

## A GUIDE TO RELEVANT LAWS

Legislation relating to birds is complex and like many aspects of the law, is subject to frequent change. It is not possible to cover here every part of the law, nor to be as detailed as may sometimes be required to resolve specific queries. In compiling this section the aim has been to make it as simple as possible whilst still covering all the significant considerations which affect rehabilitators and fundraisers whilst using live birds. However, this is entitled a 'guide' to the law within the UK and that is all it is - a guide. Further assistance with registration requirements can be obtained from the national licensing authority i.e. the Wildlife Licensing and Registration Service (WLRs) of Animal Health. This unit operates the registration service on behalf of the Scottish Government and the Welsh Assembly Government for raptor keepers in Scotland and Wales.

A general licence, issued by Natural England in England (Wales and Scotland issue their own general licences), is available which permit an individual to keep a schedule 4 birds for up to 15 days before notification is required. Although similar, the licences and laws for Scotland, England and Wales do contain differences and it is the responsibility of the rehabilitator to ensure they have the correct licence for the country in which they are operating, It should be noted, however, that the general licences may be subject to change every year and it is essential that a copy of the most recent is obtained, read and understood before any action is taken. Copies of the general licences may be downloaded from the appropriate web site:

### ENGLAND

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/generallicences.aspx>

### SCOTLAND

<http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16330/general-licences/>

### WALES

<http://wales.gov.uk/topics/environmentcountryside/consmanagement/conservationbiodiversity/wildlifelicences/?lang=en>

**Page 4 appA include flowcharts that show the procedures required, by each country, when a raptor is brought in for treatment.**

**Note: at the time of printing, this legislation guide is correct, but rehabilitators in the UK would be wise to contact the appropriate Government department to ensure that no recent changes have taken place.**

## WILDLIFE AND COUNTRYSIDE ACT 1981

This is the main Act under which avian wildlife in England, Wales and Scotland receives protection. It has been amended and added to, by secondary legislation known as Statutory Instruments. Details can be found at Appendix C -*Recommended further reading*. It does not apply in Northern Ireland where wildlife is protected by the WILDLIFE (NORTHERN IRELAND) ORDER 1985.

All British birds are protected, some to a greater degree than others. For **England and Wales**, Section 1(1) of the Act is reproduced below and is self-explanatory.

1 -(1) *Subject to the provisions of the Part, if any person intentionally:*

- a) *kills, injures or takes any wild bird,*
- b) *takes, damages or destroys the nest of any wild bird while that nest is in use or being built; or*
- c) *takes or destroys an egg of any wild bird, he shall be guilty of an offence.*

The wording of the Act in **Scotland** is slightly different:

**Protection of wild birds, their nests and eggs.**

1.--(1) *Subject to the provisions of this Part, if any person intentionally or recklessly–*

- (a) *kills, injures or takes any wild bird;*
- (b) *takes, damages, destroys or otherwise interferes with the nest of any wild bird while that nest is in use or being built;*
  - (ba) *at any other time takes, damages, destroys or otherwise interferes with any nest habitually used by any wild bird included in Schedule A1;*
  - (bb) *obstructs or prevents any wild bird from using its nest; or*
  - (c) *takes or destroys an egg of any wild bird,*  
*he shall be guilty of an offence.*
- (2) *Subject to the provisions of this Part, if any person has in his possession or control–*
  - (a) *any live or dead wild bird or any part of, or anything derived from, such a bird; or*
  - (b) *an egg of a wild bird or any part of such an egg,*  
*he shall be guilty of an offence.*

This may pose the question, why does a rehabilitator not commit an offence of 'taking a wild bird' when one comes into care? The answer is in section 4 (2)

(a):

4. -(2) *Notwithstanding anything in the provisions of Section 1 or any order made under Section 3, a person shall not be guilty of an offence by reason of:*

- a) *the taking of any wild bird if he shows that the bird had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled;*
- b) *the killing of any wild bird if he shows that the bird had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of it's recovering;*  
*or*

- c) *any act made unlawful by those provisions if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.*

In simple terms, this permits any person to take into care any injured bird for the purpose of rehabilitation, provided they have not unlawfully caused the injury themselves and provided they intend to release it back to the wild when it is no longer disabled..

'Unlawfully' will effectively mean intentionally [or recklessly in Scotland]. No licence is required, but if the bird is one listed on Schedule 4 of the Act (see Appendix A), of which more later, additional regulations must be complied with. Similarly, a rehabilitator may euthanase a bird, without committing an offence, if the provisions of Section 4 (2) (b) apply.

### **Rehabilitators and Schedule 4 birds**

The species of birds of prey which are listed on Schedule 4 are shown at Appendix A. On the 31<sup>st</sup> January 1996 the Department of the Environment (D.o.E., now Defra) discontinued the Licensed Rehabilitator Keeper (L.R.K.) Scheme, which had been in place for some years. It would be pointless to explain that scheme, so this guide will concentrate on the legislation currently pertaining to Schedule 4 birds. Natural England, for England, has issued a general 'Licence to keep certain wild birds for the purposes of rehabilitation', which relates to Schedule 4 birds.

This licence, in simple terms, applies only to:

- a) *A person who was an L.R.K. on 31<sup>st</sup> January 1996.*
- b) *A person who has been a registered keeper of three disabled, wild bred Schedule 4 birds which have been released into the wild.*
- c) *Inspectors of the RSCPA*
- d) *Official of the RSPB*

The effect of the licence is to exempt the holder from the provisions of Section 7 of the Act (in respect of registration and ringing) for the first fifteen days only from the date when the Schedule 4 bird comes into care. There are a number of conditions attached to the licence and all rehabilitators entitled to take advantage of it should fully acquaint themselves with those conditions. If you do not have a copy of the licence and are entitled to use it, then it is recommended that rehabilitators should obtain one from Natural England. Licence WML Gen-L09 (and other general licences in relation to birds) are the responsibility of the Wildlife Species Conservation Division of Defra.

The equivalent licence(s) for those in Scotland or Wales may be obtained from the appropriate Government web site.

Please note that within 4 months of the date on which a licensed person takes into possession a disabled wild-bred Schedule 4 bird, that person shall send a copy of the record maintained in accordance with the licence.

If you are asked to keep a Schedule 4 bird, pending legal proceedings, then you can only do so if acting on behalf of the Police, HM Customs & Excise, RSPB or RSPCA. WML Gen-L11 for England.

## **Registration and Ringing**

If you are not covered by a general licence, and you take into care a bird listed on Schedule 4 (see Appendix A) then you must comply with regulations made under Section 7 of the Act. These relate to the registration and ringing of certain birds and it is slightly different for England, Scotland and Wales.

N.B. The procedures have changed as WLRS are no longer issuing rings and UR (unrung) licenses are issued by the devolved administrations.

Although there is a cost involved to register a Schedule 4 bird, the cost will be refunded if the bird is released back into the wild.

## **ENGLAND**

If a bird is to be rehabilitated and released back into the wild within a short period of time it does not need to be marked but must be registered under a UR Licence (i.e. a licence to keep a bird unringed) issued by Wildlife Licensing and Registration Service (WLRS) for an appropriate period to be determined on a case by case basis. If the bird is so disabled that a vet considers it is likely to remain in captivity permanently, it must be fitted with a microchip transponder and registered by the Wildlife Licensing and Registration Service under the microchip number.

If the Schedule 4 bird you acquire is wild disabled and has not been issued with a UR license and registered, the procedure to be followed is:

- (i) Contact WLRS immediately.
- (ii) A letter will then be sent to you confirming your initial contact and outlining the relevant legislation.
- (iii) If you decide to care for the bird yourself, an application form for a UR Licence will be sent to you to enable you to register the bird.
- (iv) Complete and return the application form(s), with the correct fee. You will then be sent a registration document for the bird.
- (v) If the injuries heal and it is able to fend for itself in the wild, the bird must be released back to the wild and the registration document returned to WLRS. The initial registration fee will be refunded.

If the bird is so disabled that a vet considers it is unable to be released, the bird must then be fitted with a microchip transponder. The procedure to be followed is:

- (i) Please send in the registration document (previously issued with a UR licence number) with the microchip number attached (i.e. a sticker with the number and barcode), or a copy of the microchip certificate.
- (ii) Along with your registration document please send in a letter from your vet confirming the bird is not releasable and why.
- (iii) The bird will then be registered under the microchip number and a new registration document issued. There will be no extra charge for this.

## **SCOTLAND**

If the Schedule 4 bird you acquire is wild disabled and has not been ringed and registered, the procedure to be followed is:

- (i) Contact WLRS immediately;
- (ii) A letter will then be sent to you confirming your initial contact and outlining the relevant legislation.
- (iii) If you decide to care for the bird yourself, you should apply to the Scottish Government, Species Licensing Unit for an application form for a URS Licence to enable you to register the bird.
- (iv) Complete and return the application form to the Scottish Government. You will then be sent a URS Licence.
- (v) On receipt of your URS Licence contact WLRS we will send you the form for you to register the bird under the UR Licence number.
- (vi) Complete and return the registration document with the correct fee. You will then be sent a registration document for the bird.
- (vii) If the injuries heal and it is able to fend for itself in the wild, the bird must be released back to the wild and the registration document returned to WLRS. The initial registration fee will be refunded.

If the bird is so disabled that a vet considers it is unable to be released the bird must then be microchipped. the procedure to be followed is:

- (i) Please send in the registration document (previously issued with a URS licence number) with the micro chip number attached (i.e. a sticker with the number and barcode), or a copy of the micro chip certificate.

- (ii) Along with your registration document please send in a letter from your vet confirming the bird is not releasable and why.
- (iii) The bird will then be registered under the micro chip number and a new registration document issued. There will be no extra charge for this

## **WALES**

If a bird is to be rehabilitated and released back into the wild within a short period of time it does not need to be marked but must be registered under a UR Licence (i.e. a licence to keep a bird un ringed) Issued by The Welsh Assembly Government for an appropriate period to be determined on a case by case basis. If the bird is so disabled that a vet considers it is likely to remain in captivity permanently it must be micro chipped and registered by the Wildlife Licensing and Registration Service under that number.

If the Schedule 4 bird you acquire is wild disabled and has not been ringed and registered, the procedure to be followed is:

- (i) Contact WLRS immediately;
- (ii) A letter will then be sent to you confirming your initial contact and outlining the relevant legislation.
- (iii) If you decide to care for the bird yourself, an application form for an UR Licence will be sent to you to enable you to register the bird.
- (iv) Complete and return the application form to the Welsh Assembly Government, Animal Welfare Branch. You will then be sent a URW Licence.
- (v) On receipt of your URW Licence contact WLRS we will send you the form for you to register the bird under the URW Licence number.
- (vi) Complete and return the registration document with the correct fee. You will then be sent a registration document for the bird.
- (vii) If the injuries heal and it is able to fend for itself in the wild, the bird must be released back to the wild and the registration document returned to WLRS. The initial registration fee will be refunded.

If the bird is so disabled that a vet considers it is unable to be released the bird must then be micro chipped, the procedure to be followed is:

- (i) Please send in the registration document (previously issued with a URW licence number) with the micro chip barcode sticker attached

- (ii) Along with your registration document please send in a letter from your vet confirming the bird is not releasable and why.
- (iii) The bird will then be registered under the micro chip number and a new registration document issued. There will be no extra charge for this

## **Size of Accommodation for birds**

The legal requirements of the size of accommodation for birds is covered by Section 8 of the Act. The relevant part of which is shown below:

*8. (1) If any person keeps or confines any bird whatever in any cage or other receptacle which is not sufficient in height, length or breadth to permit the bird to stretch its wings freely, he shall be guilty of an offence and be liable to a special penalty.*

*(2) Subsection (1) does not apply to poultry or to the keeping or confining of any bird - (a) while that bird is in the course of conveyance, by whatever means; (b) while that bird is being shown for the purpose of any public exhibition or competition if the time during which the bird is kept confined for those purposes does not in the aggregate exceed 72 hours; or (c) while that bird is undergoing examination or treatment by a veterinary surgeon or veterinary practitioner.*

In practice, this means the lawful minimum size of accommodation for any bird is the length of its wing span, in every direction, as that is the interpretation of 'stretch its wings freely' taken by the courts.

There are three main areas where this section of the Act is likely to affect a rehabilitator and / or a fundraiser.

**Hospital units:** There are times when, from a welfare aspect, it is sensible (even essential) to keep a bird in a unit of a size in which it is unable to freely stretch its wings. The obvious example is in the early stages of treating a fractured wing. You should not take this decision yourself however; as to confine the bird in this way would be unlawful unless it was under veterinary care. Having said that, it is unlikely that proceedings would be taken in circumstances where your vet is not consulted but the confinement was in the best interest of the casualty. It would be advisable to discuss this aspect with your vet as to the possibility of complying with this regulation without having to visit him/her on every occasion.

**Aviaries:** In theory, perfectly healthy birds e.g. those kept for displays and talks, could be permanently housed in accommodation satisfying the requirements of Section 8. That should never be done, of course and careful consideration needs to be given to the size of aviaries according to the species kept.

**Transportation to Shows:** Section 8 (2)(a) allows a bird to be 'boxed' whilst travelling and again, the individual requirements of the relevant species must be satisfied. See also The Welfare of Animals during Transport Order 1992.

## **Barn Owl Release**

The Barn Owl is listed on Schedule 9 of the Act, which means that an offence is committed under Section 14 if any person releases or allows one to escape into the wild. The intention of this is to prevent the indiscriminate release of captive bred Barn Owls by persons whose enthusiasm and good intent outweighs their knowledge of the species and what is required for a successful release.

Any person wishing to release a captive bred Barn Owl requires a licence before doing so. For such a licence to be granted the authorities would need to be satisfied that a proper site survey had been done and that recommended release techniques were to be used. The Defra has produced guidelines regarding Barn Owl release and those should be studied carefully before embarking on any proposed release scheme.

Wild bred Barn Owls which come into care may only be released under general licences those being WML Gen-L20 in England and WLF-004 in Wales. Any Barn Owl releases that take place in Scotland must be carried out under an individual licence available from The Scottish Government (see Appendix D for contact details).

## **PROTECTION OF ANIMALS ACT 1911**

This Act and the Protection of Animals (Scotland) Act 1912 have largely been repealed by the ANIMAL WELFARE ACT 2006 and, the Animal Health and Welfare (Scotland) Act 2006, respectively.

## **ABANDONMENT OF ANIMALS ACT 1960**

This Act has been repealed by, in England and Wales, the ANIMAL WELFARE ACT 2006 and, in Scotland, the Animal Health and Welfare (Scotland) Act 2006. The act of abandoning an animal is considered to be an offence under section 9 of the Animal Welfare Act 2006 (Duty of person responsible for animal to ensure welfare); and section 29 of the Animal Health and Welfare Act (Scotland) Act 2006 (Abandonment).

## **THE WELFARE OF ANIMALS (TRANSPORT) (England) ORDER 2006, the Welfare of Animals (Transport) (Scotland) Regulations 2006 and the Welfare of Animals (Transport) (Wales) Order 2007.**

This legislation implements Council Regulation 1/2005 on the protection of animals during transport and related operations which stipulates the manner in which animals should be transported and would apply to birds being taken to a show. It may also pertain to injured birds, although the primary intention

of this legislation is to protect the welfare of animals on commercial journeys e.g. farm livestock which casualties do not normally have to undergo.

The requirements are largely common sense, in that the container used must be suitable for the species, with adequate ventilation and a means of inspection. The overall need is that the transportation should not cause the bird injury or unnecessary suffering and that the bird is fit to undertake the journey in the first place.

A copy of an **Animal Transport Certificate** is included in the forms section of this handbook. This should be completed at the start of each journey and accompany the bird during transportation.

## **PERFORMING ANIMALS (REGULATION) ACT 1925**

This Act regulates the exhibition and training of performing animals to which the public have access, whether on payment or not. Any person who exhibits or trains an animal for the relevant purpose must be registered with the local authority. The term 'animal' includes birds. This Act applies to England, Scotland and Wales.

### **Some useful definitions**

The term '**wild bird**' when used in this context, means any bird of a species which is ordinarily resident in or is a visitor to the European territory of any member state in a wild state. '**Captive Bred**' - No bird is captive bred unless its parents were lawfully in captivity when the egg from which it hatched was laid.

## **Convention on International Trade in Endangered Species of Wild Fauna and Flora**

In 1975 the Convention on International Trade in Endangered Species of Wild Fauna & Flora (CITES) came into force. Its aims were to regulate the international trade in specimens of animals, birds and plants, including derivatives. Over 170 countries are now party to the Convention, which is administered at an international level by a Secretariat based in Switzerland.

The Management Authority for the whole of the UK (i.e. including N Ireland) has now been split between Defra (for policy matters) and the Wildlife Licensing and Registration Service of Animal Health (for licensing matters).

CITES is implemented within the European Union by European Council (EC) Regulations. These Regulations are directly applicable in national law and it is for each member state to introduce its own domestic legislation to enforce the provisions of CITES Regulations within its own borders.

On 1<sup>st</sup> June 1997 EC Regulation 338/97 came into force which changed the regulations concerning the sales, purchase and display for commercial purposes in respect of many birds of prey. All species of birds of prey including owls are included one way or the other in this regulation. Certificates previously issued under Article 30 of 1808/2001 are now issued under Article 60 of EC Regulation 865/2006 - which replaced it and came into force in July 2006. Article 60 certificates may be issued to cover the commercial use of Annex A specimens used for captive breeding programmes, research or education aimed at the preservation or conservation of the species. See Appendix B for the list of species.

These certificates are only granted to those applicants who satisfy all the relevant criteria. Once granted such certificates will apply to any birds acquired thereafter. Under this Regulation, species of flora and fauna have been divided into four annexes, A through to D.

For birds of prey, Annex A and B are relevant as only one bird of prey is included in Annex C, namely the King Vulture and none on Annex D.

### **Display for commercial gain**

If any bird included in Annex A (see Appendix B) whether alive or dead or any part or derivative of such a bird is to be displayed to the public for any commercial purpose, then an Article 10 Certificate must be obtained. Zoos and bird parks may display wild disabled birds under their specific licences.

This would include 'falconry' displays at Country Fairs, Corporate Hunting Days, Falconry Courses, Film work etc. Even if the event is for a recognised Charity, a Certificate is still required for each individual bird.

**Changes to the EC regulations:** The regulation implementing EC Regulation 338/97 was amended by Regulation 865/2006, which came in to force on 6 July 2006. A number of these amendments will have some effect on keepers who use Annex A species for commercial purposes. Guidance on the issue of Article 10 certificates and closed ring requirements are set out below.

**'Specimen Specific' and 'Transaction' Article 10 Certificates:** As a result of the changes to the regulation there are still two types of Article 10 Certificate, but they are now called **Specimen Specific** Article 10 Certificates and **Transaction** Article 10 Certificates.

**Specimen Specific Certificates (SSC's)** have replaced 'breeders' Article 10 certificates and are valid for the first and all subsequent sales. They should be passed on to the new keeper along with the bird at the point of sale each time the bird is sold. Subsequent keepers will not need to apply for new certificates in their own name and should safely keep the certificate passed to them. These certificates will be clearly marked with a special condition to the effect that they are issued for the specific bird noted in the description box and

may be used for any commercial purpose, regardless of who owns it and in any country within the EU. These types of certificates are not issued for birds that are source code W (Wild) or U (Unknown).

**Transaction** certificates are valid only for use by the person they are issued to and allow the specimen to be used only for the purposes declared on the certificate or in any covering letter. These will generally be issued under circumstances where the WLRS feels that a **Specimen Specific Certificate** would not be appropriate. Examples of this include where a bird is wild taken or wild disabled, or where there are sales, movement or use restrictions placed on imported birds. This does not necessarily mean you will not be able to sell the specimen (unless the bird is of wild origin where sale is always prohibited) you will just need written permission beforehand from the Wildlife Licensing and Registration Service of Animal Health (WLRS). Birds that are source code W (Wild) or U (Unknown) will only be issued with Transaction certificates.

**Uniquely numbered closed rings for Annex A specimens:** One change that will affect some keepers is that when applying for an Article 10 Certificate, you must now ensure that the ring numbers are 'unique' rather than just 'individual'. Keepers of Schedule 4 birds in England and Wales are no longer issued with closed rings, therefore they must source their own unique rings.

Keepers that fit rings to birds listed on Annex A of the EC Regulation, but not listed on Schedule 4 should make sure that their supplier is able to provide rings that are **uniquely** numbered.

**Transaction Article 10 Certificates for Birds on Loan:** The following does not apply to specimens covered by a Specimen Specific certificate.

If you have a bird on loan and you are using it for commercial purposes you will now need to apply for a Transaction Article 10 certificate in your name. This effectively means that all the persons who 'commercially use' a bird should have a Transaction certificate in their name. If a number of keepers are benefiting at the same time there may be two or more valid Transaction certificates for the same bird in existence at the same time. Where more than one keeper is benefiting at the same time you will not need to cancel previous Article 10 certificates.

This advice does not affect the status of Specimen Specific certificates, which should still be passed on as usual with the bird and will allow commercial use regardless of who has the bird.

An Article 10 certificate is issued for a specimen to be used commercially and should not be regarded as proof of legal ownership or registration.

**Defaced Article 10 Certificates:** Please do not deface an Article 10 Certificate as this will render it invalid and you may therefore commit an

offence by continuing to use the bird for commercial purposes. You will need to re-apply for any certificate that has already been defaced.

**Article 10 Certificate - Change of Bird's State:** If an Article 10 certificate is issued for a live specimen which later dies the certificate becomes invalid as the description would no longer reflect the actual situation. A new Article 10 certificate would be required to use the dead specimen for commercial purposes.

**Change of Address:** If you move address, please remember to return your Transaction certificates for amendment with a letter confirming your new address. The Transaction certificates issued in your old address will become invalid once you move.

**Article 10 Certificates for Wild Disabled Birds:** All certificates issued for wild disabled birds will be **transaction** certificates only and will include a movement restriction condition. This means that the bird may not be moved from the specified location without the written permission of the WLRS.

Those individuals and organisations that obtain birds from veterinary practices and who wish to apply for Article 10 Certificates should be aware that Defra now require much greater detail relating to the origin of the specimen. For example any statement from the practice should include:

- The name of the finder
- The date it was handed into the practice
- Details of the injuries and treatment given
- Confirmation that the bird, after appropriate treatment, is permanently disabled
- In addition to this WLRS may ask for further information relating to the legal acquisition of the bird.

In February 2011 Defra issued the following statement: We have had concerns for some time with the number of wild Schedule 4 birds that are registered for rehabilitation and subsequently end up permanently kept in captivity. Consequently we will be taking a stricter view to ensure that wherever possible any wild Schedule 4 bird taken into captivity is rehabilitated and released back to the wild as soon as possible. To this end we will be inspecting keepers of wild Schedule 4 birds to check that rehabilitation is occurring and that the keeper has sufficient knowledge to successfully release the bird back to the wild.

We will also require keepers to take these birds to an avian vet and have it assessed (regardless of whether the bird is injured or not), as to the estimated time it will take to rehabilitate and release; or alternatively give an expert explanation as to why the bird cannot be released. Forms are available on the defra web site for vets to download and fill in the details.

With regards to applications for Article 10's for wild disabled birds; whether they are on Schedule 4 or not we will be taking a stricter view of Article 8.3 of EC Regulation 338/97 when considering applications to use any wild birds commercially for breeding and or educational display purposes for the conservation of the species. We will only grant them where there are genuine exceptional conservation benefits to the species.

### **Application forms**

An application form to obtain, or more information about, an Article 10 certificate is available by contacting the relevant Management Authority, e.g. the Wildlife Licensing and Registration Service of Animal Health.

### **ANIMAL WELFARE ACT 2006**

This Act brings together and updates legislation that exists to promote the welfare of vertebrate animals, other than those in the wild and applies in England from 6 April 2007 and Wales from 28 March 2007.

Scotland has similar legislation within the **ANIMAL HEALTH AND WELFARE (SCOTLAND) ACT 2006**.

The Act is divided into 69 clauses grouped under headings such as prevention of harm; promotion of welfare; licensing and registration; codes of practice; animals in distress and enforcement powers. Not all of the clauses apply directly to rehabilitators therefore some points have been omitted from this summary.

### **Animals to which the Act applies - Sections (1) & (2)**

The Act currently applies only to vertebrate animals and includes birds, other than man. It classifies an animal as a 'protected animal' if:

- (a) *it is of a kind which is commonly domesticated in the British Islands,*
- (b) *it is under the control of man whether on a permanent or temporary basis, or*
- (c) *it is not living in a wild state.*

### **Responsibility for animals - Sections (3)**

Responsibility for an animal is the person said to have assumed responsibility for its day-to-day care or by virtue of owning it. It also includes a person who assumes responsibility for the animal temporarily such as a veterinary surgeon taking responsibility for the animals kept in his surgery overnight, staff at boarding premises and rehabilitators.

## **Prevention of harm - Sections (4) to (8)**

Under Section 4(1) of the Act it will be an offence to cause physical or mental suffering, whether by a positive act or an omission, to an animal.

The Protection of Animals Act 1911 made it an offence to cause unnecessary suffering to any domestic or captive animal. The provisions of the 1911 Act no longer reflect modern practice, lack legal certainty in modern circumstances and are not consistent with the scheme of protection for vertebrate animals under the Act. This part of the 2006 Act is intended to retain all protection in the 1911 Act, which remains relevant today but to simplify and update the legislation.

Under Section 4. (1) of the Act it will be an offence to cause physical or mental suffering, whether by a positive act or an omission, to an animal.

## **Promotion of welfare - Sections (9) to (12)**

The Welfare of Farmed Animals (England) Regulations 2000 (made under the Agriculture (Miscellaneous Provisions) Act 1968) introduced a positive duty to ensure the welfare of livestock situated on agricultural land. The new welfare offence extends this protection to non-farmed animals so that the duty to ensure welfare now applies to all kept animals (that are owned or for which someone is responsible or in charge). Whilst rehabilitators do not legally own a wild bird they would be classed as its keeper because it is in their care and they are responsible or in charge of it.

Section 9 refers to the 'duty of person responsible for animal to ensure welfare'. Parts 1 & 2 are quoted here:

- 1) *A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of the animal for which he is responsible are met to the extent required by good practice.*
- 2) *For the purpose of this Act, an animal's needs shall be taken to include-*
  - a) *its need for a suitable environment,*
  - b) *its need for a suitable diet,*
  - c) *its need to be able to exhibit normal behaviour patterns,*
  - d) *any need it has to be housed with, or apart from, other animals, and*
  - e) *its need to be protected from pain, suffering, injury and disease.*

It should also be noted that when a person transfers responsibility (re-homing) for an animal to another temporary, the duty will apply in so far as he must take reasonable steps to ensure that the person to whom he transfers responsibility will care for it appropriately.

Subsection (4) clarifies that the killing of an animal is not in itself inconsistent with the duty to ensure its welfare, if done in an appropriate and humane manner.

Section 12 allows the appropriate national authority to promote animal welfare as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals.

“Appropriate national authority” means in relation to England, the Secretary of State; and in relation to Wales the National Assembly for Wales.

### **Licensing and Registration - Section (13)**

This part of the Act enables the appropriate national authority to set out the regimes introducing licence or registration requirements in regulations. It also imposes a duty for consultation to take place before new regulations are introduced.

### **Codes of Practice - Sections (14) to (17)**

Codes of practice are already widely used to promote the welfare of farmed animals and the Act extends their use to non-farmed animals. Codes provide non-binding guidance - agreed by Parliament after appropriate consultation - that enforcers and the courts can refer to when making judgements on whether the relevant welfare standards stipulated in the Act have been attained. Owners and keepers of animals may also find the codes a useful resource by which to increase or confirm their understanding of acceptable welfare standards and to regulate their conduct accordingly.

### **Animals in distress - Sections (18) to (21)**

This part of the Act extends the power in the Protection of Animals Act 2000 in three ways. Firstly, the power is available even if no proceedings have been commenced. Secondly, it is not restricted to animals kept for commercial purposes. Thirdly, it allows inspectors to take into possession not only animals which are suffering but also those which are likely to suffer if action is not taken.

It also authorises an inspector or police constable to enter onto premises to deal with an animal that is believed to be suffering or likely to suffer if remedial action is not taken.

### **Enforcement powers - Sections (22) to (29)**

These sections provide details of powers relating to police officers and inspectors under the Act, including entry, seizure and arrest.

These sections provides that a justice of the peace may issue a warrant authorising an inspector or police constable to enter premises to search for evidence of offences relating to this Act and the power of arrest where applicable.

## **Inspection of records required to be kept by licence - Section (25)**

Where a licence, under section 13, requires the keeping of records, these must be produced for inspection when required. Where the records are held electronically, for example on a computer, the inspector may require records to be printed or to be saved onto a disc or similar device to enable them to be taken away and considered without removing the computer on which they are stored. The inspector may make copies of records produced.

## **Inspection in connection with licence or registration - Sections (26) & (27)**

These sections concern powers of entry and inspection in relation to licensed and registration activities. It provides that regular inspections may be carried out to check that licence or registration conditions are being complied with. Inspectors will also be able to inspect where they have reasonable grounds to believe that a person is carrying on an activity without a licence or registration. A private dwelling may only be entered if 24 hours notice is given.

## **Inspectors - Section (51)**

“Inspector” for the purposes of the Act is defined as a person appointed either by a local authority or by the appropriate national authority (either the Secretary of State or the National Assembly for Wales). In practical terms, an inspector of the appropriate national authority is likely to be an Animal Health inspector.

Local authorities, when appointing inspectors for the purposes of the act, must have regard to any guidance that may be issued by the Secretary of State or National Assembly for Wales setting out the criteria (qualifications, experience etc) that are relevant to the appointment of inspectors for different purposes under the Act.

## **HUNTING BILL 2004**

To clarify the position of hunting with a bird during rehabilitation in the Hunting Bill 2004, you will find below an extract from Schedule 1 of the bill. This means that any type of hunting with dogs in this Schedule is exempt from the hunting legislation and you should not be prosecuted if you are hunting in the manner prescribed.

*6. Flushing a wild mammal from cover is exempt hunting if undertaken-*

- a) for the purpose of enabling a bird of prey to hunt the wild mammal, **and***
- b) on land which belongs to the hunter or which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.*