

Feature

Gamekeepers and the Animal Welfare Act 2006



by Matthew Knight, Senior Partner of Knights Solicitors.

THE ANIMAL WELFARE ACT 2006 REPEALED the Protection of Animals Act 1911 and made provisions for a secondary legislation, regulations, and *Codes of Practice* including those for gamebirds reared for sporting purposes, rabbits, dogs, cats, horses, donkeys and hybrids.

The Animal Welfare Act 2006 addresses duties owed to all pet, working, domesticated and farmed animals and reduces ambiguities in responsibility. Until then, there was a higher duty of care owed to pet or working animals than domesticated or farmed animals. "Animals" are defined in the Act as "vertebrate other than man", which is a wide definition and includes, for example, any type of cattle, horse, poultry, dogs, cats, ducks, sheep; in short, all farm animals. Although there is no decided case on the point, it would be sensible to assume that this includes pheasants and partridges on the rearing field and kept as layers. Although the Act helps to ensure the welfare of all types of

animals, irrespective of their purpose or species, the flipside is that gamekeepers and other owners and keepers of animals accordingly owe a greater duty of care.

S.9 contains some of the main obligations imposed by the Act and creates a wide duty of care on any person responsible for animals, even if only temporarily, to ensure the animals' welfare and includes shoot managers and gamekeepers. The Act requires anyone responsible for an animal to: provide a suitable environment for them; to provide them with a suitable diet; to ensure the animals exhibit normal behaviour patterns; and, if necessary, to house the animal either with, or indeed apart from, other animals as necessary; and to protect animals from pain, suffering, injury and disease.

It is an offence if any one of these basic elements of animal care is not present and a failure is punishable by either imprisonment up to 51 weeks, a fine or both. S.4 of the Act makes it an offence to cause

unnecessary suffering to an animal either actively or passively, regardless of whether a person actually inflicts suffering, or fails to prevent it where it is avoidable. Conviction can also lead to imprisonment up to 51 weeks and a fine of up to £20,000. In practice prison sentences are rare and fines are seldom at or towards the maximum, but the Act was intended to increase penalties for animal welfare offences and it has done so. All present indications are that organisations like the RSPCA are actively seeking chances to prosecute gamekeepers and their employers, so great care to prevent poor animal welfare must be taken.

The police and local authority can inspect premises and the local authority or the RSPCA can prosecute those accused of an offence. S.18 of the Act allows seizure of animals in distress by the relevant authority, including the police or local authority and allows seizure of animals in distress by the relevant authority, including the police or local authority and allows for the sale, gift or destruction of the animal upon application to a Magistrates' court. A local authority or the RSPCA can prosecute up to three years after an offence is committed as long as the information is laid within six months of the basic facts of the offence coming to the attention of the prosecutor.

An offender not only can have their animals seized but can be barred from owning or keeping animals in the future. S.23 allows relevant authorities to use reasonable force to gain entry if an offence is being committed. Vehicles can also be stopped and detained.

Gamekeepers and shoot managers have been concerned by the increasing attention caused by the Act and by the scope that the Act affords to officious bystanders. However, the Act has now been in force for five years and good husbandry standards in particular in

Keep all your pets in optimal conditions in case of inspection following malicious allegations.



laying pens, on the rearing field, in gun dog kennels, and in release pens have largely prevented the flood of complaints and prosecutions that many feared when the Act came into force. Continuing vigilance is needed to ensure that this trend is maintained. Owners and managers need to ensure that head and underkeepers to whom they delegate responsibility discharge it properly.

Although the Act does not apply to birds post release, it would be sensible to treat release pens as if the Act applied to them even if (as is probably the case) it does not (because if water and food were withdrawn the poults can fend for themselves and would simply do so.

Similarly, it would be sensible to make sure that pet and working animals are kept in optimal conditions. Gamekeepers live and work under a constant threat of malicious allegations. For example, a dog owner who has been asked to put his dog onto a lead may well make a baseless allegation – say of badger persecution – which will in turn result in a police raid attended by RSPCA or RSPB staff or both. No evidence of badger related offences is found but the

gamekeeper's daughter's pet rabbits have not been cleaned out for a week and the gamekeeper is prosecuted for those alleged offences for which he is in law, responsible. Far fetched? You might think so, but at least one current case is on its way to summary trial as I write this.

Increased vigilance will help to

maintain shooting's relatively good animal welfare record. Although the core activity – shooting game – is not within the scope of the Animal Welfare Act 2006, associated operations such as rearing game for release and keeping working animals such as dogs or ferrets are within it.

FURTHER INFORMATION

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Matthew Knight is the Senior Partner of Knights Solicitors. Knights Solicitors have dealt with numerous investigations and prosecutions under the Animal Welfare Act 2006. Knights Solicitors specialise in countryside and country sports litigation and have acted on behalf of gamekeepers throughout England and Wales. Tel: 01892 537311, www.knights-solicitors.co.uk

NGO FREE LEGAL HELPLINE

NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight and Richard Atkins, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales: Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.



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