

## ANIMAL WELFARE ACT 1999

### CRITERIA FOR CONSIDERING APPLICATIONS TO BE AN APPROVED ORGANISATION

#### Purpose of this document

The purpose of this document is to set out in detail the requirements which need to be met for an organisation to become an Approved Organisation (AO) under the terms of the Animal Welfare Act 1999.

#### General Provisions of the Animal Welfare Act 1999

The Animal Welfare Act 1999 reforms the law relating to the welfare of animals and the prevention of their ill-treatment and in particular:

- 1 Requires the owners of animals, and persons in charge of animals, to attend properly to the welfare of those animals;
- 2 Specifies conduct that is or is not permissible in relation to any animal or class of animals;
- 3 Provides a process for approving the use of animals in research, testing, and teaching;
- 4 Establishes a National Animal Welfare Advisory Committee and a National Animal Ethics Advisory Committee; and
- 5 Provides for the development and issue of codes of welfare and the approval of codes of ethical conduct.

#### Approved Organisations and Inspectors

The Act allows organisations which are approved under section 121<sup>1</sup> of the Act, to recommend to the Minister the appointment of inspectors and to the Director-General of the Ministry of Agriculture and Forestry the appointment of auxiliary officers under the Act under sections 124 and 125, respectively.

The inspectors have wide-ranging powers under the Act to inspect land, premises, and places and stationary vehicles, aircraft and ships if they suspect an animal's welfare may be at risk. For example, they may obtain search warrants; dispose of animals seized in an inspection; detain a vehicle, aircraft, ship or animal; and destroy sick or injured animals. For this reason the criteria which must be considered before an organisation can be approved are comprehensive.

<sup>1</sup> These guidelines were updated on 18 October 1999 by including references to sections in the Animal Welfare Act 1999. They replace the version of 8 October which referred to clauses in the "report back" version of the Animal Welfare Bill (No.2).

Although the term "organisation" is not defined in the Bill, an individual cannot be approved as an organisation. The term is not restricted to a body corporate. Any "body", whether a body corporate or an association of persons, can apply to the Minister. An organisation could include an incorporated society, charitable trust, company; state owned enterprise, Crown entity, unincorporated association, foundation and so on.

### **Role of the RNZSPCA**

The RNZSPCA has been declared to be an Approved Organisation under the Act (sections 189 and 190) because of its previous experience and history in providing inspectors under the Animals Protection Act 1960. There is also in place a formal memorandum of understanding between MAF and the RNZSPCA. The MoU is an important document which sets out, amongst other things, procedures for managing complaints which might be received by both MAF and the RNZSPCA and for transferring "complaint files" between the organisations.

Annual audits are conducted of selected SPCA branches and member societies. Branches are an integral part of the RNZSPCA while member societies are incorporated societies in their own right and are affiliated to the RNZSPCA. Member societies have approved organisation status only while they remain affiliated to the RNZSPCA.

Candidate inspectors are interviewed where required to complement reference checks. The RNZSPCA quality management procedures have been approved. The Minister may impose conditions in relation to the establishment of performance and technical standards for inspectors and auxiliary officers.

## THE APPLICATION (Section 121)

Section 121 of the Animal Welfare Act 1999 provides that the Minister may, after receiving an application from any organisation, declare that organisation, by notice in the Gazette, to be an approved organisation for the purposes of this legislation.

The basis for approval as an Approved Organisation is whether the organisation seeking approval meets the criteria set out in section 122 of the Act. This document specifies in more exacting terms the standards that the organisation must be able and willing to meet. All criteria must be met before approval can be given.

The Act does not set out a procedure when it appears that an application is likely to be declined by the Minister. It is intended, however, that the applicant will be provided with a draft copy of the recommendation and given a reasonable period of time (60 days) to present a submission to the Minister in response to the proposed decision.

### Approval with conditions

The Bill does not allow conditional approval. This means, for example, that there can not be a trial period and approval can not be given subject to specific criteria being met. The application must therefore be complete and comprehensive. The Minister does, however, retain the ability to ask the applicant for further information before making a decision.

The only conditions the Minister may apply when giving approval are conditions relating to the establishment by the organisation of performance standards and technical standards for inspectors and auxiliary officers under section 122(2).

### Monitoring

The Ministry of Agriculture and Forestry (MAF) intends to formally review and monitor all approved organisations annually to ensure that required standards are being maintained. For example, auditing systems and processes to ensure that accountability arrangements are being complied with (see section 122(1)(b)).

This will take the form of:

- A an annual report from the Approved Organisation commenting on how the criteria in Appendix 1 and the conditions imposed under section 122(2) have been met, with supporting information;
- B an audit by the MAF Compliance Group following receipt of the annual report from time to time as required;
- C an audit of any branches of the Approved Organisation from time to time as required.

MAF will prepare a draft report following an audit that will be made available to the Approved Organisation for comment following which a final report will be prepared.

If it is found that the criteria in section 122 are not being met or the conditions imposed in section 122(2) have not been complied with, the Minister may revoke the declaration of

approval. The Minister may also revoke, amend or replace a condition imposed under section 122(2).

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## REQUIRED INFORMATION

Under section 121, the information that an application **must** contain is:

- a) the full name of the applicant;
- b) a contact address;
- c) the area in which the applicant proposes to operate as an approved organisation, and
- d) information that will enable the Minister to assess whether the organisation meets the criteria set out in section 121.

Information required to satisfy the requirements of (d) above would include:

1. Evidence of the purposes of the organisation such as its rules, deed of trust, memorandum and articles of association. It must be possible to verify the legal status of the organisation, including a clear statement that its principal purpose is to promote the welfare of animals;
2. Evidence of a quality management system, together with associated policies and procedures;
3. Evidence of long term financial robustness and reliable sources of funding;
4. Procedures for selection of persons to be recommended for appointment as inspectors and auxiliary officers;
5. Copy of employment contract or other written agreement or arrangement between the organisation and inspectors and auxiliary officers.

The willingness of the organisation to enter into a memorandum of understanding with MAF (MAF Biosecurity Authority) would give the Minister additional confidence in a proposal. However, having such an agreement is not mandatory and the Minister cannot require it as a condition of approval.

All information should be clearly written, be comprehensive and credible.

## CRITERIA (Section 122)

This section explains in more detail the suitable evidence the Minister will require before an organisation can become an Approved Organisation.

### PRINCIPAL PURPOSE (Section 122(1)(a))

The evidence must show that "the principal purpose of the organisation is to promote the welfare of animals".

Its rules, deed of trust, articles of association or statutory instrument will generally determine the object of an organisation. However, some instruments of incorporation, such as articles of association of a company, can be so wide as to obscure the principal purpose of the organisation. In those cases it may be necessary to look beyond the stated purpose.

Issues to be considered might include:

- Does the organisation have a history in animal welfare? If so, what background information is provided or available?
- Does the organisation have a clear mission statement and a strategic business plan?
- Does the organisation have clear long term objectives and supporting policies?
- How does the organisation portray itself in promotional material and activities (is the focus on animal welfare)?
- Does the organisation belong to a larger national body and is it affiliated to any national or international organisations (if so, what are they)?

## ACCOUNTABILITY AND OTHER ARRANGEMENTS (section 122(1)(b))

The accountability arrangements, financial arrangements and management of an organisation must be such that, having regard to the interests of the public, the organisation is suitable to be declared an Approved Organisation.

The nature and quality of the organisation's management systems will be assessed. There should be a management system that is able to be audited readily by the MAF Compliance Group. (Management systems based on ISO 9000 would be robust evidence of such systems). These systems must show that the inspectors and auxiliary officers are able to operate in a well-ordered and managed environment.

Other suitable evidence would include:

### *Management of the organisation:*

- A written statement that identifies the management structure of the organisation. The management structure refers to the system of decision-making within the organisation, and includes the roles and responsibilities of members of the organisation. It should be clear that the management has appropriate skills and experience to implement the Animal Welfare Act and effectively manage the organisation. Evidence of this may include a current organisation chart, the names and background of the key managers and field staff, evidence that all staff and volunteers will receive regular and appropriate supervision and support;
- Information on the size of the organisation: number of people in the organisation including paid staff (part and full time); volunteers (people who take an active part in the running of the organisation but are not paid wages or salary), and members (everyone involved in the organisation; paid staff, volunteers, people who pay a subscription etc.);
- Information on the numbers and location of proposed inspectors and auxiliary officers including job descriptions and training plans for all inspectors and auxiliary officers;
- The organisation must be able to supply or demonstrate that it has appropriate policies and procedures (e.g., easy to understand, consistent with statutory authority, current and in writing) which will enable it to effectively implement the Animal Welfare Act and effectively manage the organisation. Essential policies and procedures include those dealing with: prosecutions; legal procedures (search, seizure); enforcement orders; disposal of animals; complaints (including complaints about the organisation or those staff who deal with complaints about animals owned or cared for by family or friends); and complaints about the treatment of animals.

### *Accountability arrangements:*

- A description of the organisation showing evidence of clear, workable and effective accountabilities and responsibilities, (e.g., between branches and central offices, between managers/supervisory staff, inspectors, auxiliary officers and volunteers).
- A clearly written statement of the policy of communication and managerial co-ordination within the organisation, including the supervision policy;

- A clear description of the functions, powers, responsibilities and relationships for and between each level of the organisation; for example, the governing body (board of directors, trustees, committee), members, shareholders, and employees. The information should include such matters as criteria and information for the election or (re)appointment of the governing body.
- The evidence should show that the organisation would undertake regular internal monitoring and evaluation of its work and management.
- A description of the policy for staff recruitment and vetting of staff.

*Financial arrangements:*

- A robust and transparent financial accounting system appropriate to the size and complexity of the organisation, which clearly shows how money is spent. It should also be capable of producing accurate and timely financial statements;
- Audited information to show that the organisation is legally solvent;
- Sufficient information to show that the organisation will be financially robust to ensure that it can responsibly carry out the functions given to it under the Act in the medium to long term (5-10 years). Such information might include: that it has public liability insurance and an analysis of financial information showing recent performance and future projections.
- Arrangements for the regular independent audit of accounts and that audited accounts are available for inspection;
- Adequate internal controls (especially of financial systems).

### CONFLICT OF INTEREST (Section 122(1)(c))

**The functions and powers of the organisation are not such that the organisation could face a conflict of interest if it were to have both those functions and powers and the functions and powers of an approved organisation.**

A conflict of interest is a set of conditions in which professional judgements of a *primary* interest, such as making decisions in one's official role, tend to be unduly influenced by a *secondary* interest, such as personal gain, philosophical or moral objectives. The more the secondary interest is tied to the individual, the more ethically dubious the conflict is. The *appearance* of a conflict of interest is as important as an actual or potential conflict of interest.

The functions and powers of the organisation (and key individuals) and the functioning of the organisation will determine whether or not there is a conflict of interest. For instance, an animal rights organisation would have a conflict of interest with that of an Approved Organisation under the Act. Alternatively, failure to adequately separate the advocacy and prosecutions functions of the organisation could also result in actual or perceived conflicts of interest.

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## EMPLOYMENT CONTRACTS OR ARRANGEMENTS (Section 122(1)(d))

The employment contracts or arrangements between the organisation and the organisation's inspectors and auxiliary officers are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation.

There is no statutory requirement that an inspector be employed by the Approved Organisation.

The important issue is how the inspectors/auxiliary officers are answerable to the Approved Organisation. Special problems may be experienced here because most animal welfare inspectors and auxiliary officers are volunteers or part-time staff. It is likely that most inspectors and auxiliary officers appointed under sections 124 and 125 respectively, will be employed in occupations other than as an animal welfare inspector. Section 122(1)(e)(ii) also covers this point.

Information that should be provided includes:

- Details of a job description and person specification for the animal welfare inspector/auxiliary officer positions including details of special skills, qualifications and training required and the powers, duties and functions conferred or imposed by the Animal Welfare Act 1999.
- Details of any contract or arrangement between the AO and the inspector or auxiliary officer;
- Details of how the inspector/auxiliary officer is accountable to the AO ( the section on accountability arrangements describes what issues need to be considered);
- Details of how the AO would assess "the interests of the public" in contracting a person.

## EXPERTISE AND EXPERIENCE (Section 122(1)(e))

The persons who may be recommended for appointment as inspectors or auxiliary officers –

- (i) Will have the relevant technical expertise and experience to be able to exercise competently the powers, duties, and functions conferred or imposed on inspectors and auxiliary officers under this Act; and
- (ii) Subject to section 126, will be properly answerable to the organisation.

### i) *Expertise and experience*

The AO must provide suitable evidence that persons who may be recommended for appointment as inspectors or auxiliary officers will have the "relevant technical expertise and experience to be able to exercise competently the powers duties, and functions" conferred or imposed on them under the Act.

The desired level of technical expertise is found in the syllabus for the National Certificate in Compliance and Regulatory Control (Animal Welfare). The evidence provided in the application should show that inspectors have undertaken or are undertaking this course of study. However, this is not an absolute requirement as a proposed inspector (or auxiliary officer) could have other relevant technical qualifications and/or experience which could be either deemed to be equivalent or able to be assessed against the standards for the national certificate.

As noted in the section on accountability arrangements, the application should include evidence that the technical skills are being continually monitored and updated through regular training.

### ii) *"Properly answerable"*

The inspectors and auxiliary officers are also required to be "properly answerable" to the organisation.

Although the term is not defined in the Act, the legal interpretation is that "properly" means "reasonably" or "in accordance with a sound system"; while "answerable" is the equivalent of "responsible". The application should include evidence that there are appropriate systems for monitoring the performance of inspectors and auxiliary officers including appropriate supervision.

### CONDITIONS OF APPROVAL (Section 122(2))

In declaring an organisation to be an Approved Organisation under section 121, the Minister may impose conditions on the approval relating to the establishment by the organisation of performance standards and technical standards for inspectors and auxiliary officers.

The conditions are restricted to those relating to the "establishment by the organisation of performance standards and technical standards for inspectors and auxiliary officers".

The organisation need not have performance standards and technical standards actually in place at the time the application is considered or approved.

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