure is to be carried out on older birds an anaesthetic must be administered. In all cases pinioning may only be carried out by a veterinary surgeon.

Any procedures carried out under an *Animal (Scientific Procedures) Act (1986)* licence are exempt from the provisions of the Animal Welfare Act.

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Administration of poisons etc (section 7) Offences

Without lawful authority or reasonable excuse:

1. A person administers or causes the administration of any poison or injurious drug or substance to a 'protected animal', in the knowledge that the substance is poisonous or injurious.

2. A person 'responsible' for an animal permits (or fails to take reasonable steps to prevent) another person to administer to an animal, or cause an animal to take, any poison or injurious drug or substance, in the knowledge that the substance is poisonous or injurious.

An injurious drug or substance is defined as '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'. This includes pesticides.

Under this section it is not necessary to show that the animal actually suffered as a result of the prohibited action in order to establish liability. However, it is necessary to show that the accused person knew of the poisonous nature of the substance administered to the animal.

The term administer indicates a deliberate action. Accidental poisoning is not covered by this offence.

Relevance to wildlife

These offences may apply to companion and feral animals and any wild animals under the control of man that have been deliberately poisoned.

Duty of person responsible to ensure animal welfare (section 9)

Applies to all animals for which someone is responsible. The definition of a 'responsible person' is given on Page 2 of this guidance.

Offence

A person commits an offence if he does not take such steps that 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:

For the purposes of this Act an animal's needs shall be taken to include:

- A suitable environment.
- A suitable diet.
- To be able to exhibit normal behaviour patterns.
- To be housed with or apart from or with other animals.
- Protection from pain, suffering, injury and disease.

Regard will be taken of any lawful purpose for which the animal is kept and any lawful activity undertaken in relation to the animal.

This section of the Act applies to any animal for which a person is responsible, not just 'protected animals'. It replaces the *Abandonment of Animals Act 1960* which has been repealed.

Relevance to wildlife

Keeping wildlife

Offences under this section could apply to wild animals kept in captivity. Such animals will also be 'protected animals' under the Act. Anyone acting under a licence to keep certain species under the *Conservation of Habitats and Species Regulations 2010* and the *Destructive Imported Animals Act 1932* must ensure that the provisions of the Animal Welfare Act are met.

Release of animals

This section may apply to wildlife releases (whether carried out under a licence or not). Persons undertaking the release of an animal are 'responsible' for the animal while it is in their care (even if this is only for a short period of time).

An offence may be committed if they do not take reasonable steps to ensure that on release the animal is capable of fending for itself and living independently. If the animal actually suffers as a result of this action an additional offence under Section 4 (Unnecessary Suffering) may be committed.

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It is likely that this section also applies where an animal has been caught (eg in a cage trap or snare) and released immediately. This means that it could be an offence to release an injured animal.

In addition, practices such as the capturing and translocation of wildlife, for example taking foxes from urban to rural areas, may be an offence under this section if it is considered that on release the animal is not capable of fending for itself and living independently. As above, if the animal actually suffers as a result of this action an additional offence under Section 4 (Unnecessary Suffering) may be committed.

This section may also apply to the release of birds into the wild that have been made flightless through pinioning or cutting of the primary feathers of one wing (see above). Such individuals will be less able to move between areas for feeding and shelter and to escape predators, and if released into an area where this will disadvantage them, an offence may be committed by the 'responsible person' who released them.

Use of live decoys

This section reinforces the requirement under the *Wildlife and Countryside Act 1981* for a decoy bird to be provided with adequate food, water, shelter, a perch and room to spread its wings.



Larsen trap with decoy bird (Rodney Calvert)

The Animal Welfare Act does not apply to:

- Anything which occurs in the normal course of fishing.
- Humane destruction of an animal.
- Anything otherwise licensed under the Animals (Scientific Procedures) Act (1986).

Who enforces the Act?

In broad terms the right to prosecute under the Act exists under Common Law, so any individual, authority or organisation, such as RSPCA, can bring a prosecution for an offence.

Inspectors under the Act are people appointed by local authorities or by the Secretary of State in England (the National Assembly in Wales). In practice this can mean a local authority employee with responsibility for animal welfare, or an Animal Health Officer.

In practice the RSPCA deal with most cases relating to companion and domestic animals. Police are likely to be most involved in cases involving very serious offences or issues of public order.

Penalties under the Act can be a maximum of 51 weeks imprisonment or £20,000 fine (or maximum Level 5 fine on the standard scale for offences under Section 9 - Responsibility to ensure animal welfare).

Codes of practice under the Act

Codes of practice in respect of cats, dogs, equines and privately kept non-human primates have already been published www.defra.gov.uk/wildlife-pets/pets/cruelty/index.htm.

A code of practice in relation to the welfare of Game Birds reared for sporting purposes is expected to come into force in late 2010.

A Code of Practice in relation to Animal Sanctuaries is expected to be published in due course.

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Further information

Natural England Technical Information Notes are available to download from the Natural England website: www.naturalengland.org.uk

For further information contact the Natural England Enquiry Service on 0300 060 0863 or e-mail enquiries@naturalengland.org.uk

In England, further advice on problems caused by wildlife can be obtained by contacting Natural England's Wildlife Management and Licensing Service at:

Wildlife Licensing Unit, Natural England, Burghill Road, Westbury-on-Trym, Bristol, BS10 6NJ.
0845 601 4523 (local rate)
wildlife@naturalengland.org.uk

The general licences and a range of leaflets on wildlife topics, are available online at:
www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx

Further information on the Animal Welfare Act

The Act and Explanatory Notes can be downloaded from
www.defra.gov.uk/foodfarm/farmanimal/welfare/act/index.htm

The Animal Welfare Act 2006 – Guidance Notes. RSPCA Wilberforce Way, Southwater, Horsham, West Sussex RH13 9RS. www.rspca.org.uk

CLA guidance on *Enforcement of the Animal Welfare Act 2006*. www.countryside-alliance.org.uk/political/general/enforcement-of-the-animal-welfare-act-2006/

Information on secondary legislation, including the *Mutilations (Permitted Procedures) (England) Regulations 2007 and 2008* can be found at
www.defra.gov.uk/foodfarm/farmanimal/welfare/act/secondary-legis/docking.htm and associated links

The Act as it relates to Scotland (the *Animal Health and Welfare (Scotland) Act 2006*) can be found at
www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060011_en_1

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