

# **Animal Welfare Act 2006**

## *Guidance for Wildlife Rehabilitators*



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## **Introduction**

The Animal Welfare Act 2006 (“the Act”) introduces legal requirements on people who are responsible for animals, effectively setting standards of care for those animals. These requirements will apply to all establishments taking in wild animal casualties.

The Act came into force in England on 6 April and in Wales on 28 March 2007. Note that this Act applies to England and Wales only, so this booklet does not include any information regarding the legislation in Scotland or N. Ireland.

This booklet is intended as information on certain aspects of the new law and outlines the types of steps wildlife rehabilitators could take to help them comply with it. The interpretation of the Act presented in this booklet is not the only possible interpretation and cannot be relied upon as representing the interpretation that a Court would take in any particular case. This booklet is not intended to be legal advice. In any particular instance, specific legal advice should be sought.

It is hoped that in many areas rehabilitators will exceed the basic legal requirements.

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### **Wildlife under the Act**

The Act does not protect wild animals living in the wild – other legislation exists for this purpose. However, the Act applies to wild animals in two sets of circumstances:

- (1) wild animals which have been brought under a person's control or are no longer living in a wild state are protected from certain acts, for example being caused unnecessary suffering and poisoning;
- (2) other provisions of the Act, including the welfare offence (explained in more detail overleaf), apply to wild animals for which a person is responsible. The Act explains that 'responsibility' includes permanent and temporary responsibility and being in charge of an animal. On this basis, rehabilitators who care for wild animal casualties will be responsible for these animals for the purpose of the Act. Furthermore, the parent of a child aged below 16 years who cares for a wildlife casualty is also deemed responsible for that animal.

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## The welfare offence

*“A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.”* (Section 9, Animal Welfare Act)

Rehabilitators must take reasonable steps to ensure that the needs of animals in their care are met in accordance with good practice.

Unlike the offence of causing cruelty (“unnecessary suffering”), an animal does not need to have suffered for the welfare offence to arise.

## The needs

The Act lists some of the needs of an animal to be:

- its need for a suitable environment
- its need for a suitable diet
- its need to be able to exhibit normal behaviour patterns
- any need it has to be housed with, or apart from, other animals
- its need to be protected from pain, suffering, injury and disease

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This list provides a basic checklist for the care of any animal by a rehabilitator. As well as providing food and water, and accommodation appropriate to the animal's size, the Act envisages that, for example, prey animals will be housed out of sight from predators; birds will be given the opportunity to fly (subject to their injuries); and spread of disease on the premises at which the animals are cared for will be controlled.

### **Reasonable steps in the circumstances**

Confinement of an animal at a rehabilitation establishment may unavoidably compromise its needs to some degree. An animal's need to express normal behaviour, for example, may not be able to be met because the injuries it has sustained require it to be temporarily confined for its long-term benefit. As long as the temporary confinement does not affect the animal's ability to survive on release, it should comply with the duty to ensure the animal's needs. It should also be permissible to balance the needs of all the animals in the rehabilitator's care and divide the available resources accordingly provided that each is afforded adequate welfare. As the confinement is temporary and its purpose is to benefit the animal, the rehabilitator should fulfil its legal duty even though the animal's needs are not met absolutely.

The animal must not suffer as a result of its confinement but its welfare may be compromised to some degree where it is in the animal's interests to do so. Where its welfare is compromised, it must be possible to justify this as reasonable on the basis that what is being done will enable the animal to survive in the wild on release. If confinement at the establishment which compromises the animal's welfare also significantly reduces its chances of survival on release, it may be difficult to argue that the rehabilitator took reasonable steps to ensure the animal's needs were met.

It is considered good practice in rehabilitation to euthanase an animal where it is thought that there is not a good chance that it can be successfully rehabilitated back into the wild and quality of life in a captive environment cannot be assured. Destruction of an animal in an appropriate and humane manner is specifically exempted from the welfare offence.

Protocols or standards for the care of animals are a good way to ensure, and demonstrate, that reasonable steps are taken to ensure the welfare of animals. It would also be advisable for a care plan to be drawn up for each animal that comes into the rehabilitation establishment, and for these plans to be discussed with the rehabilitator's veterinarian as required. Records should be kept of the plans and veterinary advice received.

The following sections give examples of steps that might help rehabilitators to meet their obligations in particular situations. The scope of the rehabilitator's responsibility will vary according to the circumstances of the individual animal.

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### **Release**

If an animal has become dependent on the rehabilitator and is unable to fend for itself in the wild, releasing that animal is likely to be a welfare offence. (It might also be a cruelty offence if the animal suffers unnecessarily as a result.) A rehabilitation programme that gradually re-accustoms such animals to the wild is necessary. For the majority of that programme, the rehabilitator will remain responsible for the animal and should put out food and water for the animal. Only when it is free to roam at will and not dependent on returning to the release pen for food or water will the rehabilitator's obligations cease.

An animal should be released at an appropriate site for its species, where it is likely to find food, water and a place to rest. Any other consideration relevant in the circumstances, such as the presence and density of potential predators and competitors, should be taken into account as far as reasonably possible when determining which site is most suitable.

### **Periods of pressure**

Particular consideration should be given to periods when resources at the rehabilitation establishment may become strained and the standard of care given to animals could be affected. Rehabilitators should:

- review their capacity and availability of resources for seasonal peaks of animals being received into the establishment.
- plan for emergencies such as unexpectedly large numbers of animals requiring care or staff shortages.

### **Care in the field**

Temporary responsibility for an animal's needs may arise when on the spot help is given to wild animals in the field e.g. the disentanglement of a bird from a fishing line. However, it would seem unlikely that in these circumstances responsibility would extend beyond providing the immediate assistance required.

### **Good practice**

The duty to ensure an animal's needs are met requires rehabilitators to achieve the standard of "good practice". The Act, though, does not define what represents good practice, which may be subjective. Until court cases shed light on its meaning, it would seem advisable to:

- assume that good practice is the standard that the majority of people with expertise in the relevant area would consider to be the appropriate level of care. The standard is likely to change as expert knowledge develops.

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- produce good practice guidelines to cover all areas of the rehabilitators' operations, practical and administrative. One example of such guidelines are those produced for badgers by the RSPCA, The Badger's Trust and Secret World Wildlife Rescue. Such guidelines should be compiled from existing evidence in the public domain and good quality data on rehabilitative success collected by the rehabilitators. Rehabilitators should have written standards of how they keep different species as achieving or surpassing such standards could help show that a rehabilitator has met the legal standard required.
- Take into account any codes of practice which DEFRA issues under the Act. DEFRA intends to produce a code of practice for sanctuaries and codes for the care of particular kinds of animals. Organisations such as the British Wildlife Rehabilitation Council (BWRC) will be involved in any consultations that take place. These codes may provide practical guidance relating to the welfare offence. Failure to comply with a code will not constitute an offence but could be used as evidence to establish liability for the offence. Compliance with the code could be relied on as tending to negate liability for the offence.

### **Liability**

Liability for the welfare offence will attach to the person or people responsible for the care of the animal. Depending on the circumstances, this could include staff members responsible for animal care and those in charge of management or administration of the centre.

Taking the following steps would seem likely to help rehabilitators avoid liability:

- adopting standards for the care of different kinds of animals and following good practice guidelines;
- using care plans for all animals that come into the establishment and receiving veterinary advice on these where appropriate;
- keeping records of standards, good practice guidelines, care plans and veterinary advice and treatment received;
- Keep records and, if required, provide reports regarding the welfare of animals in the care of the rehabilitator.



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## **Regulation of sanctuaries**

In addition to the Act, the government is considering introducing additional regulation for sanctuaries. This regulation might require sanctuaries periodically to register with, or obtain a licence from, the local authority. Sanctuaries may have to submit to inspections by local authority inspectors on request.

The government's latest proposals are available at:

<http://www.defra.gov.uk/animalh/welfare/bill/secondary.htm>.

Regulation seems unlikely to come into force before 2009.

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