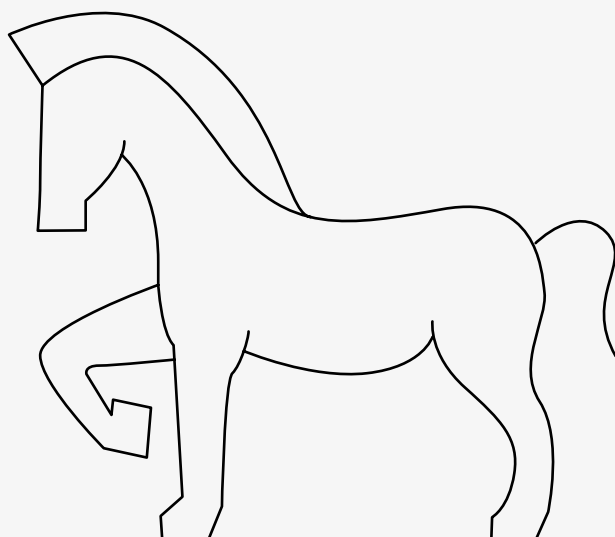


The Animal Welfare Act and Fireworks

A roundtable discussion



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Executive summary

The adverse impact of fireworks on a wide range of people and animals is a concern to a significant and growing proportion of the public. To contribute to the long-standing and complex debate around use of fireworks, a roundtable discussion was held in March 2024 to evaluate whether the Animal Welfare Act 2006, the core piece of animal welfare legislation in England and Wales, provides a mechanism to help protect animals from the harm that fireworks can cause them.

Reference to the Animal Welfare Act is made routinely by DEFRA representatives in response to parliamentary questions on the issue of fireworks and animal welfare. Yet, to date, there does not appear to be any example of a case file being taken forward to use the Act to hold someone to account in relation to suffering being inadvertently caused to an animal by fireworks being let off close to them.

A group of experienced professionals with in-depth working knowledge of the Animal Welfare Act met to discuss whether the Act could be used effectively in such cases. They concluded unanimously that it cannot for a range of reasons, including:

- The Act states that a person ‘knew or ought reasonably to have known’ the effect their actions would have on animal welfare for an offence to have been committed. It is likely that many people letting off fireworks would not have the level of knowledge needed for this requirement to be met.
- Holding a firework display in accordance with regulations is legal, and the Act was not written to criminalise legal activities.
- The burden of proof would make it prohibitively challenging to provide evidence demonstrating that fireworks were the sole or most significant factor in the death or injury of an animal in a way that would stand up to scrutiny in court.
- It would be very difficult to gather evidence to prove that one individual was liable for prosecution under the Act for causing unnecessary suffering to an animal.

The group concluded that the Animal Welfare Act offers no legal protection for animals against the risk of death, injury, illness or distress through exposure to fireworks and that alternative regulatory approaches are needed to address this issue.

Introduction

Redwings Horse Sanctuary hosted a roundtable discussion on Wednesday 27 March 2024 to explore the viability of using the Animal Welfare Act as a means of holding individuals to account in cases where fireworks are believed to have inadvertently led to the injury or death of an animal.

The discussion was conducted in response to statements made consistently by ministers at Westminster which suggest that the Animal Welfare Act is a legislative tool that could be used in such scenarios. Two examples of ministerial statements given in response to parliamentary questions are provided on pages 5 and 6.

November 2023

Question from Lord Black of Brentwood:

“To ask His Majesty’s Government whether they have made any studies about the impact of domestic firework use on domestic animals, including cats and dogs; and, if not, whether they will commission one.”

Response from Lord Benyon, DEFRA Minister:

“It is an offence under the Animal Welfare Act 2006 to cause unnecessary suffering to an animal, and this includes through the misuse of fireworks. Users of fireworks need to use them responsibly and be aware of animals close by, and those found guilty of causing animals unnecessary suffering can face up to five years’ imprisonment. We have no current plans to commission any studies on the impact of domestic firework use on domestic animals.”

February 2024

Question from Tulip Siddiq MP:

“To ask the Secretary of State for Environment, Food and Rural Affairs, what steps he is taking to help reduce the distress to animals caused by fireworks displays.”

Response from Mark Spencer, Minister for Food, Farming, and Fisheries:

“It is an offence under the Animal Welfare Act 2006 to cause unnecessary suffering to an animal, and this includes through the misuse of fireworks. Users of fireworks need to use them responsibly and be aware of animals close by, and those found guilty of causing animals unnecessary suffering can face up to five years’ imprisonment.

“A number of animal welfare and veterinary organisations provide advice and guidance to enable people to minimise the impacts of fireworks on animal welfare. We will be working closely with these organisations to amplify this messaging in the run up to, and during, key dates when fireworks are commonly used.”

Redwings is not aware of any cases where the Animal Welfare Act has been used to address the sometimes tragic impacts of fireworks on animals.

The charity was keen to explore whether the absence of legal precedent results from lack of understanding of how the Act could be used in these specific circumstances, or from the fact that the legislation does not lend itself to such scenarios.

The roundtable discussion was held in order to investigate the issue comprehensively and conclusively.

Roundtable participants

To fully explore the issues, it was essential to gather a range of professionals with detailed knowledge and practical working experience of using the Animal Welfare Act. It was also important to include individuals from several key sectors involved in enforcing the Act.

Participant details:

Nic de Brauwere, MRCVS (Chair)

Redwings Horse Sanctuary
Veterinary surgeon

Extensive experience of applying the Animal Welfare Act in a veterinary capacity and providing written and oral evidence to support court proceedings.

Rebecca Athay MCIEH

Vale of Glamorgan Council
Enterprise and Specialist Services
(Environment) Team Manager

Management responsibility for Animal Health and Welfare for over five years and wide-ranging involvement in complex welfare cases.

CI Korine Bishop

Hampshire Constabulary
Chief Inspector, District
Commander for Winchester

More than 25 years' policing experience. Leads on the UK's National Equine Crime and chairs the Equine Crime Priority Delivery Group.

Hayley Firman

RSPCA
Head of Prosecutions

Head of the RSPCA Prosecutions department since 2015, with overall responsibility for the RSPCA's animal welfare enforcement.

Steven Gale

World Horse Welfare
Investigator

Current equine welfare professional. Previously worked in Local Authority Trading Standards with Animal Health and Welfare. Experienced in use of the Animal Welfare Act in both roles.

Suzanne Green, MRCVS

**Greenway Equine
Veterinary Services**
Veterinary surgeon

Veterinary surgeon with extensive experience of equine welfare work and supporting legal cases taken under the Animal Welfare Act. Registered as an expert witness.

Dr Mark Kennedy

RSPCA
Senior Scientific
Manager - Equines

Fireworks lead for the RSPCA's Companion Animals Department. Animal welfare scientist with 30 years' experience, focussing on equines.

PC 475 James King

Norfolk Constabulary
Rural Crime Beat Manager
South Norfolk

Level 3 Crime Prevention accredited. Specific focus on rural crime, wildlife crime, animal welfare.

Lee Reynolds

Apex Chambers
Barrister

Independent barrister for more than 22 years with extensive experience of working with the Animal Welfare Act.

Gemma Rouse, MRCVS

Riverside Equine Vets
Veterinary surgeon

Riverside Equine Vets director and equine clinical team lead since 2013.

Background

Use of fireworks is a complex issue. Alongside positive associations with family and community gatherings, spectacle and tradition, there is a wide range of negative, often severe impacts on many humans, domestic animals, wildlife and the environment. An increasing body of evidence and greater awareness of unintended adverse outcomes is leading many people and businesses to reevaluate their attitude to fireworks.

However, the objectives of this roundtable discussion were specifically limited to exploration of the claim that the Animal Welfare Act may be applied in scenarios where a firework display is believed to have led to the injury or death of an animal, as has been suggested by DEFRA ministers. Broader questions and issues around use of fireworks therefore lie beyond the scope of this report.

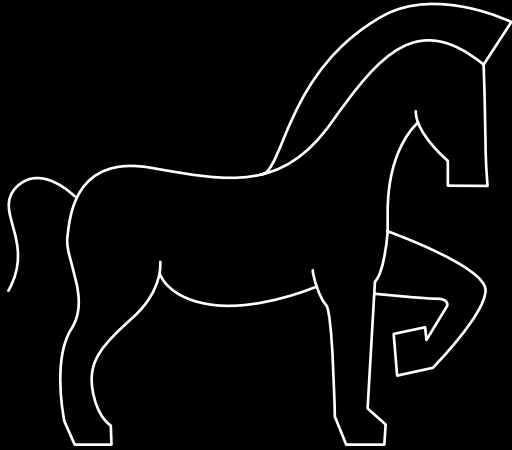
Fireworks

As with animal welfare, use of fireworks is a devolved issue in the UK. It is currently legal in England and Wales for anyone over the age of 18 to set off category F1, F2 and F3 fireworks from any private property on any night of the year between 7pm and 11pm. The curfew extends to 12 midnight on Bonfire Night and 1am on New Year's Eve, Diwali and Chinese New Year. Category F4 fireworks (the most powerful) can only be bought and handled by trained and licensed professionals.

Fireworks can be sold by licensed retailers, in person or online, throughout the year. Registered outlets, such as supermarkets, can only sell fireworks between 15 October and 10 November, 26 and 31 December and for three days before Chinese New Year and Diwali (festival dates vary each year).

Fireworks and animal welfare

Data shows that fireworks can have widespread and often serious impacts on animal welfare.



1,468

incidents involving horses and fireworks were recorded between November 2010 and 19 March 2024 (an average of more than 100 a year). These include 49 horse fatalities, 317 horse injuries and 84 people injured during a situation involving horses and fireworks. Incidents are known to be significantly underreported, meaning the true figure will be much higher.

Source: British Horse Society

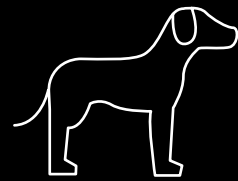
64%



of owners who have witnessed their cat experience fireworks say that their pet expresses at least one sign of stress.

Source: Cats Protection

> 41%



of dog owners say their dog is afraid of fireworks. That's over four million dogs.

Source: PDSA

Stories behind the statistics

The photograph below shows the result of an incident on New Year's Eve 2023 where a horse was spooked by fireworks let off at a neighbouring property and broke through a solid wood fence. The 22-year-old mare then ran until she collapsed in the road. She was still alive when this photo was taken but put to sleep on veterinary advice later the same day.

Surrey Police attended the incident and investigated the circumstances, but no action was taken.



Incidents of animals being killed, injured or terrified by fireworks are not anomalies. Below are just a small number of other tragic stories from 2023 alone.

- [Fireworks law plea after startled dog is knocked down and killed](#)
BBC News
- [Call for fireworks law change after dog's death in East Yorkshire](#)
BBC News
- [Dog scared by fireworks 'dies of heart attack' amid calls for them to be banned](#)
CoventryLive
- [Cat called 'Boo' nearly scared to death by fireworks](#)
Stoke-on-Trent Live
- [My pet budgie died of shock after a noisy firework went off outside – they should be banned](#)
Daily Mail Online
- [Hopefield Animal Sanctuary 'heartbroken' after Marmosets 'died of fright' from fireworks](#)
Essex Live
- [Maidstone woman issues fireworks plea after pregnant horse dies from heart attack in private display in West Kingsdown](#)
Kent Online
- [Owner issues firework warning after death of horse](#)
BBC News
- ['The Government has to listen': horse terrified by fireworks breaks his leg in the stable](#)
Horse & Hound

It is important to note that fireworks can also have a significant adverse effect on many humans, including veterans who live with PTSD, people with autism or other sensory conditions, those injured by fireworks and those affected by antisocial behaviour.

However, the Animal Welfare Act would not be applicable in these circumstances, therefore they are not covered by this report.

The Animal Welfare Act

The Animal Welfare Act 2006 came into force in April 2007 and is the primary animal welfare legislation to apply in England and Wales. Very similar Acts provide animal welfare protections in Scotland (the Animal Health and Welfare (Scotland) Act 2005) and Northern Ireland (the Welfare of Animals (Northern Ireland) Act 2011). The Animal Welfare Act replaced the Protection of Animals Act 1911, which had been used for almost 100 years.

The Animal Welfare Act has proved to be a robust and effective law, not only able to address situations of animal suffering and hold those responsible to account, but also allowing welfare professionals to take a more preventative approach and intervene in cases where an animal's welfare is a concern, but the point of evidenced suffering has not been reached.

The Animal Welfare Act was written with a predominant focus on the need for those with responsibility for an animal, either on a temporary or long-term basis, to uphold their welfare to at least minimum legal standards. The Act allows for those who neglect, abuse or abandon animals to be held accountable and facilitates conversations around improving standards that are slipping. In the past 18 years it has allowed perpetrators of serious and sustained welfare offences to be tried and sentenced accordingly.

However, the Act was not designed to address unintentional consequences of other, legal activities that may have an adverse impact on animal welfare.

Redwings Horse Sanctuary

Redwings has been raising awareness of the potential risks that fireworks pose for horses for many years. The charity has first-hand experience of the most serious outcome fireworks can have on equine welfare as three sanctuary residents have lost their lives to clinical conditions believed to be the result of the horses being spooked by fireworks let off close where they were living.

Redwings spends in excess of £3,000 each year in efforts to mitigate the potential impact of fireworks solely over the Bonfire Night period and New Year's Eve. However, opportunities to reduce the risk are limited across an organisation with more than 1,000 rescued equines in its direct care particularly when fireworks are used increasingly at other times of year.

As an equine welfare organisation, Redwings is focussed on the particular risk of fireworks to horses. Horses are flight animals with a strong fear response, making them a potential danger to themselves and those around them when anxious or afraid. Horses are also a highly social species and fearful behaviour shown by even one or two individuals is likely to trigger more widespread flight responses among their companions and neighbours.

Redwings has its own veterinary team, including specialist welfare vets who regularly work with the Animal Welfare Act to assess cases where equine welfare is a concern. They are also experienced in providing both written and verbal evidence to support prosecution cases when required.

Roundtable discussion

Roundtable participants had received a briefing document prior to the event. The briefing included the two ministerial statements quoted on pages 5 and 6 and asked the group to consider a working hypothesis that 'the Animal Welfare Act can be used in situations where fireworks are believed to be the main or only factor leading to the death or serious injury of an animal' with a view to determining whether or not this hypothesis could be supported.

The group were asked to take into consideration the responsibility of a person letting off fireworks or organising a display, along with the role of an animal's owner or keeper to safeguard their welfare. The need for having a robust evidential basis to be able to take a case before the courts was also highlighted to help participants prepare for the discussion.

The discussion itself was held via Zoom and took just under two hours. It was chaired by Redwings vet and Head of Welfare and Behaviour, Nic de Brauwere, who has extensive experience of working with the Animal Welfare Act and the judicial processes involved in bringing cases to court.

The following discussion points were not necessarily topics that were raised specifically for consideration, but were identified as key points that arose during the conversation. The report aims to consolidate issues that emerged as pertinent points and provide some context where it is felt to be helpful.

Participant case studies

First-hand experiences among the group highlight some of the issues and questions for discussion in relation to fireworks and animal welfare, in these instances equine welfare.

1. Organised firework display, Hampshire

One of the veterinary surgeons attending the roundtable had been involved with a recent case where an organised firework display had been held in November 2023 on land adjacent to where more than 30 horses were kept. They were all estimated to be within a 200–400 metre radius of the display. The vet described the impact of the display as “barely controlled chaos”. It included a frightened horse becoming caught up in a bucket in his stable, the owner narrowly escaping injury herself when trying to free him, and the vet then being faced with trying to sedate a stressed, highly adrenalised and potentially dangerous animal.

A display was being planned by the same club for November 2024. A dossier of research and data to explain why the location was unsuitable for such an event was presented to the parish council, who owned the land where the display was due to take place. Discussions were also held around why horses can be so reactive to fireworks and that opportunities to mitigate the negative impacts were limited. After a concerted effort to inform councillors of the risks and possible consequences, a vote was held and the decision not to allow the display to take place was won by one vote.

Noteworthy points arising from the example included:

- There was a perception that by informing an animal owner that a firework display is planned, an organiser’s responsibility has been met and the onus thereafter entirely lies with the owner to safeguard their animal’s welfare.
- It was suggested that if horses are frightened they should simply be relocated for the duration of the event. There was little understanding of the logistics, cost and risks involved in moving 32 horses to a suitable site at a safe distance, even if a location could be found.
- There was also a suggestion that all the horses could be sedated. Again, this shows lack of awareness of the cost, risk, practicalities and effectiveness involved.

- There was clear risk to both horse owner and vet during the display. Research indicates that being an equine vet is already one of the most dangerous civilian professions¹ and data suggests that the ratio of humans and horses injured in incidents where horses are upset by fireworks is more than 1:4².
- There doesn't appear to be any definition of what is a 'safe' distance when it comes to letting off fireworks and it became an arguable point.
- Efforts were made to suggest that if a horse was seriously injured, this may constitute unnecessary suffering under the law and therefore legislative action could be possible. However, there is no case law to support this assertion and it was hard to say with any conviction what the consequences would be or in what circumstances they would arise. Discussions therefore relied largely on appealing to the moral compass of parish councillors, which was only successful with six of the eleven individuals.
- The club planning the display was adamant that the event would go ahead, it was only by permission of the landowner being withdrawn that the display won't be held this year. This inevitably creates division at a local level.
- A risk assessment held ahead of the display that went ahead the previous year at local council level didn't take the horses or their owners into consideration, despite the number of equines and their proximity to the site. This was not just an oversight in relation to equine welfare, but to public safety as a frightened horse going over or through a fence could easily have put a dangerously energised animal directly amongst the crowds at the display, or loose on the surrounding roads.

¹[P173 Work related injuries in equine veterinary practitioners- a comparative study Occupational & Environmental Medicine \(bmj.com\)](#)

²Incidents recorded by the British Horse Society (most current figures as yet unpublished)

2. Private firework display, Norfolk

In the past decade, three equine residents at Redwings Horse Sanctuary have lost their lives in incidents relating to fireworks being let off close to them.

A Thoroughbred mare living at the charity's rescue centre in Essex was found to be extremely lame after multiple firework displays had been let off over a prolonged period during Bonfire Night 2014. Many of the horses at the centre had galloped relentlessly in their paddocks in fear, evidenced by the churned-up surfaces across the site. X-rays showed that a bone in Cinders' foot had become dislocated, a rare and complex condition. Possible surgical options were discussed with specialists, but on humane grounds it was clear that the kindest decision was to euthanase the 14-year-old mare.

Two years later, at one of their Norfolk sites, a group of placid, older ponies were spooked by fireworks being let off on an adjacent property, again, evidence of their response to the display was clear in the significantly churned-up ground. At around 6.30pm, 19-year-old Welsh pony Sprite was found collapsed with severe colic. A vet attended immediately, but his condition was so serious that euthanasia was carried out at the scene to alleviate his evident suffering.

Early the following morning one of Sprite's companions, 25-year-old Percy, was found unable to bear weight on one of his forelegs. Veterinary assessment showed Percy had a serious injury to his elbow, causing a large swelling and high level of pain. The veterinary team worked hard to treat Percy, but when his condition did not improve and he remained in considerable pain, euthanasia became the only humane option.

Noteworthy points arising from the example included:

- Horses' natural behaviour is to run from something that scares them. When contained and unable to put distance between themselves and what is frightening them, they are likely to try and escape and/or continue to run in panic until they are exhausted or injured, or the cause of their fear is removed.
- Where animals are exposed to multiple firework displays, either consecutively or concurrently, the risk of adverse effects is likely to increase, but the ability to attribute subsequent injury or death to a particular display or individual is extremely unlikely.

- Signs of illness or injury in an animal that is linked to their reaction to fireworks may not be apparent immediately.
 - The outcomes of distress caused to animals by fireworks can be very stressful, time-consuming and expensive for the people responsible for their care.
 - The veterinary surgeon who dealt with both Sprite and Percy and carried out their euthanasia says her views on fireworks have changed as a result of the experience and she no longer attends displays.
 - Behind statistics are individual animals and people.
-

Fireworks continue to cause anxiety to Redwings' equine residents and staff each year. In 2023, the charity released footage recorded on a mobile phone of a group of ponies reacting to fireworks being let off close to their paddock.

The footage can be viewed [here](#).

Discussion summary

The group was not aware of any case where the Animal Welfare Act had been used relating to suffering being caused to an animal inadvertently (as opposed to deliberately) through use of fireworks. A barrister with more than 22 years of experience who has worked extensively with the Animal Welfare Act has never had a single case of this kind presented to him for consideration.

The discussion therefore involved a theoretical application of the Act to situations where fireworks cause death or injury to an animal based on the extensive expertise offered by the group.

1. Section 4 offence: unnecessary suffering

The Animal Welfare Act contains the Section 4 offence of causing unnecessary suffering, and the Section 9 offence of failing in a duty of care. A Section 9 offence only relates to the person responsible for the animal in question. Therefore, the only part of the Animal Welfare Act that could potentially be used to hold someone to account for letting off fireworks that have caused injury or death to an animal would be Section 4.

For a Section 4 offence to have been committed the conditions of unnecessary suffering given within the Animal Welfare Act would have to be met.

4. Unnecessary suffering

- (1) A person commits an offence if—
 - (a) an act of his, or a failure of his to act, causes an animal to suffer,
 - (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
 - (c) the animal is a protected animal, and
 - (d) the suffering is unnecessary.
- (2) A person commits an offence if—
 - (a) he is responsible for an animal,
 - (b) an act, or failure to act, of another person causes the animal to suffer,
 - (c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and
 - (d) the suffering is unnecessary.
- (3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—
 - (a) whether the suffering could reasonably have been avoided or reduced;
 - (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;
 - (c) whether the conduct which caused the suffering was for a legitimate purpose, such as—
 - (i) the purpose of benefiting the animal, or
 - (ii) the purpose of protecting a person, property or another animal;
 - (d) whether the suffering was proportionate to the purpose of the conduct concerned;
 - (e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

There was discussion over whether an animal evidently distressed by fireworks would meet the legal definition of unnecessary suffering. We know that fireworks can cause temporary distress to animals, but would this be enough to meet the criteria of unnecessary suffering in a way that constituted a breach of the legislation?

If fireworks cause distress that subsequently leads to behaviour that results in suffering through injury or illness, can the firework be cited as the cause of suffering in a way that can be proved, even before the responsibility of the person letting off the firework is considered?

Should a horse die or develop a clinical condition that causes them to suffer, such as illness or injury, how can the clinical issue diagnosed by a vet be attributed unequivocally to the fireworks? If a condition such as colic was caused solely or most frequently by fireworks, the attribution would be clearer, but colic is common in horses and has multiple initiating causes. Stress is a known risk factor for colic, so we can talk about fireworks increasing the risk of colic in general terms, but drawing definitive cause-and-effect conclusions in individual cases is much harder, certainly in a way that would stand up to judicial scrutiny.

“It goes against everything I stand for in terms of wanting to find a suitable solution, wanting to be able to make a case, wanting to find that this could solve things... but I cannot see for the life of me... how we could properly get a Section 4.”

If a vet or other professional witness was prepared to state that they believed exposure to fireworks had met the definition of unnecessary suffering in a particular case, the defence may have little trouble finding another vet to cast doubt on the assertion because the circumstances do not lend themselves to clear interpretation. This is a consistent feature of cases taken to court under the Animal Welfare Act and can be problematic in even seemingly straightforward hearings. An independent review of RSPCA prosecution work in 2014 noted that: *‘A striking feature of the review was the extent to which animal welfare cases based on relatively uncomplicated (and sometimes undisputed) factual scenarios could give rise to protracted and very costly proceedings as magistrates or a District Judge grappled with the conflicting opinions of veterinary witnesses.’*³

³The Wooler Review (2014)

2. 'Knew or ought reasonably to have known'

In addition, for a Section 4 offence to have been committed, it would need to be shown that the person organising and/or detonating fireworks 'knew or ought reasonably to have known' the effect that fireworks would have or be likely to have. This would have to include being aware of animals in the area, potentially covering a range of species, and the reaction those species could have to the number and type of fireworks being let off.

"It's the nature of horses that when they're exposed to something they're scared of they will run... That's something that is different from some other species. For example, cats might try and hide away to remove themselves from the source of fear; horses can't."

It isn't a legal requirement for people to have understanding of the basic needs and characteristics of animals other than those they are responsible for. Is it realistic to expect each person planning to use fireworks to voluntarily risk assess all the circumstances to determine whether an adverse outcome is 'likely'? To do so, they would need to consider:

- The number and species of animals in the area where a display is planned
- The innate perceptions and behaviours of those species (such as horses being flight animals with highly developed senses and a strong fear response)
- Other possible factors causing stress to an animal (such as being new to the home or feeling ill)
- The ability or otherwise of an animal's owner to mitigate the impact of fireworks

Even though the risk of being adversely affected to some extent by fireworks would be considered high in many species, including horses, the number of cases resulting in severe injury or death is a small proportion of broader outcomes. This makes it harder to know when and how a person planning a firework display should determine that a serious incident is 'likely'.

3. Section 9 offence: duty of care

It was suggested that consideration could be given to whether the definition of a Section 9 offence might be extended or adapted to include the actions of a third party that then influenced the behaviour of an animal. For example, by letting off fireworks close to where an animal is kept, a person may then potentially be guilty of imposing an unsuitable environment on that animal.

Currently, the provisions of Section 9 of the Animal Welfare Act only apply to a person responsible for the care of an animal by being the owner and/or keeper.

9. Duty of person responsible for animal to ensure welfare

- (1) 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.
- (2) For the purposes of this Act, an animal's needs shall be taken to include—
 - (a) its need for a suitable environment,
 - (b) its need for a suitable diet,
 - (c) its need to be able to exhibit normal behaviour patterns,
 - (d) any need it has to be housed with, or apart from, other animals, and
 - (e) its need to be protected from pain, suffering, injury and disease.
- (3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular—
 - (a) any lawful purpose for which the animal is kept, and
 - (b) any lawful activity undertaken in relation to the animal
- (4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

“The problem with Section 9 is that it only relates to an animal that you’re responsible for.”

The duty of care was designed to allow relevant inspectors and field officers to take a more preventative approach to animal welfare. By being able to address clear gaps in standards of care that were adversely affecting an animal’s welfare, steps could be taken to help an owner make improvements, rather than having to wait until the point of unnecessary suffering being clinically diagnosed was reached. In the majority of cases where animal welfare is a concern, the focus on the responsibility of those who own and care for an animal is appropriate and allows legal action to be taken against those who breach the legislation.

Challenges have already been outlined in relation to applying the terms of unnecessary suffering in cases where fireworks have been let off by a third party and in providing evidence of cause and effect. Further discussion would be needed to consider whether there is any scope for any person other than the owner and/or keeper of an animal to have a duty of care for the animal’s welfare beyond that of not causing unnecessary suffering.

4. Prevention rather than prosecution

Efforts to improve animal welfare are focussed on preventing harm, reserving legal action for the most severe cases of cruelty and neglect. Prosecutions are complex, time-consuming and expensive and usually mean that animals have suffered or even died before the case is heard. In addition to ensuring that those responsible for serious breaches of legislation are culpable, the Animal Welfare Act also works as a deterrent to show that caring for animals involves responsibility and accountability. The Act’s effectiveness as a deterrent has increased significantly since the sentencing threshold was increased in 2021, raising the maximum prison term for offenders from six months to five years.

However, without a precedent where the Act has been used to address the suffering of animals as a result of fireworks, the regulations don’t function as a deterrent in any way.

“...because we don’t have a precedent of a successful prosecution case, it’s very hard to say with any conviction or power behind it that if you go ahead, and this happens, there will be consequences.”

5. Criminalising a legal activity

A major disconnect that prevents the Animal Welfare Act being used in cases where animals have been adversely affected by fireworks is the fact that setting off fireworks in line with regulations is a legal activity. Anyone over the age of 18 can set off fireworks on any evening of the year. Although it is not permitted to let off fireworks in a public space (such as a street or carpark) it is lawful to set off fireworks from private locations such as gardens, or communal areas where appropriate permission has been granted. The freedom of use makes it difficult to consider at what point an offence has been committed when the action currently only becomes an offence based on a particular outcome.

If a person riding a loud motorbike happens to accelerate on a road next to a horse's field and that horse spooks and injures itself as a result, the rider is highly unlikely to be investigated and prosecuted under the Animal Welfare Act because riding a roadworthy motorbike within speed limits on the public highway is lawful. Someone driving a car who unintentionally runs over a cat would also not be liable for prosecution. In addition, some animals suffer systematically through legal activity. Many battery hens suffer, for example, but are kept in a way that complies with current legal requirements.

We have to ask not only whether someone can be prosecuted for something that is, in itself, legal, but whether we should want to pursue that course of action.

Fireworks can be let off in a way that meets the definition of unnecessary suffering when they are used in a manner where suffering to an animal is deliberate or inevitable. Such cases allow the Animal Welfare Act to be used in the way that was intended, namely to define a line beyond which actions are classed as illegal. A prosecution could follow if, for example, a person attached a firework to an animal or deliberately let one off towards an animal as these would be likely to fall under the definition of a criminal act.

"I think the fundamental problem with the Animal Welfare Act and this issue is that the Act wasn't written to criminalise legal activity... which is why we in the RSPCA have never prosecuted for a firework display."

6. Who is responsible?

Legally, a person letting off fireworks on private land or at an organised event currently has no responsibility for the welfare of animals (other than their own) within the vicinity. Such guidelines as are available on using fireworks safely don't constitute a statutory requirement.

Even if it was felt that unnecessary suffering because of fireworks had taken place in a particular situation, the question then arises of who has committed an offence. Has the person who lit the firework committed the offence, the person who organised the display or the chair of the charity or organisation in whose name the display is carried out? How could it be proved who had read correspondence outlining concerns about the potential impact of planned fireworks on animals in the area?

“And then who do you prosecute? That's another problem.”

There is also the question of linking a specific firework or display with the suffering caused in a way that is evidentially sound. In addition to a large display nearby, there were also a few fireworks being let off in a nearby garden at the same time. Which firework caused the incident? Or was it an the cumulative effect of multiple fireworks being let off, in which case, how can it be determined who is responsible?

The question was raised as to whether a campaign to raise awareness of the negative impact of fireworks on animal welfare would make it more straightforward to demonstrate that someone letting off fireworks knew, or ought reasonably to have known, that there was a risk attached to their actions. While it was agreed this could make it marginally easier to argue that point, overall it would remain extremely difficult to suggest that the person letting off fireworks was directly responsible for an animal's suffering.

The group also considered whether the Animal Welfare Act plays a role in increasing the responsibility of owners. Individuals organising firework displays are encouraged to let people in the local area know when and where the display will take place, but does that mean responsibility then sits with the owner to safeguard their animal(s)?

“ If you know your horse is going to stress when there's fireworks, then what are you going to do to mitigate that? And that's where it's tricky to see who's at fault here.”

It was agreed that owners generally do the best that they can to protect their animals if they are aware that fireworks are going to be let off. If there was a very obvious risk and an owner took no steps to reduce the risk despite it being straightforward to do so, in theory there could be some scope to demonstrate a causal connection if the animal subsequently suffered. But, again, it was noted that the Animal Welfare Act is not designed to criminalise lawful behaviour, including an owner managing their animals responsibly. Even an animal that has never been visibly upset by fireworks in the past may exhibit a strong fear response on another occasion, making it very difficult to predict the risk of a serious outcome with accuracy.

“...no matter what a horse owner does... if a situation’s going to arise and a horse is going to go into that panic mode and into that fight or flight reaction, there’s just not anything that they can do.”

Sedation is a pharmaceutical option commonly used in horses and other animals to help reduce stress and the chance of injury when fireworks are likely to be set off. However, sedation is far from an ideal solution for a number of reasons:

- The most effective sedation is administered intravenously, making it an invasive procedure that needs to be carried out by a vet. This comes at a cost to the owner.
- Sedation wears off relatively quickly, meaning a top-up is likely to be needed after an hour or two for the effects to be sustained.
- Fireworks are no longer an event limited to November 5 – there are often displays on several consecutive nights over the Bonfire Night period. It seems unfeasible and unfair to sedate an animal repeatedly. Repeated use also increases pressure on the liver and kidneys.
- Sedation is not a suitable option once an animal is stressed as adrenalin limits the effect of the drug. It also makes it much harder to administer an injection and therefore more dangerous for the vet and handler.
- A drug such as ACP which is available as tablets was not considered useful as its sedative effects are limited and although it may hamper an animal’s ability to express fearful behaviour, mentally they are still fully aware of what is going on around them and therefore even more stressed by their inability to react to what they are experiencing.

7. Burden of proof

Even if there was a strong belief that the way fireworks were let off did constitute an offence under the Animal Welfare Act, and the person responsible was identified, being able to prove cause and effect to the satisfaction of a court would be challenging.

“It’s about proof isn’t it? Even though you know what’s happened, you can’t prove it.”

If a horse was showing signs of extreme stress in the stable and sustained a wound, even if an owner managed to film the moment when the horse became injured, would you also need to capture the sight and/or sound of fireworks going off at that moment for it to be considered as evidence? Even with this level of evidence, there was doubt that it would be possible to demonstrate that fireworks had unequivocally been the cause of the injury and subsequent suffering the horse experienced?

A case where a firework has directly caused an injury to an animal (such as landing on them) would be more straightforward. But a horse that has ‘bolted’ and caused itself injury as a result would be very difficult to show.

“I’m not saying that you can’t say fireworks cause distress and suffering to animals because we all know that they do. What I’m saying is that from a case perspective you’ve got to prove that that firework has directly caused that suffering.”

If a test case was put together using the Animal Welfare Act on this issue, the barristers felt that it would inevitably be lost. It would be highly likely to be dismissed before reaching trial on the grounds of no case to answer or an ‘abuse of process’ argument. Even if the defence did not present either of these arguments prior to the hearing, the case would almost certainly be lost before the trial was concluded. Once a test case has been lost, a precedent has been laid down that makes it clear that there is no realistic threat of legal consequences should a firework display be held in full knowledge that it poses a risk to the welfare of animals in the area.

8. An alternative approach

There was consensus across the group, not only that the Animal Welfare Act is not suitable legislation to tackle the issue of animal welfare in relation to fireworks, but that an alternative regulatory approach is needed.

Terms such as 'responsible use of fireworks' and 'misuse of fireworks' are frequently included in government statements about fireworks but there is lack of definition as to what the phrases mean, particularly in relation to animal welfare.

"As a vet, to be constantly patching these horses up and knowing it's every year. Every year we have wounds, we have colics, we hand out lots of oral sedation. We go and sedate horses and we try our best to keep them protected and all their owners turn up to do the same. But I think that we should definitely be concentrating on getting some legislation that is more specific... to try and prevent this from happening."

"We are obviously limited to what the legislation that exists can allow us to investigate. I agree that it needs a very specific piece of legislation."

"We are trying to make current legislation fit but it needs its own piece of legislation."

"You need to have other legislation in place to put some boundaries around fireworks because at the moment there isn't any."

"Get better guidance and regulation around the fireworks that then defines what's legal and what's illegal, which opens the door to not criminalising a legal activity, but criminalising people who have actually breached the regulations that are set out in legislation."

Particular aspects of firework use that members of the group felt would be beneficial to regulate include:

- Maximum decibel levels
- Distance (taking into account variable factors such as height, wind direction, explosive power etc)
- When fireworks can be let off
- Who can buy fireworks and from where
- Who can let fireworks off
- What steps should be taken by those organising firework displays to limit adverse impacts
- What guidance should be available to everyone who purchases or uses fireworks

“It’s not just Bonfire Night and it’s not just New Year, we have them going off regularly on different nights of the year. There were some being let off the other night here for some reason.”

There was full awareness of issues which mean bringing in new legislation is not simple or uncontroversial, but all felt that such issues should be explored and understood in order to be overcome:

- Imposing a blanket ban on any social activity is rarely a popular step and politicians are very aware of this.
- Licensing could be a practical regulatory route but would sit with local authorities, who are already dealing with significant pressures.
- Regulations without enforcement are rarely effective.
- Criminalising activities should be a last resort and other avenues looked at first.
- Codes of practice could be a useful starting point to allow full consideration of the issues, engage all relevant stakeholders and support awareness raising initiatives.
- It will be useful to follow the implementation of firework control zones and licensing in Scotland now that the Fireworks and Pyrotechnics (Scotland) Act has come into force.

Summary of key discussion points

- There is no legal precedent of the Animal Welfare Act being used to address a case where fireworks have inadvertently caused the injury or death of an animal.
- For a person to be guilty of causing unnecessary suffering, they should 'know or ought reasonably to have known' the effect(s) their actions would have on the animal in question. It isn't realistic that anyone letting off fireworks will appreciate the impacts different fireworks may have on different species in different circumstances.
- Setting off fireworks in accordance with regulations is a legal activity. Therefore, it would be extremely difficult for legitimately letting off fireworks to be seen as an offence under the Animal Welfare Act. The Act cannot arbitrarily criminalise an activity that is otherwise lawful.
- It seems unrealistic and unfair to expect owners to be able to fully protect an animal from the distress caused by fireworks when regulation of the activity itself is so limited, lies almost entirely outside the owner's control and there is no requirement for someone organising a display to let animal owners in the area know in advance that a display is being planned.
- Even if common sense made it clear that a particular firework display had directly caused the injury or death of an animal and legal action was being considered, the link between cause and effect would be extremely difficult to prove in a way that stood up to being tested in court.
- Judicial proceedings are made more complex and difficult to prove when different veterinary experts are part of the prosecution and defence teams and submit contradictory statements. It could be relatively straightforward for a defence team to cast doubt on the evidential basis linking fireworks to an animal's suffering.
- If a case involving the inadvertent death or injury of an animal due to their reaction to fireworks was put forward, it was felt very likely that the case would not make it to the courtroom, or be dismissed before the trial had been heard in full.

- The discussion group unanimously agreed that rather than the enforcement sector shying away from considering use of the Animal Welfare Act in cases where fireworks have caused suffering to animals, the Act itself simply is not a workable legislative tool in these circumstances.
- Broadening the scope of the Animal Welfare Act to make it more suitable as means of addressing cases involving fireworks would be a significant change to the legislation. It risks bringing a huge range of other legal activities under potential scrutiny alongside use of fireworks.
- Consideration needs to be given to other regulatory approaches that can more effectively balance safe and considerate enjoyment of fireworks with the many adverse impacts of these devices on both animals and people.

“...I really can’t see how we could ever realistically prosecute under Section 4 in relation to an organised event or even an ad hoc firework display. I just cannot see it. There are so many hurdles and I think the politicians have got it completely wrong.”

Conclusion

All members of the roundtable discussion group agreed unequivocally that the Animal Welfare Act cannot realistically be used to address cases where fireworks inadvertently lead to the death or injury of an animal. There are multiple reasons why the legislation is not the correct regulatory mechanism in these situations and it is therefore unsurprising that there is no case law to demonstrate otherwise.

The Animal Welfare Act was written to do a particular job, and overall it does its job well. Legal use of fireworks, either privately or as part of an organised display, fall outside the scope of what the Act was designed to achieve.

The adverse impacts of fireworks go far beyond animal welfare, incorporating people, public services, wildlife and the environment. In addition, use of fireworks is evolving, with displays no longer being restricted to traditional, seasonal events.

The overall conclusion of the roundtable is that the Animal Welfare Act cannot be viewed as a means of protecting animals from the risk of fireworks. A revision of regulations around fireworks themselves is needed if continued incidents of animal injury, illness, trauma and death are to be prevented and the associated stress and costs faced by owners mitigated.

For further information please go to
www.redwings.org.uk/fireworks
or email campaigns@redwings.co.uk

“This is a hopeless piece of legislation to try and control fireworks in relation to animal welfare. It falls at about four or five different hurdles. I think we’re putting a square peg in a round hole and it’s never going to fit.”

Led by Redwings Horse Sanctuary



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