

Five Freedoms, Five Domains: An analysis of the implementation, or lack thereof, of the Five Freedoms and the Five Domains in the Maltese Animal Welfare Act

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In this article, Dr Ariane Aquilina analyses the Five Freedoms and Five Domains in the Maltese Animal Welfare Act. The rest of the article can be found in id-Dritt XXX.

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1. The Five Freedoms and the Five Domains in the Animal Welfare Act – are they covered?

The Animal Welfare Act does not specifically mention the Five Freedoms or the Five Domains. In fact, there are few instances within the Animal Welfare Act where specific obligations are actually set out regarding the general welfare of animals, and animal owners' obligations in relation to the animals that they own or keep. Throughout the rest of the Animal Welfare Act there are some other, more detailed obligations set out, such as in Article 26(2) which states that if animals 'fall ill or are injured' while they are being transported they shall 'receive first-aid treatment as soon as possible' and shall 'be given appropriate veterinary treatment and, if necessary, undergo emergency slaughter in a way which does not cause them any unnecessary suffering'. There are also provisions that ban certain activities outright due to the toll on the welfare of the animals participating in them, including Article 31, which bans animal fights, and Article 31A, which bans the use of animals in circuses.

However, one may notice a pattern within the majority of the provisions of the Animal Welfare Act, whereby various articles completely neglect to set out substantive provisions and instead concentrate on giving the Minister responsible for animal welfare the power to make regulations on several issues. This system is important and practical when attempting to regulate certain uses of animals that, due to ever-changing requirements, need to be constantly updated and require a number of technical provisions that are more effectively set out in subsidiary legislation¹ which is easier to update, such as the transport of animals. Nevertheless, it is perturbing that even the articles regulating more general aspects of animal welfare leave much of their substance to be set out in subsidiary legislation. In particular, Article 7, concerning the keeping of animals, focuses completely on granting power to the Minister to make regulations, and does not set out general obligations. Moreover, Article 8, regarding the care of animals, sets out some general provisions but also leaves it up to subsidiary legislation made by the Minister to regulate some of the most important matters related to animal welfare. This situation presents several issues, and is important to take note of, especially considering the fact that 'poorly designed legislation can exacerbate rather than solve problems'.²

One main issue is the possibility that regulations on certain matters may not be promulgated. For example, Part X of the Animal Welfare Act deals with the use of animals in competitions. Sub-article (1) of Article 30 discusses the prohibition on entering animals into competitions if their body is found to contain certain

¹ G Doonan, M Appelt and C Inch, 'Role of Legislation in support of Animal Welfare' [2009] 50(3) The Canadian Veterinary Journal <<https://www.ncbi.nlm.nih.gov/pmc/articles/>

² Ibid.

substances, and Article 31 prohibits the organisation of animal fights. However, the rest of the provisions are left in the hands of regulations. Article 27 in fact states that ‘competitions which test the speed or strength of an animal shall not be organised, nor shall an animal be entered for such competitions, unless the competitions are held in accordance with regulations made under this article’.

The glaring problem here is that, to date, no regulations on the hosting of animal competitions have been published. This leaves a vacuum regarding whether such animal competitions technically can or cannot be organised and where the animals involved only have the undetailed and rather vague provisions found in Article 8 to protect their welfare, which, when considering the myriad uses of animals in competitions, may not be enough to secure the welfare of these animals, as discussed further below.

Another problem arises when considering that even where subsidiary legislation exists, it may still neglect to set out even general provision on animal welfare standards to be followed. An example of this in Maltese legislation are the Keeping of Wild Animals in Zoos Regulations.³ While it should be evident that the activity of keeping exotic animals kept in zoos needs to be carried out within a detailed framework that protects the welfare of such animals, the Keeping of Wild Animals in Zoos Regulations completely neglect to set out substantive welfare requirements.

Furthermore, while it is important to have specialised subsidiary legislation in relation to certain activities, it is not feasible to expect specific regulations to be drafted and published in relation to each and every species and/or, activity for which animals are used. Apart from being impractical, an attempt to create such a wide range of legislation may backfire in spreading the law too thin and thereby weakening it and in creating a complicated system of legislation which is difficult to interpret and enforce.⁴

This lacuna in detailed provisions on the general aspects of animal welfare means that the implementation of the Five Freedoms and the Five Domains in the Animal Welfare Act is even more crucial. The setting out of general provisions on animal welfare in line with the Five Freedoms and the Five Domains would ensure that the enforcers of the Animal Welfare Act will have the opportunity to rely upon these provisions in ensuring the welfare of the animals found in Malta if more specific regulations have not yet been published. This leads us to consider whether the general provisions in the Animal Welfare Act actually protect the welfare of animals, and whether the Five Freedoms, and even the Five Domains, are fully

³ Subsidiary Legislation 439.08 The Keeping of Wild Animals in Zoos Regulations <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11047&l=1>> accessed 5 October 2019.

⁴ J Vapnek and M Chapman for the Development Law Service FAO Legal Office, ‘Legislative and Regulatory Options for Animal Welfare’ [2010] FAO Legislative Study 104 <<http://www.fao.org/3/i1907e/i1907e00.htm>> accessed 4 October 2019.

covered under these general provisions.

Before discussing the Five Freedoms and the Five Domains within the Animal Welfare Act, it is important to discuss a particular issue, this being the definition of the term ‘animal welfare’. The term ‘animal welfare’ is found throughout the Animal Welfare Act, such as in sub-article (2) of Article 3, which asserts that the State recognises ‘that it has the duty to promote the welfare of animals’, and sub-article (3) of Article 8, which states that, ‘any person who keeps any animal or who agrees to look after an animal shall be responsible for its [...] welfare’.

Nonetheless, there is no definition of the term ‘animal welfare’ provided for in the Act itself. This should not come as a surprise, considering that the definition of animal welfare has been the subject of international debate and has, over the years, been updated numerous times, with various definitions being postulated by different authors.⁵ This dynamic nature of the definition of animal welfare does not lend itself well to legislation. Bearing in mind that such a definition would need to be continuously updated, the setting out of a detailed definition may backfire.⁶ However, it is certainly advisable that a general understanding of animal welfare be set out in the legislation that governs the area in a manner that details general principles of animal welfare that must be considered with any and each species, but at the same time provides the opportunity for more technical criteria to be particularised in a prompt manner that allows for the law to keep up with scientific findings.

This consideration regarding the definition of animal welfare is essential, in particular when considering sub-article (3) of Article 8 which states that a person who keeps an animal or agrees to look after one is responsible for the animal’s ‘health and welfare’. To the untrained eye, it may seem that the inclusion of the words ‘health’ and ‘welfare’ is enough to ensure the full protection of these aspects of an animal’s life and existence. However, the reality is that there are two aspects to legislation – the legislation itself which sets out provisions that should be followed, and the enforcement of it, which is crucial in ensuring that law does not remain a paper tiger but effectively regulates the matters at hand.⁷ For proper enforcement to be carried out, the law cannot hope to rely on such broad and wide terms as ‘health’ or ‘welfare’ without providing even a vague indication as to what the intention behind the use of the terms are.

⁵ M S Dawkins, ‘Behaviour as a Tool in the Assessment of Animal Welfare’ [2003] 106 *Zoology* <<https://doi.org/10.1078/0944-2006-00122>> accessed 1 October 2019; D M Broom, ‘A History of Animal Welfare Science’ [2011] 59(2) *Acta Biotheoretica* <<http://dx.doi.org/10.1007/s10441-011-9123-3>> accessed 1 October 2019.

⁶ J Vapnek and M Chapman for the Development Law Service FAO Legal Office, ‘Legislative and Regulatory Options for Animal Welfare’ [2010] FAO Legislative Study 104 <<http://www.fao.org/3/i1907e/i1907e00.htm>> accessed 4 October 2019.

⁷ --, ‘Charity reveals the Difficulties of enforcing Animal Welfare Law’ [2016] *Veterinary Record* <<https://doi.org/10.1136/vr.i6532>> accessed 4 October 2019.

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