

# **ISPCA LEGAL HANDBOOK**

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## ANIMALS – A LEGAL HANDBOOK

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INTRODUCTION BY ANGELA McCARTHY.

#### FOREWORD

This legal handbook has been produced with many people in mind: members, and especially secretaries, of local SPCA's, local and national animal welfare Inspectors, other animal welfare bodies in Ireland, and particularly the Garda Siochana, who have the statutory authority over animal welfare in this country, and to whom we are all greatly indebted for their work in enforcing the laws that protect animals. It is our hope that this book will make it easier for everyone concerned to prevent cruelty, and to foster a climate in which all animals are respected and protected from abuse.

On behalf of the ISPCA I would like to thank the legal team which produced it and to express our appreciation of their thoroughness and dedication.

Angela McCarthy  
Chairperson ISPCA

## CHAPTER ONE

### THE PROTECTION OF ANIMALS FROM ACTS OF CRUELTY.

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The Republic of Ireland boasts a large body of legislation which is designed to prevent the perpetration of cruelty to animals. There are general provisions which apply to a wide variety of animals and more specific ones which apply to individual types of animals.

The legislation discussed in this book derives from domestic statutes, Regulations and Directives of the European Union which apply in this jurisdiction. As a result, we now have a large body of law protecting animals from cruelty.

Members of the public are often unsure as to whether an act which they might consider to be cruel is also viewed as cruel under the law. The attitude of the law is set forth in a variety of Acts the most important of which are **The Protection of Animals Act, 1911, Vol. 49 1 & 2 Geo V.** and the **Protection of Animals (Amendment) Act, 1965 No.** These Acts cover "cruelty to animals" in a general way. They have an application in most instances of cruelty.

Most of these provisions grant powers to the Gardai and Local Authorities to prevent cruelty. As will be demonstrated, it is only on a very rare occasion that a member of the public is entitled to take matters into his or her own hands. Unauthorised action by individuals can result in expensive litigation which the individual will have to discharge personally.

#### Q.1 What animals are protected by the Protection of Animals legislation?

The **Protection of Animals Acts, 1911 and 1965** are the principal statutes which prohibit the maltreatment of animals.

Initially, the scope of this Act extended only to **domestic or captive animals (Section 15 of the 1911 Act)**, a domestic animal being any tame animal, or any animal which had been sufficiently tamed to be put to use by humans. Captive animals are those whose freedom is curtailed by use of cages, pens, ropes, pinions, or other device. Animals in the wild remained vulnerable to wanton acts of cruelty under the 1911 Act.

The 1965 Act, however, extended the definition to include all **wild animals, Section 13(a)**. By virtue of these provisions, it is now unlawful to commit acts of cruelty on any animal.

#### Q.2 What is Cruelty?

Cruelty occurs if any of the acts set down in Section 1(1)(a) - (f) of the 1911 Act are committed by any person. More generally cruelty is "**causing unnecessary suffering**" to an animal. In addition to positive acts constituting cruelty, it is also unlawful, to abandon or neglect animals, where by doing so the animal is caused unnecessarily to suffer.

**Section 1 (1) of the Protection of Animals Act, 1911**, as amended creates the offence of cruelty "if any person" causes, procures or (if the owner) permits the following acts to be perpetrated on animals:-

- 1 (a) to cruelly beat, kick, ill treat, over ride, over drive, over load, torture, infuriate, or terrify any animal; or  
1 (b) to convey or carry an animal in a manner or position which causes unnecessary suffering; or  
1 (c) to assist in the fighting or baiting of an animal (including the provision of premises and obtaining admission fees for the same); or:  
1(d) the administration of poisonous or injurious drugs or substances to animals; or

1 (e) subjecting an animal to an operation which is performed without due care and humanity.

**Section 1 (1)(f) of the Protection of Animals Act, 1911** (inserted by **Section 4 of the 1965 Act**) introduced a further category of cruelty which arises:-

"(Where) being the owner or having charge or control of any animal [a person] shall without reasonable cause or excuse abandon it, whether permanently or not, in circumstances likely to cause it unnecessary suffering, or cause or procure or, being the owner, permit it to be so abandoned."

**According to Section 1(1)(a) it is further an offence to:**

"..cause or procure, or, being the owner, permit any animal to be so used, or shall, by wantonly or unreasonably doing or omitting to do any act or causing or procuring the commission or omission of any act, cause any unnecessary suffering, or, being the owner, permit any unnecessary suffering to be caused to any animal;"

Not only is it an offence actively to commit acts of direct cruelty such as kicking or beating animals but acts of omission and neglect are also prohibited. These latter forms of cruelty are the most usual perpetrated in our society. It is, therefore, likely that members of the public will have encountered this type of cruelty at some stage. Many of these individuals may have had questions in relation to the course(s) of action open to them when they witness acts of cruelty to animals. The following may answer some questions individuals might have in relation to general cruelty.

**Q.3 What should an individual do if he becomes aware that an animal is being maltreated?**

As a general rule, a person who becomes aware of cruelty to an animal should contact the Gardai who have a number of powers under this legislation to take action in relation to the same.

It is not advisable for persons to take matters into their own hands, but the law does permit action by members of the general public in certain limited circumstances for example, where animals in a pound are not provided with food or water, as required by law (See *Chapter 3 on Pounds Q.3*), and in relation to stray animals in public places (See *Chapter 2 on Stray & Abandoned Animals Q.2*).

**Q.4 What powers do the Gardai have if they become aware of an incident of cruelty?**

**Section 12 of the 1911 Act** governs the powers of the Gardai.

A Garda may **arrest without warrant** "any person who he has reason to believe is guilty of an offence under this Act..."[s.12(1)]. The Garda may act of his own volition but he may also act on foot of a complaint from a member of the public, who must provide a name and address when making the said complaint.

If the person apprehended is in charge of a vehicle or animal when arrested both may be seized by the Gardai and taken into "**some place of safe custody until the termination of the proceedings**" or **until the court shall otherwise direct** pursuant to **Section 12 (2) of the Act of 1911**. The cost of such detention and any veterinary expenses are recoverable as a civil debt from the owner of the animal.

**Section 12 (2) of the Protection of Animals Act, 1911**, states that:-

"Where a person having charge of a vehicle or animal is apprehended by a police constable for an offence under this Act, it shall be lawful for that or any other constable to take charge of such vehicle or animal, and to deposit the same in **some place of safe custody** until the termination of the proceedings or until the Court shall direct such vehicle or animal to be delivered to the person charged or the owner, and the reasonable costs of such detention, including the reasonable costs of veterinary treatment where such treatment is required, shall, **in the event of a conviction** in respect of the said animal, be recoverable from the owner summarily as a civil debt, or, where the owner himself is convicted, shall be part of the costs of the case."

The term vehicle is not defined in the act, but presumably was intended to cover carriages or other such vehicles, which are taken into custody at the same time as the maltreated animal. There are separate provisions in relation to the transport of animals (See *Chapter 6 on Transport*).

**Dogs** : There are specific statutory provisions for **Dogs** (See *Chapter 11 on Dogs*),

**Horses**: The **Control of Horses Act, 1996**, confers a number of unique powers on the Gardai, to deal with issues of cruelty to and control of horses, including powers to arrest persons without warrant and to direct that a person whom he suspects of committing acts of cruelty to horses contrary to Section 1 of the 1911 Act desist from carrying out those acts (See *the Chapter 12 concerning Horses for further details about treatment of horses*).

**Q.5 What should a member of An Garda Siochana do if he finds an animal is in a deplorable condition?**

It should be noted that **the powers of the Gardai vary depending on the type of animal found**. In this respect please read this question in conjunction with question 6 below. The general provisions are found in **Section 11 of the Protection of Animals Act, 1911** which state that:-

"(1) If a police constable finds any animal **so diseased or so severely injured or in such a physical condition**, that, in his opinion, having regard to the means available for removing the animal, there is no possibility of

removing it without cruelty, he shall, if the owner is absent or refuses to consent to the destruction of the animal, at once summon a duly registered veterinary surgeon, if any such veterinary surgeon resides within a reasonable distance, and, if it appears by the certificate of such veterinary surgeon that the animal is mortally injured, or so severely injured, or so diseased, or in such physical condition, that it is cruel to keep it alive, **it shall be lawful for the police constable, without the consent of the owner, to slaughter the animal**, or cause or procure it to be slaughtered, with such instruments or appliances, and with such further precautions, and in such manner, as to inflict as little suffering as practicable, and, if the slaughter takes place on any public highway, to remove the carcass or cause or secure it to be removed therefrom.

- “(2) If any veterinary surgeon summoned under this section certifies that the injured animal can without cruelty be removed, it shall be the duty of the person in charge of the animal to cause it forthwith to be removed with as little suffering as possible, and, if that person fails so to do, the police constable may, without the consent of that person, cause the animal forthwith to be so removed.
- “(3) Any expense which may be reasonably incurred by any constable in carrying out the provisions of this section (including the expenses of any veterinary surgeon summoned by the constable, and whether the animal is slaughtered under this section or not) may be recovered from the owner summarily as a civil debt, and, subject hereto, any such expense shall be defrayed out of the fund from which the expenses of the police are payable in the area in which the animal is found.

This section would cover a situation where an animal had been badly injured in a road accident or through cruelty or neglect. The Garda can request that a veterinary surgeon inspect the animal. He can then order the destruction of the animal where he is advised by the veterinary surgeon that to keep the animal alive would in itself be an act of cruelty. If a veterinary surgeon is not available, a Garda has no power to destroy the animal unless the owner consents.

A case may arise where the owner refuses to consent to the destruction of the animal and no vet is available. In those circumstances, the Garda may exercise his powers under Section 12 to take the animal into some place of safe custody until the issue of its destruction or otherwise is resolved.

There are specific provisions concerning cats and dogs. These are discussed below. (See Question 7).

#### **Q.6 Which animals are covered by the general provisions in Section 11?**

The scope of Section 11 of the 1911 Act is set down in **Section 11 (4)** (as extended by **Section 10 of the Protection of Animals (Amendment) Act, 1965**) which states that:-

- “(4) For the purposes of this section, the expression "animal" means any horse, mule, ass, bull, sheep, goat, or pig, dog or cat.”

**Section 15 of the 1911 Act. defines** the word "bull" as meaning any cow, bullock, heifer, calf, steer or ox.

In light of the above definition, it appears that in the case of smaller animals, such as gerbils or guinea pigs, or alternatively, wild and exotic animals, the Gardai may take them into places of safe custody under Section 12, prior to their destruction. Wild birds, however, may be destroyed for humane reasons by any person (See *Chapter 14 on Wildlife*).

#### **Q.7 What can be done for severely maimed or injured cats or dogs found in a public place?**

##### **Cats and Dogs:**

There is a special provision for cats and dogs found in a public place which are severely maimed or injured so that it would in the opinion of the Garda be cruel to keep them alive. **Section 11 of the 1965 Act** also provides that the Garda himself may destroy or procure the destruction of the animal in a humane manner and/or dispose of the carcass without the consent of the owner.

This is a very useful provision as a situation could frequently arise whereby it might be impossible to locate the owner. In the meantime, the animal could be in severe pain and/or could present an environmental hazard.

**Section 11, Protection of Animals (Amendment) Act, 1965** provides, *inter alia*, that

“If any member of the Garda Síochána finds any dog or cat which has been fatally injured in a public place and which appears to him to have been fatally injured, or so severely injured that undue suffering would be inflicted on it if he complies with the subsection (1) of the Principal Act, he may in the absence of its owner forthwith destroy the animal or cause or procure it to be destroyed in such a manner as to inflict as little suffering as practicable, and may remove the carcass or cause or procure it to be removed.”

#### **Q.8 Can a Court order the destruction of an animal?**

In certain circumstances a Court can order the destruction of an animal. If a court, having convicted an owner or person in charge of an animal for cruelty, is of the view that "it would be cruel to keep the animal alive" the court may order the destruction of the animal according to **Section 2 of the 1911 Act**.

This section allows the Court the discretion to order the destruction of an animal, even where its owner has not been guilty of cruelty and does not want the animal destroyed. For example, a dog-owner may move abroad temporarily and

leave the animal in the care of an ostensibly proper kennel, which then neglects or mistreats it. Presumably, the court would be guided by the opinion of a vet in such circumstances.

**Q.9 Who can be prosecuted for cruelty?**

Any person who inflicts suffering directly or indirectly can be prosecuted. The phrase "any person" has a wide meaning and includes, owners of animals and so-called "persons having charge or control of animals" The latter category could include people who look after the animals of another, sometimes referred to as "bailees".

**Q.10. Can an owner of an animal be prosecuted if he has no knowledge that his animal is being treated in a cruel manner by another individual?**

An owner who was unaware of the suffering of his animal may be found to have committed an offence for the purposes of these Acts where he is found not to have taken reasonable care of his animals so as to prevent the infliction of the suffering. (*White v Ivens* 1915 84 LJKB 1878)

**Q.11. Can an owner who causes another person to inflict cruelty by act or omission be prosecuted under the Act of 1911?**

Yes.

**Q.12 What is required in order to obtain a conviction?**

The offences contained in the Protection of Animals Acts are offences of "strict liability". This means that the law sets down a standard of care and treatment of animals which, if broken, even unintentionally, will result in an offence. The prosecution must show that acts were done or omissions made which constituted cruel acts for the purposes of the legislation. (*Duncan v Pope* 1889 80 LT 120 & *Allen v Small* 1904 2 IR 705).

**Q.13 Who is presumed to own a mistreated animal found on private land?**

For the purposes of any proceedings the occupier of the land where an animal is found is presumed to be the owner of the animal, unless the contrary is proven, **Section 16 of the 1965 Act**.

**Q.14 What are the penalties for such an offence of cruelty?**

The part of **Section 1 of 1911 Act** which outlines the penalties for cruelty has been amended most recently by the **Control of Horses Act, 1996, Section 48**. On summary conviction of the offence of cruelty, a maximum fine of £1,500 may be imposed and a term of imprisonment not exceeding 6 months, or both. On conviction on indictment the maximum fine is £10,000 and the maximum term of imprisonment is 2 years and again both may be imposed. (*Please consult the definition section of this book for an explanation of the phrases "summary" and "indictment"*.)

Under **Section 3 of the Act of 1911** once the owner of an animal is convicted of an offence within the meaning of the Act the Court may, in addition to the foregoing punishments, deprive that person of his ownership of the animal. Such an order may be made where there is evidence of any of the following:-

- {i} A previous conviction for cruelty, or;
- {ii} The bad character of the guilty party in respect of animals, or
- {iii} That if the animal is left with the guilty party, it is likely to be exposed to danger.

An order for the destruction of the animal may also be made by the courts under this section if required.

**Section 4 of the Act of 1911** requires that a person so convicted of cruelty shall be liable to be ordered to pay compensation to the person who suffered loss as a result of the acts of cruelty on the application of that person to the Court. What is envisaged by this section is a situation where a third party who is not the owner of the animal commits the act of cruelty which results in some damage to or the necessary destruction of the animal such that the owner suffers a loss. The granting of such an order is a matter for the Court in the exercise of its discretion. The maximum amount recoverable under this provision is £10 and this appears never to have been amended. Therefore until such time as the maximum amount of this fine is enlarged, this provision is effectively redundant.

**Q.15 Do these provisions protect animals destined to become food for human consumption?**

No, Section 1(3)(a) of the Act of 1911 precludes the application of this legislation to the destruction of animals for the purposes of food for mankind unless the same involves unnecessary suffering (*See Chapter 4 on Farming Animals & Chapter 9 on Slaughter for a further discussion of this area*)

**Q.16 Do these provisions outlaw the hunting and coursing of animals?**

**Captivity**

Section 1(3)(b) as amended by Section 4 of the Protection of Animals Act, 1965 provides that the hunting and coursing of any captive animal, shall not constitute cruelty unless "such animal is liberated in an injured, mutilated or exhausted condition". In order to come within the exception, the animal must be liberated and cannot be under control.

"A captive animal shall not be deemed to be coursed or hunted within the meaning of this subsection if it is coursed or hunted in an enclosed space from which it has no reasonable chance of escape"

**Wild**

In the wild, hunting where legally permissible will not be cruelty unless it involves "unnecessary suffering" to the animal. (See *Chapter 14 on Wildlife, Hunting, Q.20 et seq.*).



## CHAPTER TWO

### THE ALLEVIATION OF SUFFERING OF STRAY & ABANDONED ANIMALS

- Q.1 Is it an offence for a person to let animals loose onto the streets?  
Q.2 What can an individual do if he encounters a wandering or stray animal?  
Q.3 What can the authorities do where an animal is found wandering in a public place?  
Q.4 What can be done where an animal is found on private land?

Stray animals present a common problem for both rural and city dwellers. They can pose a danger to themselves and others if they wander onto the public highway. Aside from the potential for accidents, these animals are caused to suffer by being abandoned. They will frequently have been neglected and will often have been left without food for considerable periods of time.

#### **Q.1 Is it an offence for a person to let animals loose onto the streets?**

It is an offence to abandon animals or to allow them to stray or cause mischief on the public roadway.

**Section 1 (f) of the Protection of Animals Act, 1911** (inserted by Section 4 of the Protection of Animals (Amendment) Act, 1965) introduced a further category of general cruelty which arises; -

"(Where) being the owner or having charge or control of any animal [a person] shall without reasonable cause or excuse abandon it, whether permanently or not, in circumstances likely to cause it unnecessary suffering, or cause or procure or, being the owner, permit it to be so abandoned."

Under **Section 10 (1) of the Summary Jurisdiction (Ireland) Act, 1851** (as amended by the Section 36 of the Control of Dogs Act, 1986) it is an offence for:-

"Any person who shall in any public road or street of a town turn loose any horse or cattle or who by negligence or ill usage in driving cattle shall in any public road or any street of a town cause any mischief to be done by such cattle, shall be liable to a fine.."

The original version of Section 10 (1) had also included provisions relating to dogs, but these were repealed with the introduction of the more comprehensive **Control Of Dogs Act, 1986** (See Chapter 11 on Dogs)

**Section 10 (11) of the Summary Jurisdiction (Ireland) Act, 1851** (as amended by the Section 4 (4) of the Animals Act, 1985) provides that:-

"Any person who shall allow any swine or other beast to wander upon any public road, or about the streets or passages of any town, shall be liable on summary conviction, in the case of a first offence under this paragraph, to a fine not exceeding £150 and, in the case of a second or subsequent such offence, to a fine not exceeding £350"

The term "beast" is not defined in the Act, although the section, as initially enacted, set out separate offences in relation to cattle, horses or dogs left at large in public places.

#### **Q.2 What can an individual do if he encounters a wandering or stray animal?**

Given the often serious consequences both to the animals and to members of the public when animals are abandoned or are left to wander, members of the public should report such sightings to the Gardai or, alternatively, the individual may take matter into his or her own hands. This is one of the very few instances in which a member of the public may act of their own volition.

**Section 10 (11) of the Summary Jurisdiction (Ireland) Act, 1851** (as amended by the Section 4 (4) of the Animals Act, 1985) provides that: -

"Any person who shall allow any swine or other beast to wander upon any public road, or about the streets or passages of any town, shall be liable on summary conviction, in the case of a first offence under this paragraph, to a fine not exceeding £150 and, in the case of a second or subsequent such offence, to a fine not exceeding £350"...and in the case the owner shall not be known, **it shall be lawful for any person by whom any such swine or beast shall be found wandering upon any such road, street, or passage, to impound the same.**"

The crucial aspect of **Section 10 (11)** is that, where the owner is not known, a citizen may impound an animal found wandering in public. It should be noted that this section does not apply to the Gardai and other State authorities whose powers are specified under that Act and elsewhere.

**Note:** Dogs are probably the most common type of animal found straying. There is a discussion as to the steps to be taken in respect of stray dogs under *Chapter 11* dealing with dogs.

#### **Q.3 What can the authorities do where an animal is found wandering in a public place?**

The authorities can impound these animals in accordance with the following guidelines.

**Section 4 of the Animals Act, 1985** regulates the powers of designated authorities to impound straying animals. It states as follows:-

- (1) "Public place" means any street, road or place to which the public have access with vehicles whether as of right or by permission and whether subject to or free of charge; and
- "State authority" means a Minister of the Government or the Commissioners of Public Works in Ireland.
- (2) (a) Subject to paragraph (b), a member of the Garda Síochána or any local authority may impound any animal found wandering on a public road or in any public place, or trespassing on any public park or open space which is owned or occupied by a local authority or a State authority.
- (b) In relation to any such public park or open space, the power to impound conferred by (a) may be exercised only on request by the local authority by which such public park or open space is owned or occupied.
- (3) The Commissioners of Public Works in Ireland may impound any animal found trespassing on any public park which is under the control and management of the Commissioners.
- (4) Paragraph 11 of Section 10 of the Act of 1851 and section 20 of that Act shall not apply in relation to the impounding of an animal by a member of the Garda Síochána or by a local authority or by the Commissioners of Public Works in Ireland.
- (5) Where an animal is impounded in pursuance of the powers conferred by this section, the authority by which the animal is impounded may recover the cost of transporting the animal to the pound from the owner of the animal as a simple contract debt in any court of competent jurisdiction"

This is a useful provision as it gives extensive powers to the various authorities to remove animals who can often pose a danger to themselves and to members of the public.

**Note:** In response to specific problems which have been encountered in relation to horses the **Control of Horses Act, 1996**, has been recently enacted (*See Chapter 12 on Horses*).

#### **Q.4 What can be done where an animal is found on private land?**

There are different requirements set down with regard to animals found on private land. The steps to be taken depend on whether the owner of the animals is known to the occupier or not.

**Section 20 of the Summary Jurisdiction (Ireland) Act 1851** provides that:-

"The decision and regulation of certain matters relating to the trespass of animals shall be subject to the following provisions:

1. It shall not hereafter be lawful to impound any animal found trespassing upon any land when the owner of such **animal shall be known**; but the occupier of such land or the person by whom such animal shall be found trespassing shall either **deliver up such animal** to the owner, or to his steward, herdsman, caretaker, or other servant, **or** he shall allow such animal in the act of trespassing to such owner steward, herdsman, caretaker, or other servant, and **allow such animal to be taken away by him**; and the owner of such animal shall thereupon be liable to pay to the occupier of such land the rate of trespass fixed by the following scale (the Act then proceeds to set out certain so-called rates of trespass)
2. **But when the owner of any such animal shall not be known**, it shall be lawful for the occupier of such land or for his own servants, or for any other person on his behalf, to **impound such animal in the nearest pound** of the county (or in the nearest pound of the manor), specifying in the notice which he is required to give to such pound keeper (under the provisions herein-before contained relating to the impounding of animals) the nature of the land or crop in which such animals shall have been found trespassing; and such pound keeper shall afterwards deliver up such animal to the owner, if known, or to any person on his behalf, either upon being so authorised in writing by any justice, or upon being paid by such owner or person the amount legally due for the pound fees and rates of sustenance, and also the amount due under the above scales of rates of trespass on any land or crop in the nature specified in such notice; and such pound keeper shall thereupon pay over the amount of such rate of trespass to the person by whom such animal shall have been impounded, unless when required by any justice, or by such occupier by notice in writing, to hold over the same until any dispute as to the same shall have been decided at petty session."

**Section 20** proceeds to state that any person "who shall be guilty of any of the next following neglects or offences shall be liable to a fine"

5. Any person who shall impound any animal found trespassing, where the owner of such animal shall be known to him, or who shall impound any animal without giving to the pound keeper the notice required by this Act
6. Any pound keeper who shall neglect or refuse to deliver up any animal so impounded to the owner, when authorised in writing by any justice so to do, or upon such owner paying to him the amount of the pound fees and rates of trespass legally due and the amount legally due for the trespass, or who shall neglect

(except when any justice shall authorise him to hold over the same until the decision of any dispute as to same at petty sessions) to pay over to the person entitled to receive the same amount which shall be paid to him for the trespass upon the liberation of such animal”

By virtue of **Section 4 (4) of the Animals Act, 1985** (see below) the Gardai, the Local Authority or the Commissioners for Public Works are exempted, inter alia, from the foregoing provisions in relation to the impounding of an animal, **Section 20**.

## CHAPTER THREE

### THE CONFINEMENT OF ANIMALS AND THE PROPER MAINTENANCE OF POUNDS

#### General:

- Q.1 What is a Pound?
- Q.2 What are the basic requirements of a pound?
- Q.3 What can a person do when they become aware of an impounded or confined animal which has been left without food or water?
- Q.4 Who pays the bills in relation to impounded animals?
- Q.5 In general where should an animal be impounded?
- Q.6 Are there exceptions to this general rule?

#### Private Pounds:

- Q.7 What is a private pound?
- Q.8 Can an animal be taken to a private pound?
- Q.9 If an animal is taken to a private pound do the Regulations of 1985 apply?
- Q.10 What are the general provisions in relation to pounds?
- Q.11 Who pays the expenses in relation to local authority public pounds?
- Q.12 What are the penalties in relation to a contravention of the regulations under this Act?

#### Sale of Impounded animals:

- Q.13 Can a pound keeper sell the animal in his care?
- Q.14 How must such a sale take place?
- Q.15 Must there be notification of the sale?
- Q.16 What happens to the animal where the sale is unsuccessful?
  
- Q.17 What happens where the animal is suffering?
- Q.18 What happens where a person attempts to retrieve his animal from a pound in an unlawful manner?
- Q.19 What should an individual do who has impounded an animal in accordance with any of the provisions as aforesaid?
- Q.20 What can a person do who has lost an animal, found that it has been impounded, and that it is about to be destroyed?
- Q.21 Could a pound keeper refuse to give up the animal to the owner?
- Q.22 Who has responsibility for the upkeep of a pound?
- Q.23 Should every Local Authority establish and maintain a pound?
- Q.24 How does a place become a pound?
- Q.25 What can an individual do where he feels that a pound is not being adequately maintained?
- Q.26 What can be done where the pound does not have adequate supplies?
- Q.27 Who prosecutes offences under the 1935 Act?
- Q.28 What can the authorities do where they find an animal wandering in a public place?

In addition to the Protection of Animals Act, 1911 and the Protection of Animals (Amendment) Act, 1965, there are three main pieces of legislation in relation to Pounds, namely the **The Pounds (Provision and Maintenance) Act, 1935** which imposes duties on the Local Authorities in relation to the maintenance and upkeep of pounds. Then there is the **Animals Act, 1985** which lays down some basic requirements for a pound. The third main statutory provision is the **Pounds Regulations 1985 (Statutory Instrument Number 306 of 1985)**. Between 1938 and 1984 various Regulations in relation to pounds were enacted. However they were all repealed by the **Pounds Regulations, 1985**

#### Q1. What is a Pound?

**Section (1) of the Pounds (Provision and Maintenance) Act, 1935**, defines the word *pound* as:-

"(A)ny enclosure, building, or premises constructed or adapted for the reception, maintenance, custody or safe-keeping of chattels or of animals seized or taken under any legal process or lawful warrant or of animals found trespassing, wandering or straying or of chattels of which the owner is unknown or cannot be found".

This definition is very wide in its scope and includes a place of safe keeping for an animal where its owner cannot be found.

#### Q.2 What are the basic requirements of a pound?

These are set down in **Section 7 of 1911 Act** (as substituted by Section 6 of the 1965 Act) as follows:-

"It shall be the duty of *any person* who impounds or confines, or causes to be impounded or confined any animal in *any pound*-

- (a) if the animal is kept in the pound for a period exceeding three hours, to ensure that a sufficient quantity of wholesome drinking water is supplied for its use, and
- (b) if the animal is kept in the pound for a period exceeding six hours, to ensure that a sufficient quantity of suitable food is supplied for its use not later than six hours after its admission to the pound and thereafter at intervals not exceeding twelve hours, as long as it remains in the pound."

**Q.3 What can a person do when they become aware of an impounded or confined animal which has been left without food or water?**

If the animal has been left without food or water for a period in excess of six hours the person may take matters into their own hands, enter the premises and supply the animal therein.

**Section 7(5) of the Act of 1911** states as follows:-

"If any animal is impounded or confined in any pound for six successive hours or longer and is without such food or water as is required by Subsection 1 of this section to be supplied, any person may enter the pound for the purpose of supplying the animal therewith."

Again this is one of the rare instances when an individual can take direct action in response to an act of cruelty. The subsection is very wide in that it allows any person in certain instances the right to enter any pound.

**Q.4 Who pays the bills in relation to impounded animals?**

**Section 7(6) of the 1911 Act as amended states that :-**

"The reasonable cost of the food and water supplied to any animal impounded or confined in any pound shall be recoverable from the owner or other person responsible for the purpose of supplying the animal therewith."

**Q.5 In general where should an animal be impounded?**

**Regulation 7 (1) of The Pounds Regulations, 1985** states that:-

"An animal or chattel shall not be impounded in any place other than the nearest pound provided by a local authority under the Pounds (Provision and Maintenance) Act, 1935, except where an assault is threatened or made on the person impounding the animal or where a rescue of the animal or chattel is threatened or attempted and, in either case, the impounding elsewhere of such animal or chattels is reasonably necessary for the detention of the animal or chattel, the safety of that person, animal or chattel or the health of the animal."

**Q.6 Are there exceptions to this general rule?**

The general rule is that animals should be taken to the local authority pound. In exceptional circumstances, e.g., where an animal owner might attempt to retrieve his animals or cause violence, they can be impounded "elsewhere". There is no specific restriction on what type of place is covered by the phrase "impounding elsewhere".

**Q.7 What is a private pound?**

A definition of a Private Pound is provided in **section 5 of the Animals Act, 1985 :-**

**Section 5 of the Animals Act, 1985** defines a "private pound" as one that is not "provided under the Act of 1935". In other words, one that is not a local authority pound.

**Q.8 Can an animal be taken to a private pound?**

Where an arrangement has been entered into between the private pound owner and the Local Authority, an animal may be taken to a private pound.

**Regulation 7 (2) of the 1985 Pounds Regulations** states that:-

"This Regulation does not apply in relation to the impounding of an animal in a private pound under Section 5 of the Animals Act, 1985.."

**Section 5 (2) of the Animals Act, 1985** states that:-

"Notwithstanding anything contained in the Act of 1935 or in Regulations thereunder, it shall be lawful for any local authority to enter into **arrangements** for the impounding in a private pound of any animal by a member of the Garda Síochána or by a local authority or by the Commissioners of Public Works in Ireland.

The general rule (that animals are to be taken to the local authority pound) does not apply where an "arrangement" has been entered into between, e.g. the I.S.P.C.A. and a local authority. In these circumstances animals could be taken to a "private" I.S.P.C.A. pound.

However, Regulation 7 does not apply "*in relation to the impounding of an animal in a private pound under Section 5 of the Animals Act, 1985*". Accordingly, the owner of a private pound would not be able to levy pound-fees under the

1985 Regulations or to avail of the other powers conferred on local authority pounds by virtue of Regulations 8, 9, 10 and 12 of the 1985 Regulations (see below). In these circumstances the I.S.P.C.A. would have to enter into a separate arrangement for payment with the local authority.

**Q.9 If an animal is taken to a private pound do the Regulations of 1985 apply?**

The 1985 Regulations do not apply to private pounds.

**Q.10 What are the general provisions in relation to pounds?**

**Section 5 (3) of the Animals Act, 1985** states that:

"The Minister may make regulation for all or any of the following matters in relation to animals impounded in private pounds:-

- (a) the notices to be given or displayed in connection with the impounding of animals,
- (b) the fees to be paid by the owner of such animals;
- (c) the provision of veterinary services for such animals;
- (d) the transfer of animals so impounded to pounds provided under the Act of 1935;
- (e) the sale, disposal or destruction, pursuant to an order of the local authority in whose functional area the private pound is situated, of animals so impounded of which the owner is unknown or cannot be found and the time after which such sale, disposal or destruction shall take place;
- (f) the sale, disposal or destruction, pursuant to an order of the local authority in whose functional area the private pound is situated, of animals so impounded of which the owner is known, where the owner, on request by the person in charge of the private pound, fails to pay the prescribed fees or to remove the animals from the pound;
- (g) the disposal of any moneys realised by any sale under *paragraph (e) or (f)*;
- (h) the standard to be applied to pounds and to the care of animals therein."

**Q.11 Who pays the expenses in relation to local authority public pounds?**

**Section 5 (4) of the Animals Act, 1985** states that:

"Any balance of expenses incurred by a local authority in connection with a private pound within its functional area after deduction of any moneys realised by any sales of animals, of which the owner is unknown or cannot be found, carried out in accordance with regulations made by the Minister under *subsection 3* and of fees paid by the owners of animals in accordance with such regulations shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas."

Also the Regulations provide for the payment which the pound keeper is entitled to claim from the owner.

**Regulation 10 (1) of the 1985 Regulations** states that:-

"A pound-keeper shall be entitled to demand and receive from the person by whom any animal or chattel is impounded in the pound, or from the owner of such animal or chattel, if and when such animal or chattel is released to such owner, the appropriate pound fee specified in the Second of Schedule to these Regulations, as well as any rights of trespass.

**Q.12 What are the penalties in relation to a contravention of the regulations under this Act?**

**Section 5 (5) of the Animals Act, 1985** states that:

"Any person who does any act (whether of commission or omission) in contravention of any regulation made under this section shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for any term not exceeding six months or, at the discretion of the court, to both such fine and such imprisonment".

**Q.13 Can a pound keeper sell the animal in his care?**

Yes, three days after the posting of the appropriate notice.

**Regulation 12 of the 1985 Regulations** states that:-

- 1 (a) Subject to Regulation 9 of these Regulations, in a case to which this Regulation applies, an impounded animal may be sold pursuant to an order of the local authority at any time after the expiration of *three days from the time that a notice relating to the animal was posted* in accordance with Regulation 8 of these Regulations."

**Section 12 (2)** states that the Regulation in relation to selling the animal shall only apply provided any of the following events has occurred:

- (a) where before the date of the sale the local authority have not been able to ascertain who the owner of the impounded animal is, or have not been able to establish the address of such owner, or
- (b) where the owner of the animal fails, on request by the pound-keeper, to pay the amount due for pound fees and rates of trespass, or to remove the animal from the pound, or
- (c) where the pound-keeper, acting in accordance with paragraph (2) of Regulation 9, refuses to release the animal from the pound."

**Q.14 How must such a sale take place?**

**Regulation 12 (1) (b)** state that "such sale may be carried out at a market or by way of public auction or, where the seller is of opinion that the sale at a market or by public auction would be abortive or inappropriate, in any other manner whatsoever."

**Q.15 Must there be notification of the sale?**

Yes. **Regulation 13** requires notification in a conspicuous place with a description of the animal and the details attaching to his initial capture, where it is impounded and the place of the proposed sale.

**Q.16 What happens to the animal where the sale is unsuccessful?**

**Regulation 14** provides for the humane destruction of the animal. This must be carried out in the presence of the Gardai.

**Q.17 What happens where the animal is suffering?**

If a veterinary surgeon on inspection is of the opinion that the animal is in such a condition that it would be cruel to keep it alive then the local authority may arrange for its humane destruction, **Regulation 4**.

**Q.18 What happens where a person attempts to retrieve his animal from a pound in an unlawful manner?**

This is an offence pursuant to **Section 5 (6) of the Animals Act, 1985:-**

"Every person who-

- (a) damages or breaks into any private pound,
- (b) releases from or takes out of any private pound any animals lawfully impounded therein, or

uses violence, threats or bribes for the purpose of securing the release from or the taking away of any animals lawfully impounded in any private pound,

shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £350 or imprisonment for any term not exceeding nine months or, at the discretion of the court, to both such fine and such imprisonment."

**Q.19 What should an individual do who has impounded an animal in accordance with any of the provisions as aforesaid?**

There are specific steps required by the legislation following the impounding of an animal, **Regulation 8 of the 1985 Pounds Regulations states:-**

- (1) A person impounding an animal shall, as soon as possible after impounding, notify the owner of the animal (where such owner is known) and the officer in charge of the Garda Siochana station nearest to the pound, of such impounding, describing the animal, stating where it was found and where it was impounded.
- (2) Whenever an animal is impounded, the pound-keeper shall, as soon as possible after such impounding, cause a notice to be posted in a conspicuous position at the pound and at the Garda Siochana station nearest to the pound, describing the animal and stating where it was found and where it was impounded.
- (3) A notice under this Regulation shall be kept posted in accordance with paragraph (2) of this Regulation until the impounded animal is returned to its owner or is otherwise disposed of from the pound in accordance with these Regulations."

**Q.20 What can a person do who has lost an animal, found that it has been impounded, and that it is about to be**

**destroyed?**

The animal may be reclaimed any time prior to destruction with the payment of a fee.

**Regulation 9 (1) of the 1985 Regulations:-**

“At any time before an impounded animal is disposed of in accordance with these Regulations, the owner of the animal may, subject to *paragraph (2)* of this Regulation, recover the animal from the pound on payment to the pound-keeper of the amount due for *pound fees* and any rates of trespass.”

**Q.21 Could a pound keeper refuse to give up the animal to the owner?**

Yes, if he is not satisfied that the animal will be adequately cared for.

**Regulation 9 (2) of the 1985 Regulations:-**

“Notwithstanding paragraph (1) of this Regulation, the pound-keeper may, with the consent of the County Registrar, *refuse to release any animal impounded under the Animals Act, 1985, if he is not satisfied that adequate accommodation and sustenance will be provided for the animal following such release.*”

**Q.22 Who has responsibility for the upkeep of a pound?**

The pound keeper, **Section 6 of the Pounds (Provision and Maintenance) Act, 1935.**

**Q.23 Should every Local Authority establish and maintain a pound?**

**Section 2 of the 1935 Act** imposes a duty on every Local Authority to provide in their functional area such pounds as are directed by the County Register with the approval of the Minister.

**Q.24 How does a place become a pound?**

The County Registrar certifies it as suitable for use as a pound and in good repair and condition, **Section 2 of the 1935 Act.**

**Q.25 What can an individual do where he feels that a pound is not being adequately maintained?**

Legal proceedings may be brought against the Local Authority by the relevant Minister in order to compel the Local Authority to fulfill its obligations in relation the maintenance of a pound, **Section 10, of the 1935 Act.** This is without prejudice to any alternative remedy.

**Section 7** provides for the County Registrar to procure repairs of a pound at the direction of the Minister where the pound is in need of such repair due to the failure or neglect on the part of the Local Authority. The costs of such repairs to be recovered from the Local Authority.

**Q.26 What can be done where the pound does not have adequate supplies?**

The County Registrar can procure adequate and necessary supplies at the direction of the Minister where the Local Authority are in neglect of their duties in this regard, **Section 7.** The costs of such repairs to be recovered from the Local Authority.

**Q.27 Who prosecutes offences under the 1935 Act?**

According to **Section 12** the Minister for Justice prosecutes offences under the 1935 Act.

**Q.28 What can the authorities do where they find an animal wandering in a public place?**

**The Animals Act, 1985,** provides for the impounding of certain wandering or trespassing animals by the Gardai or local authorities.

Under these provisions a Local Authority may impound these animals as follows:

**Section 4 of the Animals Act, 1985** states :-

“(1) “public place” means any street, road or place to which the public have access with vehicles whether as of right or by permission and whether subject to or free of charge; and

“State authority means a Minister of the Government or the Commissioners of Public Works in Ireland.



- (2) (a) Subject to *paragraph (b)*, a member of the Garda Síochána or any local authority may impound any animal found wandering on a public road or in any public place, or trespassing on any public park or open space which is owned or occupied by a local authority or a State authority.
- (b) In relation to any such public park or open space, the power to impound conferred by *paragraph (a)* may be exercised only on request by the authority by which such public park or open space is owned or occupied.
- (3) The Commissioners of Public Works in Ireland may impound any animal found trespassing on any public park which is under the control and management of the Commissioners.
- (4) Paragraph 11 of Section 10 of the Act of 1851 and section 20 of that Act shall not apply in relation to the impounding of an animal by a member of the Garda Síochána or by a local authority or by the Commissioners of Public Works in Ireland.
- (5) Where an animal is impounded in pursuance of the powers conferred by this section, the authority by which the animal is impounded may recover the cost of transporting the animal to the pound from the owner of the animal as a simple contract debt in any court of competent jurisdiction”

This is a useful provision as these animals can pose a danger to themselves and to members of the public. (See *Chapter 1 on General Cruelty, and Chapter 2 on Wandering Animals and Chapter 86 on Horses, for specific provisions in this regard*)

## CHAPTER FOUR

### THE PROTECTION OF ANIMALS KEPT FOR FARMING PURPOSES

#### General:

- Q.1 What type of animals are covered by the 1984 Act?
- Q.2 What type of protection is given to such animals under the 1984 Act?
- Q.3 Should animals kept for farming purposes be regularly inspected?
- Q.4 What is an intensive unit?
- Q.5 Are there any special requirements in addition to Section 4 in relation to intensive units?
- Q.6 What is required where an animal is found to be suffering?
- Q.7 What happens where the equipment is found to be defective?
- Q.8 How should the animals be fed?
- Q.9 What should an individual do if they witness cruelty to farm animals?

#### Powers of Gardai/Authorised Persons:

- Q.10 What powers do the Gardai have in relation to farm animals?
- Q.11 How are the various people authorised under the Act defined?
- Q.12 What are the penalties for a breach of the Act of 1984?

The general cruelty provisions contained in the legislation discussed in previous chapters also apply to farming animals. In addition to this however there is specific legislation to deal with farming animals: the **Protection of Animals Kept for Farming Purposes Act, 1984**. This Act was enacted to ratify the **European Convention for the Protection of Animals Kept for Farming Purposes (Strasbourg), 19 March, 1976 (European Treaty Series No. 87)**.

#### Q.1 What type of animals are covered by the 1984 Act?

**Section 2(1)** of the 1984 Act provides that this piece of legislation applies to any animal which:-

- “(a) is of a species which for the time being stands specified in a declaration under this section, or;
- (b) is bred or kept for the production of food, wool, skin, fur or feathers or for use in, or for the purposes of, the farming of land or of animal husbandry.”

**Section 2(2)** provides that:-

“The Minister may by regulations declare that any animal which is of a species specified in the declaration shall be an animal to which this Act applies.”

No such regulations have to date been made by the Minister. It would seem that the majority of animals would fall within the provisions of **Section 2(1)(b)**. However, ponies and horses kept for trekking purposes are outside the definition.

#### Q.2 What type of protection is given to such animals under the 1984 Act?

**Section 3 of the 1984 Act** provides *inter alia* that the Minister may make regulations as regards the care and welfare of animals to which this Act applies as he thinks fit:-

“without prejudice to the generality of the foregoing regulations under this section may in particular include-

- “(a) provisions for ensuring the provision for such animals of a proper supply of food and water;
- (b) for the purposes of ensuring that, having regard to their physiological and ethnological needs, there is as regards such animals adequate space for their free movement or other needs, provisions specifying the house space to be provided in relation to them;
- (c) provisions with respect to the dimensions and layout of housing for such animals, the materials to be used in constructing any such housing and the facilities by way of lighting, heating, cooling and ventilation, regulating the level of humidity, air circulation, drainage, water supply or otherwise to be provided in connection with any such housing.”

While no specific reference is made to tethering and to noise levels both of these are dealt with in the European Convention. While the 1984 Act could be criticised for being too narrow, it is clear that these particulars do not amount to an exhaustive list and therefore any regulations made by the Minister could also deal with noise levels and tethering as envisaged (*See also Chapter 11 re Noisy Dogs*).

**Note: The Care and Welfare of Poultry (Laying Hens) Regulations, 1990, SI No. 238 of 1990** was enacted to protect laying hens in battery cages.

#### Q.3 Should animals kept for farming purposes be regularly inspected?

Yes, **Section 4** of the 1984 Act requires that animals be monitored by the owner.

According to the Act "**Animals Kept in an Intensive Unit**" should be checked at least once per day to ensure that the condition and state of health of the animals and the equipment used in connection with them are maintained properly. If the owner is not competent to check the equipment he should have another competent person check the equipment at least once a day.

The Act also specifies that in relation to "**Animals Otherwise Kept**", these animals should be checked at "intervals sufficient to avoid their being caused unnecessary suffering" and to ensure that their condition and state of health are maintained properly.

**Q.4 What is an intensive unit?**

An intensive unit is defined in **Section 1 of the 1984 Act** as "a building or structure which is of a type or description which for the time being stands specified in regulations under **Section 6** of this Act, or any other building or structure which is one in which animals are kept under a husbandry system relying, for the purpose of providing for the care of the animals, on automatic equipment to such an extent that a failure of that equipment, would, if it were not rectified or if some other suitable provision were not made for the care of the animals, cause the animals unnecessary suffering."

**Q.5 Are there any special requirements in addition to Section 4 in relation to intensive units?**

**Section 7 of the 1984 Act** requires that records be kept of all inspections and defects.

**Q.6 What is required where an animal is found to be suffering?**

**Section 4 (2)** requires that the person in control of such an animal should forthwith take such measures as may be necessary to prevent the animals being caused unnecessary suffering.

**Q.7 What happens where the equipment is found to be defective?**

The owner or controller must forthwith cause the same to be remedied, **Section 4 (3)**, and in the interim period must take care of the health of the animal/s.

**Q.8 How should the animals be fed?**

**Section 5** provides detailed provisions in relation to the feeding of the animals.

"5 (1) A person shall not-

- (a) provide an animal to which this Act applies with food or liquid in a manner which may cause unnecessary suffering,
- (b) cause to be provided for such an animal food or liquid in such a manner,
- (c) provide such an animal with food or liquid which either may itself cause the animal injury or unnecessary suffering or contain a substance which may cause such injury or suffering,
- (d) cause to be provided for such an animal such a food or liquid containing such a substance."

**Q.9 What should an individual do if they witness cruelty to farm animals?**

A person should not take matters into their own hands but should contact the Department of Agriculture.

Under **Section 8 of the Act of 1984 Act** the inspectors from the Department of Agriculture have wide powers to enter premises, inspect and take samples of any food, liquid, animals, or equipment for test or analysis.

**Note:** An authorised person has the powers which are set down in the authorisation issued to him by the Minister. This may potentially give that person the full powers of an inspector.

**Q.10 What powers do the Gardai have in relation to farm animals?**

The Gardai have many of the same powers as inspectors, however these are somewhat limited in that unlike inspectors, the Gardai may not take samples and conduct tests. The Gardai have been described as a back up service and it is envisaged that they would only be called in to give assistance to the inspectors where the latter found difficulty in exercising their powers.

**Q.11 How are the various people authorised under the Act defined?**

The definitions are contained in Section 1 and are as follows:-

**Inspector** - means a person being a veterinary surgeon, who is appointed in writing by the Minister to be an inspector for the purposes of this Act.

**Authorised Person** - means a person not being a veterinary surgeon, who is authorised in writing by the Minister to be an authorised person for the purposes of the Act.

**Q.12 What are the penalties for a breach of the Act of 1984?**

It is an offence to breach any provision of the 1984 Act. Section 9 provides for a maximum fine of £500 and a term of imprisonment of six months (or both) on summary conviction.

## CHAPTER FIVE

### THE PROTECTION OF ANIMALS KEPT FOR SALE

#### **Pet Shops:**

- Q.1 Is there legislation designed to protect animals available for sale as pets?
- Q.2 What are the requirements in relation to the care of pets which are to be sold?
- Q.3 What can an individual do if he becomes aware that pets kept for sale are being maltreated?
- Q.4 Are there restrictions in relation to the place of sale?
- Q.5 Are there any restrictions on the type of person to whom sellers are permitted to sell the animals?
- Q.7 What are the punishments for a breach of Part V of the Act of 1965?
- Q.8 Does Part V of the 1965 Act apply to all animals?

#### **Livestock Marts:**

- Q.9 Are there specific provisions for the sale of livestock at marts?
- Q.10 What constitutes the business of a livestock mart?
- Q.11 What constitutes livestock?
- Q.12 What should a member of the public do if he becomes aware of a contravention of the Act of 1967?
- Q.13 What are the legal requirements in relation to marts?
- Q.14 Can the regulations be used to prevent cruelty?
- Q.15 How are these provisions enforced?
- Q.16 What are the penalties for an offence under the 1967 Act?

In relation to the sale of animals, the law requires a certain minimum standard of care by persons engaged in that practice. The general provisions in relation to animals kept in pounds, or similar facilities, which require that adequate food and water be provided, are also applicable in this context but more stringent standards are enforced in relation to animals intended for sale.

Persons keeping such animals must ensure that they are kept in suitable conditions and that they are properly fed, cleaned and protected from the spread of disease. The sale of animals itself is not permitted in a public place (unless it is a licenced livestock mart) and there are also restrictions on the sale of animals to minors.

#### **Q.1 Is there legislation designed to protect animals available for sale as pets?**

Yes, **Part V of the Protection of Animals (Amendment) Act, 1965**, regulates the sale of pet animals.

**Part V** should be read in conjunction with the more general provisions contained in the Principal Acts of 1911 and 1965 in relation to the care of impounded animals. Please consult **Section 7 of the Protection of Animals Act, 1911 as substituted by Section 6 of the 1965 Act**

According to **Section 15 (f) of the Protection of Animals Act, 1911**, the expression "pound" includes any receptacle of a like nature. This expression therefore covers the type of receptacles in which pet animals are held whilst on display in pet shops. The word "pound" in this context is not to be confused with the word pound as defined by the Pounds Act, 1935.

#### **Q.2 What are the requirements in relation to the care of pets which are to be sold?**

The requirements here arise due to the confinement of the animals which is a prerequisite to the sale of the same and these are set down in **section 7 of the 1911 Act (as substituted by Section 6 of the 1965 Act)**.

**Section 7 of the 1911 Act** (as amended by Section 6 of the Protection of Animals Act, 1965) states:-

- "(1) It shall be the duty of *any person* who impounds or confines, or causes to be impounded or confined any animal in *any pound*-
  - (a) if the animal is kept in the pound for a period exceeding three hours, to ensure that a sufficient quantity of wholesome drinking water is supplied for its use, and
  - (b) if the animal is kept in the pound for a period exceeding six hours, to ensure that a sufficient quantity of suitable food is supplied for its use not later than six hours after its admission to the pound and thereafter at intervals not exceeding twelve hours, as long as it remains in the pound.
- "(5) If any animal is impounded or confined in any pound for six successive hours or longer and is without such food or water as is required by subsection 1 of this section to be supplied, **any person may enter the pound for the purpose of supplying the animal therewith.**
- "(6) The reasonable cost of the food and water supplied to any animal impounded or confined in any pound shall be recoverable from the owner or other person responsible for the animal's maintenance as a civil debt."

According to **Section 25 of the Act of 1965**, the keeper of animals for sale must comply with certain conditions or he

shall be guilty of an offence. These conditions are as follows:

- “(a) the animals shall be kept at all times in accommodation suitable as respects size, temperature, lighting, ventilation and cleanliness,
- (b) the animals shall be supplied with a sufficient quantity of suitable food and drink,
- (c) the animals shall not be sold at such an age that their sale causes or is likely to cause cruelty to them,
- (d) all reasonable precautions shall be taken to prevent the spread among animals of infectious diseases,
- (e) the animals shall be adequately safeguarded against fire hazards.”

Both of the above sections apply not only to pet shops but to any other “receptacle” in which animals are kept for sale as pets. Accordingly, breeding farms for dogs and other animals must satisfy the above criteria as to the conditions in which animals are kept.

**Q.3 What can an individual do if he becomes aware that pets kept for sale are being maltreated?**

In the first instance, the individual should report the matter to the Gardai. However under **Section 7 (5) of the Act of 1911 as substituted by Section 6 of the Act of 1965**, “any person”, (i.e. any member of the public), may take personal action if such a person is witness to the deprivation of any animal of food or water for a period in excess of 6 hours and in failure of the requirement imposed by **Section 7(1) as amended**. This person may enter the pound for the purpose of providing the deprived animal with food and water.

**Q.4 Are there restrictions in relation to the place of sale?**

**Section 23** prohibits the sale of animals as pets in a public place making it an offence to do so. According to Section 2 “public place” means “any place to which the public have access whether as of right or by permission and whether subject to or free of charge.”.

Where a person is convicted of conducting an illegal sale, the Court may provide of the humane disposal or destruction of the animals.

**Q.5 Are there any restrictions on the type of person to whom sellers are permitted to sell the animals?**

Yes. Part V of the Act of 1965 not only protects the animal while in the care of the seller but attempts as far as possible to ensure that the animal will end up in safe hands after the sale. In this regard **Section 24** makes it an offence to sell an animal to any person “apparently under the age of twelve years”.

Furthermore, **Section 43 of the Control of Horses Act, 1996** now takes horses out of the remit of this section 24. It prohibits the sale or the offer of sale of a horse to “a person apparently under the age of 16”. The section also places an onerous duty on the sellers of horse. In any case of doubt a seller would be guilty of an offence. Such people should therefore seek proof of age and make inquiries as to the nature of the place where the horse is to be kept.

This development takes cognisance of the fact that horses require considerable care and represents the legislature’s realisation of the particular problems associated with horses and the under-aged. (See Horses Section)

**Q.6 What action should a member of the public take if he becomes aware that any of the conditions regarding the care and sale of animals are being breached?**

If an individual feels that any of these conditions regarding care and sale are not being met by a particular seller of animals, the Gardai should be contacted and a prosecution may be brought under these provisions. Section 26.

**Q.7 What are the punishments for a breach of Part V of the Act of 1965.**

**Section 26** affords a wide scope within which the court may exercise its discretion in relation to any offences committed under **Part V** of the Act.

**Section 26** provides for fines and sentences of imprisonment upon conviction. In addition, the Court may order that a person so convicted be disqualified from either keeping animals for sale, or running a pet shop for a set period. Finally, orders may be made for the humane disposal or destruction of animals and for the cost of such disposal or destruction to be payable by the convicted person.

**Q.8 Does Part V of the 1965 Act apply to all animals?**

No, restrictions on the scope of the Act have been imposed by subsequent legislation.

**Section 67 of the Wildlife Act, 1976** restricts the application of **Part V of the Act of 1965**. It neither applies to protected wild birds nor to protected wild animals. The special provisions of the Wildlife Act cover these types of animals. The definition of a protected wild animal is contained in Section 23(4) and the Fifth Schedule and the definition of a wild bird is contained in Section 22(3) of the Wildlife Act, 1976. These birds and animals are of a type which one would generally not expect to find on sale.

According to the Act's definition, a **Protected Wild Animal** includes **Land Mammals such as the** Badger, Bat Species, Deer Species, Hare Species, Hedgehog, Otter, Pine Marten, Red Squirrel. It also includes **Sea Mammals** such as the Dolphin species, Porpoise species, Seal species, Whale species. It also includes **Amphibians** such as the Natterjack Toad

**A Protected Wild Bird is** defined as any wild bird other than a Bullfinch, Carrion Crow, Greater Black-backed Gull, Herring Gull, Hooded (Grey) Crow, House Sparrow, Jackdaw, Jay, Lesser Black-backed Gull, Magpie, Pigeons (including Wood Pigeon, but not including Carrier Pigeons, Racing Homing Pigeons or Doves), Rook, Starling .

The protection of these creatures is specifically dealt with in the 1976 Act.

**Q.9 Are there specific provisions for the sale of livestock at marts?**

The **Livestock Marts Act of 1967** regulates the sale of animals at marts. It has not been amended but has been supplemented by the **Livestock Marts Regulations, 1968 (Statutory Instrument Number 251 of 1968)**.

**Q.10 What constitutes the business of a livestock mart?**

The business of a livestock mart involves the business of selling livestock by auction or providing for the holding of sales by of auction or otherwise, a place adapted for the sale of livestock by auction, **Section 1, 1967 Act**.

**Q.11 What constitutes livestock?**

According to the Act, livestock means "cattle, sheep or pigs."

**Q.12 What should a member of the public do if he becomes aware of a contravention of the Act of 1967?**

There are a number of offences created by the 1967 Act and any breach thereof should be brought to the attention of the Gardai who may take a prosecution against the relevant offender.

**Q.13 What are the legal requirements in relation to marts?**

Under the **Livestock Marts Act, 1967** it is an offense to carry on the business of a livestock mart unless that person is the holder of a licence, **Section 2**.

**Section 6** allows for regulations to be made under this Act in relation to hygiene, the state of the premises and veterinary requirements. The **Livestock Marts Regulations, 1968 (S.I. 251 of 1968)** has been implemented to detail the specific requirements of the legislation.

**Q.14 Can the Regulations be used to prevent cruelty?**

While there are a number of provisions in relation to the fitness of the marts for humans there are of course also provisions for the protection of the animals.

**WATER: Regulation 6** requires that there be a constant supply of drinking water made available by the licence holder for the mart.

**DRAINAGE: Regulation 7** requires that there be drainage facilities provided for the hygienical removal of waste from the mart.

**LOADING: Regulation 8** requires that there be such loading facilities for loading and unloading the animals as to ensure that the loading is carried out "safely, speedily, efficiently and without undue discomfort to the livestock"

**SEGREGATION: Regulation 11** requires that the adult male members of the livestock be separated in pens from the rest of the livestock.

**PENS: Regulation 10** requires the following

"(1) Such number of pens soundly constructed from suitable material and capable of being thoroughly cleansed and disinfected and such number of lairs shall be provided at a mart by a licensee thereof as will accommodate securely and without overcrowding or discomfort the livestock entered for sale at the mart.

“(2) Such number of covered pens soundly constructed from suitable material and capable of being thoroughly cleansed and disinfected and equipped with facilities for watering, feeding, and resting sick or unfit livestock or livestock detained on veterinary grounds shall be provided at a mart by a licensee thereof as will accommodate securely and without overcrowding or discomfort such livestock.”

**OVERCROWDING:** As well as **Regulation 10** which specifically prohibits overcrowding **Regulation 18(2)** allows a licensee to refuse livestock where entries have already reached the number which can reasonably be dealt with at sale.

These provisions ensure that the animals kept for sale are kept without unnecessary discomfort and are looked after if they are unwell.

#### Q.15 How are these provisions enforced?

**Section 7** allows for inspection of the premises by an officer of the Minister.

An officer of the Minister has the power to

- “(a) to enter, inspect and examine at all reasonable times by day a place where the business of a livestock mart has been carried on;
- (b) to require the production of any documents required to be kept in pursuance of regulations under this Act, and to inspect, examine and copy any of them;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act and the regulations thereunder and the enactments for the time being in force relating to public health are complied with, so far as respects the place;
- (d) to require the person who carries on the business of a livestock mart at the place or any person holding a responsible position of management at the place or, in the absence of any such person, any person whom he finds in the place and whom he has reasonable cause to believe to be employed in the place and give such information as it is in his power to give as to who is carrying on the business of a livestock mart in the place;
- (e) to exercise such other powers as may be necessary for carrying this Act into effect.”

These powers are quite extensive and would be useful if a member of the public had any complaints in relation to any particular Mart. It should be noted that in order to carry out these powers the officer should have in his possession a certificate of his authorisation, **Section 7 (4)**.

According to **Section 7 (2) and (3)** it is an offence to obstruct or delay an officer in the exercise of his powers.

#### Q.16 What are the penalties for an offence under the 1967 Act?

**Section 3** provides for the revocation by the Minister of any licence granted if the holder of the same is found to be guilty of any offence under this Act.

**Section 8** deals with offences and penalties. Any offences found to have been committed under this Act are punishable by fine or imprisonment or both. These penalties can be levied against anyone committing the said offence or aiding or abetting in the commission of the same.

**Summary Conviction** – A maximum of a £100 fine and 3 months imprisonment, or both. Together with, in the case of a continuing offence, a fine not exceeding £10 for each day on which that the offence continues.

**Conviction on indictment** – A maximum of a £500 fine and 6 months imprisonment or both. Together with in the case of a continuing offence, a further fine not exceeding £50 for every day on which the offence is continued.

As the amount of the fines has not been amended since 1967, even the maximum seems minor in today's terms. Some update of this area would be recommended.



## CHAPTER SIX

### TRANSPORT OF ANIMALS

- Q.1 Are there general provisions controlling the transport of animals?
- Q.2 What types of acts would fall under the prohibition in Section 1(1)(b)?
- Q.3 What are the Penalties for such offences?
- Q.4 What powers have the Gardai in relation to this area?
- Q.5 Are there specific regulations in relation to transporting animals?
- Q.6 What methods of transport are covered by these provisions?
- Q.7 What are the requirements imposed by this Order?

#### **Q.1 Are there general provisions controlling the transport of animals?**

A person who becomes aware of cruelty in the transport of animals, (e.g. that too many animals are being conveyed in one vehicle or are not being fed or watered or are travelling in an unsanitary vehicle), should identify the transporter of these animals by obtaining the name on the transport vehicle (if any) and if possible by obtaining the registration number of the vehicle. The Gardai should be contacted with details of the complaint as they have the power to prosecute for these offences under the following legislation:

The transport of animals is covered by the general anti-cruelty provisions contained in **Section 1(1) of the Protection of Animals Act, 1911**. It is also covered by the more specific **Section 1 (1) (b)** of the same Act which makes it an offence of cruelty "if any person": -

- 1 (1) (b) "shall convey, or carry or cause or procure or being the owner, permit to be conveyed or carried, any animal in such manner or position as to cause that animal any unnecessary suffering."

#### **Q.2 What types of acts would fall under the prohibition in Section 1(1)(b)?**

Having too many animals in the transport vehicle, not feeding or watering the animals, keeping them in unsanitary conditions are all things which fall under these cruelty provisions as are other acts of a like kind. If these acts are witnessed, the appropriate action would be to inform the Gardai.

#### **Q.3 What are the Penalties for such offences?**

The portion of **Section 1 of 1911 Act** dealing with the penalties for cruelty has been amended most recently by the **Control of Horses Act, 1996, Section 48**. On summary conviction of the offence of cruelty, a maximum fine of £1,500 may be imposed and a term of imprisonment not exceeding 6 months, or both. On conviction on indictment the maximum fine is £10,000 and the maximum term of imprisonment is 2 years and again both may be imposed.

Under **Section 3 of the 1911 Act** upon conviction of the owner for an offence within the meaning of the Act the court may, in addition to the imposition of any of the punishments mentioned above, deprive that person of his ownership of the animal. It appears that to make an order under this section it would be necessary to show:

- (a) that there is evidence as to a previous conviction of the owner for cruelty, or
- (b) evidence of the character of the owner, or;
- (c) that if the animal is left with the owner it is likely to be exposed to danger.

An order for the destruction of the animal may also be made by the courts under this section if required.

#### **Q.4 What powers have the Gardai in relation to this area?**

The powers of the Gardai are dealt with in **Section 12 of the 1911 Act**.

**Section 12 (1)** provides that the Gardai have the power to arrest without a warrant any person suspected of a cruelty offence either on their own knowledge or on the knowledge of a member of the public who has furnished them with his name and place of abode.

**Section 12 (2)** provides that the Gardai may also take charge of the vehicle and animals.

#### **Q.5 Are there specific regulations in relation to transporting animals?**

In addition to the general provisions outlined above, there are a number of statutory instruments which deal specifically with the transport of animals and which detail the proper methods for so doing.

The following are examples of some specific statutory instruments:-

The most general of these is the **Disease of animals (Protection of Animals During Transport) Order 1995** which was enacted under and in accordance with Sections 3,11,28,29 and 30 of the **Diseases of Animals Act, SI 6 of 1966**. These sections allow for the making of orders with the purpose of preventing the transmission and spread of disease. Therefore, while the purpose of the order is to prevent disease it has the ancillary effect of preventing cruelty.

**Q.6 What methods of transport are covered by these provisions?**

The Order sets out certain requirements for the transport of all animals by whatever means (rail, sea, road, air).

**Q.7 What are the requirements imposed by this Order?**

**Section 4** sets out the general conditions including a rule that no person shall transport animals by sea, air, road or rail or cause or permit animals to be so transported in a way as is likely to cause injury or unnecessary suffering to the animals. Animals are not to be transported unless they are fit for the intended journey and unless suitable provision has been made for their care during the journey and on arrival at their place of destination. Animals are not to be transported if they are unfit. The phrase "*unfit*" includes new born, aged, diseased, infirm, ill, injured or fatigued animals or ones that have given birth within the proceeding 48-hours or are likely to give birth during transport. However, this provision shall not apply to animals that are slightly injured or ill and whose transport would not cause unnecessary suffering or where their transport has been approved in writing by an authorised officer for the purposes of scientific research.

**Section 6** concerns the loading and unloading of animals. Animals shall not be loaded into a means of transport in such a way as is likely to cause injury or unnecessary suffering to the animals. The same applies to unloading. It shall be the duty of any person in charge of any animals which are being loaded into or unloaded out of a transport to ensure that they are not caused any unnecessary suffering by reason of the inadequately constructed or insecure fittings in any part of the means of transport or by coming into contact with any fittings or any other part of the transport which has not been adequately padded or fenced-off or with any obstruction or by reason of any undue exposure to the action of the weather or the sea or an inadequate supply of fresh air, by reason of exposure to undue fluctuations in temperature, humidity or air pressure or from any undue exposure to noise. At the end of Section 6 [1][VI] there is a very wide provision which states that "*any other matter of thing*" which causes unnecessary suffering during transport is prohibited.

Section 6 also requires that animals shall be loaded only into means of transport of which the areas where the animals are confined have been thoroughly cleaned and disinfected.

**Section 17** concerns feeding and watering intervals. This provision ensures that animals are to be adequately fed and watered and, if necessary, milked, at suitable intervals. Adequate supplies of food and water appropriate to the species of animal being transported is to be made available. An attendant is to be made available whilst the animals are being transported and he or she shall be responsible for carrying out feeding, watering and milking as required by chapter 1 of the first schedule of this statutory instrument. Adequate lighting is also to be made available for the proper tending of the animals.

**Section 18** provides that if an animal falls ill or becomes injured during transport, it should receive first aid treatment as soon as possible. The person in charge of the means of transport shall ensure that, if appropriate, the animals receive veterinary treatment and, if necessary, undergo emergency slaughter in a way that does not cause the animal unnecessary suffering.

Section 18 also ensure that the means of transport should not be overcrowded and that the animals being so transported are accommodated in such a way as to avoid any risk of injury or unnecessary suffering. To ensure this, loading densities for animals shall at least comply with the requirements laid down in chapter 6 of the first schedule of this order.

There are, of course, exceptions to some of the foregoing rules. The foregoing is merely a summary of the main general provisions.

**SI 227/90 Horses (Carriage By Sea) Order, 1960:** This statutory instrument, as the title would indicate, provides for the transport of horses by sea. It contains specific requirements relating to the design of the vessel in which horses are to be carried and the method by which the horses should be carried (**Section 13, 15**). Overcrowding is prohibited by **Section 14**. There are also very specific requirements relating to lighting, ventilation, feeding, watering, first aid, hygiene and attendance (**Sections 16, 17, 18, 19, 20, 21, 25**). **Section 28** even prohibits the carriage if it is known that the weather conditions will be such as to potentially cause injury to the horses.

**SI 257/1967 Carriage of Pigs By Road Order, 1967** This statutory instrument provides for the transport of pigs on the roadways. There are requirements dealing with the vehicle's partitions, the condition of the flooring, bedding, ventilation, coverage, means of unloading and loading, feeding, and watering. There is also a prohibition on the carriage of pigs if they are old, infirm, or fatigued as well as a prohibition on the rough treatment of the animals.

**SI 251/1968 Livestock Marts Regulations, 1968** While the majority of this regulation deals with the requirements for marts, there is a provision which requires that animals transported to or from a mart be transported in a vehicle which is "thoroughly cleansed and disinfected on the occasion of any journey to the mart."

**Transit of Greyhounds Order 1954 121/54** This lays down detailed provisions for the proper kenneling and care of

greyhounds while in transport. (Enabling legislation **Diseases of Animals Act, 1894 -1954 and the Agriculture Acts 1931 - 1948.**)

**Note:** These statutory instruments, though specific, are useful in assessing the types of behaviour which may fall under the more general cruelty provisions in the **1911 Act**.

## CHAPTER SEVEN

### ANIMALS, POISON & ILLEGAL SUBSTANCES

#### Poisons:

- Q.1 Can a person lay poison for animals?
- Q.2 Can an occupier or an owner of land lay poison on his own land?
- Q.3 Can a person administer poisonous or injurious substances to an animal?
- Q.4 What are the penalties for administering poison to an animal?
- Q.5 Can a person lay poison for wild animals?
- Q.6 Does the prohibition against the administration of poison apply to animals and birds which are not "protected".

#### Illegal Substances:

- Q.7 Which animals are protected by the prohibition on the administration of illegal substances contained in the 1993 Act?
- Q.8 What is an animal remedy?
- Q.9 What is the purpose of the Animal Remedies Act, 1993 ?
- Q.10 What powers are given to the authorities to enforce these provisions?
- Q.11 What are the penalties for a breach of this Act?
- Q.12 What are the powers of the authorities in relation to substances seized as evidence or forfeited under the Act ?
- Q.13 Have there been amendments made to this Act?

The penalties for offences relating to illegal substances were significantly increased by the Control of Horses Act 1996.

#### Q.1 Can a person lay poison for animals?

As a general rule it is illegal to lay poison for animals. **Section 8 of the 1911 Act** (as amended by **Section 7 and 14 of the 1965 Act**) makes it an offence for a person to lay poisonous substances for animals save for the control of insects and vermin. It is also an offence to sell poisonous grain and seed except for legitimate agricultural purposes.

However, **Section 7 and 14** of the 1965 Act have placed some limitations on the scope of this section; **Section 7** states that it will not be an offence for a person to place poisonous gas or substances in a rabbit hole. (Section 14 is dealt with below.)

#### Q.2 Can an occupier or an owner of land lay poison on his own land?

An occupier of land may not lay poison on land except in accordance with the stringent provisions set forth in **Section 14 of the Act of 1965**.

The 1911 Act had given a blanket exemption to all owners and occupiers of the land to lay poison as they saw fit, **Section 17 of the 1911 Act**. This section was repealed by **Section 14(6) of the 1965 Act**. It provides that an owner or occupier of land may not lay poison on land except in accordance with the following provisions if he wishes to lay poison:-

- "14 (2) A notice or notices of the laying of such poison or poisonous matter shall be posted and properly maintained on the land so that at least one notice shall be clearly visible from every public road and other public road adjoining or being upon the said land.
- (3) Notice in writing of the laying of such poison or poisonous matter shall be given to the Garda Siochana station for the sub district in which the land is situated.
- (4) No poison or poisonous matter shall be laid within one hundred yards of any public road or (save with the consent of the occupier) any dwellinghouse.
- (5) All poison or poisonous matter shall be staked or otherwise securely affixed to the soil. ...."

#### Q.3 Can a person administer poisonous or injurious substances to an animal?

No, **Section 1 (1) (d) of the Protection of Animals Act, 1911**, as amended stipulates that "if any person" causes, procures or (if the owner) permits the administration of poisonous or injurious drugs or substances to animals, he shall be guilty of an offence under this section.

#### Q.4 What are the penalties for administering poison to an animal?

The penalties are those as set down by **Section 1 of the 1911 Act as amended by the Control of Horses Act, 1996**. The part of **Section 1 of 1911 Act** dealing with the penalties for cruelty has been amended most recently by the **Control of Horses Act, 1996, Section 48**. On summary conviction of the offence of cruelty, a maximum fine of £1,500 may be imposed and a term of imprisonment not exceeding 6 months, or both. On conviction on indictment the maximum fine is £10,000 and the maximum term of imprisonment is 2 years and again both may be imposed.

In certain instances it is possible that **Section 3 of the Act of 1911** might also be applicable. Under this section, upon conviction of the owner for an offence within the meaning of the Act, the court may, in addition to the imposition of any of the punishments mentioned above, deprive that person of his ownership of the animal. Thus if a person administered poison to an animal which survived, it could be taken from him. It appears that to make an order under

this section it would be necessary to show:

- (a) that there is evidence as to a previous conviction of the owner for cruelty, or
- (b) evidence of the character of the owner, or;
- (c) that if the animal is left with the owner it is likely to be exposed to danger.

An order for the destruction of the animal may also be made by the courts under this section if required.

**Q.5 Can a person lay poison for wild animals?**

No. **Section 34** of the **Wildlife Act, 1976** prohibits the laying of poison or poisonous substances where animals are protected wild animals for the purposes of the Wildlife Act, 1976. (See Wildlife Section),

**Section 34** states that subject to section 42 a person shall not

- (a) hunt any wild bird or wild mammal by means of a trap, snare, net, line, hook, arrow, dart, spear, or similar device, instrument or missile, or bird lime or any substance of a like nature, or any poisonous, poisoned or stupefying bait, or
- (b) affix or set in place-
  - (i) any trap, snare or net for killing or taking a wild bird or a wild mammal or,
  - (ii) any line, hook, or other device or instrument, calculated or likely to cause death or bodily injury to any wild bird or a wild mammal coming in contact with it, on any tree, pole, cairn or other structure in or in the vicinity of any place frequented by wild birds or by wild mammals, or
- (c) lay any poisonous or poisoned substance or stupefying bait, being a substance or bait which is calculated to injure, or facilitate the capture of, a wild bird or a wild mammal, in, or in the vicinity of, any place mentioned in paragraph (b) of this subsection, or on any tree or pole, cairn or other structure in or in the vicinity of such place."

**Q.6 Does the prohibition against the administration of poison apply to animals and birds which are not "protected".**

If an animal or bird is not protected, this section does not apply. See **Section 34(2)(b). Part V** of the Act has been restricted in its application by **Section 67 of the Wildlife Act, 1976** and applies neither to protected wild birds nor to protected wild animals. The special provisions of the Wildlife Act cover these types of animals. The definition of a protected wild animal is contained in **Section 23(4) and the Fifth Schedule** and the definition of a wild bird is contained in **Section 22(3) of the Wildlife Act, 1976**; these birds and animals are of a type which one would not generally expect to find on sale.

According to the Act's definition, a **Protected Wild Animal** is as follows

**Land Mammals:** Badger, Bat Species, Deer Species, Hare Species, Hedgehog, Otter, Pine Marten, Red Squirrel.

**Marine Mammals:** Dolphin species, Porpoise species, Seal species, Whale species.

**Amphibians:** Natterjack Toad

**A Protected Wild Bird is** any wild bird other than a Bullfinch, Carrion Crow, Greater Black-backed Gull, Herring Gull, Hooded (Grey) Crow, House Sparrow, Jackdaw, Jay, Lesser Black-backed Gull, Magpie, Pigeons (including Wood Pigeon, but not including Carrier Pigeons, Racing Homing Pigeons or Doves), Rook, Starling .

Furthermore, if the affixing a snare or trap is done pursuant to statute or statutory instrument there is a full defence, See **Section 34(2)**.

If regulations made pursuant to the section are in force the act may be deemed to be other than an offence, **Section 34(2)(a)**.

The Minister may grant licences to do certain things and if such a licence is issued the person may commit certain of these prohibited acts, **Section 34(3)**.

**Illegal Substances**

There are a number of illegal substances which the law prohibits from being administered to animals. It should be noted that the bulk of the legislation in this area was implemented in order to address the disturbing trend in Europe of the use of illegal substances for growth promotion.

**The Animal Remedies Act, 1993** (which repealed the previous **Animal Remedies Act, 1956** and the **Therapeutic**

**Substances Act, 1932)** regulates the use of animal remedies. There are a considerable number of regulations which implement European law in this area. A full review of these would be beyond the scope of this handbook. In general these regulations outline those substances which are deemed illegal for the purposes of the Act of 1993. It should be noted that **Section 32(2)** and the **Schedule to the 1993 Act** revoke a number of provisions contained in these regulations.

**Q.7 Which animals are protected by the prohibition on the administration of illegal substances contained in the 1993 Act?**

According to **Section 2, the 1993 Act** applies to “mammals (other than humans), birds, fish, reptiles, molluscs, crustaceans, and honey bees (*Apis mellifera*) and any other animal kept for human consumption or any of whose produce is intended for human produce”.

According to **Section 2(2)(a)** the Minister may also by order extend the application of the Act to “any other kind of animal being-

- a domestic animal
- a wild animal in captivity, or
- any other wild animal”

**Q.8 What is an animal remedy?**

According to **Section 1** an “animal remedy” includes “any substance or combination of substances which -

is intended for administration to animals,

may be administered to animals, or

is, whether expressly or by implication, presented for administration to animals, for the purpose of treating, preventing or modifying disease in animals, making a medical or surgical diagnosis in animals, restoring, correcting or modifying physiological functions in animals, or except for a substance or combination of substances being a feedingstuff commonly known and solely used as such, otherwise improving the health or condition of animals;”

**Q.9 What is the purpose of the Animal Remedies Act, 1993?**

The Act places regulations on the manufacturers of animal remedies. It requires the full and complete labelling of these products so as to indicate the full complement of chemicals going into the makeup of each. (**Sections 4, 5**). Persons are prohibited from having in their possession any animal remedies which they know to be in contravention of the Act or any animal treated with the said remedies. It is also an offence to sell an animal for human consumption which has been treated with an animal remedy in contravention of this Act, (**Section 5, 6, and 7**).

**Q.10 What powers are given to the authorities to enforce these provisions?**

Powers are given to the relevant authorities to search the premises, carry out tests and make an analysis of the products (**Section 9, 10, 11**).

**Section 12** permits a judge to order a search warrant for the search of premises wherein there is reasonable cause for suspecting that the Act may be or has been contravened.

**Section 13** permits the authorities to search suspects.

**Section 14** gives the authorities powers of arrest for reasonable cause without a warrant.

**Q.11 What are the penalties for a breach of this Act?**

**Fines/ Imprisonment**

**Section 23** of the Act sets down the penalties for a breach of the Act. Depending on the breach the offender may receive up to one year in prison and a fine of £1000 for a summary offence. For an indictable offence a first conviction can attract a maximum £100,000 fine or 10 years imprisonment or both, the second and subsequent conviction attracting a maximum £250,000 fine or 10 years imprisonment or both.

**Disqualification**

**Section 24** also states that a person who has been convicted of an offence under this Act may, in addition to the penalties aforesaid, be disqualified from keeping, dealing in or having charge of any animal or class of animal or of any animal remedy or class of animal remedy or any ingredient thereof and be disqualified from working or participating in the food industry for a stated period (which could extend to the life of the person).

**Forfeiture**

**Section 25** states that in addition to the aforesaid the person convicted of an offence under the Act may forfeit his animal/s and/or animal remedies.

**Q.12 What are the powers of the authorities in relation to substances seized as evidence or forfeited under the Act ?**

The authorities have full power of disposal and this is granted to them by **Section 26**. They may recoup the full costs of any such disposals from the person who forfeited the thing or who was seized of the same, **Section 27**.

**Q.13 Have there been amendments made to this Act?**

Yes, **An Bord Bia Act, 1994, Sections 5 and 41(5)** amends **Section 17 of the 1993 Act** which deals with the issuing of identity cards to authorised officers.

## CHAPTER EIGHT

### OPERATIONS ON ANIMALS

- Q.1 Is it an offence to perform an operation on an animal without administering an anaesthetic?  
Q.2 Does this apply to all medical procedures on animals?  
Q.3 Are there any operations specifically prohibited?  
Q.4 What are the penalties for conviction under these provisions?

**Q.1 Is it an offence to perform an operation on an animal without administering an anaesthetic?**

If the administration of the anaesthetic is required to prevent pain it seems that it will be an offence not to administer the same prior to operating.

**Section 22(1) of the Protection of Animals (Amendment) Act, 1965 provides that: -**

"If any operation to which this section applies is performed on any animal without the use of any anaesthetic so administered as to prevent any pain during the operation, that operation shall be deemed for the purposes of the Principal Act to be an operation which is performed without due care and humanity."

**Q.2 Does this apply to all medical procedures on animals?**

No, the meaning of operation is limited by Section 22(2) which states inter alia that:-

"This section applies to any operation with or without the use of instruments which involves interference with the sensitive tissues or the bone structure of an animal (including the dehorning of an animal that involves such interference) , other than –

the making of injections or extractions by means of a hollow needle; or  
the application of a rubber ring or other device to an animal within seven days after its birth for the purpose of constricting the flow of blood to the scrotum of the animal; or  
the application of a rubber ring or other device to a lamb within seven days after its birth for the purpose of constricting the flow of blood to the tail of the lamb; or  
the cauterisation of the horn buds of a calf within fourteen days after its birth; or  
an operation referred to in the Schedule of this Act."

#### **Excepted Operations**

Any experiment duly authorised under the Cruelty to Animals Act, 1876.

The rendering in emergency of first aid for the purpose of saving life or relieving pain.

The docking of the tail of a dog under one month old.

The amputation of the dew claws of a dog before its eyes are open.

The castration of a male animal specified in the following table before it has reached the age so specified, that is to say:-

Bull	six months
Sheep	three months
Goat	two months
Pig	two months
Cat	four months

Any minor operation which, by reason of its quickness or painlessness is customarily performed without the use of an anaesthetic."

**Q.3 Are there any operations specifically prohibited?**

Yes, the docking and nicking of horses is prohibited by **Section 5 of the Protection of Animals (Amendment) Act, 1965** unless according to **subsection 2** the veterinary surgeon is of the view that such an operation would be for the health of the animal.

**Docking** means the severing of any tendon or muscle in the tail of a horse.

**Nicking** means the removing of any bone or any part of a bone from the tail of a horse.

**Q.4 What are the penalties on conviction for these offences?**

**Penalties :** The penalties are those as set down by **Section 1 of the 1911 Act as amended by the Control of Horses Act, 1996**. The portion of **Section 1 of 1911 Act** dealing with the penalties for cruelty has been amended most recently by the **Control of Horses Act, 1996, Section 48**. On summary conviction of the offence of cruelty, a maximum fine of £1,500 may be imposed and a term of imprisonment not exceeding 6 months, or both. On conviction on indictment the maximum fine is £10,000 and the maximum term of imprisonment is 2 years and again both may be imposed.



Under **Section 3 of the 1911 Act** upon conviction of the owner for an offence within the meaning of the Act the court may, in addition to imposing any of the aforesaid punishments, deprive that person of his ownership of the animal. An order for the destruction of the animal may also be made by the courts under this section if required. It appears that to make an order under this section it would be necessary to show:-

- a) that there is evidence as to a previous conviction of the owner for cruelty, or
- b) evidence of the character of the owner, or;
- c) evidence that if the animal is left with the owner it is likely to be exposed to danger.

## CHAPTER NINE

### THE REGULATION OF ANIMAL SLAUGHTER

#### General:

- Q.1 Which animals are covered by the 1935 Slaughter of Animals Act?  
Q.2 What is required of a slaughter house under the Principal Act of 1935?  
Q.3 Can an animal be slaughtered in front of another animal?  
Q.4 Is the manner in which the animals are slaughtered in any way controlled?  
Q.5 Are there any restrictions on the use of equipment in the slaughtering process?  
Q.6 Are there any exemptions from the restrictions in Section 15 on the use of equipment?  
Q.7 Are there any other defences available to the requirements of Part II of the Act of 1935?  
Q.8 Who is vested with the power of enforcement under the Act of 1935?  
Q.9 What powers are given to the Gardai in relation to slaughter houses and the slaughter of animals?  
Q.10 Have there been any amendments to the Act of 1935?

#### Abattoirs and Knackeries:

- Q.11 What is the main purpose behind the Abattoirs Act, 1988?  
Q.12 What animals are covered by the Act of 1988?  
Q.13 Must a person hold a licence to carry on the business of an abattoir or a knackery?  
Q.14 Are the knackeries required to keep any records of the animals they slaughter? Is there any restriction on the advertisement by the knackeries of their desire to purchase animals for slaughter?  
Q.15 Who is responsible for the enforcement of the 1988 Act?  
Q.16 Can an abattoir or knackery be forced to close down?

#### Prevention of slaughter:

- Q.17 Are there any other provisions which would afford protection to the animals intended for slaughter?  
Q.18 Can veterinary inspectors ensure that animals awaiting slaughter are not maltreated?  
Q.19 In what circumstances can a veterinary inspector prevent slaughter?  
Q.20 Are there any significant amendments to the 1988 Act?  
Q.21 Does the 1988 Act amend or repeal any Acts?

#### Cattle and Sheep:

- Q.22 Which animals are covered by the Slaughter of Cattle and Sheep Act, 1934 as amended by the Slaughter of Cattle and Sheep (Amendment) Acts, 1935 and 1936?  
Q.23 According to the 1934 Act must the premises be registered if an animal is slaughtered therein?

#### Powers of Authorities:

- Q.24 What powers are given to the authorities to enforce the restrictions contained in the Act of 1934 as amended?

#### Effect of and on the Protection of Animals Act, 1911 as Amended:

- Q.25 Has the 1911 Act been affected by any of these provisions?  
Q.26 Does the 1911 Act add anything to the law on this area?

The law requires that the slaughter of animals for consumption is to be carried out in a humane manner. There is a body of legislation which ensures that this is done;

**The Slaughter of Animals Act, 1935 (No. 45), Slaughter of Cattle and Sheep Act, 1934, (No. 42) and the Amendment Acts of 1935 (No. 37) and 1936 (No. 33), and the Abattoirs Act, 1988 (No. 8).**

There is a large volume of regulations made pursuant to this legislation most of which is irrelevant in relation to the protection of animals. However the following regulations have relevance to this area:

**The Abattoirs Act, 1988 (Abattoirs) Regulations, 1989, S.I. 152,  
The Abattoirs Act, 1988 (Veterinary Examination) Regulations, 1992, S.I. No. 89,  
The Abattoirs Act, 1988 (Amendment) Order, 1997, S.I. No. 422,  
The Abattoirs Act, 1988 (Abattoirs) (Amendment) Regulations, 1997, S.I. No. 424,  
The Abattoirs Act, 1988 (Veterinary Examination) (Amendment) Regulations, 1997, S.I. No. 425.**

#### Q.1 Which animals are covered by the 1935 Slaughter of Animals Act?

**Section 2** states inter alia that the term "animal" "includes only cattle, sheep, goats, pigs, horses, asses and mules".

#### Q.2 What is required of a slaughter house under the Principal Act of 1935?

Part II of the 1935 Act requires the following:-

#### **Section 12:-**

**WATER:** That there be a sufficient quantity of water available for use in the slaughter house and that those animals kept for a period in excess of one hour be provided with a sufficient "quantity of wholesome drinking water".

**FOOD:** If an animal is kept for a period in excess of 24 hours the animal should be supplied with a quantity of wholesome food.

It is not sufficient to feed the animal poor scraps or dirty drinking water and if this is being done the slaughter house owner/ occupier would be in breach of these provisions. Note the **wholesome requirement in this regard**.

If any of these requirements are not met the person would be guilty of a summary offence.

**Q.3 Can an animal be slaughtered in front of another animal?**

No, this is prohibited by **Section 13** and a breach of the same is a summary offence.

**Q.4 Is the manner in which the animals are slaughtered in any way controlled?**

Yes, it is a summary offence to slaughter an animal in such a way as to cause "any unnecessary, avoidable, or excessive pain or suffering of the animal", **Section 14**.

This section takes cognisance of the obvious fact that there will be an amount of pain and suffering in the slaughtering process, however it seeks to minimise this. If therefore a member of the public should find that a slaughter house prolongs this pain they should contact the authorities. The slaughterers could **cause** this suffering **by neglect or by an omission** which makes this a very wide section. i.e. nothing need actively be done in order to breach this provision.

**Q.5 Are there any restrictions on the use of equipment in the slaughtering process?**

**Section 15** requires that only approved instruments be used in the slaughter of the animal.(This includes rendering the animal unconscious.) To do otherwise would be to commit a summary offence. The Minister may regulate whether an instrument is an approved instrument, **Section 16**.

It should be noted that to date there have been no regulations made in relation to this section. While on the face of it the section is therefore redundant, if there were concerns in relation to the use of a particular type of equipment the Minister could be approached in order to have him declare the same to be prohibited.

**Q.6 Are there any exemptions from the Section 15 restrictions on the use of equipment?**

Yes, where the animal is being slaughtered for consumption by Jews or Mohammedans there is an exception to **Section 15**. There is also an additional exception where the animals are being slaughtered by order of the Minister for Agriculture in the course of an inquiry, investigation or experiment.

**Note:** Section 15(4) has been repealed by the 1988 Act, Section 3 and Schedule 1.

**Q.7 Are there any other defences available to the requirements of Part II of the Act of 1935?**

Yes, those wishing to prosecute under the 1935 Act should be aware of the defence available under **Section 17** where it states that it shall be a good defence to a charge under **Part II** of the Act "to show that the act alleged to constitute such an offence was done for the purpose of preventing unnecessary pain or suffering to such animal or preventing injury to any human being or to any animal or property and that such act was a reasonable thing to do in the circumstances for one or more of the purposes as aforesaid."

**Q.8 Who is vested with the power of enforcement under the Act of 1935?**

The duty of enforcement vests with the Local Authority, **Section 5, 1935 Act ( as amended by 1988 Abattoirs Act, Section 47 - Previously the Sanitary Authority were vested with the powers of enforcement.)**

The Local Authority appoints Veterinary Officers to carry out the functions of the Authority under the Act, **Section 6 as amended**.

The Local Authority are the persons to prosecute any offences under the Act, **Section 7 as amended**.

**Q.9 What powers are given to the Gardai in relation to slaughter houses and the slaughter of animals?**

**Section 9 lays down the powers of the Gardai who may enter any slaughter house:-**

**TIME:**"whenever any animal is being slaughtered or any carcass is being dressed therein or at any other reasonable time"

**INSPECT:** They may inspect "the plant, appliances, and equipment therein and all animals and carcasses of animals in such slaughter house."

**OBSERVE:** They may observe "all or any of the processes used in the business."

**DEMAND:** They may demand of the occupier or person in charge of the slaughter house "the name and address of the person by whom any animal is about to be or is being or was slaughtered in such slaughter-house".

They may also demand to be told whether the person has a licence, request the production of that licence and where the person does not hold a licence they may demand that the person give their name and address. This may be done also where there is a reasonable suspicion that a person slaughtered an animal without a slaughter licence. In other words this demand may be made regardless of whether there is a search of a slaughter house in progress.

A person in contravention of the Principal Act of 1935 is effectively required to provide the Gardai with their name and address which will obviously assist the Gardai in bringing about a successful prosecution.

It is a summary offence to obstruct, delay or fail to comply with a demand of the Gardai in relation to their powers under this Act, **Section 9(3)**.

**Q.10 Have there been any amendments to the Act of 1935?**

Yes, the 1988 Act has **repealed** a number of provisions: **Section 4, 10 and 15(4)** have been repealed by the 1988 Act. In addition the penalties for offences under the Act have been increased and the application of **Section 15** has been extended to include pigs by the 1988 Act. A new subsection has been substituted in **Section 3** and inserted in **Section 30 by the 1988 Act**. There has also been some transferral of functions under the **SR & O No. 58 of 1947 and S.R. & O No. 417 of 1947**. The **Protection of Animals Act, 1965** also provides a definition for the purposes of the **1935 Act, see Section 28**.

**Q.11 What is the main purpose behind the Abattoirs Act, 1988?**

The main function of the 1988 Act is to ensure that any food produced for use either by animals or humans is of a standard so as to make it fit for consumption. This requires the strict regulation of the abattoirs and knackeries wherein the animals are slaughtered and the meat prepared. As a result the bulk of the Act and its accompanying regulations do not deal with cruelty to animals but rather with the method of slaughter, the standard of the meat and the treatment of the animals after the slaughter. There are however some provisions which concern themselves with the treatment of the animals prior to slaughter and it is these which shall concern us.

**Section 22** prohibits the sale of meat for human consumption where the animals were slaughtered, cut up, delivered or originated in a knackery. This provision was enacted in recognition of the distinction between a knackery and an abattoir where in the former the meat is produced for animal consumption. In the abattoir on the other hand the meat is produced for consumption by humans. This ensures that a certain standard is met where the meat is intended to be consumed by humans.

**Q.12 What animals are covered by the Act of 1988?**

An animal is defined by **Section 2** of the 1988 Act and states that:-

"Animal means cattle, sheep, pigs, goats, horses and all other equine animals." This section was recently amended by **S.I. 422 of 1997, Regulation 2** which extends the definition to include "ratite" or running birds, ostriches, emus, and rheas."

**Q.13 Must a person hold a licence to carry on the business of an abattoir or a knackery?**

Yes, it is a mandatory requirement that a licence be held in order to carry on the business of an abattoir, **Section 8**. Not to do so is an offence. This licence lasts **12 months** after which time the holder should apply for an extension.

It is also a mandatory requirement to hold a licence in order to carry on the business of a knackery, **Section 23, and 24**.

**Q.14 Are the knackeries required to keep any records of the animals they slaughter? Is there any restriction on the advertisement by the knackeries of their desire to purchase animals for slaughter?**

Yes, **Section 34(1)(d)** allows the Minister to make regulations requiring that records of the animals be kept, including their origin and disposal.

**Section 34(1)(e)** allows the making of regulations in order to regulate the advertising by the knackeries for the purchase and sale of animals.

In relation to this provision, the then Minister of State Mr. Walsh made the comment in the Dail debates on this legislation that "Knackeries owe their existence in large measure to the diseases and accidents that beset livestock...The sad fact is, however, that the owners of some knackeries are less than scrupulous in their activities and others just as careless when it comes to animal health or other matters. **Section 34** will bring these premises under strict control...Advertising for dead or casualty animals will be regulated and the maintenance of specific records of animals handled in such premises will be obligatory. Hopefully in this way we should be able to get a better picture of animal losses and the causes of these losses." (**375 Dail Debates Col. 1829**)

**Section 34** is therefore one of the few provisions in this Act specifically dealing with the prevention of cruelty to

animals as it seeks to ensure that animals which are injured have been injured accidentally and to ascertain the causes of such injuries presumably to enable further preventative measures to be taken. It also seeks to prevent advertising which encourages the sale of animals to knackers for slaughter where they are not injured etc..

It should be noted that no regulations have been implemented under this section. For the reasons outlined by Minister of State Walsh in the Dail it is recommended by the authors that regulations should be enacted to bring this into operative effect.

**Q. 15 Who is responsible for the enforcement of the 1988 Act?**

The veterinary inspectors appointed by the Local Authority are among those responsible for enforcement, **Section 35, and 36**. They have wide powers of inspection under the **1988 Act, Section 37 and S.I. No. 89 of 1992 the Abattoirs Act, 1988 (Veterinary Examination) Regulations, 1992** in relation to animals ante and post mortem. The regulations detail those things which should be checked by the inspectors.

In addition there are authorised officers who are also appointed by the Local Authorities and who are furnished with a certificate of appointment on their appointment, **Section 53**.

The Gardai and the Authorised officers have similar powers under the Act and these are dealt with in **Section 54**. They can enter a premises by force if necessary where they reasonably suspect that the same is being used as an abattoir or knackery. They can inspect any vehicle on the premises by force if necessary. They can inspect, take copies of and remove from the premises documents and records and request information and production. They may also seize meat and meat samples.

**Q.16 Can an abattoir or knackery be forced to close down?**

Abattoirs and knackereries which pose a danger to public health may be required to close down, **Sections 18 and 33**.

**Q.17 Are there any other provisions which would afford protection to the animals intended for slaughter?**

**Section 36** allows the veterinary inspector to inspect the premises in order to ensure that the standards of hygiene are met. While this provision is in the main one which protects the ultimate consumers of the food products, it has the ancillary effect of ensuring that the animals are not kept in unsanitary conditions before they are slaughtered.

**Section 61** provides that the Minister may by regulations "specify requirements in relation to the siting, lay-out, accommodation and construction and water supply and sanitary facilities, and equipment and appliances for premises which are, or are to be used, as abattoirs or knackereries."

This is an extremely useful provision in relation to the prevention of cruelty to animals despite the fact that the main purposes behind it is to ensure that the meat produced is of a correct standard. **S.I. 152/89 as amended by S.I. 424/89** was enacted under this **Section 61**. These Regulations set down in detail the requirements for the construction, design, lighting, maintenance and hygiene of an abattoir and the yards therein.

**Regulation 57(1) of S.I. 152/89** is one of the few provisions which specifically states that it is a provision to protect animals from cruelty. This regulation has to do with the unloading of the animals and it states that:-

"All animals delivered to an abattoir for the purpose of slaughter shall be unloaded, moved and handled in such a manner as shall cause no injury, cruelty or undue stress or excitement to those animals and particular care shall be exercised to ensure that no carcase damage could result from the manner in which such animals are unloaded, moved, handled and penned."

There was some concern expressed in the Dail at the time of the proposed enactment of Section 61 in relation to old and established firms which may not be in an ideal geographical location and which would have been unable to comply with the regulations should the same be implemented. Despite this the regulations were enacted and are very comprehensive in their requirements.

**S.I. 424/97 extends S.I. 152/89** by providing that many of its regulations now apply equally to "ostriches and other ratite birds". Ratite birds means "running birds, ostriches, emus, and rheas." It should be noted that there are a number of provisions to which this extended definition does not apply, see Regulation 4.

There are also a number of additional provisions enacted by this

**Regulation 424/97:**

There are further provisions in relation to the loading of the animals - the surface shall be non-slip in order to prevent injury to the animals, there shall be no steps, projections or obstructions, **Regulation 1 of Part IV**. In addition there are further provisions in relation to the equipment and facilities in the abattoir, **Regulation 9**.

This latest regulation 424/97 was enacted in the main to deal with ratite birds and the slaughter of the same which is a relatively new industry. Obviously given the distinct nature of these animals many of the previous requirements in relation to abattoirs were insufficient.

**Q.18 Can veterinary inspectors ensure that animals awaiting slaughter are not maltreated?**

Yes, the **Abattoirs Act, 1988 (Veterinary Examination) Regulations, 1992, Regulation 4(a)** allows the veterinary inspector to "give such directions as he thinks are appropriate and are reasonable (including directions with respect to the handling of the animals) to the occupier of the abattoir or a servant or agent of the occupier and a person to whom

such directions are given shall comply therewith;"

The veterinary inspector can conduct an ante-mortum investigation before the slaughter of the animal takes place, **Regulation 6 of the 1992 Regulations.**

This would allow the veterinary inspector access to an animal and to give directions where he felt the animals were not being well treated. The occupier or agent must comply with such directions given under these regulations.

**Q.19 In what circumstances can a veterinary inspector prevent slaughter?**

If the veterinary inspector comes to the conclusion after his examination that the animal is unfit for slaughter for human consumption, the inspector may declare that the animal is so unfit and therefore prevent the slaughter, **Regulation 7 of S.I. 89/1992 as amended by S.I. 425/1997.** If it is the humane thing to do (which it presumably would be in most instances) the animal will be slaughtered anyway though its carcass will not be used for human consumption.

**Regulation 7(4) as amended** allows the veterinary inspector to direct as follows where he has declared the animal unsuitable for slaughter for human consumption:-

A) that the animal be isolated if necessary. (Note this would protect the other animals from sickness or disease etc....

B) that the animal be removed from the abattoir,

C) that the animal be rested until fit for slaughter (at the abattoir or otherwise,

D) that the animal be slaughtered "on humane grounds to avoid prolonging its suffering". Such an animal's carcass is to be deemed condemned meat and is to be removed and placed uncut into a separate container.

It should be noted that animal has the extended meaning as according to S.I. 425 of 1997, Regulation 3 the term also includes "ratite birds".

**Note** - The majority of the 1992 and 1997 Regulations deal with the inspection of the meat product (post-mortem) and therefore have little to do with the protection of animals. Those additional provisions are therefore outside the scope of this publication.

**Q.20 Are there any significant amendments to the 1988 Act?**

**An Board Bia Act, 1994 (N0. 22) repeals Section 52 of the Act of 1988.** The 1994 Act also imposes levies on slaughter or exported livestock.

**Q.21 Does the 1988 Act amend or repeal any Acts?**

Yes, the 1988 Act makes a number of significant amendments to a number of Acts most of which are of little relevance to the protection of animals. There are however, amendments made to **the Slaughter of Animals Act, 1935 by Section 47 and the Second Schedule.** This increases all fines for offences committed under the Act of 1935. The fines are now as follows:-

**Sections 9(3), 12(2), 13(2), 20(3), 14(2), 15(3), and 29(2) - a fine not exceeding £500.**

**Sections 19(2) and , 28(3)(d) - a fine not exceeding £500 or at the discretion of the court, imprisonment for any term not exceeding three months.**

**Section 30 - a fine not exceeding £500 or at the discretion of the court imprisonment for any term not exceeding six months.**

Obviously this was a much needed and welcome amendment as the previous Act had not been amended since its enactment in 1935.

**Cattle and Sheep**

While cattle and sheep are covered by the aforesaid provisions, given the special requirements and the numbers involved in the slaughter of these types of animals, specific legislation has been enacted to deal with the same: the **Slaughter of Cattle and Sheep Act, 1934 as amended by the Slaughter of Cattle and Sheep (Amendment) Acts, 1935 and 1936.**

**Q.22 Which animals are covered by the Slaughter of Cattle and Sheep Act, 1934 as amended by the Slaughter of Cattle and Sheep (Amendment) Acts, 1935 and 1936?**

**Section 1** defines "cattle" as "including bulls, cows, bullocks, heifers and calves." While there is no statement as to whether this represents an exhaustive list the use of the word "includes". suggests that it is not.

The word sheep includes "rams, ewes, wethers and lambs." Again the use of the word includes suggests that this is not an exhaustive list.

These pieces of legislation require that any persons carrying on the business of slaughtering cattle or sheep must be registered to carry on the business. The legislation also deals with beef vouchers and restricts the number of cattle to be slaughtered, **Section 23.** In addition it sets minimum prices for the purchase of cattle and sheep. This legislation is therefore more concerned with consumers of and those persons involved in the production of food from cattle and sheep than with the protection of animals.

**Q.23 According to the Act of 1934 must the premises be registered if an animal is slaughtered therein?**

Yes, the premises must be registered if the slaughter of an animal takes place therein unless the animal was suffering as a result of pain or disease and the killing was one done out of necessity and for humane reasons, **Section 27(3)**.

**Q.24 What powers are given to the authorities to enforce the restrictions contained in the 1934 Act as amended?**

The Gardai Siochana and every inspector has the power to enter at all reasonable times onto premises engaged in the practice of slaughtering cattle and sheep. They may inspect any containers, vehicles etc.. and examine the meat therein.

These powers are aimed at controlling the standard of **meat** (as this is what the authorities are given power to inspect) and not at preventing cruelty to animals.

**In addition Section 8 of the (Slaughter of Cattle and Sheep (Amendment) Act, 1936 grants further powers.** According to this section:- Every inspector is hereby authorised and empowered to do all or any of the following things, that is to say: -

“At all reasonable times to enter upon and have free access to the interior of any premises in which the business of preparing for sale for human consumption meat preserved and intended to be sold in a barrel, tin, jar or other container or the business of manufacturing or preparing for sale for human consumption any essence, extract or other preparation (whether liquid or solid) derived wholly or mainly from meat or both of those businesses is or are carried on or believed to be carried on.”

Again this relates to the meat product and not to the animals themselves.

However the 1935 Act provides for the examination of the animals themselves as **Section 12** allows inspectors to enter onto the premises at any reasonable time and inspect the animals in order to examine the animals (NB Check the section) In addition the inspector may require information, records, and documents from the occupier.

This was obviously enacted in order to make a provision for the inspection of the animals before slaughter which had not been provided for in the 1934 or 1935 Acts.

**Q.25 Has the 1911 Act been affected by any of these provisions?**

**Yes, Section 5 of the 1911 Protection of Animals Act has been repealed by Sections 1(2), 3 and the First Schedule of the Abattoirs Act, 1988.** This section controlled the Knacker's business, however this is now controlled by the 1988 Act.

**Q.26 Does the 1911 Act add anything to the law on this area?**

In addition to the general cruelty provisions which obviously apply, **Section 6 of the 1911 Act** prohibits those licenced to slaughter horses from also dealing in horses.

**CHAPTER TEN**

**THE PROTECTION OF PERFORMING ANIMALS**

**General:**

- Q.1 What is Cruelty?  
Q.2 Are there requirements in relation to the confinement of animals kept for performing purposes?  
Q.3 Are there prohibitions on types of performances by animals?  
Q.4 Are there special provisions in relation to horses and bulls?

**Prosecutions:**

- Q.5 If a person should carry out any of the prohibited acts are they committing an offence?  
Q.6 Can a T.V, or video performance be a public performance?  
Q.7 Are there any defences to this section?  
Q.8 What can an individual do to ensure a prosecution under this section and to prevent the successful plea of Section 15(3)?

**General:**

Animals which perform generally require some form of training and must of necessity be kept in captivity. The scope for potential cruelty to these animals is therefore wide.

The general cruelty provisions in the 1911 Animals Act would be the first port of call by a person concerned about the cruel treatment of these types of animals. (See *Cruelty Provisions in Chapter 1 for further discussion of this topic*)

**Section 1 (1) of the Protection of Animals Act, 1911**, as amended creates the offence of cruelty "if any person" causes, procures or (if the owner) permits the following acts to be perpetrated on animals;

- 1(a) to cruelly beat, kick, ill-treat, over-ride, over-drive, over-load, torture, infuriate, or terrify any animal.  
1(b) to convey or carry an animal in a manner or position which causes unnecessary suffering.  
**1(c) to assist in the fighting or baiting of an animal (including the provision of premises and obtaining admission fees for the same).**  
1(d) the administration of poisonous or injurious drugs or substances to animals.  
1(e) subjecting an animal to an operation which is performed without due care and humanity.

**Note Section 1(1)(c)** is particularly relevant in this instance as it is a direct prohibition on **fighting or baiting animals**. The other instances of cruelty may arise in the process of training and keeping animals for performing purposes.

**According to Section 1(a) it is further an offence to:**

"cause any unnecessary suffering to an animal by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of an act."

It should be noted that neglect of performing animals would fall within this provision.

**Q.1 What is Cruelty?**

According to the Acts cruelty is committing any of the acts as set down in **Section 1(1)(a) - (f)**. More generally cruelty is "causing unnecessary suffering" to an animal, Section 1(a). To have a finding of cruelty it would be necessary to show

that the animal did suffer  
which suffering was substantial  
the suffering was unnecessary

**Q.2 Are there requirements in relation to the confinement of animals kept for performing purposes?**

The general provisions in relation to confinement also apply to animals kept for performing purposes. **Section 7 of the 1911 Act (as substituted by Section 6 of the 1965 Act)** is particularly relevant where the cruelty relates to the form of confinement of the animals. (These provisions have been dealt with in the Section on Pounds)

**Section 7 of 1911 Act (as substituted by Section 6 of the 1965 Act)** provides as follows:-

**7 (1)**

"It shall be the duty of *any person* who impounds or confines, or causes to be impounded or confined any animal in *any pound*-

- (a) if the animal is kept in the pound for a period exceeding three hours, to ensure that a sufficient quantity of wholesome drinking water is supplied for its use, and  
(b) if the animal is kept in the pound for a period exceeding six hours, to ensure that a sufficient quantity of suitable food is supplied for its use not later than six hours after its admission to the pound and thereafter at intervals not exceeding twelve hours, as long as it remains in the pound."

**Q.3 Are there prohibitions on types of performances by animals.**



Yes, the **Protection of Animals (Amendment) Act, 1965** contains some specific prohibitions on holding certain forms of public contests involving certain specific animals.

### **Untrained Bulls and Horses**

#### **Q.4 Are there special provisions in relation to horses and bulls?**

Yes, given the particular problems with these animals, the 1965 Act contains some specific protective provisions in relation to them. The relevant section is **Section 15** and it provides as follows

“(1) No person shall promote or cause or knowingly permit to take place any public performance which includes any episode consisting of or involving: -

Throwing or casting with ropes or other appliances any unbroken horse or untrained bull, or wrestling fighting or struggling with any untrained bull, or riding or attempting to ride any horse or bull which by the use of any appliance or treatment involving cruelty is or has been stimulated with the intention of making it buck during the performance.

And no such person shall in any public performance take part in any such episode as aforesaid.”

#### **Q.5 If a person should carry out any of the prohibited acts are they committing an offence?**

Yes, **section 15(4)** makes the contravention of section 15 an offence in accordance with the cruelty provisions of the 1911 Act.

#### **Q.6 Would a T.V, or video performance be a public performance?**

No, **Section 15(5)** states that a public performance **does not include** a performance presented by means of television or cinematography which could presumably translate in today's terms to include video. Though obviously if such a performance was shown to a live audience in addition to a television/ cinema audience this would constitute public for the purposes of the Act.

#### **Q.7 Are there any defences to this section?**

In relation to **Section 15(1)(c)** there is a defence provided for in **Section 15(3)** which states that: -

“In any proceedings under this section in respect of the use of any such appliance or treatment as mentioned in paragraph (c) of subsection (1) it shall be a defence for the person charged to prove that he did not know and could not reasonably be expected to know that the appliance or treatment was to be or was used.”

#### **Q.8 What can an individual do to ensure a prosecution under this section and to prevent the successful plea of Section 15(3)?**

This defence requires that the person show that he did not have even constructive knowledge (i.e. that he should or ought have known of the cruel behaviour which contravened this section.) Generally, it would be expected that this defence would be pleaded by a person who was not present at the time of the performance. Persons who make or receive a complaint under this section should seek to ascertain as much information as possible in order to answer this defence. One could seek to show that there had been previous performances of a like kind or show that there was some direct involvement in the said performance by the person accused (orders given, payment for equipment etc..).

## CHAPTER ELEVEN

### THE CONTROL & PROTECTION OF DOGS

#### **Licences**

- Q.1 What must I do if I want to keep a dog?
- Q.2 What is a general licence?
- Q.3 What must I do if I am transferring possession of a dog from myself to another person?
- Q.4 How do I get a licence for a dog?
- Q.5 Are there any conditions attached to obtaining a licence?
- Q.6 Are there any exemptions from holding a licence?
- Q.7 For what time period do dog licences last?
- Q.8 What are the penalties for the failure to hold a valid licence for a dog?

#### **Control**

- Q.9 What does the Act of 1986 require of the owner of a dog in relation to keeping control over the same?

#### **Bothering Livestock**

- Q.10 Are there any requirements in relation to dogs who worry livestock?
- Q.11 What can an individual do if he/she sees a dog worrying livestock or about to worry them?
- Q.12 What are the penalties in relation to allowing your dog worry livestock?
- Q.13 What is the position where livestock wander onto another person's land and are attacked by a dog/s?
- Q.14 What is the position where a person trespassing on land is injured by a dog?
- Q.15 Do the Gardai and Local Authorities have any specific duties in relation to the control of dogs?
- Q.16 Can a person who commits an offence under this legislation of 1986 be disqualified from keeping a dog?:-

#### **Stray Dogs:**

- Q.17 What can be done if an individual sees a stray dog?
- Q.18 What is done with those dogs which are delivered to a dog warden?
- Q.19 If an individual finds a dog may he/she keep him?
- Q.20 What happens if the dog's owner comes looking for the dog which has been taken in by the finders or others?
- Q.21 How may a dog be claimed and who can claim him?
- Q.22 If a person has an unwanted dog what can they do?

#### **Dangerous Dogs**

- Q.23 Can a member of the public complain when a dog is dangerous?
- Q.24 What can the court do?
- Q.25 Can a court exercise this power in any other instance?

#### **Noisy Dogs:**

- Q.26 The neighbours keep a large dog in the back garden, which barks and whines, morning, noon and night. What can be done?

#### **Housing Dogs**

- Q.27 Aside from the cruelty provisions are there any provisions in relation to the housing of dogs?

#### **Shooting Dogs**

- Q.28 Are there any instances where it will be lawful to shoot a dog?

#### **Specific Dogs**

- Q.29 Are there special provisions concerning Greyhounds?

#### **Guard Dogs**

- Q.30 Are there any special requirements in relation to guard dogs ?
- Q.31 Are there any significant amendments to the legislation to this area?
- Q.32 Are there restrictions in relation to the keeping of certain types of dogs?
- Q.33 Are there any exemptions to these provisions?

#### **Offences &Penalties:**

- Q.34 What are the penalties for a breach of the Control of Dogs Acts?
- Q.35 Is it an offence for a person to use a dog for the purposes of pulling or drawing a cart etc.?

Dogs are probably the most prevalent domestic pets in Ireland and as such represent a species of animal which nearly every person will encounter on a day to day basis whether we live in a rural or urban area of the country. These animals are often therefore the victims of cruelty.

**The Dogs Act of 1906 was repealed by the Control of Dogs Act, 1986 (No. 32), Schedule, Section 36.** The **Control of Dogs Act, 1986** as amended by the **Control of Dogs (Amendment) Act, 1992 (No. 13)** now contains the main source of the law in relation to dogs.

- Q.1 What must I do if I want to keep a dog?

According to **Section 2 of the 1986 Act as amended by Section 2 of the 1992 Act** "it is unlawful to keep a dog without either:-

I) a dog licence for that dog, or

II) a general dog licence relating to the premises where the dog is kept.

You cannot therefore take possession of a dog unless you hold a licence for that particular dog or you have a general licence. (**Section(b)**)

**Q.2 What is a general licence?**

This is a licence which is issued by the Local Authority and has scope to cover all dogs kept by the licence holder in the premises specified in the licence (only one premises may be specified)(**Section 3(2)**).

**Note:** It is presumed that the occupier of the premises wherein the dog is found is the owner or keeper of the dog, **Section 2(3)**. This presumption may be rebutted if it can be shown that the dog was on the premises without his knowledge, that he was not the owner, or that the licenced owner of the dog was keeping it on his premises.

**Q.3 What must I do if I am transferring possession of a dog from myself to another person?**

You are required by **Section 2(3) of the 1986 Act** to ensure that the person is in possession of a general or specific dog licence.

**Section 6** provides that a licence may be transferred to the person to whom possession of the dog is being transferred.

**Q.4 How do I get a licence for a dog?**

The Local Authority has the authority to issue a licence

**Q.5 Are there any conditions attached to obtaining a licence?**

According to **Section 4 of the 1986 Act** a licence may not be issued to a person under the age of sixteen years or to a person disqualified from holding a licence under **Section 18 of the 1986 Act**.

**Section 18 (1) of the Control of Dogs Act, 1986**, states that:-

"Any person who is convicted under the Protection of Animals Acts 1911 - 1965, of the offence of cruelty to a dog may in addition to any penalty imposed under the Acts, be disqualified from keeping a dog for such period as the Court thinks fit."

**Q.6 Are there any exemptions from holding a licence?**

Yes, there are a number of exemptions from the necessity to hold a licence and these are contained in **Section 5 of the 1986 Act**. This section provides that

"A licence shall not be required in respect of any dog-

- whilst such dog is in the possession of the local authority;
- whilst such dog is in the possession of the Irish Society for the Prevention of Cruelty to Animals or any other person with whom a local authority has entered into an arrangement pursuant to **section 15** of the Act;
- which is kept by the Garda Siochana and wholly used by a member of the Garda Siochana in the execution of his duty;
- which is kept and wholly or mainly used for the purpose of guidance by a blind person whose eyesight is so defective that he is unable to find his way about without guidance;
- which is under the age of four months and is kept with its dam or foster-mother;
- whilst such dog is in the possession of the inspector (within the meaning of the Disease of Animals Act, 1966) or other officer of the Minister for Agriculture, or a member of the Garda Siochana, for the purposes of the Act;
- which is imported into the State for a period not exceeding thirty days;
- which is a greyhound and is purchased for export and which is exported from the State within thirty days after the date of purchase;
- which is kept by such other class of person as may be prescribed by the Minister.

**Q.7 For what time period do dog licences last?**

Section 7 provides that the licence shall be valid for 12 months from the date of issue or (as inserted by Section 3 of the 1992 Act) "for any longer period standing prescribed for the time being". After this time you must make an application to renew the licence.

**Q.8 What are the penalties for the failure to hold a valid licence for a dog?**

Such a person shall be guilty of an offence and shall be liable "to a fine not exceeding £1000 or to imprisonment for a

term not exceeding three months or both”, **Section 27 of the 1986 Act as substituted by Section 9 of the 1992 Act.**

**Q.9 What does the Act of 1986 require of the owner of a dog in relation to keeping control over the same?**

According to **Section 9(1)** unless a dog is in the premises of an owner or “such other person in charge” or in the premises of a person where the consent of that person has been given, a dog shall not be in any other place unless such owner or other persons in charge of the dog “accompanies it and keeps it under effectual control.”

**Q.10 Are there any requirements in relation to dogs who worry livestock?**

**Section 9 (2)** states that the owner or person in charge shall be guilty of an offence if the dog in their charge worries livestock. The only exception to this would be where it is shown that at the material time this was done for the purpose of removing trespassing livestock, and having regard to all the circumstances the action was reasonable and necessary.

**Q.11 What can an individual do if he/she sees a dog worrying livestock or about to worry them?**

Pursuant to **Section 13(2)** if a person has reasonable grounds for his/her belief he/she may seize the dog and bring it to a dog warden. (This is without prejudice to **Section 13(1)** below).

**Q.12 What are the penalties in relation to allowing your dog worry livestock?**

The owner or person in charge of such a dog will be guilty of an offence and can be fined up to £1000 and given a maximum sentence of three months in prison or both, **Section 27 of the 1986 Act as substituted by Section 9 of the 1992 Act.**

**Note Section 9(3) which previously dealt with the penalties for allowing a dog to bother livestock has been repealed by Section 11(a) of the 1992 Act.**

The owner is also liable for the damage caused by his/her dog to the livestock. (**Section 21**) This liability is strict. i.e. there is no need to show that negligence caused the attack or that there was a prior mischievous propensity to commit such attacks. Therefore, as of right, the owner of the livestock may recover for the damage done to his/her livestock from the owner of the dog which caused this damage.

**Q.13 What is the position where livestock wander onto another persons land and are attacked by a dog/s?**

If the owner or a person who authorised the dog to be on the land is the occupier of the land **they shall not be liable for the damage done to livestock unless** they caused the dog to attack, (**Section 21(2)**).

**Q.14 What is the position where a person trespassing on land is injured by a dog?**

According to **Section 21(3)** the ordinary rules of negligence apply. **In addition the Occupiers Liability Act, 1995** also applies which has relieved an occupier of liability where the person seeking damages was a trespasser on the land.

**Q.15 Do the Gardai and Local Authorities have any specific duties in relation to the control of dogs?**

Yes, in addition to their specific functions set out below, the Gardai and the Local Authorities are also required to keep a register of all dogs seized by them, detained in the station or which have been shot and notified to them, **Section 14 of the 1986 Act.**

A register which must be kept for a one year period must contain a number of relevant details as set down in **Section 14** as follows:-

- “
- a) A description of the dog;
  - b) In the case of a dog seized by a dog warden or a member of the Garda Síochána, the date of the seizure of the dog and particulars of the manner in which the dog is disposed of or, as the case may be, destroyed;
  - c) in the case of a dog which was detained by any other person, the date of notification of the detention to, as the case may be, the dog warden or the member in charge of the Garda Station concerned, the place where the dog was found, and the place where the dog is detained.”

**Q.16 Can a person who commits an offence under this legislation of 1986 be disqualified from keeping a dog?:-**

**Section 18** provides that if a person commits an offence under the 1911 and 1965 Acts he may be disqualified from keeping a dog. This is in line with the provisions of the **1911 and 1965 Protection of Animals Acts**. Nothing is said in relation to the commission of offences under the 1986 Act and the disqualification from keeping an animal.

**Q.17 What can be done if an individual sees a stray dog?**

A dog warden or a Garda may seize a dog found straying and may enter a premises other than a place of dwelling in

order to effect this seizure (**Section 11(1)(2)**). If an ordinary member of the public, not being a Garda or a warden, finds a dog which is a stray dog they may take possession and according to **Section 13(1)** "shall forthwith :-

return the dog to its owner, or  
deliver the dog to a dog warden, or  
detain the dog and give notice in writing containing a description of the dog, the address of the place where it was found and the address of the place where it is detained to the member in charge at the nearest Garda Station to the place where the dog was found, or to the dog warden."

**Q.18 What is done with those dogs which are delivered to a dog warden?**

They are delivered to the Local Authority who take the following steps;

If the owner or person in charge is known to the Garda or Local Authority or can be readily ascertained by them, notice shall be given them of the dog's seizure and detention,

The notice shall state that if the dog is not claimed within five days from the date of the giving of the notice, he shall be destroyed. (This is provided for in **Section 11(7)(8)(9)** ).

The owner or person in charge is liable for all expenses incurred in relation to this seizure and detention.

**Q.19 If an individual finds a dog may he/she keep him?**

Yes, **Section 13(1)(c) of the 1986 Act** allows a person to keep a dog provided they:-

Give a notice to the local Gardai or dog warden containing the following information-

- i) A description of the dog,
- ii) A statement as to where the dog was found,
- iii) the dog's new address.

**Q.20 What happens if the dog's owner comes looking for the dog which has been taken in by the finders or others?**

If the person who is a licenced owner of the dog comes to claim him the finder/other person must give him back. However if the finder retains possession of the dog for a period of one year or more, the finder can become the new owner of the dog, the previous owner's title becomes extinguished.

**Q.21 How may a dog be claimed and who can claim him?**

According to **Section 11(5)**

- i. the person must satisfy the Local Authority or the Superintendent that he is the owner,
- ii. make a declaration to the effect that they are the owner or person authorised by the owner to claim the dog, and
- iii. produce a dog licence relating to the dog or a general dog licence (and relating to the premises where the dog is kept (post 1992),
- iv. they must pay any expenses incurred by the Local Authority.

**Q.22 If a person has an unwanted dog what can they do?**

The best thing to do would be to try to find a home for the animal or to contact the I.S.P.C.A.. If this is not an option, the 1986 Act provides for the destruction of dogs which are unwanted by their owners or persons in charge and states inter alia that the Local Authority may arrange for their humane destruction, **Section 12**.

**Q.23 Can a member of the public complain when a dog is dangerous?**

Yes, a member of the public can complain to the District Court under **Section 22 (1)(a)**.

**Q.24 What can the Court do?**

Where it appears to the Court that the dog is dangerous and not kept under proper control, the Court may order that the dog be kept under proper control or order the destruction of the dog (in addition to any other penalty).

**Q.25 Can a court exercise this power in any other instance?**

Where an offence is committed under **Section 9(2)** the court has similar powers as aforesaid. Also where a dog has caused damage to livestock he may be considered a dangerous dog and the court may order as aforesaid, **Section 21(9)**.

**Q.26 The neighbours keep a large dog in the back garden, which barks and  
What can be done?**

**whines, morning, noon and night.**

As we have seen, there are many legislative provisions, which regulate ownership of dogs and their handling in public places or on private land. One aspect of canine behaviour, which is not directly regulated, however, is excessive barking. In the close confines of housing estates, with young families, incessant barking can cause significant upset, loss of sleep etc. In these circumstances, recourse may be had to a general remedy in respect of excessive noise, as follows.

**Section 108** of the **Environmental Protection Agency Act 1992**, provides:

Where any noise which is so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person lawfully using any premises in the neighbourhood or to a person lawfully using any public place, a local authority, the Agency or any such person may complain to the District Court and the Court may order the person or body making, causing or responsible for the noise to take the measures necessary to reduce the noise to a specified level or to take specified measures for the prevention or limitation of the noise and the person concerned shall comply with such order.

Before making a complaint, the complainant must first serve notice on the person responsible for the noise, advising him or her of the intention to complain to the Court (the prescribed form of notice is set out in the **Environmental Protection Agency Regulations 1994**. Service of a notice is a condition precedent to the making of a complaint and is the first item of which the Court will require proof at the hearing of the complaint. **Order 96 rule 8 (3)** of the **District Court Rules 1997** sets out the procedure for making the complaint.

Under **Section 106** of the Act, the local authority, or the Environmental Protection Agency itself, may also complain and, in extreme cases, seek to obtain a warrant for entry to the relevant premises, for the purposes of abating the nuisance.

The Section provides defences to a complaint where the noise is incidental to lawful business and all reasonable efforts have been made to limit the noise, or where the noise is generated under a licence granted under the Act.

In practice, this jurisdiction is exercised pragmatically and the Court will expect both parties to be reasonable. In the case of a noisy dog, it may be the case that the animal is ill, or that its conditions of habitation are unsuitable to its size or demeanour. In extreme cases, therefore, a complaint in these circumstances may lead to the destruction of the animal.

**Q.27 Aside from the cruelty provisions are there any provisions in relation to the housing of dogs?**

**Section 19 of the 1986 Act as amended by Section 8 of the Control of Dogs (Amendment) Act, 1992** provides for the making of regulations in relation to the keeping of five or more dogs over the age of 4 months (note these provision also applies to guard dogs.).

**Q.28 Are there any instances where it will be lawful to shoot a dog?**

Yes there are specific instances where such a shooting would be held to be lawful. These are set out in **Section 23** and must be proved by the Defendant -

- a) the dog was shot when it was worrying, or was about to worry livestock and that there were no other reasonable means of ending or preventing the worrying; or
- b) the dog was a stray dog which was in the vicinity of a place where livestock had been injured or killed, and the Defendant reasonably believed that the dog had been involved in the injury or killing, and there were no practicable means of seizing the dog or ascertaining to whom it belonged; and he was the person in charge of the livestock, and he notified within forty eight hours the member in charge at the local garda of the incident.

These provisions will be satisfied if the Defendant believed and had reasonable grounds for his belief that these provisions had been satisfied.

**Q.29 Are there special provisions concerning Greyhounds?**

There are special provisions in relation to greyhounds.

**Leash:** It states in **Section 10** of the 1986 Act that a greyhound shall not be permitted in a public place "unless the greyhound is being led by means of a sufficiently strong chain or leash."

**Numbers:** **Section 10** goes on to provide that "a person shall not cause or permit to be led by any one person more than four greyhounds at a time in any public place."

**Q.30 Are there any special requirements in relation to guard dogs ?**

The Control of Dogs Act (Guard Dog) Regulations, SI No. 255 of 1988 made pursuant to **Section 19 of the 1986 Act** set out a number of requirements in relation to the keeping of guard dogs. There are requirements for the display of public warning notices (BEWARE OF GUARD DOG), specific requirements for the construction of kennels in certain

instances ( First Schedule) and restrictions on the keeping of such kennels.

There is also a requirement in Section 3 that a guard dog which is not kept in an enclosed area being the premises and dwelling house of his owner, and is not used for agricultural purposes or by the Gardai or defences forces must be either accompanied by a handler or be secured so that he cannot go freely around the premises and escape therefrom.

The types of guard dogs falling within this section would include those used in clubs, on construction sites and for securing sports or recreation premises.

It should be noted that these regulations confer specific functions on the I.S.P.C.A.. According to **Section 6** of the Regulations the Society may implant an electronic identification mark on a guard dog and keep a register of all guard dogs so marked. It is a requirement under the regulations to have either this form of marking on a guard dog or alternatively to have the dog wear a dog collar with the owner's name and address inscribed on the same.

**Q.31 Are there any significant amendments to the legislation to this area?**

Yes, **Section 8 of the 1992 Act has amended section 19 of the 1986 Act** in specifying the areas to be addressed by the regulations in subsection 1 (without prejudice to the generality of the subsection). The old regulations as aforesaid are to remain in force and operation until new regulations under the amended section 19 are enacted. This appears to envisage more detailed regulations in the near future, however to date no such regulations have been enacted.

**The Control of Dogs Act, 1986 (Guard Dogs) (Amendment) Regulations, 1989 S.I. No. 329 amends Article 2(4) and paragraph 4 of the First Schedule of S.I. No. 255/88.**

**Q.32 Are there restrictions in relation to the keeping of certain types of dogs?**

Yes, the **Control of Dogs (Restriction of Certain Dogs) Regulation, S.I. No. 123 of 1991** requires that in order to keep the following types of dogs

Bandogs, American Pit Bull Terriers, Bulldogs, Bull Mastiffs, Doberman Pinschers, English Bull Terriers, German Shepherd (Alsations), Japanese Akitas, Japanese Tosas, Rhodesian Ridgeback, Rottweilers and Staffordshire Bull Terriers including any other strain or cross or every breed or type of dog so described - as specified in Regulation 4,

- It is necessary to have these dogs controlled by a sufficiently strong chain or leash not more than one metre in length and by a person over the age of 16 years of age who is capable of controlling the dog, **Regulation 5.**
- Further these dogs must be muzzled while in a public place, **Regulation 6.**
- These dogs must also have collars which identify the dog and give an address, **Regulation 7.**

**Q.33 Are there any exceptions to these restrictions?**

Yes, Regulation 4(2) exempts dogs kept by the Garda Síochána and wholly used by a member in the exercise of his duties.

**Q.34 What are the penalties for a breach of the Control of Dogs Acts?**

A breach of any of the provisions of the 1986 Act on summary conviction can result in a fine not exceeding £1000 or possibly to a term of imprisonment not exceeding three months or both, **See Section 27 (as amended by section 9 of the 1992 Act).**

**Note:** If cruelty is suspected but cannot be proven it is necessary to bear in mind that the aforesaid penalties may be imposed in relation to a breach of the licensing provisions, **section 27 as amended by section 9 of the 1992 Act.**

**Q.35 Is it an offence for a person to use a dog for the purposes of pulling or drawing a cart etc.?**

**Section 9 of the Protection of Animals Act, 1911** creates a specific offence for a person who uses to use a dog to pull or help to pull a cart, carriage, truck or barrow on any highway.

## CHAPTER TWELVE

### CONTROL & PROTECTION OF HORSES

#### **Cruelty:**

- Q.1 Are there any provisions prohibiting cruelty to horses?
- Q.2 What are the penalties for this offence?

#### **Control:**

- Q.3 Is there specific legislation in relation to horses?
- Q.4 What does the Control of Horses Act, 1996 attempt to do?
- Q.5 Who will be held to be the owner of the horse for the purposes of the Act where a child under 16 owns the horse?

#### **Licensing**

- Q.6 In accordance with the 1996 Act, what now are the licensing requirements in relation to horses?

#### **Exceptions:**

- Q.7 Are there exceptions to the licensing requirements?
- Q.8 Are there any defences to the requirement in Section 18(1)?
- Q.9 Can persons other than the owners who keep horses be found to have committed a licensing offence?
- Q.10 Are there exceptions to this prohibition?
- Q.11 What happens with regard to the occupier of a premises wherein unlicensed horses are found?
- Q.12 Are there defences to a section 18(2) prosecution?
- Q.13 Where can information in relation to horse licences be found?
- Q.14 Are there any other offences in relation to horse licences?

#### **Sale:**

- Q.15 Are there any restrictions in relation to the sale of horses to persons underage?
- Q.16 What can an individual do where they are concerned about the treatment of any horse?

#### **Authorised Persons/Local Authorities and Gardai**

- Q.17 Who are the enforcers and regulators under the Act?
- Q.18 What are the powers and functions of the Gardai and the authorised persons under the Act?

#### **Strays:**

- Q.19 What can the Gardai or an authorised person do if they find a horse straying in a public area?
- Q.20 Where are these horses kept once seized?
- Q.21 What is the period of detention?
- Q.22 Are there any provisions for the making of Bye-laws in relation to the Control of Horses Act, 1996?

#### **Pain and Suffering**

- Q.23 What can an individual do if they find a horse in suffering or in pain?

#### **Powers of Gardai:**

- Q.24 What other specific powers do the Gardai have?
- Q.25 Can an authorised person or a member of the Gardai bring any person or equipment onto the premises to assist him in his search?
- Q.26 Are there any restrictions on this power?
- Q.27 What is a dwelling?
- Q.28 If the Gardai or the authorised person is prevented from entering the premises what should they do?
- Q.29 What is required in order to obtain a search warrant?
- Q.30 Do the Gardai have any other powers unique to them under this Act?

#### **Prosecution:**

- Q.31 Who may prosecute under the Act?
- Q.32 If an offence is committed by a corporate entity (company etc..) can an individual be prosecuted?

#### **Penalties**

- Q.33 What are the penalties for the commission of an offence under the Act?
- Q.34 Is there an appeals procedure against this disqualification?

#### **Performing Animals**

- Q.35 Are there special provisions in relation to horses?
- Q.36 If a person should carry out any of the prohibited acts are they committing an offence?
- Q.37 Is there any opportunity afforded to the owner or person in charge of the horse to make representations prior to the destruction of the horse?
- Q.38 Does the Act amend any previous legislation?

- Q.1 Are there any provisions prohibiting cruelty to horses?



Obviously like most animals horses are protected by the general cruelty provisions contained in the **Protection of Animals Act 1911 as amended by the 1965 Act**. (See Cruelty Section)

In addition to the general cruelty provisions an **additional and specific category** Section was added to section 1 of the 1911 Act in relation to the **docking and nicking of horses**. Section 5 of the 1965 Act creates an offence of cruelty under Section 1 of the 1911 Act to dock or nick a horse unless according to subsection 2 the vet thinks that the operation would be for the health of the horse.

**Docking** means the severing of any tendon or muscle in the tail of a horse.

**Nicking** means the removing of any bone or any part of a bone from the tail of a horse.

**Q.2 What are the penalties for this offence?**

The penalties are those as set down by Section 1 of the 1911 Act as amended by the Control of Horses Act, 1996. The portion of **Section 1 of 1911 Act** dealing with the penalties for cruelty has been amended most recently by the **Control of Horses Act, 1996, Section 48**. On summary conviction of the offence of cruelty, a maximum fine of £1,500 may be imposed and a term of imprisonment not exceeding 6 months, or both. On conviction on indictment the maximum fine is £10,000 and the maximum term of imprisonment is 2 years and again both may be imposed.

Under **Section 3 of the 1911 Act** upon conviction of the owner for an offence within the meaning of the Act the court may, in addition imposing any of the aforesaid punishments, deprive that person of his ownership of the animal. An order for the destruction of the animal may also be made by the courts under this section if required. It appears that to make an order under this section it would be necessary to show:

that there is evidence as to a previous conviction of the owner for cruelty, or evidence of the character of the owner, or; that if the animal is left with the owner it is likely to be exposed to danger.

**Q.3 Is there specific legislation in relation to horses?**

Yes, there is new legislation in the form of the **Control of Horses Act, 1996** which was introduced to address the recent problems experienced with horses wandering in urban areas. These horses are often found to have been mistreated as they many are kept by children who are incapable of undertaking the task. Not only do the horses themselves suffer but they pose a danger to the general public as they are permitted to wander onto the public highway. There have been a number of serious accidents as a result of such straying horses. As a result of this and the recent case of *Flannery v. Dean* the 1996 Control of Horses Act was enacted.

**Q.4 What does the Control of Horses Act, 1996 attempt to do?**

The Act represents the realisation by the legislature of the additional care required in the maintenance of horses. Further it takes cognisance of the resulting and considerable problems which have recently been brought to the public's attention especially in urban areas and more particularly in connection with the under-aged owner.

In the main the Act sets out certain requirements in relation to the licensing of horses in an attempt to place controls on the ownership of these animals. There are also provisions laid down in relation to stray, neglected and suffering animals, together with restrictions in relation to the sale of these animals. It is hoped that this will prevent the widespread problems with strays and under-aged ownership as detailed above.

**Q.5 Who will be held to be the owner of the horse for the purposes of the Act where a child under 16 owns the horse?**

The "head of the household" is deemed to own the horse for the purposes of the Act according to **Section 2(2)**. This is useful as it requires that parents be responsible for their children's pets.

**Part II of the 1996 Act** regulates the law in relation to the licensing of horses. The local authorities are responsible for the control of this licensing and they are required to exercise their functions in "control areas" which are designated in bye-laws where the need arises. That need would arise where it was necessary to control the keeping of horses in a certain area and in order to prevent nuisance, annoyance or injury to members of the public (**Section 17**).

There are a number of provisions in relation to adjoining local authorities and the co-operation which may take place between them. The Minister may require a local authority to make bye-laws where he is requested by another local authority so to do and where he is satisfied that the same is necessary (section 17(3)).

**Q.6 In accordance with the 1996 Act, what now are the licensing requirements in relation to horses?**

Subject to the exceptions contained in section 19, according to section 18(1) "a person who owns a horse which is kept by him or her or on his or her behalf in a control area shall, unless he or she holds a horse licence in respect of the horse entitling that owner to keep the horse in the control area, be guilty of an offence.

**Q.7 Are there exceptions to the licensing requirements?**

Yes, **section 19** provides that a horse licence is not required in respect of a horse in the control area which

is kept by a local authority in respect of any of its functions;  
is kept by the Garda Síochána and used by a Member of the Garda Síochána in the execution of the member's duties;  
is kept by the Minister for Defence and used by a member of the Defence Forces in the execution of the member's duties;  
is in the possession of an authorised person (within the meaning of section 25 of the Diseases of Animals Act, 1966) for the purposes of that Act;  
is imported into the State for a period not exceeding 90 days or for such other period as may be prescribed;  
is brought into or kept in the area in such circumstances or for such purposes or periods as may be-

- i) prescribed generally or in relation to any particular control area, or
- ii) specified in bye-laws made by -

the local authority in whose functional area the control area is situated, or

a local authority which has entered into arrangements under section 20(10) on behalf of another local authority in respect of that control area or part thereof, with the consent of that other authority regarding the making of bye-laws;

g) is brought into the area for the purposes of participating in a specified event on a specified day or days as may be permitted in bye-laws made by a local authority  
is receiving from a veterinary surgeon veterinary treatment at a premises other than the premises where the horse is kept;  
is a foal  
has recently been purchased or has come into the possession of the owner or keeper for the first time, for a period of one week from the date of the purchase or the coming into possession or such other period as may be permitted in bye-laws made by-

the local authority in whose functional area the control area is situated, or

a local authority which has entered into arrangements under section 20(10) on behalf of another local authority in respect of that control area or part thereof, with the consent of that other authority regarding the making of the bye-laws;

- (i) is being transported from outside the area directly through the control area for the sole purpose of export from or leaving the State from a harbour, port or airport, or
- (ii) is being transported through the control area, having landed from outside the State at a harbour, port or airport, directly to a destination outside the area;

is kept by such other class or classes of persons and for such purposes as may be prescribed or specified in bye-laws made by -

a local authority in whose functional area the control area is situated, or

a local authority which has entered into arrangements under section 20(10) on behalf of another local authority in respect of that control area or part thereof, with the consent of that other authority regarding the making of bye-laws."

**Note:**

For the purposes of proof the onus lies with the persons charged with the offence to show that they come within **Section 19(1)**.

The specifics of the requirements of a horse licence and to whom they may be issued are contained in **Section 20**. The procedure is set down in **Section 22**. There are also requirements laid down for the identification of horses, **Section 28**.

**Note** there is an appeals process provided for in **Section 23** of the Act.

**Q.8 Are there any defences to the requirement in Section 18(1)?**

Yes, if a horse is kept in a control area without the owner's permission subsection 6 provides the owner with a defence, **Section 18(6)**. In other words if a horse is stolen and kept in a control area for which he is unlicensed the owner will not be liable.

Also under **Section 18(8)** if an application for a licence was pending at the time this would be a full defence provided that person was not already refused a licence or disqualified from keeping a horse under **Section 7**.

**Persons seeking to prosecute owners under subsection 1 should be aware of these defences** in order to answer them should they be raised. i.e. Show that where a horse is kept not by the owner, this is done with the owner's permission or at his request. Ensure that no licence is pending and ascertain whether the person is disqualified from keeping a horse or has been previously refused a licence.

**Q.9 Can persons other than the owners who keep horses be found to have committed a licencing offence?**

Yes, in accordance with section 18(2) a person other than the owner who-

"a) keeps a horse in a control area or has under his or her charge or control a horse which is kept in a control area," shall also be guilty of an offence where the owner does not hold a licence.

**Q.10 Are there exceptions to this prohibition?**

Yes, **section 18(3)** allows exceptions to this category of offender

an authorised person or a member of the Gardai Siochana acting in the course of his or her duty, a pound keeper who keeps a horse in a pound, a veterinary surgeon providing veterinary services for a horse, any person who keeps or has charge or control of a horse for the purpose of preventing it causing injury to persons or damage to property, and restoring the horse to its owner or keeper, or handing it over to an authorised person or a member of the Garda Siochana. any person with whom the local authority or a Superintendent has entered into arrangements under *section 39(4)*, or such other class or classes of persons and for such purposes as may be prescribed."

**Q.11 What happens with regard to the occupier of a premises wherein unlicensed horses are found?**

**Section 18(5)** provides that an occupier who is not the owner of the horses will be taken to be the person in charge or control for the purposes of subsection 2 unless:- the horse is kept without his knowledge or permission, or

the horse was kept there by some other person and that at the time that horse was licenced for that control area.

**Note:** therefore for the purposes of prosecuting under this section it must be shown that the occupier had knowledge of the horses being on his premises or gave permission and that the horses are not licenced by another person who holds a licence for them.

**Q.12 Are there defences to a section 18(2) prosecution?**

Yes, **section 18(7)** states that it shall be a defence for a person to show that at the time he "had no reason to believe" that the horse was not licenced for that control area. Again note should be taken of this offence.

Also under **section 18(8)** if an application for a licence was pending at the time this would be a full defence provided that person was not already refused a licence or disqualified from keeping a horse under section 7.

**Q.13 Where can information in relation to horse licences be found?**

Section 24 requires that a register of horse licences be kept by each local authority. **Section 11** details the specifics in relation to the public's access to and the contents of the register.

**Q.14 Are there any other offences in relation to horse licences?**

Yes, it is an offence to forge or fraudulently alter or use a horse licence, **Section 21**. Also if a licenced horse dies or is disposed of there is a requirement to inform the local authority of this within 14 days, **Section 25**.

**Q.15 Are there any restrictions in relation to the sale of horses to persons underage.**

Yes, it was felt that given the aforementioned problems, the prohibition on the sale of horses to underage persons contained in the **Protection of Animals (Amendment) Act, 1965** should be extended. While in accordance with **section 24 of the 1965 Act** it is an offence to sell animals to children under the age of 12, this provision has been amended by **Section 44** to exclude horses with the prohibition being extended by **Section 43** to an age limit of 16 in relation to horses.

**Q.16 What can an individual do where they are concerned about the treatment of any horse?**

If an individual witnesses such treatment he should contact the Local Authority or Gardai who have wide powers under the Act.

**Q.17 Who are the enforcers and regulators under the Act?**

The local authorities, the persons they appoint as authorised persons, and the Garda Siochana are the enforcers of the provisions of the Act.

**Authorised Persons:**

**Section 3 of the 1996 Act** permits the local authority to appoint authorised persons for the purposes of this Act as they see fit. These persons may exercise the functions under the Act within the functional area of the local authority which appointed them or within another functional area if agreements exist between local authorities. These persons are to be furnished with warrants. In addition an authorised person may be assisted in the exercise of his functions by such person as the authorised person considers necessary.

This provision while useful to the local authority in allowing them to delegate their considerable functions under the Act, may cause problems in its implementation. Freelance persons paid a set price per seized horse may not be sufficiently thorough in their attempt to find the licenced owner. Therefore some care must be taken in the implementation of the same.

**Q.18 What are the powers and functions of the Gardai and the authorised persons under the Act?**

The Garda Síochána and authorised persons have a number of functions and powers in relation to keeping the control of horses.

**Directions:** Any failure to comply with the directions of the authorised person or the Gardai where there is no reasonable excuse is an offence under the Act (See each section as stated below for specific offences.).

**Obstruction:** Also under **section 36** it is an offence to obstruct or impede an authorised person or a member of the Gardai from the exercise of their duties.

**Licences:** **Section 26** allows an authorised person or the Gardai to request the production of a horse licence where he reasonably suspects the person to be the owner of the horse. Non compliance with this section or the giving of false or misleading information to the Gardai in relation to the horse is an offence.

Under **Section 26** the Gardai or authorised person may also request the holder of the licence to produce the said licence and failure to comply within ten days will be an offence.

**Inspection :** The Gardai or an authorised person may inspect and examine the horse and obtain reasonable assistance from the person having control of the horse as they require for the purposes of the examination, **Section 26**.

**Q.19 What can the Gardai or an authorised person do if they find a horse straying in a public area?**

The Garda or authorised person where he reasonably suspects the horse to be unlicensed or not within the **Section 19** exemptions may require the person having charge or control of the horse to remove it from the public place, **Section 27**.

**Seizure**

In accordance with **section 37**, the Gardai or authorised person may seize and detain a horse where they have reason to suspect that it is “

a stray horse, or  
causing a nuisance, or  
not under adequate control, or  
posing a danger to persons or property, or  
posing a threat to the health and welfare of persons or other animals, or  
being kept in a control area, without a horse licence in respect of it being entitling the horse to be kept in that area, or  
not identifiable or capable of identification as may be required by section 28, or  
in or being kept or ridden or driven in an area contrary to any bye-laws made under section 47.”

Further if the requirements under section 33 are unlikely to be met the horse may be seized and brought to a vet, section 37(2).” (See pain and suffering below)

**Q.20 Where are these horses kept once seized?**

The horse may be kept in a pound or in any other place as specified by the Superintendent or the local authority.

**Identification:** While in the possession of the Gardai or an authorised person the horses may be lawfully identified with a mark or device in accordance with section 38.

**Q.21 What is the period of Detention?**

Section 39 deals with this and allows the horses to be kept until the termination of court proceedings where this is relevant and allows for their destruction in certain instances.

**Q.22 Are there any provisions for the making of Bye-laws in relation to the Control of Horses Act, 1996?**

**Bye - laws** may be made by the local authorities in relation to details regarding the detention of horses, **Section 39(2)**.

**Section 17** allows for the making of bye-laws in relation to the designation of functional areas as control areas.

Bye-laws may also be made in relation to the control and welfare of horses, **Section 46**.

They may also specifically exclude horses from certain areas, **Section 47**.

**Q.23 What can an individual do if they find a horse in suffering or in pain?**

The individual should contact their Local Authority or the Gardai who have powers under the 1996 Act to deal with such animals.

If the authorised person or the Gardai have reasonable cause to suspect that a horse is suffering from distress they may require the owner or person in control to take the horse to a vet, **Section 33**.

**NB** if they have reasonable cause to suspect that this requirement will not be met the Gardai or authorised person may seize and detain the horse under **Section 37**.

**Q.24 What other specific powers do the Gardai have?**

**Information:**

The Gardai or an authorised person are entitled to receive certain information when they ask for the same: from any person having charge or control of a horse they may request the name and address of the owner of the horse, **Section 30**.

From a person reasonably suspected of committing an offence under the Act, they may request their name and address, **Section 31**.

**Desist**

If the Gardai or an authorised person has reasonable cause to suspect that a person is committing an offence under **Section 45** or under any bye-laws made under **Section 46 or 47 or Section 1 of the Protection of Animals Act, 1911** as amended in relation to a horse, they may direct the person to desist from so offending.

**Power of Entry-**

In accordance with **Section 34**, both the Gardai and the authorised person have wide powers of entry onto any premises or vehicles where they have reasonable cause to suspect that either a person is causing harm to or mistreating a horse or that a breach of the Act is being committed therein. Not only are they entitled to search for the horse but they may search for and take extracts and copies from documents. Obviously they may also carry out any other function they have under the Act in the course of their search.

**Q.25 Can an authorised person or a member of the Gardai bring any person or equipment onto the premises to assist him in his search?**

Yes, both equipment and additional persons may be brought onto the premises to assist, Section 34(2).

**Q.26 Are there any restrictions on this power?**

Yes, where the premises is a "dwelling" the Gardai or authorised person may not enter before firstly obtaining either **The consent** of the occupier **search warrant** from the District Court under section 35.

**Q.27 What is a dwelling?**

Section 2 states that a dwelling does not include: "any stable, out office, yard, garden or other land appurtenant to the dwelling or usually enjoyed therewith." i.e. a vehicle would not require a search warrant.

**Q.28 If the Gardai or the authorised person is prevented from entering the premises what should they do?**

**Section 34(4)** provides for such an event in allowing the Gardai or authorised person to apply to court for a search warrant allowing entry under **Section 35**.

**Note – Search warrants are granted in accordance with the provisions of Section 35.**

**Q.29 What is required in order to obtain a search warrant?**

The Gardai must have reasonable grounds for suspecting that

"there is evidence on any premises in relation to an offence under the Act, or a person is causing harm to or mistreating a horse on any premises".

The warrant must obviously be obtained from the District Court in the correct District Court area.

**Q.30 Do the Gardai have any other powers unique to them under this Act?**

Yes, the Gardai have wide powers under the 1996 Act (**Section 4**) in that they may arrest without warrant any person reasonably suspected of committing an offence under the following section of the Act [**Ss. 21, 27, 28(3), 32, 36, 37, 45, 46, 47**].

**Q.31 Who may prosecute under the Act?**

The local authorities or the Gardai, **Section 9**.

**Q.32 If an offence is committed by a corporate entity (company etc..) can an individual be prosecuted?**

Any officer, director manager, secretary who personally carries out an offence under the Act will be guilty of an offence also, **Section 5**.

**Q.33 What are the penalties for the commission of an offence under the Act?**

**Section 6** sets out the penalties

Summary conviction (except for **Section 45** offence) - £1,500 maximum fine or to imprisonment for a maximum period of 6 months or both.

**Section 45** offence: Summary - £1,500 maximum and 6 months or both. Indictment - £10,000 maximum and 2 years or both.

**Disqualification:**

In addition to the penalties which the court may impose in accordance with **Section 6** of the Act, the court may under **Section 7** disqualify persons guilty of an offence under the Act from keeping, dealing in, or having charge or control, directly or indirectly of a horse for such a period as the court deems fit. This period can be anything up to a maximum of the life of the person .

**Q.34 Is there an appeals procedure against this disqualification?**

Yes, there is a procedure whereby after three months a person may apply to have a disqualification in excess of 6 months lifted, **Section 7**.

**Forfeiture:**

On conviction under the Act a person may be required by the court to forfeit the horse/s the subject of the prosecution to the local authority or to an authorised person, **Section 8**.

**Performing Animals**

For further detail see Performing Animals Section

**Q.35 Are there special provisions in relation to horses?**

Yes, given the particular problems with horses (and bulls), the Act contains some specific protective provisions in relation to them. The relevant section is **Section 15** and it provides as follows:-

No person shall promote or cause or knowingly permit to take place any public performance which includes any episode consisting of or involving: -

Throwing or casting with ropes or other appliances any unbroken horse or untrained bull, or wrestling fighting or struggling with any untrained bull, or riding or attempting to ride any horse or bull which by the use of any appliance or treatment involving cruelty is or has been stimulated with the intention of making it buck during the performance.

and no such person shall in any public performance take part in any such episode as aforesaid.

**Q.36 If a person should carry out any of the prohibited acts are they committing an offence?**

Yes. **Section 15(4)** makes the contravention of Section 15 an offence under the cruelty provisions of the 1911 Act

**Disposal of Horses**

There are situations where the Act provides for the humane destruction of horses in the care of the local authority; where a horse has been seized on more than two occasions within a twelve month period under section 37, section 40 allows for the destruction of that animal where either a "Superintendent or an authorised person is of the opinion that -

- the owner or keeper of the horse is not exercising adequate control over the horse so as to prevent it straying, causing nuisance, or posing a danger to persons or property, or
- such horse is likely to be in a public place whilst not-
  - i) under adequate control, or
  - ii) identifiable or capable of identification as may be required by section 28."

**Illness**

Also under **Section 41** where a horse is in pain or suffering or is a health risk to other animals or persons the authorities may order that he be humanely destroyed. This would only occur where the animal was first examined by a

veterinary surgeon under the provisions of **Section 37**.

**Q.36 Is there any opportunity afforded to the owner or person in charge of the horse to make representations prior to the destruction of the horse?**

Yes, in relation to **Section 37** destructions, five days are allowed within which to make representations from the date upon which the notice of the authorities intention to destroy the horse is posted on the place of detention and sent to the owner, **Section 40(3)**.

If the representations made do not succeed in altering the decision to destroy the horse, the owner or person in charge has the right to appeal to the District Court within 7 days of the decision of the authority to this effect, **Section 40(4)**. If such an appeal is taken obviously the decision to destroy the horse will remain suspended, **Section 40(6)**. The decision of the District Court on this matter is the final decision, however the High Court has jurisdiction to hear any appeal on a point of law which might arise, **Section 40(8)**.

Example of a possible representation - That the present owner was not the owner on the first occasion of the horse's seizure.

**Q.38 Does the Act amend any previous legislation?**

Yes, the Control of Horses Act, 1996 amends as follows:-

Section 46 updates the penalties for the offence of cruelty contained in the **1911 Protection of Animals Act, Section 1**. (See Cruelty Section)

Section 49 updates and increases the penalties for the purposes of the **Pounds (Provision and Maintenance) Act, 1935.(NB insert above)**

Section 50 updates and increases the penalties for the purposes of **Section 5 of the Animals Act, 1985. (NB insert above)**

In addition the prohibition on the sale of a horse to a child under the age of 12 contained in **section 24 of the Protection of Animals (Amendment) Act, 1965** has been increased to the age of 16, section 43, 44. (see above - Sale/Pet Shops)

## CHAPTER THIRTEEN

### BULLS

- Q.1 What must one do in order to keep bulls?  
Q.2 What is a registered bull?  
Q.3 What is a permit?  
Q.4 Who issues a permit?  
Q.5 What are the pre-requisites to obtaining a permit?  
Q.6 What can the Gardai/ inspectors do where they suspect a bull is being kept in contravention of the law?  
Q.7 Can the Minister order the castration or slaughter of a bull?  
Q.8 Are there penalties for breaching these provisions?  
Q.9 Are there special provisions in relation to bulls?  
Q.10 If a person should carry out any of the prohibited acts are they committing an offence?  
Q.11 Does the 1985 Act repeal or amend any previous Act?

The usual cruelty provisions apply equally to bulls as to other animals and the occurrence of any of the acts prohibited by the **1911 and 1965 Protection of Animals Acts** would constitute an offence of cruelty within the meaning of those Acts. (See *Paragraph 1 on General Cruelty*)

In order to control the breeding of bulls such that all breeding is pure breeding the legislature in accordance with **Directive 77/504/EEC** have introduced the **Control of Bulls for Breeding Act, 1985**. This attempts to place restraints on the keeping of bulls and requires that they be approved by the relevant authorities and registered or issued with a permit.

#### **Q.1 What must one do in order to keep bulls?**

**Section 2 of the Control of Bulls for Breeding Act, 1985** requires that where a bull is unregistered it shall be unlawful to have such a bull in your possession without the said possession being authorised by a permit under **Section 3** of the 1985 Act. If your bull is registered therefore, you may keep the same without a permit. i.e. the bull must be either a registered bull or there must be a permit issued for the keeping of that animal.

#### **Q.2 What is a registered bull?**

A registered bull is a bull which according to **Section 2** is entered or if under the age of fifteen months is eligible to be entered in a herd book of a breed.

#### **Q.3 What is a permit?**

A permit allows a person to have an unregistered bull in their possession, **Section 3**. (Note Conditions may be attached to the permit).

#### **Q.4 Who issues a permit?**

The Minister according to **Section 3**.

#### **Q.5 What are the pre-requisites to obtaining a permit?**

The payment of a prescribed fee and that certain circumstances exist as prescribed.

#### **Q.6 What can the Gardai/ inspectors do where they suspect a bull is being kept in contravention of the law?**

**Section 5** allows the Gardai and inspectors to enter onto the land for the purposes of an inspection where they have a reasonable belief that a bull is being kept. Further they may inspect the bull and any documentation relating to its permit or certificate.

**Note** Inspectors are defined as any persons authorised by the Minister to exercise all or any of the powers conferred, or to perform all or any of the duties imposed on a inspector under this Act, **Section 2**.

#### **Q.7 Can the Minister order the castration or slaughter of a bull?**

Yes, **Section 6** permits the Minister to direct that a bull be castrated or slaughtered where the bull is kept without a permit. The fees of the said castration or slaughter can be claimed from the owner.

**Note** This is not the only option open where a bull is found to be without a permit. If the bull is unregistered the Minister may direct the owner to apply for a permit.

#### **Q.8 Are There penalties for breaching these provisions?**

Breaching a provision of this Act of 1985 is an offence and the penalties can be found in **Section 8 and 9 of the 1985 Act**.



## Performing Bulls

For further detail see the Section on Performing Animals

### Q.9 Are there special provisions in relation to bulls?

Yes, given the particular problems with these animals, the Act contains some specific protective provisions in relation to them. The relevant section is **Section 15** and it provides as follows

“(1) No person shall promote or cause or knowingly permit to take place any public performance which includes any episode consisting of or involving: -

- i. Throwing or casting with ropes or other appliances any unbroken horse or untrained bull, or
- ii. wrestling fighting or struggling with any untrained bull, or
- iii. riding or attempting to ride any horse or bull which by the use of any appliance or treatment involving cruelty is or has been stimulated with the intention of making it buck during the performance.

and no such person shall in any public performance take part in any such episode as aforesaid.”

### Q.10 If a person should carry out any of the prohibited acts are they committing an offence?

Yes, **Section 15(4)** makes the contravention of **Section 15** an offence in accordance with the cruelty provisions of the 1911 Act.

### Q.11 Does the 1985 Act repeal or amend any previous Act?

Yes, **Section 12** repeals the **Live Stock Breeding Act, 1925**.

## CHAPTER FOURTEEN

### HUNTING & THE PROTECTION OF WILDLIFE

#### General:

- Q.1 What is a protected wild animal?  
Q.2 Who in accordance with the Act has the function of conserving wildlife?  
Q.3 Are there any general protections in relation to wild animals give under this Act?

#### Wild Birds:

- Q.4 What protections can be afforded to a wild bird which is not specified as being protected ?  
Q.5 Is the hunting of wild birds prohibited?  
Q.6 Are there any exceptions to this prohibition?  
Q.7 Is it an offence to injure a wild bird in the process of hunting the animal?  
Q.8 Is it an offence to wilfully remove eggs from the nest of a wild bird, or the nest itself?  
Q.9 Is it an offence to destroy, injure or mutilate the nest or eggs of a wild bird?  
Q.10 Is it an offence to disturb a protected wild bird on or near its nest?  
Q.11 Are there any defences available to persons charged with such offences?  
Q.12 Which party bears the onus of proof in relation to such defences?

#### Wild Animals:

- Q.13 Does a wild animal which is not a protected wild animal have any protection under this section?  
Q.14 Is the hunting of protected wild animals prohibited?  
Q.15 What is an exempted wild animal?  
Q.16 Are there any exceptions to this prohibition?  
Q.17 Is it an offence to injure a wild animal while in the process of hunting it?  
Q.18 Is it an offence to wilfully interfere with or destroy the breeding place of any protected wild animal?  
Q.19 Are there any defences to section 23(5) available to a person charged thereunder?  
Q.20 Are there any specific provisions in relation to any animals?

#### Hunting:

- Q.21 Is it an offence to capture or humanely kill a protected wild animal?  
Q.22 Are there any specific time restrictions in relation to the hunting of wild animals and wild birds in general?  
Q.23 Which party bears the onus of proof in relation to defences to prosecutions under these provisions?  
Q.24 What happens where a person or organisation carries out an action which falls foul of more than one of the relevant provisions - can they be prosecuted under all sections?  
Q.25 Do these provisions affect hare coursing?  
Q.26 Can a master of a hunting pack get a group licence?

Q.27 Can open seasons be altered or adjusted?

**Firearms:**

Q.28 Can a person hunt with firearms?

Q.29 What is a qualified person?

**Traps, snares and other devices:**

Q.30 Is it permissible to use a snare, trap or poison to hunt or capture a protected wild animal?

Q.31 Are there defences to these prohibitions?

Q.32 Is it an offence to sell traps and snares?

Q.33 What can a person do if they see a wild bird being used as a scarecrow or decoy for the purposes of hunting?

Q.34 Is it also an offence to use a stuffed wild bird for the purpose of hunting any other protected wild bird?

Q.35 Can a licence be granted to use live birds as decoys?

Q.36 Can a mechanically propelled vehicle be used for hunting protected wild birds and animals?

Q.37 Can a person hunting a protected wild bird or animal use a lamp, mirror, light torch or other artificial light, reflecting or dazzling device or appliance for the purpose of hunting?

**On Private land:**

Q.38 Is it an offence for a person to enter land of which they are not the owner or occupier in order to hunt wild animals or birds, with or without a firearm?

Q.39 What can I do if I see someone on my land hunting with a firearm without my permission?

Q.40 What can a person do where damage is being done to their livestock, poultry or crops, pen-reared birds, other fauna or flora, woodland forestry or fishery by protected wild birds or animals?

Q.41 Who may prosecute this offence under section 44?

Q.42 On whom does the onus of proving where unlawful entry to land is alleged?

**Dealing in Wild animals:**

Q.43 What can I do if I see someone selling protected wild animals or birds?

Q.44 Are there any defences to Section 45(1), which prohibits the sale of wild birds?

Q.45 Can a dealer have a wild animal or bird or bird's nest in his possession?

Q.46 Is it an offence for a restaurant to purchase a protected wild bird or animal from a dealer?

Q.47 What defences are available to such an offence?

Q.48 Are there any specific provisions in relation to eggs?

Q.49 Is it an offence to aid or abet the commission of an offence under the Act?

Q.50 What powers do the Gardai and authorised persons (appointed by the Minister) have?

Q.51 Can a person lose possession of property as a result of a conviction under this Act?

**Amendments:**

Q.52 Have any orders been enacted pursuant to or affecting the Act?

Q.53 Does the 1976 Act amend other legislation?

Wildlife in Ireland is protected by a piece of legislation known as **the Wildlife Act, 1976** as amended. The purpose of this legislation is the conservation of the wildlife (flora and fauna (including game)). The Act is very comprehensive and covers many specific methods of hunting trapping an animal or bird, protecting what are known as protected wild animals and birds. .

In the main any breaches or suspected breaches of this Act should be reported to the Gardai who may take steps towards prosecuting such offences.

**Q.1 What is a protected wild animal?**

These are generally a type of animal that one would not expect to find on sale. **Section 2 of the 1976 Act** refers us to **Section 23(4)** for a definition of a protected wild animal. Such an animal is any animal to which this **Section 23** for the time being applies. **Section 23(1)** refers us to the Fifth Schedule of the Act for the list of protected animals. According to the Act's definition, a **Protected Wild Animal** is as follows

**LAND MAMMALS** Badger, Bat Species, Deer Species, Hare Species, Hedgehog, Otter, Pine Marten, Red Squirrel.

**MARINE MAMMALS** Dolphin species, Porpoise species, Seal species, Whale species.

**AMPHIBIANS** Natterjack Toad.

**WILD BIRDS** Section 22(3) of the Wildlife Act, 1976 refers us to the Third Schedule for a list of those birds which are **not protected** wild birds:-

**Protected Wild Bird** is any wild bird other than a Bullfinch, Carrion Crow, Greater Black-backed Gull, Herring Gull, Hooded (Grey) Crow, House Sparrow, Jackdaw, Jay, Lesser Black-backed Gull, Magpie, Pigeons (including Wood Pigeon, but not including Carrier Pigeons, Racing Homing Pigeons or Doves), Rook, Starling .

**Q.2 Who in accordance with the Act has the function of conserving wildlife?**

The Act stipulates that the Minister for Tourism, Fishery and Forestry is vested with the function of conserving wildlife (section 11)..

**Q.3 Are there general protections in relation to wild birds and animals given under this Act?**

Yes, **Section 19** affords protection to wild birds and their nests and eggs (other than birds mentioned in Schedule 3 of the Act see above for the list of non-protected wild birds). **Section 20** affords protection to wild animals protected by section 23 (see above for the list of protected animals.)

**Q.4 Can a wild bird specified as not being a protected wild bird have specific protections?**

Yes, according to **Section 22(2)** the Minister may specify in regulations pursuant to **Section 22** that **Section 22** and the protective measures therein apply equally to a non-protected wild bird as set down in **Schedule 3**.

**Q.5 Is the hunting of protected wild birds prohibited?**

Yes, in accordance with **Section 22(4)(a)** it is an offence to hunt a protected wild bird without a licence to do so.

**Q.6 Are there any exceptions to this prohibition?**

Yes, by order and pursuant to **Section 24** the Minister may by order decree that certain species of wild bird may be hunted during certain time periods. These periods are known as open season on hunting certain animals. In addition if you are the holder of a licence to hunt this animal you may do so.

If a person wished to prosecute someone for an offence under section 22, it would be necessary to ensure that the hunting was not permitted by order of the Minister during the said period or that the person was not a licence holder.

**Q.7 Is it an offence to injure a wild bird in the process of hunting the animal?**

Yes, unless there is permission to hunt the bird either in accordance with a **Section 24** order or a licence issued by the Minister, **Section 22(4)(b)**.

**Q.8 Is it an offence to wilfully remove the eggs or the nest of a wild bird ?**

Yes, pursuant to **Section 22(4)(c)** it is an offence to tamper with a protected bird's nest unless this is done in accordance with a licence.

**Q.9 Is it an offence to destroy, injure or mutilate the nest or eggs of a protected wild bird?**

Yes, this is an offence pursuant to **Section 22(4)(d)**.

**Q.10 Is it an offence to disturb a protected wild bird on or near the nest?**

Yes, **Section 22(4)(e)** states that it is an offence to disturb a protected wild bird on or near the nest.

**Q.11 Are there any defences available of which a person hoping to prosecute should be aware?**

Yes, there are a number of defences open to a person under **section 22(5) as amended by SI No. 397 of 1985, Regulation 3**. The following are permitted by Section 22 (5) which states that it shall not be an offence for a person:-

“while engaged in ornithology wilfully to disturb a protected wild bird, or

while so engaged or engaged in agriculture, fishing or forestry unintentionally to injure or kill a protected wild bird, or

to remove for conservation purposes or to destroy unintentionally the eggs or nest of a protected wild bird in the ordinary course of agriculture, or (Note Section 22(5)(c) was substituted by SI No. 397 of 1985 Regulation 3. - addition of conservation).

to capture an injured or disabled protected wild bird for the purpose of killing it humanely, or with the intention of tending it and of later releasing it, or

to kill humanely a protected wild bird which has been injured in the manner described in paragraph (b) or captured in the manner described in paragraph (d) or injured in the circumstances described in paragraph (h) of this subsection.

to take birds of a protected wild bird for the purpose of having them hatched out for re-population, or reintroduction into the wild or for such purpose, to move such eggs from the nest of such a bird to that of another bird of the same species, or (Note Section 22(5)(f) was substituted by S.I. No. 397 of 1985 Regulation 3).

to destroy or remove any such nest which is built in or on an occupied building, or

while constructing a road or while carrying on any archaeological operation, building operation or work of engineering construction or while constructing or carrying on such operation or work as may be prescribed, unintentionally to kill or

injure a protected wild bird or to remove for conservation purposes or to unintentionally destroy, injure or mutilate the eggs or nest of a protected wild bird." (Note Section 22(5)(h) was substituted by S.I. No. 397 of 1985 Regulation 3)."

This last amendment to Section 22(5)(h) requires that any damage done in the process of construction be unintentional which seems to place an onus on the developers to take reasonable care and to where possible remove the eggs for conservation purposes. This onus was clearly not present under the 1976 Act as it stood.

There is also a general defence in relation to all acts carried out in pursuance of a statute or statutory instrument which might result in a breach of this section .

Another defence would be to commit the offence for the purposes of preventing a damage of the type specified in **Section 42(1)** from being done by the wild animals. Such an offence in such a case would become permitted according to **Section 22(6)** .

**Q.12 In relation to the prosecution of the offences on which party is the onus of establishing the defences placed ?**

The burden of proof is specifically provided for in **Section 22(7)** in relation to subsection 4(e) offences. It states that the prosecution need not show that the offender was not engaged in ornithology at the time of the offence as alleged. No reference is made in relation to the onus of showing that one of the exemptions applies (which includes the ornithology defence) one must then wonder whether the prosecution must prove that the Defendant does not fall within the subsection 5 exemptions in order to prove their case.

The better view it is submitted is that despite this specific reference to the first of the subsection 5 categories, the onus in relation to proving whether the defence falls within the excused categories rests with the defence and that this specific reference to the burden of proof was inserted to remove any doubt which might arise in relation to this specific provision, Section 22(4)(e).

**Q.13 Does a wild animal which is not a protected wild animal have any protection under this section?**

Yes, according to section 23(2) the Minister may specify in regulations that the protective measures in relation to protected wild animals contained in section 23 apply equally to non-protected wild animals. In the absence of such regulations, however, unless an animal is listed in the Fifth Schedule, it will not be protection by the Section.

**Q.14 Is the hunting of protected wild animals prohibited?**

Yes, in accordance with section 23(5) it is an offence to hunt a protected wild animal which is not an exempted wild mammal without a licence to do so. Further it is an offence to hunt an exempted wild mammal without a licence to do so (whether a full licence or a seasonal licence).

**Q.15 What is an exempted wild mammal?**

Section 2 refers us to section 25 for the definition of an exempted wild mammal. Section 25 states inter alia that an exempted wild mammal is one the subject of a Ministerial order permitting the hunting of the same for a certain specified period in a stated area. This order may limit the total amount of such animals which may be hunted and may distinguish between different species of the animal. Effectively such orders declare an open season on certain types of animals.

**Q.16 Are there any exceptions to this prohibition?**

Yes, by order and pursuant to section 24 the Minister may by order decree that certain species of wild birds may be hunted during certain time periods. These periods are known as open season on hunting certain animals.

In addition, if you are the holder of a licence to hunt this animal you may do so.

If a person wished to prosecute someone for an offence under section 22 it would be necessary to ensure that the hunting was not permitted by order of the Minister during the said period or that the person was not a licence holder.

**Q.17 Is it an offence to injure a wild animal while in the process of hunting the animal?**

Yes, unless there is permission to hunt the bird either in accordance with a section 25 order or a licence issued by the Minister, Section 23(5)(c).

**Q.18 Is it an offence to willfully interfere with or destroy the breeding place of any protected wild animal?**

Yes, pursuant to section 23(5)(d) it is an offence to interfere with or destroy the breeding place of a protected wild animal.

**Q.19 Are there any defences to section 23(5) available of which a person hoping to prosecute should be aware?**

Yes, there are a number of defences to Section 23(5) open to a person under section 23(7). According to Section

23(7) "Notwithstanding section (5) of this section, it shall not be an offence for a person -

while engaged in agriculture, fishing or forestry or in zoology or in any other scientific pursuit, unintentionally to injure or kill a protected wild animal, or  
while so engaged to interfere with or destroy the breeding place of such an animal, or

while constructing a road or while carrying out any archaeological operation, building operation or work of engineering construction, or while constructing or carrying on such other operation or work as may be prescribed, to kill or injure such an animal or to destroy or injure the breeding place of such an animal, or

to capture an injured or disabled wild animal for the purpose of killing it humanely, or tending it and later releasing it.

to kill humanely a protected wild animal which is either injured in the manner described in paragraph (a) of this subsection or captured in the manner described in paragraph (d) of this subsection, or so to kill a protected wild animal injured in the circumstances described in paragraph (c) of this subsection.

There is also a general defence in relation to all acts carried out in pursuance of a statute or statutory instrument which might result in a breach of this section, **Section 23(7)(iv)**".

Another defence would be to commit the offence for the purposes of preventing a damage of the type specified in **Section 42(1), Section 23(8)**. e.g. damage to agricultural crops, flora, other fauna etc..

If **Section 3(3)** of the **Whale Fisheries Act, 1937** permits the act to be done it will not be held to have been an act in contravention of this section, **Section 23(7)(iii)**.

**Q.20 Are there specific provisions in relation to any animals?**

Yes, **Section 23(7) (i)(ii)** makes specific provision for hares

**Q.21 Is it an offence to capture or humanely kill a protected wild animal?**

Yes, unless a licence is granted by the Minister for educational scientific or other purposes as specified in the licence, **Section 23(6)**.

**Q.22 Are there any specific time restrictions in relation to the hunting of wild animals and birds in general?**

Yes, **Section 37** states inter alia that it is an offence (subject to **Section 42**) to hunt a woodcock between sunrise and sunset, and any other wild bird (other than a duck or a goose) during the period one hour after sunrise and one hour before sunset.

Note: If the person has a licence pursuant to **Sections 22(9) or 23(6)** and is hunting for certain purposes they may be exempt from these restrictions, **Section 37(2)**.

**Q.23 In relation to the prosecution of the offences, on which party is the onus of establishing the defences placed ?**

The burden of proof is specifically provided for in **Section 23(9)** in relation to **subsection 7(a)** where it states that the prosecution need not show that the offender was not engaged in agriculture, fishing or forestry or in zoology or in any other scientific pursuit, at the time of the offence as alleged.

It is submitted (as it was in relation to wild birds) that despite this specific reference to the first and second of the **subsection 7** categories, the onus in relation to proving whether the defence falls within the excused categories remains with the defence.

**Q.24 What happens where a person or organisation carries out one action which falls foul of a number of provisions of the 1976 Act and of Section 8 of the Protection of Animals Act, 1911? Can that person then be prosecuted under all sections?**

If the offence falls within **Section 34, Section 22 or 23 of the 1976 Act and Section 8 of the Protection of Animals Act, 1911, Section 34(7)** specifically precludes conviction under all of these sections in respect of the same act. Perhaps a prosecution could be brought under all of these sections with the conviction simply reflecting one breach. It may however be preferable to choose on section which best fits the offence and run with that.

**Q.25 Do these provisions affect hare coursing?**

No. It will not be unlawful to kill hares by coursing at a regulated coursing match held in a specified place and during a specified time as stated in the order of the Minister in relation to hares. In addition it will not be unlawful to hunt hares using a pack of beagles or harriers within the period specified by the Ministerial order and in the stated area, **Section 23(7)(i)**.

**Q.26 Can a Master of a hunting pack get a group licence?**

Yes, **Sections 26 and 27** permit the licensing of hound hunting for a specified period in a specified area. The Minister may grant licences to hunt deer and otters using hounds, **Section 26**.

The protection of these aforementioned animals is specifically dealt with in the 1976 Act.

**Q.27 Can open seasons be altered or adjusted?**

Yes, the Minister may for weather reasons or any other reasons in the interests of conservation of fauna prohibit the hunting of any animal for a specified period and in a specified area where the animal is an exempted wild mammal or an animal which is the subject of a **Section 24** order, **Section 27**.

**Q.28 Can a person hunt with firearms?**

Yes, if they are in possession of a firearms licence in accordance with **Section 29**.

**Section 28** also allows hunting with firearms where the person is a qualified person.

**Q.29 What is a qualified person?**

**Section 28(2)** provides that the person must be at least 16 years of age and

“ entitled to sporting rights over the land, or  
is the guest, invitee, servant or agent or possesses the written authority of a person who is entitled to sporting rights over the land.  
is a member of a body of persons which is entitled to sporting rights over the land or which has authority, or  
is a person who is of a class or description which the Minister by regulation declares to be qualified class or description for the purposes of this section.”

**Q.30 Is it permissible to use a snare or a trap or poison to hunt or capture a protected wild animal?**

No, **Section 34** prohibits the use of traps or snares to hunt or capture protected wild animals.

**Section 34** states that subject to **Section 42** a person shall not

a) hunt any wild bird or mammal by means of a trap, snare, net, line, hook, arrow, dart, spear, or similar device, instrument or missile, or bird line or any substance of a like nature, or any poisonous, poisoned or stupefying bait, or affix, place or set-

any trap, snare or net for killing or taking a wild bird or a wild mammal or,  
any line, hook, or other device or instrument, calculated or likely to cause death or bodily injury to any wild bird or a wild mammal coming in contact with it,

on any tree, pole, cairn or other structure in or in the vicinity of any place frequented by wild birds or by wild mammals, or

lay any poisonous or poisoned substance or stupefying bait, being a substance or bait which is calculated or is likely to injure, or facilitate the capture of, a wild bird or a wild mammal, in or in the vicinity of any place mentioned in paragraph (b) of this subsection, or on any tree or pole, cairn or other structure in or in the vicinity of such place.”

This is a wide provision and on its face prohibits in relation to wild birds and animals what it often some of the cruelest treatment of animals; setting traps and laying poison .

**Q.31 Are there defences to these prohibitions?**

Yes, if the animal or bird is not a protected one this section does not apply, **Section 34(2)(b)**.

Also if the affixing a snare or trap is done pursuant to statute or statutory instrument there is a full defence, **Section 34(2)**.

If regulations made pursuant to the section are in force the act may be deemed to be other than an offence, **Section 34(2)(a)**.

The Minister may grant licences to do certain things and if such a licence is issued the person may commit certain of these prohibited acts, **Section 34(3)**

**Q.32 Is it an offence to sell traps and snares?**

Yes, **Section 34(6)** creates the offence of selling traps and snares without a licence.

**Q.33 What can a person do if they see a wild bird being used as a scarecrow or decoy for the purposes of hunting?**

Such an activity should be reported as the same is an offence according to **Section 35 (1)**.

**Q.34 Is it also an offence to use a stuffed decoy wild bird for the purpose of hunting any other protected wild bird?**

Yes, pursuant to **Section 35** it is an offence to use such a decoy for these purposes unless the same is used for the purposes of hunting wild ducks or geese.

**Note** it is also an offence pursuant to **Section 35(1)(d)** to use electrical or other instruments to emit the sound of birds for the purposes of hunting protected wild birds unless this is used for the purposes of hunting ducks, geese or plover.

**NB** While these items may be used in relation to the hunting of geese and ducks there may be in existence Ministerial orders made in accordance with **Section 34(5)** specifically prohibiting their use in geese and duck hunting in certain areas during certain times.

**Q.35 Can a licence be granted to use live birds as decoys?**

Yes, the Minister may issue a licence permitting such use; however there are strict conditions attaching to such licences in relation to the watering, feeding and confinement of such a decoy. In addition the decoy may only be used to hunt birds of the same species, **Section 35(5)**.

**Q.36 Can a mechanically propelled vehicle be used for the hunting of protected wild animals and birds?**

No, unless there is a licence to use a mechanically propelled vehicle, vessel or aircraft for the hunting of a protected wild bird or animal, the same is prohibited pursuant to **Section 36**.

**Q.37 Can a person hunting a protected wild bird or animal use a lamp, mirror, light, torch or other artificial light - reflecting or dazzling device or appliance?**

No, **Section 38** prohibits the use of the aforesaid unless they attach a "band, ring, tag, or other marking device to the same or are hunting for scientific or educational purposes pursuant to a licence issued by the Minister."

**Q.38 Is it an offence for a person to enter onto land of which they are not the owner or occupier in order to hunt wild animals or birds with or without a firearm?**

**Section 44** states that this is an offence and further states that it is an offence to shoot over such land if the same is not done with the permission of the owner.

**Q.39 What can I do if I see someone on my land hunting with a firearm wild birds or animals without my permission?**

The owner /occupier, the holder of a **Section 29(5)** licence or the holder of sporting rights has the right to request that the person who is committing a **Section 44** offence and is in possession of a firearm furnish them with their name and address, **Section 44(2)**.

**Q.40 What can a person do where damage is being done to their livestock, poultry or agricultural crops (including vegetable or fruit), pen-reared birds, other fauna or flora in a woodland or forest plantation or a fishery by protected wild animals or birds?**

Notwithstanding any other provision of the Act, the Minister may permit an authorised person to destroy the said animals, **Section 42**. There are a number of conditions attaching to this section.

**Note** also that **S.I. No. 254 of 1986** affects this provision in that it permits the Minister to capture or kill any species specified in the First Schedule of the SI which is a threat to public health or safety, is likely to cause serious damage to crops, livestock, fisheries or forestry, is likely to cause damage to flora and fauna."

This SI is enacted and takes effect notwithstanding the provisions of the Wildlife Act.

**Q.41 Who may prosecute this offence under section 44?**

The owner occupier of the land, and the holder of sporting rights over the land be that an individual or a person representing a sporting body holding such rights over the land, **Section 44(4)**.

**Q.42 On whom does the onus of proving that the Defendant was on the land without lawful authority lie?**

**Section 44(7)** expressly provides that the onus of proving that the Defendant had no lawful authority to be on the land is for the prosecution. Where it is asserted that there was lawful authority the onus shifts to the Defendant.

**Q.43 What can I do if I see a person selling protected wild animals or birds?**

It is an offence under **Section 45(1)** as amended by **S.I. No. 397/1985** for a non-licensed person to sell protected wild animals or birds whether dead or alive (taxidermy). The relevant authorities should therefore be contacted.

**Q.44 Are there any defences to this Section 45(1) provision prohibiting the sale of wild animals that a person attempting to prosecute should be on the look out for?**

Selling a protected wild animal or bird is lawful where according to **Section 45(3)**

“a)The sale by a person of any live specimen of a protected wild bird or protected wild animal solely for the purposes of propagating or improving the quality of such species, the sale by a person of live hares to a coursing club affiliated to the Irish Coursing Club.  
the sale to a licensed wildlife dealer by a person of any protected wild bird or protected wild animal lawfully killed by him.”

These defences take into consideration that there are licences which permit the killing of a protected species and that as such a licence holder is entitled to sell his kill. There is also an exemption given to the Irish Coursing Club in relation to live hares.

Some protected wild animals and birds are endangered species or are in danger of becoming such. Therefore the legislature have given cognisance to the fact that on occasion some of these species may in fact benefit from the sale of another of their species in order to propagate their kind.

**Q.45 Can a dealer have a wild animal or bird or bird's eggs in his possession?**

No according to **Section 45 (2)** as this constitutes an offence.

**Q.46 Is it an offence for a restaurant to purchase a protected wild bird or animal from a dealer?**

Yes, if the dealer has no wildlife licence to so deal, **Section 45(4)**.

**Q.47 What defences are available?**

The only relevant defence open would be to show that the animals/birds were obtained lawfully, **Section 45(8) as amended by S.I. No. 397/1985**.

**Q.48 Are there any provisions specifically in relation to eggs?**

The 1976 Act has been amended by **S.I. No. 397/1985** which has inserted three new subsections dealing with eggs, **Section 44 (11), (12), and (13)** and they provide as follows:

**11 and 12** neither a licensed wildlife dealer nor an unlicensed dealer may keep for sale, purchase for resale or engage in taxidermy in respect of eggs taken from the wild of a protected wild bird. Further,

**Ss. 13** A licensed wildlife dealer shall not have these eggs in his possession.

**Note** Sections 46, 47, 48 and 49 relate to wildlife dealer licences.

**Q.49 For the purposes of the 1976 Act is it an offence to aid and abet in the commission of an offence?**

Yes, anyone aiding or abetting in the commission of an offence under the 1976 Act is guilty of an offence, **Section 69(1)**.

**Q.50 What powers do the Gardai and authorised persons (appointed by the Minister) have under the Act?**

**Section 72** lays down the extensive powers of both the Gardai and authorised persons.

They may if they reasonably suspect a person of being guilty of a **Part II (Sections 11-44) or Sections 45, 47, 51, 52, or 53** offence **stop** such a person at a reasonable time, require that they furnish their **name and address, demand production** of the flora or fauna or product and **seize** the same or part thereof as a specimen, **Section 72(2)**. Further they may search any vehicle, vessel or aircraft which they reasonably suspect of being used for the transport import or export of flora or fauna or product or part thereof contrary to **Sections 51, 52, or 53** and they may require that to facilitate the search the vehicle be stopped, **Section 72(3) (a)**.

They may open and search any package/container, **Section 72(3)(b)**.

Request that they be permitted to inspect any relevant documentation, obtain the name and address of the owner and



the person operating or controlling the vehicle vessel or aircraft, **Section 72(3)(c)**.

Inspect any relevant books or records and take copies of the same and seize and detain any relevant document where there is a **reasonable suspicion that an offence is or has been committed**.

For the purposes of the Act the Gardai may enter onto any land (not into buildings - This would require a warrant etc..)

**Search Warrants** may be obtained under **Section 73** following the compliance with certain criteria. A member of the Gardai or an authorised person should place their suspicions on an information on oath which will be brought before a Peace Commissioner or a District Judge. The latter will grant a search warrant where they are satisfied that there are reasonable grounds for suspecting that a person is in possession on any premises or other land -

“  
a protected wild bird,  
a protected wild animal,  
the eggs of a protected wild bird,  
the carcass or any other part of or any product of a protected wild bird or protected wild animal, or  
any plant or part or product of a plant which is of a species to which an order under section 21 of the Act applies.”

**Note : The powers as aforesaid are in addition to the Gardai's existing powers of search and seizure, Section 72(6).**

**Penalties** are provided for in Section 74 and they are dependent on the provision of the Act which has been breached.

**Q.51 Can a person lose possession of any property as a result of being found to have committed an offence for the purposes of this Act?**

Yes, where a person is convicted of an offence involving a trap or snare etc. they may by order of the court forfeit the same, **Section 76**. The same applies where the offence involves a firearm. The owner or other interested party has a right to be heard in relation to the forfeiture.

**Q.52 Have any orders being enacted pursuant to or affecting this 1976 Act?**

Yes, there have been a number of Transfers of Ministerial **Functions. S.I. No. 307/1977** specifies what constitutes a trap, net and snare for the purposes of section 34 of the 1976 Act. There have also been some amendments to the Act of 1976

**Q.53 Does the 1976 Act itself amend any other pieces of legislation?**

Yes, Sections 62, 63, 64, 65, 66, and 67 amend a number of acts.  
Firearms Act, 1925, section 3  
Forestry Act 1946 Act  
State Property Act, 1954  
Firearms Act, 1964  
Registration of Title Act, 1964 section 69

Protection of Animals (Amendment) Act, 1965, Sections 23-26, and Section 67 of the 1976 Act effectively reduces the remit of the 1965 Act so that it no longer applies to protected wild animals and wild birds.

**Section 10 and the First Schedule of the 1976 Act repeals a number of Acts and sections therein as follows :-**

Deer Protection Act, 1698  
Game Act, 1787  
Night Poaching Act, 1826  
Poaching Prevention Act, 1862  
Game Preservation Act, 1930  
Wild Birds Protection Act, 1930  
Forestry Act, 1946 Section 61  
Protection of Animals (Amendment) Act, 1965 Section 8