

# Animal Protection, as provided by the Laws of Malta

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In this article, **Jessica-Ann Spiteri** delves into the local and EU laws which delve on Animal Protection, starting with Chapter 439 of the Laws of Malta, as well as the relative Directions relating to the subject matter.

**TAGS:** Animal Welfare Act, Comparative and EU Law

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Animals are beings which do not have a voice, and yet they are still an integral part of our lives. As a law student and as a person who dearly cares for animals, it is interesting to examine various legislations and regulations which protect and secure the lives of animals in Malta. Why? Because, while animal abuse has decreased in our country, it has not been entirely eradicated either.

The first piece of legislation which is to be examined is the Animal Welfare Act, Chapter 439 of the Laws of Malta. It was enacted in February 2002 and has been recently updated. The Act begins by defining animals, animal experiments, an animal welfare officer, ill treatment and much more.

The third article of this Act is one of the most important. This is because the State is declaring that it will:

*“protect the life of animals and to prevent and punish acts of ill-treatment in their regard. In particular the state shall protect such animals from undue labour and work practices which are beyond and not consonant with their nature. Furthermore, the State also considers that “animals are sentient beings and that it has the duty to promote the welfare of animals, and that the welfare of animals is to be protected through the intervention of the State through its legislative, judicial and administrative organs.” In addition, “the State recognises that it is its duty to collaborate with voluntary organisations in the field of animal welfare, and that it is its duty to promote the culture of respect towards animals.”*

This article implies that the government is binding itself to do its utmost to take care of animals in different ways. Furthermore, it would also create or collaborate with other organisations to safeguard animals' health and rights. An astounding accomplishment was the establishment of a Council for Animal Welfare as explained in Article 4 of this Act. It not only explains its composition and powers, but also the number of persons who would be representing various animals and protecting their rights.

In addition, the Act explains how animals shall not be kept unless such legislation dictates as such<sup>1</sup>. Article 8 illustrates how an animal is to be looked after or cared for. It begins by expressing that animals are to be fed and watered, not be caused unnecessary stress or pain, and are not to be abandoned. This clearly emphasises that the carer or owner of such creature is to be held responsible with regards to their health and welfare. Sub-article 4 of such article further states that such animal is to not only be provided with a healthy environment, but also a healthy diet so that such

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1 Animal Welfare Act, Chapter 439 of the laws of Malta, Article 7

animal's behavioural patterns will not be disrupted. This means that when an animal is cared for in the right manner, it will not become aggressive or violent. An enlightening section in this piece of legislation relates to surgical procedures on animals<sup>2</sup>, most importantly:

*“modifying the appearance of an animal by which any part of the animal's body is removed or damaged, other than for a curative purpose, shall be illegal, unless otherwise prescribed in regulations made under this Act.”*

Pertaining to the killing of animals, the Minister responsible would be able to specify in which situations it would be possible to kill an animal and in what manner, provide for the manner and persons who would be given permission to kill such animal and also provide for the slaughterhouses and equipment to do so. When it is necessary to terminate an animal's life, this shall be done with the least possible physical and mental harm to the animal.

Article 15 deals with the housing of animals. It explains how animals are to be housed, who is allowed to take care of such animals and what types of species are to be housed. There is also the possibility for the Minister to provide a housing system for animals, however there are limits to what the Minister can do or provide in regard to such housing system. Furthermore, the Director for Veterinary Services will have a say in the matter with regards to permits for such housing systems.<sup>3</sup>

When speaking of the breeding of animals, Article 20 states that the Minister not only has the ability to make regulations in regards to breeding of animals, method of breeding of the different animal species and categories to which such can be used for breeding purposes. On the contrary, the Minister also has the ability to make regulations in regard to when the young of such animals may be separated from their parents. Also, all those involved in the breeding of animals are to be responsible for the:

*“anatomical, physiological and behavioural characteristics of such animals, which are likely to put at risk the health and welfare of either the offspring or the parents.”*

Part IX of this legislation relates to transport of animals by road, sea or air. Certain species or categories of animals can only be transported from one place to another under certain requirements. This includes the fact that the animals which are transported are to be accompanied by a certificate, identification marks or documents indicated in the certificate, along with other requirements. It has to be kept in mind, however, that such

2 Animal Welfare Act, Chapter 439 of the laws of Malta, Article 9

3 Animal Welfare Act, Chapter 439 of the laws of Malta, Article 17, Article 18 and Article 19

requirements would not apply in the case of or enterprise or in the case of transport abroad of animals which have not been loaded for transportation purposes in Malta.

Regarding the issuing of a certificate, Article 24 states that it can only be issued after the animals have been inspected before being loaded. There are reasons for which such certificate would not be issued, such as if the animals are not carrying identification marks or documents, along with other grounds. It is also important that during the transportation of animals, the transporter shall, at all times, carry appropriate documentation. Lastly it has to be kept in mind that a certificate can be revoked by the Director for Veterinary Services.

Articles 27-31 describe animals which can be used for competitions. Animal fights are not to be organised, and any occurrence of such is to be considered illegal. When examining the situation of circuses, Article 31A states that,

*“it shall not be lawful for any person to use animals for performances, exhibitions, shows or for the training thereof in circuses.”*

In addition, Article 31B states that: “

*it shall not be lawful for any person, including circus operators and circus promoters, to promote, advertise or allow the promotion or advertisement of circuses using animals in Malta.”*

Other articles describe the situation if one contravenes or does not comply with such articles, along with the ability or inability to treat and reallocate animals. One will also find exemptions to when such regulation applies, such as licenses zoos.

Animal experiments are frowned upon by many communities. From the writer's point of view, animal experiments are acts which not only hurt animals, but torture them for results that may not be effectual on human beings. Article 32 emphasises that specific people who have been issued a license by a Minister acting on the advice of the Council, in conjunction with the Director for Veterinary Service would be allowed to, for example, alter genetic material of animals and administer particular substances and other functions. In sub-article 2 of such article, the regulation seems to promote the protection of animals in a very strange way.

Such animals who have been subjected to tests or alterations by biotechnology are not allowed to be produced, transported, put at another person's disposal, sold, bought, kept in stock to be sold, disposed of or

introduced in Malta, without the written authority of the Minister. It seems that the Minister would allow such alterations or tests to occur only when there is the need for such and not whenever the people who are licensed desire to mass-produce experiments by which animals would be harmed unconditionally. It is true that there are ethical conditions which those who conduct experiments are to follow in order to ensure that animals would not be tortured or have a degrading life.

Unfortunately, these rules or principles are not always followed. Many laboratories have been shut down, but a very recent case has shown that animals are still used in obscene ways for experimentation so human products would be tested or diseases afflicting humans may be cured. Unfortunately, many experiments and alterations keep happening for years with no scientific gains and many animals like baboons, cats, dogs of a specific breeds such as beagles or golden retrievers, mice and rats suffer unconditionally. Recently, *The Guardian* posted that a laboratory near Hamburg,

*“subjected monkeys to “barbaric” treatment and kept unwell dogs in squalid conditions is under investigation amid calls for its closure.”<sup>4</sup>*

This statement, and even the raw footage produced by the Cruelty Free International and Soko Tierschutz, who shot it whilst in the laboratory of Pharmacology and Toxicology (LPT) near Hamburg, shocked many. Even though the tests may seem necessary in order to produce a particular product which can help human beings, animals should not suffer. They should not be chained or tormented by machinery. Unfortunately, many tests do not produce the expected results or do not help human beings at all, whilst animals would have been tormented for years on end to no avail.

The legislation in Malta tries to protect as much as possible the lives of animals used for testing. For example, Article 33 states that the licence will only be issued by the Minister if the practices in question will not affect the health or welfare of animals, and such practices shall not be in breach of ethical rules and standards.

Furthermore, the licence is to specify the practice for which it is required, and it may include any conditions and restrictions which the Minister may deem necessary. Therefore, it is made clear that no animal experiment may be conducted without a licence. Most importantly, the Minister may make regulations providing for procedures to be followed in the case of

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4 ‘Barbaric’ Tests On Monkeys Lead To Calls For Closure Of German Lab’ (2019) <<https://www.theguardian.com/environment/2019/oct/15/barbaric-tests-on-monkeys-lead-to-calls-for-closure-of-german-lab>> accessed 21 October 2019.

experiments involving an animal,<sup>5</sup> and only persons who are deemed a competent authority may conduct such experiments. Licences would only be granted to responsible and competent people who are subject to restrictions as provided by the Minister. It is worth mentioning that if such restrictions are not implemented properly, such licence would be useless.

However, today, because Malta forms part of the European Union, not only does it have models to follow, but Directives which were implemented throughout its Member States. The European Union has been doing its utmost to protect such creatures through the use of these Directives, one example being the Council Directive of 24 November 1986, known as the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (86/609/EEC)<sup>6</sup>. However, this is no longer in force. Instead, there is Directive 2010/63/EU<sup>7</sup> regarding the provision of protection of animals used for scientific purposes so to revise the previous Directive. This directive has a wide range of protection granted to various species of animals especially foetuses of mammals where its aim is based on the principle of the Three Rs so to replace, reduce and refine the use of animals used for scientific purposes.

Rerouting back to the Animal Welfare Act, Article 38 explains what purposes animal experiments should have. Most importantly, no animal experiments should be carried out if there are other means to conduct such experiments. This shows that the Maltese government is trying to reduce the use of animals when it comes to experimentation. Also, certain experiments are considered as unlawful in the eyes of the law.<sup>8</sup> The licence holder<sup>9</sup> whose licence was granted by the Minister has various obligations, such as that of keeping records<sup>10</sup> of the experiments which were conducted. In the case of aggressive animals which may be a harm to human beings or other animals, these will not be allowed to be bred, imported or sold in Malta, according to Article 43.

To further expand on the topic of dangerous animals, one is to examine Subsidiary Legislation 439.19,<sup>11</sup> which deals with the ownership and the keeping of dangerous animals. This regulation will not apply in cases of

5 Animal Welfare Act, Chapter 439 of the laws of Malta, Article 36

6 (1986) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01986L0609-20130101>> accessed 21 October 2019.

7 (2010) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0063&from=EN>> accessed 21 October 2019.

8 Animal Welfare Act, Chapter 439 of the laws of Malta, Article 39

9 Animal Welfare Act, Chapter 439 of the laws of Malta, Article 40

10 Animal Welfare Act, Chapter 439 of the laws of Malta, Article 41

11 (2016) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12462&l=1>> accessed 21 October 2019.



housing of or the keeping of animals in pet shops which are not dangerous, in the case of the housing and keeping of food-producing animals registered or licensed with the Veterinary Services Directorate in terms of the Prevention of Diseases Ordinance and the Veterinary Services Act, and also in the case of licensed zoos.

A dangerous animal will be classified in different categories. First of all, the Director will consider whether an animal is declared to be dangerous. Such animal would only be kept in a licensed zoo and would be identified under Schedule B, which is a list produced by this Subsidiary Legislation. If such animal is not found in a zoo after the date of coming to force of these regulations, the animal may be kept on an adequate site as long as the provisions laid down in these regulations are observed. If such animal is considered dangerous and is not found under such Schedule, then an emergency order would be issued, and steps would be taken for the dangerous animal to be kept in a licensed zoo. An emergency order would have the same effect as though the dangerous animal were included in the list reproduced in Schedule B. It shall cease to have any effect on the expiration of the period aforesaid. Most importantly, any person who intends to be a keeper of a dangerous animal shall apply to the Director for registration as a keeper and abide by any other obligations and rules which one has to abide by to become a legal keeper.<sup>12</sup> A keeper of a dangerous animal is solely and fully responsible for the same animal and for any matter relating to the health and safety of the dangerous animal and the general public.<sup>13</sup> Furthermore, the keeper of dangerous animals is required and not merely allowed to keep certain instruments, such as a tranquilizer gun and other devices or substances so as to ensure the safety of both the general public and the animal itself. Such device or instrument shall only be used in case of extreme necessity.

An animal of such categorisation will only be brought into a site if the written approval of the Director is given. Also, the site where the animal is being kept has to not only be adequate, but also has to be a safe space which caters for all the requirements for such animal. Moreover, the micro-climate is considered important, so that the animal would be placed in an environment similar to its natural habitat. Of course, there are other requirements, such as the animal's enclosure using sturdy durable material and being built in a way so as not to hurt the animal or enable its escape. Article 5 further states that, amongst other obligations, the Director responsible for Veterinary Services has the ability to request that some enclosures be monitored by CCTV 24/7 and have recordings for the prior 3 months, which are to remain available should the Director request

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12      Subsidiary Legislation 439.19, of the laws of Malta, Article 4 (2)

13      Subsidiary Legislation 439.19, of the laws of Malta, Article 6

them. The rest of the Subsidiary Legislation deals with national animal registry, record-keeping of such dangerous animals in the register, return of an animal lacking necessary authorisation, the Director's authority to inspect such enclosure, enforcement notice, notification of escape or death of the dangerous animal, right of appeal from the decision of the Director, insurance, applicability of other laws, other additional provisions or requirements and offences and penalties.

The rest of the Animal Welfare Act,<sup>14</sup> on the other hand, deals with the Commissioner for Animal Welfare's functions, enforcement powers of the Director for Veterinary Services or Director for Animal Welfare, offences and penalties for any person in violation of such Act. The Minister has the power to make regulations regarding restrictions or obligations, administrative penalties, the hunting of animals, appeals and the revision of the Director's decisions and other articles which are found under this regulation.

In 2018, it became illegal to chain up dogs in Malta. In this regard, one would find Legal Notice 318 of 2018. No person is in any way allowed to:

*“fasten, chain or restrain a dog, or cause a dog to be tethered, fastened, or chained, tied to any stationary object as permanent means of housing of a dog or as a primary method of confinement of the dog”*

However, such prohibition will not apply in the case of restraining or tethering a dog during veterinary procedures, or when a dog is being transported as logically, a dog would be confined during its transportation. Moreover, a veterinary surgeon or an animal welfare officer is allowed, when carrying out an inspection, to command the keeper or owner of the dog to restrain it for some time as it may cause any harm or pose danger to property, other animals or general public. Any collars have to be adequate and used according to these legislations.

Pertaining to confinement, this is only allowed in particular instances and only in certain places or enclosures. If the dog is constrained, there are four requirements which have to be followed. First of all, amongst other things, it has to be confined in an adequate enclosure with a secure fence according to the Schedule found in this Subsidiary Legislation. Furthermore, it must be kept on a solid and impermeable floor, in good hygienic conditions and lastly, without tethering or restraints. On the other hand, if there is a condition or a situation where danger may be imposed to humans, dogs or other animals, then confinement or tethering would be allowed for a limited period.

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14 (2002) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?ap=lom&itemid=8905&l=1>> accessed 21 October 2019.



It is also wise to highlight the fact that no dog is allowed to roam freely in public roads by which they may hurt not only pose a danger to society, but even other animals. This does not mean that the regulation will prohibit any person to walk a dog which is restrained not only by a collar, but also by a leash. Nor will a person be prohibited to have a dog beside them on a sidewalk or any other space while restrained in an adequate manner. There will be no prohibition only if the owner of such dog is at all times with the dog and standing next to him. In addition, tethering or any other restraints will not be applicable in cases of guide dogs, dogs that are specifically trained to carry out particular tasks, or any other dog during veterinary visits or procedures and during training of dogs in designated training facilities or sites, including but not limited to military bases and police depots. If they would be subject to the restraint this would only be allowed if it is limited to a reasonable amount of time such as would be required for completion of the temporary task. There is also the explanation of how a dog is to be transferred. Dogs are to be transported from one place to another in a vehicle which offers protection and safety to the creature. The vehicle must be equipped with adequate flooring so that the dog would be able to sit down and lie comfortably and would not be in danger of leaping or falling out of the car.

It is worth mentioning another piece of legislation, this being Subsidiary Legislation 439.08, which describes the situation of keeping wild animals in the zoos. Such regulation defines zoos as:

*“All permanent establishments where animals of wild species are kept for exhibition to the public for seven or more days a year, with the exception of circuses, pet shops and establishments which the Veterinary Services exempts from the requirements of these regulations on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of these regulations.”*

There is also other information in this regulation, such as requirements which a zoo must follow, and that the Veterinary Service must take any necessary measures so as to ensure that zoos implement various conservation measures, licensing and inspection of existing and new zoos. Another regulation which relates to the caring of animals is Subsidiary Legislation 439.10, which revolves around the animals’ transport (protection)<sup>15</sup>. This regulation’s articles give information with regards to different scenarios, such as how transport to and from Maltese territory is to occur, the duties of a transporter, measures to prevent or reduce delays during transport and detention of animals, on-spot checks, and more. In addition, it is worth

15 (2013) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?ap=lom&itemid=11049&l=1>> accessed 21 October 2019.

mentioning that Subsidiary Legislation 36.08, which related to the transport of cattle, animals or eggs between Malta and Gozo,<sup>16</sup> was repealed by Legal Notice 418 of 2014.<sup>17</sup>

The Prevention of Disease Ordinance,<sup>18</sup> which is Chapter 36 of the Laws of Malta, and Subsidiary Legislation 36.20,<sup>19</sup> which cater for situations so as to prevent disease amongst animals, are worthy to be examined when considering animal rights and animal regulations in the Maltese Islands. Moreover, one may make reference to two other pieces of subsidiary legislation. First of all, Subsidiary Legislation 439.16, which strives to protect animals offered in pet shops (minimum standards),<sup>20</sup> and Subsidiary Legislation 499.66.<sup>21</sup> which caters for situations where there is the use of animals and animal-drawn vehicles on the road. Last but not least, there is also a piece of legislation which caters for the profession of veterinaries and the services which they provide. This is found under Chapter 437 of the Laws of Malta.<sup>22</sup>

From the author's perspective, much is being done in Malta not only to regulate and decrease the abuse on such creatures, but also to protect them. This is because everyone knows that their voices are only heard if we human beings speak on their behalf. As one can see, there are various penalties imposed against those who go against these regulations. However, in many cases of abuse, the perpetrators are not punished severely enough. This was seen in a recent case in summer where unfortunately, the abusers got nothing but a slap on the wrist, as the *Independent Gazette* stated<sup>23</sup>. Sadly, although cases like these are somewhat controlled, they are still prevalent, and one may opine that not enough is being done with regards to the protection of these creatures.

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16 (1944) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9098>> accessed 21 October 2019.

17 (2014) <<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26504&l=1>> accessed 21 October 2019.

18 (1908) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8595>> accessed 21 October 2019.

19 (1967) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9109&l=1>> accessed 21 October 2019.

20 (2014) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12084&l=1>> accessed 21 October 2019.

21 (2016) <<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12438&l=1>> accessed 21 October 2019.

22 (2002) <<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8903&l=1>> accessed 21 October 2019

23 'Disgust As Accused In Shocking Animal Cruelty Case Gets Slap On The Wrist' (*The Independent*, 2019) <<https://www.independent.com.mt/articles/2019-07-27/local-news/Disgust-as-accused-in-shocking-animal-cruelty-case-gets-slap-on-the-wrist-6736211506>> accessed 21 October 2019.

