

Case No: CO/4050/2018

**Neutral Citation Number: [2019] EWHC 1416 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**ADMINISTRATIVE COURT**  
**DIVISIONAL COURT**

Birmingham Civil Justice Centre  
Priory Court  
33 Bull Street  
Birmingham B4 6DS

Thursday, 28 February 2019

BEFORE:  
**LORD JUSTICE FLAUX**  
**MRS JUSTICE ANDREWS**

BETWEEN:

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**STAFFORDSHIRE COUNTY COUNCIL**

Claimant/Respondent

- and -

**SHERRATT AND SIGLEY**

Defendants/Appellants

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**MR DOUGLAS-JONES** appeared on behalf of the Claimant/Respondent  
**MR LLOYD** appeared on behalf of the First Defendant/Appellant  
**MR MCDONALD** appeared on behalf of the Second Defendant/Appellant

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**JUDGMENT**  
**(Approved)**  
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LORD JUSTICE FLAUX:

**Introduction and Background**

1. This is an appeal by way of case stated from the decision dated 11 June 2018 of District Judge Magistrates' Court Boswell, sitting in the North Staffordshire Magistrates' Court, that certain informations laid against the respondents by the appellants as prosecuting authority in respect of alleged offences under the Welfare of Farm Animals (England) Regulations 2007 were out of time.
2. The background can be derived from the case stated and summarised as follows. The first respondent is the owner of two farms and the second respondent was employed by her to deal with the day-to-day care of animals on both farms. On 11 January 2017 animal welfare officers from the appellant local authority visited both farms. At one farm cattle in the back field were in an open-sided shed without straw and with muddy wet ground. There was thus insufficient shelter and dry lying area. Similar conditions were found on the return visit on 18 January 2017. On both occasions there were hazardous objects lying around the field.
3. On both visits and on a subsequent visit on 7 February 2017 a number of cows were found tethered in a small old building called a shippon, two to a stall and with not enough room for them to lie down at the same time. They were tethered there for milking but the officers concluded they were kept there longer than necessary for that purpose in cramped conditions with insufficient bedding.
4. On the 11 January 2017 visit sheep were found in a shed with bottles, pieces of wood and other hazardous materials on the floor and the door not properly secured. At the other farm on 18 January 2017 visit, seven calves were found in a shed with a sparse covering of straw which was soaked. In relation to all these findings the officers concluded the welfare needs of the animals were not being met.
5. At trial the respondents each faced 12 charges under section 9 of the Animal Welfare Act 2006 of failing to take reasonable care to ensure the welfare of their animals. They each also faced six charges under regulation 7 of the 2007 Regulations for failing to ensure the animals were kept in conditions which in broad terms ensured their wellbeing and avoided suffering.
6. On the first day of the trial the District Judge ruled that he did not have jurisdiction to try the six charges under regulation 7 of the Regulations because the information was not laid in respect of them until 13 September 2017, more than six months after the date of the alleged offences of 18 January 2017 and thus outside the six-month time limit under section 127 of the Magistrates' Court Act 1980. He went on to try the offences under section 9 of the 2006 Act. The respondents were convicted of 10 of the offences and acquitted of two. The case stated relates only to the offences in respect of which the District Judge ruled that he had no jurisdiction.

7. The question posed for decision by the High Court in the case stated is whether the District Judge was correct to apply that time limit for laying an information under section 127 of the 1980 Act to offences under the 2007 Regulations.

### **The Statutory Framework**

8. The default time limit between the commission of an offence and the laying of an information is that provided by section 127 of the Magistrates' Court Act 1980:

"(1) Except as otherwise expressly provided by any enactment and subject to subsection (2) below, a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose."

9. In respect of offences under the Animal Welfare Act 2006 there is express provision under section 31 for a longer time than under the Magistrates' Court Act:

#### **"Time limits for prosecutions**

(1) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980, a magistrates' court may try an information relating to an offence under this Act if the information is laid—

(a) before the end of the period of three years beginning with the date of the commission of the offence, and

(b) before the end of the period of six months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge."

10. As stated, several of the offences in respect of which information was laid against the respondents were offences under section 9 of the Animal Welfare Act of failing to take reasonable steps to ensure the welfare of their animals. Those informations were laid within the extended time limit under section 31. The offences were tried by the magistrates and the respondents were convicted of some and acquitted of the others.

11. Section 12 of the Animal Welfare Act provides that regulations may be passed to promote the welfare of animals. So far as relevant it provides as follows:

"(1) The appropriate national authority may by regulations make such provision as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals.

(3) Power to make regulations under subsection (1) includes power—

(a) to provide that breach of a provision of the regulations is an offence;

(b) to apply a relevant post-conviction power in relation to conviction for an offence under the regulations.

(4) Power to make regulations under subsection (1) does not include power to create an offence triable on indictment or punishable with—

(a) imprisonment for a term exceeding 51 weeks, or

(b) a fine exceeding level 5 on the standard scale.

(5) Regulations under subsection (1) may provide that a specified offence under the regulations is to be treated as a relevant offence for the purposes of section 23."

12. Section 23 is concerned with the power of a magistrate to issue a search warrant. Subsection (2) limits the power to cases where the magistrate is satisfied that there are reasonable grounds for believing that a relevant offence has been committed, relevant offences being defined in subsection (3) as offences under various sections of the Act including section 9. Section 12(5) obviously contemplates that regulations made under that section may provide that the offences under the Regulations are deemed to be relevant offences for the purpose of section 23.

13. One of the sets of regulations passed pursuant to section 12 was the Welfare of Farmed Animals (England) Regulations 2007, regulation 4 and 5 of which imposed various duties of persons responsible for farmed animals. Regulation 7 then provided for the creation of offences for breach of those duties:

"A person commits an offence if, without lawful authority or excuse, he—

(a) contravenes, or does not comply with a duty in, regulation 4, 5 or 6."

14. Regulation 8 provides that the Secretary of State may direct that he or the local authority shall prosecute such offences, and regulation 9 provides that on summary conviction penalties can be imposed which are in line with section 12(4) of the Act. These regulations do not contain any provision deeming offences under the Regulations to be relevant offences for the purposes of section 23 of the 2006 Act.

### **The Parties' Submissions**

15. Counsel originally instructed on behalf of the appellants sought to rely upon a passage in paragraph 3.1 of *Bennion on Statutory Interpretation* dealing with delegated legislation which stated that the effect of a provision in delegated legislation is the same as if it were contained in the enabling Act and that this principle applied whether or not the enabling Act spelt it out. The authority for that proposition was said to be the decision of the House of Lords in *Institute of Patent Agents v Lockwood* [1894] AC 347, the passage cited being in the judgment of Lord Herschell LC at 361. However, counsel very fairly recognised that that case and the other authorities does not support the wider proposition set out in *Bennion*. In fact, in *Lockwood* the relevant Act provided in terms

that delegated legislation to be made under it: "shall be of the same effect as if they were contained in this Act", a clear provision in that statute that is absent from section 12 of the 2006 Act.

16. What is now argued by Mr Douglas-Jones on behalf of the appellant is that the offences created by the 2007 regulations are offences "under" the 2006 Act. He relied on references in section 12(2) of the Act to "regulations under that section [i.e. subsection 12(1)]" as demonstrating the intention of Parliament that Regulations created pursuant to section 12 would be "under" the Act. He also relied upon the use of the word "under" in the Explanatory Note to the Regulations, "These Regulations are made under section 12 of the Animal Welfare Act 2006" and the fact that the power to create offences under the Regulations derived from section 12(3)(a) of the 2006 Act to submit that this indicates that the offences created by the 2007 Regulations are also offences "under" the 2006 Act and thus captured by section 31 of that Act. He submitted that the use of the word "under" rather than "in" was deliberate and an indication that the 2007 Regulations are an extension of the 2006 Act.

17. Mr Douglas-Jones also relied upon the Explanatory Memorandum to the 2007 Regulations, specifically paragraph 4.1 which stated in terms these Regulations are made under section 12 of the Animal Welfare Act 2006, and paragraph 7.1 referring to the policy background of the 2006 Act being modernising legislation in relation to the welfare of farmed and non-farmed animals and the creation of a new duty under section 9 on persons responsible for vertebrate animals to ensure the needs of animals in their care. The Explanatory Memorandum also said at paragraph 7.2 that the Welfare of Farmed Animals (England) Regulations 2000, (i.e. the predecessor regulations to those we are considering): "set out in detail the general conditions under which farmed animals must be kept and contained further schedules setting out additional conditions applying to various species of farmed animals." Paragraph 7.3 then provided:

"In order to continue to implement the various EU Directives underlying the 2000 Regulations, as amended, and to ensure that all animal welfare legislation is brought together under the 2006 Act, the Welfare of Farmed Animals Regulations 2000 are being replaced by the present instrument."

18. Mr Douglas-Jones also relied upon the Impact Assessment which was annexed to that Explanatory Memorandum headed "Final Regulatory Impact Assessment" and to a passage at paragraph 8 of that headed "Enforcement, Sanctions and Monitoring" which said:

"It is intended that the enforcement of sanctions and monitoring of the proposed regulations will not be in any way different from existing enforcement sanctions and monitoring related to the welfare of animals on farms."

19. Mr Douglas-Jones submitted the reference to enforcement must encompass the time limits for the bringing of prosecutions under section 31. He submitted all this material demonstrated that the intention of the 2007 Regulations was that they should be an

extension of the 2006 Act continuing to implement the relevant EU legislation and, as it said, all animal welfare legislation was to be brought together under the 2006 Act.

20. He also relied upon the Explanatory Notes to section 31 of the 2006 Act, paragraph 133 which states:

"Under the existing law, which requires that a prosecution be commenced within 6 months of the date of the offence being committed, it has sometimes proved difficult to prosecute for cruelty to animals when evidence of the offence has not been discovered until some considerable time after the offence was committed. For example, if a recording of an animal fight was discovered and the enforcer wished to bring a prosecution under section 8(1)."

21. He referred to the decision of the Divisional Court in *R v Woodward and Others* [2017] EWHC 1008 (Admin), a case concerned with section 31(1)(b) of the Act where Hickinbottom LJ had referred at paragraph 23 to the need for a careful decision by the prosecutor as to whether to prosecute. He submitted that the need for such a careful decision was no less applicable to offences under the 2007 Regulations. Accordingly, there was no rationale for the section 31 time limits not to be equally applicable to offences under the 2007 Regulations particularly where, as here, the offender was being charged with offences under both the Act and the Regulations.
22. On behalf of the second respondent Mr McDonald submitted that though these arguments were novel they would not stand up to scrutiny. Section 127 of the Magistrates' Court Act required an express enactment for that time limit to be disapplied. Neither the 2006 Act nor the Regulations contained any such express enactment in relation to offences under the Regulations. It would have been perfectly possible for section 31 of the Act to include express reference to the time limits applying to offences under the Regulations as well as under the Act.
23. He and Mr Lloyd for the first respondent referred to a number of recent pieces of legislation where the legislative intent to include regulations was apparent from their express inclusion by reference. By way of example, section 26(4) of the Space Industry Act 2018 provides, "The regulator, (a) may investigate offences under this Act or under regulations made under this Act..." That approach had not been adopted under section 31 nor had section 12 of the Act, which dealt with the making of the Regulations and creation of offences under the Regulations, cross-referred to section 31, in contrast to the cross-reference in section 12(5) to section 23.
24. Both Mr McDonald and Mr Lloyd submitted that the logical consequence of the appellant's interpretation of the words "under this Act" would mean that regulations which are secondary legislation made under a piece of primary legislation would have the same practical effect as if they were primary legislation without having received the same level of Parliamentary scrutiny. There is nothing in any of this animal welfare legislation which merits such a special interpretation.

### **Analysis and Conclusions**

25. Ingenious and elegant though the arguments of Mr Douglas-Jones were, I cannot accept them. Before the time limit in section 127 of the Magistrates' Court Act 1980 can be disapplied there must be an express enactment in the relevant legislation for a different time limit. There is no express reference in either the 2006 Act or the 2007 Regulations to the time limit under section 31 applying to offences under the Regulations.
26. The appellant's arguments about the Regulations being an extension of the Act (which in one sense they are since the power to make them is conferred by section 12(1)) or about the Regulations being under the Act do not fill that lacuna. It is striking that section 12 itself at subsection (3) refers to offences under the regulations. There is no wording which is in any sense equivalent to that considered in *Lockwood* that the Regulations: "shall be of the same effect as if they were contained in this Act." Put another way, the use of the words "under this Act" is not equivalent in effect to the words "in this Act".
27. If the intention had been that section 31 should apply to offences under any regulations made under section 12, it would have been very easy for section 12(3)(a) to provide in terms that an offence created by the Regulations would be treated as an offence under the 2006 Act for the purposes of section 31. This is what was done in the deeming provision under section 12(5) for the purposes of section 23. Mr Douglas-Jones sought to answer that point by reference to section 23(3) identifying "relevant offences" as only certain of the offences under the Act. However, the answer to that point is that in order to make offences under the Regulations relevant offences under section 23, the Act found it expressly necessary to provide for that deeming provision. The absence of any equivalent reference to section 31 tells very strongly against the appellant's argument that Parliament must be taken to have intended to broaden the scope of section 31 to include regulatory offences.
28. So far as the reference to the Impact Assessment is concerned, I am far from satisfied that the reference to "enforcement" would include section 31 in any event, but perhaps more significantly, whatever the status of the Impact Assessment it is clearly a very long way from being an express enactment to the contrary for the purposes of section 127 of the Magistrates' Court Act 1980.
29. Where Parliament intends that the provisions in an Act should apply equally to regulations made under it, it has tried and tested ways of doing so, both in the 19th century statutes such as were being considered in *Lockwood* and in the modern statutory provisions such as the Space Industry Act 2018. It is nothing to the point to say, as Mr Douglas-Jones did, that none of the modern statutes relied upon are concerned with the question of time limits for bringing a prosecution. It is a question rather of what words are used in order to achieve a specific statutory intent. There is nothing in the Act or the Regulations which points to any such intention here. Accordingly I would answer the question posed by the case stated in the affirmative and dismiss the appeal.

MRS JUSTICE ANDREWS

30. I agree that the appeal should be dismissed.

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**This transcript has been approved by the Judge**