

1

Legal Systems

National, European and International

Law is the system of rules used to govern the functioning of a particular group of people and is enforced by the imposition of penalties. It may operate at an international level, governing the relationships between states (international law), within an individual nation state (national or domestic law), or in a relatively small geographical area such as a city. Laws may also apply to particular groups of people (tribal laws) or to a union of nation states (European law). Some countries are divided into a number of provinces or states, each of which has its own laws, in addition to federal laws that apply to the entire country.

In order to understand how the law works it is useful to examine the way laws are produced and how they change over time. The precise detail of how the law works varies between countries.

1.1 Legal Jurisdictions

Laws are made at a number of different levels. The national or domestic laws of a country apply only within its sovereign territory. Some countries are divided into smaller units, for example states, each of which has its own legislature and laws but in which the national (federal law) is supreme.

Below the level of a state or province individual cities may have their own laws – often called byelaws or city ordinances – in order to deal with local issues. In addition, in some jurisdictions tribal laws apply and in the laws of some countries, and in some international laws, aboriginal rights are recognized.

European Union law applies to states which make up the Union and international law is the law that governs the relationships between states. At the time of writing, the citizens of the United Kingdom had just voted in a referendum to leave the European Union; however, the process of leaving will take several years so EU law continues to apply to the United Kingdom for the time being.

1.2 National Laws

1.2.1 What Is National Law?

The national or domestic law of a state is the law that pertains within the jurisdiction of that state, for example France, Kenya or Norway. National laws are often referred to as 'Acts', but

this varies between countries. In England this refers to an Act of Parliament. In the United States the term refers to an Act of Congress. Some Acts from different jurisdictions have identical titles, for example:

The Animal Welfare Act of 1966	United States of America
The Animal Welfare Act 1999	New Zealand
The Animal Welfare Act 1992	Australian Capital Territory (state legislation)
The Animal Welfare Act 2002	Western Australia (state legislation)
The Animal Welfare Act 2006	England and Wales
The Animal Welfare Act 2009	Norway

Clearly, in order to avoid confusion, when citing legislation it is important to quote both the date and the jurisdiction to which it applies, for example: ‘In the United States, the Animal Welfare Act of 1966 regulates the treatment of animals in research, exhibition, and transport, and their treatment by animal dealers.’

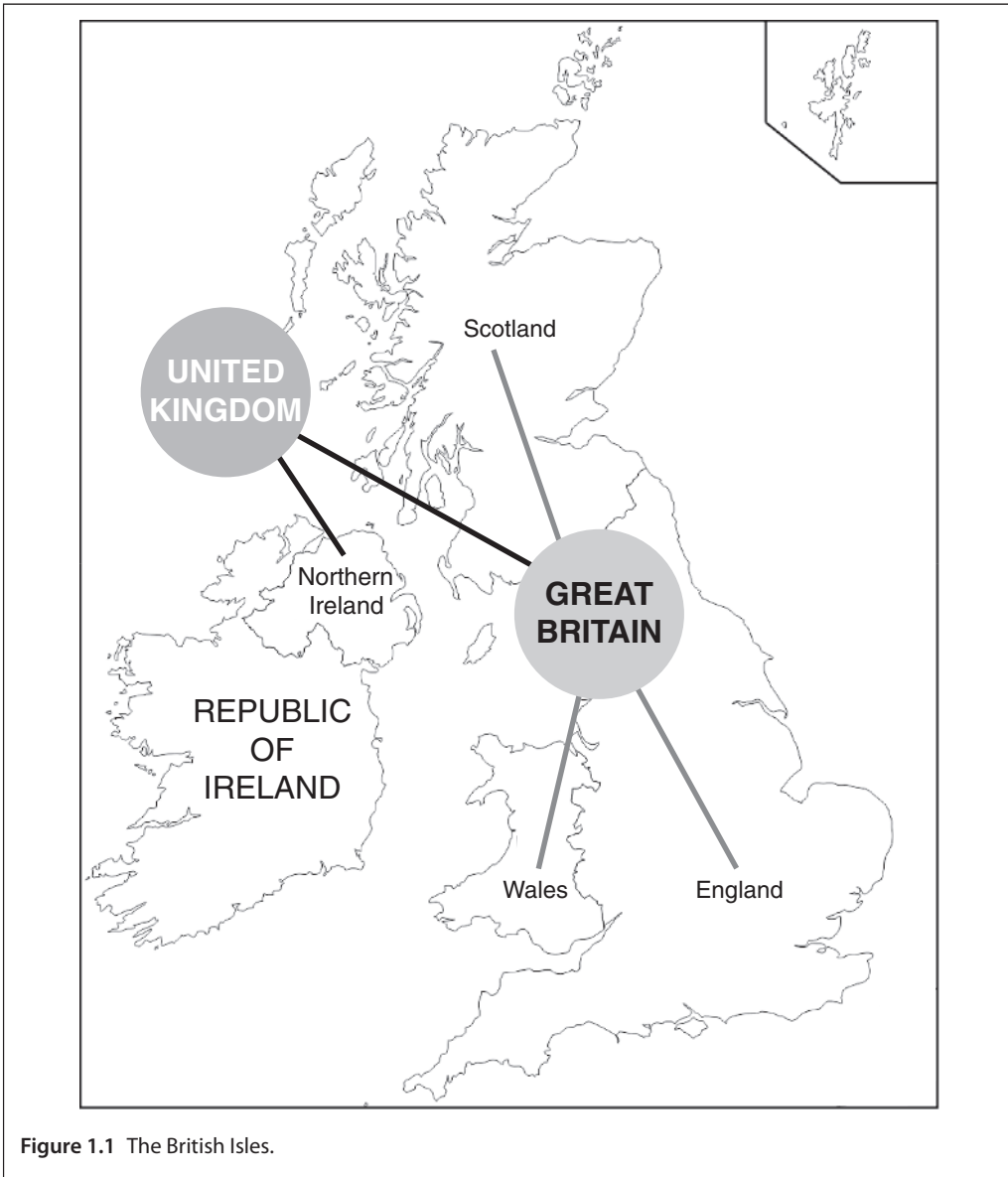
National law is complicated in the United Kingdom owing to the devolution of certain powers to the individual countries (Box 1.1). Great care must be taken when referring to laws in the United Kingdom as some apply only in individual countries while others apply throughout the United Kingdom. In some cases the same Act of Parliament contains different provisions on the same topic for different jurisdictions. For example, the Wildlife and Countryside Act 1981 applies in Great Britain (i.e. England, Wales and Scotland) but s. 1 (Protection of wild birds, their nests and eggs) has two versions; one that applies to England and Wales and a second that applies to Scotland.

Box 1.1 The United Kingdom, the Crown Dependencies and UK Overseas Territories

The full title of the United Kingdom is the ‘United Kingdom of Great Britain and Northern Ireland’. Great Britain consists of England, Wales and Scotland (Figure 1.1).

The devolution of certain legislative and executive powers to Wales, Scotland and Northern Ireland has been made possible by the Government of Wales Act 1998, the Scotland Act 1998, and the Northern Ireland (Elections) Act 1998. These powers have been devolved to the National Assembly for Wales, the Scottish Parliament (Figure 1.2) and the Northern Ireland Assembly respectively. Devolved issues generally include planning, agriculture, natural and built heritage, forestry, fishing, local government and some aspects of transport.

In addition to the four countries that make up the Kingdom, the United Kingdom has specific constitutional and legal responsibilities for its 14 Overseas Territories and three Crown Dependencies (Table 1.1). Each has its own laws, some of which are concerned with the protection of animals and ecosystems.



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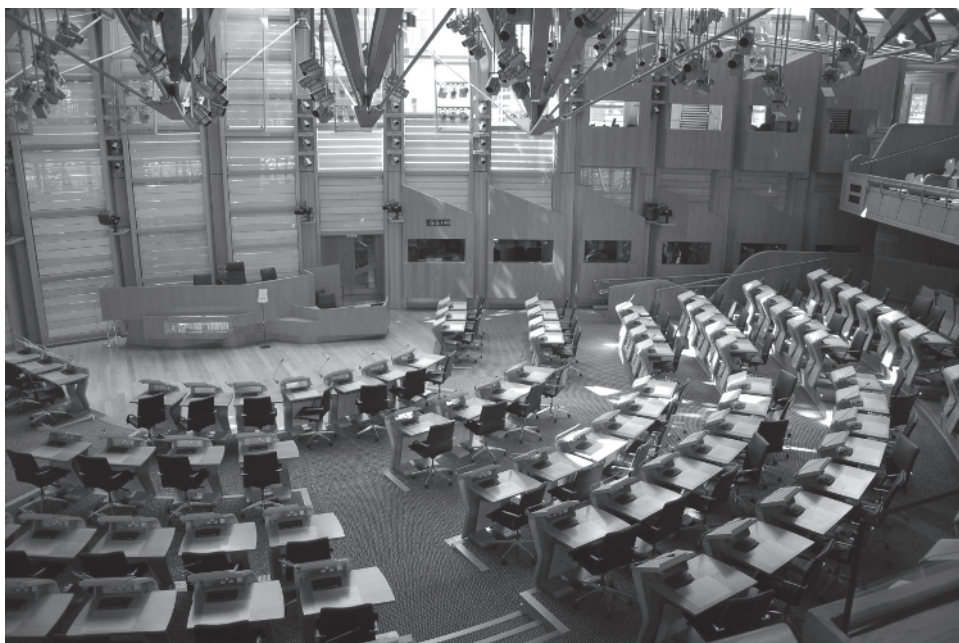
Box 1.1 (Continued)

Figure 1.2 The Debating Chamber of the Scottish Parliament at Holyrood, Edinburgh, Scotland.

Table 1.1 Constituent parts of the United Kingdom and associated Crown Dependencies.

Term	Constituent geographical areas	Legislation
British Isles	The islands of Great Britain, Ireland (consisting of Northern Ireland and the Republic of Ireland) and over 6000 smaller islands including three British Crown Dependencies: the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey	This is a geographical region rather than a legal jurisdiction.
United Kingdom	Great Britain and Northern Ireland	Some laws apply to the United Kingdom as a whole. Northern Ireland is a separate legal jurisdiction.
Great Britain	England, Scotland and Wales	Each country has some of its own laws. Other laws may apply to two or three of these countries. The term 'English law' applies to the legal system of England and Wales.
Isle of Man	Isle of Man	Self-governing Crown Dependency with its own legal system.

(Continued)

Table 1.1 (Continued)

Term	Constituent geographical areas	Legislation
Bailiwick of Jersey	Jersey and surrounding uninhabited islands and rocks: Les Dirouilles, Les Écréhous, Les Minquiers, Les Pierres de Lecq	Self-governing Crown Dependencies with their own legal systems
Bailiwick of Guernsey	Guernsey, Alderney and Sark	
UK Overseas Territories	Sovereign Base Areas of Akrotiri and Dhekelia (on Cyprus) Anguilla Bermuda British Antarctic Territory British Indian Ocean Territory British Virgin Islands Cayman Islands Falkland Islands Gibraltar Montserrat Pitcairn Islands Saint Helena, Ascension and Tristan da Cunha South Georgia and the South Sandwich Islands Turks and Caicos Islands	Each territory has its own legal system.

1.2.2 The Process of Enacting New National Laws

The process of producing new legislation at the national level begins when the government, an individual member of the government, a pressure group or some other group of individuals or organization has an idea which, if it is to be implemented, requires a change to the law. The government, or one of its members, may then take steps to change the law.

The process of producing new legislation begins in some countries (e.g. the United Kingdom and Canada) with a period of consultation during which a 'green paper' and then a 'white paper' may be produced. A green paper is essentially a broad statement of the intention of the proposed changes to the law. Its purpose is to stimulate discussion and to attract comment from interested parties. A white paper is a more detailed statement of government policy. This is not itself law but may eventually be implemented by legislation.

Verbatim records of the proceedings of a law-making body are extremely important for legal research concerned with the passage of laws, or indeed their failure to be passed, and provide an interesting insight into the views of individual politicians in arguing for or against changes to the law.



Figure 1.3 The Houses of Parliament, London, England.

An edited record of what was said in the UK Parliament (Figure 1.3) is recorded in *Hansard*. It also records votes, written statements and written answers to parliamentary questions. The report is published daily online and this is followed by a bound final version. The words of Members of Parliament are recorded by *Hansard* reporters and then edited to remove repetitions and obvious mistakes, without taking away from the meaning. An example of part of a transcript from *Hansard* relating to the presentation of a Bill to prevent the use of wild animals in circuses is provided in Box 1.2.

In the United Kingdom, and in many other jurisdictions, legislation begins as a Bill, which may eventually become an Act if it gains sufficient support from Members of Parliament, often after considerable amendment as it passes through several levels of detailed scrutiny. It then becomes law from the day it comes into force, once it has received royal assent. The structure of an Act of Parliament is illustrated in Box 1.3.

The official record of the proceedings and debates of the US Congress is known as the *Congressional Record*. A verbatim report from the *Congressional Record* of a speech made in the House of Representatives in support of the Captive Primate Safety Act is reproduced in Box 1.4

Box 1.2 An example of text from *Hansard*

Hansard – House of Commons Debates

3 Sep 2014 : Column 265

House of Commons

Wednesday 3 September 2014

The House met at half-past Eleven o'clock

PRAYERS

[Mr Speaker in the Chair]

BILL PRESENTED

3 Sep 2014 : Column 289

Wild Animals in Circuses

Motion for leave to bring in a Bill (Standing Order No. 23)

12.39 pm

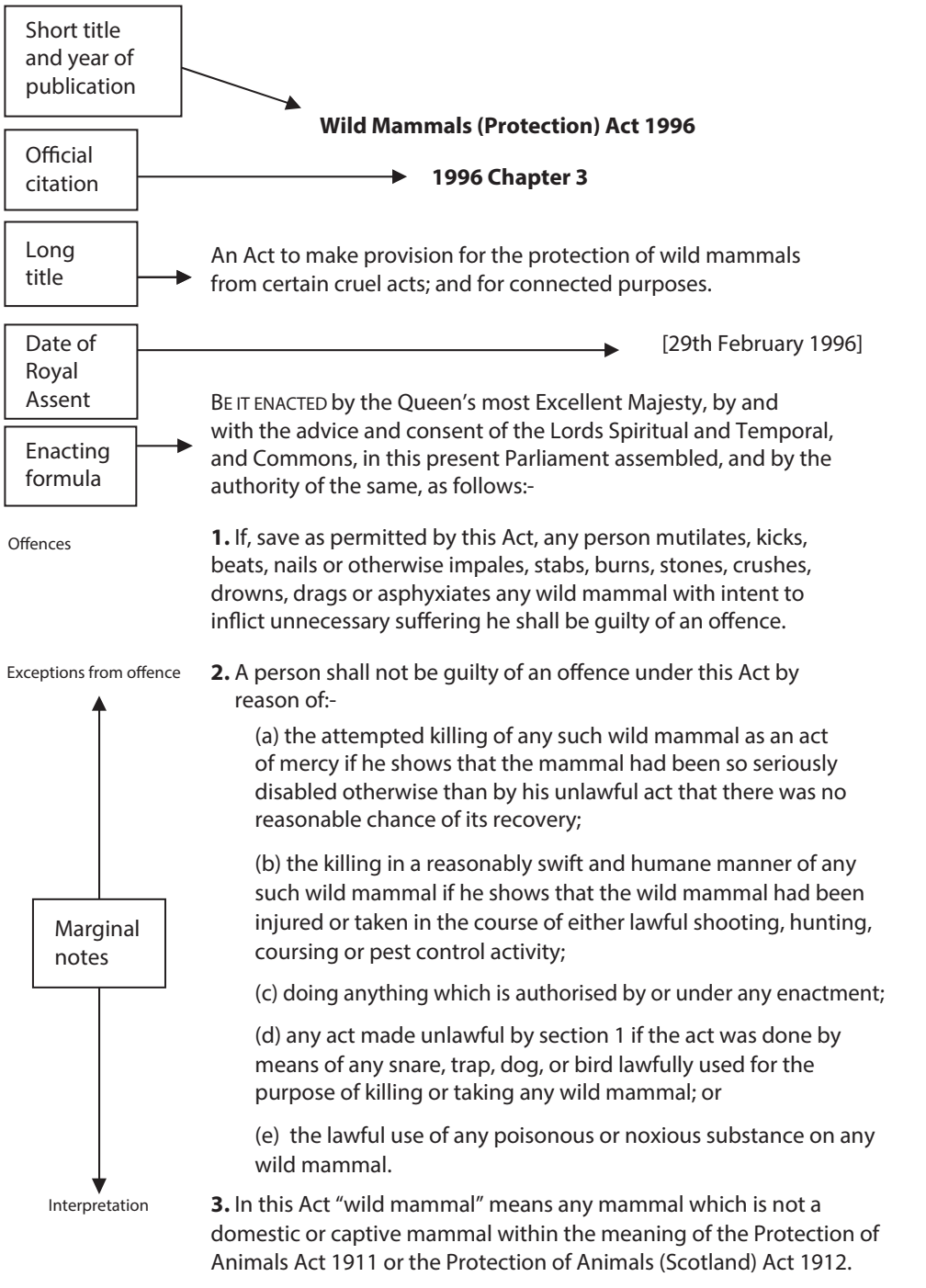
Jim Fitzpatrick (Poplar and Limehouse) (Lab): I beg to move,

That leave be given to bring in a Bill to prohibit the use of wild animals in circuses; and for connected purposes.

I am grateful for the opportunity to raise this issue once more. I am told that the matter was first raised by the hon. Member for North Thanet (Sir Roger Gale) when he was chair of the all-party group on animal welfare in 1997. It was addressed by the last Labour Government when they passed the Animal Welfare Act 2006, which laid provisions to return to the issue, as we did in 2009 when we stated we were minded to introduce a ban but ran out of parliamentary time. As detailed by the former DEFRA Minister, the hon. Member for Newbury (Richard Benyon), in a debate last year, in this Parliament, the issue had commanded 120 parliamentary questions, over 16,000 items of correspondence, five early-day motions and a Backbench Business Committee debate, ably led by the hon. Member for The Wrekin (Mark Pritchard). That was based on last year's summary of interests and statistics, and there has been continued interest this year...

...In answer to my parliamentary question of 4 November 2013, DEFRA reported that there were still 28 wild animals, including four tigers and two lions, performing for human entertainment in the UK. The animal welfare issues have been well documented, but for some they are not strong enough to warrant a ban. Most of us would say they are, but let us look at the ethics of performing animals and compare their conditions and treatment with what we expect for animals in our great zoos and wildlife parks. The contrast between their living conditions, the space they have and the environment they occupy could not be clearer...

Box 1.3 The structure of an Act of Parliament in the United Kingdom



Powers of constable	<p>4. Where a constable has reasonable grounds for suspecting that a person has committed an offence under the provisions of this Act and that evidence of the commission of the offence may be found on that person or in or on any vehicle he may have with him, the constable may-</p> <p>(a) without warrant, stop and search that person and any vehicle or article he may have with him; and</p> <p>(b) seize and detain for the purposes of proceedings under any of those provisions anything which may be evidence of the commission of the offence or may be liable to be confiscated under section 6 of this Act.</p>
Powers	<p>5. – (1) A person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding six months, or both.</p> <p>(2) Provided that where the offence was committed in respect of more than one wild mammal, the maximum fine which may be imposed shall be determined as if the person had been convicted of a separate offence in respect of each such wild mammal.</p>
Court powers of confiscation&c.	<p>6. – (1) The court before whom any person is convicted under this Act may, in addition to any punishment, order the confiscation of any vehicle or equipment used in the commission of the offence.</p> <p>(2) The Secretary of State may, by regulations made by statutory instrument and subject to annulment in pursuance of a resolution of either House of Parliament, make provision for the disposal or destruction in prescribed circumstances of any vehicle or equipment confiscated under this section.</p>
Citation, commencement and extent.	<p>7. – (1) This Act may be cited as the Wild Mammals (Protection) Act 1996.</p> <p>(2) This Act shall come into force with the expiration of the period of two months beginning with its passing.</p> <p>(3) This Act shall not apply in Northern Ireland.</p> <p>(4) Section 6 of this Act shall not apply to Scotland, and so much of section 4 as refers to that section shall also not apply there.</p>

Section number



Box 1.4 An example of text from *The Congressional Record*

Congressional Record

111th Congress (2009–2010)

CAPTIVE PRIMATE SAFETY ACT – (Extensions of Remarks – February 26, 2009)

SPEECH OF
HON. MARK STEVEN KIRK
 OF ILLINOIS
 IN THE HOUSE OF REPRESENTATIVES
 MONDAY, FEBRUARY 23, 2009

Mr. KIRK: Mr. Speaker, as the lead Republican sponsor I am pleased to rise in support of the Captive Primate Safety Act. This legislation, supported by the American Zoo and Aquarium Association, the Humane Society of the United States, and the Jane Goodall Institute, among others, would protect public health and safety and enhance animal welfare by preventing people from keeping nonhuman primates as pets.

On February 16, 2009, Travis, a 200-pound chimpanzee, attacked a 55-year-old woman in Connecticut. Travis, a popular figure in his home town who appeared in television commercials and posed for photographs, inflicted such massive injuries on the victim that she now awaits a face transplant.

This gruesome incident highlights the fact that keeping a primate for a pet is both dangerous to the owner and inhumane to the animal. Over the past decade, roughly 100 people have been injured by primates, many of whom are children. Acts of neglect have also occurred in my home state of Illinois. In October 2008, Chicago police seized a ring-tailed lemur that was reportedly found with no food, little water, and standing in his own waste.

Although nonhuman primates are our closest living relatives, because they have unique needs and can be dangerous, they should not be kept as pets. With an estimated 15,000 primates in private hands, federal legislation is needed to reinforce this fact.

This legislation would amend the Lacey Act by adding nonhuman primates to the list of “prohibited wildlife species,” declaring it illegal for any individual person to import, export, transport, sell, receive, acquire, or purchase any prohibited wildlife species. The bill exempts zoos, universities, and wildlife sanctuaries. Having passed in the 110th Congress overwhelmingly, I strongly encourage my colleagues to join me again in passing this needed and timely legislation.

[Note: This Act was not passed.]

1.2.3 Delegated Legislation

Delegated or secondary legislation is generally concerned with detailed changes to the law made under powers given by an existing Act of Parliament. It allows the government to change the law without producing a new Act. For example, s. 97 of the Environment Act 1995 gave a power to Ministers to produce regulations to protect hedgerows:

s. 97 Hedgerows.

- (1) The appropriate Ministers may by regulations make provision for, or in connection with, the protection of important hedgerows in England or Wales.
- (2) The question whether a hedgerow is or is not “important” for the purposes of this section shall be determined in accordance with prescribed criteria.

This power was exercised by the making of the Hedgerows Regulations 1997 (see Box 7.2).

Delegated legislation may also be used to make small changes to existing laws. In Great Britain, Statutory Instruments form the majority of delegated legislation but it can also include documents known as Orders, Rules or Codes of Practice. The term ‘Statutory Instrument’ is also used in Australia and Canada, but in Northern Ireland the equivalent instrument is known as a Statutory Rule.

In the Australian Capital Territory, the Animal Welfare Act 1992 allows for the making of codes of practice – which may be mandatory – as follows:

21 Contents

A code of practice may deal with the following matters:

- (a) the care and use of animals for scientific purposes;
- (b) the use of animals from pounds;
- (c) the management and control of companion animals;
- (d) the management of companion animals in pounds and shelters;
- (e) the development of new breeds of companion animals;
- (f) the breeding and selling of cats or dogs with heritable defects;
- (g) the use of electric goads;
- (h) horse agistment establishments;
- (i) animal welfare in rural industry;
- (j) animal welfare in intensive farming;
- (k) transport of livestock;
- (l) animal welfare in the management of saleyards;
- (m) livestock and poultry slaughtering establishments;
- (n) fishing;
- (o) culling of native animals;
- (p) control of feral animals;
- (q) aerial shooting of animals;
- (r) trapping and snaring of animals;
- (s) commercial pest control;
- (t) commercial keeping and display of animals;
- (u) keeping of zoo animals;
- (v) animal welfare in the racing industry;
- (w) any other matter related to animal welfare.

In the United States, primary law at the federal level takes the form of Acts of Congress. The Administrative Procedure Act of 1946 governs the manner in which the agencies of the federal government propose and establish regulations. These regulations are published in the Code of Federal Regulations (CFR) (see Section 1.7.3).

1.2.4 Looking for National Laws

It would be helpful if all of the law on a particular topic could be found within a single piece of legislation. However, even within a single country it may be difficult to locate all of the laws necessary to have a complete understanding of a single area of the law. In some countries there may be one major law concerned with the protection of wildlife, but in others, especially if the law has developed over a considerable period of time, the law may be dispersed throughout a large number of Acts and the related delegated legislation. It may even be challenging to locate all of the law concerning a single type of animal. The various laws in the United Kingdom relating to domestic dogs range from national legislation concerning dog fighting, the use of dogs in hunting and the regulation of kennels, to local byelaws concerned with the fouling of land by dogs (Figure 1.4).

A useful starting point for anyone new to a particular area of the law is to locate a general book on the subject. However, law books date very quickly as the law evolves with time. The Internet is a useful source of law and many countries have comprehensive government legislation web sites, some of which allow the user to search for laws on a particular subject without knowing the title of the law or laws they are seeking. Even these can be out of date so great care must be taken in using them. Section 1.7 describes some useful sources of laws.

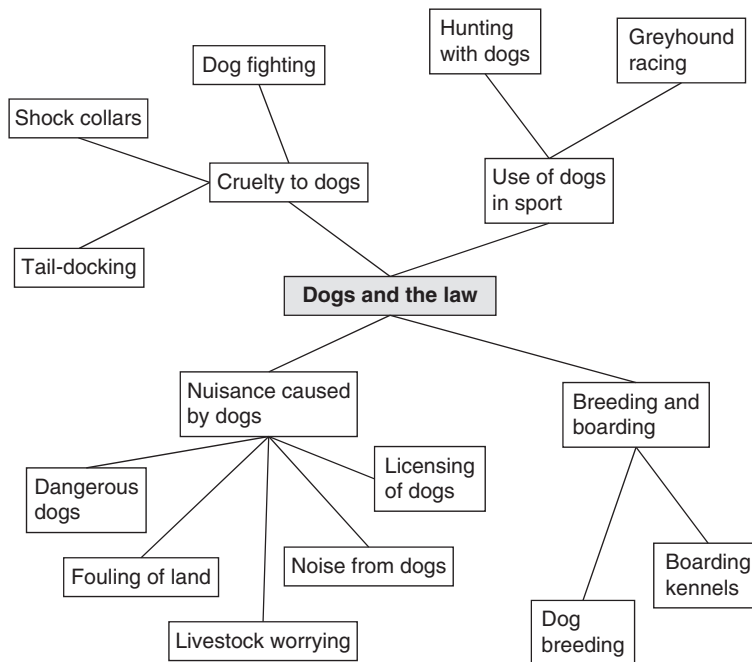


Figure 1.4 Some areas of dog ownership and use regulated by the law in the United Kingdom.

1.2.5 Federal Systems of Law

In some countries, national law is complicated by the division of their territory into states. In such countries some laws (federal laws) apply to the entire country while others apply only within a particular state or province. This type of system is known as federalism. Generally, the national government governs issues that affect the whole country while the smaller political sub-divisions govern matters of local concern. The court system is complex in countries with a federal system as courts exist at the national and the state, or provincial, level. Such systems are to be found, for example, in the United States, Canada, Australia, Germany and India.

1.3 The European Union and European Law

1.3.1 Principles

The European Union came into existence as a result of the signing of the Maastricht Treaty by the Member States in 1992, although it has a history stretching back to the 1940s. It shares a flag with the Council of Europe (Figure 1.5) (see Section 1.4.8). European law has a significant influence on laws concerned with nature conservation, environmental protection and animal welfare in the Member States (Table 1.2).

In order for the European Union to promulgate new laws there must first be a relevant provision within a treaty to which the Member States have already agreed. For example, the European Union could not make new laws to protect the environment of individuals who reside within the European Union unless the Member States had previously agreed to this as an objective and had signed a treaty containing a provision to this effect. Such a provision may be found in Art. 191 of the Treaty on the Functioning of the European Union 2016 (consolidated version):

TITLE XX

ENVIRONMENT

Article 191

(ex Article 174 TEC)

1. Union policy on the environment shall contribute to pursuit of the following objectives:
 - preserving, protecting and improving the quality of the environment,
 - protecting human health,
 - prudent and rational utilisation of natural resources,
 - promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

1.3.2 Institutions

The Institutions of the European Union include

- the Council of the European Union
- the Commission
- the Parliament
- the European Court of Justice (ECJ) (Figure 1.6).



Figure 1.5 The European flag, official emblem of both the European Union and the Council of Europe, consists of 12 gold (yellow) stars on an azure (blue) field.

Table 1.2 Member States of the European Union (July 2017).

Austria	Germany	Netherlands
Belgium	Greece	Poland
Bulgaria	Hungary	Portugal
Cyprus	Ireland	Romania
Czech Republic	Italy	Slovakia
Denmark	Latvia	Slovenia
Estonia	Lithuania	Spain
Finland	Luxembourg	Sweden
France	Malta	United Kingdom*

*On 23 June 2016 the citizens of the United Kingdom voted to leave the European Union.

The Council of the European Union is the supreme legislative body of the European Union. It is made up of government Ministers from each of the Member States and it votes on new laws. The Commission is the executive of the European Union and is made up of Commissioners appointed by the Member States. It formulates policy, proposes new laws and institutes proceedings in the ECJ where it believes that there has been a breach of EU law. Within the Commission, the Directorate-General for the Environment is responsible for environmental matters, and within this, Directorate B is responsible for Nature. The Directorate-General for Agriculture and Rural Development is referred to as DG AGRI.

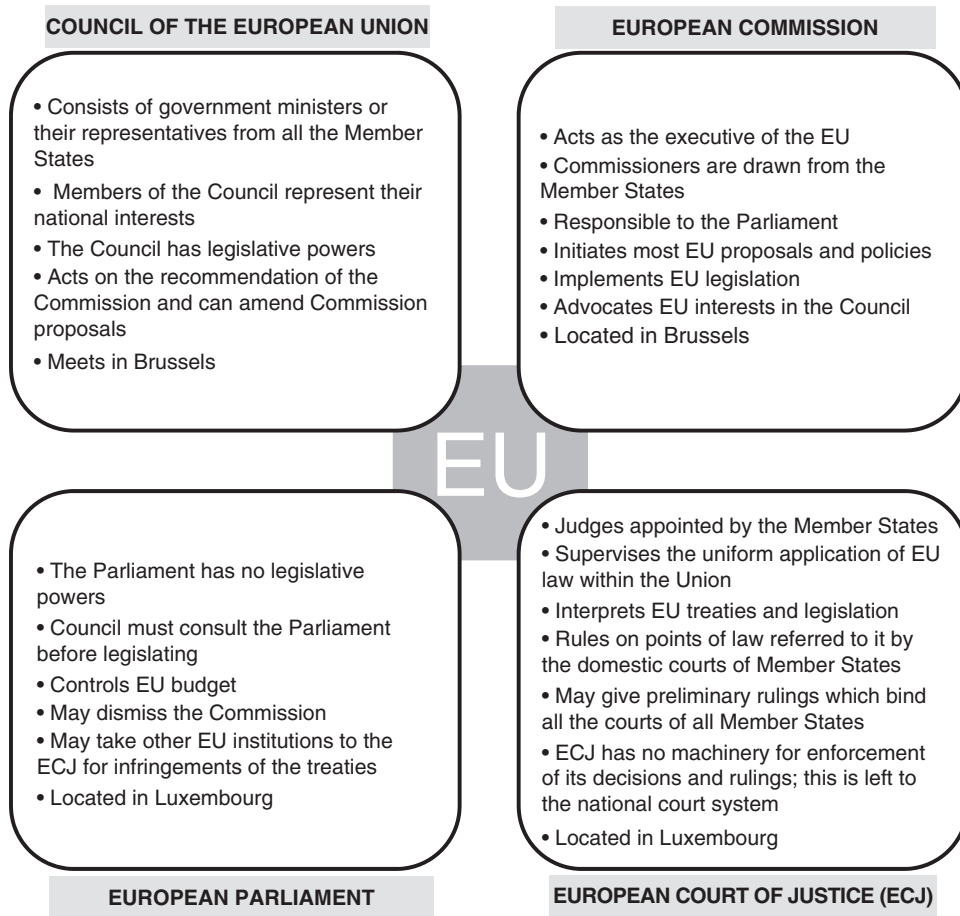


Figure 1.6 The Institutions of the European Union.

The ECJ interprets and enforces EU law. Finally, the European Parliament consists of over 700 MEPs whose powers include the control of the European Union's budget and the power to dismiss the Commission.

1.3.3 EU Primary Legislation

The primary law of the European Union is made up of the treaties created by the Member States. The treaties currently in force are

- the Treaty on European Union
- the Treaty on the Functioning of the European Union
- the Treaty of Lisbon
- the Treaty Establishing the European Atomic Energy Community.

These are supplemented by the Charter of Fundamental Rights of the European Union.

The Treaty on the Functioning of the European Union defines the legal actions of the Union in Art. 288:

CHAPTER 2
LEGAL ACTS OF THE UNION, ADOPTION PROCEDURES AND OTHER PROVISIONS

SECTION 1
THE LEGAL ACTS OF THE UNION

Article 288
(ex Article 249 TEC)

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

1.3.4 EU Secondary Legislation

The secondary legislation of the European Union takes the form of

- Regulations
- Directives
- Decisions.

European Regulations are generally applicable and binding in their entirety. They are directly applicable in all Member States without the need for individual states to make any changes to their domestic law. Since it requires no action by the Member States, a Regulation can bring about swift and immediate reform of the law. However, this mechanism is rarely used in the sphere of environmental law, except to fulfil obligations under international treaties, for example Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, which fulfils commitments under the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES).

European Directives are addressed to one or more Member States. Directives require Member States to change their national law in order to comply (Box 1.5). They are binding on policy but leave the choice of form and method of implementation to the Member States. Directives have the advantage of allowing for the gradual harmonization of laws within the Union, but there is a time limit within which any Directive must be incorporated into national law. The structure of the Zoos Directive is shown in Figure 1.7.

Decisions may be addressed to a state, a company or a person and are binding on them in their entirety. The purpose of a decision is to bring a state, corporation or individual into line with EU policy and law.

Box 1.5 Transposing EU law into national law in the Republic of Ireland

Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos

Article 3

Requirements applicable to zoos

Member States shall take measures under Articles 4, 5, 6 and 7 to ensure all zoos implement the following conservation measures:

- participating in research from which conservation benefits accrue to the species, and/or training in relevant conservation skills, and/or the exchange of information relating to species conservation and/or, where appropriate, captive breeding, repopulation or reintroduction of species into the wild,
- promoting public education and awareness in relation to the conservation of biodiversity, particularly by providing information about the species exhibited and their natural habitats,...

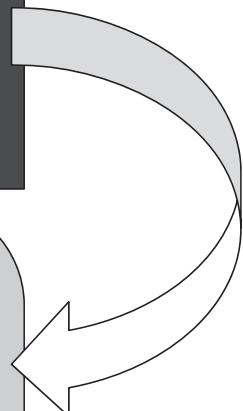
EUROPEAN LAW

European Communities (Licensing and Inspection of Zoos) Regulations 2003.

4. - (1) The Minister may, on application by a person in accordance with paragraph (3), grant the person a licence to operate a zoo, if satisfied that the required conservation measures will be implemented in a satisfactory manner at the zoo.
- (2) The following are the required conservation measures:
- (a) participating in at least one of the following activities:
 - (i) research from which conservation benefits accrue to the species;
 - (ii) training in relevant conservation skills;
 - (iii) the exchange of information relating to species conservation;
 - (iv) where appropriate, captive breeding, repopulation or reintroduction of species into the wild;
 - (b) promoting public education and awareness in relation to the conservation of biodiversity, particularly by providing information about the species exhibited and their natural habitats;...

IRISH LAW

The Zoos Directive requires Member States of the European Union to establish a licensing system for zoos that requires zoos to have a conservation function



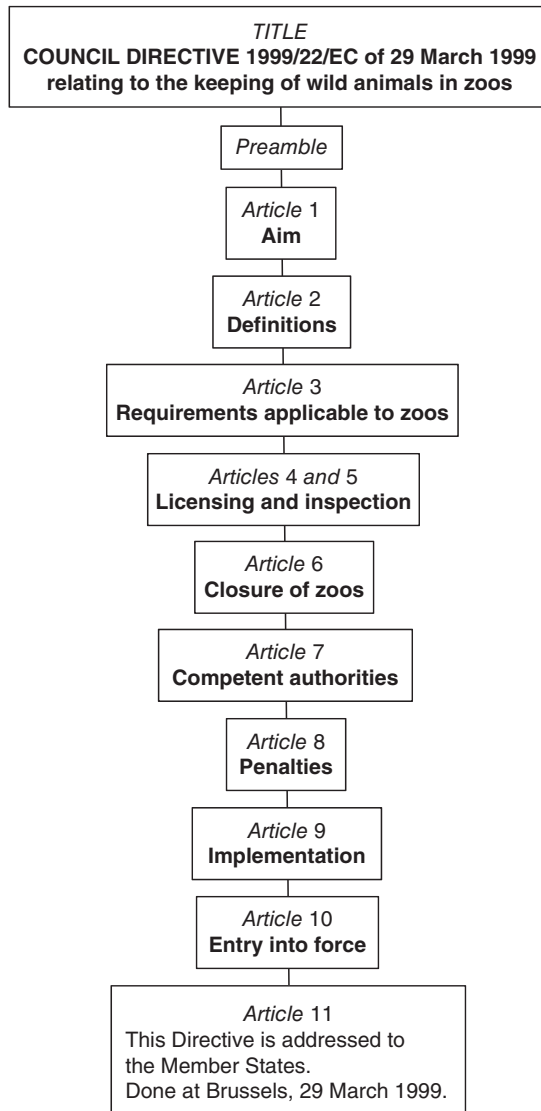


Figure 1.7 An example of the structure of a European Directive: the Zoos Directive.

As the result of a Decision the Commission ordered Member States to suspend the importation of certain animals during a disease outbreak:

COMMISSION DECISION of 7 June 2006 amending Decisions 2005/710/EC, 2005/734/EC, 2005/758/EC, 2005/759/EC, 2005/760/EC, 2006/247/EC and 2006/265/EC as regards certain protection measures in relation to highly pathogenic avian influenza

Article 1

Decision 2005/710/EC is amended as follows:

1. Paragraph 1(a) of Article 1 is replaced by the following:

'Article 1

1. Member States shall suspend the importation of:
 - (a) live poultry, ratites, farmed and wild feathered game, and hatching eggs of these species coming from the part of the territory of Romania referred to in Part B of the Annex;
2. In Article 4, the date '31 July 2006' is replaced by '31 December 2006'.

The 7th Environment Action Programme of the European Union was communicated to the Member States in a Decision: Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'. It included a provision to protect biodiversity and ecosystems:

- (11) The Union has agreed to halt the loss of biodiversity and the degradation of ecosystem services in the Union by 2020, and restore them in so far as feasible, while stepping up the Union contribution to averting global biodiversity loss.

The Council and the Commission may also make recommendations, give opinions and issue notices, but these are not legally binding.

Where a conflict arises between the national law of a Member State and EU law a national court must follow EU law.

1.3.5 The Role of the European Court of Justice

The role of the European Court of Justice (ECJ) is to ensure that European law is interpreted and applied in the same way in all Member States. European Union law has been used to improve wildlife conservation by requiring Member States to designate protected areas and to protect listed species. In 1993 the ECJ ruled that the Spanish government was in breach of Art. 4 of Council Directive 79/409/EEC on the conservation of wild birds (the Wild Birds Directive) by failing to designate the Marismas de Santoña – a wetland – as a Special Protection Area for birds. Member States of the European Union are under a duty to designate any area that fulfils the appropriate ornithological criteria (*Commission v. Spain* [1993]).

Other cases have been brought by the European Commission and others against EU Member States to compel them properly to implement the Wild Birds Directive (*Commission v. Germany* [1991]; *R v. Secretary of State for the Environment, ex parte Royal Society for the Protection of Birds* [1997]; *Commission v. Netherlands* [1999]) and to support the establishment of Special Areas of Conservation under the Habitats Directive (e.g. *R v. Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Limited (World Wide Fund for Nature UK and Avon Wildlife Trust interveners* [2000]).

In June 2007 the ECJ found that Finland had failed in its obligations under Arts. 12(1) and 16(1)(b) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) by authorizing the hunting of wolves on a preventive basis without it being established that the hunting was such as to prevent serious damage within the meaning of Art. 16(1)(b) (*Commission of the European Communities v. Republic of Finland* [2007]).

In September 2015 the Commission took Malta to the European Court for allowing the live-capture of seven species of wild finches in contravention of the provisions of the Wild Birds Directive:

European Commission v Republic of Malta

(Case C-557/15)

The applicant [the Commission] claims that the Court should:

declare that by adopting a derogation regime allowing the live-capturing of seven species of wild finches (Chaffinch *Fringilla coelebs*, Linnet *Carduelis cannabina*, Goldfinch *Carduelis carduelis*, Greenfinch *Carduelis chloris*, Hawfinch *Coccothraustes coccothraustes*, Serin *Serinus serinus* and Siskin *Carduelis spinus*), the Republic of Malta has failed to fulfil its obligations under Article 5(a) and 5(e) and 8(1) in connection with Annex IV, point (a), read in conjunction with Article 9(1), of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

1.4 International Law

1.4.1 Sources of International Law

International law is concerned with defining the responsibilities of states in their behaviour towards each other. This should not be confused with the national laws of foreign countries. International law is complex because its rules emanate from a number of different sources. Some basic principles may be found in customary international law. This refers to the obligations that arise as a result of established practice rather than written obligations

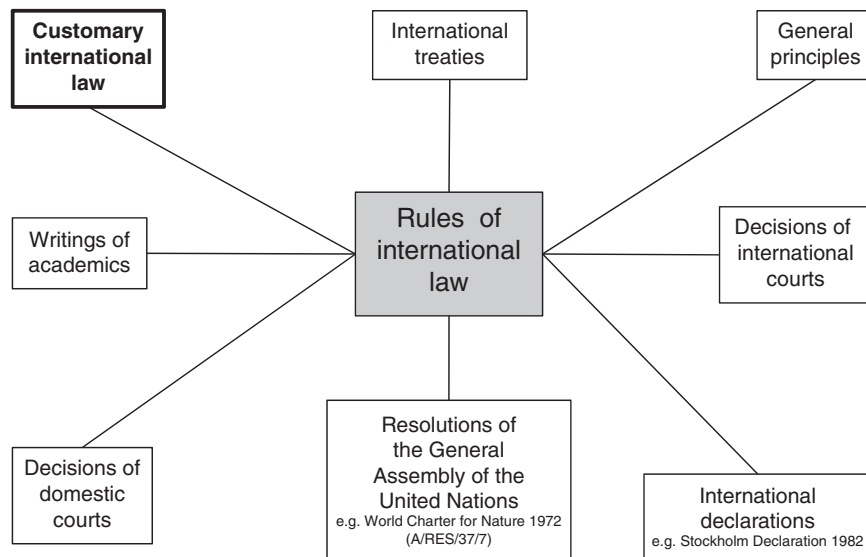


Figure 1.8 The sources of international law.

established through treaties. Apart from customary law and the obligations agreed by Parties to treaties, other sources include the writings of academics and judicial decisions (Figure 1.8).

The preamble to the Vienna Convention on the Law of Treaties 1969 (Vienna Convention) affirms that customary law applies where the law is not established by treaty:

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention, ...

1.4.2 Principles

Most of the international law concerned with animals and ecosystems is to be found in the form of international treaties, for example the United Nations Convention on Biological Diversity 1992. States are bound by international law by consent. International law is difficult to enforce. In some cases states may impose trade sanctions on others in order to encourage them to comply with their international legal obligations.

International law is increasingly concerning itself with wildlife and the conservation of the natural environment. Although much of this law is regional in its application some of it has global implications and has led to changes in both European and national wildlife and nature conservation laws.

Added protection has been achieved by creating additional designations for protected areas, by banning trade in some wildlife species, and by the further listing of protected species beyond what was previously the case under the domestic law of individual states.

The international community has no legislature capable of formulating laws that are binding on individual states. When states wish to cooperate in areas of mutual concern they may voluntarily enter into mutually binding legal obligations. Such obligations take the form of treaties, conventions or agreements. However, this system relies entirely upon the cooperation of individual states for its effectiveness, since no state can be bound by international law without its consent. States are free to join and leave treaties as they please. Even if a state joins a treaty it may still ignore its provisions, although international political pressure may be applied in an attempt to achieve compliance. For international law to have effect it must be transposed into the national laws of the parties (Box. 1.6).

The Vienna Convention sets out the form that international treaties should take, how they should be interpreted, how they should operate and so forth.

1.4.3 Titles

International laws are variously called conventions, treaties, agreements and protocols, for example:

- United Nations Convention on Biological Diversity 1992;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES);
- Antarctic Treaty 1959;
- Agreement on the Conservation of Polar Bears 1973;
- Agreement on the Conservation of Gorillas and their Habitats 2007;
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation 2010.

A protocol is an agreement that is added to an existing (parent) treaty which amends or supplements it in some way.

Box 1.6 Transposing international law into British law

Convention on the Conservation of European Wildlife and Natural Habitats 1979

Article 9

Each Contracting Party may make exceptions from the provisions of Articles 4, 5, 6, 7 and from the prohibition of the use of the means mentioned in Article 8 provided that there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned:

- for the protection of flora and fauna;
- to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property;
- in the interests of public health and safety, air safety or other overriding public interests;
- for the purposes of research and education, of repopulation, of reintroduction and for the necessary breeding;
- to permit, under strictly supervised conditions, on a selective basis and to a limited extent, the taking, keeping or other judicious exploitation of certain wild animals and plants in small numbers.

INTERNATIONAL LAW

Wildlife and Countryside Act 1981

16 Power to grant licences.

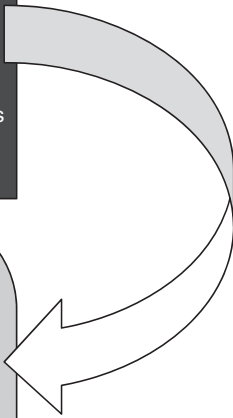
(3) Sections 9(1), (2), (4) and (4A), 11(1) and (2) and 13(1) do not apply to anything done -

- (a) for scientific or educational purposes;
- (b) for the purpose of ringing or marking, or examining any ring or mark on, wild animals;
- (c) for the purpose of conserving wild animals or wild plants or introducing them to particular areas;
- (d) for the purpose of protecting any zoological or botanical collection;
- (e) for the purpose of photography;
- (f) for the purpose of preserving public health or public safety;
- (g) for the purpose of preventing the spread of disease; or
- (h) for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries,

if it is done under and in accordance with the terms of a licence granted by the appropriate authority.

BRITISH LAW

The Convention on the Conservation of European Wildlife and Natural Habitats 1979 makes provision for exemptions in relation to offences against habitats and species



1.4.4 How a Treaty Is Formed

Article 6 of the Vienna Convention on the Law of Treaties 1969 provides that every state possesses capacity to conclude treaties. The Convention sets out rules for the creation, form and operation of treaties made since it came into force.

International agreements are generally opened for signature at an international conference held in a major city. The United Nations Conference on Environment and Development (UNCED) – also known as the Earth Summit – was a major UN conference held in Rio de Janeiro, Brazil, between 3 and 14 June 1992. Several legally binding agreements were opened for signature including the UN Convention on Biological Diversity.

Conventions sometimes become known by the city in which they were signed. For example, the ‘Washington Convention’ refers to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which was signed in Washington DC in 1973. However, this practice may cause confusion as some cities have hosted conferences that have resulted in more than one international agreement. The ‘Vienna Convention’ may refer to the Vienna Convention on the Law of Treaties 1969, the Vienna Convention for the Protection of the Ozone Layer 1985 or any of a dozen other agreements. The Convention for the Preservation of Wild Animals, Birds and Fish in Africa 1900 is also known as the ‘London Convention’, along with over 30 other agreements that have been made in London.

International agreements do not appear over night; CITES was signed in 1973 but it was the result of a resolution adopted by the International Union for the Conservation of Nature and Natural Resources (IUCN) in 1963:

GA 1963 RES 005

5. Resolution on illegal traffic in wildlife species

Whereas many rare and vanishing species of wildlife are threatened with early extinction through illegal export from their native land and whereas such illegal export would be much less frequent if import into other countries were prohibited; recalling resolution 2.213 adopted by the General Conference of UNESCO at its 12th session and resolution 1931 (xvii) adopted by the General Assembly of the United Nations at its 17th session concerning economic development and conservation of natural resources, flora and fauna, the 8th General Assembly of IUCN meeting at Nairobi in 1963 recommends that the practical and political problems involved in illegal export be studied and that an international convention on regulations of export, transit and import of rare or threatened wildlife species or their skins and trophies be drafted and submitted for the approval of governments by the appropriate international organisations possibly on the occasion of a world-wide conference convened for that purpose.

CITES was concluded on 6 March 1973 and was signed by 21 states on that date. By March 2016 there were 182 Contracting Parties, including the European Union (Figure 1.9).

1.4.5 Structure of International Treaties

International treaties vary in both length and structure. The Agreement on the Conservation of Polar Bears 1973 is just over 1000 words in length (Figure 1.10; Box 1.7), whereas the UN Convention on Biological Diversity 1992 runs to over 9000 words.

Individual treaty provisions are referred to as ‘articles’. Each article is numbered and may be further divided into numbered ‘paragraphs’. Articles on related topics may be grouped into ‘parts’ in long treaties. The UN Convention on the Law of the Sea 1982 (UNCLOS) consists of 302 articles (and an additional six annexes); the Agreement Between the Government of

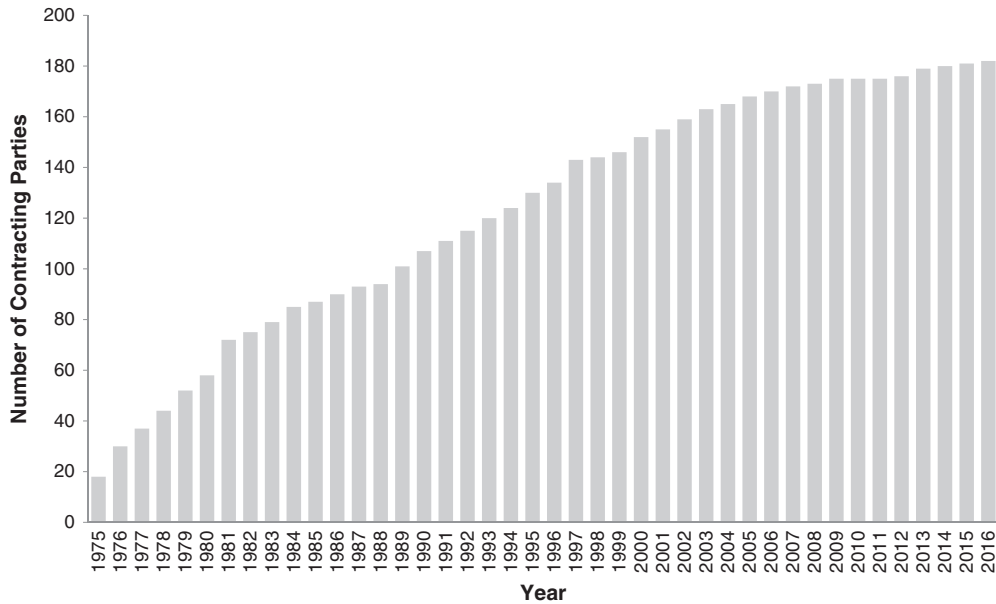


Figure 1.9 Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES).

Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd 1987 consists of just eight articles.

Treaty articles usually contain commitments made in very general terms. For example, some treaties require Parties to exchange knowledge or to cooperate in research. Others contain more detail and, for example, may commit Parties to the establishment of protected areas aimed at the conservation of particular species or habitats, or they may seek to control the emission of particular pollutants. Such commitments will usually only have legal effect when they are written into the domestic laws of the Parties to the treaty. In the United Kingdom this may require a new Act of Parliament or Statutory Instrument. In some cases international commitments may be incorporated into European law in the form of a Regulation (requiring no further legislative action by Member States).

Some treaties contain ‘annexes’ that contain additional details, for example lists of protected species or habitats, necessary for their proper implementation.

A straightforward international treaty may have the following structure:

- Title
- Date of signature
- Preamble
- Definitions of terms used
- Action to be taken by the Parties in order to fulfil the principal objectives of the treaty
- Arrangements for signature, ratification, accession and reservations
- Arrangements for entry into force
- Arrangements for meetings of the Parties
- Arrangements for denunciation
- Arrangements for depositary and the establishment of a secretariat.

Box 1.7 The Agreement on the Conservation of Polar Bears 1973**Agreement on the Conservation of Polar Bears**

Oslo, 15 November 1973

The Governments of Canada, Denmark*, Norway, the Union of Soviet Socialist Republics** and the United States of America,

Recognizing the special responsibilities and special interests of the States of the Arctic Region in relation to the protection of the fauna and flora of the Arctic Region;

Recognizing that the polar bear is a significant resource of the Arctic Region which requires additional protection;

Having decided that such protection should be achieved through co-ordinated national measures taken by the States of the Arctic Region;

Desiring to take immediate action to bring further conservation and management measures into effect;

Having agreed as follows:

Article I

1. The taking of polar bears shall be prohibited except as provided in Article III.
2. For the purposes of this Agreement, the term "taking" includes hunting, killing and capturing.

Article II

Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns, and shall manage polar bear populations in accordance with sound conservation practices based on the best available scientific data.



Figure 1.10 Polar bears (*Ursus maritimus*).

Article III

1. Subject to the provisions of Articles II and IV any Contracting Party may allow the taking of polar bears when such taking is carried out:

(Continued)

Box 1.7 (Continued)

- (a) for bona fide scientific purposes; or
- (b) by that Party for conservation purposes; or
- (c) to prevent serious disturbance of the management of other living resources, subject to forfeiture to that Party of the skins and other items of value resulting from such taking; or
- (d) by local people using traditional methods in the exercise of their traditional rights and in accordance with the laws of that Party; or
- (e) wherever polar bears have or might have been subject to taking by traditional means by its nationals.

2. The skins and other items of value resulting from taking under sub-paragraph (b) and (c) of paragraph 1 of this Article shall not be available for commercial purposes.

Article IV

The use of aircraft and large motorized vessels for the purpose of taking polar bears shall be prohibited, except where the application of such prohibition would be inconsistent with domestic laws.

Article V

A Contracting Party shall prohibit the exportation from, the importation and delivery into, and traffic within, its territory of polar bears or any part or product thereof taken in violation of this Agreement.

Article VI

1. Each Contracting Party shall enact and enforce such legislation and other measures as may be necessary for the purpose of giving effect to this Agreement.

2. Nothing in this Agreement shall prevent a Contracting Party from maintaining or amending existing legislation or other measures or establishing new measures on the taking of polar bears so as to provide more stringent controls than those required under the provisions of this Agreement.

Article VII

The Contracting Parties shall conduct national research programmes on polar bears, particularly research relating to the conservation and management of the species. They shall as appropriate co-ordinate such research with research carried out by other Parties, consult with other Parties on the management of migrating polar bear populations, and exchange information on research and management programmes, research results and data on bears taken.

Article VIII

Each Contracting Party shall take action as appropriate to promote compliance with the provisions of this Agreement by nationals of States not party to this Agreement.

Article IX

The Contracting Parties shall continue to consult with one another with the object of giving further protection to polar bears.

Article X

1. This Agreement shall be open for signature at Oslo by the Governments of Canada, Denmark, Norway, the Union of Soviet Socialist Republics and the United States of America until 31st March 1974.

2. This Agreement shall be subject to ratification or approval by the signatory Governments. Instruments of ratification or approval shall be deposited with the Government of Norway as soon as possible.

3. This Agreement shall be open for accession by the Governments referred to in paragraph 1 of this Article. Instruments of accession shall be deposited with the Depository Government.

4. This Agreement shall enter into force ninety days after the deposit of the third instrument of ratification, approval or accession. Thereafter, it shall enter into force for a signatory or acceding Government on the date of deposit of its instrument of ratification, approval or accession.

5. This Agreement shall remain in force initially for a period of five years from its date of entry into force, and unless any Contracting Party during that period requests the termination of the Agreement at the end of that period, it shall continue in force thereafter.

6. On the request addressed to the Depository Government by any of the Governments referred to in paragraph 1 of this Article consultations shall be conducted with a view to convening a meeting of representatives of the five Governments to consider the revision or amendment of this Agreement.

7. Any Party may denounce this Agreement by written notification to the Depository Government at any time after five years from the date of entry into force of this Agreement. The denunciation shall take effect twelve months after the Depository Government has received the notification.

8. The Depository Government shall notify the Governments referred to in paragraph 1 of this Article of the deposit of instruments of ratification, approval or accession, of the entry into force of this Agreement and of the receipt of notifications of denunciation and any other communications from a Contracting Party specifically provided for in this Agreement.

9. The original of this Agreement shall be deposited with the Government of Norway which shall deliver certified copies thereof to each of the Governments referred to in paragraph 1 of this Article. The Depository Government shall transmit certified copies of this Agreement to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

In Witness Whereof the undersigned, being duly authorized by their Governments, have signed this Agreement.

Done at Oslo, in the English and Russian languages, each text being equally authentic, this fifteenth day of November, 1973.

[*In relation to Greenland; **in 1991 the USSR split into 15 new countries, including the Russian Federation which assumed its legal personality.]

Preamble

International treaties begin with a ‘preamble’ that explains the general purpose of the law. It may also refer to the treaty’s origin by, for example, referring to other related agreements.

Agreement on the Conservation of Populations of European Bats 1991

The Contracting Parties

Recalling the Convention on the Conservation of Migratory Species of Wild Animals opened for signature in Bonn on 23 June 1979;

Recognising the unfavourable conservation status of bats in Europe and non-European Range States and in particular the serious threat to them from habitat degradation, disturbance of roosting sites and certain pesticides;

Conscious that the threats facing bats in Europe and non-European Range States are common to both migratory and nonmigratory species and that roosts are often shared by migratory and non-migratory species;

Recalling that the first meeting of the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals held in Bonn in October 1985 agreed to add European species of CHIROPTERA (Rhinolophidae and Vespertilionidae) to Appendix II of the Convention and instructed the Secretariat of the Convention to take appropriate measures to develop an Agreement for these species;

Convinced that the conclusion of an Agreement for these species would greatly benefit the conservation of bats in Europe;

Have agreed as follows: ...

A treaty preamble may also affirm the sovereign rights of signatories as, for example, in the UN Convention on Biological Diversity 1992:

... Reaffirming that States have sovereign rights over their own biological resources.

This is important because states have rights over their own resources and must be able to exploit them for the benefit of their people. The preamble may recognize specific rights of indigenous peoples affected by a treaty, for example in the Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd 1987:

... Acknowledging that there are various human uses of caribou and for generations certain indigenous people of Yukon Territory and the Northwest Territories in Canada have customarily and traditionally harvested Porcupine Caribou to meet their nutritional, cultural and other essential needs and will continue to do so in the future, and that certain rural residents of the State of Alaska in the United States of America have harvested Porcupine Caribou for customary and traditional uses and will continue to do so in the future, and that these people should participate in the conservation of the Porcupine Caribou Herd and its habitat ...

Early treaties concerned with wildlife or the protection of ecosystems made reference to their value only in human terms:

Convention for the Protection of Migratory Birds and Game Mammals 1936

Whereas, some of the birds denominated migratory, in their movements cross the United States of America and the United Mexican States, in which countries they live temporarily;

Whereas, it is right and proper to protect the said migratory birds, whatever may be their origin, in the United States of America and the United Mexican States, in order that the species may not be exterminated;

Whereas, for this purpose it is necessary to employ adequate measures which will permit a rational utilization of migratory birds for the purpose of sport as well as for food, commerce and industry;

The Governments of the two countries have agreed to conclude a Convention ...

More recent treaties have recognized the intrinsic value of biodiversity and the 'rights' of future generations of humans. The preamble to the UN Convention on Biological Diversity 1992 makes reference to the intrinsic value of biological diversity and the importance of conserving it for the benefit of future generations:

UN Convention on Biological Diversity 1992

The Contracting Parties,

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,

... Determined to conserve and sustainably use biological diversity for the benefit of present and future generations, ...

Reservations

Occasionally a Party to a treaty may not wish to be bound by certain provisions within the treaty. In such cases the Party would enter a 'reservation' in relation to such provisions. A reservation is defined by Art. 2(1)(d) of the Vienna Convention as

... a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.

The Agreement on the Conservation of Populations of European Bats 1991 (EUROBATS) protects all bat species in Europe. However, any Party may enter a reservation whereby a particular species is excluded:

ARTICLE VIII

Reservations

The provisions of this Agreement shall not be subject to general reservations. However, a Range State or Regional Economic Integration Organisation may, on becoming a Party in accordance with Article X or XI, enter a specific reservation with regard to any particular species of bat.

Ratification

Ratification is the process of validating an agreement so that it becomes binding. The Vienna Convention defines ratification as follows:

Article 2

... (b) "ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty; ...

The means by which a treaty must be ratified are indicated in the treaty itself, for example the Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971:

Article 9

... 3. Ratification or accession shall be effected by the deposit of an instrument of ratification or accession with the Director General of the United Nations Educational, Scientific and Cultural Organization, ...

Termination

A treaty may be terminated at a time determined by the treaty itself. For example, the Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd 1987 may be terminated by either Party after giving 12 months' notice:

8. Entry into force; Amendments

- a. This agreement which is authentic in English and French shall enter into force on signature and shall remain in force until terminated by either Party upon twelve months' written notice to the other.

Secretariat

Many treaties require the establishment of a secretariat or bureau to perform various functions in relation to the operation of the treaty. The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES) asked the United Nations Environment Programme (UNEP) to undertake the functions of the Secretariat established by the Treaty in 1973. The UNEP contracted the task to the International Union for the Conservation of Nature and Natural Resources (IUCN). The Secretariat's office is located in Geneva.

In CITES, a secretariat is established under Art. XII:

Article XII

The Secretariat

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme ..., he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

2. The functions of the Secretariat shall be:
 - (a) to arrange for and service meetings of the Parties;
 - (b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;
 - (c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;
 - (d) to study the reports of Parties and to request from Parties ... further information ...;
 - (e) to invite the attention of the Parties to any matter pertaining to the aims of the present Convention; ...

Some treaties do not establish a secretariat, for example the Agreement on the Conservation of Polar Bears 1973 (Box 1.7).

Technical advice

Many treaties make provision for the Parties to seek and consider advice from scientific and technical experts whose knowledge and expertise may assist with the implementation of the treaty. Such experts may be required to participate in Conferences of the Parties. For example, under Art. 7 of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat 1971:

1. The representatives of the Contracting Parties at such Conferences should include persons who are experts on wetlands or waterfowl by reason of knowledge and experience gained in scientific, administrative or other appropriate capacities.

Many treaties have established advisory bodies to assist with their implementation: the Convention on the Conservation of Migratory Species of Wild Animals 1979 established a Scientific Council under Art. VIII; the Convention on the Conservation of European Wildlife and Natural Habitats 1979 established a Standing Committee under Art. 14; the Agreement on the Conservation of Gorillas and their Habitats 2007 Art. VI established a Technical Committee; and the UN Convention on Biological Diversity 1992 established a Subsidiary Body on Scientific, Technical and Technological Advice (Art. 25).

The Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd 1987 established an advisory board:

Article 4. International Porcupine Caribou Board

- a. The Parties will establish an advisory Board to be known as the International Porcupine Caribou Board, hereinafter called the Board.
- b. The Parties will each appoint four members of the Board within a reasonable period following the entry into force of the present Agreement ...

Membership of the Board includes federal, territorial and First Nation governments that work with the users of the herd, as well as those who study its biology.

The Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES) nominated the IUCN as a major technical adviser and the two organizations signed a memorandum of understanding (MOU) in 1999 to formalize their cooperation with the aim of better implementation of the Convention (Anon., 1999). The IUCN produces the 'Red List', which classifies species into categories based on their conservation status, which helps to inform CITES officials. Each Party to the Convention is required under Art. IX to designate management and scientific authorities.

Conference of the Parties (COP)

A requirement to hold periodic Conferences of the Parties may be specified in a treaty. Treaties usually establish a secretariat which arranges and services these conferences, and has various administrative functions in relation to the operation of the treaty. At such conferences a treaty may be amended and other treaty business may be conducted. The interval between meetings was not specified in the International Convention for the Regulation of Whaling 1946:

Article III

8. ... meetings of the Commission shall be convened as the Commission may determine.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 requires Contracting Parties to meet at least biennially:

Article XI Conference of the Parties

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.
2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.
3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention ...

At these meetings the Parties may consider reports from the Secretariat or any Party, adopt financial provisions, make recommendations for improving the Convention and adopt amendments to the appendices which list protected species.

Entry into force

The point in time when a treaty comes into force will be indicated in the treaty itself. Under Art. 24 of the Vienna Convention:

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

For example, in the US–Russia Bilateral Agreement for Polar Bears of the Chukchi Sea Population 2000, the mechanism is specified in Art. XIII:

ARTICLE XIII

1. This Agreement shall enter into force 30 days after the date on which the Contracting Parties have exchanged written notification through diplomatic channels that they have completed their respective domestic legal procedures necessary to bring the Agreement into force, and shall remain in force unless terminated in accordance with paragraph 2 of this Article.

A treaty may specify a minimum number of ratifications necessary before it comes into force. The UN Convention on Biological Diversity 1992 requires 30:

Article 36. Entry Into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.

1.4.6 Soft Law

In the context of international law, the term ‘soft law’ refer to codes of conduct, policy declarations and guidelines agreed between states that set standards of conduct but are not legally binding. The term ‘hard law’ refers to legally binding agreements and customary law. Soft law is important in many areas of environmental law, including conservation and sustainability (Kirton and Trebilcock, 2004).

The World Conservation Strategy (1980) is a soft law document produced by the IUCN in cooperation with the UNEP, the World Wildlife Fund (WWF), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Its aim was to assist the achievement of sustainable development through the conservation of living resources by: maintaining essential ecological processes and life support systems; preserving genetic diversity; and ensuring the sustainable utilization of species and ecosystems:

The World Conservation Strategy is intended to stimulate a more focussed approach to the management of living resources and to provide policy guidance on how this can be carried out by three main groups:

- government policy makers and their advisers;
 - conservationists and others directly concerned with living resources;
 - development practitioners, including development agencies, industry and commerce, and trade unions.
1. The aim of the World Conservation Strategy is to achieve the three main objectives of living resource conservation:
 - (a) **to maintain essential ecological processes and life-support systems** (such as soil regeneration and protection, the recycling of nutrients, and the cleansing of waters), on which human survival and development depend;
 - (b) **to preserve genetic diversity** (the range of genetic material found in the world’s organisms), on which depend the functioning of many of the above processes and

life-support systems, the breeding programmes necessary for the protection and improvement of cultivated plants, domesticated animals and microorganisms, as well as much scientific and medical advance, technical innovation, and the security of the many industries that use living resources;

- (c) **to ensure the sustainable utilization of species and ecosystems** (notably fish and other wildlife, forests and grazing lands), which support millions of rural communities as well as major industries ...

In December 2007 the UN General Assembly adopted the Non-Legally Binding Instrument on All Types of Forests (NLBI). This was the first time that the Member States had agreed to an international instrument for sustainable forest management. The instrument had previously been adopted by the UN Forum on Forests at its seventh session on 28 April 2007:

United Nations Forum on Forests
Report of the seventh session
(24 February 2006 and 16 to 27 April 2007)
Economic and Social Council
Official Records, 2007
Supplement No. 22
Non-Legally Binding Instrument on All Types of Forests
Member States [of the UN], ...
... *Have committed* themselves as follows:

I. Purpose

1. The purpose of this instrument is:

- (a) To strengthen political commitment and action at all levels to implement effectively sustainable management of all types of forests and to achieve the shared global objectives on forests;
- (b) To enhance the contribution of forests to the achievement of the internationally agreed development goals, including the Millennium Development Goals, in particular with respect to poverty eradication and environmental sustainability;
- (c) To provide a framework for national action and international cooperation ...

In November 2010 representatives of the governments of the range states of the tiger (*Panthera tigris*) (Figure 1.11) gathered in St. Petersburg, Russia, for a conference which resulted in their adopting a declaration on tiger conservation:

The St. Petersburg Declaration on Tiger Conservation
(Saint Petersburg, Russia, November 23, 2010)

We, the Heads of the Governments of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, Nepal, the Russian Federation, the Kingdom of Thailand, and the Socialist Republic of Vietnam, being custodians of the last remaining tigers in the wild, ...

... Because it is our obligation to future generations, and because we must act now, we hereby declare the following:

Strive to double the number of wild tigers across their range by 2022 by

- (1) doing everything possible to effectively manage, preserve, protect, and enhance habitats, including:
 - a. Mainstreaming biodiversity conservation in planning and development processes in tiger habitat;
 - b. Making critical tiger breeding habitats inviolate areas within the larger tiger conservation landscapes where no economic or commercial infrastructure development or other adverse activities are permitted; and maintaining the landscapes and creating corridors around and between them where all permitted development activities are tiger-and biodiversity-compatible;
 - c. Improving protection by using systematic patrolling to safeguard tigers, their prey, and habitats; and
 - d. Working collaboratively on trans-boundary issues, such as the uninhibited movement of tigers and the management of tiger conservation landscapes.



Figure 1.11 A tiger (*Panthera tigris*). In 2010 representatives of the governments of the range states of the tiger adopted the St Petersburg Declaration on Tiger Conservation.

In addition, the Parties agreed to collaborate to eradicate poaching, smuggling and illegal trade in tigers, their parts and derivatives; engage with indigenous and local communities to reduce human–tiger conflict; increase the effectiveness of tiger and habitat management; and improve funding for tiger conservation.

1.4.7 Memoranda of Understanding

A memorandum of understanding (MOU) is an agreement between two or more Parties which indicates an intended common purpose but which is not legally binding. In England, Chester Zoo has an MOU with the Sichuan Forestry Department in China which allows its staff to work in forest reserves on conservation projects and with local communities. An MOU has also been signed on the prevention, investigation and enforcement of wildlife crime between Natural England, Natural Resources Wales (NRW), the Crown Prosecution Service (CPS) and the National Police Chiefs' Council (NPCC).

In the United States the Forest Service has entered into a number of MOUs in relation to the management of forests, for example the Memorandum of Understanding Between Lake County Resources Initiative, Lake County, Town of Lakeview, City of Paisley, Marubeni Sustainable Energy, Inc., The Collins Companies, Oregon Dept. of Forestry, USDA Forest Service Fremont-Winema National Forests, and Bureau of Land Management-Lakeview District (Nie, 2011).

1.4.8 International Institutions

The organs of the United Nations

The UN was established in 1945 (after the end of the Second World War) with the primary objective of achieving world peace. It is based in New York and has 193 Member States that cooperate in the promulgation of international law, some of which is concerned with the protection of biodiversity, the sustainable use of resources and the prevention of environmental pollution.

The main organs of the UN are

- the General Assembly
- the Security Council
- the Economic and Social Council
- the Trusteeship Council
- the International Court of Justice (ICJ)
- the UN Secretariat.

United Nations resolutions are formal expressions of the opinion or will of organs of the UN. Occasionally they relate to conservation (see Section 11.7.2).

United Nations Environment Programme

The UNEP is an organization of the UN whose mission is 'to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations'. Its headquarters is located in Nairobi, Kenya.

United Nations Educational, Scientific and Cultural Organization

UNESCO is an organization of the UN whose mission is 'to contribute to the building of peace, the eradication of poverty, sustainable development and intercultural dialogue

through education, the sciences, culture, communication and information'. UNESCO and the International Council on Monuments and Sites (ICOMOS) were responsible for producing the initial draft of what became the Convention Concerning the Protection of the World Cultural and Natural Heritage 1972.

Council of Europe

The Council of Europe is an organization with 47 member countries representing almost the entire continent of Europe which seeks to develop common and democratic principles based on the European Convention on Human Rights (the Convention for the Protection of Human Rights and Fundamental Freedoms 1950) and other reference texts on the protection of individuals. It is responsible for a number of international animal welfare laws (European Convention for the Protection of Animals during International Transport 2003; European Convention for the Protection of Animals kept for Farming Purposes 1976) and laws protecting wildlife (Convention on the Conservation of European Wildlife and Natural Habitats 1979; European Landscape Convention 2000) and has published guidelines on the reintroduction of animals to the wild (Recommendation Number R (85) 15 (1985)).

The Council of Europe should not be confused with the European Council (or Council of the European Union), which is an institution of the European Union (Figure 1.6).

1.5 Case Law and Law Reports

Case law is the reported decisions of certain courts and other judicial bodies. These decisions concern the interpretation and application of the law and often consider the meaning of particular words or phrases in the law (Box 1.8). Some case law sets precedents which must be followed in other similar cases, the principle being that similar facts should yield similar outcomes.

A law report is a version of the proceedings of a particular case heard in a court. It contains the 'facts of the case' along with the judgment of the court and comments made by the judge or judges. Many cases are not reported at all, while others may appear in more than one series of law reports. Since there may be more than one version of the proceedings in a particular case it is important to appreciate that some law reports are more authoritative than others. The series of reports known as the *Law Reports* is the official series of reports cited in the High Court and Court of Appeal and is widely regarded as the most authoritative series of law reports for England and Wales. For this reason it should be cited in preference to any other reports of the same case.

A legal judgment contains two distinct parts. The most important is called the *ratio decidendi*. This is the fundamental legal principle that has been used to decide the outcome of the case, based upon the facts. This principle may be important in acting as a precedent in future cases. The second element of the judgment is called the *obiter dicta*. These are things 'said in passing' by the judge. They are a statement of law which is not based on the facts of the case, and as such do not form part of the decision. For example, the judge may consider what the law might have been if the facts of the case had been slightly different. Such comments will not generally form part of a legal precedent since they do not relate to the facts of the case that was under consideration.

When does the decision of a court act as a precedent? If all court decisions were to act as precedents for all other courts, the result would be chaos. In the United Kingdom, the system

of precedent acts within a strict hierarchy so that, in general, the ‘lower’ courts are bound by the decisions of the ‘higher’ courts, and all courts are bound by the decisions of the Supreme Court (previously the House of Lords), the highest court in the land.

The decisions of a supreme court are not generally subject to review by any other court. It is the court of last resort or the highest court of appeal. In some jurisdictions the court called the Supreme Court is not the highest court in the land (e.g. the Supreme Court of Hawaii) and in others the highest court does not have this title. In Australia the highest court is called the High Court.

The UK Supreme Court does not have the power to ‘strike down’ legislation passed by the UK Parliament. However, the supreme courts of some other countries do have such a power. For example, the US Supreme Court has the power to ‘strike down’ federal and state laws that break a rule in the Constitution.

Judges may choose to broaden or narrow the application of a precedent by their interpretation of the *ratio decidendi*. For example, it may be inappropriate to widen the application of a previous court decision if this would lead to an unacceptably high number of claims for compensation. Alternatively, a court may extend a decision where it believes that this is in the interests of justice.

Box 1.8 Defining a badger ‘sett’ and ‘disturbance’ of badgers under English law

The system of underground tunnels and chambers where badgers (*Meles meles*) live is called a sett (Figure 1.12). Badger setts vary in size and complexity. A sett may have a single entrance leading into a large chamber. Some are just a few metres long and may consist of three or four tunnels with perhaps two entrances. Others are extremely large with a complex network of interconnecting tunnels and chambers, the entire structure sometimes occupying three storeys. One excavated sett was found to cover an area of 704 square metres, with 80 entrances, 354 metres of tunnels and 20 chambers (Roper *et al.*, 1991). Another covering a slightly larger area (740 square metres) but with a similar tunnel length (360 metres) had only 38 entrances but a total of 78 chambers (Leeson and Mills, 1977).

Setts are not static structures but change considerably over time. Badgers continue to excavate new tunnels long after the size of the sett has exceeded their needs. They may end up like cities in which some parts are allowed to become derelict while new tunnels and chambers are excavated elsewhere in the complex. Sometimes old entrances that have not been used for some time (perhaps a year or so) may be cleared out and that section of the sett may then be renovated. Some setts are believed to be hundreds of years old and will have been occupied by many generations of badgers.

In Great Britain, badger setts are protected by law under the Protection of Badgers Act 1992, s. 3:

A person is guilty of an offence if he interferes with a badger sett ...

A badger sett is defined under s. 14 as:

... any structure or place which displays signs indicating current use by a badger



Figure 1.12 A badger (*Meles meles*). Source: Drawn by Dr A.J. Woodward.

Offences therefore only apply to badger setts in current use by badgers. However, the legal definition of a sett is not sufficiently clear to determine all of the activities within the vicinity of a sett which are unlawful and it has been left to the courts to conclude that a sett does not include the area up to and including the surface area above the systems of tunnels and chambers (*Green and Others v. Stipendiary Magistrate for the County of Lincolnshire* [2001]).

In some rural areas signs have been erected asking members of the public to report suspicious activity that could be linked to crimes affecting badgers or other wildlife to the police (Figure 1.13).

Natural England (2009) considers that, as many badgers live in urban areas, they are resilient animals that can tolerate some types of disturbance without suffering harm. The organisation has produced an information leaflet to explain its interpretation of the law relating to the disturbance of badgers while occupying a sett (an offence under s. 3(1)(e) of the Act):

Some examples of activities at or near setts that we do **not** consider likely to cause disturbance to badgers, and therefore would **not** normally expect to require a licence, include:

- (1) Development, or other activities occurring close to badger setts (use of hand tools and/or machinery), where there is no reason to believe that the 'disturbance' will be greater than that which badgers commonly tolerate, and therefore any badger(s) occupying the sett are unlikely to be disturbed;
- (2) Vegetation removal (including felling small trees or shrubs) over or adjacent to setts (using hand tools and/or machinery);
- (3) Clearing out of ditches/watercourses using machinery and/or hand tools where badger setts are present.

(Continued)

Box 1.8 (Continued)



Figure 1.13 Badger baiting – a blood sport in which badgers are baited with dogs – still occurs in parts of the United Kingdom. Badger groups and the police display signs in the countryside asking members of the public to report any suspicious activity that might indicate the presence of badger baiters.

1.5.1 How Are Legal Cases Named?

Traditionally, law reports have been published in volumes which are eventually bound in chronological order at the end of each year. Some law reports appear in newspapers, for example *The Times*. Universities that teach law, particularly those that have a law school, will devote part of their library to collections of law reports and may employ a specialist law librarian. Case law is now also widely accessible online through systems such as

- Lawtel www.lawtel.co.uk
- Lawdirect www.lawdirect.co.uk
- Lexus www.lexis.com.

Legal cases are identified by the names of the parties concerned and the date. When the date of a case is enclosed within round brackets, the date refers to the year in which the judgment was handed down. Round brackets indicate that the case can be found in the volume of the law reports represented by the volume number in the citation. *Caygill v. Thwaite* (1885) 49 JP 614 may be found in volume 49 of *Justice of the Peace Reports* at page 614. Square brackets are used when referring to the date of the relevant volume of the law reports where the case has been reported, which may not be the year the case was decided. *McQuaker v. Goddard* [1940] 1 KB 687 was reported in the 1940 volume of the *Law Reports, King's Bench Division* at page 687.

A list of the abbreviated titles of law reports should be available in a good law library. Commonly cited reports include

All ER	<i>All England Law Reports</i>
EnvLR	<i>Environmental Law Reports</i>
HL	<i>House of Lords Appeals</i>
HL Cas	<i>House of Lords Cases</i>
LR	<i>Law Reports</i>
P&CR	<i>Planning & Compensation Reports</i>
QB (or KB)	<i>Queen's or King's Bench</i>

Terminology varies between criminal and civil cases.

A criminal case:

Prosecuting authority v. defendant.

A civil case:

Plaintiff v. defendant.

An example of a reference for case law in the United States is:

Northern Spotted Owl v. Hodel (1988) 19 ELR 20277.

ELR is the abbreviation for *Environmental Law Reporter*, which is available online. The judgment in the case may be found in the court records. The reference to this is abbreviated as:

Northern Spotted Owl v. Hodel, 716 F. Supp. 479 (W.D. Wash. 1988).

The full title of the case as it appears in the published opinion of the court is:

716 F. Supp. 479 (1988)

NORTHERN SPOTTED OWL (*STRIX OCCIDENTALIS CAURINA*), *et al.*,

Plaintiffs,

v.

Donald HODEL, *et al.*, Defendants.

No. C88-573Z.

United States District Court, W.D. Washington at Seattle.

November 17, 1988.

In this case lawyers representing the northern spotted owl were from the Sierra Club Legal Defense Fund (the plaintiffs). Donald Hodel (the defendant) was the Secretary of the Interior, the government department responsible for the US Fish and Wildlife Service.

1.6 Amending the Law

The reader should be wary of relying on legal documents available on web sites. Even some official government web sites do not contain the current versions of some legislation. Never rely on a legal document in its original published form. It may be necessary to consult a number of other documents containing subsequent amendments in order to determine current law. For example, in the United Kingdom, the Animals (Scientific Procedures) Act 1986 has been amended by

- the Animals (Scientific Procedures) Act (Amendment) Regulations 1993
- the Animals (Scientific Procedures) Act (Amendment) Order 1993
- the Animals (Scientific Procedures) Act 1986 (Amendment) Regulations 1998
- The Animals (Scientific Procedures) Act 1986 Amendment Regulations 2012.

In addition, the 1986 Act is the subject of a number of other Rules and Orders, including Orders relating to fees and appropriate methods of humane killing.

The law may be amended in a number of different ways:

- (a) A new law may be passed where no previous law applied.
- (b) A law may be repealed without being replaced.
- (c) A new law may be passed and an earlier law may be repealed.
- (d) A new law may be passed amending an existing law.

For example, s. 1(5) of the Wildlife and Countryside Act 1981 originally stated that:

... (5) Subject to the provisions of this Part, if any person intentionally –
 (a) disturbs any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or
 (b) disturbs dependent young of such a bird,
 he shall be guilty of an offence and be liable to a special penalty.

The current (July 2017) form of this section is:

Subject to the provisions of this Part, if any person intentionally **or recklessly** –

- (a) disturbs any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or
 (b) disturbs dependent young of such a bird,
- he shall be guilty of an offence ~~and be liable to a special penalty~~.

For England and Wales, the words 'or recklessly' were added by the Countryside and Rights of Way Act 2000, Schedule 12, paragraph 1, and the words 'and be liable to a special penalty' were repealed by Schedule 16, Part IV of the Act.

Laws are also amended at European and international level. In the European Union the original Wild Birds Directive (Council Directive 79/409/EEC on the conservation of wild birds) has been amended and these amendments have been consolidated in Council Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds. The Convention on International Trade in Endangered Species of Wild Fauna and Flora was signed at Washington DC, on 3 March 1973 and then amended at Bonn, on 22 June 1979 and further amended at Gaborone, on 30 April 1983.

1.7 Where to Find the Law

Universities and colleges that teach law will usually have either a discrete law library or a specific section of their main library devoted to law. A specialist law librarian may be employed to assist students and staff with finding legal documents. A good law library will contain textbooks on specialized areas of the law, law reports, legal journals, printed copies of legislation and other materials of interest to lawyers and law students.

1.7.1 Legal Encyclopaedias and Web Sites

A great deal of legal material is now available online (Table 1.3). However, great care must be taken in selecting authoritative sources of law. Government web sites are often excellent sources, but even these may not contain the most up-to-date version of a particular law. Many organizations claim to provide information about the law, sometimes even quoting legislation verbatim. It may nevertheless be impossible to determine when the information was first posted and if it has been kept up to date.

Legal encyclopaedias are an important authoritative source of national laws and case law. The best known are the Halsbury's series of publications:

Halsbury's Laws of Australia
Halsbury's Laws of Canada
Halsbury's Laws of England
Halsbury's Laws of Hong Kong
Halsbury's Laws of India
Halsbury's Laws of Malaysia
Halsbury's Laws of Singapore

The Laws of New Zealand is the equivalent for New Zealand but is not in the Halsbury's series.

The Law Library of Congress (www.loc.gov/law/find) is an important source for a wide range of laws from many countries.

Table 1.3 Useful sources of law.

Jurisdiction/organisation	Web site
Australia	www.australia.gov.au/information-and-services/public-safety-and-law/legislation
Canada	http://laws-lois.justice.gc.ca/eng/acts/
Council of Europe	www.coe.int/en/
European Union	http://europa.eu/eu-law/index_en.htm
General – Animal Legal and Historical Center, Michigan State University	www.animallaw.info/
International Court of Justice	www.icj-cij.org/docket/index.php?p1=3&p2=2
New Zealand	http://legislation.govt.nz/
Singapore	http://statutes.agc.gov.sg/aol/home.w3p
United Kingdom (The National Archives)	www.legislation.gov.uk/
United Nations (UN)	www.un.org/en/index.html
United States	www.usa.gov/Topics/Reference-Shelf/Laws.shtml
US tribal laws	www.tribal-institute.org/lists/codes.htm

1.7.2 Where to Find UK Laws

The best source of UK legislation is the National Archives web site (www.legislation.gov.uk/). In addition *Halsbury's Laws of England* is an extremely useful encyclopaedia of English law which is regularly updated.

1.7.3 Where to Find US Laws

United States federal law is published in the United States Code and the rules of its executive departments and agencies may be found in the Code of Federal Regulations.

The United States Code

The United States Code (USC) is the codification of the general and permanent laws of the United States by subject matter. It is divided by broad subjects into over 50 titles, for example, Title 7 – Agriculture, Title 16 – Conservation, Title 54 – National Parks and Related Programs. An example of a law published in the United States Code is provided in Box 1.9.

Box 1.9 An example of a law published in the United States Code

7 U.S. Code Chapter 11 – HONEYBEES

§281 Honeybee importation

(a) In general

The Secretary of Agriculture is authorized to prohibit or restrict the importation or entry of honeybees and honeybee semen into or through the United States in order to prevent the introduction and spread of diseases and parasites harmful to honeybees, the introduction of genetically

undesirable germ plasm of honeybees, or the introduction and spread of undesirable species or subspecies of honeybees and the semen of honeybees.

(b) Regulations

The Secretary of Agriculture and the Secretary of the Treasury are each authorized to prescribe such regulations as the respective Secretary determines necessary to carry out this section.

(c) Enforcement

Honeybees or honeybee semen offered for importation into, intercepted entering, or having entered the United States, other than in accordance with regulations promulgated by the Secretary of Agriculture and the Secretary of the Treasury, shall be destroyed or immediately exported.

(d) "Honeybee" defined

As used in this chapter, the term "honeybee" means all life stages and the germ plasm of honeybees of the genus *Apis*, except honeybee semen.

§282 Punishment for unlawful importation

Any person who violates any provision of section 281 of this title or any regulation issued under it is guilty of an offense against the United States and shall, upon conviction, be fined not more than \$1,000, or imprisoned for not more than one year, or both.

§283 Propagation of stock and release of germ plasm

The Secretary of Agriculture may propagate bee-breeding stock and may release bee germ plasm to the public.

§284 Eradication and control of undesirable species and subspecies

(a) Operations in United States

The Secretary of Agriculture either independently or in cooperation with States or political subdivisions thereof, farmers' associations, and similar organizations and individuals, is authorized to carry out operations or measures in the United States to eradicate, suppress, control, and to prevent or retard the spread of undesirable species and subspecies of honeybees.

(b) Cooperation with certain foreign governments; measure and character; consultation with Secretary of State

The Secretary of Agriculture is authorized to cooperate with the Governments of Canada, Mexico, Guatemala, Belize, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and Colombia, or the local authorities thereof, in carrying out necessary research, surveys, and control operations in those countries in connection with the eradication, suppression, control, and prevention or retardation of the spread of undesirable species and subspecies of honeybees, including but not limited to *Apis mellifera adansonii*, commonly known as the African or Brazilian honeybee. The measure and character of cooperation carried out under this subsection on the part of such countries, including the expenditure or use of funds appropriated pursuant to this chapter, shall be such as may be prescribed by the Secretary of Agriculture. Arrangements for the cooperation authorized by this subsection shall be made through and in consultation with the Secretary of State.

(c) Responsibility for authority to carry out operations

In performing the operations or measures authorized in this chapter, the cooperating foreign country, State, or local agency shall be responsible for the authority to carry out such operations

(Continued)

Box 1.9 (Continued)

or measures on all lands and properties within the foreign country or State, other than those owned or controlled by the Federal Government of the United States, and for such other facilities and means as in the discretion of the Secretary of Agriculture are necessary.

§285 Uses of funds

Funds appropriated to carry out the provisions of this chapter may also be used for printing and binding without regard to section 501 of title 44 for employment, by contract or otherwise, of civilian nationals of Canada, Mexico, Guatemala, Belize, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and Colombia for services abroad, and for the construction and operation of research laboratories, quarantine stations, and other buildings and facilities.

The Code of Federal Regulations

The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government of the United States. It is an official and complete text of agency regulations presented in an organized fashion in a single publication. This is updated daily by amendments published in the *Federal Register*. The CFR consists of 50 Titles, each of which is divided into Parts. For example, Title 50, Part 18 is concerned with marine mammals; Title 34, Part 19 is concerned with wilderness preservation.

1.8 Reading Legislation

A great deal of law is structured such that it effectively says ‘Doing A is illegal, except when it isn’t’. For example, if we wanted to protect squirrels we could write a law – The Squirrels Act 2018 – that had a single section:

s. 1 The killing of any squirrel is an offence.

However, we could envisage a situation where it might be necessary to kill a squirrel, for example if it was doing damage to a crop. We could amend our Act:

s. 1 The killing of any squirrel is an offence, except as provided by s. 2.

s. 2 Section 1 does not make unlawful the killing of any squirrel that is damaging a crop.

We might now decide to add further situations where it should be legitimate to kill a squirrel:

s. 1 The killing of any squirrel is an offence, except as provided by s. 2.

s. 2 Section 1 does not apply to any squirrel which, before it was killed, was:

- (a) damaging a crop;
- (b) a threat to human health;
- (c) a threat to forestry;
- (d) so badly diseased or injured that it was unlikely to recover.

Clearly, if you are only provided with s. 1 of this amended hypothetical law you would not be able to tell when killing a squirrel is an offence and when it is not.

Some laws are linked to other laws in such a way that it is not possible to understand one without consulting the other. For example, in this hypothetical Squirrels Act, s. 1 could define a squirrel thus:

s. 1 The killing of any squirrel (as defined by section 7 of the Furry Animals Act 1980) is an offence, except as provided by s. 2.

Now, in order to understand the offence, as well as reading s. 2 of this Act, we also need to look up the definition of 'squirrel' in s. 7 of the (hypothetical) Furry Animals Act 1980.

Individual laws often have a complex structure and sometimes refer to other laws, without which they do not make sense. The lesson to be learned here is that you need to be cautious when reading small sections of law in isolation. Much of this book consists of quotations of relatively short sections of law to illustrate particular points. Where possible I have tried to provide additional information to explain the context of the quoted material in the form of notes and text (in a different font) inserted into the quotation in square brackets. For example, some laws refer to members of the government vaguely as the 'Secretary' or the 'Secretary of State', without specifying which one. Where this occurs I have added the detail that is explained elsewhere in the actual legislation but omitted in the quotation, for example:

... the Secretary may make regulations for the protection of ...

becomes

... the Secretary [of Agriculture] may make regulations for the protection of ...

Alternatively, in places I have added one or more asterisks indicating an explanation of a term or an abbreviation immediately after the quoted legislation, for example:

... (2) A statutory authority* shall not carry out development in relation to a wild river unless it has consulted with, and considered any advice given by, the Minister in relation to the development.

[* 'statutory authority' means (under s. 69A) any of the following: (a) a Public Service agency, [(b) repealed], (c) a council or a county council ..., (d) any other body constituted by or under an Act, (d) an authorised network operator under the Electricity Network Assets (Authorised Transactions) Act 2015.]

When laws are amended new sections are sometimes inserted into the original text. This is potentially problematic because it may be logical, for instance, to insert a new section between ss. 12 and 13. If the new section is inserted after s. 12 and becomes s. 13 the old s. 13 should logically become s. 14, the old s. 14 would then become s. 15 and so on. Any other legislation which referred to any section after s. 12 would now need to be changed because of the renumbering. For example, every reference to the old s. 14 would now need to refer to s. 15.

Obviously, it would cause chaos to adopt this approach to amending the law. A more sensible method would allow the insertion of new sections without renumbering. A widely adopted system appends letters after the section number. For example, a section inserted after s. 12 would become s. 12A; in a sequence of subsections, two new subsections inserted between

(c) and (d) would be called (ca) and (cb). This approach allows existing sections and subsections to retain their original numbers and letters but results in unusual sequences within amended laws such as sections

s. 1

s. 2

s. 3

s. 3A

s. 3B

s. 4

s. 5

s. 6,

and subsections

s. 4

(a)

(b)

(c)

(d)

(da)

(db)

(dc)

(e).

The added sections and subsections have been underlined in the sequences above.

The same principle may be used to number schedules added to a law (see, for example, Box. 6.1 which shows how new schedules were added to the Wildlife and Countryside Act 1981).

1.9 Legal Journals

Legal journals are an important source of information about new frontiers in the law. Examples of legal journals that publish articles on the laws concerning nature conservation and animal welfare are

Australian Animal Protection Law Journal

Ecology Law Quarterly

Harvard Environmental Law Review

Journal of Animal Law and Ethics

Journal of Animal Welfare Law

Journal of Environmental Law

Journal of International Wildlife Law & Policy

Stanford Journal of Animal Law & Policy

The Environmental Law Reporter

The Journal of Legal Studies

Scientific journals also occasionally publish papers concerned with various aspects of animal or conservation law, including:

Animal Welfare

Biological Conservation

Conservation Biology

Human Dimensions of Wildlife

Journal of Applied Animal Welfare Science

Journal of Law and the Biosciences

Journal of Forensic Science

Oryx

Society and Animals

Wildlife Society Bulletin.

