



MODEL ANIMAL WELFARE ACT

– A Comprehensive Framework Law –

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Dr. iur. Sabine Lennkh
World Animal Net



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For more about the Model Animal
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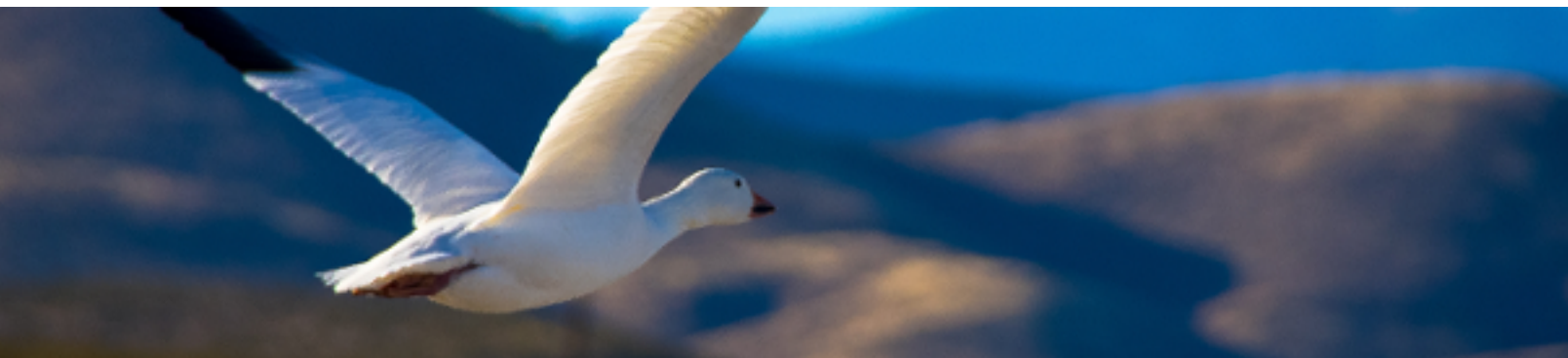
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MODEL ANIMAL WELFARE ACT

A Model Animal Welfare Act – Guiding Principles for Modern Animal Welfare Legislation, Proposal for the Wording of a New Animal Welfare Act, and Explanatory Notes

This Model Animal Welfare Act has been designed to serve as a basic template and guidance document for those interested in enacting new legislation or improving existing animal protection legislation. It has been drafted using an extensive comparative law exercise, taking into account 'best practice' in the field. Thus it is aspirational in nature; seeking to provide the best possible structures, systems and provisions to protect the welfare of animals. This may mean that countries which are just starting to establish animal welfare requirements might decide to introduce its provisions progressively. In such cases, a strategic approach (step-wise and prioritised) is recommended. This could also be considered in cases where countries already have structures, systems and provisions that have been introduced gradually over time, but remain less than optimal. The important principle is that each country works progressively towards the best possible protection for the welfare of its animal population, and indeed – as elaborated in the Three Rs approach – the eventual reduction and replacement of any uses of animals which compromise their welfare.

The purpose of this Model Animal Welfare Act is to function as an 'umbrella' or 'framework' law. Where a country has a federal system, it is recommended that it is introduced at national level (in preference to state, province or other regional levels). It represents an international unification and harmonisation of animal protection and welfare legislation, which can be adapted or modified – if the circumstances require – in Common Law as well as Civil Law systems. Elements of both legal orders have been considered and incorporated to achieve (as far as possible for the present day) a comprehensive, far-reaching and progressive approach to animal welfare legislation which takes account of the desired expedience when it comes to prevention of animal cruelty and abuse, establishing responsibility and the principle of care towards the animal, promoting the education and sensitisation of the population, as well as offering effective solutions for efficient law enforcement. This Model Act was created in order to govern people's behaviour, while other civil or religious legal systems may take a very different form (for example, be limited to 'codes' or 'edicts'). Nonetheless, elements of this Act can also be used for inspiration in creating, amending or interpreting these.

Disclaimer: The contents of this document do not constitute legal advice and are intended solely as general information and a reference. Use of this document in any manner does not at any time create an attorney-client relationship. As with any piece of model legislation, existing laws, regulations, or constitutional provisions may be impacted positively or negatively by the language in this Act, or may conflict with such provisions. Thus, to help ensure the greatest possible outcome for animals, if engaging in the actual drafting of legislation the language should be reviewed by local legal experts in consideration of the unique legal, political and social circumstances in each jurisdiction and adjusted accordingly.

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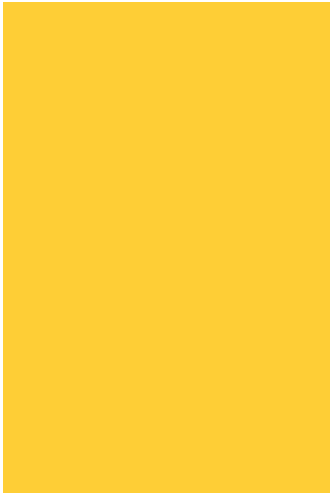


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PART 3



EXPLANATORY NOTES

To facilitate the understanding of this Act as well as for information purposes – aspects which, from the authors' point of view, may need additional clarification have been further expanded below.

CHAPTER 1: PRELIMINARY PROVISIONS

Section 1 Title, Commencement and Conflicting Provisions

As regards commencement, the Act could be brought into operation on a given date in the future, at a time which would permit the Competent Authority to begin implementation without delay. As the Act envisages progressive implementation this need not be a lengthy delay. However, where provisions will necessitate work and investment to amend animal keeping/husbandry/handling systems (such as animal housing/enclosures, fixtures/fittings or equipment), then a phase-in period can be stipulated in the relevant provision. Experience elsewhere has indicated that this must be stressed to be mandatory, with stringent express penalties for lack of compliance (otherwise animal industries will not use the period concerned to make the necessary adaptations).

Section 2 Objectives

Lays out the overall objectives of the Act. It is important that these objectives include the progressive development of humane attitudes, as well as protection of animal welfare.

Section 3 Support for Animal Welfare

Section 3 (1): Obliges the state with the mandate to promote and support animal welfare and the development of humane attitudes, ideologically as well as materially. This not only gives the government the responsibility for educating, informing and sensitising the public, but also for providing the financial resources needed to support the development of animal welfare and humane attitudes.

It is the nation's as well as its society's duty to instigate a change of attitude towards animal welfare concerns by informing and educating its people so every individual is able to take an ethical and moral decision on their relationship to their fellow creatures. The state is therefore bound to take steps to progressively counteract any deficiencies in its society's knowledge, understanding and awareness which prevent the achievement of the protection of the lives and welfare of animals.

Section 3 (2): It is envisaged that this work would include

- **Research**

Supporting and (co-)funding research in areas such as: animal welfare (for example, humane forms of animal keeping), the application of indigenous knowledge to improve animal welfare (including use of traditional/adapted breeds), alternatives to animal experiments, and the development of humane attitudes.

The establishment of a strong and dynamic institutional relationship between animal welfare scientists and regulatory agencies is an important precursor to the development of good animal welfare legislation.

- **Good Practice Development**

The collection and dissemination of animal welfare good practice: pilot projects, case studies, research and cooperation (within and outside of the country) – thus facilitating the application of nationally appropriate best practice.

- **Training and Capacity Building**

Support and funding for training and capacity building (including the provision of guidance) on animal welfare where most needed, e.g.: policy officials, enforcement officers/police officers and extension workers.

Support (including technical support/expertise and political support) would also be needed for similar training and capacity building for other relevant stakeholders, such as NGOs (including both animal welfare organisations and others working on animal issues), veterinarians (and other animal health workers, such as para-vets), animal owners/keepers and animal industries (including farmers/farmers groups, traders, transporters, handlers, and slaughterhouses).

- **Education**

The introduction of programmes at schools, further and higher education bodies (such as: veterinary universities and agricultural colleges).

- **Public Awareness**

The introduction of communication and public awareness programmes including: events and actions, use of international days (for example, World Animal Day, World Wildlife Day and World Rabies Day) and use of the mass media.

- **Animal Welfare Organisations/NGOs**

Supporting and encouraging the establishment and effective running of NGOs engaging in animal welfare matters, i.e. animal welfare and protection organisations, such as SPCAs. Also, funding (or co-funding) of services provided in connection with this Animal Welfare Act.

In the context of financial support, consideration could be given to including a financial clause in this paragraph specifying the extent of the state's obligations. Without such a specific provision, the state may not be able to limit or restrict the extent of its liability, or prioritise its engagement based on its assessment of need, relative urgency and importance, and the weighting of interests on a case-by-case basis. There will clearly be areas where the state should have primary responsibility; and others where the obligation should be passed to other stakeholders (for example, animal industries – where the costs incurred in complying with this Act should be part and parcel of their operating costs).

Section 4 Scope of Application

The aim of this Act is the protection of the lives and welfare of animals. Animal protection is aimed at safeguarding the animal and preserving it from harm, injury, and negative impacts and actions. Thus, by definition, animal protection constitutes and implements specifically targeted assistance for each and every animal. In principle, both the concepts of animal welfare and animal protection would incorporate the protection of life, and therefore the provisions of any animal welfare law should also embrace each animal as an individual regardless of the species, assumed possible inferiority as a species or the species value or detriment (for instance as a 'pest') for the human. Indeed, the major distinction between animal welfare and conservation is this very care for each individual animal, as opposed to the species.

For avoidance of doubt, we have defined an 'animal' as any mammal, bird, reptile, amphibian, fish, insect or other multi-cellular organism that is not a plant or fungi.

Whilst a number of contemporary animal welfare laws – such as the UK's Animal Welfare Act 2006 and the Swiss Tierschutzgesetz (Animal Welfare Act) of 2005 – continue to restrict their range of application to vertebrates alone, others espouse the principle of comprehensive and unconditional protection of life – as can be found, for instance, in the current and exemplary German (Tierschutzgesetz 2006) and Austrian (Tierschutzgesetz 2005) animal welfare laws (although certain sections of these laws apply only to vertebrates (Germany), and vertebrates, cephalopods and decapods (Austria)). The New Zealand Act (Animal Welfare Act 1999 – reprint 1 January 2014) also has a wide definition of 'animal'. A wider scope is favoured. Even if science has not yet demonstrated a comparable capability to suffer or feel pain in some non-vertebrates, they can experience harm and damage, their physical integrity can be impaired and their welfare could be detrimentally affected.

Another factor that is often considered in relation to the scope of an animal welfare law is whether this should cover animals living in the wild, as well as those in captivity. The inclusion of wild-living animals is favoured, as human actions and activities can affect the welfare of these animals as well as those directly under the custody or care of people.

The argument is sometimes advanced that wild animals living in wilderness areas should be left alone. Whilst we agree with this in principle, in practice the situation with wild animals is more complex. There are few truly wild habitats left in the world where animals can live their lives without being affected by human activities: Not only are animals' habitats encroached by human expansion and their lives affected by human-caused factors such as climate change; but also their territories are often entered by humans, or criss-crossed by roads, railways, farms, power lines, fences, and even country borders. These factors are also causing more wild animals to voluntarily enter into areas of human habitation, where our lives become inextricably linked and entwined, and the way in which we deal with wild animal encounters directly affects their welfare – and sometimes their lives. Hence there is an ethical imperative to include these animals in the scope of the law: The question is not so much whether an animal is living in the wild or in the custody or care of people; but rather whether there is the possibility of human actions affecting the welfare of that individual animal. This is why the definition covers all animals regardless of the animal being domestic or wild.

Where the objective is to develop a prudent and morally responsible human-animal relationship on a compassionate level (in terms of principles, education and changing attitudes) and an ethically-based system of animal welfare, which is comprehensive and future-orientated, then the basic scope of legal protection for animals should be all-embracing and cover all animals indiscriminately. Thus, the decision for this Act is to cover all non-human animals, using a wide definition of 'animal'. The decision to focus Chapters 5 and 6 (on enforcement and penalties) on sentient animals was based on reasons of practicality and the effective targeting of enforcement and prosecution resources. However, if this approach is followed, then the precautionary principle should always be applied - as science is showing that an increasing number of species of animals are sentient than was previously supposed.

Section 5 Definitions

In many legal orders it is common practice to give a catalogue of definitions to help with the application of the law and to avoid – as far as possible – any misinterpretations of the wording of the law by its users. These definitions serve as clarifications and often prove to be exceedingly valuable tools in the implementation and execution of an act. Some laws have very elaborate definitions which do not necessarily serve their intended purpose, particularly when they expound at great length on common place expressions and established terms. Preference should be given to specifying crucial essentials and substantive differences, especially when any further or different legal consequences are drawn from the distinctions: for instance, the classification of animals in certain groups such as 'wild animals', 'farmed animals' or 'animals used for work', 'companion animals' etc., or to describe in more detail a

Competent Authority or the attributes of an Animal Welfare Inspector.

The list given here should not be seen as conclusive, but is just a proposal which can be contracted or expanded according to need, requirements and desire.

Section 5 Pt. 2: It is understood that 'Animal Protection' could be implemented by practical, legal or formal measures to prevent suffering and preserve liberties, interests and/or rights.

Section 5 Pt. 4: In regard to 'Animal Shelter', the definition specifically states that this should be operated by a charitable, non-profit animal welfare organisation, both in order to distinguish a shelter from a government/municipal facility and to prevent private enterprises from using this terminology to solicit donations for private animal collections.

Section 5 Pt. 28: The definition of veterinarian can be amended to suit the prevailing system, i.e. whether veterinarians are registered, certified or licensed (or indeed any other form of authorisation) to practice as a veterinarian.

The list is not comprehensive and could for example be broadened to also incorporate some more abstract and ambiguous terms like

- *Dignity – Inherent worth of the animal that has to be respected when dealing with it. If any strain imposed on the animal cannot be justified by overriding interests, this constitutes a disregard for the animal's dignity. Strain is deemed to be present in particular if pain, suffering or harm is inflicted on the animal, if it is exposed to anxiety or humiliation, if there is major interference with its appearance or its abilities or if it is excessively instrumentalised.*

The term 'dignity' is used in the Swiss Animal Welfare Act (Tierschutzgesetz 2005).

Section 6 Fundamental Principles of Animal Welfare

The fundamental principles underlying this Act have been reiterated here in order to ensure that they are well understood and promulgated along with the law. Also, there is an obligation for these to be considered by every person using or applying the Act and by any supporting secondary legislation, i.e. regulations, as well as 'Welfare Codes' and standards. This specifically includes cases where the Act/auxiliary regulations [and, as appropriate, 'Welfare Codes', standards and guidance] are subject to interpretation.

We consider the principle of the 3Rs, which were first introduced in Russell and Burch's 1959 book 'The Principles of Humane Experimental Techniques', to be ethically sound and practical to apply. As well as being internationally recognised, these are prominently highlighted as a guiding principle in European Union (EU) Directive 2010/63/EU on the protection of animals used for scientific purposes (see: For instance, Pt. (10), (11) and (13), and Articles 4 and 13 of Directive 2010/63/EU).

It is logical to extend the 3R principles to all other areas of commercial animal use (with appropriate minor textual amendments), particularly where there is any doubt that the welfare needs of the animals can be met. Indeed, they are already being applied in many areas. For example, as regards livestock production,

- Reduction – 'Eat Less Meat' programmes, 'Meat Free' days (Mondays or Fridays) etc.;
- Refinement – Introduction of free range and organic systems; and
- Replacement – The development of cultured meat and vegetarian meat replacements.

In all cases, replacement should be the ultimate goal.

CHAPTER 2:

GENERAL PROVISIONS

Whilst the primary purpose of this Act is the development of a humane ethic and positive 'duty of care', the following provisions mainly relating to the general human-animal relationship are established at the outset to categorically prohibit certain unacceptable acts of cruelty.

Section 7 Prohibition of Cruelty to Animals

Section 7 (1): This Axiom contains the core elements of an offence against this law. It is a general clause explicitly prohibiting the infliction/causing of pain, suffering or injury on an animal, or exposing an animal to illness and disease or to fear and distress, without 'sound justification' (in terms of any overriding reason of human or animal welfare), whereby 'sound justification' means there is a factual/objective justification or a legitimate interest for the act or omission, in other words the conduct must be in regard to the reason as well as to the expedient used and the extent of the encroachment vindicated.

This norm protects all animals and makes no distinction between owned animals and animals which are not under the ambit or care of people. The tort itself can be committed by everybody. Both wilful and negligent commitments of the offence are covered.

The wording of the general prohibition clause has been carefully considered, and a decision made to express this as a prima facie prohibition against the infliction of any pain, suffering, injury or the exposure to illness and disease or to fear or distress - with the only exception to this being over-riding reasons of human or animal welfare (with 'sound justification' explained above). This is considered the only way of complying with the internationally-recognised Five Freedoms, which have been included as fundamental principles of this Act. The use of any wide qualification of the prohibition, such as 'unnecessary' or 'unavoidable' has been dismissed as such terms are frequently used to justify the breach of clauses protecting the welfare of animals when balanced against any common commercial practices or economic needs. In our view, this approach does not meet the spirit of the Five Freedoms, or the moral imperative to safeguard the welfare of each animal.

[However, if consideration is given to including any qualifying terms, then (as regards 'pain, suffering or injury') the term 'avoidable' is considered preferable to the term 'unnecessary', which has already caused many interpretive problems in practice.]

Similarly, deliberation has been given to the possibility of including the qualification 'significant' in relation to 'fear' in some of the specified provisions detailed in Section 7 (2) (*see below*), as it was recognised that in some cases fear could be fleeting and also triggered in response to an imagined threat (as well as a real threat). In such cases, it would be considered disproportionate to prosecute. However, the qualifier was omitted in order to meet the principles of the Five Freedoms. At an earlier stage the qualifier 'significant' was likewise rejected in relation to 'distress', because 'distress' was considered to have more of a fundamental impact on the welfare of the animal.

[However, if consideration is given to including any qualifying terms, in regard to 'fear' then the term 'significant' is considered preferable to either 'avoidable' or 'unnecessary', for the reasons given above. As regards 'distress' no qualifier is considered acceptable.]

Section 7 (2): Contains a list of specified general prohibitions which are not subject to negotiation. These

provisions deal with the human's incumbent responsibility for his/her actions towards the animal as a fellow being. Thus they stipulate the basic mandatory principles of human conduct towards the animal, providing the imperative guidelines which would form the basis of any further and more specific regulations [and, as appropriate, 'Welfare Codes', standards and guidance].

Still, this list of 26 gross violations is neither final nor conclusive, and can be extended by the inclusion of further serious general prohibitions if the legislator feels this would be preferable for reasons of clarity and detail. However, it should be born in mind that not all contingencies can be comprehensively covered at an early stage of law development, so it is often preferable to include wider general provisions, as opposed to a greater number of provisions containing more specific details. The aim is to provide a framework law which establishes major principles, which cover the widest possible variety of circumstances, but remains transparent and accessible.

The order of these violations should not be deemed to be indicative of the severity of the individual act or infringement, i.e. the position in the list of provisions does not reflect the severity of the breach (and should not be interpreted as the higher the more serious, and the lower the less serious the offence).

To Pt. 11: Some of the provisions in Section 7 (2) are general in nature, and will need to be more specific and tightly drafted in regulations. For example, this provision on tethering could specify the minimum length of any tether and its type (e.g. a running lead which moves freely and enables a dog to run along its length without danger of entanglement).

To Pt. 20: The Animal Welfare Committee will compile a list of traps and catching devices which are authorised, as well as define which poisons are allowable in which circumstances (positive list). When carrying out their review, they will also clarify which do not meet their criteria, and therefore should be prohibited.

To Pt. 23: This provision safeguards domestic or companion animals from abandonment in all circumstances. It also prevents the abandonment/release of non-indigenous wildlife in recognition of the fact that these are not adapted to survive in the alien environment and may adversely affect the welfare of native wildlife and the balance of nature/biodiversity. As regards indigenous wildlife, the provision against abandonment/release applies in cases where they have not been fully rehabilitated or where there are any doubts about their ability to survive. This is to prevent abandonment or irresponsible release back into the wild and/or release into unsuitable territory (for example, into alien habitat and/or in close proximity to human habitation).

'Founded reasons' (to doubt an animal's ability to survive in the territory to which it is being released) would include examples such as: the case of an injured wild animal which has not been successfully rehabilitated to adapt to a life in the wild; or a wild animal being released into unsuitable or dangerous territory.

To Pt. 26: This provision is in particular aimed at prohibiting sexual actions for the purpose of sexual gratification, perversion, recreation, entertainment or abuse. 'Unnatural offences' against animals, such as 'carnal knowledge of an animal'/sodomy/bestiality, are sometimes included in a country's Penal Code. It has been incorporated here in this framework Act, to ensure that all criminal offences against animals are covered in one law. This may necessitate further discussion, and possibly an amendment of the Penal Code.

Section 8 Prohibited Interventions Performed on Animals

Today's legal requirements in connection with interventions performed on animals have to conform to a number of important (and often recently established) norms. It is necessary that these norms are prominently reflected in any new regulations [and, as appropriate, 'Welfare Codes', standards and guidance]. The underlying principles include securing the integrity and well-being of the animal.

Clearly interventions have to be permitted for therapeutic or diagnostic purposes, where these are likely to be in the interests of the animal's health and welfare. An exception has also been permitted for expert markings/identification, where this is carried out in accordance with legal regulations. This is currently considered

acceptable for purposes of animal management and traceability, but may be superseded by more welfare-friendly methods in the future – in which case the situation can be amended by regulatory means, as opposed to an amendment of this act.

Any intervention to create a transgenic animal is categorically prohibited, as not only might this have a detrimental impact on the animal or the animal's progeny; but would also infringe the intrinsic value and integrity of the animal.

Non-therapeutic mutilations are strictly prohibited, with the exception of a limited number of specified exemptions, for example, to prevent reproduction or to indicate a neutered stray animal by the tipping of an ear (*see Section 8 (3) for details*).

In addition and as a brief summary of Section 8, three main focus points alone would justify any intervention which might cause any pain for the animal: a medical indication must be established and then the intervention may only be performed under effective anaesthesia and in compliance with the obligation that the procedure including the pre-sedation, the post-operative treatment of pain and with non-steroidal anti-inflammatory drugs must be carried out by a qualified veterinarian.

Section 9 Prohibition of Killing Animals

Section 9 (1): Initially animal protection legislation concentrated mainly on the prohibition of animal cruelty. The unjustified (please see also explanation of 'sound justification' in the Explanatory Notes to Section 7 (1) above) killing of a vertebrate was only made a punishable offence from the second half of the last century (for example, by Germany in the 70s). In principle, following an ethical approach, a comprehensive protection of life should be guaranteed for every individual animal – thus the general interdiction of killing an animal should be explicitly included in the law. However, in order to enable practical and progressive implementation this prohibition is dealt with by providing limited permission for the killing of animals, as stated in accordance with provisions stipulating an exception from this rule and offering an express authorisation, for example in connection with the killing/slaughter for the production of meat or for reasons of disease or 'pest' control. It is also worth remembering that 'sound justification' will be partly dependent on current social and cultural norms, and may therefore change over time (for example, killing of animals for food may currently be considered an accepted justification, but this may not be the case in future, for instance, when meat substitutes and test-tube grown meat are widely available and accepted).

Section 9 (2): The inclusion of a categorical ban on killing of a companion animal, and in particular of dogs and cats, does not seem superfluous within this concept. These animals have been domesticated to hold a special relationship with humans, rather than for any economic purposes. Thus no justification is able to override these strict legal rules.

Countries may consider adding other animals to this list – for example, wildlife (such as turtles or tortoises) for which there may already be a ban on killing in a wildlife law.

Section 9 (3): A categorical ban on the killing of any animal in order to provide entertainment has also been included. This is for avoidance of doubt – here again no justification is able to override these strict legal rules.

Section 9 (4): Here consideration could also be given to imposing a prohibition of killing an animal in a public place/space (like a market, a street, a square etc.) and of killing an animal in the sight or view of another conscious animal.

Section 10 Prohibition of Passing on, Selling, Offering for Sale, Purchasing or Possessing Certain Animals (Doomed Animals)

Section 10 (1): Another exception from Section 9's prohibition to kill any animal is covered in Section 10 in association with doomed animals. This is the case when the continuation of life would be connected with irremediable pain, suffering, agony, torment or distress, which would represent an unreasonable and unacceptable burden for an animal. In such cases the law requires the immediate humane killing of the animal concerned. This first sub-section prohibits the passing on, selling, offering for sale or purchase of such animals.

Section 10 (2): Further prohibition has been included covering the possession of any animal, without reasonable cause, which is suffering irremediable pain, agony, torment or distress. This is necessary for purposes of consistency of approach – to ensure that owned animals do not suffer similar unreasonable and unacceptable burdens; requiring the immediate humane killing of such animals. This can assist animal welfare in practical ways, for example, in cases where producers retain a suffering animal until it reaches its slaughter weight, or where owners or keepers of companion animals still keep them alive even though they are doomed and their welfare is seriously impaired.

Section 11 Obligation to Grant First Aid

Evidently, there are discrepancies in concepts and views regarding an obligation to extend first aid to an animal and these are to a certain degree attributable to differences between legal systems. In Austria for instance according to § 9 Tierschutzgesetz (Animal Welfare Act) of 2005 someone "who has recognisably hurt or jeopardized an animal shall, to the extent he can reasonably be expected to do so, grant the necessary first aid to the animal". The new Norwegian Animal Welfare Act of 2010 goes even further and speaks in its § 4. 'Duty to help' provision of the general public, i.e. "anybody who discovers an animal which is obviously sick, injured, or helpless, shall as far as possible help the animal", so here no perpetrator situation is required any more.

As the aspiration is to compile a forward-looking and all-embracing piece of legislation, the Norwegian approach is definitely seen as among the most progressive and considerate practices and thus preferred.

Section 11 (1): Obliges everyone, and not just those causing an accident or a hazardous situation, to render an animal first aid and care as needed, or to arrange for such first aid and care and/or diagnosis and treatment. However, this legal duty is slightly limited as it falls under the precondition that the person concerned can reasonably be expected to act and comply with this obligation.

Section 11 (2): Obliges the owner or keeper of an animal to provide a sick, injured or distressed animal with diagnosis and appropriate treatment without any delay: Where necessary, veterinary advice must be sought. For avoidance of doubt: The primary duty of care falls upon the owner or keeper of the animal. However, it is recognised that in emergency situations, as above, the owner or keeper may not be on hand or available to carry out such duties.

To Chapter 2 - Aspects still to be given further consideration:

- From the perspective of creating an objective ranking for the above mentioned provisions further consideration could be given to whether the 'Prohibition of Killing Animals' (Section 9) – as the more serious infringement – should be positioned before the 'Prohibition of Cruelty to Animals' (Section 7). The traditional classification of cruelty to animals utilised here and thus systematically located before the actual tort of killing an animal, results from legal-historical reasons; as originally animal cruelty was the primary determinant of the real legitimacy of animal protection, and thus constituted the central focus and objective of animal protection

laws. Nowadays this no longer applies; and in most of the more recent examples of animal welfare laws the unjustified killing of a vertebrate is now seen as a punishable offence.

- Another fundamental consideration is whether to include, in the appropriate position, a general paragraph giving the Minister or the Competent Authority the authorisation to adopt any regulations [supplemented as necessary by 'Welfare Codes', standards and guidance] in order to provide further interpretation or detail in support of certain provisions.

CHAPTER 3: KEEPING OF ANIMALS/CARE OF ANIMALS

Animal keeping is one of the issues which no longer focuses exclusively on the human-animal relationship, but warrants additional specified requirements for the treatment of those animals which are in the hands of humans and thus are subject to the imperative of increased consideration and care on the part of humans. It is irrelevant in this context whether the animal in question is in human custody on a permanent basis or only temporarily, as for instance in the case of animal transportation (as per the definition of 'keeper').

A. General Regulations

Section 12 Principles of Keeping Animals

Section 12 (1): The 'Principles of Keeping Animals' serve first and foremost to safeguard the animal's well-being. The most important relevant consideration, with reference to the ethical guiding principles of the law, is that the animal has to be treated and kept commensurate and appropriate to its species-specific and individual needs and requirements: meaning supplied with appropriate food/nourishment, liquid and care, as well as a suitable accommodation, sufficient room for exercise and also the possibility for social interaction - without exception. In addition, the animal shall be able to live without pain, suffering, injury, fear or distress.

To Pt. 1: This provision would cover not only the need to provide food and drink of an appropriate type and quantity, but also to ensure that it is accessible (for example, in the case of drink this should be presented in a manner that enables an animal to drink naturally e.g. from a drinking nipple for young animals) and also appropriate from a behavioural point of view (for example, permitting foraging where such behaviour is natural).

Section 12 (2): This provision will prohibit the use of housing systems that fail to comply with the animal welfare requirements detailed in Section 12 (1) and any prescribed minimum standards. It is considered good practice for the Competent Authority to establish more detailed minimum standards for housing systems, in order to equip the industry with more concrete advice and guidance in this regard (which is particularly valuable where potentially high investments are at stake). Thus Section (7) vests the Competent Authority with the necessary authorisation to provide such guidance – see below.

Section 12 (3) and (4): In accordance with agreed animal welfare principles and the latest animal welfare regulations, any permanent chaining or tethering should be completely prohibited. Any chaining or tethering should only be a temporary measure to safeguard the animal's welfare. Ideally, all chaining or tethering should be inadmissible, if other methods of restraint are available which are more welfare-friendly.

Dogs should not be tethered more than temporarily (for example to restrain them when out e.g. on a visit to the veterinarian), or on a running chain which permits free movement (a walled garden would be preferable, if available – but it is recognised that this is not always possible or practical). However, this provision would in no way prevent a dog from being walked on a leash.

Section 12 (6): An animal within the social unit of a family is often appreciated as an integral part of this emotional coexistence of spouses, children and pet. Thus there is also an increasing number of disputes over ownership of animals, particularly companion animals when marriages or partnerships break up. These have the potential to significantly affect the welfare of the animals, unless resolved in a manner which prioritises the welfare of the individual animal. Therefore custody of the animal has to be granted to the person who is willing to assume the duties of the keeper of the animal and at the same time is in the best position to ensure the well-being of the animal.

Section 12 (7): In relation to Section (2) above, in addition to providing authorisation for the Competent Authority to determine minimum standards for housing systems, this Section provides powers for the requirement of prior authorisation of systems. This is an effective method of ensuring that only systems which meet the given criteria are introduced. Such a scheme can be established for any new systems, and existing systems given a phase-out period, during which they have to be adapted or replaced if necessary in order to comply. The prior authorisation scheme prevents the (costly) acquisition of new systems which fail to comply, and are unacceptable from a welfare perspective, i.e. it provides clarity and reassurance regarding the acceptability of new housing systems before any investment is made.

[Experience shows that lack of clear specifications and guidance causes the industry to rally against change, when it has made significant investments in non-compliant systems.]

Section 13 Qualifications of the Animal Keeper

Section 13 (1): Although at times it would seem very welcome to impose stricter requirements on the animal keeper than usually legally mandatory, in general everybody has a right to keep animals provided that they are capable of complying with the law. An exception from this entitlement is made in the case that the animal keeper has been banned from keeping animals due to prior violations of the subject Act or any other legislation.

Section 13 (2): The demand for expertise in the keeping of animals is only recently being introduced into animal welfare legislation. This was also included in the OIE's General Principles (Chapter 7.1. of the Terrestrial Animal Health Code, Article 7.1.4 Pt. 11) which states that: "Owners and handlers should have sufficient skill and knowledge to ensure that animals are treated in accordance with these principles". It has long been recognised that this plays an important contribution to the well-being of animals. Clearly, a number of violations of the law could be prevented if animal keepers had greater knowledge and understanding of humane keeping, handling and care of animals in connection with their tasks and duties. Thus it is considered essential that this aspect is covered in any modern animal welfare law.

There is no general requirement within this law for a formally recognised proof of knowledge and skills, because this was not felt to be universally necessary (for example, in the case of companion animals). However, it is recognised that this provision would leave some scope for interpretation, and that this could be particularly problematic in commercial transactions (whereby an animal owner or keeper would need to prove 'due diligence' in complying with the law). Thus it is considered that this aspect would need to be realised and implemented by statutory regulations and legal obligations.

Also, initiatives supporting and promoting information, awareness and education/training are core issues to be followed up simultaneously.

Section 13 (3) and (4): It is every keeper's obligation to ensure that he/she has access to the relevant information, advice and education/training. In a commercial situation, it is envisaged that a company/employer would provide this for its employees (either by employing those already qualified, or by providing the necessary

training/qualification). The provision requiring animal owners to ensure that keepers have the necessary knowledge and required skills would cover both the situation where an animal keeping enterprise is obliged to comply with these requirements (by ensuring that employees were properly trained/qualified), and where an owner of any animal gives his/her animal into the keeping of another (for example, a transporter, slaughterhouse, boarding kennel etc.). In such circumstances, the owner would need to satisfy him/herself that the keeper in question was appropriately trained/qualified (thus safeguarding the welfare of his/her animal).

Section 13 (5): This provision will need to be tailored to local jurisdictions (as some countries may have a set age at which young people are no longer considered minors requiring guardian's consent).

Section 14 Care in Case of Illness or Injury

This injunction makes provisions against any indifference and negligence rendered towards an ill or injured animal, and wants to clearly foster a sense of responsibility and empathy for the needy and vulnerable animal. Animals which show signs of pain or distress, but are not evidently ill or injured, also need to be inspected, and the cause of their pain or distress identified. In cases where the cause of the animal's pain or distress cannot be identified and/or where the owner/keeper is not able to remedy the animal's illness or injury, then veterinary attention must be provided.

The duty to separate a sick animal is not only in the interest of its own well-being, but also serves to avoid the risk of infecting other healthy animals.

Further aspects to be stressed: Here again consideration could be given to including a paragraph in each section giving the Minister or the Competent Authority the authorisation to adopt any regulations [and, as appropriate, establish 'Welfare Codes', standards and guidance] in order to provide further interpretation or detail in support of certain provisions (or, for example, to allow for exceptions).

B. Special Regulations

Section 15 Principles of Animal Breeding

Breeding should only exculpate a selection for physically and mentally healthy animals and thus support and encourage positive and natural development, and not bioengineering in its most negative spin-offs. Consequently inhumane breeding practices or breeding for unhealthy traits are prohibited. Equally the concept of breeding and releasing transgenic animals encounters strong resistance and opposition, and legitimate concerns about unintended detrimental consequences: Thus countries should also consider a ban of these methods.

Section 15 (4): Breeding for positive welfare traits is encouraged. However, animals should not be purposefully bred for adaptation to industrial farming systems; as when systems do not provide good welfare, then it is the system that should be changed, and not the animal.

Section 16 Keeping of Animals within the Scope of Business Activities

Section 16 (1): As with some of the before mentioned activities, the keeping and breeding of animals for business purposes falls under the categories requiring an authorisation in accordance with Section 29. Each jurisdiction can decide whether this should in the form of registration or licensing. Animal shelters and wildlife rehabilitation

centres have not been included in the list because they are usually not-for-profit enterprises, and have been dealt with separately under Section 38.

Consideration would be given to excluding dog walkers and dog/cat sitters from this provision, where this is carried out as a 'pocket-money business' (like baby-sitting), and not a regular activity run on a profit-making business model (such as a kennel, dog hotel etc.).

An authorisation system enables the Competent Authority to control and restrict certain activities, as well as facilitating the monitoring of businesses. For example, if there is an overpopulation problem with dogs or cats, then they could decide to prohibit commercial breeding of these animals; or severely restrict and control the number of authorised breeders. Intensive breeding of companion animals (such as in 'puppy mills' or 'puppy farms' should be expressly prohibited, and no authorisations given for such activities).

Section 16 (2): This section covers the fundamental requirements of the authorisation process. Further requirements could be added by regulations [supplemented as necessary by 'Welfare Codes', standards and guidance], as required; see Section 16 (9).

Section 16 (3): Information which has to be kept available and has to be supplied for inspection.

Section 16 (4): This enables the authorities to know the location and contact details of all animal enterprises, so they can identify unauthorised activities; and/or advise enterprises of any new requirements or prohibitions.

Section 16 (7): When certain activities using animals are prohibited, the welfare needs of the animals should be prioritised when determining optimum transitional periods. For example, in the case of bans on circuses, a short transitional period may lead to animals' lives being taken needlessly, simply because it takes some time to successfully relocate wild animals. Whereas in other situations, such as farming situations where animals are suffering during their lifespan and are due to be killed shortly in any case, then a shorter transitional period would be preferable. Each situation should be determined on its merits, from the standpoint of animal welfare.

Section 16 (8): This provision will work to encourage keepers or producers of animals for business or economic activities to put pressure on their breeders to obtain the necessary authorisation for breeding, and thereby ensure that they are controlled by the competent authorities to ensure compliance with animal welfare requirements. It is a safeguard to protect the health and welfare of animals in the commercial supply chain.

Section 16 (9): Businesses with a high rate of unwanted animals, such as racing horses or greyhounds, should be carefully monitored and in case of any ongoing problems with surplus animals, such businesses or activities should be closed down, or at the very least only authorised if they fund shelters or sanctuaries for animals no longer used.

Section 16 (10): This provision authorises the Competent Authority to issue regulations [and, as appropriate, 'Welfare Codes', standards and guidance] covering any or all aspects of keeping or breeding animals in the scope of business or economic activities. These would include (but not be limited to)

- The power to withdraw or deny authorisations for any particular type of category of activity or any species of animal, or to restrict authorisation to stipulated species and numbers of animals (in the light of changing scientific research, needs or requirements, particular welfare concerns, or moral criteria). *[Thus ensuring that fresh authorisation would need to be obtained before any novel or different species were introduced, or any increase made to the numbers of animals - above the maximum authorised (which may affect animal welfare)]; and*
- Authority to issue detailed requirements concerning authorisation and application processes (including aspects such as record keeping; premises, facilities and accommodation; feeding and care; health and hygiene; skills/training; and humane methods for animal management activities); and even the implementation of a complete ban on the keeping of certain animal species or the production, possession, sale, offering for sale, or use of certain animal products. *[To ensure that international obligations can be met (for example, CITES restrictions); as well as ensuring that protection can be afforded to vulnerable animals including those whose conservation status or welfare needs are threatened].*

This will enable the authorities to follow the general principles established in Section 6 and, in particular,

Section 6 (4) (whereby the different purposes for which animals are kept and used must be regularly re-evaluated) and Section 6 (5) (whereby when it is found that the needs of different species cannot be met in captivity, the species must not be kept by humans).

Section 17 Sale and Trading of Animals

Section 17 (1): If the ownership of an animal is transferred to another person/enterprise it has to be ensured that the person/enterprise who will now be in charge of the animal has all the general knowledge and information to be able to care for the animal's well-being in all aspects. This provision deals with this need, and provides for evidence of compliance so the Competent Authority is able to enforce the provision.

Section 17 (2): This section is similar to Section 16 (1) but relates to the trading and sale of animals. It requires authorisation in accordance with Section 29. The list provided in Section 29 (1) is a non-exhaustive enumeration of activities which require authorisation from the authorities; and there should be discussion and consultation on which activities should be expressly included.

As has been stated in regard to Section 16 (1) above, this system provides a helpful framework for the authorities to establish and notify relevant requirements (with updates as necessary), and to carry out effective enforcement. These provisions will help to maintain permanent supervision and control on the trade of animals, which should serve to protect animals from unregulated breeding as well as from any unchecked black-market-type trading. However, the private transfer of ownership of individual animals within the regulations of the subject Act still can be undertaken without restrictions or any need for authorisation.

Sections 17 (3) - (9): The comments given under Section 16 (2) – (8) above apply, as relevant to the trading and selling of animals.

Section 17 (6): In some countries (such as the U.S.), this provision may evoke constitutional concerns, where no appeal rights are issued. This may not be the case elsewhere, but an effective appeals procedure is recommended in all cases, to avoid any unjust application of the provision.

Section 17 (10): This provision has been included to ensure that dogs and cats are not offered for sale at random sales outlets, as this would not only be detrimental to the welfare of the animals being held for sale, but could also encourage impulse buying (which frequently leads to later abandonment or neglect). Ideally other animals prone to spontaneous purchasing, such as rabbits, guinea pigs, hamsters etc., should also fall under this prohibition.

Section 17 (11): This provision specifically authorises the Competent Authority to restrict or ban the trade or sale of certain wild animals and/or wildlife products. This is to ensure that international obligations can be met (for example, CITES restrictions); as well as ensuring that protection can be afforded to vulnerable animals including those whose conservation status or welfare needs are threatened. Likewise in countries where the breeding and releasing of transgenic animals has been banned simultaneously the sale and trading of transgenic animals has to be prohibited, too.

This rule is separated from the general provision to introduce regulations [supplemented as necessary by 'Welfare Codes', standards and guidance] contained in Section 17 (12) for purposes of emphasis and expressed intent. This protection has to be read in conjunction with Section 16, which includes the power to introduce a complete ban on the keeping of certain animal species or the production, possession, sale, offering for sale, or use of certain animal products. The logic for this separation is that this section deals with trade and sale of animals; whereas Section 16 deals with the 'Keeping of Animals within the Scope of Business Activities'.

Section 17 (12): This would include the power to withdraw or deny authorisations for any particular type of trading or selling activity or any species of animal, or to restrict authorisation to stipulated species and numbers of animals (in the light of changing scientific research, needs or requirements, particular welfare concerns, or moral criteria); authority to issue detailed requirements concerning authorisation requirements and the application process (including aspects such as record keeping; premises, facilities and accommodation; feeding and care; health and

hygiene; skills/training); and even the implementation of a complete ban on the trading or selling of certain animals or animal products as well as certain methods of selling – for example, a ban on the selling of animals over the Internet is highly recommended; and many countries ban the selling of companion animals through public sales or displays (in order to prevent impulse buying and protect their welfare).

This goes wider than wildlife alone, and may be needed to protect animals other than wildlife, in relation to any threat to their welfare or conservation status (and this protection also has to be read in conjunction with the Explanatory Notes of Section 16 (9)).

Section 18 Abandoned, Stray or Lost Animals and Confiscated Animals

These provisions would cover various species of animals, and need to be carefully drafted to take account of the local situation. For example, whilst stray dogs may need to be managed in some high population urban communities (to preserve animal and human health and welfare), in other places – such as rural areas or townships, stray dogs may be welcomed and cared for communally as 'community' animals. In some countries, farmed animals may also graze communally or wander (including, for example, cows and/or horses abandoned by their previous owners or keepers).

Section 18 (1): Within the law the Competent Authority has the duty to guarantee the proper accommodation and care of any abandoned, stray or lost animal, and equally for any animal which has been confiscated or taken away by the authority, or their designated agents.

The system established by the Competent Authority would need to determine who they would designate as agents for the capture, removal and taking away of these animals. Responsibilities would need to be delineated, and appropriate conditions agreed. In this regard, the usual choice is either for municipalities/local authorities to employ their own 'Animal Wardens' for this purpose or to contract the duty to appointed 'Animal Welfare Officers', who usually work for animal welfare organisations/animal shelters and have undergone appropriate training in the capture and handling of animals.

The OIE's international standard on Stray Dog Population Control states that the Veterinary Services should play a leading role in dog population management, coordinating their activities with other competent public institutions and/or agencies. The same principle should apply to other species.

The Police Service is also frequently required to play a part, usually in relation to enforcement.

The Competent Authority would also need to determine who they would accept as an appropriately authorised person, institution or organisation to house, care for – and possibly neuter and rehome – these animals. Here again, some municipalities/local authorities have their own animal holding facilities – and there is no objection to this, providing the welfare needs of the animals can be secured. However, contracting animal welfare organisations to carry out the duty is the most common option: This can help to provide a comprehensive and welfare-friendly service, whilst also using the animal welfare organisation and its contacts to promote re-homing of unwanted animals, and responsible animal care education and awareness.

In this case the animal shelter or institution would take over this obligation as an explicitly defined own mission. Any animal shelter or institution being assigned this duty would need to comply with the legally stated prerequisites.

Section 18 (2): The animal shelter or institution should receive appropriate compensation for its services, and any related expenditure, from the authorities. The amount and form of remuneration would be agreed upon between the authorities and the animal shelter or institution. For example, a contract could be established setting out the concrete modalities, including set compensation for services in form of fixed daily fees, plus an agreement to refund any reasonable associated 'out of pocket' expenses.

The owner of the animal remains liable for repayment of all reasonable service charges and expenses incurred for

the capture and safeguarding of the animal (as a civil debt) – provided he/she can be located.

Section 18 (7): This could include any necessary further provisions in the context of abandoned, stray or lost animals and confiscated animals. These could include

- The delineation of responsibilities, including a 'duty to enforce';
- Detailed requirements concerning the designation of agents for the capture, removal and taking away of these animals, including responsibilities, powers and appropriate terms and conditions (including aspects such as authorisation/licensing, skills/training, transport and equipment, record keeping, and access for inspection checks);
- Detailed requirements concerning the authorisation/licensing of persons, institutions or organisations to house, care for – and possibly neuter, vaccinate and rehome – these animals, including responsibilities, powers and appropriate terms and conditions (including aspects such as authorisation/licensing, skills/training, premises, transport and equipment, record keeping, and access for inspection checks);
- Procedures regarding the official publication of animals found; and
- Prerequisites and conditions when ownership can be transferred to a third party (for example, neutering and checks on potential new owners).

Section 19 General and Commercial Transport of Animals

The legal regulations on animal transport do not only cover the transport itself, which includes any kind of transfer or relocation of the animal from one place to another, but also the loading and unloading of the animal.

Section 19 (1) - (5): Are general provisions, covering all live animal transport. The remainder of the provisions cover only the commercial transport of live animals (carried out in connection with any business/economic activity).

Section 19 (6) Pt. 4: Space allowances will need to be determined based on latest scientific evidence and best practice. The European Food Safety Agency (EFSA) recommends in its 'Scientific Opinion Concerning the Welfare of Animals during Transport' (EFSA Journal 2011; 9(1)), (pp 81-84), a more flexible and objective approach for the establishment of space allowance (than the current tables based on species, and using large intervals). Animal transports involve all different age/weight stages, and EFSA considers that an allometric equation would give a much more objective calculation of the space allowance to the benefit of animal welfare and, at the same time, be of great assistance for both the transporters and the controlling authorities. They also recommended that space allowance for horses should be seen in relation to area per kg rather than area per animal. Space allowances also need to be adjusted for journey times and ambient climatic conditions.

Section 19 (2) and (6) Pt. 9: Feeding and watering requirements need to be appropriate to the method of transport, as well as the species and individual animal. For example, it may not be practical to use water containers on the floor, due to potential spillages and contamination, so nipple drinkers should be provided as an alternative. In such cases, animals may need to be acclimatised to drinking in a new way before they are transported (otherwise they can die of dehydration because they are unable to use the form of water dispenser available).

Another example would be the transportation of aquatic animals, where their welfare could be impaired by excretions in their water, if they were fed shortly before or during transport.

However, in the case that practical circumstances demand certain exemptions from general provisions, then species-specific requirements must be introduced in the form of regulations, 'Welfare Codes' or standards to protect the welfare of the animals during transport. Where this cannot be achieved consideration has to be given to introducing a complete ban on this life transport.

Section 19 (6) Pt. 13: The system of prior authorisation, based on the provision of route plans submitted in advance, is a vital part of enforcement. It necessitates prior planning on the part of the transporter, and enables

the Competent Authority to arrange for veterinary inspection of 'fitness to travel' (and checks on other transport-related requirements). It can also link in with vehicle tracking and monitoring, to ensure that any maximum journey times, or staging and resting requirements, are correctly actioned. It is important that the veterinarian who is responsible for certifying 'fitness to travel' is responsible to the Competent Authority, as opposed to paid for by the transporter – to ensure fair and independent assessment.

To Pt. 16: The Competent Authority has to establish rules and regulations on ascertaining the individual animal's fitness for transport, set maximum journey times as well as regular rest intervals and feeding and watering times. It is recommended that longer journeys (over 8 hours) are banned entirely. As regards fitness to travel, detailed rules shall be produced to ensure that an animal must be fit for the intended journey before the journey starts and must remain sufficiently fit throughout the journey. This means the animal should be healthy enough to tolerate the entire journey it is about to make (including loading, unloading and any journey breaks) with no or very little adverse effect on it; the journey should not cause the animal any suffering or injury. The OIE Code sets out in detail the types of animals that are considered unfit to travel and in any case of doubt, the precautionary principle should be applied.

To Pt. 17: Provision has been made for a special license for international trade, transport and sea journeys. This enables closer supervision and control of these journeys (and also the establishment of additional safeguards or the withdrawal of categories of special licences/permits where welfare problems are encountered). In this case further requirements will need to be imposed (for example staging points, resting periods and extra feeding and watering provisions). CITES implementation may also require specific measures to protect certain species. Furthermore, consideration should be given to prohibiting the export of live animals, replacing this by trade in carcasses or meat products. This is important from two perspectives: both the avoidance of suffering during transport and the fact that a country is unable to regulate and control the treatment and killing of its animals outside its jurisdiction.

Each country will need to consider its approach, based on its own situation. For example, whilst it may appear to be in the interests of animal welfare to ban certain types of sea transport for live animals, in some island states, a sea journey may be the only way to deliver an animal to the nearest slaughterhouse.

Section 19 (7): These would include any detailed provisions and guidelines which have to be taken into account in this context of live animal transport, including

- The delineation of responsibilities, including a 'duty to enforce' and enforcement procedures and protocols to ensure effective and uniform enforcement;
- The means of transport: vessels, aeroplane, vehicle and container specifications (including fixtures and fittings, lighting, and ventilation/temperature control, stabilisation); and inspection and certification of the means of transport;
- Conditions and requirements for the registration and authorisation of businesses transporting animals;
- The training and certification of transporters, drivers and handlers of live animals;
- Additional specific requirements relating to the advance submission of journey plans and the authorisation system, including contingency plans for emergencies and requirements for journey tracking and logging;
- Detailed requirements for suitable facilities and equipment at the start and end of the journey, and at any stops for resting/staging points during the journey: for the assembly, loading, unloading and holding of animals; for the washing and disinfection of vehicles after unloading; for emergencies and veterinary inspections; and the humane killing of animals when necessary;
- The proper treatment of animals during transport and in loading and unloading: provision of adequate numbers of suitable trained and certified staff, particularly during loading and unloading; feeding, watering and rest requirements (including minimising any delays); inspection; veterinary assistance; temperature and humidity monitoring; protection from the elements; and the provision of appropriate bedding;
- Special provisions for veterinary supervision, disease control, preventative actions to minimise delays to live transport consignments, and emergency response measures;

- Specific requirements for different species, including detailed rules on fitness to travel (e.g. prohibitions on the transport of young animals (*with age recommendations for different species*), deer in velvet, shorn sheep in cold weather, or species in hot weather etc.); partitioning and mixing of animals; appropriate restraint, space and height allowances etc.;
- Any special requirements for animals transported by rail, road or sea, or over long distances;
- Provisions governing travelling times, and water, feed and rest – including the establishment of maximum journey times for the transport of live animals, particularly for journeys to slaughter; and
- Requirements for record keeping and powers of entry.

The latest animal welfare research should always be considered before establishing detailed requirements. For example, careful consideration should be given in relation to any requirements leading to journeys being broken (staging points for feeding or resting) – as unnecessary loading and unloading can exacerbate animal welfare problems unless sufficient time is given for recovery.

International requirements should also be taken into account – such as the International Air Transport Association’s (IATA) regulations, CITES requirements, and the OIE’s international animal welfare standards (transport of animals by land, sea and air; and the transport of farmed fish).

It is also important to note that the improper transport of an animal which leads to an animal’s injury or to the animal suffering or experiencing pain, fear or distress can be penalised according to Section 7 AWA, i.e. ‘Cruelty to Animals’ (note Section 7 (2) Pt. 22). This would cover cases of inappropriate transport such as, for example, transporting an animal in the trunk of a car.

Section 20 Humane Killing and Slaughter of Animals

This section covers all humane killing and slaughter, regardless of species and method. This is to ensure the application of coherent animal welfare principles across the board. However, detailed requirements will need to be elaborated to cover individual species, as they have very different needs and requirements to achieve a humane death.

Without prejudice to the prohibition of killing animals according to Section 9 and notwithstanding Section 7, Section 20 now states that the killing of an animal is only allowed if it is ensured that it is carried out in a humane way (with care, circumspection, respect, and as little negative effect on the animal as possible). The prohibition in Section 9 relates to the killing of animals without any ‘sound justification’. The production of food and other staple products is generally regarded as such a justification, (as would be, for example, the killing of animals for the purpose of ‘pest’ or disease control). However, as stated in the 2008 Policy of WSPA (now World Animal Protection), the different purposes for which animals are used must be regularly re-evaluated. For example, the killing of animals for inessential or luxury items (such as fur production or perfumes) could be viewed as ‘unsound’.

One other vital aspect of Section 20 is that killing or slaughtering any animal without prior and effective anaesthetisation or stunning before death is absolutely prohibited (see sub-section (3), as well as sub-section (5)) except in the case of emergency killing/slaughter (according to sub-section (4), (*where general principles still apply*)). This specifically excludes cases where the animal is killed instantaneously due to the fact that this can be the most humane way of ending an animal’s life (because there is no possibility of the animal regaining consciousness in pain, as there is with stunning followed by exsanguination).

Regulations/detailed provisions on humane killing and slaughter should include all relevant requirements from the OIE’s international standards, including slaughter of animals for human consumption and dog population management (which has a section on euthanasia).

Section 20 (2) and (5): The provision regarding veterinary assistants can be amended to suit the prevailing system, i.e. whether veterinary assistants are registered, certified or licensed (or indeed any other form of authorisation) to practice as such.

Section 20 (4): Detailed guidance provided on the killing of animals and farmed fish for disease control purposes likewise should incorporate the provisions of the OIE's international standards on these subjects.

Section 20 (7) and (12): A system of certification has been included for personnel as a means of ensuring that the necessary training has been undertaken, and the required degree of competence reached to safeguard animal welfare. This will enable the Competent Authority to accredit bodies to carry out the training, and to approve any training courses in advance. The requirement for certification will ensure that employers only recruit properly qualified staff, or assist personnel to train to the requisite level. The system can be amended and applied as suits local requirements e.g. licensing or registration, as opposed to certification.

Section 20 (8), (9) and (12): Detailed guidance issued on the design and construction of slaughterhouses should also include the principles given in the OIE's international standard on the slaughter of animals for human consumption. A system of licensing has been included so the Competent Authority can ensure that all new slaughterhouses are designed to meet the necessary requirements. This prevents the situation occurring when new facilities are constructed which do not meet the latest standards; and then the costs of dismantling prove exorbitant or prohibitive. A reasonable transition period can be given for existing facilities to be updated to compliant standards.

Section 20 (11): Some countries already prohibit ritual or religious slaughter, as this prolongs death and suffering. However, where religious slaughter is permitted for specified local religious communities, then there should be a provision requiring immediate post-cut stunning; or – preferably – simultaneous stunning and throat cutting. Where this is permitted, a system is recommended where prior authorisation is required to approve limited religious slaughter, providing there is the required simultaneous or post-cut stunning; and systems to ensure that the meat produced is only provided to the relevant local religious communities.

Section 20 (12): Such provisions would contain restrictions or even implementation of a complete ban on certain killing or slaughter practices (including methods of restraint, stunning/anaesthesia or killing) or detailed provisions and guidelines which have to be taken into account in this context of humane killing or slaughter of animals, including

- Requirements and specifications on the design and construction of slaughterhouses and lairages; their installations, equipment and instruments;
- Requirements for the licensing of slaughterhouses and their installations, equipment and instruments including transitional periods during which existing facilities, installations and systems may be sold and used; allocation of responsibilities for licensing; allocation of costs; and procedures for official inspections;
- The stunning, slaughtering and killing of animals, including the exsanguinations of animals;
- Requirements for different species of animal including: appropriate care and welfare, unloading, movement/handling, restraint, stunning and anaesthetisation, humane killing, slaughtering and exsanguination;
- The requirement to unload and lairage animals as soon as possible after arrival at a slaughterhouse;
- The unloading, movement and handling of animals to and in lairages and slaughterhouses, including appropriate use of animal behaviour;
- The requirement to slaughter/kill sick or injured animals humanely as soon as they arrive at the slaughterhouse (if possible at the site where they are found to be sick or injured, without being moved);
- The requirement to humanely slaughter/kill lactating animals as soon as possible after arrival at the slaughterhouse;
- The transportation and accommodation of animals within slaughterhouses;
- The restraint and containing of animals before anaesthetising, slaughtering or killing;
- Care and welfare of animals in the lairage and slaughterhouse;
- Any restrictions and special provisions covering ritual or religious slaughter, if permitted. Conditions for the establishment and authorisation of slaughterhouses dedicated to ritual/religious slaughter, measures to ensure that such meat is only consumed by the relevant religious community, and additional animal welfare safeguards for such slaughter methods where permitted;

- Restrictions on the substances/preparations which can be used for humane killing or anaesthesia, and guidance on the administration/use of permitted substances/preparations to ensure a humane death;
- Detailed provisions on the welfare of animals during killing for disease control;
- Special requirements for aquatic animals;
- The euthanasia of companion animals;
- The type of knowledge and skills required by staff, including training and expert knowledge, and details of the certification system for proof of compliance (including bodies accredited to conduct training and certification); and
- Requirements for record keeping and powers of entry.

Section 21 Principles of Animal Training

Section 21 (2): Animal trainers need to be registered by the Competent Authority in order to facilitate the notification of any particular protective provisions, and to enable appropriate enforcement inspections to be carried out. It is recommended that each country investigates its own position as regards such sports, performances and exhibitions before deciding how to approach this provision. If there are many, and many of these are small-scale, then it may be considered necessary to include a 'de minimus' provision (exempting small-scale non-commercial events from the requirement to register). However, it is recommended that all commercial events are required to be registered (and pay an appropriate registration fee). Also it is suggested that any animal welfare concerns about exempted sports, performances and exhibitions are carefully investigated, with a view to removing the exemption if they are found to adversely affect animal welfare.

Sections 21 (3) - (5): If there is any doubt that the training of certain species; use of substances and drugs; or the use of training devices, aids or tools could contravene the provisions of this Act or impair animal welfare, then they should be prohibited. The provision to restrict use should only be applied in cases where there are no foreseen adverse impacts on animal welfare (but where it is considered that such use should be controlled and monitored as a precautionary measure).

Section 21 (3): Careful consideration should be given to the types of animal training that will be permitted. For example, the Competent Authority may decide to prohibit all training of wild animals, because this would be contrary to their natural species-specific behaviour and/or because such training would be likely to impair the animal's welfare. But the Competent Authority might wish to consider permitting some degree of positive training of some wild animals where in the interest of the welfare of the individual animal (for example, to allow for safe handling for the purposes of veterinary inspection and/or treatment).

However, the Competent Authority may consider prohibiting all training (or indeed use) for itinerant animal shows in general because the transport and confinement inherent in this form of entertainment are likely to compromise animal welfare.

Section 21 (4): This provision requires the Competent Authority to bring forward measures to prohibit [or restrict] the use of any substances or drugs to enhance an animal's performance or modify its behaviour because such substances/drugs can impair animal welfare. For example, drugs can mask pain – which can have the effect of making an animal perform beyond its natural limitations and/or despite injury or damage.

Section 21 (5): This provision requires the Competent Authority to bring forward measures to prohibit [or restrict] the use of certain technical training devices, aids or tools which could impair animal welfare. It is recognised that not all training devices, aids or tools would be detrimental to animal welfare. However, some clearly are – such as those employing electric shocks, or otherwise designed to produce pain (such as whips, spike collars, coral type pronged collars etc.).

Section 21 (6): This provision seeks to prohibit any use of a live animal to train a dog or other animals in ways that affect the welfare of the animal or the dog or other animals. However, this does not rule out training a dog for

herding or guarding.

Section 21 (7): Unannounced inspections are necessary, otherwise training methods cannot be effectively checked.

Section 21 (8): These would contain restrictions or detailed provisions and guidelines which have to be taken into account in this context of animal training, including

- Conditions and requirements for the registration and authorisation of persons and/or businesses training any animal for competitive or public sports, performance or exhibition.
- The type of knowledge and skills required by persons training animals for competitive or public sports, performance or exhibition, including details of bodies accredited to conduct such training. *[This could be included under the registration procedure envisaged in Section 21 (2) above. However, a distinct provision is recommended in case the Competent Authority decides to restrict registration to businesses, whilst introducing a separate system of skills accreditation/certification for each individual animal trainer. This provision also authorises the Competent Authority to appoint accredited training providers.]*
- Prohibitions and restrictions on the training of certain species of animals and/or the training of animals for certain types of sports, performance or exhibition.
- Detailed provisions on the welfare of animals during training.
- Listing prohibited technical devices, aids or tools for the training of animals for sports, performance or exhibition.
- Requirements for record keeping and powers of entry.

CHAPTER 4: SPECIFIC CATEGORIES OF ANIMAL USE

Section 22 Companion Animals (Pet Animals)

Section 22 (1): Education and awareness programmes shall be designed to deter impulse buying of companion animals, encourage spaying and neutering of dogs and cats, prevent straying, and ensure that keepers understand how to care for their animals in order to safeguard their health and welfare.

Section 22 (2): The Competent Authority must monitor companion animal ownership and any problems arising to ensure that management measures are introduced in a timely and effective manner. The form of registration and identification implemented should be effective and suitable for the country's socio-cultural environment and stage of technological development. For example, microchipping is an excellent technology for identification, but is only practical where equipment such as microchip readers can be rolled out nationally. In other cases, low tech solutions such as tattooing may be more practical.

Money from registration fees must be spent on animal welfare programmes for companion animals, including responsible ownership education and awareness.

Section 22 (3): Consideration should be given to making an annual visit to a veterinarian compulsory, either for an annual vaccination (where disease risk requires) or for an annual health check. However, this will need to be reviewed for each country individually, depending on criteria such as disease risk, animal health issues and availability and accessibility of veterinary services.

Section 22 (4): Free or low cost spay-neuter services may be an expensive endeavour initially, but on the other hand constitute an effective incentive for the owner to have their animals spayed/neutered and at the same time the decreases in the stray animal population that result will be favourable to any (developing) country. It will aid tourism to not have packs of roaming dogs on the streets, for instance. Collaboration with private sector veterinarians (e.g. in programmes to spay-neuter and vaccinate stray dogs) and NGOs (animal welfare organisations) is a common feature of dog management programmes. Indeed, the Competent Authority (or local authority) may invite tenders for companion animal stray management services, including animal warden/animal welfare officer services. In such cases, tenders and contracts must be carefully framed to ensure that the animals' welfare is protected.

Section 22 (6): Trap, Neuter, Release (TNR) programmes have been found to be an effective population control method for feral cats and dogs. They have also been used to control wild rabbit populations, and there has been interest in trialling programmes on other species (particularly introduced non-indigenous species). It is important that legislation is implemented to facilitate their use where they have been found to be effective and in the animals' welfare interests, ensuring that there are no legal barriers (e.g. no possibility of prosecution for capturing/releasing wild animals in such cases). However, work is ongoing to develop non-surgical neutering methods, and these may provide a more humane alternative (particularly for wild animals, where capture and handling can be stressful).

Section 22 (7) and (8): Some countries may decide to have an explicit prohibition on killing healthy animals, in which case these provisions will need to be amended accordingly. However, this may not be feasible in other countries, (for example, where there is a serious stray control problem and no extensive shelter network, or where spay/neuter-release for both dogs and cats is not considered acceptable). It is for each country to decide on an appropriate approach for its own circumstances.

Section 22 (9): The approach of producing a positive list of species that may be kept as companion animals is preferred to the prohibition of certain species. Such a list automatically prohibits all others, and thus is less likely to become outdated and inadequate. The assessment of which species should be covered on a positive list would include

- Animal welfare criteria;
- Degree of domestication;
- Adaptation to human contact/proximity;
- Risk of zoonotic disease;
- Risk of injury to humans; and
- Conservation aspects (e.g. risk of capture and depletion of wild populations).

There could be an initial list for mammals, followed by lists for reptiles and birds. Consideration would need to be given as to whether existing companion animals of other species would be registered and allowed to remain with their keeper whilst still alive, or confiscated (which may give rise to logistical and ethical issues).

Considerations in this regard are that wild or exotic animals, such as primates, reptiles, ornamental fish and wild birds are not suited to life in captivity. It is impossible to recreate the environment and climate to meet their needs in captivity. Also, most individuals have neither the finances nor the experience to care for them properly (and it has been estimated that 90% are dead within the first two years of captivity). Many wild animals forced into a domestic situation cause injury to humans, especially children. Others, if released into the environment, can cause irreversible and costly damage to the ecosystem.

Section 22 (10): These provisions could cover all areas of companion animal ownership and stray management. These would incorporate restrictions or detailed provisions, and guidelines for the prevention of companion animal problems, population control and stray dog management including

- The introduction of requirements for the enclosure of dogs and other companion animals, and leash laws for animals taken outside the home, in cases where there are animal welfare, health or safety concerns, such as in busy urban areas.
- The introduction of control measures for any dogs which may be dangerous to people or other animals. These shall not be breed-specific, and shall not be detrimental to animal welfare.
- The introduction of environmental controls to restrict available food sources (a recognised component of stray management). In particular, food sources which attract and maintain strays which can be found around abattoirs, rubbish dumps, dead stock facilities, restaurant and hotel yards etc.
- The allocation of duties and responsibilities to local authorities, including the establishment of a network of facilities for housing and re-homing stray companion animals, and the development of constructive working relations with animal welfare organisations.
- Detailed provisions on population control measures, including the aspects discussed in the notes in Section 22 (6) above.

To elaborate some of the above mentioned aspects in more detail:

There may for instance be a need for provisions concerning the enclosure of dogs and other companion animals within the home boundary in busy urban areas (where animals could be in danger if they stray and/or cause road traffic accidents). There may also be a need to introduce local leash laws, for similar reasons. However, the requirements of Section 12 (4) would also need to be taken into account in any such provisions.

The introduction of control measures for any dogs which may be dangerous to humans or other animals shall not be breed-specific, and should be carefully designed to ensure that such provisions are not more stringent than necessary, or detrimental to animal welfare. For example, legislation could make owners responsible for ensuring that any dogs which exhibit aggressive or potentially dangerous behaviour under any circumstances (however extreme) should be securely kept in the home enclosure and/or be muzzled at all times in public places. There could also be compulsory neutering, and a prohibition against breeding, for any dogs which have aggressive or potentially dangerous traits.

Breed-specific dog bans are to be avoided. For example, a country may not ban all pit bull terriers wholesale. There are several reasons for this: there is no hard and fast rule governing which breeds of dogs are dangerous and which are not; such a rule would make owning these dogs more palatable to people who should not own them, simply because they are forbidden; the rule would simply lead to the indoctrination of another breed as the 'rebellious' type of dog to own; and this rule would lead to the euthanasia of many dogs based solely on breed, and not on temperament.

Section 23 Animals Kept for Farming Purposes

Section 23 (1): The Competent Authority should publish minimum standards as guidelines to producers, importers and users of housing systems. Without such guidance, these businesses will find it difficult to assess potential compliance. However, as these standards only represent a bare minimum, and are likely to be improved and updated over time, businesses should be advised not to take these minimum standards as acceptable norms, but to produce, import and use higher-welfare systems.

Section 23 (3): The cost of this authorisation procedure shall be borne by the applicant. Housing systems and installations shall only be approved/licensed by the Competent Authority if all stipulated requirements are adhered to, and it can be demonstrated that such a system or installation will meet the welfare requirements of the animals. A condition to include CCTV in modern intensive systems is included to ensure that management and enforcement officers can effectively monitor and inspect the animals therein: The costs for this would be a small proportion of the overall cost of the system, and be far outweighed by the potential benefits.

Section 23 (4): There must be provision for an authorisation/license to be retroactively revoked if any of the particulars furnished in the application are subsequently found to be false; or if welfare problems become apparent in the ensuing use that could not be overcome by adjustments or alterations. In cases where scientific advances later prove that licensed systems are detrimentally impacting animal welfare, then it may be necessary to either compensate the business involved, or to permit a phase-in period for adjustments or system replacement.

Section 23 (6): In some very extensive systems it may not be feasible for animals to be inspected more frequently than once each day. However, in other cases it may be indicated to inspect more than once per day. In cases where more frequent inspections are required, these should be stipulated in regulations [and, as appropriate, 'Welfare Codes', standards and guidance].

Section 23 (8): This provision is considered desirable, based on the potential for animal suffering in cases of non-compliance. However, the feasibility of this will depend on the capacity of the veterinary services/competent authority.

Section 23 (9): It is important that any systems which are known to be inherently bad for animal welfare are listed and prohibited accordingly. In such cases, rules concerning the design, operation and use of alternative production systems should also be detailed. However, it may prove necessary to introduce phase-out periods in cases where significant investment and work is needed to change to more welfare-friendly systems. In all cases, phase-in periods should be kept to a minimum, and not subsequently extended, as animal welfare is compromised in the interim.

Section 23 (10): Prohibitions could be considered for (but not limited to) farming for fur, feathers, down and

gourmet foods meeting these criteria.

Section 23 (11): Individual countries may have other farming practices which are detrimental to animal welfare and thus need to be prohibited in addition. In cases where the practices indicated are not currently used in a particular country, then it is recommended to introduce an immediate ban to prevent their introduction. This is necessary because these practices are increasingly being introduced and extended to countries where they are not traditionally used. Forced molting is a practice used by the commercial egg industry to induce a flock of hens to molt simultaneously, usually by withdrawing food (in order to prolong or spur egg laying).

Cases where calves have not been provided with a specified minimum daily ration of fibrous food have been used in veal production (particularly for the production of white veal), thus the need for a requirement for them to be fed fibre 'in sufficient quantity' for health, growth and vigour.

Section 23 (12): As with companion animals (Section 22 (8)), the approach of producing a positive list of species that may be kept for farming purposes is preferred to the prohibition of certain species. Such a list automatically prohibits all others, and thus is less likely to become outdated and inadequate. The assessment of which species should be included on a positive list would include

- Animal welfare criteria;
- Degree of domestication;
- Adaptation to human contact/proximity;
- Risk of zoonotic disease;
- Risk of injury to humans; and
- Conservation aspects (e.g. risk of capture and depletion of wild populations).

Particular consideration should be given to the introduction of non-domesticated species for farming purposes. The general rule should be that in any cases of doubt animal species should be excluded from the list of species that are permitted to be kept for farming purposes. Particular concerns are when animals cannot be handled and provided with the necessary care and veterinary attention; cannot be consistently killed humanely; where captivity causes stress and/or disruption of usual social interactions and species-specific behaviours; when captivity may adversely impact upon wild populations or ecosystems; or where they may be a health or safety risk to humans or other animals.

Section 23 (13): These would cover all aspects of the welfare of animals kept for farming purposes, and would incorporate restrictions, prohibitions, and detailed provisions and guidelines for the welfare of animals, including fish and birds, kept for farming purposes.

Farmed fish are often forgotten, but their welfare equally needs to be safeguarded. In particular, fish should not be confined in a way that exposes them to suffering. Factors such as stocking density, water quality and direction of flow should be regulated to protect the welfare of individual fish. The handling, transport and killing of farmed fish should comply with general humane principles. It should be prohibited for fish farms to allow anglers into farms to play the fish and then throw them back. It should also be prohibited to hang living fish up (e.g. from a stick, rope, angle etc. that has been threaded through the fish body) or to keep living fish out of water for periods that would compromise their welfare (e.g. prior to killing).

Section 24 Animals Used for Experimentation (including Science, Research, Testing and Education)

The subject of animal experimentation and of tests on live animals is a very sensitive and complex issue; and one which requires a variety of perspectives to be considered – ranging from scientific to ethical; and often involving a balance between competing interests. It is never easy to balance the animal's need for protection and safeguarding from pain, suffering and distress on the one hand, and humankind's perception of animal experiments being necessary for progress in certain fields of research on the other. However, there are now agreed

international principles governing animal experimentation, including an OIE international standard on 'The Use of Animals in Research and Education'. There is also a growing consensus that it is not just or ethical to use animals for purposes which are not vitally important to humans, animals or the environment.

In this Act, preference has been given to the inclusion of some of the most important fundamental provisions into the Animal Welfare Act itself, together with a controlling framework based on best practice. This will enable the Competent Authority to control and monitor animal experimentation, and the breeding of animals for experimentation, on its territory, whilst preparing to introduce detailed regulations [supplemented as necessary by 'Welfare Codes', standards and guidance].

Far more detailed requirements will need to be elaborated in supporting regulations [and, as appropriate, 'Welfare Codes', standards and guidance]. There is much useful information in the OIE's International Standard. There are also many detailed regulations from other countries and the EU that could serve as guidance in this regard. However, these will need to be relevant to the country and its own situation.

In some countries, animal experimentation is not seen to be a pressing animal welfare concern, simply because it is not widely practiced. However, experience has shown that animal experimentation can move from highly regulated environments towards non-regulated or lower-regulated, low-cost countries. Thus, it is vital to establish these controls before there has been industry development (possibly with investment in facilities, installations and systems which are detrimental to animal welfare).

Prominence has been given to the internationally accepted 3Rs (see Section 24 (5) as well as Section 6 (3) 2.). However, these need to be applied stringently and systematically in order to be effective. In particular, there is a hierarchy of application, whereby replacement should be the aim; followed by reduction where this has not been considered feasible; and refinement always applied to any animal experiments (refinement having a multi-faceted approach designed to minimise impacts on animal welfare).

The 3Rs principle should also be fully taken into account in the authorisation and ethical review processes for animal experiments. In particular, no authorisation should be given where alternative methods are available or where the use in question cannot be fully justified. The use of alternatives and prohibitions in other countries should be studied and taken into account before a decision is taken, and every effort made to ensure the early national adoption of all alternatives to prevent unnecessary animal use. (For example, the use of animals for medical training: As, for instance, trauma training which is not considered necessary or ethical, as human-based model simulators can be used (and are in some countries).

Section 24 (3): The Competent Authority should consider requiring the application to be accompanied by a redacted copy for publication by the Competent Authority, identical in content except for the elimination of personal information, locations or commercially confidential information. This approach facilitates publication of experiment licences after the usual Freedom of Information measures (whilst protecting individual and organisational identities and commercially sensitive information).

Section 24 (18): This provision would cover educational uses such as the keeping of animals as school 'pets', and the use of animals for school demonstrations and educational visits. Whilst such uses are well-meaning, they might have a poor educational impact, whilst compromising the animals' welfare. There are particular problems during school holidays, when classroom 'pets' are taken home by pupils (who can quickly lose interest), and their welfare can no longer be overseen by staff.

Section 24 (19): The detailed rules and regulations governing animal experimentation. These shall include, but not be restricted to

- Conditions, requirements and procedures for the authorisation of animal experiments and granting of personal and project licenses; the licensing of breeding centres for experimental animals; and the licensing of premises where animal experimentation may be conducted. A licensing system has been used as this is common for controlling animal experimentation, but it is possible to amend this to another form of authorisation, such as

certification or registration, if this is appropriate to the system prevailing in the jurisdiction.

- Detailed requirements for the ethical and scientific review of animal experiments before authorisation is granted. Ethical and scientific review shall be carried out locally (at the authorised premises) before an application for authorisation is submitted, and include: analysis of the need for the experiment, its scientific premise and soundness, ethical aspects, animal welfare impact, and whether it could entail duplication. After submission, it shall be thoroughly examined by the Animal Experimentation Sub-Committee referred to in Article 35 (4), which may call upon additional expertise and advice as necessary.
- Minimum standards for the premises where animal experiments may be conducted, including: animal facilities and accommodation; installations; equipment; inspection systems; and other systems used in carrying out experiments on animals.
- Minimum standards for facilities where experimental animals may be bred, including: animal facilities and accommodation; installations; equipment; and inspection systems.
- Detailed requirements for the accommodation, care and supervision of animals bred or used for experimentation, including: animal welfare and veterinary care (including pain management; anaesthesia and analgesia; and humane endpoints); housing; environmental enrichment; exercise and social interaction.
- Detailed requirements on qualifications, training and responsibilities for the named person responsible for experiments; the veterinary supervisor; and any other roles relating to the care and supervision of animals bred or used for experimentation.

In addition to those rules and regulations regarding animal experimentation itself, further provisions should be implemented to prohibit the funding and/or commissioning of research to be carried out in other countries where it would be prohibited by this Act.

Section 25 Wildlife and Animals Kept in Zoos/Aquaria

Historically, legal regimes dealing with wildlife have been associated with particular socio-economic structures (particularly land-owning classes seeking to create and protect rights over the wildlife present on their land). Wildlife was treated by the law as an economic or leisure resource, or as something to be controlled, rather than something worthy of protection in its own right. Animal welfare was hardly a consideration in these times, and most protective provisions were designed to protect endangered species – although there were some minor provisions aimed at curtailing the worst excesses of cruelty (for example, provisions such as a requirement to kill severely injured animals; and prohibitions such as shooting an animal from an aircraft, vehicle or mechanically propelled craft).

The utilitarian status of wildlife within the legislative regime began to change towards the latter half of the nineteenth century. However, wildlife welfare still needs to be given greater consideration; particularly to take better account of the sentience of wildlife and the responsibilities of humans to captive wildlife.

It is important that legislation protecting the welfare of wild animals reflects and is consistent with general animal welfare principles. However, the special circumstances pertaining to wildlife (both in nature and in captivity) will naturally need to be considered, and the optimum approach taken for their welfare. Thus, this Act has focused on the approach that wild animals living in the wild with no 'owner' should be guaranteed a life as undisturbed as possible in their natural habitat, with optimal freedom. A similar principle should ideally be applied also to wild animals in protected areas.

As stated in the preamble to the Bern Convention (Convention on the Conservation of European Wildlife and Natural Habitats): "Wild flora and fauna constitute a natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that needs to be preserved and handed on to future generations." Wildlife is part of a valuable biodiversity and natural heritage which needs to be protected. Wild animals are also fellow sentient animals. Thus, there is a human obligation to ensure that they do not suffer or perish at the hands of humans (or through human activity).

However, there is now very little wilderness area left, so the creation and development of protected areas is encouraged.

Nevertheless, some countries do still permit hunting in nature and/or in protected areas. If this is the case, then additional controls will be needed to protect the welfare of the animals (as well as the usual conservation controls, which are designed to protect species and numbers of animals, rather than the welfare of individual animals). These would include aspects such as: prohibition on hunting during mating and breeding and rearing seasons (not just for reasons of stock replenishment, but also for welfare reasons such as social hierarchies, family units, care of young wildlife etc.). The provisions on hunting proficiency certificates and prohibition of cruel killing methods are included as additional welfare safeguards.

Section 25 (1) and (2): Human activities, development and expansion are affecting wildlife habitats (their climate) and their welfare – and these side-effects of human activity are frequently not recognised until it is too late for the animals. Thus a system of animal welfare impact assessment is recommended (as is already used for environmental impacts, and for animal welfare in the EU) to forewarn and permit preventative action. Habitat encroachment can include wildlife corridors, buffer zones and migratory routes. Human activities can include use of chemicals, such as fertilizers and pesticides, which can impact wildlife adversely.

Each country should determine its own minimum standards for these animal welfare impact assessments, using available 'best practice'. Capacity building will be needed to ensure that these assessments are carried out effectively and in regular intervals; and wildlife rangers will need to be trained in animal welfare to ensure that they can guard against animal welfare infringements in the wild or protected areas.

Section 25 (4): As regards population control measures, non-lethal measures such as fertility control are continually being developed and refined. These should always be used where feasible, as opposed to lethal control measures.

Section 25 (7): Legal provisions may ban the keeping of some species of animals (negative or black list) or only allow some species to be kept (positive or white list). As this is a model law, a positive list system has been adopted. Whilst the negative list is the most commonly used system to regulate the keeping of wild animals, the use of positive lists is gaining support, as this is the most precautionary approach. On a negative list system, the default is that any animal not on a negative list is allowed to be kept, requiring the list to be quite long to ensure that animals with welfare, health, invasive or conservation risks are not kept. In addition it might not be adequate to address emerging trends and threats from the keeping of new exotic animals. Indeed, the process to add new species to the list is often slow and burdensome and the content of the list will thus lag behind the latest trends in the trade and keeping of exotic animals.

The objectively assessed criteria for listing or de-listing should include

- Animal welfare;
- Risk of zoonotic disease;
- Risk of injury to humans; and
- Pet exaptation (the ability to live in close proximity to humans).

A review of the positive list is intended to remove any species from the list where scientific advances or practical experience has shown that these cannot be kept without welfare problems. Great caution should be exercised in adding any species to this white list that have not previously been kept in captivity. This should only be done in case of a proven need, i.e. in cases where it is considered necessary for animal/human survival and where it can be proven beyond any reasonable doubt that the welfare needs of the animals can indeed be met in captivity. Keeping can also require authorisation in the form of a license.

Section 25 (8) and (9): A system of licensing has been suggested for hunting premises. However, it is possible to amend this to another form of authorisation (e.g. registration or certification), if appropriate to the system of the jurisdiction.

Section 25 (8) & (15): In no case should authorisation be given to any 'canned hunting' operations, as these are considered both unethical and detrimental to animal welfare. Ideally, all forms of non-conservation culling/hunting should be prohibited.

Section 25 (9): It is considered prudent to deny hunting licenses to individuals who are likely to pose a risk to animal welfare (for example, through demonstrated lack of concern for the welfare of animals, or general tendencies towards violent or aggressive behaviour). However, this has been restricted to any person who has been convicted (for violating any animal protection provision, or for any act of violence or aggression against humans) in order to ensure that there is proof in terms of prior conviction. Countries may also decide to introduce administrative measures to protect against potential human rights violations, by giving an individual the opportunity to prove that he or she is entitled and deserving of a certificate despite any prior conviction. If this approach is adopted, such procedures will need to be carried out vigilantly to prevent any potential risks to animal welfare.

Section 25 (10), (11) and (12): Hunting using inhumane methods should not be permitted. Every country will need to consider the methods which are currently being used, and introduce specific bans on any which are found to be inhumane (or, using the precautionary principle, where any doubt remains as to whether they are humane).

Section 25 (12): Certain methods known to be inhumane are prohibited from the outset. In other cases, the Animal Welfare Committee shall review methods of capture, entrapment and killing of animal, following which they will present a list of prohibited methods. In these cases, there will be a ban not only on their use, but also on the sale, offering for sale, advertising, import and export of unauthorised catching, trapping or killing devices and poisons.

Section 25 (15): A ban on such uses is strongly recommended because they cannot justify the inevitable welfare compromises. Should governments take a decision to permit any of these uses, then they should establish a system of licensing, with effective enforcement and monitoring, in order to regularly review and re-evaluate such uses.

Section 25 (16): Where wild animals are causing problems for local communities (e.g. those living adjacent to nature or protected areas), work should first be carried out together with local communities to try to mediate a solution – including education and awareness, and the development of targeted compensation schemes. There are also other cases, which involve wild animals moving into human domain, but which are commonly dealt with through 'pest control' measures (sometimes home solutions, and sometimes through 'pest control' professionals). We do not consider the term 'pest control' to be an appropriate or desirable descriptor, as it is often human activities that are problematic, as opposed to the animals. However, as this is common terminology, we have used it for avoidance of doubt, but placed it in quotation marks. We also consider that animal welfare principles should be applied consistently, regardless of whether such animals are considered a nuisance from a human perspective. A system of licensing has been suggested for 'pest control' businesses. However, it is possible to amend this to another form of authorisation (e.g. registration or certification), if appropriate to the system of the jurisdiction.

Section 25 (17): It should be noted that Education and Entertainment are not considered proven benefits for the purpose of this Act.

Section 25 (19): The conservation value of many zoological gardens (zoos and aquaria) is now being questioned, as the most valuable conservation programmes are carried out in situ. Breeding programmes only contribute to conservation efforts if the animals bred can be successfully reintroduced into sustainable natural wildlife habitats. The educational value of many zoos has also been questioned, as education based on captive wild animals which cannot live their lives free from human interference and compromised welfare is not considered positive. The welfare of many animals in zoos and aquaria is impaired due to factors such as: unsuitable enclosures, management practices, and social groupings. Therefore, great care and consideration should be given to the authorisation of any new zoos/aquaria. Where a decision is taken not to authorise an existing zoo, or to rescind the authorisation for an existing zoo/aquaria, then a period of grace may need to be given in order to rehome the remaining animals or to upgrade their facilities and care. Every effort should be made to ensure that displaced

animals are humanely rehomed.

Section 25 (23): These could include any measures in the context of wildlife and zoos/aquaria, and include aspects such as

- Establishing the system and requirements for animal welfare impact assessments;
- The prerequisites and minimum requirements for the keeping of wild animals in captivity, taking into consideration both the objectives and other provisions of the subject Act, as well as the recognised state of scientific knowledge;
- Rules and conditions covering the keeping of wild animals in captivity;
- Special conditions and requirements for the application for, and issue of, hunting licenses;
- Special conditions and requirements for the application for, and issue of, hunting proficiency certificates and advanced hunting proficiency certificates; including eligibility criteria;
- Conditions and requirements concerning the advertising, naming and branding of any premises and businesses keeping wild animals to ensure that customers, tourists and the public are not misled about the nature of the business or their credentials;
- Requirements for record keeping and powers of entry and access to records;
- Prohibitions, limitations and controls on the trade in wild animals and their body parts or derived products; including prohibitions on the export of live wild animals for purposes other than over-riding animal welfare reasons; and
- Deterring and punishing such offences as illegal hunting, illegal trafficking, illegal trade, illegal possession, illegal processing and illegal consumption. In particular, specific provisions against reckless commission, to ensure that particular problems are identified and individuals made aware of the possibility of potential adverse consequences arising from their actions.

As regards 'reckless commission', requisite measures may include prohibiting

- All forms of deliberate capture or killing of wild animals (or specified species of wild animals) in the wild or protected areas;
- Deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- Deliberate destruction or taking of eggs from the wild; and
- Deterioration or destruction of breeding sites or resting places.

However, there will likely be other cases of 'reckless commission' in each country, which necessitate specific mention.

Wildlife conservation and hunting laws will need to be reviewed to ensure consistency with the agreed animal welfare principles.

In addition, it is important that a country makes use of ancillary legislation dealing with finance, money laundering and tax, to deter/punish those who attempt to benefit from the proceeds of wildlife crime.

Section 26 Animals Used for Work

It will be a requirement for a business using animals for working purposes to obtain authorisation in accordance with Section 16 and Section 29 of the Act. However, some jurisdictions may wish to impose a 'de minimus' on this provision (for example, restricting it to a minimum number of animals used), in order to make it less burdensome administratively and exempt individuals using their animal for subsistence income generation from the need to obtain authorisation. This would in no way exempt such animal users from compliance with the provisions of this Act.

Section 26 (4): Adequate shade or shelter will depend on the climate and any available natural shade and shelter.

In warm weather, measures to prevent heat stress would include: shady resting places, free access to drinking water, pouring water over animals (where appropriate), less work and more frequent resting periods. Where the weather is such that animals cannot be worked without discomfort or welfare problems, then they should not be worked at such times or under those specific conditions. Heat stress could be defined or cross-referenced with the OIE Chapter on Working Equids.

Section 27 Animals Used for Sports, Leisure and Entertainment

These provisions should be considered in terms of the fact that the use of animals for sports, leisure and entertainment can create significant human and animal welfare problems; as well as conservation problems in the case of wild animals. There can also be significant public safety issues surrounding the use of wild animals (including to animal trainers, children, and the public at large). The industry covers an enormous range of uses of animals and is probably also the least 'justifiable' form of animal use. These also have a negative educational impact on children, as regards respect and protection of sentient beings. Thus there are serious ethical and welfare considerations in this category of animal use.

This category of animal use also incorporates welfare considerations in respect of training (Section 21); keeping (Sections 12 and 13); disposal of animals when they are no longer able to perform (Sections 9, 10 and 20); and – in the case of itinerant sports, leisure or entertainments – transport (Section 19). As regards training, the techniques, devices, or agents used to make the animals perform are many times abusive, cruel, or stressful; causing suffering to the animals and creating a greater threat to the public.

Many of the associated welfare problems are not evident in the performance/event itself, which is the reason why welfare monitoring is suggested (for example, the disposal of animals no longer able to perform has been found to be a significant problem).

Section 27 (1) and (2): Careful consideration should be given to how best to enact this (and subsequent) provisions. Much will depend on the existing situation in the country, necessitating research and analysis. For example, some countries have a strong culture of animal use in entertainment, whereas others (particularly countries with their own wildlife populations in the wild, or nature reserves) have not taken this route. In general, the precautionary principle is advised, with uses being prohibited where it cannot be proven that the welfare needs of the animals can be secured – particularly given the fact that this use is not for purposes more essential than human entertainment.

Section 27 (3): The use of wild animals in such businesses involves significant welfare and conservation problems (for example, itinerant circuses cannot provide for the physiological and behavioural needs of wild animals, and have been involved in wildlife trade infringements). Many forward-looking countries thus prohibit the use of wild animals in this way. [For example, bans and phasing out of circuses and dolphinariums are increasingly common.] Others prohibit the introduction of any new businesses, and closely regulate and monitor existing ones.

Section 27 (7): A prohibition against bullfights and rodeos is recommended even in cases where such events do not take place in a country – as problems have occurred when promoters try to stage such events in different countries, and countries find they do not have the legislative backing required to prevent this from happening.

Section 27 (8): There are various systems and guidelines covering the use of animals in filming.

Section 27 (10): This provision will enable prohibitions or regulations to be extended in the event of new evidence or societal/ethical considerations. In some cases, new forms of animal entertainment may be devised, which would best be prohibited before they can gain popularity. Even some common uses of animals for sports, leisure and entertainment can be found to cause unacceptable welfare problems (for example, certain horse races – such as 'steeplechases' – where jumps are raised to a level that causes falls, injuries and deaths). In some countries, dog

racing is prohibited, due to ethical/societal concerns as well as welfare problems.

Section 27 (11): These could include any prohibitions, restrictions or detailed provisions and guidelines in the context of animals used for sports, leisure and entertainment, including

- The prerequisites and minimum requirements for the use of animals in sports, leisure and entertainment, taking into consideration both the objectives and other provisions of the subject Act, as well as the recognised state of scientific knowledge;
- Rules and conditions covering the use of animals for film, still photographs, video or television productions;
- Special conditions and requirements for the authorisation of persons or businesses using animals for sports, leisure or entertainment;
- Conditions and requirements concerning the advertising, naming and branding of such persons or businesses to ensure consumers are not misled about the nature of their business or their credentials; and
- Requirements for record keeping and powers of entry.

As regards the advertising, naming and branding of such persons or businesses, some mislead consumers – for example, in the case of tourist wildlife menageries masquerading as 'sanctuaries' or 'zoos'/aquaria, when they have no genuine rescue or conservation programmes. Facilities which breed wild animals simply to attract visitors (for example, permitting close contact, 'petting' and stroking) can be unscrupulous in disposing of unwanted animals when they grow – and misinformed visitors think they are witnessing a conservation breeding programme.

Where itinerant acts are permitted, a notification system similar to that for animal transport should be considered, to enable unannounced spot-check inspections to be carried out. This would need to include a journey and exhibition/performance timetable, with detailed travel plans and venues, as well as details of the animals to be transported and the arrangement made for their care and welfare.

CHAPTER 5: IMPLEMENTATION AND ENFORCEMENT PROVISIONS

Section 28 Authorities

Section 28 (1): The relevant Ministry at central government level should be given overall responsibility for the policy and administration of this Act. This will enable it to co-ordinate all enforcement role players; and to provide overall responsibility for the mandate. There is discussion/advice about the decision on where to site the mandate above in IV. Proposed New Measures for Consideration, Competent Authority.

Section 28 (2): This provision enables the Competent Authority to use the expertise of the Veterinary Services in drafting or co-ordinating regulations [supplemented as necessary by 'Welfare Codes, standards and guidance'] or instructions and guidance of a technical nature. This is to ensure the full use of their expertise; but is in no way meant to over-ride the need to fully involve the Animal Welfare Committee, and to take account of its advice.

Section 28 (3): If the humane ethic is to be instilled in all areas where humans have dealings with animals, then animal welfare inspection and education should be made a duty for all authorities dealing with animals, as well as being a police matter.

This provision introduces a 'duty to enforce' the Act and any secondary legislation made under it for all relevant government bodies. It is recognised that some of these bodies will need to build expertise in animal welfare matters; and this capacity building will be the responsibility of the Competent Authority. However, targeted enforcement instructions and guidance notes (for specific areas of animal use/activity) will assist in this process.

Section 28 (4): The organs of public security/police officers have a clear duty to enforce this Act. This means that they will need to proactively include this in their functions and duties, rather than solely acting on the direct request of the Competent Authority. As with (3) above, it is recognised that organs of the public security/police will need to build expertise in animal welfare matters; and this capacity building will be the responsibility of the Competent Authority.

Section 28 (5): This provision provides a duty to enforce for lower tiers of government (for municipalities and, where appropriate, for regional governments – such as provinces or states). This is for the avoidance of doubt – e.g. to avoid any cases where regional or local government denies any mandate or responsibility for animal welfare, because this is deemed to be for the Competent Authority.

Section 28 (7): This provision enables the Competent Authority to appoint additional Animal Welfare Inspectors. This has proven to be a useful adjunct to enforcement by officials in cases where countries find themselves lacking in enforcement ability or resources. The most usual source of these additional Animal Welfare Inspectors is from within animal welfare organisations (where much of the animal welfare expertise resides). However, the optimum

situation is when resources are made available for comprehensive official supervision; with additional checks permitted by representatives from animal welfare organisations.

In all cases where Animal Welfare Inspectors are appointed, they need to be granted the powers necessary to carry out the task, backed up by official identification and warrants.

Section 28 (8): A system of training and examination/interview will have to be established by the Competent Authority to ensure that only adequately trained and experienced professionals – with appropriate personal qualities and motivations – are granted a license to act as Animal Welfare Inspectors. A system of licensing has been suggested for Animal Welfare Inspectors. However, it is possible to amend this to another form of authorisation (e.g. registration or certification), if appropriate to the system of the jurisdiction.

Section 28 (9): The Competent Authority has the duty to monitor and enforce the proper compliance with the subject Act and all administrative decisions based on it. To meet this obligation the authority has the responsibility to ensure that competent officers/Animal Welfare Inspectors for the execution of this Act are engaged (of sufficient number to ensure regular and systematic monitoring). All of these officers/Animal Welfare Inspectors – whether from central or local government, or additional Animal Welfare Inspectors recruited from outside government – should not only possess the necessary professional qualifications, expertise and technical skills but also the desirable personal commitment and qualities (including compassion and empathy). An important part of the remit of these officers/Animal Welfare Inspectors will lie in areas which prevent animal welfare problems, such as: education, information and advice, particularly as concerns proper animal keeping and care. There will also be an imperative for the oversight of enforcement and inspection activities to ensure the quantity and quality of inspections. This should include a reporting system and inspection audits.

Section 29 Authorisations

As was explained in Part 1, IV. Proposed New Measures for Consideration, Content of the Law, this Act is only intended as framework legislation, establishing broad principles. The Act then authorises the Minister responsible, the Ministry or the Competent Authority to adopt any regulations [and establish, as appropriate, 'Welfare Codes', standards and guidance] needed to elaborate the concrete details for the implementation of these principles. This accords with the right and proper delineation between Parliament's governance function and Government's responsibility for implementation (avoiding a lengthy and over-technical Act for Parliamentary consideration, and facilitating subsequent amendments by the Executive based on experience gained and advancing scientific knowledge and the changing values and expectations of society).

A modern Animal Welfare Act lays down certain fundamental provisions to ensure the well-being of the individual animal. Where these cannot be met in certain areas of animal use, then prohibitions can be included in the Act. However, in other areas, concerns may exist over the ability to protect the welfare of animals, but there is not yet a consensus in favour of a prohibition. In these cases, a system of authorisation (based on licensing) can provide a framework which

- Can prevent the expansion of types of animal use and systems which are suspected of adversely affecting animal welfare;
- Provides a scheme for elaborating and notifying detailed requirements designed to protect the welfare of animals;
- Enables such requirements to be specifically tailored to each use and system (such as a zoo/aquaria, animal shelter, wildlife rehabilitation centre, breeding establishment, pet shop, farm, slaughterhouse etc.), and each species (i.e. housing and care of animals based on species-specific needs);
- Enables the elaboration of detailed requirements covering the professional, technical and personal skills and experience of persons working in these areas;
- Raises knowledge and awareness of animal owners, keepers and users;
- Puts animal owners, keepers and users on notice, given the possibility of losing their licence or even

ownership for certain infringements;

- Enables and facilitates the elaboration of provisions on enforcement, such as: inspections, powers of entry, access to animal keeping facilities, record keeping and reporting requirements; and
- Provides a feed-back and reporting system, which will facilitate regular review and reappraisal (in some cases leading to subsequent prohibitions; and in others to tightened requirements and enhanced enforcement).

This approach equates with the legal concept of 'proportionality', whereby the least onerous measures should always be adopted (when faced with a choice of approaches).

The list provided in Section 29 (1) is a non-exhaustive enumeration of activities which are subject to approval from the authorities; but there should be comprehensive discussion and consultation on which of these activities should be included in each country. Indeed, some countries would have different types of activities which need to be covered, so this can only be considered on a country-by-country basis. In such deliberations, prominence should be given to the inclusion of areas where exploitation and abuse is more likely to warrant additional protection. Authorisation should also be required where surveillance or monitoring is deemed necessary (for example, to determine whether any use has to be prohibited). In general, the aim should be to cover as many activities of keeping or breeding animals as possible, because the authorisation system provides a helpful framework for the authorities to establish and notify relevant requirements (with regular updates as needed), and to carry out effective enforcement.

Where the authorisation system or other feedback identifies a specific animal welfare problem which needs to be dealt with, consideration would have to be given as to whether this could be tackled through administrative procedures (for example, connected to the authorisation system), through the introduction of new implementing regulations [supplemented as necessary by 'Welfare Codes', standards and guidance], or through a combination of the two.

For example, in the case of a stray dog control problem

1. *The introduction of a compulsory dog license scheme (when overpopulation and straying become a real problem);*
2. *Measures to promote neutering (such as a graded rate of dog license fee, depending on whether a dog has been neutered or not);*
3. *Compulsory marking/identification of dogs (and cats) for the purpose of enforcement, and repatriating runaway animals;*
4. *Compulsory vaccination for problematic and prevalent diseases; and*
5. *Control over breeders and traders of companion animals/dogs.*

To some extent, countries may decide that they are unable to cope with the administrative requirements for an extensive system of authorisations. This would be regrettable, for the reasons given above. In such cases, it is strongly recommended that an authorisation system is at least brought into effect for the areas of animal use with the highest welfare problems or the lowest level of ethical justification. Thus the system can be trialled, inspections carried out, and an informed decision taken as to whether to prohibit the uses in question. Then, once the Competent Authority is familiar with an authorisation system and able to administer this effectively, it is hoped that it could subsequently be extended to other areas of animal use.

Consideration could be given to levying a licensing fee for the authorisation of any commercial establishment or activity using animals (breeding, keeping, using, transporting or trading), which should then be considered an animal welfare tax and retained in the budget for animal welfare activities. No fees/animal welfare taxes should be levied for non-profit and voluntary activities for the benefit of animal welfare.

Section 30 Nature of Enforcement

The Competent Authority will need to design an enforcement programme, based on a combination of these

approaches. The aim should be to maximise the use of current supervision activities involving animals, by always including animal welfare inspections in these. For other activities involving animals, a proactive enforcement regime will need to be determined. In general, more resources should be directed towards prevention work and areas where there are prohibitions or controls (for example, authorisation requirements), as these have been implemented for good reasons.

Section 31 Powers of Enforcement Bodies

These powers shall be granted to all enforcement bodies, including appointed Animal Welfare Inspectors. This enables these officers to fulfil their enforcement duties effectively. However, the granting of such powers underlines the importance of authorising only competent and suitable professionals.

Section 31 (1): The bodies responsible for enforcement have the right to enter and inspect any premises or means of transportation regardless of whether this is in relation to a commercial animal keeping/use activity or in relation to private animal keeping. This is especially the case when there is suspicion of an infringement of this Act.

Section 31 (4): Wide-ranging powers are suggested to facilitate effective enforcement. However, these will need to be checked locally, as in some jurisdictions reasonable notice or a court order may be constitutionally required absent exigent circumstances. Also, consideration may be given to restricting power of access to private dwellings, possibly requiring a court order to enter in cases where there is reason to suspect a breach of the subject Act or any legislation made under it.

Where veterinary support is needed, the Competent Authority should have a list of authorised veterinarians with relevant skills and experience, including species-specific experts.

Section 31 (5): The provisions of Section 18 (1) and (2) with regard to lost, abandoned or confiscated animals apply accordingly to an animal which has been relieved or seized from its owner/keeper as per this Section.

Section 32 Improvement Notices

In more advanced animal welfare legislation, emphasis is given to the role of education and awareness in enforcement. An important part of an Animal Welfare Inspector's job is to generate awareness and to inform the public about proper animal keeping and care. Thus, the preference is for prevention (wherever feasible), as opposed to focussing on sanctions and punishments. This idea is at the core of this measure of an improvement notice.

Improvement notices can be given at the discretion of the enforcement officer/Animal Welfare Inspector in cases where he/she feels that an educational approach is appropriate. This action is recommended in cases where any omission or contravention has been carried out through lack of knowledge or awareness (rather than intentionally), and the enforcement officer/Animal Welfare Inspector feels that there will be no recurrence. However, it should be left to the judgement of the individual enforcement officer/Animal Welfare Inspector whether to issue an improvement notice or to implement prosecution proceedings without any further delay.

Therefore the Animal Welfare Inspector has the option to grant a culprit a period of grace in which to rectify the problem, remedy the defects, and comply with the provisions of the Act.

Improvement notices can be used for defects found to vehicles transporting animals and animal keeping systems, as well as for aspects of animal care.

Section 33 Duty to Alert and Report Offences and Duty to File a Criminal Complaint

Section 33 (1): This regulation is addressed to 'anybody', and thus provides a duty for all people (whether working with animals or not, including the general public) to report any suspicions of animal mistreatment, cruelty or neglect to the authorities. It is recognised that this may bring negative, as well as positive, benefits – as it may deter some people from seeking medical assistance for their injured animal. However, on balance, such a provision is thought to be favourable.

The authorities are not always in a position to easily discover breaches of the law, and so additional intelligence can be helpful. The aim is not so much reprisal, as assistance for the animal which suffers as well as expert support, advice and help for the keeper by the Competent Authority.

Section 33 (3): The Competent Authority will need to carry out education and awareness activities to encourage citizens to note and report any animal welfare infringements. Providing media feedback on investigations into such complaints will assist to spread the message that public participation is useful and constructive.

Section 33 (4) and (5): The Competent Authority has the duty to follow up on all alerts and reports, and is obligated to file a criminal complaint when a violation according to Section 43 (1) has been committed intentionally.

Section 34 Charges and Fees

The enforcement of the subject Act would in general be free of charge. However, the Minister, the Ministry or the Competent Authority should be entitled to make provisions for the collection of fees or charges in connection with any appropriate and indicated administrative procedures under the Act and subordinate regulations – for example to cover the costs of certain administrative measures such as: authorisations, licenses, permits, certificates, registrations etc., supervision, control and special services. These dues could help with the expenses involved in the execution of this law. It is good practice to collect such dues in a dedicated account, to ensure that they are used for the animal welfare purposes for which they are collected (as opposed to being placed into general government coffers). No costs or charges should be levied in respect of non-profit organisations, or individuals who are carrying out voluntary activities which are deemed to be in the public interest.

Section 35 Animal Welfare Committee

As already mentioned above in IV. Proposed New Measures for Consideration, Involved Parties, an expert Animal Welfare (and Ethics) Committee is needed for a number of purposes. In addition to providing support and counsel to the authorities on a regular basis, these include assisting the government to compile legislation (and enforcement guidance) and to continuously monitor, review and evaluate the existing status and state of animal welfare issues. Expert advice to the government/authorities would include aspects such as: animal care and protection, ethical problems, scientific and legal developments, and practical enforcement issues. Thus, the committee would be charged with keeping abreast of all animal welfare advances, and making recommendations for any policy and enforcement changes needed to take account of these. The Committee would also have a specific duty to ensure that the various agencies in charge of implementing and executing animal welfare laws and provisions are able to effectively carry out their remit.

Section 35 (1): This will include, but not be restricted to, the Animal Welfare Committee compiling a list of traps and catching devices which are authorised, as well as defining which poisons are allowable in which circumstances (positive lists).

Section 35 (2): It is important that members of the Committee are appointed on a personal basis, so they can

always put animal welfare interests first, regardless of their official position or role. In an Animal Welfare Committee, the primary duty should always be to the welfare of animals. Thus, members should be selected based on their personal expertise, experience and sympathy to animal welfare. Ethical training is considered necessary to ensure that each member is able to weigh the different ethical perspectives – which can be complex in animal welfare. Issue-related Sub-Committees have been included here in order to ensure appropriate expertise and consideration: This avoids the situation where every Committee member has to be involved in the minutiae of every issue.

Section 35 (3): The Committee must be granted free and full access to all government information and statistics (and premises for the purpose of cross-checking), and at the same time it has to be ensured that it is in a position to publish critical and/or controversial reports or statements when required (including minority reports). An annual report is not only a record of its work during the year, but also a permanent record of its recommendations to government and the status of governments' response to these (including any that have not yet been actioned). There must always be openness and transparency in its work.

Section 36 Animal Welfare Ombudsman

This provision for the appointment of an Animal Welfare Ombudsman provides both an independent arbiter for animal welfare issues, and enhanced legal protection for animals. [NB. 'Ombudsman' is a known concept and term, and is used in this Act to cover both male and female incumbents of the post.] The provision of legal representation for animals has been added in order to ensure that animals can (where required) be provided with the necessary and appropriate protection under the law (which they are not able to assess and request on their own account). Thus a 'public protector' now is tasked with maintaining/defending the interests of the individual animal. Some countries already use Animal Welfare Ombudsmen and the system is now being called for in others (including Australia and the EU). Switzerland used to have an animal lawyer to act on behalf of the interests of the individual animal in criminal proceedings concerning offences against animal welfare legislation but unfortunately abolished this function by the end of 2010. However, it is considered of utmost importance to provide representation of an individual animal's own interests at both administrative and criminal levels. The main advantage of this representation over the use of the Public Prosecutor is the level of knowledge/expertise, and the fact that this would be a priority function for the Animal Welfare Ombudsman's office.

Section 36 (2): Relevant professional qualifications may vary and need to be balanced with skills and experience. These must in combination be sufficient to provide a solid technical and practical overview of animal welfare science, ethics and practical issues. Relevant professional studies may include (but not be limited to): veterinary medicine, animal behaviour/ethology and animal welfare law.

Section 37 Animal Welfare and Protection Organisations/Humane Societies

Section 37 (1): This provision should guarantee that always all parties and stakeholders with a verifiable interest in animal welfare and protection issues shall have a chance to be heard and be given an opportunity to influence any current or future measures which might be considered by the authorities/government.

Section 37 (2): This provision guards against commercial interests using the designation 'animal welfare organisation', 'animal protection organisation' or 'humane society' in order to collect funds and donations for purposes other than animal welfare.

Section 37 (3) - (5): Some countries where resources for animal welfare enforcement are scarce (man-power and finances) may decide to supplement official enforcement by engaging animal welfare and protection

organisations/humane societies in the enforcement task (or in selected parts of this). If this approach is adopted, it is preferable to limit engagement to organisations/societies which have been previously approved by the Minister/Ministry or Competent Authority and fulfil certain requirements according to sub-section (4).

There will need to be discussion and consultation to decide the extent to which enforcement powers should, could or would be given to animal welfare and protection organisations/humane societies. This will relate to both the level of powers ceded by the Competent Authority and the extent to which animal welfare and protection organisations/humane societies are willing to assume government tasks (and whether such services should be compensated).

For their part, animal welfare and protection organisations/humane societies will need to give careful consideration to whether they consider enforcement and prosecution as part of their mission, or whether their willingness to accept such a role could facilitate the 'abdication' of government for their responsibilities in this area and/or whether the work would detract from their other programmes (such as government monitoring, advocacy, and education and awareness).

Animal welfare and protection organisations/humane societies will also need to give careful consideration to the effectiveness and viability of accepting enforcement responsibilities, including the extent to which they are given the powers and resources required for the successful discharge of enforcement duties. Here the matter of costs and resources is also an important issue: Animal welfare and protection organisations/humane societies always need to secure funds for their work. Thus, they should negotiate satisfactory government reimbursement for any expenses incurred in carrying out such delegated enforcement measures.

In addition to giving the Animal Welfare Ombudsman the authority of legal representation of an individual animal one might also contemplate allowing any approved Animal Welfare and Protection Organisation/Humane Society the right of action within the framework of an altruistic legal action, i.e. to file complaints against sovereign decisions without being prejudiced in its own rights. Whereby here once again the public interest would be paramount as this right of action for Animal Welfare and Protection Organisations/Humane Societies would only cover infringements of any objective rights to the detriment of animals but would not apply to an assertion of any possible subjective rights of an individual animal.

Section 38 Animal Shelters, Animal Sanctuaries and Wildlife Rehabilitation Centres

Running an animal shelter, animal sanctuary or wildlife rehabilitation centre also requires authorisation in accordance with Section 29. This will prevent the establishment of inadequate facilities and/or facilities being established by ill-qualified and/or unsuitable individuals.

Section 38 (1): As well-run animal shelters, animal sanctuaries and wildlife rehabilitation centres can be beneficial for wildlife and society, it was decided not to restrict these activities to registered non-profit organisations. However, it was decided appropriate to restrict donations (please see Section 38 (6)) to registered non-profit organisations (as these can be accounted for and controlled, to ensure they are used for the purpose).

Section 38 (4): There are a number of measures taken by shelters worldwide to ensure that animals adopted before spay-neuter is possible are subsequently spay-neutered. One option requires adopting owners to leave a financial deposit with the shelter, which is refunded when the dog or cat is brought in for the scheduled operation at the appropriate age/fitness. Alternatively, ownership registration requirements could also be used here: allowing animals to be temporarily homed without official transfer of ownership until they are returned for the operation.

The procedures used by shelters for spay-neuter returns could form part of the competent authority's authorisation checks.

Section 38 (5): It is important to restrict use of these names (animal shelter, animal sanctuary or wildlife rehabilitation centre) to bona fide organisations to prevent the (current) proliferation of these terms simply to secure visitors and support fraudulently.

A system of licensing has been suggested for animal shelters, sanctuaries and wildlife rehabilitation centres. However, it is possible to amend this to another form of authorisation (e.g. registration or certification), if appropriate to the system of the jurisdiction.

Section 38 (7): Such additional provisions could include

- Providing definitions for an 'animal shelter', 'animal sanctuary' and 'wildlife rehabilitation centre' – which have to be met in order to qualify under each distinct category;
- Establishing detailed standards and criteria which must be met in order to be licensed as an authorised animal shelter, animal sanctuary or wildlife rehabilitation centre; or
- Establishing Welfare Codes containing 'best practice' for each category.

In delineating secondary legislation and guidelines, the Competent Authority will need to place particular attention on the following: that the animal taken into the custody of an animal shelter, animal sanctuary or wildlife rehabilitation centre receives all the attention needed, including ample medical care, as well as appropriate housing and surroundings adapted to its species-specific requirements. Detailed provisions covering the important record keeping requirements (see Section 38 (4)) will have to be established, including: animals arriving and departing from the facility. In addition, rules will need to be elaborated covering the management of the animal, including: the knowledge, experience, expertise and technical skills of the person who will run the animal shelter, animal sanctuary or wildlife rehabilitation centre.

'Animal shelter', 'animal sanctuary' and 'wildlife rehabilitation centre' have each been defined within the Act (see Section 5 Pt. 3., Pt. 2. and Pt. 28.), and are distinctly different. Thus it is important that each license is issued accordingly (with relevant criteria and conditions). A brief overview of the key differences is

Animal Shelter: Temporarily houses and cares for stray or homeless animals, in order to reunite them with their owners or rehome them;

Animal Sanctuary: Keeps animals to live out their lives; and

Wildlife Rehabilitation Centre: Cares for injured, orphaned, or sick wild animals with the aim of returning them to the wild after treatment and rehabilitation.

When drafting conditions for the licensing of sanctuaries, it is important to ensure that these provide for optimum conditions, as close as possible to the relevant species' native habitat, as the animals will be there for life. Wildlife rehabilitation centres should have a similar provision, as they are for wild animals that need to remain accustomed to conditions in the wild: In order to be successfully rehabilitated, it is important that they stay in near-natural conditions without becoming accustomed to human contact or proximity.

Section 39 Veterinarians and Para-Veterinarians

As animal health and welfare professionals, veterinarians and para-veterinarians are on the front-line of caring for animals thus they should always prioritise the animal's health and well-being and not focus primarily on their duty to the animal's owner. However, many are paid for their services by the industry, which may lead to a conflict of interest which has the potential to jeopardise the health and welfare of animals. These provisions have been included to counter this possibility.

Section 39 (3): This clause requiring veterinarians and para-veterinarians to report (potential) cases of non-compliance with this Act has been added after careful consideration. It is recognised that one possible adverse effect of this provision may be that owners or keepers are unwilling to bring suffering animals for

veterinary attention. However, it strengthens their duty of care, and core role as protectors of the health and welfare of animals – which is viewed as widely beneficial.

Section 40 Animal Welfare Research

National animal welfare research is necessary in addition to available international research to ensure that the country can take decisions and share knowledge and expertise about animal welfare issues, on the basis of evidence which is relevant to local conditions and the local situation.

Section 41 Consumer Information

These provisions are designed to ensure that consumers are provided with adequate information on the animal welfare aspects of products, thereby empowering them to make informed choices and drive further improvements in animal welfare.

In cases where countries decide not to ban any system or method which is known to cause, or likely to cause, animal welfare problems, then the Competent Authority shall specifically require products made using this system or method to be clearly labelled as such. This will include, but not be limited to, meat produced from animals in (or born from parents in) close confinement systems (cages, stalls, crates etc.) and products tested on animals.

Section 42 Animal Welfare Measurement and Impact Assessment

This Section provides for Animal Welfare Impact Assessments to be carried out routinely whenever animal welfare could be adversely impacted. This practice is already widely carried out in relation to environmental issues (as an environmental impact assessment). This is particularly useful for determining any potential impact on wildlife populations of any planned development activities or change of land use. But it could also be useful in other areas – for example, impact on animals in rural areas – such as: development or building activities, deforestation, changing water courses (dams, flooding, river works etc.), changes to habitat etc. It would also cover aspects not usually connected to animal issues, such as the use of chemicals, herbicides, pesticides etc.

Section 42 (2): When animal welfare legislation has been agreed, it is important to ensure that other government policies and laws do not undermine or contradict this. Thus the need for an audit of these; and amendments made whenever necessary to adhere to animal welfare principles.

Section 42 (4): Animal welfare indicators should comprise all authorised/licensed uses. These will need to cover all species, and both inputs (i.e. needs to be provided for the animal, including stockmanship) and animal based measures (ABMs). Inputs are needed to ensure that welfare can be provided for, but only the condition of the animals can procure a true indication of the state of the animal (and thus its welfare). These indicators need to include clear, measurable requirements which allow animal keepers and official Animal Welfare Inspectors to assess compliance. Once agreed, the indicators will need to be publicised and animal owners, keepers and users educated.

Section 42 (5): Statistics are needed to identify and analyse any problems with particular animal industries and uses. This enables the Competent Authority to plan future interventions (such as education/training, enforcement targeting and legislative amendment).

CHAPTER 6: PENAL AND FINAL/CONCLUDING PROVISIONS

Section 43 Penal and Administrative Fine Provisions

Penalties should be set by the Competent Authority according to a fine banding system which would be preferable to actually stating any specific amount in any currency in the subject Act itself. The actual currency levels for each banding shall then be stipulated in regulations or published in the Official Gazette (calculated by taking into account the severity of the infringement, and average income and general living standards of each individual country). Then these can be reviewed on a regular basis, and easily amended when required, according to inflation rates.

By way of example, the list of fine levels for each banding could be established as follows:

Level 1 offence – minor infringements – penalties set at a minimum of Euro 50 up to Euro 1,000;

Level 2 offence – serious infringements – penalties set at a minimum of Euro 300 up to Euro 15,000, and for corporate bodies up to Euro 50,000;

Level 3 offence – aggravated infringements as well as repeated offences – penalties set at a minimum of Euro 3,000 up to Euro 30,000, and for corporate bodies up to Euro 250,000; and

Level 4 offence – for criminal offences imprisonment of up to 5 years and a fine of minimum Euro 5,000 up to Euro 250,000, and for corporate bodies up to Euro 500,000.

Please note that these amounts are only a guide, and appropriate levels would need to be determined for each country. Also, please note that this currency guidance has been determined at the date of publication of this Model Animal Welfare Act and may become outdated over time (the very reason we promote a banding system). In no case should lower penalties be established than those existing for any law that the Act supersedes. Thus any country using this Act as a basis for a new Animal Welfare Act is advised to read each section carefully, and to compare with any existing provisions to ensure that this is providing an enhancement and improvement to the existing level of protection and deterrent.

In some countries, fines are related not only to the seriousness of the offence, but also to the economic situation of the offender. This can be a just system, if well applied – in particular to ensure that fines are established at meaningful levels for more affluent individuals. The same rationale is applied to the provision of higher maximum fine levels for corporate bodies.

Fines for animal mistreatment have to be substantial enough to function not only as adequate punishment, but also as a suitable and effective deterrent.

However, deterrence and punishment – as well as education and further training – should always go hand in hand: And the hope is that these will eventually achieve a shift in human attitudes and behaviour.

Section 44 Prohibition of Keeping Animals or of Having Contact with Animals and Forfeiture

This is an important provision – for both its deterrent value and its role in preventing further animal welfare problems.

Section 45 Further Aspects

The list of further aspects is not comprehensive, but should highlight a few points worthy of further consideration.

The financial implications to be addressed would also depend very much on the individual country and the scale of expenditure. For instance, as regards creating or updating an existing or new administrative apparatus to combine and supervise all animal welfare related activities.

Some auxiliary costs could be compensated by charging fees for certain administrative measures, i.e. for authorisations, licenses, permits, supervision, control as well as specific services under the subject Act and subordinate regulations stipulated under the Act according to Section 34 (2).

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WAN's Model Act is a major contribution to the advance of animal protection, not only by providing a practical template for new legislation in countries with relatively little experience in the field, but also by highlighting the fundamental weaknesses in countries that purport to have high standards."

Dr. Dan Lyons, Centre for Animals and Social Justice

In all the years I have been working for animal welfare, the Model Animal Welfare Act is the biggest, most positive step I have ever seen towards protecting animal rights. This law is much more important than building 100 shelters, because with a strong and comprehensive modern law we can save all the animals.

Amina Abaza, Egyptian Minister for Animal Welfare and Environment in the Women's Government of Egypt and S.P.A.R.E Founder and Chairperson

We commend the commitment to animal welfare demonstrated by the extensive time and effort that must have been associated with such an undertaking and the resulting product will no doubt serve as a useful tool for the consideration of some countries undertaking to introduce or revise legislation.

Dr. Bernard Vallat, former Director General of the World Organisation for Animal Health (OIE)

This document manages to be readable while delivering comprehensive and detailed content. While it is definitely "how to" regarding the development of animal welfare policy and legislation, I found many of the lessons transferable to other areas of policy-making as well. Really well put together and thoroughly thought out, the WAN Model Animal Welfare Act is a useful tool that I will keep referring back to.

Shakira Eicher, Assistant Director, Policy and Strategy Unit, Department of the Premier, Western Cape Government, South Africa

How refreshing to read the WAN Model Animal Welfare Act, an excellent, comprehensive document, written in an easy-to-understand style, without the use of unnecessary complex and seemingly ambiguous terminology. This 'Bible' will enable groups around the world to confidently approach decision makers, with informed proposals and recommendations for animal welfare legislation in their respective countries.

Joy Leney, former International Projects Director, WSPA (now World Animal Protection)

NOW we will move ahead!

Liz Komen, Namibia Animal Rehabilitation Research and Education Center



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