

O'Flynn, 'Irish Animal Protection Laws: A Comparative Analysis', [2011] 4 *Web JCLI*
<http://webjcli.ncl.ac.uk/2011/issue4/o'flynn4.html>

Irish Animal Protection Laws: A Comparative Analysis.

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First published in the Web Journal of Current Legal Issues

The author would like to express her gratitude to Maureen O'Sullivan for her helpful comments on an earlier draft of this article.

Summary

This article will interrogate the manner in which the law protects animals. The Irish jurisdiction will be the main focus of discussion. The research will engage in a comparative analysis of the law on this issue in Ireland, England and Wales and Switzerland in order to assess the appropriateness and efficacy of existing Irish regulation on the protection of animals. The law in England and Wales will be examined as it shares a common law history with Ireland. Swiss law will be assessed as Switzerland has introduced extensive regulation and therefore it provides a useful comparison with Ireland's current legal climate in this area. The main problematic areas within Irish animal protection laws will be discussed and potential areas of reform will be highlighted.

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Introduction

This article will discuss animal protection laws in Ireland, England and Wales and Switzerland in order to assess protection currently in place within these jurisdictions highlighting the lack of regulation within the Irish jurisdiction. The author will seek to evaluate different approaches to animal protection focusing on a more regulated approach using England and Wales and Switzerland as comparators to illustrate areas from which Ireland may choose to compare.

The law in England and Wales will be examined for comparative purposes as this jurisdiction, unlike Switzerland, shares a common law history and a heritage with Ireland. The primary piece of Irish legislation on animal protection (The Protection of Animals Act 1911, as amended by the Protection of Animals (Amendment Act) 1965) was drafted prior to Irish independence and furthermore the legislation in England and Wales has recently been updated (Animal Welfare Act, 2006) yet Ireland has not followed suit. Swiss law will be examined as the system for the protection of animals in that jurisdiction is generally considered to be among the most regulated worldwide and thereby provides a worthy contrast. Switzerland has extensive regulation so it provides a useful comparison with our current regulatory system and perhaps, in areas, an ideal model. This article will focus on companion or pet animals and the pet trade industry and will commence by describing the current protection afforded to animals in all three jurisdiction. It will then move on to highlight the main problematic areas within the Irish jurisdiction and will conclude by setting out potential areas of reform available to the Irish jurisdiction drawing on practices from England and Wales and Switzerland. Other jurisdictions will also be referred to where appropriate.

Irish Animal Protection Laws

The current legislation in Ireland is the Protection of Animals Act 1911 (as amended by the 1965 Act) making it 100 years old. The legislation was introduced when Ireland was still governed by the United Kingdom. Since the 1911 Act, England and Wales has updated its animal protection laws with the Animal Welfare Act 2006 bringing animal protection up to date with contemporary times and practices. However, Ireland has not been as proactive in protecting its animals.

The 1911 Act has 18 sections and covers domestic, captive and wild animals. It does not cover invertebrates (as currently scientific experimentation has not proven that they can

suffer by feeling pain). At the time of introduction, this Act was designed to minimise animal suffering. The Act imposes fines for cruelty, provides that a person can be disqualified from keeping an animal, and provides guidelines for the running of dog shelters. The 1965 amendment, The Protection of Animals Act (Amendment) 1965, extended the legislation by outlawing the docking of horses' tails and provided some guidelines for the running of pet shops. However, this Act came from a time when animals had a very different role in society. In contemporary times this Act has many flaws in comparison to other jurisdictions. There are no guidelines on the needs of different animals or how to care for them, the fines are minimal and out-dated, and overall, this Act is no longer adequate to protect animals. Under the Act people only have a duty to ensure that an animal does not suffer unnecessarily but it does not impose a broader duty of care on anyone responsible for an animal to take reasonable steps to ensure that the animal's needs are met.

The docking of dogs' tails is not prohibited in this Act (tail docking is the term used to describe the shortening of an animal's tail by amputation). The docking of a dogs' tails can be extremely painful for the dog and reports have been issued by Veterinary Ireland on this practice, calling for it to be made illegal (Consultation paper, 2008). The docking of dogs' tails is carried out without anaesthesia or pain relief. In England this type of practice has been outlawed under s 5 of the Welfare of Animals Act 2006. The 1965 amendment of the 1911 Act outlawed docking of horses' tails yet docking of dogs' tails remains legal (The Protection of Animals Amendment Act 1965, s.5). This issue still has not been addressed even though the Dog Breeding Establishment Act 2010 which deals specifically with the breeding of dogs has been introduced (This Act will be discussed later in the article). It could have outlawed this practice.

A further issue with the 1911 Act is the pet trade. Section 25 of the 1965 amendment Act has some provisions dealing with pet shops. Under section 24, there is a restriction on the sale of pets to children under 12, section 23 prohibits the sale of any pets in a public place and section 25 deals with such requirements as accommodation and food and drink. Threats to health such as disease, fire hazards and appropriate age in which an animal can be sold are also prescribed. However, these conditions are extremely basic; they do not provide any definitions or further guidance on how to abide by these requirements and are lacking any detail on how to care for animals. Pet shops are extremely popular and widespread with most towns having two or three shops¹ so therefore, proper guidelines need to be in place. These shops are generally supplied with animals through large companies in the business of breeding or shipping in animals from other countries. Yet there are no rules or regulations on these suppliers when breeding these animals or transporting them to pet shops.

A major problem arising from the pet trade is the selling of cats and dogs. Although many pet shops do not engage in this practice, some of the larger organisations which own several pet shops do. For example, "Wackers" a pet shop in Dublin which has received a lot of media attention due to its selling of pups as there have been investigations revealing cruelty towards the animals. They have been the focus of an inquiry by the Dublin Society for the Prevention of Cruelty to Animals (DSPCA), a non-profit organisation set up prevent cruelty to animals,

¹ In Ireland there are currently 15 "Pet mania" stores, six "Pet World" stores, 10 "Maxi zoos" stores, two "Pet Master" stores and three "Pet Stop" stores not to mention the numerous independent stores in Ireland. For example, Waterford city had a population of 45,748 according to the Central Statistics Office in 2006 see <http://www.cso.ie/statistics/popofeachprovcountycity2006.htm> accessed on 24/5/11 and has four independent stores.

and “Buyer Beware”, a T.V. documentary which goes under-cover investigating topical issues in Ireland. It was found that this pet store was selling ill pups to customers. The DSPCA did a separate undercover investigation and purchased a terrier puppy from Wackers. On inspection by a DSPCA vet, it was found to have a particularly bad infestation of ear mites along with worms. The ear mites had been prevalent for at least "2-3 weeks" before purchase. The pup had apparently been living in a very unhygienic environment to the extent that the pup was more a "rescue case" than a purchase. (For more information see <http://www.timesonline.co.uk/tol/news/world/ireland/article6823434.ece>).

This information was released to the public in 2009 at the same time the new Dog Breeding Establishment Bill 2009 (now the Dog Breeding Establishment Act 2010) was being debated. Nonetheless, it is still legal to sell pups through pet shops even though it has been revealed how badly pups are treated in this environment. In 2009 Austria made it illegal to trade in living cats and dogs in shops (Singer, 2006, p161). Pet shops are becoming more and more popular in Ireland yet there is no regulation. Zoos for example, are under strict regulation (European Communities (Licensing and Inspection of Zoos) Regulations, 2003) as are circuses (European Communities (circuses) Regulations 2007). The European Communities Licensing and Inspection of Zoos sets out requirements such as the need for a licence in order to establish a zoo. An application for a licence to operate a zoo must be made in writing to the Minister for the Environment, Heritage and Local Government. Conservation measures must be adhered to such as the captive breeding, accommodating the animals under conditions that aim to satisfy the biological and conservation requirements of the individual species and maintaining a high standard of animal husbandry in the zoo, including a developed programme of preventive and curative veterinary care and nutrition. If any of the conditions of the licence are not fulfilled, the Minister can revoke the licence. Furthermore before a new license is issued, the Minister must inspect the zoo. The European Communities (Circuses) Regulation 2007 is the responsibility of the Minister for Agriculture and Food. These regulations state that circuses cannot operate unless they are registered. If a person commits an offence under these regulations, they can be fined up to €5,000 or a term of imprisonment not exceeding six months, or both. The type of animals catered for in zoos and circuses are far different from a pet shop, however, this comparison does draw attention to the fact that there are no regulations on the operation of pet shops other than the basic conditions set out in the 1965 Amendment Act.

There is a lack of clarity within the Act; for example sub-section (e) of section 1 of the 1911 Act prevents the operation of an animal without “due care.” This section states you cannot operate without due care yet it does not state what is meant by “due care” or that there needs to be proper reason for such an operation. This section lacks clarity and is missing vital definitions such as what is meant by the words operate and also due care.

Furthermore, the Act fails to provide any real deterrence from acting cruelly towards an animal. According to section 18(3) if a person is disqualified from keeping a dog and does so regardless, he/she will be liable to a fine not exceeding £25 pounds or a term of imprisonment not exceeding three months or both. This is not sufficient as disqualification from keeping a dog means that there had to be severe cruelty suffered by the dog yet a person can go on to keep another dog, possibly be cruel toward that dog, yet the punishment will be a minimal fine.

The entire Act is out-dated. The inclusion of spring traps (1911 Act s.10), control of knackers’ yards (1911 Act s.5), and administration of poison (1911 Act s.8) are no longer

relevant. The punishment section refers to hard labour which is no longer a used method of punishment and fines of £10 for example are no longer relevant as this currency is no longer in use as Ireland has converted to the euro and the amount is a paltry sum.

New legislation has recently been introduced in Ireland. The Dog Breeding Establishment Act 2010 was introduced to tackle the issue of puppy farming where these animals are kept in poor and unhygienic conditions. This Act regulates the general conditions upon which the pups and breeding bitches must be kept, the amount of litters a bitch can have during her lifetime (Dog Breeding Establishment Act, section 15) and also all the regulations that must be followed including a fee to run a breeding establishment (Dog Breeding Establishment Act, s.13.) The Wildlife (Amendment) Act 2010 was also introduced which imposed a ban on stag hunting (deer hunting) in Ireland the first hunt to be outlawed in Ireland.² Under this legislation the Ward Union's licence was revoked so they could no longer hunt the domesticated deer they own and care for with packs of hounds. However, the main piece of legislation protecting animals in Ireland is still the Protection of Animals Act 1911.

In conclusion, Ireland's animal protection laws are far from adequate, they do not address contemporary issues, it is out-dated in terms of punishment, the sections it covers and deterrence and in need of reform. Human-animal relationships have changed as a result of agricultural development, economic growth, urban expansion and political change. The law needs to change also.

English and Welsh Animal Protection Laws

England and Wales have made great improvements to the law in regard to animal protection. The Animal Welfare Act 2006 is a modern piece of legislation that has greatly improved the legal protection granted to animals.

The United Kingdom has a long history of protecting animals from cruelty. In 1822 Richard Martin's Act to Prevent the Cruel and Improper Treatment of Cattle was passed by Parliament. This is the first parliamentary legislation for animal welfare in the world. This Act was sponsored by Richard Martin Member of Parliament in Galway; the 'Act to Prevent the Cruel and Improper Treatment of Cattle' gave the courts power to impose fines of between ten shillings and five pounds or up to three months imprisonment for acts of cruelty towards cattle, horses or sheep (Legood, 2001.) Subsequent amendments to what became known as 'Martin's Act' gave increasing protection to large animals. In 1824 the Society for the Prevention of Cruelty to Animals (which became the Royal SPCA in 1840) was established. The society worked mainly on law enforcement and prosecutions. In 1835, the Act was amended and expanded to include protection of all domestic animals, such as dogs

² Fox hunting and hare coursing remains legal in Ireland. Stag hunting was run and controlled by the Ward Union based in Co. Meath. Ireland. During the hunting season which ran from October to March the hunt met twice a week, mainly Tuesdays and Friday's i.e approximately 45 – 50 times a season. In addition the hunt held 2-3 children meets. The club had approximately 400 – 500 members and subscribers, of which 200 are riding members. This hunt involved a large pack of hound on pursuit of domesticated deer that were kept by the Ward hunt. See <http://www.wardunionhunt.ie/History.html> accessed on 16/5/11. This hunt attracted a lot of media attention as farmers were complaining about the hunt going through their land and damage not being repaired. Furthermore, one of the stags when being chased entered a school playground in a primary school resulting in national newspaper and news reports on the incident. See <http://www.banbloodsports.com/ln-0701e.htm> accessed on 28/5/11. These incidents highlighted some of the problems associated with the Ward Union hunt and perhaps are the reason this particular hunt was chosen to be outlawed.

and cats which indicated the extent to which the arguments of Martin and others had been won and significance of the founding of the RSPCA in terms of momentum for legislation.

The current animal protection law, the Animal Welfare Act, came into effect on 6 April 2007 marking the first major modernisation of animal welfare laws in the U.K. since 1911. Many of the provisions of the English Protection of Animals Act 1911, no longer reflected modern practice. The 2006 Animal Welfare Act brings together and updates legislation to promote the protection of animals and contains 69 sections outlining some of the following; promotion of welfare, (ss9-12) prevention of harm (ss4-8) and enforcement powers (ss23- 29). The purpose of the Act is to reduce animal suffering. Therefore, the English legislators have recognised that animals can indeed suffer. One of the most influential campaigners for fairer treatment of animals was the economist and philosopher Jeremy Bentham He noted that the capacity for suffering was the vital characteristic that gives all sentient beings the right to equal consideration. He wrote that the capacity for suffering -- and/or enjoyment or happiness -- is not just another characteristic like the capacity for language or higher mathematics He believed that the capacity for suffering is a prerequisite for having any interests at all and held this to be a condition that must be met before we can speak of rights. He argued that the ability to suffer, and not the Cartesian demarcation of the ability to reason, should be the benchmark, or what he called the "insuperable line." (Bentham, 1978). If reason alone were the criterion by which we judge who ought to have rights, human infants and adults with certain forms of disability might fall short, too "The question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?" (Bentham, 1823).

Not only is it against the law to be cruel to an animal under the new English legislation, one must also ensure that all the animal's welfare needs are met. The Act applies to "protected animals" which for the purposes of this Act are:

- (a) it is of a kind which is commonly domesticated in the British Islands,
- (b) it is under the control of man whether on a permanent or temporary basis, or
- (c) it is not living in a wild state.(The Animal Welfare Act, s.2)

Furthermore, the Act is an 'enabling Act' to permit the passing of secondary legislation in the form of regulations³ and approved codes of practice (which are practical guidelines on how to care for the animal in question). By introducing these changes through secondary legislation it will ensure that the law can be easily modernised in line with future advances in scientific knowledge and animal welfare practice. The Act is also a 'common informers Act' in that any person or organisation can bring forward a case for prosecution under the Act.⁴

The Animal Welfare Act 2006 has introduced a "duty of care" on people to ensure the needs of any animal for which they are responsible are met. The Act imposes a duty of care for non-farm animals (for example, cats, dogs and small animals such as rabbits) for the first time as prior to the introduction of this Act, there were only welfare standards for farmed animals. This is a major step in protecting animals. This duty of care includes making sure that animals have a proper diet, are housed with or apart from other animals according to their

³ Regulations made under the Act can require an animal activity to be licensed by or registered with a local authority. Members of Parliament can set licence conditions which must be complied with before a licence can be issued or a registration accepted.

⁴ This includes the Local Authority, Police or a member of the public (including the RSPCA) can undertake a prosecution, which can be started up to 3 years after the offence (as long as it is within 6 months of the evidence becoming available)

need and have the ability to express normal behaviour such as dogs been able to run and play and are protected from pain, suffering, injury and disease(The Animal Welfare Act, s9(2)).

In addition to the 2006 Act, there are codes of practice for the welfare of dogs, welfare of cats, welfare of horses, ponies, donkeys and their hybrids and the welfare of privately kept non-human primates.⁵ The purpose of the codes of practice is to provide practical guidance to help people to comply with the provisions of Section 9 of the Act which states “a person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.” The Codes provide detailed guidance for pet owners on how to meet the welfare needs of their animals, and this information can be used by a court to illustrate whether an owner has been complying with the Animal Welfare Act.

The 2006 Act also created a new offence of failing to provide for the needs of an animal in one's care. It allows action to protect animals to be taken much earlier rather than have to wait for an animal to show signs of suffering. For example, enforcers will be able to intervene before suffering begins as section 10 of the Animal Welfare Act allows the RSPCA inspectors to serve an improvement notice, which will clearly detail what steps the owner needs to take within a specific time period to prevent an animal from suffering. If the inspector's advice is not followed, and the animal will suffer if left in that situation, now they have the support of the law to step in before the animal suffers. (Before this law was introduced, inspectors had to return time and time again to see an animal, unable to act until the animal was clearly suffering). Moreover, it places more emphasis on owners and keepers who will need to understand their responsibilities and take all reasonable steps to provide for the needs of their animals.

Significantly, anyone who is cruel to an animal, or does not provide for its welfare needs, may be banned from owning animals, fined up to £20,000 and/or sent to prison (The Animal Welfare Act, ss32-45). The law also increases to 16 the minimum age at which a person can buy an animal and prohibits giving animals as prizes to unaccompanied children under this age (The Animal Welfare Act, s.11). Furthermore, the docking of a dog's tail for cosmetic reasons is now illegal (The Animal Welfare Act, s.6).

In summary, the position in Ireland is far less regulated than that of England and Wales. The main Irish animal protection laws date back to over one hundred years old and have failed to improve animal protection laws as England and Wales have in 2006. The introduction of a duty of care, the extension of protection to non-farm animals and the granting of further powers to inspectors to intervene where an animal is suffering, have greatly improved protection in place for animals within England and Wales. However, Irish animal protection laws have not moved with contemporary times and fail to provide adequate protection for animals and further fail to provide suitable deterrence and punishment for cases involving animal cruelty.

⁵ Primates contain all lemurs, monkeys, and apes. All primates have five fingers, a generalized dental pattern, and a primitive body plan. Another distinguishing feature of primates is fingernails.

Swiss Animal Protection Laws

Switzerland is said to have some of the most stringent animal rights laws in the world (The Guardian, 2010). In late 2008, a new animal act passed into law in Switzerland. It runs to 150 pages and explains in great detail how dozens of species are to be kept and treated by their owners, be they "companion animals" or livestock on a farm.

The new rules are particularly strict in relation to dogs. Dogs are deemed "social animals and, therefore, "must have daily contact with humans, and, as far as possible, with other dogs" (Ordinance on the Protection of Animals, article 70 hereinafter OPA). If kept in outdoor kennels, they must be "chain free" for at least five hours a day and kept in pairs, or with other "compatible animals" (OPA, article 71) Their enclosures must have separate areas for eating, sleeping and toileting (OPA, article 72).

Prospective owners will have to pay for and complete a two-part course in order to take ownership of a dog—there is a theory section on the needs and wishes of the animal such as the need for companionship and affection. There is also a practice section, where students will be instructed in how to walk their dog and react to various situations that might arise during the process (OPA, article 68).

They have detailed guidelines on how to care for different animals. A dwarf rabbit, for example, usually weighing between 2lbs - 5lbs must be kept in a hutch no smaller than 50cm x 70cm with 40cm headroom. They must also have a nest box, or the "ability to dig" meaning that they must have a large amount of bedding underneath them. (OPA, article 65) Furthermore, should pet owners require advance guidance as to what will be expected of them, a government website provides it. The Act prohibits the keeping of a solitary parakeet, guinea pig and other animals which are deemed to have a high emotional need for companionship. Pigs, budgies, goldfish and other social animals cannot be kept alone (OPA, article 13). The new regulation stipulates that aquariums for pet fish should not be transparent on all sides and that owners must make sure that the natural cycle of day and night is maintained in terms of light (OPA, annex p.132). Goldfish are also considered social animals.

Problematic Areas in Irish Legislation: Comparative analysis

The Pet Trade

A pet trade licence is required in both England and Wales (Pet Animals Act, 1951) and Switzerland (The Animal Protection Law, article 13 and the OPA article 104 para 1). Any person keeping a pet shop in England and Wales has to be licensed by the local authority. Before granting a licence the local authority must be satisfied that the animals are kept in accommodation that is both suitable and clean; that they are supplied with appropriate food and drink; and are adequately protected from disease and fire. The local authority may attach any conditions to the licence, may inspect the licensed premises at all reasonable times and may refuse a licence if the conditions at the premises are unsatisfactory or if the terms of the licence are not being complied with.

In Switzerland you also need a licence to operate a pet shop. The Swiss pet trade licence has many requirements. They include regulations about experience of the staff, how animals must be cared for, and the sales of the animals. The main person caring for the animals must have a

degree as a veterinary nurse or a certificate of competence issued by a specialist training facility (OPA, article 103). Furthermore, animals cannot be sold to persons under the age of 16 (OPA, article 110).

There are however, no such requirements in Ireland. Any person can set up and operate a pet shop. The only provision relating to the regulation of the sale of pet animals is part V of the 1965 amendment of the Protection of Animals Act 1911. This section sets out that pets cannot be sold in any public place, pets cannot be sold to children under twelve years of age and has provisions regarding pet shops stating that:

- (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 the animals of infectious diseases,
- (e) the animals shall be adequately safeguarded against fire hazards.

However, any person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding three months or to both (The Protection of Animals (Amendment) Act 1965 section 26 (1)).

The existence of this penalty does not overcome the non-existence of a licence system in order to operate a pet shop. Nor does it overcome the issue that no training or experience is necessary. Moreover, the fine is completely out-dated and minimal if a shop were to be found guilty of any of the offenses.

The recent Irish case involving a female employee of “Petmania” – a large group of Irish pet stores, illustrates the serious need for regulation within this industry. The woman in question successfully sued “Petmania” claiming that she contracted a rare brain disease from parrots while working in the shop. The young woman is paralysed and brain damaged after contracting the disease. She was given no health and safety training or warnings about the dangers of working with animals. Furthermore, the store did not provide gloves or masks for staff and a health and safety manual the company claims it issued to staff did not contain anything about health or safety. Senior Counsel John Gleeson said the booklet was 'remarkable' in that it made no mention at all about the risks of working with animals. He further noted that it did not even mention the word animal but instead contained information about employment rights.

Mr Gleeson said experts would say the single most significant risk of working in pet shops is the risk of contracting infections from creatures. Animals in the store were neither screened nor treated because they were of 'relatively low value', he said. The court also heard that the month before she became ill an internal inspection of the stores noted that the bird cages 'were filthy' and that it scored six out of 12 in a hygiene rating. (See <http://www.rte.ie/news/2011/0622/inglep.html>)

This case illustrates the need for regulation of pet shops in order to protect not only animal welfare but also human health.

Punishment

In England and Wales there is a maximum fine of £20,000 and jail terms of up to a year can be imposed for cruelty (Animal Welfare Act, ss. 32-45). In Switzerland a person can be fined for everyday they are found to have acted cruelly towards an animal (OPA, article 26). The maximum fines can reach the equivalent of €911, 455 for a serious case of cruelty or in the case of a less significant animal cruelty the penalty will be a fine with the maximum amount set at €8,427. Furthermore, terms of imprisonment can be set from 6 months up to 3 years (Animal Protection Laws, articles 26-28). However, in Ireland a large number of offences listed under the 1911 Act are, punishable by a fine “not exceeding twenty-five pounds, or alternatively or in addition thereto, to be imprisoned, with or without hard labour, for any term not exceeding six months.” Therefore, not only is the currency out-dated, the amount of the potential fine and the inclusion of hard labour are also.

This point can be further illustrated through case law. For example, a recent English case involved an owner of a pet shop who sold a fish to a 14 year old. She was fined £1,000, was placed under curfew and made wear an electronic tagging system for two months to ensure she abided by the set curfew (see <http://www.guardian.co.uk/world/2010/mar/31/pet-shop-fined-over-goldfish>). Under the Animal Welfare Act 2006 it is illegal to sell an animal to a person under the age of 16 therefore this owner was breaching the law. This may sound extreme but does prove that the English courts are enforcing the law.

Guidelines and information

England and Wales provide codes of practice on how to care for animals ranging from dogs and cats to horses. Switzerland sets out information on over 150 species. Furthermore, should pet owners require advance guidance as to what will be expected of them, a government website provides it.

In turn, in Ireland there are no guidelines or information. The current law fails to direct how animals ought to be cared for. People in Ireland have to rely on the internet which can be a source of inaccurate information leaving little guidance on how to care for their animals. The only alternatives are to go to a vet which can be costly or hope that a pet shop has staff that can properly advise people on how to care for their animals.

Case law

It is difficult to access cases of animal cruelty in Ireland. The main sources are through newspaper reports and the ISPCA (Irish Society for the Prevention of Cruelty to Animals) website. Where cases arise they are heard in the District Court, the lowest level of court in Ireland. This in itself is sending a message that cases involving animal cruelty are being heard in the same court as the most minor offences such as speeding tickets and penalty points. By contrast, in Switzerland, all decisions made in cases involving animal cruelty are available on a dedicated website (see <http://www.bvet.admin.ch/dokumentation/index.html>) This website provides information on the type of animal affected by the cruelty, the offence the perpetrator

of the cruelty is charged with, the outcome of the case and the penalty or punishment which was imposed.

Potential areas of reform for Ireland

International standards

International standards could be put in place. For example, the European Convention on the Protection of Pet Animals is a treaty of the Council of Europe to promote the welfare of pet animals. The treaty has been in existence since 1987 and became effective in 1992. To date this convention has been signed by 23 countries and been ratified by 22 of the 23 countries. Ireland has neither signed nor ratified the convention.

In October 2010, the European Commission organised the First International Conference on Animal Welfare Education (see <http://www.animalwelfare-education.eu/conference.html>). The conference was to provide more information on how animals should be treated. Furthermore, since January 2011 the European Commission has been preparing a second EU Strategy on the protection and welfare of animals 2011-2015. The objectives of this strategy are “to maintain and enhance the welfare of animals through legislation and enforcement; to develop a common understanding of animal welfare issues at international level; to improve understanding of animal welfare issues by the public and stakeholders; to improve our overall understanding of animal welfare issues and to develop knowledge to guide effective and efficient delivery policy (Europa website, 2011).

Furthermore, there is also a United Nations for animals (now known as Red Rover) which has set up an International Court of Justice for Animal Rights or ‘Animal Court’ which has its headquarters in Geneva. The United Animals Nation was founded in 1979 by Franz Weber, based on the example of the United Nations Organisation and which has 120 member organisations over the whole world. The statutes of the Animal Court are part of the Charter of the United Animal Nations. Proceedings supporting animal rights have taken place regularly since 1979 in the presence of the international press and with the participation of well-known legal representatives and experts (see <http://www.uan.org/>). Moreover, a Universal Declaration on Animal Welfare was developed in 1977 which has been signed by organisations all over the world in order to ascribe moral and legal rights to animals (See <http://www.wspa-international.org/wspaswork/udaw/Default.aspx>.) The UN has adopted other Universal Declarations. Therefore, the United Nations could adopt such a declaration on animal welfare. The European commission could also introduce a treaty which would be binding.

The introduction of new legislation:

Many jurisdictions have replaced old and out-dated legislation with updated and modern pieces of legislation such as Sweden and New Zealand with the aim of preventing and reducing animal cruelty. England and Wales introduced new legislation in 2006. This new Act repealed the English Protection of Animals Act 1911. As stated earlier in this article, this new Act brought about significant improvements in the area of animal protection. Switzerland introduced new legislation in 2008 in order to update its 1978 laws.

Ireland could follow the same course of action as its neighbouring jurisdiction has done and repeal its one hundred year old laws. In 2010 the Irish government was to introduce new legislation. However, the introduction of other animal welfare measures namely the Dog Breeding Establishment Act 2010 and the Wildlife (Amendment) Act 2010, put a halt to the implementation of any further animal welfare measure as neither piece of legislation had a smooth introduction. While both pieces of legislation place Irish animal protection laws more in line with international norms - they both also caused nationwide uproar and resulted in political divide due to the nature of the legislation. The Dog Breeding Establishment Act 2010 was rushed through and lead to several amendments and the creation of a second piece of legislation in order to deal with the deficiencies namely the Welfare of Greyhounds Bill 2010. This Bill was introduced to deal with the breeding regulations of greyhounds as they were excluded from the Dog Breeding Establishment Act as the greyhound industry were not satisfied with this Bill. The Wildlife (Amendment) Bill 2010 resulted in a disagreement between political parties and the Ward Union have continued to set plans for further hunts by searching for loopholes in the legislation (see <http://www.irishtimes.com/newspaper/ireland/2010/1014/1224281062054.html>). Furthermore, even after its introduction into government there are suggestions that the current government want to repeal this legislation (see <http://www.irishtimes.com/newspaper/breaking/2011/0223/breaking30.html>). So while the repeal of the 1911 Act is a viable option for reform, there are many obstacles standing in the way of this course of action such as the issues that arose during the introduction of both the Dog Breeding Establishment Act and the Wildlife (Amendment) Act.

Constitutional Change

A Constitution amendment could be a viable option. Switzerland changed its Constitution in 1992 to protect animals' dignity. Germany added a protection of animals section to its Constitution in 2002. This is an extremely significant step as these countries have granted protection to animals in a document that was originally drafted with only humans in mind. Germany amended their constitution by adding the words “and animals” to a clause that obliges the state to respect and protect the dignity of humans. Interestingly the change came about as a result of a case on the religious slaughter of farm animals. In 1995 a German court ruled that the Muslim slaughter of animals, which involves slitting the throat of the animal and letting it bleed to death without the use of any prior stunning, was illegal This decision was challenged in Germany’s Constitutional court in 2002 and was overturned (*Bundesverfassungsgericht 1 B v R 1783/99*) It was held that the ban on religious slaughter amounted to an unacceptable interference with professional freedom as Muslims were effectively prevented from working as butchers. Rook notes “Professional freedom is protected by the German constitution but, at that time, animal welfare was not a constitutional consideration and therefore could not be weighed in the balance.” She further notes that the change in the constitution sought to rectify this and

[c]onsequently, including ‘animal welfare’ in the German constitution had, and has, nothing to do with granting animals ‘rights’. Animals are not legal persons in Germany. However, the welfare of animals is now a factor to be taken into account and weighed in the balance whenever the Constitutional court is deciding what action to take in a given case. (Rook, 2009)

Therefore, the change of status of animals in the legal systems of these two countries has served as a historic milestone for the animal protection movement. However, the viability of this option of reform may not be suitable at the present time as Ireland does not even have up to date legislation so therefore, the people of Ireland may not vote in favour of such a change as we have not been as proactive as other jurisdictions in terms of animal protection laws. Therefore, perhaps other steps would need to be taken before a constitutional change could come about.

Private Action

Representatives of animals could be enabled to bring private suits to ensure that anticruelty and related laws are actually enforced. If, for example, a farm is treating horses cruelly and in violation of legal requirements, a suit could be brought, on behalf of those animals, to bring about compliance with the law (Sunstein, 2006).

Switzerland had adopted a procedure where humans can prosecute on behalf of animals. Antoine Goetschel, was Switzerland's only public animal lawyer. He explains that there is a core principle of fair justice that underpins his work. Animals can be, and often are, treated poorly by their human masters. Goetschel states "Not even a vet can act on behalf of the animal in court." He further explains that the high rates of prosecution in the canton of Zurich where he was the animal advocate, compared to the other areas of Switzerland, shows why more prosecutors are needed. Goetschel states that he represented about 150-200 animals annually in Zurich, while in other states, only a handful of cases go to court each year. However, an animal rights group initiated new legislation that would stipulate appointment of state-funded animal lawyers in all Swiss cantons, in order to ensure animal welfare laws are enforced. The referendum which was held in Switzerland in March 2010, resulted in a seventy percent vote against this legislation, therefore, this law failed to be adopted. There are no longer any public animal lawyers in Switzerland as the function of the animal lawyer has been abrogated by the canton this year⁶ (see <http://www.guardian.co.uk/world/2010/mar/05/lawyer-who-defends-animals>)

In response to the decision made in the referendum Jakob Buechler, a lawmaker for the centrist Christian People's Party, commented on the results of the referendum "The Swiss people have clearly said our animal protection laws are so good we don't need animal lawyers." Also, the president of the Swiss Farmers' Union, Hansjorg Walter, said "Voters have taken a pragmatic decision and acknowledged that Switzerland has one of the strictest animal welfare laws" (See <http://www.moveoneinc.com/blog/europe/enif-fish-id-want-live-switzerland/>).

Other jurisdictions such as Austria have in place a similar system to that which Switzerland was trying to achieve. Each province must appoint an "Animal Solicitor" for a five year term. These "Animal Solicitors" have the right to be informed about all animal related trials, must receive government support, they can make independent decisions, and they can start court procedures on behalf of animals (Sankoff, 2005). Therefore, such a system can be put in place. Furthermore, Peter Singer, a professor at Princeton, has stated that "I have always argued that it should be possible for animals to be represented in court by guardians, or lawyers, acting on their behalf, much as we do for people with disabilities" (Guardian, 5th

March 2010). Cass Sunstein, an American legal scholar and author in the field of animal law, states that

[i]n a sense, this would be a dramatic proposal, because it might well be understood to mean that animals should be allowed to sue in their own name—and whoever the nominal plaintiff, there would be no question that the suit was being brought to protect animals, not human beings. The very idea might seem absurd. But it is simpler and more conventional than it appears. Of course any animals would be represented by human beings, just like any other litigant who lacks ordinary (human) competence; for example, the interests of children are protected by prosecutors, and also by trustees and guardians in private litigation brought on children's behalf (Sunstein, 2002: 6).

Conclusion

Ireland's animal protection laws are certainly out-dated and in need of re-visiting. Mr John Carmody of the Animals Rights Action Network (ARAN), an Irish organisation constantly campaigning against animal cruelty in Ireland has said, "[t]he Government simply doesn't make animal protection issues a priority. There's a very big problem at the moment when it comes to the situation of people abusing animals". He is of the opinion that the Animal Protection Act 1911 "does nothing more than make sure that animals have adequate food and water and that's basically it, it's definitely not enough" (see <http://www.irishtimes.com/newspaper/ireland/2008/0905/1220544890425.html>).

As illustrated in this article Ireland can learn from other jurisdictions and bring animal protection laws into the 21st century. We are at a time of economic down turn; however this does not mean we ignore health and safety law, environmental law or disability law - so why would we ignore animal protection laws? We need to be a more humane and civilised society and in order to do this we must introduce adequate protection for animals.

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