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Animal Experiments

While the concept of natural rights has been the subject of debate for philosophers, rights for animals have often been claimed by lobby groups as a reason to ban animal experiments. Animal rights groups have sought to make their views known through various methods from demonstrations and protests to extreme methods such as parcel bombs.

The protests against Huntingdon Life Sciences in particular have proved a focal point in the public debate on animal rights and the use of animals in scientific experimentation. Animal rights protests and the use of both innovative and violent measures have resulted in new legislation.

This paper explores the use of animals in experiments, the animal rights movement and the current law regarding the conduct of protests and harassment.

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Summary of main points

Claims that the use of animals in scientific experiments has become less acceptable to an ever-greater number of people have not been clearly substantiated in opinion poll data. It is clear, however, that those opposed have become more vociferous and organised in their opposition. This has resulted in many establishments associated with this kind of activity being targeted by protesters; some of which have closed down.

Animal rights protesters have ensured the issue has received extensive coverage in newspapers and by commentators, and the question of the rights and wrongs of animal experiments is subject to public scrutiny.

Over time, tactics used by protesters have evolved. Some factions have taken extreme actions against those people involved in animal experimentation. Others have taken a finance-oriented approach that would appear to have had unprecedented success.

Huntingdon Life Sciences has been the main focus for much of the recent protests. The combination of violent attacks and targeting of the company's financial support pushed it to the brink of bankruptcy.

The Government has responded to the developing tactics of animal rights protesters by looking at how existing legislation might be more effectively utilised while introducing new measures through the *Criminal Justice and Police Act 2001*.

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I Animal Rights

The concept of animal rights is one not accepted by all groups of society, in the opinion of animal activists however such rights are inevitable. Many animal groups present themselves as animal rights organisations without explicitly stating what they believe animal rights to entail or how far they should be extended. For the purposes of this paper and simplicity, all animal organisations that campaign for the betterment of animal welfare, whether under the title of animal rights or animal welfare will be considered animal rights organisations.

It is probably impossible to identify the beginning of the animal rights movement. The establishment of the Royal Society for the Prevention of Cruelty to Animals (RSPCA), though ostensibly an animal welfare organisation, in 1824 is probably as good a place as any for the UK. This was the first organisation established to protect animals against the needs, or desires, of humanity. Indeed, it has been speculated that the respect the organisation has today was probably not a feature of its early days:

When first founded, the RSPCA and ASPCA [American Society for the Prevention of Cruelty to Animals] were radical groups, far ahead of public opinion of their times, and opposed to all forms of cruelty to animals...¹

As the gap closed between the goals of the organisation and prevailing public sympathies the organisation inevitably became more associated with the establishment than its radical beginnings. The RSPCA is now probably the most 'establishment' of animal rights groups. As such, and reflecting the level of public support in charity donations, the RSPCA presents its opinions supported by many well-qualified people that smaller animal organisations could not afford to employ. Even the society, during the preliminaries to the *Hunting Bill*² of 2000/01, had to go to court to defend its right to bar pro-hunting activists from the organisation before they changed society policy on hunting.³ These court struggles show that it is still often difficult for some to accept that a commitment to animal welfare means defending that concept across the board.

The first organisation founded to protest animal experimentation was the Society for the Protection of Animals Liable to Vivisection, started in England in 1875. In 1897, its name was changed to the National Antivivisection Society and a year later spawned the British Union for the Abolition of Vivisection.⁴

On the topic of animal experimentation, the RSPCA believe that sufficient knowledge is available, and the debate on animal experimentation has already progressed to the point, where to inform and develop a constructive way forward it can be assumed that:

¹ Peter Singer, *Animal Liberation*, 2nd edition, 1995, p 219

² <http://pubs1.tso.parliament.uk/pa/cm200001/cmbills/002/2001002.htm>

³ "RSPCA wins right to bar pro-hunting activists", *Guardian*, 7 January 2001

⁴ Compton's Encyclopedia On-Line, http://www.comptons.com/encyclopedia/ARTICLES/0000/00086016_A.html

- Animals are capable of nociception and of experiencing pain, as recognised within animal protection legislation. Many people, particularly animal welfarists in academia, industry and animal protection organisations, believe that animals should be given the ‘benefit of the doubt’ and assumed to be capable of suffering.
- Animals experience psychological stress and distress if they are unable to cope with inappropriate environments or procedures.
- Animals are regarded by many to have intrinsic worth, such that they should not be viewed simply as means to human ends. This is generally interpreted in practice to mean that the impact of harmful practices and procedures should be minimised and that animal lives should not be wasted.
- Absolute statements about the scientific validity/invalidity of, or justification for, animal experiments are not constructive in that they deflect attention and debate away from the very real dilemmas associated with the many different areas of animal use. Judgements on scientific validity, necessity and justification can only be made on a case-by-case basis.
- There is a serious conflict of interests between scientific studies and the individual animals used in experiments. The use of animals in research and testing is thus a fundamental ethical dilemma that can and should be reduced by fully implementing the principles contained in the Three Rs of Reduction, Refinement and Replacement. The Home Office (HO) Inspectorate and the local Ethical Review Process (ERP) both play vital and complementary roles in this respect.⁵

A. Lobby Groups and Activism

The radical edge of animal activism has been taken up by many other organisations. Several, such as People for the Ethical Treatment of Animals⁶ (PeTA) and the Animal Liberation Front, are often identified in the press as extreme or militant.⁷ PeTA are portrayed as extreme in their views (promoting complete vegetarianism⁸ and the non-use of animal products)⁹ whereas the Animal Liberation Front are portrayed as extreme in their actions¹⁰ (infiltrating testing labs and liberating ‘captive’ animals).¹¹ The Home Office had reportedly considered declaring one group, the Justice Department, a terrorist organisation under the *Terrorism Act 2000*.¹²

⁵ RSPCA Parliamentary Briefing on Animal Experiments, June 2001

⁶ <http://www.peta.org>

⁷ for example, “Haphazard Army with the scent of victory”, *The Guardian*, 18 January 2001

⁸ for example: <http://www.petaeurope.org/mc/facts/fsveg5.html>

⁹ for example: <http://www.petaeurope.org/mc/facts/fsveg12.html>

¹⁰ “Animal rights activists turn the screw”, *Nature*, 10 December 1998

¹¹ “In for the kill”, *Guardian Weekend*, 5 December 1998

¹² “Animal group to be banned under new terror law”, *The Sunday Times*, 4 February 2001

The above groups are largely based in the UK and have information available via the Internet. The Veggies website claims to provide a list of over 5000 animal related groups¹³ and a diary of animal rights events throughout the UK.¹⁴

B. Noteworthy Points of Conflict

In the recent past, particular establishments have attracted media attention with regard to animal experiments. The following sections deal with two animal breeding establishments. The most high profile case subject to attention from animal rights activists has been Huntingdon Life Sciences (HLS). Fuller detail of this particular animal research establishment is provided later in the paper.

1. Hillgrove Farm

Hillgrove Farm was a facility, licensed under the appropriate legislation, to breed and provide animals (cats) for the purposes of experimentation.¹⁵ There were no experiments upon animals actually carried out at Hillgrove Farm despite pictures on websites dedicated to its closure.¹⁶ Another pertinent detail is that over 50% of animal research carried out on cats was for applied veterinary research. The campaign against the farm was conducted over a long period of time, costing a great deal of police time, and eventually achieved its closure. The RSPCA briefing at the time of the closure reported that

There will still be a demand for laboratory cats and the RSPCA is concerned that more cats will now be imported from other countries where we have no control over how they are bred. More research using cats may also be conducted overseas where conditions in laboratories may not meet those required in the UK.¹⁷

This is a stark contrast to the victory hailed by the protesters.

Campaigners who had fought for the closure of the farm were delighted yesterday. Heather James, of Save the Hillgrove Cats, said: "This has never been about us or Christopher Brown, it has been about the cats and their safety. This is one of the happiest days of my life."

Robb Webb, a spokesman for the Animal Liberation Front, said: "Mr Brown has always said he wouldn't close the farm, but it is clear that animal rights activists have, through constant protest, pickets and raids, encouraged him to end this obscene business that offended everyone."

¹³ Animal Contacts Directory, <http://www.veggies.org.uk/acd/index.htm>

¹⁴ Animal Rights Calendar, <http://www.veggies.org.uk/calendar.htm>

¹⁵ HC Deb 19 January 1998 c 379W

¹⁶ For example,

http://www.asa.org.uk/adjudications/show_adjudication.asp?adjudication_id=3889&dates_of_adjudications_id=all&from_index=by_issue&issue_id=2

¹⁷ RSPCA Parliamentary Brief, *Hillgrove Farm*, 13 August 1999

She added: "It is a wonderful day for all those who care about animals. I used to go down there to protest about it and this is a victory for the protesters."¹⁸

The press reported that the cost to Thames Valley Police between March 1997 and the time of its closure in August 1999 had been in the region of £3 million. The high point of the protest had been in April 1998 when more than a thousand protesters converged on the farm. The continued protests led to the highly unusual tactic of the police imposing a five mile exclusion zone around the farm.

2. Harlan UK

This company came into the limelight when the Daily Mail published an exposé by an undercover animal rights worker on alleged cruelty in a beagle breeding facility. The article was based on a report delivered to the Home Office that triggered an inquiry at Harlan UK.¹⁹

Mr. Baker: To ask the Secretary of State for the Home Department if he will (1) make a statement on the findings of the recent British Union for the Abolition of Vivisection report into Harlan UK Ltd in relation to alleged infringements of the *Animal (Scientific Procedures) Act 1986*;

(2) instigate an investigation into Harlan UK Ltd. to establish whether infringements of the *Animals (Scientific Procedures) Act 1986* have occurred;

(3) list the dates since 1 July 1998 when his Department's Inspectorate has visited Harlan UK Ltd. under section 18(2)(d) of the *Animals (Scientific Proceedings) Act 1986*, [sic] indicating which visits were announced and which unannounced; and what reports were made to him in accordance with section 18(2)(e) of that Act;

(4) make a statement on the death of two primates en route from Oxford University to Harlan UK Ltd.

Mr. George Howarth: We have received, and are studying, a detailed report provided, on 29 June, by the British Union for the Abolition of Vivisection (BUAV). An investigation into the allegations made has already been launched and I have asked for urgent advice on whether there is a need to suspend--under the powers granted by section 13 of the *Animals (Scientific Procedures) Act 1986*--the establishment's certificate of designation.

A comprehensive and thorough investigation will be carried out. It will be led by a senior member of the Home Office Inspectorate unconnected with this establishment. This could take two or three months to complete, but I will be receiving interim reports.

¹⁸ "Wanted: homes for 800 cats as lab farm closes", *Daily Telegraph*, 14 August 1999

¹⁹ HC Deb 5 July 1999 c 333W

In addition to the standards of care and welfare of animals, the BUAV report criticises the Home Office Inspectorate. These allegations will be considered during the investigation.

I will be advising the Animal Procedures Committee of the outcomes in due course.

It would be wrong to pre-judge the outcome of the investigation and I will not, therefore, comment further at this time. However, I give the hon. Member my assurances that if any of the allegations of contraventions of the Act; of the terms and conditions of licences or certificates; or of the Codes of Practice are substantiated appropriate action will be taken to rectify the problems and to prevent recurrence. No options have been ruled out at this stage.

The investigation resulted in a report²⁰ that essentially cleared the facility of significant wrongdoing but embroiled BUAV in a public relations storm.²¹ In fact, the welfare conditions within the facility were generally praised. The initial publication of the report contained a large amount of blacked out information that the welfare group had not wanted to be published. This was later rectified and the full report is now available.²²

²⁰ HC Deb 8 March 2000 cc 661-2W; Dep 00/514

²¹ "MP attacks animal campaigners over dog lab 'evidence'", *Daily Telegraph*, 9 March 2000

²² HC Deb 30 March 2000 cc 213-4W; Dep 00/631

II Activism and Business

Animal rights activists have had a drastic effect on the financial value of Huntingdon Life Sciences by putting pressure on shareholders and financial institutions²³ backing the company. There has been condemnation of those that did not back the company²⁴ against the activists but also understanding of the difficulties involved in doing so.²⁵ The Government has announced that it will provide guidance for shareholders to enable their investments in companies that are likely targets to remain anonymous.²⁶

Animal rights activists blame the Government for the need to carry out extreme action as it has not implemented policies to ban animal research.²⁷ In the unlikely event that such a ban would become law, those companies whose international concerns require such experimentation (for example, pharmaceuticals) would have to seriously consider relocating outside the UK.²⁸ There would also be a likely knock-on effect on the UK research base within such industries, as universities would similarly be banned from using such procedures. Even then, it is likely that the activists would then shift focus to other industries perceived as cruel. There have been reports that betting offices,²⁹ anglers,³⁰ chip shops³¹ and shooting³² would be potential targets. There have even been death threats issued to a former agriculture minister³³ over badgers being culled in the experiment to determine their role in bovine tuberculosis and PeTA have vowed to make leather as unacceptable as fur.³⁴

Obviously, protesters and activists have a right to raise and protest about animal welfare issues important to them. This has to be balanced with the rights of individuals to carry out their lives without undue fear or intimidation. The Government's acknowledged role lies in balancing the right to protest with the right to live a peaceful life.

²³ "City firms face 'direct action' by extremists", *The Independent*, 29 January 2001

²⁴ "Appeasement in the City", *Financial Times*, 11 January 2001; "Drug-test group hits at bank over protestors", *Financial Times*, 16 January 2001

²⁵ "Don't call someone a coward for failing to stand up to terrorism", *The Independent*, 22 January 2001

²⁶ Home Office Press Release 014/2001, *Home Secretary takes tough line on animal rights extremists*, 17 January 2001; "Government offers guidance against animal rights activists", *Financial Times*, 19 January 2001

²⁷ "Ministers to blame for bombings, say animal protestors", *The Independent*, 13 January 2001

²⁸ "Aventis arm set to pull out of research in Britain", *Financial Times*, 25 November 2000

²⁹ "Animal rights group targets bookie's staff", *Scotsman*, 8 January 2000

³⁰ "Anglers call for protection as protests mount", *The Times*, 24 July 2000

³¹ "Chip shops legitimate targets, say animal extremists", *Daily Telegraph*, 13 January 2001

³² "Shooting and fishing will be next targets", *Daily Telegraph*, 27 December 2000

³³ "Death threats sent to Nick Brown over badger cull", *The Guardian*, 19 June 2000

³⁴ "Activists vow to make leather as unacceptable as fur", *The Independent*, 14 February 2000

A. **Huntingdon Life Sciences**

The company introduces itself on its website:

Huntingdon Life Sciences is one of the world's largest Contract Research Organisations. Founded in 1952 in the UK, the company is now an international business with resources on three continents.

Originally the company concentrated upon nutrition, veterinary and biochemical research. An expansion of services in the late '50s led to the assessment of pharmaceuticals, agrochemicals, food additives and a whole variety of industrial and consumer chemicals. This set the company on its present path to become a leading provider of toxicology testing services.³⁵

While Huntingdon Life Sciences had been subject to undercover investigation in 1988/9,³⁶ their problems essentially began in 1997 when a Channel 4 documentary exposed cruelty within animal testing laboratories at the company. A subsequent Home Office investigation of the laboratories upheld the findings concluding that the laboratory 'was not appropriately staffed and that animals were not at all times provided with adequate care'.³⁷

While this case indicated that the system could break down and allow cruelty to occur, unless there is greater evidence that the rate of animal cruelty is greater than currently reported it is unlikely that prohibition will occur. Huntingdon Life Sciences was at the point of the attack and action has focused on the company, leading to it having extreme financial problems as the action from protesters has become increasingly sophisticated.

Extreme events such as parcel bombs have, for some time, been part of working lives of animal researchers. However, prior to the Huntingdon case animal rights protests typically took the form of people waving banners at the gates of the establishment and, in extreme cases, breaking into those establishments to free the animals. This has escalated to include sending letters and information to investors in the company and informing associated businesses that they will face protests, similar to those faced by HLS, if they continue to do business with HLS.

The Government has been concerned that the system should not allow private individuals to be subjected to pressure in this way and there have been several moves to provide protection for workers at animal laboratories and investors in those companies. These are discussed in greater detail later in this paper.

³⁵ <http://www.huntingdon.com/index.html>

³⁶ <http://www.helpthedogs.org/campaigns/secret.html>

³⁷ HC Deb 24 July 1997 cc 678-80W

B. The Continuing Campaign Against HLS

There has been much press coverage of the Huntingdon Life Sciences episode, as it seems to herald a new methodology by activists to target large companies that are believed to act contrary to welfare or environmental standards. The tactics of staff intimidation have been escalated to a new level by publishing, on the Stop Huntingdon Animal Cruelty (SHAC) website,³⁸ plans of the institution and internal telephone numbers of staff. They also have lists of shareholders in the company published on the site and visitors to the site are encouraged to target both customers and shareholders of the company. For the press, this has become a topic of intense interest, a David and Goliath situation where David was reportedly about to win.

There were reports of private investors being contacted and pressured to sell their shares in Huntingdon Life Sciences in March 2000:

[Neil Hansen] confirmed to the Times last night that he was the Peter Ward who had written to all the shareholders of Huntingdon Life Sciences (HLS) telling them to sell their shares or face 24 hour protests at their homes.³⁹

Though Mr Hansen had previously been jailed for sending a ‘hoax bomb to a pregnant woman’ the article reported him to say that the protests would be peaceful. The first person to be picketed by the group was a 70 year old man who had been tracked down through shareholder records at Companies House.⁴⁰ The Labour Party admitted to holding HLS stock but that it would be sold.

The Financial Times writes of a series of financial institutions refusing to do business with Huntingdon Life Sciences due to the actions of protesters. The list consists of Barclays, Citigroup, Merrill Lynch, Credit Suisse, First Boston, HSBC, Phillips and Drew, West LB Panmure and the Royal Bank of Scotland.

Some claim their exit was due to concern for their employees; others acted on purely commercial grounds. Whatever their motives, it is probable that Huntingdon would now be bankrupt without the bold intervention of a singular-sounding US investment bank called Stephens.⁴¹

The BioIndustry Association called on financial institutions to ‘stand firm in the face of intimidatory behaviour by activists’ groups’.⁴² If a company can be isolated through action such as this then it would become standard practice to target more companies in a similar manner.

³⁸ <http://www.shac.net>

³⁹ “Lab investors told: Sell shares, or else”, *Times*, 29 March 2000

⁴⁰ “Animal rights group pickets investor’s home”, *Daily Telegraph*, 11 April 2000

⁴¹ “Walking with animals, learning new tricks”, *FT Weekend*, 17/18 March 2001

⁴² “City urged to fight animal rights threats”, *Financial Times*, 15 March 2001

Despite such calls, one institution after another has severed its ties with Huntingdon Life Sciences: emphasis added

Animal rights campaigners have forced **HSBC**, the world's second-largest bank, to sever its ties with Huntingdon Life Sciences, the drug testing group.

[...]

Merck [a German pharmaceutical company] said that demonstrators broke some windows at its offices in Hitchin, Hertfordshire. The campaigners are also thought to have staged a rally outside the home of a Du Pont director.⁴³

A division of **Credit Suisse First Boston**, the investment bank, is to sever its links with Huntingdon Life Sciences...

...Trevor Jones, **Pershing's** [a CSFB clearing company] managing director, said that the decision was aimed at protecting the 750 staff. 'Many of my staff are women under 30 and we felt we could not put them in this situation'.⁴⁴

[**Barclays**] said it had dropped a stake of about 1 per cent it was holding on behalf of clients because it did not want to put its staff at risk of reprisals.⁴⁵

The most important bank to HLS, the **Royal Bank of Scotland** who, through owning Nat West, held the loan under which Huntingdon Life Sciences operated also withdrew its association.

The Royal Bank of Scotland was last night looking for ways to extricate itself from the uncomfortable position as banker to Huntingdon Life Sciences as it emerged that one of America's largest banks had severed ties with the controversial animal-testing laboratory.⁴⁶

HLS has indicated its intention to sue the Royal Bank for its actions:

HLS claims the Royal, Britain's biggest corporate bank and the country's second largest high street bank, broke confidentiality when it admitted to an animal welfare group that it shared concerns for the work being carried out by the firm at its laboratories in Cambridgeshire.

The disclosure was made by Sir George [Mathewson – the bank's deputy chairman] in reply to a letter from the RSPCA...⁴⁷

⁴³ "Bank drops its holding in animal tests group", *Financial Times*, 12 December 2000

⁴⁴ "Bank arm cuts HLS link after animal protest", *Financial Times*, 31 January 2001

⁴⁵ "Barclays cuts links with Huntingdon Life Sciences", *Financial Times*, 7 February 2001

⁴⁶ "Huntingdon Life: facing collapse in 36 hours", *Guardian*, 18 January 2001

⁴⁷ "Royal Bank to be sued by animal testing lab", *Scotland on Sunday*, 14 January 2001

The company was eventually saved through the intervention of an American company, Stephens, but its problems continued as companies began to refuse to trade in its shares. (*emphasis added*)

Winterflood Securities stepped down as market-maker in Huntingdon Life Sciences...

...The broker declined to comment yesterday, but it is understood that its management is unhappy at the failure by police, government and the stock exchange to take action against animal rights activists.⁴⁸

This action damages the company as share dealing gets restricted to fewer companies until ‘a sole market-maker can set the prevailing share price leaving investors with less choice and less liquidity’.⁴⁹

In the meantime, intimidation of those associated with the company continues to be reported. Brian Cass, the managing director, was attacked by what have been assumed to be animal rights activists wielding baseball bats.⁵⁰ It is not just high level officers of the company that are targeted, all workers would appear to be targets:

As an act of terrorism, a man being sprayed in the eyes with ammonia and pushed to the floor as he returned home from work ranks low on the richter scale of urban violence.

It was painful for him, and distressing for his wife and children, who watched helplessly as the two balaclava wearing attackers went on to smash several windows and kick in the front door.

Ordinarily, such an attack – two days before Christmas – would be condemned and quickly forgotten. But not this one. This was seen as a disturbing new front in the war between animal rights activists and Britain’s biggest animal testing laboratory.

In this war there have been death threats, firebombed cars, evil whispers on the telephone and vividly descriptive hate mail. But until this attack there had been no physical violence against people. Now, it seems, the gloves are off.⁵¹

Even day to day work can be intimidating:

As far as the workers at Huntingdon Life Sciences are concerned, the Stop Huntingdon Animal Cruelty (SHAC) campaigners are not just demonstrators. They are terrorists.

⁴⁸ “Winterflood says safety fears forced it to quit”, *Financial Times*, 29 March 2001

⁴⁹ “Shareholders take stock at a testing time”, *Financial Times*, 29 March 2001

⁵⁰ Editorial, “Malicious protestors”, *Guardian*, 24 February 2001

⁵¹ “How threats, firebombs and assault are sending an animal testing lab to the dogs”, *Independent*, 9 January 2001

For more than a year employees – not just scientists but administrators, clerks and cleaners – have been subjected to daily abuse as they arrive and leave work. If they can get away with it, demonstrators hurl stones at their cars. Workers often need a police escort.

[...]

Since March last year five employees have had their cars torched. Firebombs have been found under another five cars.

[...]

Jim, a 32 year old administrator, said that the mood was one of fear and determination. His address had been published and he has had to stop his partner's children from opening mail.⁵²

Recently, HLS have considered establishing a 'rarely-used shareholding structure to keep investors anonymous and protect them from animal rights campaigners'.⁵³ The BioIndustry Association had urged financial institutions to stand firm against the protesters as commercial pressure on HLS mounted.⁵⁴ This call was supported by the *Association of Medical Research Charities* that announced they were to stop banking with HSBC due to their failure to provide support to HLS. This made the point that the scientific community might also be capable of exerting financial pressures on the City.

The AMRC is understood to have a few hundred thousand pounds with HSBC but its move could be followed by some of its members.

The organisation has 112 members with combined assets of about £16bn. They include the Wellcome Trust, one of the world's largest charities.

The trust, which also banks with HSBC, said yesterday it supported the AMRC's move and was 'watching the situation with interest'.⁵⁵

The Association of the British Pharmaceutical Industry has threatened withdrawal of their business and indicated that pharmaceutical companies may also reconsider their banking arrangements with Barclays and other financial institutions that failed to support HLS.

Drugs companies are threatening to boycott banks and brokers which give in to demands from animal rights extremists.

The pharmaceutical groups, with billions of assets, are outraged at the way they believe financial organisations caved in to the campaigners and cut ties with controversial research firm Huntingdon Life Sciences. They want pledges of support from the banks that manage their money.

⁵² "Workers living in fear", *Guardian*, 18 January 2001

⁵³ "Huntingdon seeks nominee structure to protect holders", *Financial Times*, 12 May 2001

⁵⁴ "City urged to fight animal rights threats", *Financial Times*, 10 March 2001

⁵⁵ "HSBC loses charities customer", *Financial Times*, 23 April 2001

Several of the biggest drugs companies are understood to have written to the big banks to voice their concerns. Trevor Jones, director-general of the Association of the British Pharmaceutical Industry (ABPI), said: "If they are not prepared to support a member of our industry (Huntingdon), we must ask if they are the people we should rely on for advice and to invest our cash. That debate is taking place right now."⁵⁶

⁵⁶ "Drug firms threaten bank boycotts", *The Guardian*, 2 May 2001

III Animal Experiments

The topic of animal experiments is one that has been brought into greater light in recent times. This is a result of the twin developments of biological sciences and a greater discussion of the concept of natural rights (both human and animal).

The rise of animal rights concerns followed soon after the rise of biological sciences and the great scientific institutions stimulated debate on all strands of philosophical thought. The same minds that debated the *hows* of biological science were equally applied to the *whys* of the rights of man and the animal kingdom. As our understanding of animal biology has continued to advance, it is important that the welfare of animals is approached with the greatest appreciation of current knowledge.

The institutionalising of animal experiments was accomplished by the requirement that products to be sold should first have their safety thoroughly assessed. This is a principle that few people would argue with: no-one wants to unnecessarily risk their life through the purchase of a new form of pain relief agent. When the safety rules were established one of the most obvious ways of safety testing appeared to be to test it first on animals, along with modern, alternative test methods it remains a valuable tool in safety assessment. Animal experimentation is not confined to statutory safety testing and plays an important role in the development stage of drugs and medicines.

Animal testing followed the principle of the miner's canary. If the canary could survive in the air within the mine then the miner would also be safe. It is doubtful whether canaries actually saved many lives but they certainly would have provided a modicum of peace of mind for the miners. While animal testing may also provide peace of mind, dangers highlighted through animal tests have rarely proved to be false. The licensing of medicines and other products requires an assessment of their safety for users, while not all products are harmless if the risk of their use has been assessed then users are less likely to suffer unintentional harm. Research on animals does not guarantee safety. To provide the greatest knowledge of the risks in utilising a product then animal experiments, conducted alongside other measures of safety, provide as comprehensive a safety profile as is currently possible.

As our knowledge of biology and biological function has improved, there has been an ever-increasing demand that diseases be vanquished and medical conditions rectified. An amazing number of conditions and diseases have proved susceptible to human developed medicines and medical techniques. There is a need, however, to ensure such products and techniques are as safe as possible. The development of animal testing means that there has accumulated a weighty body of knowledge that would be difficult for non-animal alternatives, used on their own, to surpass. The record of animal testing has been on the whole successful.

There are instances of animal-tested drugs causing problems in humans, the most quoted being thalidomide. These have often been due to inadequacies of testing protocols used by the laboratory, or stated in law, than of the animal model. If researchers had looked for the effects of thalidomide on foetal development then it is likely the resultant tragedy might have been avoided. Nevertheless, if alternative models are to successfully replace animal models

then they will have to overcome the inertia of a system generally accepted to be effective. This means that even once the substantial scientific hurdle of developing satisfactory alternatives to animals has been overcome there will be an equally substantial political hurdle.

In the meantime, the growth of the demand for new remedies has led to a growth in the industry that supplies them and a subsidiary growth in the side of the industry that has to assess their safety. For a company to generate a new product, it has to invest vast sums of money on speculative research, then on development, then on safety testing before submitting the product for clinical trials then licensing. In most countries, regulatory safety requirements demand animal tests: usually over 90% of all experiments carried out by Huntingdon Life Sciences is to meet regulatory safety requirements.⁵⁷ Even if one country, such as the UK, relaxed the need for animal tests, the economic necessity of selling the product in other countries would demand the tests continued to meet safety requirements in those countries.

Pressure exerted by animal rights protesters can be seen to have some success. It is difficult however to measure whether local successes result in overall animal welfare improvements. For example, the closure of Europe's last chimpanzee research laboratory⁵⁸ may reflect a reduction in chimpanzee experiments or simply that such experiments have moved elsewhere (in this case the USA). The RSPCA believe that action to improve animal welfare should improve the situation not simply move it out of the country.

While it is undoubtedly important to take a moral stance where uses of animals are unjustifiable and/or more humane alternatives exist, making purely political gestures that could result in the export of welfare issues and of moral problems is unacceptable.

The enabling power of the ASPA should be used in a constructive way genuinely to reduce animal use and suffering on a world-wide basis. This requires appropriate consultation, research and reflection before taking action in response to political demands.⁵⁹

The Home Office website⁶⁰ also indicates the progress that has been made in animal welfare within the context of experimentation.

There is also a danger that in the excitement of the chase the primary focus of a campaign might be lost. The Stop Huntingdon Animal Cruelty campaign targeted customers of HLS and caused British Biotech to announce that they would no longer place work with HLS.⁶¹

⁵⁷ Personal communication with HLS Public Affairs Office, 10 June 2001

⁵⁸ "Europe's last chimpanzee lab to be disbanded within weeks", *Independent*, 1 May 2001

⁵⁹ RSPCA Parliamentary Briefing on Animal Experiments, June 2001

⁶⁰ <http://www.homeoffice.gov.uk/animact/progress.htm>

⁶¹ "Brit Biotech severs links with HLS", *Financial Times*, 31 March 2001

While this was seen as a victory for the campaign as it hurt HLS, it is unlikely to have advanced animal welfare. The need for British Biotech, and other similar companies, to continue animal testing has not been removed. Instead, they will have to place their contracts with alternate institutions, most likely overseas where animal welfare legislation is less strong than the UK.

A. Why are Animals used in experiments?

The use of animals in experiments is outlined in section III C. From there it is possible to see three main categories: fundamental biological research, research and development of medical products or devices (for humans and other animals), and production and breeding of animals with genetic defects and genetically modified characteristics.

The breeding of modified animals and specially bred strains of animals are included in official records even if they are not used in what are typically considered animal experiments, e.g. for animal research purposes. The ethics of deliberately breeding an animal that is destined to suffer an illness is a consideration for regulators. Such animals do however provide a more effective way of learning about the progress of a condition and the efficacy of retarding treatments than would otherwise be the case.

The research and development of medical products or devices is the category most often targeted by animal rights protesters, as it is perceived as simply for monetary benefits. There is a common perception that animal experiments are carried out in lieu of alternatives. Most often, they are complemented by a suite of tests that supplement the animal experiments. Animal experiments are a very expensive part of the development of a product: expensive to keep the animals, expensive to hire the scientists, expensive to maintain the necessary security. There is also a high public relations cost. If it was possible for companies to dispose with animal experiments while complying with regulations and maintaining safety standards it is likely that they would be abandoned on purely economic terms.

Fundamental research would appear to be the softest of all the categories as it is easy to question the use of animals in experiments for the purpose of curiosity alone. However most of the current benefits enjoyed by humanity has come through understanding gained by fundamental, curiosity driven, research. Few pharmaceutical companies would claim that their directed medicines research could have been achieved in the absence of existing fundamental 'blue sky' research.

1. Medicines and Animal Testing

The use of animals in safety testing can probably be traced to people allowing their animals to drink from newly discovered water sources. The regulation of products that require the use of animals is much more recent than that.

Arguably, the first legislation proposed for medicines was in 1860 when a select committee recommended that local authorities be empowered to appoint inspectors to examine food and drugs for evidence of adulteration. The *Adulteration Act 1860* that resulted only addressed

the adulteration of food. It was not until the *Pharmacy Act 1868* that *the Adulteration Act 1860* was extended to cover drugs as well as food. At this time however, there was no need to test the safety of the drug for sale, no animal tests were required and subsequent legislation tended to cover economic rather than health issues. The first legislation that included a form of licensing for medicinal products was the *Therapeutic Substances Act 1925* which applied to biological substances such as vaccines, sera, toxins, antitoxins, antigens, arsphenamines, insulin, pituitary hormone and surgical sutures. Licensing included inspection of manufacturing sites and record keeping. Labelling requirements were introduced to identify the manufacturer of each batch of material produced. In fact, it was not until 1938 in the US (*Food, Drug and Cosmetic Act 1938*) and 1968 in the UK (*Medicines Act 1968*) that there were any statutory requirements imposed on medicine safety. Only after this, did statutory safety tests have to be carried out before medicines could be sold on the open market. Safety legislation like this that brought animal testing to the fore and established animal testing as a necessary part of drug sales. The *Medicines Act* was partly a response to the Thalidomide tragedy of the late 1950's.

There had obviously been animal testing prior to the legislation as drug companies found animal models the most reliable way of deducing efficacy and potential side effects before clinical trials on humans. The introduction of the statutes most probably encouraged a growth in animal testing under the aegis of safety testing. As a result of campaigning by the Society for the Protection of Animals Liable to Vivisection, Britain became the first country to have legal controls on the use of animals in the laboratory: *Cruelty to Animals Act 1876*. The law covered only vertebrate animals (mammals, birds, reptiles, fish, and amphibians), with more restrictive provisions on the use of donkeys, horses, mules, dogs, and cats. The law required all experimenters to have permits, and it established guidelines for the kinds of experiments and the way they were performed. This legislation was updated by the *Animals (Scientific Procedures) Act 1986* (see section III D).

a. Medicines Act 1968

The Medicines Control Agency is now responsible for the licensing and regulation of medicines in the UK. They provide the following information on their website with respect to the Medicines Act 1968, European Legislation and the current legislative framework:

The control of medicines in the UK is primarily through the system of licensing and conditional exemptions from licensing laid down in EC legislation, the Medicines Act 1968 and in relevant subordinate legislation. This legislation covers inter alia the systems by which licences to manufacture, market, distribute, sell and supply medicinal products are granted by Ministers ("the Licensing Authority") (or, in the new centralised system, by the relevant Community institutions), once they are satisfied about the safety, efficacy and quality of the product.

There are controls also on clinical trials, on the claims which may be made in advertising and other promotion, on quality control, manufacture of unlicensed products and supply of imports. The Authority is also required to monitor the safety of licensed medicinal products and to take action when adverse effects are recognised.

The Medicines Control Agency (MCA) is accountable to Health and Agriculture Ministers in the UK for the discharge of the functions they exercise collectively or singly as the "Licensing Authority" (LA). Department of Health Ministers are accountable to Parliament on matters concerning human medicines regulation on a UK basis.

The Medicines Act 1968 also set up a statutory advisory body called the Medicines Commission to give advice on matters specified in the Act relating to medicinal products. Under Section 4 of the Act Ministers have also established special advisory committees. The LA may not refuse to grant a marketing authorisation, revoke, vary or suspend it (in the latter case except in an emergency) on grounds relating to safety, quality or efficacy without first consulting the appropriate independent advisory body. The MCA provides the professional assessors and administrative support for these bodies.

The legislation provides a regulatory framework in respect of the safety, quality and efficacy of medicinal products to be sold or supplied or administered to patients. The MCA accordingly discharges, on behalf of Ministers, functions which have been put in place by or as a consequence of EC legislation as well as functions covered purely by domestic law.⁶²

The safety concerns mentioned may indicate animal tests and in certain cases mandate that animal tests be used: all new medicines require safety tests involving animals. Current UK policy is to avoid animal tests wherever possible utilising the principle of the 3 Rs (replace, reduce, refine) with regard to animal testing. The requirement to utilise LD50 tests,⁶³ introduced under international obligations for safety requirements, was refined in 1999 when the Government announced that licences would no longer be issued for LD 50 tests if a suitable alternative was available.⁶⁴

2. Chemicals and Animal Testing

Like medicines, the use of chemicals has been largely unregulated until fairly recent times and there were no statutory requirements for animal tests on chemicals. There had been voluntary codes of practice within the industry but the first legislative requirements on classification and labelling of chemical substances came through the EEC Dangerous Substances Directive.⁶⁵ There was initially no requirement to conduct animal tests though it is likely that such experiments would have been conducted, in the absence of alternatives, to satisfy safety requirements of the Directive. An amending Directive, the sixth time the Directive had been so amended, actually introduced a statutory requirement for animal tests to be carried out:

⁶² <http://www.open.gov.uk/mca/aboutagency/regframework/regframework.htm#current>

⁶³ A test where the amount necessary to cause the death of 50% of test animals was determined.

⁶⁴ Home Office Press Release 330/99, *LD 50 test - changes to licensing procedures*, 21 October 1999

⁶⁵ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances
http://europa.eu.int/eur-lex/en/lif/dat/1967/en_367L0548.html

Annex VI General Classification and Labelling Requirements for Dangerous Substances - Part I

A. Save where otherwise provided in the separate Directives on dangerous preparations, the substances and preparations shall be classified as very toxic, toxic or harmful according to the following criteria: (a) classification as very toxic, toxic or harmful shall be effected by determining the acute toxicity of the commercial substance or preparation in animals, expressed in LD50 or LC50⁶⁶ values with the following parameters being taken as reference values...⁶⁷

This Directive meant that new substances to be marketed within the Common Market would have to be proved safe and part of those safety tests would have to be conducted on animals. The Dangerous Substances Directive was one of the pieces of legislation that the UK had to comply with when it entered the EEC in 1974. However, the first multilateral legislation that the UK had to comply with that encouraged the use of animal experiments was concerned with the movement of hazardous wastes.

a. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

The Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially) informed the Basel Convention (1989) and implicitly requires that animal experiments be carried out. This is because information on toxicity is required as part of the agreement on the transport of such wastes, see extract from Annex III of the Convention below:

- H10. Liberation of toxic gases in contact with air or water Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
- H11. Toxic (Delayed or chronic) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity
- H12. Ecotoxic Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
- H13. Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.⁶⁸

In many cases, the only way such information is available is through animal experimentation. Thus, there is an implicit requirement for these experiments through this convention.

⁶⁶ LC50 - the concentration that results in the deaths of 50% of test animals

⁶⁷ Council Directive 79/831/EEC of 18 September 1979 amending for the sixth time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances
http://europa.eu.int/eur-lex/en/lif/dat/1979/en_379L0831.html

⁶⁸ <http://sedac.ciesin.org/pidb/texts/basel.transboundary.hazardous.wastes.1989.html>

b. Legislation that requires the use of Animal Experiments

From this limited start, there is now a range of legislation that implicitly, or explicitly, requires animal experimentation. It would be difficult to compile a comprehensive list of such legislation but the Parliamentary Office of Science and Technology compiled two lists⁶⁹ that contain the major pieces of UK and EU legislation that do so. The EU legislation covers the following topics:

- Animal Trade
- Animal Nutrition Products
- Veterinary medicinal products
- Proprietary medicinal products
- Classification, packaging and labelling of dangerous substances/preparations
- Food additives
- Cosmetics
- Food contact materials
- Pesticides

The UK legislation is mainly secondary legislation implementing the EU directives with the following major pieces of primary legislation from which some secondary legislation has been spawned, e.g., *Control of Substances Hazardous to Health (COSHH) Regulations*:

Medicines Act 1968

Health and Safety at Work Act 1974

Food and Environment Protection Act 1985

Consumer Protection Act 1987

Food Safety Act 1990

Currently the EU is concerned that many chemicals used routinely have never been subject to safety testing and are believed to have health effects. There is a programme in place to test such chemicals (EU Review of active substances)⁷⁰ but this has led to protests over the number of animal tests that will be required.

The Pesticide Safety Directorate (of MAFF) is the Government agency dealing with the review. There is comprehensive information available on the MAFF website⁷¹ about the review and how it is being conducted.

Essentially the review programme was established under the provisions of the Directive 91/414/EEC⁷² (implemented in the UK by the *Plant Protection Products Regulations 1995*).

⁶⁹ based on, POST Report, *The use of animals in research development and testing*, September 1992

⁷⁰ http://europa.eu.int/comm/food/fs/ph_ps/pro/eva/existing/index_en.htm

⁷¹ <http://www.pesticides.gov.uk>

⁷² http://www.pesticides.gov.uk/ec_process/EC_overview_general/91414background.htm

The prime focus of the review is to establish a list of substances, used as pesticides, or herbicides, that can be used without danger to human or animal health. These substances will be listed in an annex to the Directive.

B. The Rights and Wrongs of Experiments and Protests

Experimentation on animals can be an extremely emotive issue. Animal activists cannot see any justification for inflicting pain and suffering on animals. Those dependent on medicines cannot see how short term suffering by the animals could be more important than the long term gain made by those suffering from the disease or illness. It becomes, like many political issues, a situation where there is no absolute right and wrong.

Animal rights activists often refer to those carrying out experiments as evil and portray them as people who like to make animals suffer. These beliefs lead some to sympathise with, if not actually aid, those involved in the more extreme actions associated with animal rights. Those on the receiving end of bomb threats, mainly scientists, tend to perceive animal rights protesters simply as terrorists. They may also perceive the bureaucracy of regulations as something put in place to frustrate them rather than to improve animal welfare. Neither strand of opinion tends to have the end result of improving animal welfare.

The only solution would seem to be a good flow of information but those predisposed to a particular position are likely to disregard the others' points as simple propaganda or sentimentalism. There is probably a need for:

1. The scientific lobby to maintain a reasonable level of advance on biological science and improving how both we, and our companion animals, live day to day.
2. The animal lobby to apply pressure ensuring that those experiments allowed are actually 'necessary' and to press for further advances in biological sciences that will allow us to move increasingly from whole animal systems to more in vitro tests.

In the meantime, there remains a need for policy makers continually to examine the issue and press world governments to do likewise. It may eventually be possible to begin relaxing the need for animal experiments for product licences and to carry out fewer animal experiments. In arguing against the continued need for animal research, some campaigning groups claim that the contribution of medical science to the health of populations is very small.⁷³ While this claim would not find a great deal of support in the wider community, as long as there is a demand for new medicines, and for those medicines to be as safe as possible before testing on humans, there is likely to be a need for animal experiments.

It is often stated that few human illnesses affect animals. This is true in so far as specific disease organisms infective in humans are rarely infective in other animals. However, the mechanisms of infectivity and disease are often the same. With respect to toxins, the

⁷³ Letter, "Animal Rights and medical research", *Times*, 27 April 2001

mechanisms of toxicity are often extremely similar. Most mammalian animals share much of the same biological architecture and the things that go wrong with human organs and systems often have analogues in animals. By looking at the effect of the treatments on animals the companies are testing how those treatments react within a whole body system, something as yet, irreproducible in a test tube. It is less relevant whether the treatment is particularly efficacious in animals than whether there are adverse effects that may have to be watched for in human subjects during clinical trials.

Toxicity tests can be misleading if the wrong animal is chosen as a model, though models can be chosen on many criteria from organ size and distribution to bio-molecular considerations not immediately obvious. It is rare however that products do not belong to a known class of chemicals that already have a history. This makes it easier to choose suitable animal systems to test these substances. As already mentioned, initially it may not be 100% foolproof but the public generally demands that policy makers ensure things are as safe as they can be.

There are methods which can replace certain aspects of animal testing, and in some instances completely replace them. The alternatives have the dual problem of proving their efficacy and of persuading all relevant governments to accept the test in lieu of animal tests.

In theory, the UK could prohibit animal testing unilaterally. While this might have serious implications for international treaties and trade obligations, such tests could be made illegal and testing requirements dropped for products sold in the UK. Beyond any other considerations, this would be unlikely to improve animal welfare in the slightest. As experiments would have to be done to sell products in other countries, the companies would simply relocate their testing laboratories, usually to places where animal welfare legislation is far inferior to that in the UK.

To compound the problem, our membership of the EU and other trading agreements would mean that we would be unable to ban products that were tested on animals. Production methods and testing procedures would not be an allowable basis for levying such a ban. Animal testing may be something that is necessary and justified but disagreeable or it may be something that simply needs to be replaced. Regardless of individual opinions, it is unlikely to be abolished quickly or easily.

Animal rights activists often refer to the ‘cruelty’ of Huntingdon Life Sciences. This is a more difficult topic because cruelty usually means inflicting ‘unnecessary’ suffering. It is open to debate whether animal testing (partially or in its entirety) can be classified as cruel. There were specific incidences of cruelty exposed and the guilty parties have been punished but subsequent visits have revealed no further breaches of the *Animals (Scientific Procedures) Act 1986*. Banning animal experiments on the basis of isolated incidents of cruelty would be equivalent to banning the practice of driving on the basis that some people broke the laws of the road.

C. Animal Experiments in the UK

Statistics on the number of animal experiments carried out in the UK have for the majority of recent years shown a continually decreasing trend. This is borne out in the statistics presented in this section. However, the RSPCA is concerned that the figures currently mask an increase in the number of procedures carried out on genetically modified animals. They are concerned that in years to come the trend will reverse due to such procedures. In the meantime, they hope that there will be continued reductions in the number of animals used per compound tested and suffering per procedure.⁷⁴

Chart 1 shows the number of experiments/procedures started on live animals in each year since 1967. From 1 January 1987 statistics related to procedures which were subject to the provisions of the Animals (Scientific Procedures) Act 1986. To allow comparison with experiments which would have been recorded had the *Cruelty to Animal Acts 1876* still continued in force, statistics were collected under both systems in 1987. The number of experiments or scientific procedures fell consistently between 1976 and the early 1990s. Since then, the rate of decrease has fallen and there has been little change in the number since 1995.

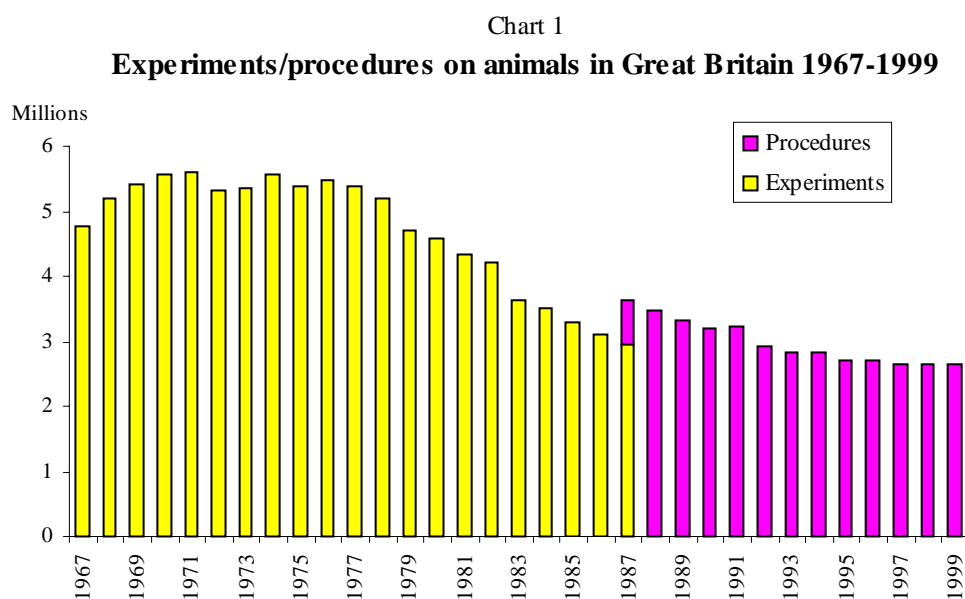


Table 1 gives details of the number of procedures, by type of animal, in 1989 and 1999. In 1999, over 90% of procedures were conducted on mammals: over 90% of which were mice and rats. Between 1989 and 1999, the number of procedures fell for most types of animals and by just over 20% overall. Trends varied markedly for individual species. Procedures on ungulates⁷⁵ increased by over 80%; there was also a large percentage increase in procedures on fish.

⁷⁴ RSPCA Parliamentary Briefing on Animal Experiments, June 2001

⁷⁵ An ungulate is a mammal that has hooves.

Table 1

Scientific procedures by species of animal, 1989 and 1999

Great Britain

	1989	1999	Percentage change
Mammals	3,004,025	2,413,692	-20%
Mouse	1,774,880	1,641,868	-7%
Rat	882,256	566,990	-36%
Guinea pig	144,827	62,086	-57%
Hamster	20,255	10,621	-48%
Gerbil	5,619	6,225	+11%
Other rodent	1,100	2,484	+126%
Rabbit	113,370	41,435	-63%
Cat	4,762	1,623	-66%
Dog	12,625	8,185	-35%
Ferret	3,520	1,119	-68%
Other carnivore	504	2,952	+486%
Horse, donkey and crossbred equids	1,411	9,342	+562%
Pig	8,650	11,684	+35%
Goat	707	511	-28%
Sheep	18,748	36,048	+92%
Cattle	5,019	5,695	+13%
Other ungulates	276	294	+7%
Prosimian	32	0	-100%
Marmoset or tamarin	1,423	1,514	+6%
Squirrel, owl or spider monkey	472	24	-95%
Macaque	2,904	2,465	-15%
Baboon	394	0	-100%
Other primate	55	0	-100%
Other mammal	216	527	+144%
Birds	251,954	106,009	-58%
Reptiles	76	32	-58%
Amphibians	11,545	14,582	+26%
Fish	77,525	122,438	+58%
Total	3,345,125	2,656,753	-21%

Source: Statistics of scientific procedures on living animals Great Britain 1999 and earlier, Home Office

A breakdown of these procedures, by primary purpose is given in the following table. Between 1995 and 1999 the only one to increase was breeding for genetic defects or modified genes, which doubled.⁷⁶

Table 2

Scientific procedures by primary purpose

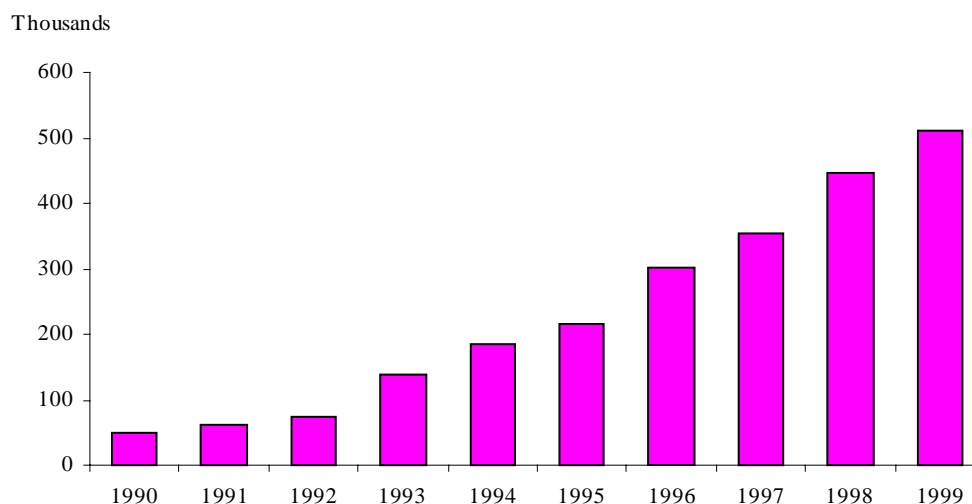
Great Britain 1999

	Number	Proportion of total
Fundamental biological research	803,771	30.3%
Research and development of products or devices		
-Human medicine or dentistry	836,194	31.5%
-Veterinary medicine	169,550	6.4%
Protection of man, animals or environment	153,261	5.8%
Production and breeding of animals with genetic defects and genetically modified animals	639,116	24.1%
Other	54,861	2.1%

Source: *Statistics of scientific procedures on living animals Great Britain 1999*, Home Office

The number of procedures using genetically modified animals was first recorded in 1990 when there were just over 48,000. Since then the number has increased more than tenfold. This is illustrated in Chart 2 below. In 1990 these procedures accounted for 1.5% of the total, by 1999 this had increased to 19.3%.⁷⁷

Chart 2
**Procedures using genetically modified animals
in Great Britain**



⁷⁶ *Statistics of scientific procedures on living animals Great Britain 1999*, Home Office

Table 3 shows the number of licensees reporting procedures, their type and the number they carried out. Over two-thirds of those reporting procedures were universities or other academic establishments. Projects at commercial organisations accounted for 14.5% of total, but over 40% of all procedures. In 1987, commercial organisations carried out 60% of all procedures; the fall in the procedures started by commercial licensees has largely accounted for the overall fall since 1987.⁷⁸

Table 3

Scientific procedures and licence holder, by type of designated establishment

Great Britain 1999

	Procedures		Licence holders reporting procedures	
	number	% of total	number	% of total
Universities, medical schools	936,137	35.2%	2,012	68.6%
Government departments	91,788	3.5%	88	3.0%
Other public bodies	312,582	11.8%	259	8.8%
Non-profit making organisations	119,455	4.5%	86	2.9%
Commercial organisations	1,101,571	41.5%	424	14.5%
Other ^(a)	95,220	3.6%	62	2.1%
Total	2,656,753	..	2,931	..

(a) Public health laboratories and NHS hospitals

Source: Statistics of scientific procedures on living animals Great Britain 1999, Home Office

Table 4 details a subset of data from the previous tables: general safety evaluation procedures, by type in 1989 and 1999. During this time the number of each type of procedure fell, the total number fell by over 80,000. There were a total of over 543,000 procedures covering the whole range of toxicology or safety and efficacy evaluation. Safety and efficacy testing of pharmaceutical products and pharmaceutical quality control accounted for over 60% of these procedures.

Table 4

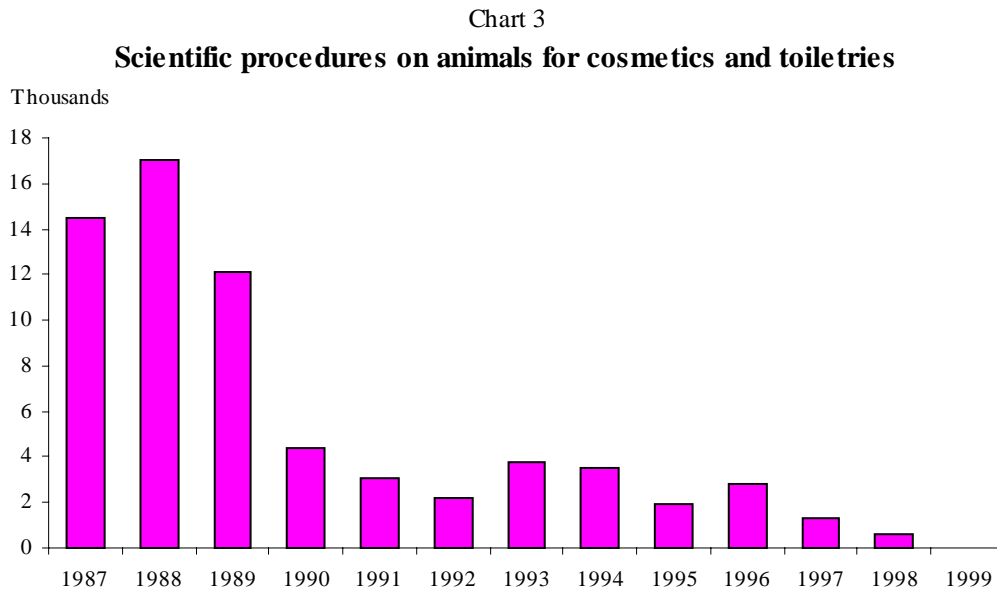
General safety/efficacy evaluation procedures by purpose, 1989 and 1999

Great Britain

	1989	1999	Percentage
			change
Environmental pollution	34,826	32,312	-7%
Substances used in agriculture	80,692	48,081	-40%
Substances used in industry	86,252	57,592	-33%
Substances used in the household	4,017	341	-92%
Food additives	5,710	4,853	-15%
Cosmetics and toiletries	12,090	0	-100%
Total	223,587	143,179	-36%

*Source: Statistics of scientific procedures on living animals Great Britain 1999 and earlier, Home Office*⁷⁷ *Statistics of scientific procedures on living animals Great Britain 1999, Home Office*⁷⁸ *ibid*

Since November 1997, no licences have been issued for cosmetic finished-product testing and existing licenses have been amended to exclude this. Chart 3 below shows trends in the number of procedures for cosmetics and toiletries. 1999 was the first year when no such procedures were started.



D. Regulation of Animal Welfare

Though legislation requires animal experiments to be carried out there is also legislation in place to protect the welfare of the animals used for experimentation. The *Animals (Scientific Procedures) Act 1986* is focussed on ensuring that those animal experiments that do take place are necessary and minimise the suffering imposed upon experimental animals.

To perform animal experiments in the UK requires licensing from the Animals Scientific Procedures Inspectorate (ASPI). The specific project, or experiment, has to be licensed to show that the knowledge expected to be gained is new and useful to its field. It must also demonstrate that the suffering expected to be imposed on the animal during the experiment is unavoidable and minimised as far as possible. The individuals carrying out the experiment must also be licensed to indicate their suitability to carry out particular procedures. Researchers also have to be trained in their use of animals.

The RSPCA believes that the mandatory training required for all prospective licensees, including the component on the ethics of laboratory animal use, is an essential strength of the UK system of regulation. The Society's [Research Animals Department] has had considerable input into the nature and content of the courses, particularly the ethics component, and members of its staff teach ethics on some of them.⁷⁹

⁷⁹ RSPCA Parliamentary Briefing on Animal Experiments, June 2001

The ASPI scrutinise all applications to carry out animal experiments in the UK.

The main tasks of the members of the Inspectorate are to assess and advise on applications for licences and certificates and to inspect work in progress in scientific establishments to check that the terms and conditions of licences and certificates are being observed.

[...]

The inspector is the "front line" scientific assessor for the Home Office of proposals for programmes of work involving living animals. Applications for project licences are made by senior scientists, are often complex and may cover up to 5 years' work. The proposals may be for any work within the entire field of biological and biomedical science, from human transplant surgery to the life history of newts. Proposals must be assessed in detail and challenged where necessary to determine whether the benefits likely to result from the project outweigh the cost in suffering to the animals to be used. To make this judgement, the inspector must take a view on the scientific quality of the proposed work, the appropriateness of the animal use and the measures to be taken to minimise suffering. It is often necessary for inspectors to discuss the proposals in detail and at length with the scientists so that the inspector is confident when making the judgements that as much as possible has been done to **REPLACE** the procedures with alternatives not using living animals, to **REDUCE** numbers of animals used in particular studies, and to **REFINE** the procedures to minimise pain, suffering, distress or lasting harm (the 3Rs).

[...]

Inspectors maintain programmes of visits to establishments to check that licensees and others are complying with the terms and conditions of the licences and certificates, and maintaining standards of husbandry and accommodation in line with the provisions of the Codes of Practice. Inspectors are expected to be well informed on all aspects of the work being undertaken in the places for which they are responsible and to develop and sustain a satisfactory working relationship with the thousand or so licensees and others in their region. The Inspectorate carries out about two and a half thousand visits to establishments each year for inspection purposes. The number of visits to each establishment during the year will be determined by size and type of work carried out. The majority of the visits to animal facilities within establishments are made without notice.⁸⁰

One of the major strengths of the *Animals (Scientific Procedures) Act 1986* is its ability to refuse work that is not justified. Each experiment proposed must be justified and not simply on scientific grounds. The Act introduced an ethical review process for experiments and the RSPCA believes that the local ethical review committees are an important part in the functioning of the legislation. The committees allow a voice to be given to those actually working with the animals and the day to day concerns related to animal research. The

⁸⁰ <http://www.homeoffice.gov.uk/animact/aspileaf.htm>

RSPCA believe such committees might bring attention to some of the practical welfare problems associated with animal research:

The full lifetime experience of the animals involved in the research should be considered when assessing harms. We believe that researchers should have to explain all adverse effects in their project licence applications in a manner that really describes what they mean for the animals. This should pay regard to source, transport, housing, husbandry and care, procedures, re-use and eventual fate (rehoming, release or euthanasia). As well as facilitating decisions on the necessity of and justification for each study, proper consideration of all these factors should help to focus the mind of the applicant and the local ERP on identifying and minimising costs. It is also not clear whether associated costs such as those incurred in breeding and supplying animals (e.g. lifetime confinement of bitches, or the use of wild-caught primates to supplement breeding colonies), or wastage of unused stock animals, are taken into account.⁸¹

As well as regulating the activities allowed during experiments, and who may carry them out, the ASPI also provide regulations on the housing and keeping of experimental animals. Much of the expense of animal experiments arises through the strict regulations on bedding, food and environmental considerations that must be adhered to. It is also expensive to maintain animals in an environment that precludes, as far as possible, exposure to unplanned toxins or disease.

The whole use of animals under the law is constantly under review by the Animal Procedures Committee⁸² that advises the Home Office on these matters. This committee currently consists of 19 members⁸³ (including the chairman) and animal welfare concerns are most overtly represented by Mr Mike Baker, the UK Director of the International Fund for Animal Welfare and Dr Maggy Jennings, Head of Research Animals Department, Royal Society for the Prevention of Cruelty to Animals.

The House of Lords is currently involved in assessing the working of the Act and what might be done to refine and improve on the current legislation. The deadline for written submissions to the Enquiry passed on 11 June 2001 and it is expected that the committee may, after submission of oral evidence, publish a report early next year:

The House of Lords has appointed a committee chaired by Lord Smith of Clifton, to conduct an inquiry on issues respecting animals in scientific procedures in the United Kingdom. The terms of reference of the committee are:

"To consider and report on issues respecting animals in scientific procedures in the United Kingdom, including--

⁸¹ RSPCA Parliamentary Briefing on Animal Experiments, June 2001

⁸² <http://www.apc.gov.uk/>

⁸³ <http://www.apc.gov.uk/members/members.htm>

- (1) the working of the Animals (Scientific Procedures) Act 1986;
 - (2) the effectiveness of and justification for animal procedures, particularly in:
 - (i) medicine
 - (ii) education
 - (iii) defence
 - (iv) product testing; and
 - (3) the development and use of alternatives to animal procedures;
- and in all the foregoing considerations to pay regard to:
 - public attitudes, availability of information, labelling and consumer issues;
 - developments in biotechnology, and the likely future demand for animal procedures;
 - the effect of any changes on the economy and the science base;
 - EU and international law and practice."

The Committee will take evidence in writing and in person and produce a report to the House, with recommendations addressed to the Government, early next year. We invite written submissions by Monday 11 June relevant to our terms of reference, and addressed in particular to the following questions:

1. What have been the strengths and weaknesses in the operation of the Animals (Scientific Procedures) Act since 1986; how do you consider that legislation on animal procedures needs to be changed?
2. What scientific developments and changes in public attitudes have occurred relevant to animal procedures since 1986; how have researchers and regulators responded to such changes; and do you consider that their response has been appropriate?
3. What are the current effective alternatives to animal procedures; and what alternatives to animal procedures might be developed?
4. How do you consider that demand for animal procedures will develop in the future; and how should the regulatory system respond?⁸⁴

⁸⁴ <http://pubs1.tso.parliament.uk/pa/ld199697/ldselect/ldscenqs.htm#anim>

IV Activism and the Law

It is clear that the use of activism may usefully draw attention to malpractice within the animal industry but that, once established, such activism is very difficult to stop. Investigation of HLS found animal cruelty and two workers in HLS were prosecuted and fined.⁸⁵ Since then, HLS has received pass marks from the Inspectorate but this has not stopped the protests.

The emotive language often used by some activists can reinforce the belief they have the moral high ground that justifies extremes of behaviour to accomplish their goals,⁸⁶ even self-harming activity.⁸⁷ As with any extreme activity, only a small minority have to be involved to tarnish the activities of the majority of activists on that issue. Thus, a minority may lead to a loss of sympathy for an issue among the general public and the press.⁸⁸

The end result of the Huntingdon Life Sciences activism may be a tightening of legislation that could be used against activists.⁸⁹ Actions by the government that might otherwise be condemned as infringing civil liberties are more likely to be supported in the face of extreme actions.⁹⁰ Most people believe the government has a moral duty to protect those engaged in legal activity against the actions of extremists.⁹¹

In April, the Prime Minister announced the establishment of a high level strategic body to address the problem of animal rights activists.⁹² The remit of this body is

To co-ordinate policy to protect those who work in or are connected with legitimate animal research establishments against intimidation by extremist groups.⁹³

There already exists a substantial body of legislation for dealing with threatening behaviour and harassment. The following section details some of the measures the police already possess to address the issue of harassment and disorderly behaviour and the measures being introduced through the new *Criminal Justice and Police Act 2001*.

The European Convention on Human Rights, which was incorporated into UK law by the *Human Rights Act 1998*, includes rights to freedom of thought, conscience and religion, (Article 9), freedom of expression (Article 10) and freedom of assembly and association

⁸⁵ "Laboratory staff cruel to dogs", *The Independent*, 18 September 1997

⁸⁶ "Animal rights woman must keep away from don's home", *Daily Telegraph*, 24 February 2000

⁸⁷ "Revealed: how Barry Horne refused to become a martyr for the cause", *The Observer*, 20 December 1998

⁸⁸ For example, "Are we now too cowardly to confront animal terrorism", *Daily Telegraph*, 16 January 2001; "Running Scared", *Guardian*, 17 January 2001

⁸⁹ "Intimidation of animal lab staff to be outlawed", *The Independent*, 18 January 2001

⁹⁰ "Isolate the extremists who terrorise people they don't agree with", *The Independent*, 22 January 2001

⁹¹ "Animal rights protests versus democracy", *Financial Times*, 22 January 2001

⁹² HC Deb 26 April 2001 cc 401-2W

⁹³ Home Office Press Release 114/2001, *Top level government group to tackle animal rights extremists*, 26 April 2001

(Article 11). It also provides a right to respect for private and family life (Article 8). All of these rights are subject to a number of limitations and qualifications. These include limitations necessary in a democratic society in the interests of public safety, the prevention of public disorder, the protection of health or morals, and the protection of the rights and freedoms of others. The full text of these Articles can be found in Schedule 1 of the *Human Rights Act 1998*.⁹⁴

A. Public Order Offences

The *Public Order Act 1986* sets out a number of public order offences. Some, such as riot (maximum penalty of 10 years imprisonment and a fine) and violent disorder (maximum penalty of 5 years imprisonment and a fine) are intended for use in very serious incidents involving public disorder. Other offences under the 1986 Act are designed, however, for use in a wider range of public order situations.

A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness to fear for his safety may be found guilty of the offence of affray. Affray is punishable under Section 3 of the *Public Order Act 1996* by up to three years' imprisonment and a fine following conviction on indictment, or six months' imprisonment and a £5,000 fine following summary conviction. However, for the purposes of this provision a threat cannot be made by the use of words alone. It must be shown that the accused intended to use or threaten violence, or that he was aware that his conduct might be violent or threaten violence.

Section 4 of the *Public Order Act 1986* provides that a person is guilty of an offence punishable by up to six months' imprisonment and a £5,000 fine if he uses threatening, abusive or insulting words or behaviour towards another person; or distributes or displays to another person any writing, sign or visible representation which is threatening, abusive or insulting; with intent:

- a) to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or
- b) to provoke the immediate use of unlawful violence by that person or another, or
- c) whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

The offence may be committed in a public or a private place, although no offence is committed where the words or behaviour are used, or the writing, sign or visible representation distributed or displayed, by a person inside a dwelling and the other person is also inside that or another

⁹⁴ The full text of the 1998 Act as originally drafted is available on the HMSO web-site at <http://www.legislation.hmsso.gov.uk/acts/acts1998/19980042.htm>

dwelling. A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

Section 6(3) of the *1986 Act* provides that a person is guilty of an offence under section 4 only if he intends his words or behaviour, or the writing, sign or visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

Section 154 of the *Criminal Justice and Public Order Act 1994* added a new section, 4A, to the *Public Order Act 1986*. The new section, which came into force 3 February 1995, created an offence of "causing intentional harassment, alarm or distress", punishable by up to six months' imprisonment and a £5,000 fine. The offence is committed by a person who, with intent to cause a person harassment, alarm or distress, uses threatening, abusive or insulting words or behaviour or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that person harassment, alarm or distress. A constable may arrest without warrant any person he reasonably suspects is committing such an offence.

As with section 4 of the *1986 Act*, no offence is committed under section 4A where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling. It is a defence for a person accused of an offence under section 4A of the *1986 Act* to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or that his conduct was reasonable.

The offence of causing intentional harassment, alarm and distress is an aggravated form of the offence of "disorderly conduct", set out in section 5 of the *Public Order Act 1986* and punishable by a fine of up to £1,000. The offence under the *1986 Act* applies to threatening, abusive, insulting or disorderly behaviour used, or threatening, abusive or insulting writing, signs and visible representations displayed, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. It does not depend on harassment, alarm or distress actually having been caused in the particular case. It is a defence for a person accused of an offence under section 5 to prove that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, that he was inside a dwelling and had no reason to believe that the words, behaviour, writing, signs, or other visible representation would be heard or seen by a person outside that or any other dwelling, or that his conduct was reasonable.

A person is guilty of an offence under section 5 only if he intends his words or behaviour to be threatening, abusive or insulting or is aware that it may be so, or if he intends his behaviour to be or is aware that it may be disorderly.⁹⁵ A constable may arrest without warrant a person who

⁹⁵ *Public Order Act 1986* s.6

fails to heed his or another constable's warning to desist from conduct which the constable reasonably suspects would constitute an offence under this section.

A person who trespasses on land in the open air and does anything which is intended by him to have the effect of intimidating people so as to deter them from engaging in any lawful activity, or of obstructing or disrupting that activity, may be charged with "aggravated trespass". This is an offence punishable with up to three months' imprisonment and a £2,500 fine under section 68 of the *Criminal Justice and Public Order Act 1994*.

Where groups of animal rights activists have gathered outside laboratories and other sites the police have sometimes made use of their powers under the *Public Order Act 1986*, as amended by the *Criminal Justice and Public Order Act 1994*, to impose conditions on public assemblies and prohibit "trespassory assemblies".

- It is an offence punishable by a fine of up to £1,000 for a person to take part in an assembly which he knows is prohibited under these provisions or knowingly to fail to comply with conditions imposed on a public assembly.
- It is an offence, punishable by up to 3 months' imprisonment and a £2,500 fine, for a person to organise an assembly the holding of which he knows to be prohibited under these provisions, or to organise a public assembly and knowingly fail to comply with conditions imposed upon it.
- It is also an offence punishable by up to 3 months' imprisonment and a £2,500 fine for a person to incite another to take part in a prohibited assembly or to incite another to fail to comply with conditions imposed on a public assembly.

A number of animal rights activists have been charged under these provisions.⁹⁶

The Home Office have examined the way in which police addressed all disorderly conduct and the results may indicate ways in which existing laws may be put to more effective use in policing activists. One research study reported that the police made extensive and increasing use of the disorderly conduct offence, under section 5 of the 1986 Act, while other methods of addressing disorderly conduct showed a decline in use.⁹⁷ There was, however, considerable variation between police forces in the choice of provisions used to deal with low-level disorder. The study also found that section 5 offences were most often characterised by abusive and threatening behaviour, the majority of which was directed at the police, or at police and members of the public jointly. Significant minorities of incidents involved violence, again often directed at the police, or general disorderly behaviour with no apparent focus. In more than a tenth of cases, the police were the sole victims of offensive behaviour. The study noted that:

⁹⁶ e.g. "Lab protect man bailed", *Coventry Evening Telegraph*, 7 November 2000

⁹⁷ David Brown & Tom Ellis, *Policing Low-Level Disorder: Police Use of Section 5 of the Public Order Act 1986* Home Office Research Study 135 (1994) pp vii-viii

In some cases, the abuse or violence directed at the police was relatively serious. More often, it was for consideration whether the misbehaviour would have caused a police officer alarm or distress; arrests may have been made to secure respect for the police.⁹⁸

A subsequent Home Office study noted that half the police forces in England and Wales had used the powers under the 1994 Act in 1995.⁹⁹ The study concluded that:

Formal action by way of a police caution or prosecution was relatively infrequent. This was because the directions, or even the threat of their use, was commonly found to resolve situations without the need for arrests.

A strong theme emerging from the research was how use of the powers could vary from force to force, division to division and incident to incident. Clearly the pattern of public disorder is not random; however three other factors had a strong influence on these variations. These were:

Police willingness to use the CJPOA powers, with some forces and divisions enthusiastically and frequently applying the powers while others had formal or informal policies which restricted their application;

Whether the police had been given prior warning or possible public disorder, and had deployed officers in good time and sufficient numbers for the CJPOA to be utilised;

Individual officers' skills in managing public order situations and keeping the peace. The *possibility* of the provisions being used could provide a background to public order encounters, but whether and how they were applied depended on the skills and experience of officers.

In the past the police had dealt with situations covered by the CJPOA using pre-existing powers and offences. These included sections of the Public Order Act 1986, common law breach of the peace, public nuisance and criminal damage. On other occasions, when no law or powers were clearly applicable, officers relied on their general authority. Overall, the introduction of the CJPOA did not appear to have led to a significant change in officers' approach to disorder or an expansion of the types of situation they attended. However, the use of the CJPOA provisions rather than pre-existing powers resulted in officers being placed in a *stronger legal position* when dealing with cases of disorder.¹⁰⁰

⁹⁸ *ibid.* p viii

⁹⁹ Tom Bucke & Zoe James, *Trespass and protest: policing under the Criminal Justice and Public Order Act 1994* Home Office Research Study 190 p xii

¹⁰⁰ Tom Bucke & Zoe James, *Trespass and protest: policing under the Criminal Justice and Public Order Act 1994* Home Office Research Study 190 p xii

B. Harassment

In some cases, persistent disorderly conduct might constitute an offence under the *Protection from Harassment Act 1997*. Section 1 of the 1997 Act makes a general declaration prohibiting a course of conduct amounting to harassment which, if carried out, would give rise to criminal penalties under section 2 or section 4 and may be the subject of a claim in civil proceedings under section 3 of the Act. The conduct amounting to harassment is defined in section 1 as follows:

1. - (1) A person must not pursue a course of conduct-
 - (a) which amounts to harassment of another, and
 - (b) which he knows or ought to know amounts to harassment of the other.

- (2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

- (3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows-
 - (a) that it was pursued for the purpose of preventing or detecting crime,
 - (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
 - (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

A person who pursues a course of conduct in breach of section 1 is guilty of an offence punishable by up to 6 months' imprisonment and a £5,000 fine. Section 4 created a more serious, arrestable, criminal offence of carrying out a course of conduct as described in section 1 which puts people in fear of violence.

Section 7 of the 1997 Act provides that references to harassing a person include alarming the person or causing the person distress, that a 'course of conduct' must involve conduct on at least two occasions, and that 'conduct' includes speech. Section 3 created an arrestable offence which is committed where a person, without reasonable excuse, breaches an injunction prohibiting harassment which has been issued as part of a civil remedy provided for elsewhere in that section.

Harassment is not defined in the Act though section 7 provides that

- references to harassing a person include alarming the person or causing the person distress,
- a 'course of conduct' must involve conduct on at least two occasions, and
- 'conduct' includes speech.

The definition of ‘harassment’ is the same whether in a civil or a criminal case, although the standard of proof will be higher in a criminal case than in a civil action.

The case of *Huntingdon Life Sciences*¹⁰¹ is one of a small number of reported cases in which the scope of this definition has been addressed. Huntingdon Life Sciences, in response to a sustained campaign by animal rights protesters, obtained an injunction under the 1997 Act against the British Union for the Abolition of Vivisection (BUAV) and other named defendants. The BUAV successfully applied to have the injunction struck out. The appeal judge commented that the 1997 Act ‘was clearly not intended by Parliament to be used to clamp down on the discussion of matters of public interest or upon the rights of political protest and public demonstration which are so much part of our democratic tradition’. In a separate criminal case last year, three boys were convicted of causing harassment under the 1997 Act following what was described as a sustained campaign of bullying their neighbour’s children.¹⁰²

The Act provides three possible defences to a charge or allegation of harassment. Where harassment has been proved, the defendant would have to show one of the following:

1. that the conduct was for the purposes of preventing or detecting crime;
2. it was pursued under an enactment or rule of law; or
3. in the particular circumstances the conduct was reasonable.¹⁰³

The last of these has potentially the widest scope for limiting the scope of the Act. It is for the courts to decide whether the conduct was in fact reasonable in the circumstances.

A Home Office research study evaluating the use and effectiveness of the 1997 Act was published last year.¹⁰⁴ It found that the police were not always clear about what conduct could be taken to constitute harassment within the meaning of the Act and that police officers did not always take action at the right time. The study suggested that there might be a need to review police practice in dealing with harassment cases. Noting the relatively high attrition rate of harassment cases, the study also suggested that cases were not being effectively pursued.

C. Other criminal offences

Common assault, which is a summary offence punishable by up to six months’ imprisonment and a £5,000 fine,¹⁰⁵ may be committed where one person intentionally or recklessly causes another person to “apprehend immediate and unlawful personal violence”.

¹⁰¹ *Huntingdon Life Sciences and anr v Curtin and ors*, *Times Law Reports*, 11 December 1997

¹⁰² ‘Three boys convicted of bullying neighbours’, *The Guardian*, 28 April 1998

¹⁰³ section 1(3)

¹⁰⁴ Jessica Harris, *An evaluation of the use and effectiveness of the Protection from Harassment Act 1997* Home Office Research Study 203 (2000)

¹⁰⁵ *Criminal Justice Act 1988* section 39,

A person who, without lawful excuse, intentionally or recklessly destroys or damages property belonging to another person is guilty of criminal damage, which is punishable under the *Criminal Damage Act 1971* by up to 10 years' imprisonment following conviction on indictment.

D. Malicious communications

Under section 1 of the *Malicious Communications Act 1988* a person who sends a letter or other article to another person that conveys:

- i) a message which is indecent or grossly offensive; or
- ii) a threat; or
- iii) information which is false and known or believed to be false by the sender; or
- iv) any other article which is, in whole or in part, of an indecent or grossly offensive nature,

is guilty of an offence punishable by a fine of up to £2,500 if his purpose, or one of his purposes, in sending it is that it should cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated. Section 2 of the *1988 Act* provides that a person is not guilty of this offence if he shows that the threat was used to reinforce a demand which he believed he had reasonable grounds for making, and that he believed that the use of the threat was a proper means of reinforcing the demand.

Section 43(1) of the *Telecommunications Act 1984* makes it an offence punishable by up to six months' imprisonment and a £5,000 fine for a person to:

- i) send, by means of a public telecommunications system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- ii) send, by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently make use for that purpose of a public telecommunications system.

Halsbury's Statutes notes that knowledge is an essential ingredient of this offence and cites case-law to support the view that knowledge includes the state of mind of a person who shuts his eyes to the obvious. It adds that there is authority for saying that where a person deliberately refrains from making inquiries the result of which he might not care to have, this constitutes in law actual knowledge of the facts in question.¹⁰⁶

¹⁰⁶ *Halsbury's Statutes* Fourth Edition, Vol 45, p 193, note to s.43

E. Arrest for breach of the peace

A police constable, or indeed any other person, may make an arrest where a breach of the peace has been committed, is being committed, or where there is reasonable cause to believe that such a breach will be committed or renewed. Individuals who are not police constables need to be aware, however, that they may be liable to actions for wrongful arrest in respect of the exercise of these powers, and may, therefore need to exercise caution, or leave matters to the police. In *R v Howell* the Court of Appeal said that:

There is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being harmed through an assault, an affray, a riot, unlawful assembly or other disturbance¹⁰⁷

This emphasises that actual or apprehended violence is an essential ingredient of a breach of the peace. People who are arrested under these powers may be brought before magistrates, who may bind them over for a set period (often a year) to be of good behaviour and keep the peace. A person may be bound over whether or not he or she has been convicted of any substantive offence. A person who refuses to be bound over may be imprisoned for up to two months and fined £1,000.

F. Anti-social behaviour orders (ASBOs).

Section 1 of the *Crime and Disorder Act 1998* was intended to enable the police and local authorities to apply to magistrates' courts, asking them to issue anti-social behaviour orders (ASBOs), restraining the activities of particular individuals. Section 1(1) of the 1998 Act provides that:

An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely-

that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

(b) that such an order is necessary to protect persons in the local government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts by him;

and in this section "relevant authority" means the council for the local government area or any chief officer of police any part of whose police area lies within that area.

¹⁰⁷ [1982] QB 416

Each “relevant authority” must consult the other before making an application to the court for an ASBO.

Section 1(4)-(5) of the 1998 Act provides that:

(4) If, on such an application, it is proved that the conditions mentioned in subsection (1) above are fulfilled, the magistrates’ court may make an order under this section (an “anti-social behaviour order”) which prohibits the defendant from doing anything described in the order.

(5) For the purpose of determining whether the condition mentioned in subsection (1)(a) above is fulfilled, the court shall disregard any act of the defendant which he shows was reasonable in the circumstances.

An ASBO will have effect for at least 2 years.¹⁰⁸ Either the applicant or the person on whom the order has been imposed may apply to the court for it to be discharged.¹⁰⁹ An order cannot, however, be discharged within the first 2 years unless both parties consent.¹¹⁰

A person who, without reasonable excuse, does anything which he is prohibited from doing by an ASBO commits an offence punishable by up to 5 years’ imprisonment and a fine following conviction on indictment.¹¹¹

Detailed guidance on the use of anti-social behaviour orders is available on the Home Office website¹¹² as is guidance for local authorities on drawing up ASBO protocols.¹¹³

G. The Criminal Justice and Police Act 2001

Part I of the *Criminal Justice and Police Act 2001*, which was given Royal Assent on 11 May 2001, enables the police in England and Wales to impose fixed “on the spot” penalties for certain types of disorderly behaviour. Failure to pay the fixed penalty or request a trial may lead to the imposition of a fine equivalent to one and a half times the penalty. The Act also provides measures for dealing with alcohol-related disorder, including powers for local authorities to prohibit the consumption of alcohol in specified public areas and powers for the police and local authorities to take steps to close licensed premises. The provisions of the Bill originally presented in the House of Commons¹¹⁴ are discussed in more detail in Library research paper 01/10 *The Criminal Justice and Police Bill*.

¹⁰⁸ *Crime and Disorder Act 1998* s.7

¹⁰⁹ *ibid.* s.8

¹¹⁰ *ibid.* s.9

¹¹¹ *ibid.* s.10

¹¹² <http://www.homeoffice.gov.uk/cdact/asbo.htm>

¹¹³ <http://www.homeoffice.gov.uk/cdact/asboguid.htm>

¹¹⁴ HC Bill 31 of 2000-2001

On 21 February 2001 Jack Straw, then Home Secretary, announced new measures designed to deal with animal rights extremists and give the scientific community better protection from their activities.¹¹⁵ These measures, which were inserted as two new clauses of the *Criminal Justice and Police Bill* during the Bill's committee stage in the House of Commons,¹¹⁶ were intended to:

- give police constables the power to give directions stopping the harassment of a person in his home. It will be an offence punishable by up to 3 months' imprisonment and a £2,500 fine for a person knowingly to contravene such a direction and the police will be able to arrest anyone who does so.
- amend the *Malicious Communications Act 1988* to make the sending of hate mail an imprisonable offence, introduce an objective test of what constitutes a belief that a particular behaviour was reasonable, and ensure that the offence under the 1988 Act covers communications sent by electronic means;

A press notice issued by the Department of Trade and Industry (DTI) on 2 March 2001 announced a Government amendment to the Bill to allow company directors who are at serious risk of violence or intimidation to apply to the Secretary of State for permission to file a service address on the company register instead of their home address. A home address would still have to be provided, but it would be kept on a separate, secure register which would only be available for inspection by bodies such as the police.¹¹⁷ An amendment designed to do this was also added to the Bill as a new Clause during its committee stage in the House of Commons.¹¹⁸

During the Bill's report stage in the House of Commons, a Government amendment was inserted which is designed to deal with acts of collective harassment. The Home Office minister Charles Clarke described the Government's intentions in introducing the amendment as follows:

It is already an offence for a group of people to arrange for one person to engage in a course of conduct that harasses another. What is less clear is whether it is an offence for a group to arrange for, say, each member to do just one act of harassment. For instance, one person might order an unwanted taxi to call for the victim, and another might arrange for an unwanted consignment of gravel to be dumped in the victim's driveway, as in the example given in Committee by the hon. Member for North-East Hertfordshire (Mr. Heald). In such a case, the victim is at the receiving end of a series of harassing experiences, but no offence may have been committed by any one person.

¹¹⁵ Package of measures to tackle animal rights extremists - Home Office press notice 21.2.2001

¹¹⁶ HC Standing Committee 'F' 6 March 2001 cc 430-496

¹¹⁷ Byers acts to protect directors under threat of violence – DTI press notice 2.3.2001

¹¹⁸ HC Standing Committee 'F' 6 March 2001 c 512

We believe that, in practice, it is indeed possible that such a group would have to engage in some sort of course of conduct to make and check the necessary arrangements and that, in doing so, its members could well be liable to prosecution directly under the 1997 Act. However, we have concluded that it is prudent to make it explicitly clear that collective harassment of such a nature is no less an offence than a campaign of harassment by one person--a point made by my hon. Friends the Members for South Thanet and for Peterborough.

Subsection (1) amends section 7 of the 1997 Act, which defines "conduct" and "course of conduct" in sections 1 to 5. It will insert new subsection (3A), which adds to the definition of "conduct". Paragraph (a) provides that conduct by one person shall be taken, at the time it occurs, also to be conduct by another if it is aided, abetted, counselled or procured by that other person.¹¹⁹

He went on to say:

Paragraph (b) provides that the knowledge and purpose of those who aid, abet, counsel or procure such conduct relate to the moment at which the conduct was aided, abetted, counselled or procured, not to when it took place. That will enable knowledge and purpose to be considered in relation to what was planned or should have been expected at the time of planning. Thus the new clause still allows for a defence of reasonableness.

We believe that the new clause will add a valuable measure of protection for individuals such as members of the scientific community against a concerted campaign of harassment. If the 1997 Act were not amended, the perpetrators could escape prosecution; I agree with all members of the Committee who moved amendments and spoke in the debates on those matters that that is unacceptable. That is why we have introduced the measure. We believe profoundly and strongly that we must take all the action we can to protect legal research in this country and ensure that those who engage in that research are properly protected and free from intimidation.¹²⁰

These amendments became part of the final Act and should provide yet further powers for the police to deal with the increasing problem of ensuring that animal rights protests remain lawful.

¹¹⁹ HC Deb 14 March 2001 cc 1045-1046

¹²⁰ *ibid.* c 1047