

Final Research Report

The Duty of Cat Owners to Provide Proper Welfare: Interpretative Challenges in Thai Animal Welfare Law, with Comparative Insights from the UK and Germany

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## ABSTRACT AND KEYWORDS

### **Abstract**

Despite the legislative recognition in 2014 that animals are ‘sentient beings,’ conflicting trends persist in Thailand regarding the treatment of cats. While many cats are humanised and considered family members, others are mistreated. This research seeks to clarify the term ‘proper welfare’ in Thai animal welfare legislation to determine cat owners’ duties. To this end, it employs a mixed-methods approach, drawing on comparative insights from the United Kingdom and Germany—jurisdictions that influenced the drafting of Thai legislation—and adopts an interdisciplinary methodology, incorporating philosophical and scientific lenses to explore this multi-dimensional concept. Although cats are legally classified as property, this research argues that such status does not grant owners unrestricted rights. These rights can be justifiably limited under general legal principles such as public morals and good order, which are already embedded in Thailand’s Constitution and have been interpreted inclusively in the UK and Germany. While abolitionists may find such restrictions insufficient to protect the intrinsic value of cats, from a welfarist and new welfarist perspective, they represent a meaningful step forward—at least until cats and their fellow creatures are truly emancipated from their property status in an anthropocentric world.

### **Key words:**

Animal rights law; Animal welfare laws; Proper Cat welfare; Property rights

## บทคัดย่อและคำสำคัญ

### บทคัดย่อ

แม้กฎหมายไทยจะรับรองในปีพ.ศ.2557ว่า “สัตว์เป็นสิ่งมีชีวิตที่มีความรู้สึก” แต่แนวโน้มการปฏิบัติต่อแมวในประเทศไทยยังคงมีความขัดแย้งอยู่มาก ด้านหนึ่งแมวหลายตัวได้รับการปฏิบัติแบบมนุษย์ เหมือนดังสมาชิกในครอบครัว แต่จำนวนไม่น้อยกลับถูกปฏิบัติอย่างไม่เหมาะสม งานวิจัยนี้มุ่งสร้างความชัดเจนให้คำว่า “สวัสดิภาพที่เหมาะสม” ตามกฎหมายสวัสดิภาพสัตว์ของไทยเพื่อให้เกิดความชัดเจนของหน้าที่ดังกล่าวของเจ้าของแมว โดยใช้วิธีวิจัยแบบผสมผสาน โดยเปรียบเทียบกับกฎหมายของสหราชอาณาจักรและสหพันธ์สาธารณรัฐเยอรมนี เนื่องจากเป็นต้นแบบที่มีอิทธิพลต่อการร่างกฎหมายไทยดังกล่าว อีกทั้งยังใช้วิธีวิจัยแบบสหวิทยาการ โดยนำทฤษฎะเชิงปรัชญาและวิทยาศาสตร์มาร่วมอธิบายเนื่องจาก “สวัสดิภาพแมวที่เหมาะสม” เป็นแนวคิดที่ครอบคลุมหลายมิติ แม้ว่าแมวจะยังคงมีสถานะทางกฎหมายเป็นเพียงทรัพย์สิน แต่งานวิจัยนี้เสนอว่าสถานะดังกล่าวไม่ได้ให้สิทธิต่อผู้ที่เป็นเจ้าของอย่างไม่มีขีดจำกัด สิทธิเหล่านี้ถูกจำกัดได้โดยขอบข่ายได้หลักกฎหมายทั่วไป เช่น ศีลธรรมอันดี และความสงบเรียบร้อยของประชาชน ซึ่งเป็นหลักที่มีบัญญัติไว้ในรัฐธรรมนูญไทย และได้ถูกตีความอย่างครอบคลุมทั้งในสหราชอาณาจักร และสหพันธ์สาธารณรัฐเยอรมนี แม้หากมองในมุมมองนักสิทธิสัตว์อาจจะยังไม่เพียงพอในการคุ้มครองคุณค่าของแมวโดยตรง แต่สำหรับนักสวัสดิภาพสัตว์ และนักสวัสดิภาพแนวใหม่ ถือเป็นก้าวสำคัญ จนวนกว่าแมวและเพื่อนสัตว์อื่นๆ จะได้รับการปลดจากสถานะของการเป็นทรัพย์สินในโลกที่มีมนุษย์เป็นศูนย์กลางอย่างแท้จริง

### คำสำคัญ:

กฎหมายสิทธิสัตว์; กฎหมายสวัสดิภาพสัตว์; สวัสดิภาพแมว; สิทธิในทรัพย์สิน

# THE DUTY OF CAT OWNERS TO PROVIDE PROPER WELFARE: INTERPRETATIVE CHALLENGES IN THAI ANIMAL WELFARE LAW, WITH COMPARATIVE INSIGHTS FROM THE UK AND GERMANY

## CHAPTER 1 INTRODUCTION

### 1.1 Research Problem and its Significance

Pet humanisation has recently been reported a *megatrend* in Thailand.<sup>1</sup> This trend sees pet owners increasingly viewing their companion animals as family members and referring to themselves as ‘pet parents,’ often prioritising their pets’ needs over personal expenses.<sup>2</sup> As Thailand enters an aging society with a continuously declining birthrate, pet acquisition is sharply on the rise.<sup>3</sup> As in many other countries, cats are among the most popular companion animals.<sup>4</sup> Combined with their high reproduction rate, they represent one of the fastest-growing populations in Thai households.<sup>5</sup>

However, not all owners are able—or willing—to care for their cats throughout the animals’ lives, a reality frequently highlighted by news reports and, to a lesser extent, government

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<sup>1</sup> Economic Intelligence Center Siam Commercial Bank, ‘Pet humanization seen as a major trend in Thailand’ (*Thailand Business News*, 7 February 2023) <<https://www.thailand-business-news.com/lifestyle/96196-pet-humanization-seen-as-a-major-trend-in-thailand>> accessed 28 December 2023.

<sup>2</sup> Ibid; Pet Fair South-East Asia, ‘Thailand Pet Care Market’ (2025) <<https://www.petfair-sea.com/asia-markets/southeast-asia-pet-market/thailand-pet-market/>> accessed 28 December 2023; Warunrat Kutmart, ‘Is the era of those who want kids over? Poll indicates that over 49% of Thais choose raising “pets” instead of children’ (*Bangkokbiznews*, 16 January 2023) <<https://www.bangkokbiznews.com/business/business/1048207>> accessed 28 December 2023; Pet Fair South-East Asia, ‘Thailand Pet Market – Pet Fair South-East Asia’ (2025) <<https://petfair-sea.com/asia-markets/southeast-asia-pet-market/thailand-pet-market/>> accessed 18 June 2025.

<sup>3</sup> Pet Fair South-East Asia, ‘Thailand Pet Care Market’ (n 2).

<sup>4</sup> Government of Canada, ‘Sector Trend Analysis – Pet food trends in Thailand’ <<https://agriculture.canada.ca/en/international-trade/market-intelligence/reports/sector-trend-analysis-pet-food-trends-thailand>> accessed 28 December 2023.

<sup>5</sup> Ibid. The statistic is in the 5 years period of 2016-2021 and expected to continue in the years 2021-2026.

data. For example, some owners keep an excessive number of cats in unsanitary conditions, leading to disease outbreaks, and an inability to afford veterinary treatment.<sup>6</sup> In other cases, cats have been found confined in small cages for days.<sup>7</sup> On a broader scale, although the total number of court cases has not been officially published, it was reported that within from 2014 to 2018, more than 1,000 cases related to animal cruelty were recorded, with approximately 50 resulting in court judgments.<sup>8</sup> Similarly, statistical data from the Department of the Livestock Development (DLD), collected via DLD 4.0 mobile application between 2017 to 2024, shows a linear increase in complaints: 206 for animal cruelty, 94 for animal abandonment, and 270 for animal welfare violations.<sup>9</sup> Alongside dogs, cats are among the most commonly abandoned pets.<sup>10</sup> It is estimated that between 2027 and 2047, the number of stray cats and dogs in Thailand will increase by 260 percent.<sup>11</sup>

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<sup>6</sup> ‘Woman Caring for Over 80 Stray Cats at Home Seeks Justice After Complaints About Foul Odor’ (Sanook, 4 October 2019) <<https://www.sanook.com/news/7915458/>> accessed 18 June 2025.

<sup>7</sup> ‘The owner who abandon dogs and cats in confinement in Songkhla has met with the police and admitted his wrongdoing’ (MGR online, 5 September 2019) <<https://mgronline.com/south/detail/9620000085384>> accessed 23 May 2024. As the case number was not disclosed, it is impossible to retrieve the court's judgment.

<sup>8</sup> ‘Understanding the Animal Cruelty Prevention Act: After 4 Years, Over 1,000 Cases, Only 50 Reached Verdicts’ (Matichon Weekly, 27 December 2018) <[https://www.matichon.co.th/weekly/special/scoop/article\\_158719?utm\\_source=chatgpt.com](https://www.matichon.co.th/weekly/special/scoop/article_158719?utm_source=chatgpt.com)> accessed 18 June 2025.

<sup>9</sup> The Information and Communication Technology Center, Department of Livestock Development, *Statistical Report on the Use of the Thai Livestock System 4.0 (DLD 4.0) Data from December 2017 – 30 September 2024* (the Information and Communication Technology Center, Department of Livestock Development 2024) <[https://ict.dld.go.th/webnew/images/stories/procure/2567/10.Oct/25671008\\_1.pdf](https://ict.dld.go.th/webnew/images/stories/procure/2567/10.Oct/25671008_1.pdf)> accessed 18 June 2025.

<sup>10</sup> Thai Health Official, ‘Stray Dogs and Cats Expected to Soar to 5 million in Next 20 Years, says Department of Livestock Development’ (Thai Health Promotion Foundation, 24 January 2019) <<https://www.thaihealth.or.th/%E0%B8%9B%E0%B8%A8%E0%B8%B8%E0%B8%AA%E0%B8%B1%E0%B8%95%E0%B8%A7%E0%B9%8C%E0%B9%80%E0%B8%9C%E0%B8%A2%E0%B8%AA%E0%B8%B8%E0%B8%99%E0%B8%B1%E0%B8%82%E0%B9%81%E0%B8%A1%E0%B8%A7%E0%B8%88%E0%B8%A3%E0%B8%88/>> accessed 25 June 2025; Parliamentary Interpellation 209 R. (Volume 138, 27 January 2021) <[https://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/180/T\\_0016.PDF](https://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/180/T_0016.PDF)> accessed 28 December 2023.

<sup>11</sup> *ibid.*



These conflicting trends have continued despite the enactment of the Cruelty Prevention and Animal Welfare Provision Act B.E. 2557 (hereafter ‘the 2557 Act’) and its subsequent secondary legislation—the Notification of the Ministry of Agriculture and Cooperatives on the Provision of Animal Welfare B.E. 2561 (hereafter ‘the Notification’)—in 2014 and 2018, respectively. The 2557 Act marks the first law in Thai legal history to recognise animals as ‘sentient beings’ and to require their protection in accordance with their natural characteristics. Its drafters cited the United Kingdom and Germany as model jurisdictions due to their comprehensive approaches to both cruelty prevention and welfare provision for domestic animals.<sup>12</sup>

Despite these advancements, a closer examination reveals interpretive challenges—particularly regarding the term ‘proper welfare.’ Section 22 of the 2557 Act, under Chapter VI on Animal Welfare Provision, requires that the animal owners provide ‘proper welfare’ to their animals, subject to further regulation by the Minister. The second paragraph stipulates that the Minister must take into account the ‘type, kind, character, condition, and age’ of the animal when issuing such regulations.

However, Section 3 of the 2557 Act defines ‘animal welfare provision’ as raising or caring for an animal so that the animal lives in ‘proper’ conditions, has ‘good’ health and hygiene, and has ‘adequate’ accommodation, food, and water.<sup>13</sup> This suggests that the term ‘animal welfare’ is inherently positive—making the requirement of ‘proper welfare’ in Section 22 paradoxically circular and vague. Section 23 further complicates the interpretation by prohibiting owners from leaving, abandoning, or relinquishing responsibility for their animals ‘without reasonable cause.’<sup>14</sup> However, Paragraph 2 of the same section provides an exception, allowing the transfer of ownership or possessory rights to a person who intends

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<sup>12</sup> In 2004, private sectors led by the Thai Society for the Prevention of Cruelty to Animals and the Lawyers Council initiated the drafting of an animal welfare bill, which then convened with the bill from the Department of Livestock Development in 2007. See further, King Prajadhipok's Institute, *Problems on the Enforcement of the Cruelty Prevention and Animal Welfare Provision Act B.E. 2557* (2009) 59; the Council of State's analytical summary report for the draft Act at 11-12.

<sup>13</sup> Cruelty Prevention and Animal Welfare Provision Act B.E. 2557 (the 2557 Act), s 3.

<sup>14</sup> The 2557 Act, s 3

to take responsibility for the animal's care.

Although the subsequent Ministerial regulation issued under Section 22 of the 2557, namely the Notification in 2018, provides further detail on how owners must provide 'proper welfare' to their animals, it relies heavily on equally vague and subjective terms such as 'appropriate,' 'good,' 'without delay,' 'suitable,' 'stress, fear, pain or suffering,' and 'unreasonable.'<sup>15</sup> Moreover, it contains no species-specific provisions, including those addressing cats.

This unclear scope of the term 'proper welfare' has serious implications for interpreting the penalty provisions of the 2557 Act. While Section 32 imposes a fine not exceeding 40,000 baht for failure to comply with Sections 22 and 23, Section 31 provides harsher penalties—imprisonment of up to two years, a fine of up to 40,000 baht, or both—for cruelty offences prohibited under Section 20, which is part of Chapter V on the Prevention of Animal Cruelty. Although Section 3 of the 2557 Act and the Notification define cruelty, the prohibition under Section 20 of the 2557 Act is not absolute as it is qualified by the phrase 'without reasonable cause.'<sup>16</sup> Section 21 further lists at least 11 of such causes, including certain acts

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<sup>15</sup> Notification of the Ministry of Agriculture and Cooperatives on the Provision of Animal Welfare B.E. 2561 (the Notification), s 4 provides that for animals that are owned or possessed, the owner or possessor must provide proper welfare for their animal as follows:

*'1 provide the animal with food and water in appropriate quantities and qualities, in accordance with the species, type, characteristics, condition, and age of the animal. In the case where the animal is kept in groups, the owner should ensure that each individual animal has thoroughly received food and water.*  
*2 provide the animal with an environment that is suitable for the livelihood and safety of the animal.*  
*3 provide the animal for good health and hygiene, have an appropriate management of disease control and prevention, and give treatment when the animal is sick or injured, without delay.*  
*4 manage so the animal is not subjected to stress, fear, pain, or suffering without reasonable cause.*  
*5 provide the animal with opportunities to express natural behaviours essential for the animal's livelihood, health and vigour'* (author's translation).

<sup>16</sup> The 2557 Act, s 3 defines cruelty as *'an act or omission that causes an animal to suffer physically or mentally, or results in pain, illness, incapacitation, or potential death. It shall also include exploiting a disabled, ill, old, or pregnant animal; engaging in bestiality; or subjecting an animal to excessive or inappropriate labour due to illness, old age, or immaturity'* (author's translation).

of killings or harming certain body parts for ‘justified’ reasons.<sup>17</sup>

These ambiguities are, to some degree, understandable. Although ‘animal welfare’ is a concept shaped by diverse disciplines—such as philosophy, science, and law—there is no universally accepted definition, let alone a shared understanding of what constitutes ‘proper’ welfare. From a species-specific standpoint, perspectives on cat welfare are even more fragmented and underdeveloped across these fields. Exploring how ‘proper animal welfare’ has been conceptualised and applied—along with its limitations—will lay a solid foundation for interpreting the term ‘proper cat welfare.’ This, in turn, will profoundly influence the scope of cat owners’ duties—and, more importantly, the protection and treatment of cats.<sup>18</sup>

Although the Council of State cited the UK and Germany in drafting the 2557 Act, its analysis was limited to brief references to the UK’s Animal Welfare Act 2006 and Germany’s Animal Welfare Act 1998, the latter of which was already outdated at the time. As of 2025, Thailand still lags behind both jurisdictions in global benchmarks—such as the Animal Protection Index and Animal Rights by Country 2025—particularly in the area of companion animal protection.<sup>19</sup> A more comprehensive comparative legal study is therefore needed. Analysing

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<sup>17</sup> Permissible killings under the 2557 Act, s 21 include: killing for food, provided that the animals are raised specifically for that purpose (s 21(1)); killing where a veterinarian determines that the animal is sick, disabled, or injured and cannot be treated or cured to survive without suffering (Section 21(4)), killing according to religious rituals or beliefs (s 21(5)); killing deemed necessary to prevent danger to human life or health, to other animals, or to prevent damage to property (s 21(6)).

The 2557 Act, s 21(8) allows cutting of ears, tails, hair, horns, or tusks, provided there is a reasonable cause and it does not harm the animal or affect the ability to live.

<sup>18</sup> WSAVA Animal Welfare Guidelines Group and others, *WSAVA Animal Welfare Guidelines for Companion Animal Practitioners and Veterinary Teams* (World Small Animal Veterinary Association 2019) 11.

<sup>19</sup> The Animal Protection Index (API) is an index produced by World Animal Protection that ranks 50 countries based on their legislation and policy. According to the API, Thailand has been awarded overall D banding score while Germany and the UK have received C and B, respectively. The index includes indicators such as protecting companion animals where Germany and the UK receive C and B, respectively, while Thailand scores a D. See World Animal Protection, ‘Comparing Countries in the Index’ (*Animal Protection Index*) <<https://api.worldanimalprotection.org/compare>> accessed 26 June 2025.

how the UK and Germany interpret cat owners' duties to ensure proper welfare can not only enhance the understanding and application of Thai law but also help identify potential strengths and best practices to guide future legal reforms.

## 1.2 Research Question

The overarching question of this research is:

How should the term 'proper welfare' under Thai animal welfare law be interpreted in relation to the legal duties of cat owners?

To address this, the research explores four peripheral-questions:

1. How has 'proper animal welfare' been philosophically and scientifically conceptualised and applied in animal welfare models and the laws of the UK, Germany, and Thailand, and what challenges does this pose for interpreting 'proper cat welfare'?
2. How, and to what extent, can cat owners fulfil their duties to provide proper welfare under Thai animal welfare law, in comparison to the UK and Germany?
3. Under what circumstances, if any, should a failure to fulfil such duties (as identified in Question 2) be penalised under harsher penalties—that is, under Section 31 instead of Section 32 of the 2557 Act, in comparison with the UK and Germany?
4. How, if at all, should the 2557 Act be reformed for greater clarification of the term 'proper welfare' to better clarify cat owners' duties under Thailand's 2557 Act, in comparison to the UK and Germany?

## 1.3 Research Objective

The primary aim of this research is to seek clarification of the term '*proper welfare*' to determine cat owners' duties under Thailand's Cruelty Prevention and Animal Welfare

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According to the Animal Rights Ranking from US News 2024, Thailand ranked 38, while the UK and Germany rank 15 and 13, respectively. See Animal Legal Defense Fund, '2024 U.S. Animal Protection Laws Rankings' (16 February 2024) <<https://aldf.org/project/us-state-rankings/>> accessed 26 June 2025.

Provision Act B.E. 2557.

To achieve this aim, the research pursues four subsidiary objectives:

First, to examine how the term ‘*proper animal welfare*’ has been philosophically and scientifically conceptualised and applied in animal welfare models and the legal frameworks of Thailand, the United Kingdom, and Germany, and to identify the resulting challenges for interpreting ‘proper cat welfare.’

From that, the research aims to clarify the scope of cat owners’ welfare-related duties under the 2557 Act—in comparison to the United Kingdom and Germany. This includes identifying positive obligations—meaning the range of affirmative duties and how far they may extend—as well as negative obligations, which refer to duties that owners must not violate or a minimum standard, below which failure constitutes a punishable offence.

The third sub-objective is to explore the thresholds for applying harsher penalties—namely, when a failure to fulfil these duties should fall under Section 31 instead of Section 32 of the 2557 Act—particularly in light of comparative insights from the UK and Germany.

Last but not least, the fourth peripheral objective is to explore potential avenues for legal reform to clarify of the term ‘proper welfare’ and better determine cat owners’ duties under Thailand’s 2557 Act. This will be pursued through comparative insights from the UK and Germany—jurisdictions that have influenced the development of Thailand’s 2557 Act and are recognised for their well-established animal welfare frameworks.

## **1.4 Research Method**

This research adopts a mixed-methods approach, combining interdisciplinary, doctrinal, and comparative methodologies. An interdisciplinary method is employed because the concept of animal welfare intersects with multiple disciplines, including philosophy, science, law,

politics, religions, economics, and culture, to name a few. This research focuses particularly on philosophy and science, as these fields have fundamentally shaped—if not revolutionised—the development of animal welfare laws worldwide.<sup>20</sup>

A comparative legal method is also applied, focusing on three national jurisdictions: Thailand, the United Kingdom (specifically England and Wales), and Germany. The rationale for this approach is two folds. First, comparative study is an essential tool for deepening the understanding of animal law—an emerging and underexplored legal discipline, especially outside Western contexts.<sup>21</sup> Particularly, Europe is considered a global leader in animal welfare legislation, with jurisdictions such as the UK and German being home to two of the oldest and most advanced legal frameworks in this field.<sup>22</sup> Both have significantly strengthened their animal welfare laws since the early 2000s, placing them among the top jurisdictions in the region for protecting cat welfare.<sup>23</sup> Notably, the UK also has a human population size and rate of cat ownership comparable to that of Thailand.<sup>24</sup>

Second, comparative analysis is key to examining legal transplants, particularly when one jurisdiction—Thailand, in this case—borrows legal principles from others, namely the UK and Germany, as explored in this research. Studying how these jurisdictions tackle similar interpretive issues can enhance comprehension of the Thai legislative framework and support its development by identifying existing gaps, best practices, and potential areas for

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<sup>20</sup> Ian J H Duncan, 'Animal Welfare: A Brief History' (*La Fondation Droit Animal, Ethique et Sciences*, 27 June 2019) <<https://www.fondation-droit-animal.org/proceedings-aw/animal-welfare-a-brief-history/>> accessed 18 June 2025.

<sup>21</sup> Chrysa Adamakopoulou and others, 'Cats' and Dogs' Welfare: Text Mining and Topics Modeling Analysis of the Scientific Literature' (2023) 10 *Front Vet Sci* 1.

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

<sup>24</sup> Niall McCarthy, 'Infographic: Which Countries Have the Most Cat Owners?' (*Statista*, 13 July 2017) <<https://www.statista.com/chart/10267/which-countries-have-the-most-cat-owners/>> accessed 23 February 2025.

reforms.

It is worth noting that when addressing the human rights dimensions of cat welfare duties in the UK and Germany, certain provisions of the European Convention on Human Rights (ECHR) of the Council of Europe, along with relevant case law arising therefrom the European Court of Human Rights (ECtHR), will also be discussed, as the United Kingdom and Germany are State Parties to the Convention. For the purpose of this research, the Council of Europe is not treated as a separate jurisdiction per se, but rather as legal sources that are intertwined with and embedded in national legal systems. For instance, Germany, as a monist state, incorporates international treaties like the ECHR and the European Convention for the Protection of Pet Animals (ECPA) 1987 directly into its legal system without requiring separate transposing legislation. In contrast, the United Kingdom, a dualist state, has implemented the ECHR domestically through the Human Rights Act 1998, and not the state party to the ECPA.

Discussions of ECtHR case law will be limited to cases in which one of the countries under study was directly involved—either as an applicant or a respondent—since the resulting judgments have a direct impact on that country’s legal landscape of the specific issues examined.

The European Union (EU), which is entirely separate from the Council of Europe, will be mentioned only briefly in this research. At first glance, Article 13 of the Treaty on the Functioning of the European Union (TFEU) recognises animals as sentient beings and requires that their welfare needs be given full regard when formulating and implementing certain EU policies. As a provision of primary law, it theoretically takes precedence over national laws such as Germany’s (and the UK’s when it was still an EU member). However, the EU arguably lacks competence in the matters central to this research—namely, the duties of private individual pet owners, in purely domestic contexts and without cross-border

movement, to ensure the welfare of their pets.<sup>25</sup> Existing EU legislation applies only to cats intended for scientific purposes, those transported commercially across member states, and to measures aimed at preventing the spread of rabies and other contagious diseases across borders.<sup>26</sup> The EU also does not have competence over the welfare of stray cats.<sup>27</sup> As such, these areas fall outside the scope of this research.

For doctrinal research method, legal documents and primary sources of Thai animal welfare laws, namely the 2557 Act and, where applicable the Notification, are examined. The primary source includes relevant constitutional provisions, judicial decisions, and legislative materials such as statements in support of the law, the records containing legislative deliberations and drafts. Secondary sources of academic journals and publications related to the research topic are also consulted. Similar legal resources of the UK and Germany will also equally be consulted.

### **1.5 Research Scope**

As a multi-faceted subject, animal welfare spans the realms of science, philosophy, law, politics, religions, economics, to name a few.<sup>28</sup> However, this research focuses on the philosophical and scientific foundations of the term to be able to interpret the word ‘proper welfare’ under Thailand’s the 2557 Act. In particular, the research examines interpretative issues on the scope of duty of cat owners to provide cat welfare and related penalties.

The 2557 Act overlooks the fact that humans are animals by defining animals in relation to

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<sup>25</sup> Costa v ENEL (Case 6/64) [1964] ECR 585. Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/1, art 13. The principle first appeared in the Protocol on the Protection and Welfare of Animals, Annex to the Treaty of Amsterdam [1997] OJ C340/117.

<sup>26</sup> European Commission, 'Questions and Answers: The New EU Rules on Animal Welfare' (23 February 2023) <[https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_23\\_6253](https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_6253)> accessed 20 February 2025.

<sup>27</sup> *ibid.*

<sup>28</sup> World Organisation for Animal Health (WOAH), 'Animal Welfare' (23 March 2021) <<https://www.woah.org/en/what-we-do/animal-health-and-welfare/animal-welfare/>> accessed 20 February 2025.



human use.<sup>29</sup> Accordingly, when this research refers to animal welfare, it specifically means the welfare of a non-human animal. Having said that, this research is aware of the argument put forward by scientists such as Broom who argues that there is only one biology, and the welfare concept applies identically to humans and non-human animals.<sup>30</sup>

This research exclusively focuses on private individual cat owners who keep cats as companion animals rather than for commercial purposes. Likewise, the research omits legal duties related to cat welfare in rehoming institutions, animal aid centres, animal welfare organisations, and breeders. It intentionally excludes legal issues surrounding pet cats' travelling, either domestically or internationally.

The research will draw best practice from the UK and Germany. Regarding the UK, animal welfare is a devolved matter. This means three legal jurisdictions within the UK, namely England and Wales, Scotland, and Northern Ireland have their own animal welfare laws. England and Wales issued Animal Welfare Act 2006 (hence forth the AWA 2006), Scotland enacted the Animal Health and Welfare (Scotland) Act 2006, and Northern Ireland has the Welfare of Animals Act (Northern Ireland) 2011.<sup>31</sup> Although different in names, they provide similar animal welfare protections with shared core principles.<sup>32</sup> Some sections of Animal Welfare Act 2006 also extend to Scotland and Northern Ireland. Hence, this research will only focus on England and Wales jurisdiction.

## 1.6 Research Hypothesis

The current Thai animal welfare legal framework—particularly the Cruelty Prevention and

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<sup>29</sup> The 2557 Act, s 3 defines an animal as 'an animal which, generally, is a domestic animal, working animal, animal used for transportation, companion animal, animal used as food, animal used for entertainment, or animal used for any other purposes, whether owned or unowned, and shall include an animal which lives in its natural habitat as prescribed by the Minister.'

<sup>30</sup> Andrew Knight, Clive Phillips and Paula Sparks (eds), *Routledge Handbook of Animal Welfare* (Taylor & Francis 2022) 16, FW Rogers Brambell, *Report of the Technical Committee to Enquire into the Welfare of Animals Kept under Intensive Livestock Husbandry Systems* (Cmnd 2836, HMSO 1965) 9-10.

<sup>31</sup> Certain provisions of the Animal Welfare Act 2006 (AWA 2006) apply in the rest of the jurisdictions. Scotland enacted Animal Health and Welfare (Scotland) Act 2006. Section 16(1) is equivalent to Section 1(1) of the Animal and Welfare Act 2006 of England and Wales.

<sup>32</sup> The principles include the Five Freedom principles, good practice, and reasonableness.

Animal Welfare Provision Act B.E. 2557—lacks sufficient clarity on what constitutes ‘proper welfare’ for animals in general, and for cats in particular. This ambiguity creates legal uncertainty regarding animal owners’ duties to provide such welfare.

Animal welfare laws are often criticised for prioritising human needs over those of non-human animals, largely due to the latter’s legal status as property. Since cats are considered legal property, the more extensively owners’ property rights can be lawfully restricted, the broader the scope for interpreting animal welfare laws in terms of their duties to provide ‘proper’ welfare. In the short term, Thailand can strengthen the protection of cats by imposing greater limitations on property right. However, as these rights are constitutionally protected, long-term reform should consider the dereification of cats and the extension of constitutional protection to them.

### **1.7 Expected Benefits**

This research will enhance the understanding of the term ‘proper animal welfare.’ A clearer interpretation will contribute to a more rigorous understanding of ‘proper cat welfare’, the legal duties of cat owners, and the potential liabilities arising from non-compliance.

Additionally, the study will offer recommendations for the interpretation of Thai animal welfare laws and explore possible avenues for legal reform, with reference to comparative insights from the UK and Germany. The findings are expected to benefit a broad range of stakeholders—including individuals who love, care for, or are concerned about cats, the general public, legal scholars and state authorities—towards the genuine and effective protection of cats.

## CHAPTER 2 ‘PROPER’ ANIMAL WELFARE: CONCEPTUALISATION, APPLICATION, AND CHALLENGES IN INTERPRETING ‘PROPER CAT WELFARE’

This chapter addresses the first subsidiary objective and its corresponding compound sub-inquiry: How has ‘proper animal welfare’ been philosophically and scientifically conceptualised and applied in animal welfare models and in the laws of the UK, Germany, and Thailand, and what challenges does this pose for interpreting ‘proper cat welfare’?

The chapter is structured into three main sections. Section 2.1 explores conceptual perspectives on ‘proper animal welfare’ and their limitations, drawing on both philosophical and scientific viewpoints. Section 2.2 examines how the concept has been applied in scientific models—namely the Five Freedoms and the Welfare Quality® (WQ) framework—and within the legal frameworks of the UK, Germany, and Thailand. It also considers the limitations of such applications. Section 2.3 then focuses specifically on the interpretation of ‘proper cat welfare’, synthesising the insights from the preceding sections to identify key interpretive challenges.

By mapping the philosophical, scientific, and legal understandings of animal welfare, the chapter lays the foundation for determining how ‘proper welfare’ should be understood in the specific context of cat ownership under Thai law, setting the stage for further analysis in the subsequent chapters.

### **2.1 Conceptual Perspectives on ‘Proper Animal Welfare’ and Their Limitations**

This section examines two main conceptual perspectives on ‘proper animal welfare’: philosophical and scientific. Sub-section 2.1.1 discusses five key philosophical approaches—utilitarianism, deontology, welfarism, abolitionism, and new welfarism—and assesses their relevance and limitations for interpreting proper animal welfare. Sub-section 2.1.2 explores three major scientific approaches: the biological functioning, the feelings, and the natural living approaches. Likewise, the sub-section will assess how these scientific approaches contribute to and complicate the interpretation of proper animal welfare.

#### **2.1.1 Philosophical Perspectives and Their Limitations**

### 2.1.1.1 Utilitarianism

While utilitarian perspectives on animal welfare vary, a lowest common denominator among utilitarian views for the term ‘proper animal welfare’ can be modestly identified as an animal not being suffered from a wanton cruelty, referring by Jeremy Bentham, the founding father of the theory, as the acts “performed deliberately for the sake of seeing the animal suffer, and not for the useful purpose.”<sup>33</sup>

On this basis, the term is based on two moral principles: equality and utility.<sup>34</sup> The principle of equality involves equal consideration of all sentient beings or those with the capacity to have feelings or experience negative states such as suffering or pain, and/or positive states, such as pleasures or enjoyment.<sup>35</sup> The main proponents such as Singer opposes speciesism, a form of discrimination based on human superiority over nonhuman animals.<sup>36</sup>

Utility involves the consequential considerations or the balancing exercise between the aggregate positive and negative sensibilities of all moral agents (i.e., sentient beings) in the society affected by the outcome of the act or its tendency.<sup>37</sup> Bentham argues that a pleasure or pain can be measured according to its intensity, duration, (un)certainities, its nearness or remoteness, and its extent (how many are affected by it).<sup>38</sup> The right course of action is when aggregate enjoyment or pleasure of each individual concerned outweighs

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<sup>33</sup> Johannes Kniess, ‘Bentham on Animal Welfare’ (2019) 27 British Journal for the History of Philosophy 556; Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (first published 1780, Jonathan Bennett ed, 2017) <<https://earlymoderntexts.com/assets/pdfs/bentham1780.pdf>> accessed 18 June 2025, 23; Raffael N Fasel and Sean C Butler, *Animal Rights Law* (Hart Publishing 2023) 37; Tom Regan and Peter Singer, *Animal Rights and Human Obligations* (Pearson 1989) 108, 413; Peter Singer, *Animal Liberation* (Random House 2015) 30-33.

<sup>34</sup> Tom Regan and Peter Singer (n 33) 108.

<sup>35</sup> *ibid* 30-33, 413.

<sup>36</sup> *ibid* 79.

<sup>37</sup> Jeremy Bentham (n 33) 22.

<sup>38</sup> Johannes Kniess (n 33) 556; Jeremy Bentham (n 33) 22.

overall suffering or pain.<sup>39</sup> In other words, the right act minimises net suffering.<sup>40</sup> Pleasures and pains can take various forms and labels, including profit and loss, convenience and inconvenience, benefit and disadvantage, or happiness and unhappiness.<sup>41</sup> Hence, the use of nonhuman animals (e.g., for food, clothes, companionship, or medicines) can continue as long as their suffering or pain does not exceed the enjoyment or pleasure of all moral agents concerned.

The limitation of conceptualising ‘proper animal welfare’ under utilitarianism is that firstly, it is relative and consequential. It depends on how one interprets the terms suffers or pains, and enjoyment or pleasure. While animal’s innate ability to suffer greatly matters, it does not guarantee that the greater the animal’s ability to suffer, the higher the threshold will be accounted for “proper” welfare. This depends also on how useful the animal is to humans. For example, despite both being classified as vertebrates and mammals with similar pain receptors, utilitarianists will consider it morally acceptable to grant livestock such as pigs a lower threshold of ‘proper’ welfare than companion animals such as cats as the former generate more benefits such as food and income to humans. By the same tokens, both animals can be killed painlessly and that would still be regarded as them having proper welfare if it can be justified on ground of acceptable utility e.g., to prevent zoonotic diseases such as rabies. Proponents such as Bentham do not specify a limit to this suffering or define the tipping point at which nonhuman pain outweighs human pleasure or utility. Only suffering from a wanton cruelty seems to warrant his calculation.<sup>42</sup>

Also, it is unclear how the calculation works exactly—whose sensibility and utility are involved, over what timeframe, and how they should be objectively and uniformly measured. This becomes particularly challenging when the ‘whose’ refers to individuals from different species. For example, although mammals share similar pain mechanisms, the expression and perception associated of pain can differ between species such as cats and

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<sup>39</sup> Jeremy Bentham (n 33) 23.

<sup>40</sup> Cheryl Abbate, ‘Animal Ethics’ in Andrew Knight, Clive Philips, and Paula Sparks (eds), *Routledge Handbook of Animal Welfare* (Routledge 2022) <<https://doi.org/10.4324/9781003182351-32>> accessed 20 February 2025, 357.

<sup>41</sup> Jeremy Bentham (n 33) 23.

<sup>42</sup> Johannes Kniess (n 33).

humans.<sup>43</sup> Although the main proponents such as Singer opposes speciesism, he believes that the higher an individual's cognitive capacities (e.g., the ability to form future desires or maintain a continuous mental existence), the greater their capacity for pain and suffering—particularly in cases involves the killing of animals.<sup>44</sup>

This contradicts the underlying principle of equal consideration. At the end of the day, proper animal welfare is not about intrinsic or innate equality between beings. It is anthropocentric in that human interest is considered superior and outweighs those of animals. This is well illustrated by the primary reason Bentham opposed wanton cruelty: to prevent the psychological effects on the perpetrators, which could lead to greater crimes against humans (the 'cruel habit' arguments).<sup>45</sup>

### 2.1.1.2 Deontology

For deontologists such as Tom Regan, proper animal welfare represents when the experiential life of the animal fares well for them, regardless of the animal's utility to others.<sup>46</sup> The underlying principle is that as subject-of-a-life, animals have equal inherent worth, or inherent value, as well as an experiential welfare interests that can be benefited or harmed.<sup>47</sup> They warrant the moral rights to justice, to respectful treatment (the respect principle), and derived from the respect principle, the right not to be harmed (the harm principle).<sup>48</sup>

However, the right not to be harm is a prima facie right that can be justifiably restricted under the respect principle, in two situations, and this is where deontology departs from its successor, abolitionism.<sup>49</sup> One is when facing a choice of harming the few for the many,

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<sup>43</sup> Roberta Downing and Giorgia Della Rocca, 'Pain in Pets: Beyond Physiology' (2023) 13 *Animals* 335.

<sup>44</sup> Gary L Francione, 'Animal Rights and Animal Welfare' (1996) 48 *Rutgers L Rev* 397, 414; Peter Singer (n 33) 31.

<sup>45</sup> *ibid.*

<sup>46</sup> Gary L Francione (n 44) 417.

<sup>47</sup> Tom Regan, *The Case for Animal Rights* (University of California Press 1983) 243.

<sup>48</sup> Tom Regan and Peter Singer (n 33) 24, Gary L Francione (n 44) 417-418.

<sup>49</sup> Gary L Francione (n 44) 417-418.

harm the few (mini-ride principle).<sup>50</sup> Two is when harming the few would make them worse off than any of the many, harm the many (worst-off principle).<sup>51</sup>

These argumentations post certain limitations and criticisms. One, it is unclear what harms are and how to compare them, not to mention who will be counted the ‘few’ or the ‘many.’

### 2.1.1.3 Welfarism

In essence, a welfarist would regard animal welfare as proper when the animal is treated humanely and not subjected to unnecessary suffering or cruelty.

While inspired by—though not a direct reflection of—utilitarianism, it shares similar limitations to the utilitarian concept of proper animal welfare.<sup>52</sup> Firstly, it gives more weight to human interests than to those of nonhuman animals by allowing the continued exploitation and killing of nonhumans, as long as any suffering inflicted upon them is justified by utility.<sup>53</sup> Therefore, certain measures—such as the welfare provision in question—can still be considered right, morally acceptable, or ‘proper,’ even if they merely reduce—rather than eliminate—unjustifiable pain or suffering inflicted on sentient beings.<sup>54</sup>

Similar to the utilitarian limitations, the protection from unnecessary suffering offers only limited protection against inhumane treatment that is gratuitous, without necessity, or without reasonable cause.<sup>55</sup> Moreover, the balancing approach, drawing from utilitarianism, leaves plenty of room for the elites or legal authorities to interpret i.e., where to draw the line between humane and inhumane treatment or necessary and unnecessary suffering.<sup>56</sup> Humane treatment can also be seen as anthropomorphism, linking the acceptable level of

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<sup>50</sup> *ibid.*

<sup>51</sup> *ibid* 418.

<sup>52</sup> David Killoren and Robert Streiffer, ‘Utilitarianism about Animals and the Moral Significance of Use’ (2020) 177 *Philosophical Studies* 1043, 1047; Cheryl Abbate (n 40) 359; Gary L Francione (n 44) 397.

<sup>53</sup> Cheryl Abbate (n 40) 360; Luis E Chiesa, ‘Animal Rights Unraveled: Why Abolitionism Collapses into Welfarism and What It Means for Animal Ethics’ (2016) 28 *Geo Env'tl L Rev* 557, 559-568.

<sup>54</sup> Luis E Chiesa (n 53) 559-568.

<sup>55</sup> Gary L Francione, ‘Animal Welfare and Society—Part 1, The Viewpoints of a Philosopher’ (2022) 12 *Animal Frontiers* 43.

<sup>56</sup> *ibid.*

animal treatment to human customary practice regarding the use of animals for specific purposes.<sup>57</sup> In essence, Francione regards humane treatment as ‘moral and legal fantasy.’<sup>58</sup> It does not address the core question of whether the use or the instrumentalisation of animals is necessary in the first place.<sup>59</sup> Without recognising the intrinsic value of nonhumans and challenging their property status, welfarism risks becoming anthropocentric where human interests (such as economic or emotional ones) trump those of nonhumans.<sup>60</sup> Robert Garner observes that animal welfare legislation rarely causes serious harm to the interests of the animal users.<sup>61</sup>

#### 2.1.1.4 Abolitionism

Emerging in the late 1970s as a response to welfarism, abolitionism—or the animal rights theory—rejects the very idea of animal welfare, however ‘proper’, arguing it legitimises and perpetuates animal exploitation.<sup>62</sup> Even when strictly enforced, abolitionists argue, animal welfare laws merely regulate animal exploitation rather than end it.<sup>63</sup> They represent humane-use reforms that fall short of recognising animals’ rights.<sup>64</sup> As Francione contends, when human and nonhuman interests conflict, the later ‘will virtually never prevail.’<sup>65</sup>

Rooted in deontology, abolitionism recognises the intrinsic moral value of nonhuman animals—value that exists independently of their utility to humans<sup>66</sup> However, proponents such as Francione, go further by calling for the complete abolition of animal use and the dismantling of their legal status as property.<sup>67</sup>

According to this view, the property status of animals renders the balancing exercise

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<sup>57</sup> *ibid.*

<sup>58</sup> *ibid.*

<sup>59</sup> Gary L Francione (n 44) 427.

<sup>60</sup> *ibid* 415, 427.

<sup>61</sup> *ibid* 427.

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.* 399. Raffael N Fasel and Sean C Butler (n 33) 24.

<sup>64</sup> Gary L Francione (n 44) 403.

<sup>65</sup> *ibid* 400-401.

<sup>66</sup> Tom Regan and Peter Singer (n 33) 24.

<sup>67</sup> Cheryl Abbate (n 40) 360.



endorsed by utilitarianism and welfarism ‘structurally defective.’<sup>68</sup> Under what Francione calls the ‘property paradigm,’ animals are treated as ownable and disposable things or legal objects, while only persons—legal subjects—possess enforceable rights (among which is property right) and duties.<sup>69</sup> When interests clash, the property owner’s interest prevail, protected under the right to own and use animal property.<sup>70</sup>

From this standpoint, animal welfare is the customary practice of rational owners who seek to maximise the value of their animal property.<sup>71</sup> Such owners will avoid unnecessary damage or harm—not for the animals’ sake, but to preserve economic value.<sup>72</sup> Only a lack of knowledge regarding animal welfare causes property owners to act irrationally and fail to maximise the value of their animal property.<sup>73</sup> Since animal welfare laws build upon these market-based premises, most legal systems grant wide discretion to property owners in using animals.<sup>74</sup> Legal restrictions on animal use are the exception, not the rule.<sup>75</sup>

Therefore, genuine animal protection requires recognising animals as persons with intrinsic moral value, possessing absolute rights not to be treated as property and the right to personhood.<sup>76</sup> Because nonhuman animals have inherent value, their ownership and exploitation are always morally wrong—even when such treatment is suffering-free, humane, or beneficial.<sup>77</sup> Their rights are moral trumps, protecting their interests absolutely and prohibiting their sacrifice even when doing so might benefit humans or increase overall welfare.<sup>78</sup>

Abolitionism contends that no relationship between humans and nonhumans is morally

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<sup>68</sup> Gary L Francione (n 44) 397, 400-401.

<sup>69</sup> *ibid* 397, 400-401, 435; Raffael N Fasel and Sean C Butler (n 33) 39-40.

<sup>70</sup> Gary L Francione (n 44) 435.

<sup>71</sup> *ibid* 451.

<sup>72</sup> *ibid*.

<sup>73</sup> *ibid*.

<sup>74</sup> *ibid* 436.

<sup>75</sup> *ibid* 437, 443.

<sup>76</sup> *ibid*.

<sup>77</sup> Cheryl Abbate (n 40) 359-360, Luis E Chiesa (n 53) 560.

<sup>78</sup> Gary L Francione (n 44) 398, 400-401.

justified. Pet ownership and domestication are viewed as violations of animals' fundamental rights. Abolitionists advocate for the sterilisation of animals to prevent the birth of new ones, and for finding good homes for those that already exist.<sup>79</sup> As Francione and Charlton put it: *'A morally just world would have no pets, no aquaria, no zoos. No fields of sheep, no barns of cows. That's true animal rights.'*<sup>80</sup> If reduced to a slogan, abolitionists would advocate for *'no cages, not bigger cages.'*<sup>81</sup>

However, in terms of the limitations of abolitionism, from the welfarist perspective, abolitionism is utopian, and socially and psychologically unrealistic, with no possibility of exception.<sup>82</sup> There is also a vague concept of intrinsic value and uncertainty when interests collide. Even in the realm of human rights, rights are not always trumps; they can be restricted and are rarely absolute. Moreover, a world without domesticated animals or pets is often regarded as undesirable and bleak.<sup>83</sup> Animals can have great lives while being used by humans.<sup>84</sup> Rather than abolishing animal use, it is better to improve their situations.<sup>85</sup>

#### 2.1.1.5 New Welfarism

*New Welfarism* emerged during the 2000s as a hybrid view between welfarism and abolitionism. It adopts welfarism's approach, which supports animal welfare measures based on the view that animals should be treated humanely to reduce suffering while still being owned and used for human purposes.<sup>86</sup> However, its ultimate goal is abolitionist in nature, seeking animal rights and the eventual end of certain uses and killings.<sup>87</sup> It represents the

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<sup>79</sup> Gary L Francione and Anna E Charlton, 'Why Keeping a Pet Is Fundamentally Unethical' (*Aeon Magazine*, 8 September 2016) <<https://aeon.co/essays/why-keeping-a-pet-is-fundamentally-unethical>> accessed 23 February 2025.

<sup>80</sup> *ibid.*

<sup>81</sup> Luis E Chiesa (n 53) 560.

<sup>82</sup> Gary L Francione, 'Animal Rights Theory and Utilitarianism: Relative Normative Guidance' 13 *Between the Species* (2011) 3, Gary L Francione (n 44) 399, 405.

<sup>83</sup> Gary L Francione (n 44) 400, 405 438.

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> Raffael N Fasel and Sean C Butler (n 33) 34.

<sup>87</sup> Gary L Francione (n 44) 399, 408.

argument of *‘cleaner cages today and empty cages tomorrow.’*<sup>88</sup> This stance is opposed by Francione, an abolitionist, who argues that welfarist reform *‘has not—and cannot—lead to the abolition of animal institutionalised exploitation.’*<sup>89</sup>

Therefore, drawing from various philosophical perspectives, the main features of proper animal welfare can be understood along a continuum—from a minimum standard, where animals are not subjected to unnecessary suffering or wanton cruelty, to a middle or upper-middle point, where they are treated humanely. However, abolitionists argue that the structural limitations of this continuum lie in the legal status of animals as property and in the balancing of animal and human interests—both of which ultimately undermine the interpretation of what constitutes ‘proper’ welfare.

### **2.1.2 Scientific Perspectives and Their Limitations**

Animal welfare is a relatively young, dynamic, and complex field of science, with the study of companion animal welfare being even more recent.<sup>90</sup> Although difficult to categorise neatly, there are three distinct yet interrelated scientific approaches to explaining the notion of ‘proper animal welfare,’ each with its own limitations in fully capturing its meaning.<sup>91</sup>

#### **2.1.2.1 The Biological Functioning Approach**

Scientists with biological-functioning view would regard ‘proper animal welfare’ as when an animal has successful attempts to cope with the environment.<sup>92</sup>

This approach emphasises on the biological and functional abilities of an animal to cope or adapt to impactful elements or environmental stimuli outside the animal’s response system or body.<sup>93</sup> Environmental stimuli include factors such as pathogens, attack from conspecifics,

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<sup>88</sup> *ibid.*

<sup>89</sup> *ibid* 400.

<sup>90</sup> Chrysa Adamakopoulou and others (n 21).

<sup>91</sup> *ibid.*

<sup>92</sup> Donald M Broom, ‘Welfare Assessment and Relevant Ethical Decisions: Key Concepts’ (2008) 10 Annual Review of Biomedical Sciences 79.

<sup>93</sup> *ibid.*

causes of tissue damage, and housing conditions.<sup>94</sup> Therefore, to ensure proper welfare, preventative and therapeutic health care measures are necessary. Preventative health care includes routine care measures such as hygiene, regular checks of skin, coat, and teeth, claw care, and exercise to maintain the animal's good health.<sup>95</sup> Therapeutic healthcare involves detecting abnormalities, visiting a veterinarian, and providing follow-up care.<sup>96</sup>

However, this view has certain limitations. Firstly, since the state of welfare can range from very good to very poor—as indicated by an animal's coping mechanisms or lack thereof—it is challenging to pinpoint exactly when welfare can be considered 'proper.' For example, an animal's normal behaviour may be mistaken for sub-clinical disease or stereotypies.<sup>97</sup> Likewise, animals may appear to have good physical outcomes due to genetics or environmental factors, while their mental state remains compromised.<sup>98</sup>

Moreover, while coping mechanisms include factors such as body physiology, brain state, and behaviour, scientists who adopt the biological functioning views differ in their opinions on which indicators matter and when.<sup>99</sup> For instance, although proper welfare can be reflected in fitness, growth, absence of injury, a positive nutritional state, and stable body temperature, proponents of the biological functioning approach are not uniform in their inclusion of positive affective states as indicators of welfare.<sup>100</sup> Broom, for example, includes pleasure, contentment, and happiness—alongside the absence of distress or significant stress response—as part of animal welfare.<sup>101</sup> However, others entirely exclude the animal's

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<sup>94</sup> *ibid.*

<sup>95</sup> WTS Welttierschutz Stiftung, 'Module 02// Animal Care' (*WTS Welttierschutz Stiftung*) <<https://teaching-animal-welfare.org/modules/module-02/>> accessed 20 May 2024.

<sup>96</sup> *ibid.*

<sup>97</sup> *ibid.*

<sup>98</sup> Corrado Carenzi and Marina Verga, 'Animal Welfare: Review of the Scientific Concept and Definition' (2009) 8 *Italian Journal of Animal Science* 21, 25.

<sup>99</sup> Nat Waran and others, 'Physiological Measures of Animal Welfare - What We Can Measure We Can Manage' (*Coursera*) <<https://www.coursera.org/learn/animal-welfare/lecture/HcfY9/physiological-measures-of-animal-welfare>> accessed 21 May 2024; John WS Bradshaw, Rachel A Casey, SL Brown, *The Behaviour of the Domestic Cat* (2nd edn, CABI 2012) 176; Corrado Carenzi and Marina Verga (n 98) 25.

<sup>100</sup> *ibid.*

<sup>101</sup> *ibid.*

subjective experiences, such as feelings of suffering and pleasure.<sup>102</sup>

By the same token, poor or improper welfare can occur when the animal fails or struggles to cope, adapt, or interact with environmental conditions.<sup>103</sup> However, disagreement over the indicators persists. For example, McGlone argues that poor welfare occurs only when the animal's survival or reproduction is impaired.<sup>104</sup> In contrast, Broom includes negative feelings such as pain, fear, and suffering, considering them part of a brain state that requires perceptual awareness.<sup>105</sup> These are the biological mechanisms of coping.<sup>106</sup> He defines animal suffering as the experience of '*one or more negative, unpleasant feelings that continue for more than a few seconds.*'<sup>107</sup>

#### 2.1.2.2 The Feelings Approach

Under the Feelings Approach, proper animal welfare is indicated by the absence of negative emotional states, such as unpleasant feelings, and the presence of positive subjective emotional states, such as pleasure, contentment, joy, and comfort—and vice versa for poor welfare.<sup>108</sup> Furthermore, the greater the intensity and duration of a pleasant or unpleasant experience, the more significant its impact on the animal's welfare.<sup>109</sup>

To a certain extent, this view represents the intersection of science and philosophy, specifically utilitarianism and welfarism. Evolving from the biological-functioning approach, the feeling approach defines animal welfare based on the psychological or subjective state

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<sup>102</sup> *ibid* 195-196.

<sup>103</sup> Donald M Broom (n 92) 81.

<sup>104</sup> D Fraser and others, 'A Scientific Conception of Animal Welfare That Reflects Ethical Concerns' (1997) 6 *Animal Welfare* 187.

<sup>105</sup> Donald M Broom (n 92).

<sup>106</sup> *ibid*.

<sup>107</sup> *ibid* 83.

<sup>108</sup> Andrew H Sparkes and others, 'ISFM Guidelines on Population Management and Welfare of Unowned Domestic Cats (*Felis Catus*)' (2013) 15 *Journal of Feline Medicine and Surgery* 811; WTS Welttierschutz Stiftung, '/// Modules' (WTS Welttierschutz Stiftung) <<https://teaching-animal-welfare.org/modules/>> accessed 20 May 2024.

<sup>109</sup> *ibid*.

of the animals, including their feelings and emotions.<sup>110</sup> In other word, animal welfare depends on the singular capacity of animals to experience affective states such as suffering or pleasure.<sup>111</sup>

However, this approach has some drawbacks. Firstly, recognising, detecting, and directly assessing feelings is inherently challenging, as they are subjective and private.<sup>112</sup> The inability of animals to communicate in human language—and vice versa—further complicates assessment.<sup>113</sup> Also, by defining animal welfare exclusively through feelings, this approach can overlook situations where animals do not experience feelings, such as when they are asleep, under anaesthesia, drugged, or lacking awareness due to disease or limited brain capacity.<sup>114</sup>

### 2.1.2.3 The Natural Living Approach

This approach perceives proper animal welfare as when the animals live according to their natural lifestyle.<sup>115</sup> This perspective defines animal welfare based on the extent to which an animal can perform natural or species-specific behaviours needs.<sup>116</sup> However, the limitations of this approach include the difficulty of pinpointing the innate behaviours of animals, especially domesticated or companion animals. Despite belonging to the same species, the domestication process can lead to significant differences between wild ancestors and now-domesticated animals living in home environments. As a result, it can be challenging to determine the welfare implications of living conditions that differ from those experienced by their wild counterparts.

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<sup>110</sup> Ibid; F Wemelsfelder and S Mullan, 'Applying Ethological and Health Indicators to Practical Animal Welfare Assessment' (2014) 33 *Revue Scientifique et Technique de l'OIE* 111.

<sup>111</sup> *ibid.*

<sup>112</sup> Ilona Rodan and Sarah Heath, *Feline Behavioral Health and Welfare* (Elsevier Health Sciences 2015) 162.

<sup>113</sup> *ibid.*

<sup>114</sup> Donald M Broom (n 92) 84.

<sup>115</sup> Nat Waran and others (n 99).

<sup>116</sup> *ibid.*; D Fraser and others (n 104) 187; Ilona Rodan and Sarah Heath (n 112) 12.

## 2.2 The Applications of 'Proper Animal Welfare' and Their Limitations

This section examines how the philosophical and scientific concept of 'proper animal welfare' has been applied in practice, particularly through scientific models and the legal systems of Thailand, the United Kingdom, and Germany. It also will evaluate the limitations inherent in these applications. This analysis will serve as a foundation for the subsequent discussion on the interpretation of 'proper cat welfare.'

### 2.2.1 Animal Welfare Models

Closely linked to scientific theories are animal welfare models, which provide practical and operational tools for interpreting 'proper animal welfare.' These models typically specify the conditions necessary to ensure welfare, making the concept more applicable and assessable in real-world contexts.<sup>117</sup> Each model defines and evaluates welfare through various methods and indicators, based on the prevailing scientific understanding.<sup>118</sup> Although new models will likely emerge as animal welfare science continues to evolve, this subsection focuses on two influential models: the Five Freedoms and one of its most recent successors, the Welfare Quality® (WQ). Both originated in Europe and were designed primarily for farmed animals, but their influence now extends globally across species.<sup>119</sup>

#### 2.2.1.1 The Five Freedoms

For decades, the scientific community—including veterinarians and animal behaviourists—has generally accepted the Five Freedoms as the 'gold standard' of animal welfare and 'the best-known operational list of welfare dimensions.'<sup>120</sup> The model originated from the UK's

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<sup>117</sup> WTS Welttierschutz Stiftung, '// Modules' (n 108).

<sup>118</sup> WTS Welttierschutz Stiftung, 'MODULE 06 // Animal Welfare Legislation' (WTS Welttierschutz Stiftung) <<https://teaching-animal-welfare.org/modules/module-06/>> accessed 21 May 2024.

<sup>119</sup> Janice H Cox and Sabine Lennkh, *Model Animal Welfare Act: A Comprehensive Framework Law* (2016) <[https://worldanimal.net/images/stories/documents/Model\\_AWA/Updated/MAWA\\_PDF\\_Part1.pdf](https://worldanimal.net/images/stories/documents/Model_AWA/Updated/MAWA_PDF_Part1.pdf)> accessed 21 May 2024, 19-20.

<sup>120</sup> Compassion in Food Business, *What is Animal Welfare? Summary Review 2023* (2023) <<https://www.compassioninfoodbusiness.com/media/7454441/what-is-animal-welfare-summary-review-2023.pdf>> accessed 25 February 2025; Amanda Waxman, 'Five Freedoms of Animal Welfare: What They Are & Why They Aren't Enough' (*the Humane League*, 21 December 2021) <<https://thehumaneleague.org/article/the-five-freedoms-of-animal-welfare>> accessed 21 May 2024;

*Brambell Report* (1965), a response to Ruth Harrison's 1964 book *Animal Machines*, which exposed the maltreatment of farm animals following the rise of intensive animal production after the Second World War. The Report recognised that:

*Welfare is a wide term that embraces both the physical and mental well-being of the animal. Any attempt to evaluate welfare therefore must take into account the scientific evidence available concerning the feelings of animals that can be derived from their structure and functions and also from their behaviour.*<sup>121</sup>

This report was later developed into the Five Freedoms in 1979 by the UK's Farm Animal Welfare Council (FAWC). The most recent iteration, officially published by the FAWC in 2009, reads: '(1) freedom from hunger and thirst; (2) freedom from discomfort; (3) freedom from pain, injury and disease; (4) freedom to express normal behaviour; (5) freedom from fear and distress.'<sup>122</sup>

The model incorporates all three scientific approaches to animal welfare: biological functioning, feelings, and natural behaviour approaches. However, it does not provide guidance on how to balance these freedoms when they are in conflict. Each freedom is open to interpretation and there is also a mismatch between them.<sup>123</sup> Only the fourth freedom is positive, while the rest address negative subjective experiences such as hunger, thirst, discomfort, pain, fear, and distress.

Moreover, although the Five Freedoms offer general guidelines, animal welfare science has been rapidly advancing. For example, recently, research found that vertebrates and some invertebrates, such as cephalopods, have complex cognitive and affective processes

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Welfare Quality®, *Welfare Quality Report No 12* (2009)

<<https://www.welfarequalitynetwork.net/media/1120/wqr12.pdf>> accessed 25 February 2025, 4.

<sup>121</sup> FW Rogers Brambell (n 30) 9, Farm Animal Welfare Council, *Press Statement* (5 December 1979) <<https://webarchive.nationalarchives.gov.uk/ukgwa/20121010012427/http://www.fawc.org.uk/reports.htm>> accessed 18 June 2025; Janice Cox and Sabine Lennkh (n 119) 18; Amanda Waxman (n 120).

<sup>122</sup> Farm Animal Welfare Council (FAWC), *Farm Animal Welfare in Great Britain: Past, Present and Future* (FAWC 2009) 10.

<sup>123</sup> WTS Welttierschutz Stiftung, '/// Modules' (n 108); Amanda Waxman (n 120).



enabling them to have complex positive and negative mental states, such as fear, anxiety, frustration, panic, anger, helplessness, boredom, loneliness, depression, curiosity, affection, and excitement, to name a few.<sup>124</sup> Species-specific fundamental needs will provide a more accurate way to define what constitutes proper welfare of their species.<sup>125</sup>

### 2.2.1.2 Welfare Quality® (WQ)

The Welfare Quality® (WQ) is a European research initiative project run by European and Latin American scientists, funded by the European Commission from 2004 to 2009.<sup>126</sup> The model aims to complement the Five Freedoms, offering practical strategies to improve animal welfare in Europe.<sup>127</sup> It primarily focuses on crossed-species farm animal welfare, including dairy cows, fattener pigs, laying hens and broiler chickens. However, it also served as the basis for a Model Animal Welfare Act, drafted by a group of animal law scholars to apply to all animals.<sup>128</sup>

The WQ defines four key principles of proper animal welfare: good feeding, good housing, good health, and appropriate behaviour.<sup>129</sup> These four principles are further subdivided into twelve criteria in total, as illustrated in the table below:

Principles	Welfare Criteria
Good Feeding	<p><i>1. not suffer from prolonged hunger, i.e. have a sufficient and appropriate diet</i></p> <p><i>2. not suffer from prolonged thirst, i.e. have a sufficient and accessible water supply</i></p>

<sup>124</sup> Ibid; Sandra McLean, ‘Do Octopuses, Squid and Crabs Have Emotions?’ (*News@York*, 24 March 2022) <<https://news.yorku.ca/2022/03/24/do-octopuses-squid-and-crabs-have-emotions/>> accessed 20 February 2025; Robyn Crook, ‘Sensation, Emotion, and Cognition in Cephalopods: Evolution of Complex Brains’ (2023) 15 *IBRO Neuroscience Reports* S59.

<sup>125</sup> Donald M Broom (n 92) 82.

<sup>126</sup> Janice H Cox and Sabine Lennkh (n 119) 43-44.

<sup>127</sup> *ibid.*

<sup>128</sup> *ibid.*

<sup>129</sup> *ibid.*

Good Housing	<p><i>3. comfort around resting</i></p> <p><i>4. thermal comfort</i></p> <p><i>5. ease of movement, i.e. have enough space to be able to move around freely</i></p>
Good Health	<p><i>6. free of physical injuries</i></p> <p><i>7. free of disease</i></p> <p><i>8. not suffer pain induced by inappropriate management, handling, slaughter or surgical procedures (e.g. castration)</i></p>
Appropriate behaviour	<p><i>9. expression of normal, non-harmful, social behaviours (e.g. grooming)</i></p> <p><i>10. expression of species-specific natural behaviours</i></p> <p><i>11. be handled well in all situations, i.e. handlers should promote good human-animal relationships</i></p> <p><i>12. Negative emotions such as fear, distress, frustration or apathy should be avoided, whereas positive emotions such as security or contentment should be promoted.<sup>130</sup></i></p>

This model is considered ‘more concrete and specific’ and ‘particularly useful’ for legislation.<sup>131</sup> It separates hunger and thirst from the first Five Freedoms into two separate criteria and introduces a time-based dimension, namely, ‘prolonged.’ In addition to the state of comfort described in the Five Freedoms, the WQ also includes ‘thermal comfort.’ Unlike the Five Freedoms, the WQ separates pain and injury into distinct criteria, emphasising that

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<sup>130</sup> *ibid.* 19; Raphaëlle Botreau and others, *An Overview of the Development of the Welfare Quality® Project* (Linda Keeling ed, 12th edn, Cardiff University 2009) 6.

<sup>131</sup> *ibid.*

human-induced factors, such as inappropriate management, or non-medical factors, such as slaughter can cause animal pain.<sup>132</sup> Compared to the Five Freedoms, the WQ covers a wider range of the animal's ability to express normal behaviour and incorporates a more well-rounded understanding of emotions to be avoided or promoted. This is one of the first models to include positive emotions.<sup>133</sup> However, the model requires species-specific training and expertise to meet each criterion.<sup>134</sup> Clarification is needed on how to measure and balance these criteria for companion animals, including cats.<sup>135</sup>

## 2.2.2 Legal Frameworks

This section illustrates how the term 'proper animal welfare' has been applied in practice across three jurisdictions. It delineates the extent to which these applications reflect philosophical and scientific foundations of the concept, thereby impliedly revealing their inherent limitations. This analysis provides a critically authoritative foundation for interpreting 'proper cat welfare' and serves as the basis for the subsequent chapter on the scope of cat welfare duties.

### 2.2.2.1 United Kingdom (England and Wales)

The Animal Welfare Act 2006 (AWA 2006) does not explicitly use the term '*proper animal welfare*.' However, a reading of the Act as a whole suggests that the term '*welfare*' as used throughout is inherently positive and functionally equivalent to '*proper animal welfare*.' It aligns with the principles of utilitarianism, welfarism, all major scientific theories of animal welfare, and the Five Freedoms model.

Scientific development—particularly in understanding of animal sentience and needs—played a major role in modernising the AWA 2006 to promote animal welfare, as older laws dating back to 1911.<sup>136</sup> Sections 1(1) and 1(4) of the AWA 2006 scope welfare protection to

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<sup>132</sup> *ibid.*

<sup>133</sup> Raphaëlle Botreau and others (n 130) 9.

<sup>134</sup> Compassion in Food Business (n 120) 7.

<sup>135</sup> *ibid.*

<sup>136</sup> Explanatory Notes to the Animal Welfare Act 2006 paras 3, 11; Secretary of State for Environment, Food and Rural Affairs and the Chief Secretary to the Treasury by Command of Her Majesty, *Launch of the Draft Animal Welfare Bill 2004* (Cm 6252, 2004) 47-48.

vertebrates (other than humans), based on scientific evidence of their capacity to experience pain or suffering.<sup>137</sup>

The AWA 2006 reflects utilitarian and welfarist influences in several key ways. For instance, the word *suffering* introduced in Section 1(4) is subsequently qualified by the term *unnecessary* in Section 4. Additionally, welfare encompasses the killing or destruction of animals, which, under Section 9(4), must be carried out ‘in an appropriate and humane manner.’<sup>138</sup> Moreover, structurally, the Act divides offences into two categories: the Prevention of Harm (Sections 4-8) and the Promotion of Welfare (Section 9). The former sets out the minimum standards of animal welfare—namely, that an animal is not subjected to cruelty. This includes offences such as unnecessary suffering, mutilation, docking of dogs’ tails, administration of poisons, and animal fighting. The latter reflects welfarists’ humane treatment elements as well as those of the Five Freedoms model, specifically a suitable environment, a suitable diet, the ability to exhibit normal behaviour patterns, the opportunity to be housed with or apart from other animals, and protection from pain, suffering, injury and disease.<sup>139</sup> Taken together, ‘proper animal welfare’ under the AWA 2006 can be understood as when an animal is not subjected to cruelty and is treated humanely in a way that meets the animal’s five needs.

#### 2.2.2.2 Germany

Similar to the UK, German law does not explicitly use the term ‘*proper animal welfare*.’ Instead, it employs terms such as *Wohlbefinden der Tiere* (‘*animal well-being*’) and *Tierschutz* (‘animal protection’), which largely align with the principles of proper animal welfare from welfarist and scientific perspectives, while also incorporating, to a lesser extent, elements of a deontological view.<sup>140</sup>

As a State Party to the European Convention for the Protection of Pet Animals (ECPA) of 1987, which entered into force in Germany in 1992, Germany affirms the basic principles of

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<sup>137</sup> Explanatory Notes to Animal Welfare Act 2006 para. 3, AWA 2006, s1(1), 1(3)

<sup>138</sup> AWA 2006, s 9(4).

<sup>139</sup> *ibid* s 9(2).

<sup>140</sup> Notably, the German version of the ECPA uses the term *Wohlbefinden der Tiere* in Article 3, which translates precisely into English as the ‘*well-being of animal*.’

pet welfare (notably, the German version uses the term *Wohlbefinden der Tiere*) outlined in Article 3, including the absence of unnecessary pain, suffering, distress, and abandonment.<sup>141</sup> The Convention defines pet animals as those kept ‘for private enjoyment and companionship,’ reflecting a welfarist orientation.<sup>142</sup>

Concurrently, although it has not yet entered into force and does not apply to the welfare of domestic cats within the scope of this research, it is worth noting that, once adopted, Germany will be bound by Article 3 of the proposed EU Regulation of the European Parliament and of the Council on the Welfare of Dogs and Cats and their Traceability. Article 3 defines ‘welfare of dogs and cats’ as ‘the physical and mental state of a dog or a cat in relation to the conditions in which it is born, lives and dies.’<sup>143</sup> This definition aligns more closely with the modern scientific understanding of animal welfare as an inherently neutral term.

While the German Constitution and the Animal Protection Act (*Tierschutzgesetz*, TierSchG) do not explicitly use the term ‘proper animal welfare’, they consistently employ the term *Tierschutz* (translated as ‘animal protection’). Additionally, in case law, the Federal Administrative Court has applied the TierSchG using the term *Wohlbefinden des Tieres* (‘animal well-being’), interpreting it as ethically oriented and encompassing the protection of animal life, intrinsic value, and well-being, as reflected in Section 1 of the TierSchG on Principles (*Grundsatz*).<sup>144</sup>

At first glance, this interpretation appears to reflect a deontological doctrine. However, the second principle in Section 1, sentence 2, of TierSchG provides that ‘no one may inflict pain, suffering or damage on an animal without reasonable cause.’ This aligns more closely with

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<sup>141</sup> *ibid.*

<sup>142</sup> European Convention for the Protection of Pet Animals (adopted 13 November 1987, entered into force 1 May 1992) ETS No 125.

<sup>143</sup> Proposed Regulation of the European Parliament and of the Council on the Welfare of Dogs and Cats and their traceability, Article 3, COM/2023/769 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2023:769:FIN>> accessed 23 May 2024.

<sup>144</sup> BVerwG, Judgment of 13 June 2019 – 3 C 28.16, paras 4, 17, 20, 25, 26; Animal Protection Act (*Tierschutzgesetz*, TierSchG), BGBl I 2002, 1193.

utilitarian and welfarist perspectives, which define welfare in terms of the minimising unnecessary suffering and seeks to balance the legally protected interests of animal owners with those of animal welfare.<sup>145</sup>

### **2.2.2.3 Thailand**

Similar to the UK to some extent, and to a lesser extent the German approach, Thai animal welfare law reflects a welfarist perspective over the term ‘proper animal welfare.’ Section 3 of the 2557 Act and the Notification define ‘animals’ based on their utility, including those ‘kept as domestic animals or for companionship.’

However, unlike its UK and German counterparts, Section 3 of the 2557 Act and the Notification explicitly define ‘animal welfare provision’ as ‘raising or caring for an animal so that the animal lives in proper conditions, has good health and hygiene, and has adequate accommodation, food, and water.’ Notably, consistent with both the UK and German approaches, Section 21 of the 2557 Act permits the practice of animal cruelty if there is a reasonable cause.

Therefore, overall, the term ‘welfare’ in the Thai context is, to some extent, functionally equivalent to ‘proper animal welfare’ in the UK approach—being inherently positive. It aligns with the principles of utilitarianism, welfarism, major scientific theories of animal welfare, and the Five Freedoms model, collectively framing the overarching framework around a list of positive welfare conditions that effectively represent humane treatment and the minimisation of unreasonable suffering.

## **2.3 Proper Cat Welfare: Interpretations and Challenges**

This section synthesises the preceding sections to assess key interpretive challenges surrounding the term ‘proper cat welfare.’ It begins by mapping the philosophical, scientific, and legal understandings of—and challenges associated with—the broader concept of ‘proper animal welfare.’ It then proceeds by discussing the specific difficulties these pose for interpreting ‘proper cat welfare.’

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<sup>145</sup> BVerwG, Judgment of 13 June 2019 – 3 C 28.16, paras 4, 17, 20, 25, 26.

The previous section demonstrated that the challenge in interpreting the term ‘proper animal welfare’ stems predominantly from the fact that philosophical, legal, and scientific epistemic communities differ—sometimes significantly—in how they perceive the term. These varying interpretations reflect distinct emphases. Utilitarian and welfarist perspectives tend to adopt a more human- and sentio-centric perspective—applicable to all animals, so long as they are sentient and used humanely—whereas scientific approaches often lean towards a zoo-centric lens, focusing on the animal’s subjective experiences and internal states. Consequently, the scientific approach is more attuned to species-specific welfare considerations. Legal frameworks tend to occupy an intermediate position, balancing both dimensions to varying degrees. Despite their difference, these perspectives generally share a fundamental goal: fostering positive human-animal relationships. A notable exception remains—the abolitionist perspective—which rejects such relationships altogether, even when they are positive.

Another fundamental challenge to the interpretation of proper animal welfare lies in the term ‘suffering.’ What constitutes suffering—its sources, its acceptable limits, and, consequently, the acceptable methods for its reduction—varies considerably across these perspectives and therefore influences how ‘proper’ is proper enough in practice.

For utilitarians and welfarists, suffering and its acceptable limits are always relative to anthropocentric necessity. It is a balancing exercise that is susceptible to changing societal values and justifies animal utility as long as the suffering inflicted upon animals is minimised, if not eliminated. Only wanton cruelty is considered an unequivocally unacceptable source of suffering, though this too is subject to societal and factual sensitivities. Therefore, the killing of animals is typically seen as a permissible source of suffering if it is carried out in a way that causes minimal to nonexistent suffering, serves societal needs, and is not done out of wanton cruelty. Accordingly, acceptable approaches to reducing suffering focus on providing positive, ‘humane’ treatments to the animals in question. This begs further question: how does each society—or rather, each jurisdiction—interpret the term ‘humane’ in practice?

For scientific theorists, the sources of sufferings may include biological malfunctions, negative affective states (feelings), or the suppression of natural behaviour—depending on

whether the perspective emphasises biological functioning, feelings, or natural living, respectively. Consequently, the methods for reducing suffering vary in accordance with these differing perspectives. Altogether, these challenges can influence and complicate the meanings and interpretation of ‘proper cat welfare.’

To be more specific, for utilitarians and welfarists, proper cat welfare means, at a minimum, that a cat does not suffer from wanton cruelty. If a cat is killed painlessly and out of the owner’s necessity, it may still be considered that the cat’s welfare has been properly respected. This assessment depends on the prevailing sensibilities of moral agents within a society, which are shaped by the perceived utility of cats—who are now, in most societies, regarded as human companions and, for some, even as family members.<sup>146</sup> Likewise, a welfarist would consider that a cat enjoys proper welfare when the cat is treated humanely and not subjected to unnecessary suffering or cruelty.

From these perspectives, the recognition of the intrinsic value of cats and the innate equality between them and their human owners does not contribute to their welfare. Their use, such as for companionship or as child substitutes, can persist as long as it produces a consequence that aligns with the majority (human) public interests and customary practices. However, challenges remain, as previously discussed, in defining the terms ‘humane,’ ‘cruelty,’ ‘suffering,’ and in weighing them against the notion of ‘necessity.’

For deontologists, proper cat welfare is when the experiential life of the cat fares well for

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<sup>146</sup> Historically, cats have played both practical and spiritual roles. In ancient Egypt and medieval Europe, they were valued for their usefulness in agriculture due to their ability to catch rodents and other pests. In ancient Egyptian mythology, cats were considered sacred and were associated with goddess Bastet (Bast), the deity of home, fertility, and protection. Similarly, in parts of Thailand that remain agrarian, traditional ceremonies such as *Hae Nang Maew*—a rain-requesting ritual—still reflect the cultural belief in cats as sacred creatures with mysterious powers. In particular, black cats are believed to be connected to rain-bearing clouds. However, in contemporary practice, living cats have largely been replaced by cat-like objects or dolls in these ceremonies. See further, Thanwadee Sookprasert, ‘Hae Nang Meaw’ (Rituals, Ceremonies and Local Festivals in Thailand Database, 12 January 2016, last updated 14 September 2016) <<https://rituals.sac.or.th/detail.php?id=9>> accessed 19 June 2025. Dennis C Turner and Patrick Bateson, *The Domestic Cat: The Biology of Its Behaviour* (3rd edn, Cambridge University Press 2014); Richard H Wilkinson, *The Complete Gods and Goddesses of Ancient Egypt* (Thames & Hudson 2003).



them.<sup>147</sup> This begs the question how ‘well’ the life should be, given that it is considered morally justifiable to harm them in two situations. One is when facing a choice of harming the few for the many, harm the few (mini-ride principle). Two is when harming the few would make them worse off than any of the many, harm the many (worst-off principle).<sup>148</sup> This makes deontology sharing the same deficits as utilitarianism, welfarism, and new welfarism because in practice, it is challenging to see who is in the ‘many’ and who is the ‘few.’ For example, in Thailand, there is no official numbers of cat owners and how many each owner owns. Different sources of data need to be retrieved which can undermines the legitimacy to harm the ‘few.’

Abolitionism, which regards cats as having inherent value with fundamental rights—such as the right not to be treated as property—rejects the very notion of ‘proper cat welfare.’ This is because the concept continues to treat cats as property and endorses the practices of ownership, utilisation, and domestication. As long as cats remain the property of humans, the welfarist approach to balancing interests is inherently anthropocentric and speciesist, ultimately subordinating the cat’s interests to those of their human owners. Even when these practices are pain-free or appear beneficial, abolitionists argue that no relationship between humans and cats is morally justified. All pet cats, they contend, should be sterilised to end the cycle of domestication. From this perspective, meaningful protection of cats must encompass their full range of experiential interests, independent of their usefulness to humans. This includes the de-reification of cats as property and the recognition of their fundamental right not to be treated as property at all.

However, abolitionist perspectives on ‘proper cat welfare’ do not fully reflect the current trend of pet humanisation, in which cat owners increasingly no longer view their cats as mere property to be exploited or used, but rather as family members. In Thailand, cat owners are often colloquially referred to—both by themselves and others—as ‘cat slaves,’ as they cater to their cats’ every need and desire, from maintaining luxurious automatic litter boxes and providing cave-style beds for privacy to serving organic and holistic food. These actions are almost entirely altruistic, aimed at fulfilling whatever is in the cat’s best

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<sup>147</sup> Gary L Francione (n 44) 417.

<sup>148</sup> *ibid.* 418.

interest. In return, owners often seek only one thing: a sign of affection from their ‘master.’

Moreover, regardless of the cat’s legal status as property, national and international court decisions increasingly protect animals through the backdoor—by restricting human property rights on the grounds of public interest, general welfare, or morality. This approach will be discussed in greater detail in the subsequent chapters.

Scientific discussions on what constitutes proper cat welfare are more nuanced, despite some similarity to welfarism, which does not challenge the continued use of cats. In studying the anthropogenic effects on cat welfare, scientists generally agree that cat welfare refers to a cat’s state of being—an inherently neutral term that can range from very good to very poor. However, they differ on *what* should be measured to assess this ‘state of being.’

A scientist with a biological functioning-based conception would regard cats as having proper welfare when they are able to successfully cope with their environment. One key challenge lies in identifying the extent to which a cat’s failure to cope is attributable to human actions or omissions. For example, it is recommended that cats require between 0.03 and 0.51 litres of water per day to maintain their core body temperature.<sup>149</sup> However, this requirement varies depending on environmental conditions, activity levels, physiology, and clinical signs of dehydration.<sup>150</sup> While pet owners may provide water appropriately and of good quality, the causes of dehydration in cats are multifactorial.<sup>151</sup> Therefore, not all biological malfunction can be accurately attributed to improper welfare caused by human actions or omissions.

The feelings approach holds that cats have proper welfare when they do not experience negative emotional states, such as unpleasant feelings, and instead experience positive subjective emotional states. Therefore, understanding cat’s emotions is essential to respecting and safeguarding their welfare, as cats are capable of experiencing a wide range of emotions—pleasant ones such as pleasure, and unpleasant ones such as pain, fear,

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<sup>149</sup> WTS Welttierschutz Stiftung, ‘Module 02// Animal Care’ (n 95).

<sup>150</sup> *ibid.*

<sup>151</sup> *ibid.*

anxiety, frustration, stress, boredom, hunger, thirst, and distress.<sup>152</sup> However, there are several challenges associated with this approach.

Take pain, for example. Even in humans, individuals experience pain differently in terms of its quality, intensity, and associated emotions.<sup>153</sup> In the case of cats, recognising pain is even more challenging than in dogs, as knowledge about feline pain remains limited.<sup>154</sup> As of the time of writing, there is no gold standard for assessing acute pain in cats.<sup>155</sup> Although scoring methods based on physiological and behavioural variables are used in clinical settings, they are often criticised for lacking rigorous validation.<sup>156</sup> Additionally, reliance on human observers in these scoring systems raises concerns about objectivity and the potential for human error, which could result in either underassessment or overassessment of a cat's pain.<sup>157</sup> This challenge is further compounded by the difficulty of distinguishing pain from other emotional states, such as fear, stress, anxiety, and dysphoria.<sup>158</sup> Moreover, cats tend to mask signs of pain or suffering until the condition has progressed pathologically and significantly.<sup>159</sup>

Furthermore, strictly considering whether cats have proper welfare based solely on their positive feelings can lead to anomalies.<sup>160</sup> For example, a cat may experience pleasure from eating human food that contains high levels of sodium chloride (e.g., bacon, or salted mackerels). However, this additive can be detrimental to the cat's health, potentially leading to conditions such as chronic kidney disease.<sup>161</sup> While this disease takes time to develop and

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<sup>152</sup> Ilona Rodan and Sarah Heath, *Feline Behavioral Health and Welfare* (Elsevier Health Sciences 2015) 233, Sparkes AH and others, 'ISFM Guidelines on Population Management and Welfare of Unowned Domestic Cats (*Felis Catus*)' (2013) 15 *Journal of Feline Medicine and Surgery* 811.

<sup>153</sup> Ilona Rodan and Sarah Heath, *Feline Behavioral Health and Welfare* (Elsevier Health Sciences 2015) 162.

<sup>154</sup> *ibid.*

<sup>155</sup> *ibid.*

<sup>156</sup> *ibid* 177.

<sup>157</sup> *ibid* 162.

<sup>158</sup> *ibid* 177.

<sup>159</sup> *ibid.*

<sup>160</sup> *ibid.*

<sup>161</sup> *ibid.*

may cause little or no suffering in the short term, focusing purely on immediate pleasure or delayed suffering could lead to the mistaken conclusion that feeding human food improves cat welfare.

In a similar vein, it is difficult to determine whether future suffering will outweigh accumulated pleasure, let alone attribute responsibility to human owners, given the varied causes of feline diseases. Empirical methods for quantifying the subjective experiences of cats remain limited. For instance, it is unclear whether keeping cats strictly indoors reduces their welfare by depriving them of the pleasure of roaming. Likewise, there is no purely empirical method to weigh suffering against pleasure or enjoyment—such as determining whether prolonging the life of a sick cat decreases welfare because suffering outweighs the enjoyment of living.<sup>162</sup> Furthermore, the concept of suffering itself is vague. Some scientists define it as a negative subjective experience encompassing a wide range of unpleasant emotional states or feelings, which must be either acute or persist for a prolonged period.<sup>163</sup> Others, however, qualify suffering on much shorter timescales—sometimes within a matter of seconds.<sup>164</sup>

Another challenge is cat fear. It is triggered by potential threats or the perception of threats, often arising from a loss of familiarity and security in their environments. Fear-inducing events include trips to the vet, encounters with unfamiliar people or pets, rehoming, being left in a shelter, or abandonment into a stray population.<sup>165</sup> Furthermore, fear in cats can result from perceived oppressive interactions, such as being forcibly held, placed on a lap, or followed without being allowed to initiate interaction on their own terms.<sup>166</sup> Fear typically leads to stress, which, in both the short and long term, can result in poor feline welfare.<sup>167</sup> Therefore, under the feelings approach, proper cat welfare requires high standards of humane handling that promote positive emotions and minimise negative ones.<sup>168</sup> Achieving

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<sup>162</sup> Ibid 10.

<sup>163</sup> Corrado Carenzi and Marina Verga (n 98) 21-23.

<sup>164</sup> Donal M Broom (n 92) 81.

<sup>165</sup> *ibid.*

<sup>166</sup> *ibid.*

<sup>167</sup> *ibid.*

<sup>168</sup> WTS Welttierschutz Stiftung, 'Module 02// Animal Care' (n 95).

this necessitates knowledge, preparation, practice, and experience.<sup>169</sup>

Under the natural living approach, cat welfare means that cats can engage in their innate natural behaviours within a suitable environment.<sup>170</sup> Innate feline behaviours include marking, playing, hunting (which is not solely driven by hunger), jumping, climbing, scratching, eating small but frequent meals, resting undisturbed, and using a quiet, private toileting area.<sup>171</sup> Their ancestors, the African wildcat (*Felis silvestris lybica*), avoided eating near water sources to prevent contamination.<sup>172</sup> Similarly, domestic cats (*Felis catus*) often prefer their water bowl to be placed separately from both the litter tray and food bowl.<sup>173</sup> A suitable environment—often referred to as Environmental Enrichment (EE)—involves multi-faceted arrangements. These include factors such as adequate space, both in terms of quality and quantity. Studies have shown that increasing available space enhances cats’ play behaviour, which is regarded as an indicator of positive welfare.<sup>174</sup> The space must also be dry and clean, providing a resting area, access to natural daylight, good ventilation, and protection from rain, sun, wind, and extreme climates. Other essential dimensions include the provision of food resources that are not only sufficient in quantity but also presented in a stimulating manner. Environmental enrichment also involves safeguarding cats from potential predators and offering opportunities for social interaction.<sup>175</sup>

However, the domestication process can lead to significant differences between domestic cats and their wild counterparts. As a result, it can be challenging to determine the welfare implications of living conditions that deviate from those experienced by their wild ancestors.<sup>176</sup> Additionally, most studies on appropriate environments for cats are conducted

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<sup>169</sup> WTS Welttierschutz Stiftung, ‘Module 03// Humane Handling’ (*WTS Welttierschutz Stiftung*)

<<<https://teaching-animal-welfare.org/modules/module-03/>> accessed 20 May 2024.

<sup>170</sup> *ibid.*

<sup>171</sup> “Understanding Cats’ Needs” (*Cats Protection*)

<<https://learnonline.cats.org.uk/content/ucn/story.html>> accessed May 20, 2024

<sup>172</sup> *ibid.*

<sup>173</sup> *ibid.*

<sup>174</sup> Rachel Foreman-Worsley and Mark J Farnworth, ‘A Systematic Review of Social and Environmental Factors and Their Implications for Indoor Cat Welfare’ (2019) 220 *Applied Animal Behaviour Science* 1,5.

<sup>175</sup> WTS Welttierschutz Stiftung, ‘Module 02// Animal Care’ (n 95).

<sup>176</sup> Corrado Carenzi and Marina Verga (n 98) 26.

in shelters, catteries, or laboratory settings, rather than in private homes, which may limit the validity of the findings when applied to domestic contexts.<sup>177</sup> Furthermore, even if cats are kept in environments that aligns with their natural adaptations, they may still suffer or become ill if those adaptations are insufficient to meet the specific challenges they face.<sup>178</sup>

Read together, these scientific perspectives may lead to different conclusions of what considers proper cat welfare. A scientist with a functioning-based conception might conclude that the welfare of a strictly indoor cat is high because the cat is well-fed, and free from disease or injury.<sup>179</sup> However, those who adopt a feelings-based conception may argue that the same cat has poor welfare, as the cat's vocalisations and persistent attempts to escape the house suggest frustration and boredom.<sup>180</sup> Meanwhile, proponents of the natural-living conception may also conclude that the cat's welfare is poor, due to the restrictive and artificial indoor environment that prevents the cat from expressing its full repertoire of natural behaviours.<sup>181</sup> Therefore, at the conceptual level, science alone may not provide an optimal answer as how 'proper' is proper enough to ensure cat welfare.

At the applicational level, animal welfare models such as the Five Freedoms and Welfare Quality ® (WQ) are based on all three scientific concepts and thus offer a more holistic approach to assessing proper cat welfare criteria—despite their original focus on production animals. However, because each model includes different measurements, what constitutes proper cat welfare vary in detail, although they share overlapping elements. Moreover, these models do not offer guidance on how to balance conflicting criteria. For example, according to the Five Freedoms, excessive freedom from hunger and thirst may compromise a cat's freedom from disease, as overfeeding can lead to obesity. This, in turn, may restrict the cat's natural abilities if she becomes reluctant to play or jump, thereby causing discomfort and, compromising her freedom from it. Similarly, as with the limitations of the feeling approach, negative subjective experiences—such as hunger, thirst, discomfort, pain, and fear—are

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<sup>177</sup> Rachel Foreman-Worsley and Mark J Farnworth, 'A Systematic Review of Social and Environmental Factors and Their Implications for Indoor Cat Welfare' (2019) 220 *Applied Animal Behaviour Science* 1, 6.

<sup>178</sup> D Fraser and others (n 104) 187-205.

<sup>179</sup> *ibid.*

<sup>180</sup> *ibid.*

<sup>181</sup> *ibid.*

natural survival mechanisms that can, at best, be temporarily alleviated, but not permanently eliminated.<sup>182</sup>

Although neither the UK, Germany, nor Thailand explicitly employs the term ‘proper cat welfare’ in their legislation, it can generally be inferred to encompass the minimisation of unnecessary suffering or cruelty and the promotion of humane treatments. To varying degrees, each jurisdiction reflects utilitarian and welfarist theories. However, challenges arise in interpreting context-sensitive terms such as ‘unnecessary,’ ‘cruelty,’ ‘suffering,’ and ‘humane.’ These interpretative differences will be discussed in greater detail in the next chapter

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<sup>182</sup> David J Mellor, ‘Updating Animal Welfare Thinking: Moving beyond the “Five Freedoms” towards “A Life Worth Living”’ (2016) 6 *Animals* 21.

### CHAPTER 3 SCOPE OF ‘PROPER’ CAT WELFARE DUTIES

This chapter primarily addresses the second subsidiary research objective: to clarify the scope of cat owners’ welfare-related duties under the 2557 Act, in comparison to the United Kingdom and Germany. It does so by answering the related question: *How, and to what extent, can cat owners fulfil their duties to provide proper welfare under Thai animal welfare law, in comparison to the UK and Germany?* To achieve this, the chapter explores both positive obligations—the range of affirmative duties and how far they may extend—and negative obligations, referring to duties or minimum standards that must not be violated, below which constitutes a punishable offence.

The chapter is structured into three sections, corresponding to the three main elements of the ‘proper cat welfare’ continuum discussed in previous chapter: at the minimum end, where cats are protected from unnecessary suffering or cruelty; at the middle or upper-middle point, where they are treated humanely; and as a fundamental limitation across the continuum, the legal status of cats as property. Each section is further subdivided by jurisdiction, namely the UK, Germany, and Thailand.

The first section examines the relationship between the rights and duties of cat owners and the legal status of cats in each jurisdiction. The underlying premise is that where cats are regarded as legal property, the broader the restriction of the cat owners’ property rights, the greater the scope for interpreting animal welfare laws with respect to their duties to provide ‘proper’ welfare.

The second section addresses positive duties, building on the theoretical foundation of utilitarianism and welfarism, which hold that cat welfare requires humane treatment. The section builds on the premise that while all three jurisdictions impose such duties, the scope and standard of ‘humane’ treatment vary.

The third section considers negative duties. As discussed in previous chapter, one of the key challenges in determining ‘proper’ cat welfare lies in interpreting the term *suffering*. Therefore, this section examines cat owners’ duties to refrain from causing cat suffering, on



the premise that, at a minimum, all jurisdictions prohibit cat owners from causing unnecessary suffering or wanton cruelty, although the extent and specific application of these duties vary across legal systems.

### 3.1 The legal status of cats and the rights of their owners

From an abolitionist perspective, the fundamental limitation on cat owners' welfare duties lies in the classification of cats as property. This section draws on this theory to critically examine how the UK, Germany and Thailand assign legal status to cats and the corresponding rights of their owners.

#### 3.1.1 United Kingdom (England and Wales)

Rooted in Roman law, cats are classified in English law as *animals domitae naturae*.<sup>183</sup> This means they are considered inanimate chattels or property, subject to absolute ownership and the exercise of rights by their owner. As such, any law governing the relationship between animals and their owners—including animal welfare legislation—can imply restrictions on the owners' property rights.

The explanatory notes of the Animal Welfare Bill (now the Animal Welfare Act 2006, or AWA 2006) explicitly confirm this, stating that 'animals are a form of property,' over which an owner holds qualified rights.<sup>184</sup> One such right is the peaceful enjoyment of possessions, protected under the Human Rights Act 1998 (HRA 1998), a quasi-constitutional legislation, that implements Article 1 of the First Protocol of the European Convention on Human Rights (ECHR). The explanatory notes acknowledge that animal welfare constitutes a legitimate public interest that can justify this qualified right, provided that the restriction is proportionate.<sup>185</sup>

The principle of proportionality provides a structured test for courts to assess whether a restriction on property rights pursues a legitimate aim (such as the preventing or reducing unnecessary suffering in animals, or protecting public morals), serves the public interest (e.g.,

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<sup>183</sup> *Buckle v Holmes* (1925) 134 LT 284 The Secretary of State for Environment, Food and Rural Affairs (n 136) 70.

<sup>184</sup> The Secretary of State for Environment, Food and Rural Affairs (n 136) 70.

<sup>185</sup> *ibid.*

the state powers to deprive a person of their animals or to destroy them), is prescribed by law (i.e., through animal welfare legislation), and complies with general principles of international law.<sup>186</sup> These explanatory notes confirm the interplay between animal's legal status as property and their protection, achievable through the limitation of owners' property by imposing welfare duties.

This interpretation is supported by the ECtHR case *Friend and Others v. the United Kingdom* (2009), which, although not concerning cats and their owners specifically, its ratio decidendi provides valuable insights into the interplay between human rights and animal welfare across species. In this case, the Court confirms that animals (hounds in this case) fall within Article 1(1) of the First Protocol. However, it ruled that the prevention or reduction of unnecessary suffering of the animals (in this case, wild animals) constitutes a legitimate restriction on property right, on the ground of public interests.

However, such restrictions must be proportionate and must not impose an excessive burden on the applicant.<sup>187</sup> The Court emphasised the need to strike a fair balance between these conflicting interests, while recognising that member states enjoy a wide margin of appreciation. Despite this flexibility, the Court reinforced the core limitation identified by abolitionists persists: that human rights under the Convention must be broadly construed, whereas exceptions or limitations—animal welfare in this regard—are interpreted narrowly.<sup>188</sup>

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<sup>186</sup> *Buckle v Holmes* (1925) 134 LT 284. The Secretary of State for Environment, Food and Rural Affairs (n 136) 70. As a state party to the Council of Europe, the UK implemented the European Convention on Human Rights (ECHR) through the Human Rights Act 1998 (HRA 1998). It is a statutory instrument that qualified UK constitutional status. This means that, among other things, all branches of the UK government—legislative, executive, and judiciary—must comply with the ECHR, and the jurisprudence of the European Court of Human Rights (ECtHR), with a certain margin of appreciation. See, Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms' (adopted 20 March 1952, entered into force 18 May 1954) ETS No 9, art 1; Jowell J, 'Proportionality in the United Kingdom' (2008) *Revue générale du droit* 3; *Friend and Others v the United Kingdom* App nos 16072/06, 27809/08 (ECHR, 24 November 2009) paras 58, 150-151.

<sup>187</sup> *ibid* para 57.

<sup>188</sup> *ibid* paras 41, 129.

### 3.1.2 Germany

The stark contrasts between Germany and its UK and Thailand counterparts are twofold : the legal status of cats and their protection at the constitutional level.

Unlike in the UK and Thailand, where cats are strictly considered legal property, cats in Germany are not regarded as legal things. Reflecting a shift in public attitudes towards animals, the German parliament abolished this status through the Act for the Improvement of the Legal Status of Animals in Civil Law in 1990.<sup>189</sup> Consequently, Section 90a of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) explicitly states that animals are not things.

However, the implications for human rights are complicated by the fact that animals do not enjoy a legal status equivalent to that of humans. The same section stipulates that provisions applying to things shall nevertheless apply to animals, ‘except insofar as otherwise provided.’<sup>190</sup> This means, among other things, that cats can still be owned and disposed of.<sup>191</sup> This is further reaffirmed by Germany’s status as a party to the European Convention for the Protection of Pet Animals (ECPA) of 1987, which entered into force in Germany in 1992. Under Article 1 of the ECPA, ‘pet animals’ are defined as animals kept ‘for private enjoyment and companionship.’<sup>192</sup>

Before the constitutional amendment in 2002 that positioned animal protection (*schützt ... die Tiere*) as a state objective under Article 20a of the German Basic Law, animal welfare was ruled to fall within the constitutional principle of public interest (*Gemeinwohlbelang*) or the common good (*Interesse des Gemeinwohls*).<sup>193</sup> Accordingly, fundamental human rights

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<sup>189</sup> Act for the Improvement of the Legal Status of Animals in Civil Law (BGB I 1990, 1762).

<sup>190</sup> BVerfG, 1 BvR 1783/99, 15 January 2002, 46.

<sup>191</sup> *ibid* 21.

<sup>192</sup> European Convention for the Protection of Pet Animals (adopted 13 November 1987, entered into force 1 May 1992) ETS No 125, art 1.

<sup>193</sup> Bundesministerium für Ernährung und Landwirtschaft (BMEL), *Tierschutzbericht* (2003) 3 <[https://www.bmel.de/SharedDocs/Downloads/DE/\\_Tiere/Tierschutz/Tierversuche/Tierschutzbericht\\_2003.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmel.de/SharedDocs/Downloads/DE/_Tiere/Tierschutz/Tierversuche/Tierschutzbericht_2003.pdf?__blob=publicationFile&v=2)> accessed 21 February 2025; BVerfGE, 1 BvR 1783/99, Judgment of 15 January 2002, paras 36, 39, 43, 45, 47, 57 concerns the Jewish and Islamic ritual slaughters of warm-

under the Basic Law could be restricted by the guiding principles of the *TierSchG*.<sup>194</sup> These include the prohibition against inflicting ‘pain, suffering or harm (*Schmerzen, Leiden oder Schäden*)’ on animals ‘without reasonable cause (*ohne vernünftigen Grund*)’ and ‘beyond what is indispensable (*das unerlässliche Maß übersteigende*).’<sup>195</sup> The notions of ‘reasonable cause’ and ‘indispensability’ are assessed under the principle of proportionality (*Verhältnismäßigkeitsgebot*).<sup>196</sup>

However, under the principle of proportionality, the court has also ruled that animal protection under the *TierSchG* must not take precedence in an overly one-sided manner without a sufficient constitutional justification. Due consideration must be given to constitutionally protected fundamental rights to ensure they are not duly or disproportionately restricted, imposing an unreasonable burden on those concerned.<sup>197</sup>

This non-constitutional provisions of animal protection legislation (the *TierSchG*) were considered insufficient to safeguard animals, leading to the constitutional amendment in 2002.<sup>198</sup> The constitutional drafters recognised that unless explicitly guaranteed in the constitution, animal interests might not always be given equal consideration, particularly when inviolable human rights are at stake.<sup>199</sup> The drafters acknowledged that animals, especially those with more highly developed systems, are sentient beings with the capacity to suffer.<sup>200</sup> They possess a right (*Anspruch der Tiere*) to protection from suffering, harm, or

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blooded animals without prior stunning. The Court gave more weight to fundamental rights to religious and occupational freedoms which are safeguarded in ss 2(1), 4(1), and 4(2) of the Basic Law, although the slaughters were against s 4a of the *TierSchG* (BVerfGE, 1 BvR 1783/99, Judgment of 15 January 2002 paras 104, 337 - 356).

<sup>194</sup> *ibid.*

<sup>195</sup> *ibid.*

<sup>196</sup> *ibid.*

<sup>197</sup> *ibid* paras 53 ,59.

<sup>198</sup> German Bundestag, ‘Draft Law to Amend the Basic Law (State Objective of Animal Protection)’ (Draft Law of the Parliamentary Groups SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN, FDP) Printed Paper 14/8860 (14th Legislative Period, 2002).

<sup>199</sup> *ibid.*

<sup>200</sup> *ibid.*

pain, which should ideally be elevated to the constitutional level.<sup>201</sup> By granting animal protection constitutional status, the legislature, executive, and judiciary are required to consider animal protection (*Tierschutzes*) in their interpretation and application of any applicable law.<sup>202</sup> For individual pet owners, the constitutional status of animal protection means that individuals must consider whether they can meet their pets' every need even before acquiring them, including their requirements for space, attention, and freedom of movement.<sup>203</sup> However, a balance must be struck in each case with other equally important constitutional interests, including fundamental human rights.<sup>204</sup>

In relations to fundamental rights of the cat owners, similar to the UK, Germany is also a state party to the ECHR, meaning that the same relevant ECHR provisions and principles apply in Germany. The ECHR was implemented in Germany in 1952 as a federal statute after its publication in the German Bundesgesetzblatt (BGBL or the Federal Law Gazette of Germany), in accordance with Article 59(2) of the Basic Law. As a result, German courts apply the ECHR in the same way as other federal statutes. The ECHR and the ECtHR's jurisdiction serve as 'interpretative tools of German norms of a constitutional nature,' influencing the interpretation of the Basic Law, particularly in relation to the fundamental rights.<sup>205</sup>

One of the landmark ECHR cases directly applicable to Germany is *PETA Deutschland v Germany* (2014). The case illustrates not only the interplay between animal welfare and human rights in Germany, but also the structural deficits of animal welfare regime, which ultimately places humans at the forefront when inter-species interests collide—a central criticism raised by abolitionists. Although the case concerned PETA Deutschland's freedom of expression in its campaign 'Holocaust on Your Plate'—aimed at drawing public attention to the welfare of intensively farmed animals vis-à-vis the human dignity of Holocaust victims—its implications are generally applicable to cats and their owners.

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<sup>201</sup> *ibid.*

<sup>202</sup> German Federal Ministry of Food and Agriculture, 'Tierschutzbericht 2003' (BMEL 2003) <[https://www.bmel.de/SharedDocs/Downloads/DE/\\_Tiere/Tierschutz/Tierversuche/Tierschutzbericht\\_2003.pdf](https://www.bmel.de/SharedDocs/Downloads/DE/_Tiere/Tierschutz/Tierversuche/Tierschutzbericht_2003.pdf)> accessed 20 February 2025.

<sup>203</sup> *ibid* 13-17.

<sup>204</sup> *ibid* 15.

<sup>205</sup> BVerfG, 2 BvR 1481/04, 14 October 2004 (Görgülü case).

The ECtHR ruled that animal protection, rights, and welfare are ‘undeniably in the public interest’ and ‘topics of general concern’ that can justifiably restrict fundamental rights.<sup>206</sup> However, taking into account the historical and social context of German history, both the German domestic courts and the ECtHR agreed that there were competing interests between the public interest in animal-keeping conditions and human dignity. Although, at the time of the ruling, animal protection had been enshrined in the German Constitution for a decade, the courts acknowledged that the Constitution ‘drew a clear distinction between human life and dignity on the one side and the interests of animal protection on the other.’<sup>207</sup> The Berlin Regional Court went even further, emphasising that the Basic Law places human dignity at the centre (Section 1), while animal protection is only marginally referenced to (Section 20a).<sup>208</sup> This case portrays that, despite reaching constitutional status, animal protection can still be subordinated to human dignity, thus supporting abolitionist views.

### 3.1.3 Thailand

In Thailand, cats are considered legal things or property that can be owned, possessed, destroyed, killed, seized, or retained as security for compensation.<sup>209</sup> As a result, any legal requirements to protect cat welfare necessarily imply restrictions on a cat owner’s right to property.<sup>210</sup>

The right to property is protected under Section 37 of Constitution of the Kingdom of Thailand B.E. 2560. However, it is not absolute. According to Section 25 of the Constitution, property rights can be exercised only insofar as they do not endanger state security, public order, good morals, or violate the rights or liberties of others. Other restrictions may also be

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<sup>206</sup> PETA Deutschland v Germany (ECtHR, App No. 43371/09, Judgment of 7 January 2014) para 47.

<sup>207</sup> *ibid* 48.

<sup>208</sup> Basic Law for the Federal Republic of Germany (Grundgesetz, GG), promulgated 23 May 1949, last amended 20 December 2022, s1(1).

<sup>209</sup> Examples are the *Civil and Commercial Code of Thailand*, B.E. 2468 (1925), ss 301, 1320-1322, 1452; *Civil Procedure Code of Thailand*, s 335 (12); *Penal Code of Thailand* B.E. 2499 (1956).

<sup>210</sup> The first Constitution of Thailand in 1932, s 14 protected the ‘absolute freedom’ to property within the confines of the law. Similar provision existed in the Constitution of the Kingdom of Thailand in 1946 and 1952. However, the ‘absolute freedom’ to property was subtly revised in the Constitutions of 1949 (s 49), 1968 (s 32), 1974 (s 39), 1978 (s 33), 1991 (s 35), which instead stipulated that a person’s right to property shall be protected, and that the scope and restrictions of such right shall be confined by law.

imposed by law. However, Section 26 specifies that such laws must meet constitutional conditions. In the absence of these conditions, the law ‘shall not be contrary to the rule of law, shall not unreasonably impose burdens on or restrict the rights or liberties of a person individuals, and shall not affect the human dignity of a person.’<sup>211</sup> Additionally, the law must specify the justification and necessity for the restriction of rights and liberties.

As the Constitution does not provide specific legal conditions, in accordance with Section 26, to restrict property rights, animal welfare legislation—such as the 2557 Act and the Notification—must be interpreted within the general interpretative framework of Section 26 of the Constitution. Consequently, the legal requirements for cat owners to provide ‘proper’ welfare for their cats cannot be deemed an ‘unreasonable’ burden or restriction on the cat owner’s property rights.

The higher the standards that animal welfare legislation imposes on cat owners, the greater the level of protection afforded to cats. However, since cats remain legal property over which their owners have constitutionally guaranteed rights, and as long as their protection does not explicitly reach a constitutional level, secondary animal welfare legislation—such as the 2557 Act and the Notification—can only be interpreted insofar as it is compatible with primary constitutional protections, including fundamental human rights. This limitation undermines the potential for optimal protection of cats.

As already discussed, Thai animal welfare legislation contains several indeterminate terms such as suffering, justifiable, reasonable, adequate, or proper. The principle of proportionality can help strike a fair balance between the competing interests of cat owners, the cats themselves, and the wider community. However, because the notion of cat welfare is inherently rooted in utilitarianism and welfarism, the proportionality approach risks promoting anthropocentrism and speciesism, where the interests of cat owners outweigh those of cats.

For example, in 2019, the Ministry of Agriculture and Cooperatives proposed an amendment

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<sup>211</sup> Constitution of the Kingdom of Thailand B.E. 2560.

to the 2557 Act to include compulsory animal identification and registration.<sup>212</sup> If passed, animal owners would have to pay a 20-baht fee for an identification card, as well as a 150-baht fee for the identification tag per animal.<sup>213</sup> However, the Cabinet rejected the proposal, with the Prime Minister expressing concern that, while this would increase pet owners' responsibility, it could impose an 'excessive burden' on the public.<sup>214</sup> This reflects the terms within Section 26 of the Constitution, where human rights are prioritised.

## 3.2 Positive duties

### 3.2.1 United Kingdom (England and Wales)

The proactive nature of the Animal Welfare Act (AWA) 2006 places responsibility on animal owners to ensure proper welfare for their animals.<sup>215</sup> One of such main responsibilities lie under Section 9 of the AWA and its subsidiary document, namely the Code of Practice for the Welfare of Cats (the Code). Since cats are protected animals within the scope of the AWA, the following discussion will substitute the term 'animal' in the AWA and the Code with the term 'cat.'

Section 9 of the AWA 2006 imposes a duty on cat owners to ensure welfare. Section 9(1) requires an owner to take 'reasonable steps in all the circumstances' to meet their cat's needs 'to the extent required by good practice.' What constitutes the good practice is elaborated in the Code of Practice for the Welfare of Cats, which will be discussed further in the next paragraphs. Section 9(1) sets a 'purely objective standard of care' that a person

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<sup>212</sup> Draft Prevention of Cruelty and Provision of Animal Welfare Act (No. ...), B.E. ..., as amended according to the resolution of the joint meeting with the representatives of the Office of the Council of State and relevant agencies, 14 January 2019.

<sup>213</sup> *ibid* s 7.

<sup>214</sup> Secretariat of the Cabinet, Letter No. NR 0503/31939 dated 12 October 2018 regarding the Draft Prevention of Cruelty and Provision of Animal Welfare Act (No. ...) B.E. .... to the Minister of Agriculture and Cooperatives' (referring to the Ministry of Agriculture and Cooperatives, urgent letter No. KS 0604/5273 dated 13 September 2018).

<sup>215</sup> PBC Deb 23 July 2019 (Animal Welfare (Sentencing) Bill (Second Sitting)), vol 663, col 38 <[https://hansard.parliament.uk/commons/2019-07-23/debates/0d31dfe7-20d9-41b9-8c8f-704ba942fb06/AnimalWelfare\(Sentencing\)Bill\(SecondSitting\)](https://hansard.parliament.uk/commons/2019-07-23/debates/0d31dfe7-20d9-41b9-8c8f-704ba942fb06/AnimalWelfare(Sentencing)Bill(SecondSitting))> accessed 21 February 2025; AWA 2006, s 32(1).



responsible for an animal must meet.<sup>216</sup> This obligation must be considered in light of Section 9(3), which addresses the lawful purpose for which the cat is kept and the lawful activities undertaken in relation to the cat.<sup>217</sup>

Section 9(2) explicitly requires the owner to meet their cat's five welfare needs, which include: a 'suitable' environment, a 'suitable' diet, the ability to exhibit 'normal' behaviour patterns, being housed with or apart from other animals, and protection from 'pain, suffering', injury and disease.<sup>218</sup> This aligns with the Five Freedoms model.

The explanatory notes clarify that 'the killing of an animal is not in itself inconsistent with the duty to ensure its welfare, if done in an appropriate and humane manner.'<sup>219</sup> This reflects utilitarianism and animal welfarism doctrines.

A subsidiary source of positive duties of cat owners to provide cat welfare is the Code of Practice for the Welfare of Cats. It is a 19-page long advisory document, establishing minimum standards for cat owners to meet their cat's welfare needs, in accordance with the AWA 2006.<sup>220</sup> While breaching the Code is not an offence in itself, courts can consider it when deciding on offences under the AWA 2006.<sup>221</sup>

The Code also heavily relies on science discoveries to expand and elaborate on Section 9 of the AWA 2006. Regarding the general welfare needs of cats, for example, as per Section 9(2)(b), it recommends that a suitable cat diet includes fresh clean drinking water, a well-balanced, meat-based diet tailored to factors such as age, activity level, and health conditions.<sup>222</sup> It also emphasises the importance of portion control, noting that overfeeding

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<sup>216</sup> *R (on the application of Gray) v Aylesbury Crown Court* [2013] EWHC 500 (Admin).

<sup>217</sup> AWA 2006, s 9(3).

<sup>218</sup> *ibid* s 9(2).

<sup>219</sup> Explanatory Notes Animal Welfare Act 2006 para 54.

<sup>220</sup> AWA 2006, SS.9, 15; Department for Environment, Food and Rural Affairs, *Code of Practice for the Welfare of Cats* (Defra, 2017).

<sup>221</sup> Angus Nurse and Diane Ryland, 'Cats and the Law: A Plain English Guide' (*International Cat Care*, 2014)

1 <<http://www.thecatgroup.org.uk/pdfs/Cats-law-web.pdf>> accessed 22 May 2024.

<sup>222</sup> *ibid* 4.

or underfeeding can lead to health problems and suffering.<sup>223</sup> Another significant reflection of scientific understanding of cat welfare is its acknowledgement that cat welfare is individualistic, stating that ‘there is no one “perfect” way to care for all cats.’<sup>224</sup> Each cat is unique, but all share specific needs.<sup>225</sup> It allows some flexibility for cat owners to ‘find out what your cat’s precise needs are and how to meet them.’<sup>226</sup>

### 3.2.2 Germany

Germany acknowledges the ECPPA’s principle that it is human moral obligation ‘to respect all living creatures.’ Positive obligations under the ECPPA include providing suitable and sufficient food, water, exercise, accommodation, attention, and care, according to the ethological needs of the pet.<sup>227</sup>

The TierSchG governs welfare-related duties of cat owners, involving two overarching principles. The first one is the human responsibility to protect the lives and well-being of fellow creatures.<sup>228</sup> The second principle is the prohibition of inflicting pain, suffering, or harm on an animal without reasonable cause (ohne vernünftigen Grund) which will be discussed in greater details in the next sub-section.<sup>229</sup>

Positive duties are outlined across the TierSchG. For example, Section 2 (1) requires animal owners to appropriately feed, care for and house their animals according to the species and needs of the animals.<sup>230</sup> Section 2 (3) requires that owners possess the necessary skills and knowledge to fulfil these duties ‘adequately.’<sup>231</sup> Section 2a (1) of the TierSchG empowers the Federal Ministry of Food and Agriculture to issue statutory instruments (or ordinances) to

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<sup>223</sup> *ibid.*

<sup>224</sup> Department for Environment, Food and Rural Affairs, *Code of Practice for the Welfare of Cats* (Defra, 2017)1.

<sup>225</sup> *ibid.*

<sup>226</sup> *ibid.*

<sup>227</sup> European Convention for the Protection of Pet Animals (adopted 13 November 1987, entered into force 1 May 1992) ETS No 125, art 4.

<sup>228</sup> Animal Protection Act (Tierschutzgesetz -TierSchG), BGBl I 2002, 1193, s 1.

<sup>229</sup> *ibid* s 2.

<sup>230</sup> *ibid* s 2(1).

<sup>231</sup> *ibid* s 2(3).

set more detailed humane treatment standards in accordance with Section 2. Examples include Section 2a (1)(3) on the lighting conditions and temperature of animal housing, and Section 2a (1)(3) on rooms, cages, feeding, and drinking facilities.

However, as of the time of writing, there is no ordinance specifically issued under Section 2(a)(1) of the TierSchG. Most cat welfare protection ordinances, which are not uniform across Germany, have been enacted under Section 13b of the TierSchG, primarily to improve the welfare of free-roaming cats (*freilebender Katzen*), including strays and feral cats.<sup>232</sup>

Therefore, only owners of cats with uncontrolled outdoor access are required to neuter and register their cats to prevent them from mating with strays or feral cats. This measure aims to reduce the current and future population of free-roaming cats, thereby protecting them from pain, suffering and harm.<sup>233</sup>

### 3.2.3 Thailand

Positive duties of cat owners to provide proper cat welfare can be found in various legal provisions. As discussed in the previous chapter, Section 3 of the 2557 Act and the related Notification stipulate that the provision of cat welfare involves positive duties of raising or caring of a cat so that the cat lives in proper conditions, enjoys good health and hygiene, and has adequate accommodation, food, and water. Under Chapter VI: Animal Welfare Provision, Section 22, paragraph 1, cat owners are required to provide ‘proper’ welfare to their animals ‘in accordance with rules, procedures, and conditions prescribed by the Minister.’ Pursuant to this provision, the 2018 Notification was enacted, and its Section 4 imposes five main duties on cat owners to provide proper welfare for their animals.

The first duty under Section 4(1) of the Notification requires cat owners to provide their cat

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<sup>232</sup> Castration is already mandatory in over 1500 municipalities and cities in Germany. Bayerisches Staatsministerium für Umwelt und Verbraucherschutz, *Handreichungen für den Erlass von Katzenschutzverordnungen nach § 13b TierSchG* (2023) <[https://www.stmuv.bayern.de/themen/tiergesundheit\\_tierschutz/tierschutz/katzen\\_kastration/doc/ueberarbeitete\\_handreichungen.pdf](https://www.stmuv.bayern.de/themen/tiergesundheit_tierschutz/tierschutz/katzen_kastration/doc/ueberarbeitete_handreichungen.pdf) > accessed 25 February 2025.

<sup>233</sup> Examples are Berlin Cat Welfare ordinance (Berliner Katzenschutzverordnung) (in force 2022); Cat Protection Ordinance of the City of Karlsruhe (Katzenschutzverordnung der Stadt Karlsruhe) (in force 1 January 2024).

with food and water with appropriate quantity and quality, in accordance with the type, characteristics, condition, and age. In the case where the cat is kept in groups, the owner should ensure that each individual cat has thoroughly received food and water.<sup>234</sup> This largely mirrors the first Freedom of the Five Freedoms and Welfare Quality (WQ)’s good feeding principle (number 1 and 2). However, it omits the word ‘prolonged’, or the duration of hunger and thirst as specified in WQ numbers 1 and 2.

The terms ‘species, type, characteristics, condition, and age’ imply that the requirements are tailored to each individual cat, and thus, will be assessed on a case-by-case basis, as every cat is different. For example, although all cats belong to the species *Felis Catus*, there are between 42-71 recognised cat breeds.<sup>235</sup> Additionally, while the Feline Five suggests five key characteristics of cats—neuroticism, extraversion, dominance, impulsiveness, and tolerance—the degree of expression in each cat varies.<sup>236</sup> Cat conditions also differ widely, ranging from the frequency of detection, affected areas (such as kidney, heart, brain, etc.), and severity (for example, Stage 1-5 kidney disease). Age and sex further contribute to these variations.<sup>237</sup>

The second duty, according to Section 4(2) of the Notification, requires the cat owner to provide the cat with an environment that is suitable for their livelihood and ensures their safety. This largely reflects Five Freedoms number 2. However, the term ‘suitable environment’ in the Five Freedoms refers to freedom from physical and thermal discomfort,

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<sup>234</sup> The Notification of the Ministry of Agriculture and Cooperatives on the Provision of Animal Welfare B.E. 2561, s 4.

<sup>235</sup> The CFA (Cat Fanciers Association) recognizes 42 pedigree breeds of cats, while TICA, the International Cat Association, recognises 71 cat breeds. Animal Clinic of Woodruff, ‘All About Cat Breeds’ <<https://www.animalclinicofwoodruff.com/pet-blog/pet-health-issues/all-about-cat-breeds>> accessed 25 June 2025.

<sup>236</sup> Four Paws, ‘A Cat’s Personality’ (Vier Pfoten International – gemeinnützige Privatstiftung) <<https://www.four-paws.org/our-stories/publications-guides/a-cats-personality>> accessed 21 February 2025; Carla A Litchfield CA and others, ‘The “Feline Five”: An Exploration of Personality in Pet Cats (*Felis Catus*)’ (2017) 12 PLOS ONE 1.

<sup>237</sup> Royal Veterinary Collage, ‘The Cat’s out the Bag: The Most Common Diseases in Pet Cats Revealed - News – VetCompass’ (*Royal Veterinary College RVC*, 28 February 2024) <<https://www.rvc.ac.uk/vetcompass/news/the-cat-s-out-the-bag-the-most-common-diseases-in-pet-cats-revealed>> accessed 21 February 2025.

which includes shelter and a comforting resting area. It remains to be seen in case law how far the Notification will be interpreted to encompass such elements.

Thirdly, Section 4(3) of the Notification mandates that the owner provide the cat with ‘good health and hygiene, proper management on disease control and prevention and give treatment when the animal is sick or injured, without delay.’ This provision largely aligns with WQ number 6 and 7, as well as Five Freedoms number 3. Notably, it also incorporates a time element, emphasising the urgency of providing care when cats are unwell or injured.

Section 4(4) of the Notification imposes duty to manage so the cat is not subjected to stress, fear, pain, or suffering without reasonable cause. This reflects the WQ, particularly, number 8-12, and the Five Freedoms, specifically number 5. The concept of unreasonable suffering aligns with both utilitarianism and animal welfarism, balancing the animal’s interests with the overall human benefits and societal values.

Finally, Section 4(5) of the Notification requires the owners to provide their cat with opportunities to express natural behaviours essential for the animal’s livelihood, good health and vigour. To some degree, this reflects WQ number 10, Five Freedoms number 4, and the natural living approach.

Together, these obligations reflect a mix of welfarism, utilitarianism, scientific aspects of animal welfare, and both the Five Freedom and the Welfare Quality (WQ) frameworks. Importantly, these duties are not rigid; the determination of whether a cat owner has provided ‘proper’ welfare should be assessed on a case-by-case basis, as each individual cat has unique needs and circumstances.

### **3.3 Negative duties**

#### **3.3.1 The UK (England and Wales)**

Animal cruelty offences are covered under Sections 4 to 8 of the Animal Welfare Act 2006 (AWA), addressing offences such as unnecessary suffering, mutilation, docking of dogs’ tails, the administration of poisons, and animal fighting, respectively. This chapter will focus particularly on the offences under Sections 4, 5, and 7 as they are most relevant to cats.

Section 4 prohibits a cat owner from causing unnecessary suffering to cats, either through an act or a failure to act.<sup>238</sup> Section 4(3) outlines specific considerations that the courts will consider when determining whether the suffering is deemed unnecessary. The lists reflect several principles such as proportionality (s 4(3)(a),(c),(d)), necessity (s 4(3)(a)), legality (s 4(3)(b)), legitimacy (s 4(3)(b)), competence (s 4(3)(b),(e)) and humanity (s 4(3)(e)).<sup>239</sup> However, killing or destructing their cats in an appropriate and humane manner, is not amount to ‘unnecessary suffering.’<sup>240</sup>

Section 5 on mutilation prohibits a cat owner from conducting or causing a prohibited procedure that interferes with the cat’s sensitive tissues or bone structure, unless it is for medical treatment. An example of this would be the feline onychectomy or declawing procedure, which involves the surgical amputation of the third phalanx, or the outermost bone of a cat’s paw.<sup>241</sup> This is equivalent to removing each human finger from the tip to the first knuckle, permanently eliminating the cat’s natural ability to scratch.<sup>242</sup> No equivalent explicit prohibition exists in Thailand’s 2557 Act.

Section 7 on the administration of poisons prohibits a cat owner from permitting another person to administer any poisonous substance or drug to their cats, unless the person has lawful authority or a reasonable excuse. The explanatory notes clarify that liability depends on the mental element, specifically whether the person knew the substance was poisonous.

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<sup>238</sup> AWA 2006, s 4(1)(a).

<sup>239</sup> The full lists according to s 4(3) include:

- (a) whether the suffering could reasonably have been avoided or reduced;*
- (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;*
- (c) whether the conduct which caused the suffering was for a legitimate purpose, such as—*
  - (i) the purpose of benefiting the animal, or*
  - (ii) the purpose of protecting a person, property or another animal;*
- (d) whether the suffering was proportionate to the purpose of the conduct concerned;*
- (e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.*

<sup>240</sup> AWA 2006, s 4(4).

<sup>241</sup> Kitty City Kansas Rescue, ‘Declawing’ (Kitty City Kansas Rescue)

<<https://kittycityks.com/learning/declawing/>> accessed February 20, 2025.

<sup>242</sup> *ibid.*

The term ‘administer’ refers to a deliberate action. It is not necessary for the animal to suffer as a result of the administration to establish liability.<sup>243</sup> The explanatory notes explicitly exclude accidental poisoning from liability.<sup>244</sup> It is worth mentioning that there is no equivalent explicit prohibition clause regarding the administration of poison in Thailand’s 2557 Animal Welfare Act. Recently, an incident in which an owner administered anesthesia to his cat for a movie production sparked public outcry, although there was no evidence that the cat’s health was compromised afterward.<sup>245</sup>

### 3.3.2 Germany

Cat owners in Germany are subject to several negative duties arising from multiple sources of law, including the European Convention for the Protection of Pet Animals (ECPA) and the German Animal Protection Act (TierSchG). Since cats fall within the scope of protection under both instruments, the following discussion will refer specifically to cats rather than the border term ‘animals’ used in the legislation.

Germany has been a State Party to the ECPA since 1987.<sup>246</sup> As a result, cat owners have negative duties to refrain from abandoning their cats or causing them unnecessary pain, suffering, or distress.<sup>247</sup> As a monist state, Germany incorporates international treaties directly into its domestic legal system without requiring additional implementing legislation. These negative duties reflected in several provisions of the TierSchG.

The core negative duties in the TierSchG are found in Section 1, sentence 2, which states that ‘no one may inflict pain, suffering or harm on an animal without reasonable cause.’ This

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<sup>243</sup> Explanatory Notes Animal Welfare Act 2006, para 37.

<sup>244</sup> *ibid.*

<sup>245</sup> The Matter, ‘Summary of the #BanMaeYua Controversy: From a TV Drama Sedating a Cat to a Debate on Animal Rights’ (*The Matter*, 11 November 2024) <<https://thematter.co/brief/recap/maeyua-recap/234254>> accessed 19 June 2025.

<sup>246</sup> Treaty Office, ‘Chart of signatures and ratifications of Treaty 125’ (Council of Europe, 19 June 2025) <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=125>> accessed 19 June 2025.

<sup>247</sup> European Convention for the Protection of Pet Animals (adopted 13 November 1987, entered into force 1 May 1992) ETS No 125, art 3.

general prohibition is further elaborated in Sections 17 and 18 of the TierSchG, which set out the criminal and administrative offences, respectively.

Section 17(1) of the TierSchG prohibits killing of cats ‘without a reasonable cause (*ohne vernünftiger Grund*).’ Section 17(2)(a) criminalises the infliction of significant pain or suffering (*erhebliche Schmerzen oder Leiden*) committed with brutality (*aus Rohheit*). Section 17(2)(b) prohibits causing prolonged or repeated significant pain or suffering. Notably, this subsection does not require additional conditions such as ‘brutality’ or ‘without a reasonable cause,’ nor may such conditions be read into the provision through restrictive interpretation.<sup>248</sup>

The term ‘suffering’ under Section 17 (2) of the TierSchG has been extensively clarified through court rulings, which have shaped its practical application. For suffering to qualify as ‘significant,’ it must exceed the threshold of minor harm.<sup>249</sup> The more severely an innate behavioural pattern is disrupted by human action, the more likely the suffering will be deemed significant.<sup>250</sup> Other directly observable phenomena—such as wounds, reactions, and behavioural disorders—can also serve as evidence of such suffering.<sup>251</sup>

Section 18 (1)(1) of the TierSchG constitutes an administrative offence, prohibiting owners from intentionally or negligently causing their cat significant pain, suffering or harm (*erhebliche Schmerzen, Leiden oder Schäden zufügt*) without a ‘reasonable cause.’<sup>252</sup> Although the term ‘reasonable cause’ is not explicitly defined in the TierSchG, it is generally understood to require a complex balance of moral, legal, and ecological considerations.<sup>253</sup> Factors such as whether the act serves a legitimate human need, its proportionality, the nature and likelihood of harm to the cats, and whether the objective could be achieved through less harmful means, must all be assessed in light of the animal

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<sup>248</sup> *ibid.*

<sup>249</sup> LGMosbach, Beschluss of 19 June 1991, 1Qs32/91.

<sup>250</sup> *ibid.*

<sup>251</sup> *ibid.*

<sup>252</sup> TierSchG, s 18 (1)(1).

<sup>253</sup> Sönke Florian Gerhold, ‘The Reasonable Grounds for Killing an Animal Using the Example of Badger Hunting – §17 No. 1 TierSchG in Light of Article 20a GG and the General Part of the StGB’ (2022) 44 *Natur und Recht* 369-378.



protection mandate enshrined in Article 20a of the Basic Law.<sup>254</sup>

More specific provisions of negative duties can be found in the Second Section on Animal Husbandry of the TierSchG. For example, Section 2(2) effectively prohibits restricting a cat's ability to move in a species-appropriate manner if such restriction causes pain, avoidable suffering (*vermeidbare Leiden*), or harm.<sup>255</sup> Additionally, Section 3 imposes a list of negative obligations on cat owners. For instance, they must not demand services from cats that are obviously beyond their strength—a provision similar to Thailand's legal definition of animal cruelty, which will be discussed in more detail in the next section.<sup>256</sup> Section 3 (10) further prohibits owners from providing cats with food that causes significant pain, suffering or harm.<sup>257</sup>

Section 3(3) of the TierSchG prohibits cat owners from abandoning or leaving behind their cats in order to dispose of them or evade their responsibilities of ownership or care.<sup>258</sup> The German approach is similar to that of the UK, as the offence may fall under either a criminal offence (Section 17) or an administrative offence (Section 18), depending on the extent of harm caused to the abandoned cats.<sup>259</sup> The former applies when the abandonment is intentional and results in the cat suffering significantly over a prolonged period. The latter is applicable when the abandonment—whether intentional or negligent—causes the cat significant pain, suffering or harm (*erhebliche Schmerzen, Leiden oder Schäden zufügt*) without 'reasonable cause'.<sup>260</sup>

### 3.3.3 Thailand

As with German and UK approaches, cats are protected animals within the scope of the 2557 Act. In the following discussion, the terms 'animals' and 'owners' used within the 2557

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<sup>254</sup> *ibid.*

<sup>255</sup> TierSchG, s 2(2).

<sup>256</sup> *ibid* s 3(1).

<sup>257</sup> *ibid* s 3(10).

<sup>258</sup> *ibid* s 3(3).

<sup>259</sup> Michael Kubiciel and Matthias Wachter, 'Animal Protection in the Penal Code: Symbolic Action or Evidence-Based Criminal Policy?' (*Kripoz*, 29 July 2021) <<https://kripoz.de/2021/07/29/tierschutz-in-das-strafgesetzbuch-folgenlose-symbolik-oder-evidenzbasierte-kriminalpolitik/>> accessed 27 June 2025.

<sup>260</sup> TierSchG, s 18(1)(1).

Act are substituted with ‘cats’ and ‘cat owners,’ respectively.

According to Section 20 of the 2557 Act, cat owners must refrain from acts of animal cruelty. Inferred from Section 3, paragraph 2, this imposes a negative duty on cat owners to refrain from causing their cat(s) physical or mental suffering, pain, illness, incapacitation, or potential death.<sup>261</sup> They must also not exploit a disabled, ill, old, or pregnant cat; engage in bestiality; or subject a cat to excessive or inappropriate labour due to illness, old age, or immaturity.<sup>262</sup> However, under Section 20, these obligations apply only in the absence of ‘reasonable cause.’<sup>263</sup> Although the Act does not define ‘reasonable cause,’ Section 21 sets out at least eleven specific exceptions that are not considered acts of cruelty.<sup>264</sup>

It is worth noting that in 2015, the Committee issued an observation extending further nineteen specific acts that are considered animal cruelty.<sup>265</sup> The Ministry of Agriculture and Cooperatives, along with the Department of Livestock Development, accepted this observation as interpretative guidance to ensure effective enforcement of the 2557 Act in line with its intent.<sup>266</sup> Most of the listed acts involve consequential physical violence, such as killing or injuring an animal in a fit of rage; poisoning that causes harm, suffering, or death; and stabbing, burning, or scalding that causes unnecessary suffering, disability, or death. Notably, the list also includes confining antagonistic animals together and separating animal mothers from their unweaned offspring without reasonable cause.<sup>267</sup> Acts of neglect are also included, such as abandonment; causing animals to suffer or die from starvation, or lack of food, water, or rest; failure to provide treatment and care when the animal is ill; and

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<sup>261</sup> The 2557 Act, s 3 para 2.

<sup>262</sup> *ibid.*

<sup>263</sup> *ibid* s 20.

<sup>264</sup> *ibid* s 21.

<sup>265</sup> Secretariat of the Cabinet, *Report on the Implementation of the Observations of the Ad Hoc Committee on the Draft Prevention of Cruelty and Animal Welfare Act B.E....* (No NR 0503/6113, 24 February 2015); Ministry of Agriculture and Cooperatives, *Observations by the Ad Hoc Committee on the Draft Animal Welfare Act B.E....* (Letter No KS 0604/852, 10 February 2015); Department of Livestock Development Order No 964/2557, 8 December 2014.

<sup>266</sup> *ibid.*

<sup>267</sup> *ibid.*

restraining animals for an unnecessarily prolonged period or with inappropriate restraints.<sup>268</sup>

Section 23 of the 2557 Act prohibits cat owners from leaving, abandoning, or relinquishing responsibility for their cat without reasonable cause.<sup>269</sup> While the Act does not specify what constitutes *unreasonable* cause, Section 23 paragraph 2 allows the owner to transfer ownership or possessory right to another person who is willing to care for the cat.

Section 23 of the 2557 Act was initially drafted by the Council of State (Seventh Committee Group) in 2010, which expressed the view that the abandonment of animals contributes to social problems.<sup>270</sup> However, at that time, the Committee did not consider such abandonment to constitute animal cruelty.<sup>271</sup> In 2013, the Committee redefined ‘abandonment to relieve oneself of the responsibility’ as an act of cruelty.<sup>272</sup> In 2015, the Department of Livestock Development accepted this interpretation and added a condition under which abandonment may be considered cruelty—namely, when it results in the animal’s suffering, injury, or death.<sup>273</sup> This approach is similar to those of the UK and Germany.

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<sup>268</sup> *ibid.*

<sup>269</sup> *ibid.*

<sup>270</sup> Office of the Council of State (Seventh Committee Group), *Minutes of the Meeting No. 9 (39/2553) (7/2553)*, 18 January 2010) 4.

<sup>271</sup> *ibid.*; Legal Information Division, *Explanatory Notes on the Animal Cruelty and Animal Welfare Act B.E. 2557 (2014)* (Office of the Council of State 2021) 44.

<sup>272</sup> Secretariat of the Cabinet (n 265); Ministry of Agriculture and Cooperatives, Observations by the Ad Hoc Committee on the Draft Animal Welfare Act B.E.... (Letter No KS 0604/852, 10 February 2015); Department of Livestock Development Order (No 964/2557, 8 December 2014).

<sup>273</sup> *ibid.*

## CHAPTER 4 THRESHOLDS FOR HARSHER PENALTIES

This chapter addresses the research's third sub-question: Under what circumstances, if any, should a failure to fulfil duties to provide proper welfare (as discussed in the previous chapter) be penalised under harsher penalties—that is, under Section 31 instead of Section 32 of the 2557 Act, in comparison with the UK and Germany?

To answer this, the chapter begins with a comparative analysis of the penalty provisions in the UK (England and Wales) and Germany that are functionally equivalent to Sections 31 and 32 of the 2557 Act. It then examines on the distinctions between these provisions to identify the key factors each jurisdiction considers decisive for harsher penalties. This comparative inquiry supports the research's third peripheral objective: exploring the thresholds for applying harsher penalties—namely, when a failure to fulfil proper welfare duties should fall under Section 31 instead of Section 32 of the 2557 Act—in light of insights from the UK and Germany.

### 4.1 United Kingdom (England and Wales)

Although the Thai legislature cited the UK as a model jurisdiction when drafting the 2557 Act, UK law has since evolved and now provides valuable insights into objective thresholds for imposing harsher penalties. These developments can inform the interpretation and application of Sections 31 and 32 of the 2557 Act.

In England and Wales, the provision functionally equivalent to Section 31 of Thailand's 2557 Act is Section 32(1) of the Animal Welfare Act 2006 (AWA 2006), which penalises cruelty offences under Sections 4-8 of the AWA 2006. The penalties include imprisonment for a term not exceeding five years, an unlimited fine, or both.<sup>274</sup>

The provision corresponding to Section 32 of Thailand's 2557 Act is Section 32(2) of the AWA 2006, which penalises breaches of Section 9 of the AWA 2006. The penalties under this provision include imprisonment for a term not exceeding 51 weeks, an unlimited fine, or

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<sup>274</sup> It was raised from 6 months imprisonment by the Animal Welfare (Sentencing) Act 2021.

both.<sup>275</sup>

In contrast to Germany and Thailand, England and Wales have distinctive sentencing guidelines that provide clear distinctions between the application of Sections 32(1) and 32(2) of the AWA 2006. The Animal Cruelty Sentencing Guideline applies to Section 32(1), while the Failure to Ensure Animal Welfare Sentencing Guideline applies to Section 32(2). These guidelines, which came into force in 2023, are mandatory for judges and follow a similar sentencing framework based on assessing the degree of culpability of the cat owner and the level of harm caused or intended to the cat.

Under the guidelines, culpability and harm are assessed together to determine a starting point for the sentence, which may range from a custodial sentence, to a community order, or a fine.<sup>276</sup> Furthermore, mitigating and aggravating factors are taken into account to adjust the sentence either downwards or upwards. These structured considerations are crucial for determining the thresholds for sentencing under each provision.

Culpability under both offences is divided into three categories: Category A (High culpability), Category B (Medium culpability), and Category C (Lower culpability). However, the content and criteria for each category differ between the two guidelines. Under the Animal Cruelty Sentencing Guideline, high culpability includes '*prolonged and/or repeated incidents of serious cruelty, sadistic behaviour, use of very significant force.*'<sup>277</sup> In contrast, the Failure to Ensure Animal Welfare Sentencing Guideline regards high culpability for acts such as prolonged or deliberate ill-treatment or neglect.

For medium culpability, the Animal Cruelty Sentencing Guideline includes factors such as deliberate attempt to cause suffering, prolonged and/or repeated incidents of cruelty or neglect, use of significant force, and deliberate disregard for the welfare of the animal

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<sup>275</sup> Explanatory Notes to the Animal Welfare Act 2006.

<sup>276</sup> *ibid.*

<sup>277</sup> Sentencing Council, 'Animal Cruelty Offences: Crown Court Sentencing Guidelines' (Sentencing Council, 2023) <<https://www.sentencingcouncil.org.uk/offences/crown-court/item/animal-cruelty/>> accessed 21 February 2025.

(including by failure to seek treatment).<sup>278</sup> A combination of such factors may justify the elevating the offence to high culpability. On the other hand, the Failure to Ensure Animal Welfare Sentencing Guideline adopts a more flexible approach. It considers medium culpability to apply where factors associated with both high culpability and low culpability are present and balance each other out.<sup>279</sup>

Lower culpability under both the *Animal Cruelty Sentencing Guideline* and the *Failure to ensure animal welfare Sentencing Guideline* is similar. It includes circumstances such as *well-intentioned but incompetent care*, *a momentary or brief lapse in judgement*, and the presence of a *mental disorder or learning disability*, where there is a causal link to the commission of the offence.<sup>280</sup> This is the grey area which at the time of writing does not exist in comparable Thai animal welfare law.

In terms of harm, the two guidelines diverge in structure but share comparable criteria. The *Animal Cruelty Sentencing Guideline* categorises harm into three levels, whereas the *Failure to Ensure Animal Welfare Sentencing Guideline* consolidates harm into two levels. In both cases, harm is assessed based on the degree to which it is inflicted—or intended to be inflicted—on the animal. Under the Animal Cruelty Sentencing Guideline, the first-category harm includes outcomes such as death, injury requiring euthanasia, grave or life-threatening injury or conditions, or the infliction of a very high level of pain and/or suffering.<sup>281</sup> These indicators closely align with the criteria for ‘Greater Harm’ under the Failure to Ensure Animal Welfare Sentencing Guideline, which likewise includes death, serious injury or harm, and a high degree of suffering inflicted upon the cat.<sup>282</sup>

The second category of harm under the *Animal Cruelty Sentencing Guideline* includes injuries or conditions with a substantial and/or lasting effect, such as tail docking, ear

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<sup>278</sup> *ibid*; Secretary of State for Environment, Food and Rural Affairs (n 136) 77.

<sup>279</sup> Sentencing Council, ‘Failure to ensure animal welfare’ (Sentencing Council, 2023) <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/failure-to-ensure-animal-welfare/>&\_rt\_nonce=0742b80de0> accessed 7 June 2025.

<sup>280</sup> *ibid*.

<sup>281</sup> Sentencing Council, ‘Animal Cruelty Offences: Crown Court Sentencing Guidelines’ (n 277).

<sup>282</sup> *ibid*.; Sentencing Council, ‘Failure to ensure animal welfare’ (n 279).

cropping, and similar forms of mutilation. It also encompasses cases involving a substantial level of pain and/or suffering inflicted on cats.<sup>283</sup> This can still warrant the Greater Harm category under the *Failure to Ensure Animal Welfare Sentencing Guideline*.

The third category of harm under the *Animal Cruelty Sentencing Guideline* involves little or no physical or developmental harm or distress to animals.<sup>284</sup> This is functionally equivalent to the ‘Lesser Harm’ category within the *Failure to Ensure Animal Welfare Sentencing Guideline*, which broadly includes all other forms of harm not rising to the level of ‘Greater Harm.’<sup>285</sup>

Both sentencing guidelines also contain similar lists of aggravating and mitigating factors, which are critical for determining when harsher penalties are warranted.<sup>286</sup> Shared aggravating factors between the two guidelines include: a high number of animal victims; ignoring warnings or professional advice or failing to obtain such advice; significant financial gain as the motivation; the animal victims requires substantial intervention to recover; and multiple instances of reoffending involving the same crimes.<sup>287</sup>

Aggravating factors specific to the *Animal Cruelty Sentencing Guideline* include: the use of weapon; the use of technology—such as circulating details, photographs, videos of the offence on social media to record, publicise, or promote cruelty; the use of another animal to inflict death or injury; committing the offence while under the influence of alcohol or drugs; and committing the offence in the presence of others, especially children.

Mitigating factors are shared between the two guidelines. They include being a first-time offender (as they are considered less likely to reoffend), expressing remorse, and having a difficult or deprived background or personal circumstances. Such circumstances may include experiences of discrimination, early loss, neglect or abuse, mental health difficulties, or

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<sup>283</sup> *ibid.*

<sup>284</sup> *ibid.*

<sup>285</sup> *ibid.*

<sup>286</sup> *ibid.*

<sup>287</sup> *ibid.*

being a direct or indirect victim of domestic abuse.<sup>288</sup>

## 4.2 Germany

In contrast to the United Kingdom, Germany does not have a formal, centralised sentencing guidelines. Rather, penalties are determined by the courts on a case-by-case basis, guided by the general principles of criminal and administrative law.

The penalty provisions in Germany that are functionally equivalent to Sections 31 and 32 of Thailand's 2557 Act are Sections 17 and 18(4) of the TierSchG, respectively. Section 17 TierSchG which criminalises severe acts of animal cruelty, provides the harshest penalties under the Act, including imprisonment for up to three years or a monetary fine.<sup>289</sup> By contrast, Section 18 (4) TierSchG—the administrative counterpart—imposes of fines of up to five thousand euros, aligning more closely to Section 32 of the 2557 Act.

Regarding the distinction between Sections 17 and 18 of the TierSchG, Germany—unlike the UK—does not have formalised sentencing guidelines. However, the TierSchG explicitly classifies Sections 17 as a criminal offence and Section 18 as an administrative violation.<sup>290</sup> Both provisions must be considered together to distinguish their scope and jurisdiction, as administrative authorities handle Section 18 offences, while public prosecutors address Section 17 violations.<sup>291</sup> Therefore, although these sections share some similarity such as the terms 'significant pain or suffering (*erhebliche Schmerzen oder Leiden*),' they can be distinguished based on different principles of laws. This can shed light on the objective thresholds for imposing harsher penalties (Section 17, instead of Section 18) when a specific sentencing guideline is lacking.

One distinction between Sections 17 and 18 offences of the TierSchG is the requirement of intent. As a criminal offence, Section 17 of the TierSchG is subjected to the German Criminal

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<sup>288</sup> *ibid.*

<sup>289</sup> Deutscher Bundestag, 'Animal Protection: More Protection for Animals in Law' (Deutscher Bundestag, 2021) <<https://www.bundestag.de/dokumente/textarchiv/2021/kw12-de-tierschutz-826564>> accessed 21 February 2025.

<sup>290</sup> TierSchG, s 18(4).

<sup>291</sup> Michael Kubiciel and Matthias Wachter (n 259).



Code (Strafgesetzbuch-StGB) with similar culpability-based structure (Schuld) to the UK. Specifically, Section 46 of the StGB offers principles of sentencing (Grundsätze der Strafzumessung) regarding culpability or the degree of guilt (Schuld) for criminal liability.<sup>292</sup> This means the acts of brutality (Rohheit) or neglect that causes significant pain or suffering must be committed with intention (*Vorsatz*).<sup>293</sup> This expands to terms such as intentionality, malice, wickedness or insensitive attitude that shows disregard for the suffering of others.<sup>294</sup>

Section 18 of the TierSchG can either be committed with intent or by negligence. However, its intent does not reach the threshold of criminal intent of Section 17. As Section 18 is an administrative offence, the *Gesetz über Ordnungswidrigkeiten* (OWiG) applies. Specifically, Section 17 of OWiG provides Principles for Determining the Fine (Bußgeld), the direct counterpart to Section 46 StGB. To ensure the penalty reflects both the severity of the offence and the individual circumstances of the offender, Section 17 of OWiG provides that in determining the amount of the fine, the significance of the offence (i.e., the serious impact on animal welfare or public interest), the degree of fault (*der Vorwurf*) (i.e., negligent, grossly negligent, or nearly intentional conduct), the perpetrator's economic circumstances (*wirtschaftlichen Verhältnisse*) will be considered. The overall principle is that the fine shall exceed the economic advantage that the offender has derived from the administrative offence.<sup>295</sup>

Another difference between Sections 17 and 18 of the TierSchG also lies in the applicability of Section 46(2) of the StGB. It provides the equivalent lists of the UK's aggravating factors, applicable to Section 17 of the TierSchG. This means in sentencing, the court will consider several factors including: the offender's inhumane motives; the attitude reflected in the offence i.e., the delight in the cat's screams, the mocking and insulting the cat while tortured; the extent of the breach of duty; the manner in which the offence was carried out and the culpable effects of the offence; the offender's prior background, personal and economic circumstances; and the conduct after the offence, in particular the efforts for

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<sup>292</sup> German Criminal Code (Strafgesetzbuch, StGB) 1871, s 46(1).

<sup>293</sup> TierSchG, s 17(2)(a).

<sup>294</sup> BayObLG, NJW 1974, 1340-1341; BayObLG, Decision of 21.02.2022 – 204 StRR 68/22, paras 23-24.

<sup>295</sup> Regulatory Offences Act (Ordnungswidrigkeitengesetz, OWiG) 1980, s 17 (4).

reparation.<sup>296</sup>

The offence commits under Section 18 of the TierSchG can either be intentional or by negligent. However, its intent does not reach the threshold of criminal intent required under Section 17 of the TierSchG. As Section 18 is an administrative offence, the *Gesetz über Ordnungswidrigkeiten* (OWiG) applies. Specifically, Section 17 of the OWiG provides Principles for Determining the Fine (Bußgeld), the direct counterpart to Section 46 StGB. To ensure the penalty reflects both the severity of the offence and the individual circumstances of the offender, Section 17 of the OWiG provides that in determining the amount of the fine, the significance of the offence (i.e., the serious impact on animal welfare or public interest), the degree of fault (der Vorwurf) (i.e., negligent, grossly negligent, or nearly intentional conduct?), the perpetrator's economic circumstances (*wirtschaftlichen Verhältnisse*) will be considered. Section 17 (4) of the OWiG provides that the fine shall exceed the economic advantage that the offender has derived from the administrative offence.

Another distinction between Sections 17 and 18 of the TierSchG is the harm the offence subsequently causes to cats. Section 17 of the TierSchG is a result-based offense (*Erfolgsdelikt*). The harm inflicted on them is usually greater in severity, such as brutal death, being subjected to torture cruelly or sadistically, great pain or prolonged or repeated suffering.<sup>297</sup> Appalling living conditions, the number of cat victims involved, and their mortality can also warrant Section 17 TierSchG penalties.<sup>298</sup> However, Section 21(1) of the OWiG provides that if an act is both a criminal offence and an administrative offence, only the criminal law shall apply.

Another distinction closely related to harm caused is the severity of the act itself. Significant pain or suffering within the meaning of Section 17(2)(a) has to arise from the act of cruelty (*Rohheit*) such as cruelly or sadistically torturing.<sup>299</sup> It can also be the act of inflicting prolonged or repeated significant pain or suffering such as appalling living conditions, the

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<sup>296</sup> German Criminal Code (Strafgesetzbuch, StGB) 1871, s 46(2); BayObLG, Decision of 21.02.2022 – 204 StRR 68/22.

<sup>297</sup> TierSchG, s17(2)(a).

<sup>298</sup> BayObLG, Decision of 21.02.2022 – 204 StRR 68/22.

<sup>299</sup> *ibid.*

area where current Thai animal welfare legislation, particularly the 2557 Act and the Notification does not explicitly refer to.

### **4.3 Thailand**

This subsection explores general backgrounds of Sections 31 and 32 of the 2557 Act, its similar provisions in Thai law, and possible distinctions between these sections.

Section 31 of the 2557 Act imposes a maximum penalty of two years' imprisonment and/or a fine not exceeding forty thousand baht for animal cruelty offence under Section 20 of the Act. Section 32 of the 2557 Act prescribes a fine not exceeding forty thousand baht for an animal welfare offence including Sections 22 (and concurrently Section 4 of the Notification) and 23 of the 2557 Act.

When read in conjunction with Sections 3 and 20, Section 31 of the 2557 Act can be interpreted as comprising two distinct parts. The first part applies to a cat owner who, without justification under Section 21, inflicts cruelty or causes their cat physical or mental suffering, pain, illness, incapacitation, or potential death. The second part applies to cat owners who, without justification under Section 21, exploit a disabled, ill, old, or pregnant; engage in bestiality; or subject their cat to excessive or inappropriate labour due to illness, old age, or immaturity.

Some of the wording used in these two parts reflect Sections 381 and 382 of the Penal Code, respectively. Section 381 penalises anyone who commits animal cruelty or kills an animal in a manner that causes unnecessary suffering. Section 382 criminalises anyone who subjects an animal to excessive or inappropriate labour due to illness, old age, or immaturity. Examining these Penal Code provisions can help illuminate key differences between Sections 31 and 32 of the 2557 Act and inform their interpretation.

Sections 381 and 382 of the Penal Code have been classified as petty offence since the enactment of Thailand's first Penal Code in 1956. Section 102 of the Penal Code defines a petty offense as an offence punishable by imprisonment for no more than one month and/or a fine of no more than 10,000 baht. Prevailing academic opinions suggest that Section 381 requires intent element of the perpetrator and a certain degree of brutality or

sadistic behaviours.<sup>300</sup> Section 382, however, has been academically argued to not require an intent element.<sup>301</sup>

Regarding the distinctions between Sections 31 and 32 of the 2557 Act, previous chapters suggest that, at philosophical level, these provisions form part of a broader continuum of animal protection. The 2557 Act, its associated Notification, and the concept of cat welfare predominantly reflect utilitarianism and welfarism, which focus on protecting animals' interests in being treated humanely and not being subjected to unnecessary, unreasonably suffering or cruelty. This framework implies that cat welfare entails the absence of cruelty and the humane treatment of cats. Therefore, it logically follows that providing improper welfare—whether by action or inaction—can amount to animal cruelty when the animals suffer unnecessarily or unreasonably. Therefore, it is not conceptually absurd for a cat owner who fails to provide proper welfare to be held liable for animal cruelty offences, with the corresponding penalties under Section 31. The 2557 Act can be interpreted accordingly.

The exchange documents of the drafters during the drafting process of the 2557 Act also gear towards this interpretation. They acknowledged that animal welfare provisions and animal cruelty are interconnected concept.<sup>302</sup> The improper implementation or the absence of the former can result in the latter

This threshold is lower than that of Section 381 of the Penal Code, which is argued to require a certain degree of brutality or sadistic behaviours. Notably, Section 3 and 20 of the 2557 Act suggest that the method by which a cat owner causes such harm is secondary—any act or a failure to act would suffice. In other words, animal cruelty-related offence under Sections 20, 21, and 31 are result-based offence that can arise from Sections 22 and

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<sup>300</sup> Kanit Na Nakhon, *Criminal Law: The Offences* (11th edn, Vinyuchon 2020) 599; Taweekiat Meenakanit and Ronnakorn Bunmee, *Commentary on Criminal Law: Offences and Petty Offences* (20th edn, Vinyuchon 2022).

<sup>301</sup> *ibid.*

<sup>302</sup> Committee on the Study of the Problem of Animal Abandonment in Public Places, 'Report on the Problem of Animal Abandonment in Public Places' (National Legislative Assembly, 17 June 2016); Draft Prevention of Cruelty and Provision of Animal Welfare Act, B.E. ... (Proposed by the Cabinet) dated 9 October 2014.

23 of the 2557 Act.

Another possible factor determining Sections 31 and 32 differences is the nature and/or object of the act. The former includes the exploitation of a disabled, ill, old, or pregnant cat; the excessive or inappropriate use of a vulnerable cat for labour—one that is sick, old, or immature; or acts of bestiality.

One possible threshold between Sections 31 and 32 of the 2557 Act can lie in the element of intent associated with their respective offences. Since imprisonment under Section 31 constitutes a criminal law sanction, a violation of Sections 20 of the 2557 Act would, under Section 59(1) of the Penal Code, require an element of intent to establish criminal liability unless the law explicitly provides for strict liability or negligence.<sup>303</sup> Under Section 59(2) of the Penal Code, acting with intent means acting with awareness, while intending or reasonably foreseeing the consequences of such act.<sup>304</sup> Section 59(3) of the Penal Code stipulates that unaware of the facts constituting the elements of the offence will not be deemed to have intended or foreseen the consequences of the committed act.<sup>305</sup> Acting with negligence is referred by Section 59(4) as committing an offence not intentionally but by failing to exercise with due care that a person in such circumstances should have, given the ordinary course of events and conditions.<sup>306</sup>

Therefore, for Sections 22 and 23 of the 2557 Act, as well as Section 4 of the Notification to be qualified as animal cruelty, the cat owner must act with intent within the meaning of Section 59 of the Penal Code. This means that cat owner must be aware of their action or act consciously and either intends for the consequence or can foresee the outcome prohibited by Section 20 of the 2557 Act, given no exemption from Section 21 of the 2557 Act.

For example, a cat owner must be aware of their actions or omissions and either intends the consequences or reasonably foresee that his/her cat may suffer physically or mentally,

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<sup>303</sup> Penal Code of Thailand, s 59(1).

<sup>304</sup> *ibid* s 59(2).

<sup>305</sup> *ibid* s 59(3).

<sup>306</sup> *ibid* s 59(4).

experience pain, become ill or incapacitated, or potentially die. If a cat owner lacks knowledge or misunderstands certain facts constituting the elements of the offense e.g. an owner who feeds his/her kittens cow milk causing them diarrhoea without knowing that cats are lactose intolerance, he/she may not be deemed to have intended the consequence or foreseen it because of their action. It also excludes an owner who acts negligently by failing to exercise due care that a person in such circumstances should have. For example, momentary or brief lapses in judgement by housing a newly arrived cat with existing ones, leading to fights and injuries, will not fall within Section 20 of the 2557 Act. Using intention as a means to distinguish when Sections 22 or 23 passes threshold for animal cruelty to be penalised under Section 31 of the 2557 Act, therefore, will result to leniency of the law, especially in comparison to the UK and Germany.

Another challenge in attaching the penalty threshold under the 2557 Act to the intent element lies in the prevailing academic opinions regarding the interpretation of Sections 381 and 382 of the Penal Code. Section 381, which forms the first part of the cruelty offence under the 2557 Act, is generally understood to require both intent and a certain degree of brutality or sadistic behaviour on the part of the perpetrator.<sup>307</sup> In contrast, Section 382—which underpins the second part of the cruelty offence in the 2557 Act) that criminalises anyone who subjects an animal to excessive or inappropriate labour due to illness, old age, or immaturity—has been argued not to require intent.<sup>308</sup> Consequently, a violation of Section 20 of the 2557 Act may occur intentionally, unintentionally, or negligently.

However, another interpretation is also possible that since Sections 381 and 382 of the Penal Code do not explicitly mention the possibility of an act being committed without intent or by negligence, reading them in conjunction with Section 59 implies that both offences need to be committed with intent. Given all these possibilities, interpreting the 2557 Act in line with these distinctions would create inconsistency in the intent requirement. Consequently, offences under Sections 20-23 of the 2557 Act could be committed either intentionally, unintentionally, or negligently.

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<sup>307</sup> Kanit Na Nakhon, *Criminal Law: The Offenses* (11th edn, Vinyuchon 2020) 599; Taweekiat Meenakanit and Ronnakorn Bunmee, *Commentary on Criminal Law: Offenses and Petty Offences* (20th edn, Vinyuchon 2022).

<sup>308</sup> *ibid.*

Another possible distinction between Sections 31 and 32 of the 2557 Act can be that to qualify as animal cruelty punishable under Section 31, the act and omission to act has to be consequential that it causes an animal to suffer unnecessarily or unreasonably, experience physical or mental suffering, pain, illness, incapacitation, or potential death. However, this is subject to one caveat—the act or omission must occur without reasonable cause.

From this interpretation, the absence of or improper cat welfare provisions could amount to animal cruelty offence punishable under Section 32 of the 2557 Act if it causes the cat physical or mental suffering, pain, illness, incapacitation, or potential death. The same principle should apply to cat abandonment if it results in similar harm to the cat.

However, a key caveat remains—the existence of a ‘reasonable cause.’ It is yet to be seen in court whether factors such as unintentional acts, negligence, lack of knowledge, financial constraints, limited access to veterinary care, or misunderstandings would qualify as reasonable cause. For instance, if a cat owner with limited financial resources cannot afford prescription renal diets for a cat diagnosed with chronic kidney disease, would they be liable under Section 4(1) of the Notification, which requires providing food appropriate to the cat’s condition? Would the same apply to an owner unaware of the diagnosis who continues feeding regular cat food? What about an owner who, due to lack of knowledge, feeds their cat human food high in sodium, which years later contributes to kidney disease? As long as a cat owner has a reasonable justification for those acts or their associated consequences, the animals will not be protected.

## CHAPTER 5 AVENUES FOR REFORM

This chapter addresses the fourth peripheral objective and its corresponding question: How, if at all, should the 2557 Act be reformed for greater clarification of the term ‘proper welfare’ to better clarify cat owners’ duties under Thailand’s 2557 Act, in comparison to the UK and Germany? The chapter structures into three main parts corresponding to the prior sub-inquiries. Some recommendations will be made based on the UK and Germany—jurisdictions, as well as to some extent, existing Thai legislation.

### 5.1 Defining Proper Cat Welfare in Thailand—Avenues for Reform

As already discussed, Thailand does not explicitly employ the term ‘proper cat welfare’ in the legislation. Since the 2557 Act reflects utilitarian and welfarist theories, it can generally be inferred to encompass the minimisation of unnecessary suffering or cruelty and the promotion of humane treatments.

Specifically, proper cat welfare means a cat living in alignment with their four positive interests and free from one negative interest. The four positive interests include: appropriate food and water, in quantity and quality, tailored specifically for each individual cat; suitable and safe environment; good health, hygiene, and timely treatment; and opportunities to express natural behaviour essential for the cat’s livelihood, health and vigour. The one negative interest is the negative mental states of stress, fear, pain, or suffering, that are without reasonable cause.

Defining proper cat welfare will inevitably involve interpreting value-based and context-sensitive terms such as ‘unnecessary,’ ‘cruelty,’ ‘suffering,’ and ‘humane.’

While science can enrich the definition by adding species-specific needs of cats, terms such as suffering remain controversial. The term involves subjective experiences influenced by various factors, and their measurement can range from fleeting moments to prolonged periods.

#### 5.1.1 The United Kingdom Model

Although the AWA 2006’s use of indeterminate terms such as ‘unnecessary suffering,’ simultaneously its Section 4(3) provides an objectively clear criteria or framework for when



suffering becomes unnecessary. This reduces interpretative challenges and subjectivity, increase legal certainty and closing the gap on interpreting indeterminate terms for both legal authorities and animal owners. Thailand should use similar approach by objectively listing what constitute ‘unreasonable cause,’ within the meaning of Section 20 of the 2557 Act.

For Thailand, the UK model is highly feasible. According to the minutes of the Committee’s forth meeting in November 2012, when drafting the 2557 Act, the Committee proposed adding a definition of ‘suffering’ as it forms part of the definition of ‘cruelty.’<sup>309</sup> They believed this would prevent ambiguity and potential obstacles in the interpretation and enforcement of the Act, as well as in the application of Sections 381 and 382 of the Penal Code. The proposed definition of ‘suffering’ encompassed any action affecting an animal’s body or mind, causing stress, pain, or fear, either directly or indirectly.<sup>310</sup> The Committee also emphasised that suffering should be considered alongside animal welfare, as inadequate welfare could lead to suffering.<sup>311</sup>

However, to assess suffering, the Committee suggested five key factors: deprivation of food and water, inadequate or cramped shelter, illness without treatment, experiencing fear of harm, and an inability to express natural behaviours.<sup>312</sup> This approach reflects the Five Freedoms model.<sup>313</sup> This reliance on the Five Freedoms—developed in the 1960s—to define the contemporary ‘proper cat welfare’ may not fully reflect the ongoing advancements in science and evolving public morals.

### 5.1.2 The German Model

Thailand could adopt a more holistic approach as Germany. Proper cat welfare can be inferred from the TierSchG to mean cat’s life and well-being of animals as fellow creatures. The German approach focuses less on cats’ ability to suffer and more on the de-reification

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<sup>309</sup> House of Representatives, *Summary of the 2nd Meeting of the Ad Hoc Committee on the Consideration of the Draft Prevention of Cruelty and Provision of Animal Welfare Act* (25 October 2012) 2.

<sup>310</sup> *ibid.*

<sup>311</sup> *ibid.*

<sup>312</sup> *ibid.*

<sup>313</sup> *ibid.*

of their status as mere things, alleviating their status as fellow creatures. Although the de-reification process is not completed as Section 90a of the German Civil Code confers that certain legal provisions that apply to things still apply to cats, for abolitionist perspective, Germany is heading to a right direction, in which Thailand could learn from.

## **5.2 Duties for Proper Cat Welfare in Thailand—Avenues for Reform**

In Thailand, cat welfare definitions in animal welfare legislation align with welfarism, utilitarianism, the Five Freedoms, and the WQ, so too are cat owners' legal duties to provide 'proper welfare' for their cats. From the 2557 Act (Section 3) and the Notification (Sections 3 and 4), cat owners have five main duties to ensure proper welfare: 1. providing food and water in appropriate quantity and quality for each cat, 2. suitable and safe environment, 3. ensure good health and hygiene with timely treatment. 4. Natural behaviour 5. Negative duty not to inflict the animals to stress, fear, pain, or suffering without reasonable cause. The proportion between negative and positive duties is the same as the Five Freedom framework.

### **5.2.1 The United Kingdom Model**

Issuing a Code of Practice would aid in educating and supporting individual cat owners to comply with the legislation. It can motivate them to strive for 'perfect' welfare for their cats and serve as valuable guidance on interpreting both primary and secondary legislation.

Although animals retain thinghood status within the law, as they do in Thailand, judicial recognition in Thailand is possible as seen in the UK courts and the ECtHR where they progressively recognised that animal protection is a matter of public interest and good morals, which can legitimately restrict fundamental human rights.

### **5.2.2 The German Model**

Reflecting on Germany, there are both short- and long-term solutions for the interpretative issues in Thai animal welfare legislation. In the short term, one solution could be to replicate the German court case pre-constitutional amendment in 2002. Interpreting animal protection as part of the constitutionally protected interests, such as public order or good morals under Section 25 of the Thai Constitution, would create a level playing field for cat

welfare protection within secondary legislation and the cat owner's constitutional rights. This approach is highly feasible, as during the drafting process of the 2557 Act, the Department of Livestock Development, under the Ministry of Agriculture and Cooperatives, issued a clarification in October 2014 highlighting the necessity of enacting the Act. Among the reasons cited was for the 'broader benefit to the nation.'<sup>314</sup> Specifically, the failure to ensure animal welfare and prevent unnecessary suffering, cruelty or killing during their care and use could affect Thai social traditions, public morality, Thailand's international reputation as a nation that values and respects all living beings equally, as well as its standing in international trade.<sup>315</sup>

As the interpretation of animal welfare legislation occurs within a larger legal context, Thailand should, in the long run, consider two legal improvements using Germany as a model. First, the 2557 Act should be amended to include clarity on the intent requirement for offences, similar to § 18 of the TierSchG. This would specify, if applicable, that the act must be committed intentionally or negligently. The second improvement would involve granting animal protection constitutional status and recognising the legal personhood of non-human animals. This would, at the very least, ensure equal considerations of human and non-human interests, marking a pivotal normative shift in the legal status of non-human animals at the state level. Undefined terms in secondary animal welfare legislation—such as 'reasonable cause' (*ohne vernünftigen Grund*), 'suffering,' 'significant,' or 'proper'—would not only be interpreted on a case-by-case basis, remaining open to scientific advancements, but would also be interpreted in reference to constitutional provisions (e.g., Article 20a of the German Basic Law).<sup>316</sup>

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<sup>314</sup> *ibid.*

<sup>315</sup> *ibid.*

<sup>316</sup> Jens Bülte, Barbara Felde, and Christoph Maisack (eds), *Reform of Animal Protection Law: The Implementation of the Constitutional Goal of Animal Protection de lege lata* (Nomos, 2022) <<https://doi.org/10.5771/9783748928478-1>> accessed 21 February 2025, 53-54; BVerwG, Judgment of 13 June 2019, 3 C 28/16, JZ 2020, 524.

Although German court cases have suggested that achieving constitutional status does not guarantee absolute animal protection, its inclusion would signal a positive commitment to animal protection. It would demonstrate to state authorities, the general public, and the international community that Thailand is taking to animal welfare seriously and progressing in a meaningful way—a stance that the drafters of the 2557 Act intended.

### **5.2.3 Other Thai Laws as Models**

This research highlights three existing legislations in Thailand as potential frameworks for reference in future animal welfare legislation reforms: The Tambon Wang Neua Municipality Ordinance on the Control of Dog and Cat Keeping or Release, B.E. 2563 (2020), the Nong Na Kham Municipality Ordinance on the Control of Dog and Cat Release B.E. 2561 (2018), and the Notification of the Ministry of Agriculture and Cooperatives on the Provision of Cat Welfare in Cat Breeding Facilities B.E. 2563.

#### **5.2.3.1 The Tambon Wang Neua Municipality Ordinance on the Control of Dog and Cat Keeping or Release, B.E. 2563 (2020)**

Section 7 restricts the number of dogs or cats a person can keep based on the size of their land. For example, a person living on 20 square wa can own up to 2 animals, 50 square wa allows a maximum 3 animals, and over 50 square wa permits a maximum of 5 animals. If these limits are exceeded, permission from the local authority must be obtained. Section 13 further requires dog or cat owners to provide an appropriate living space for their animals, ensuring adequate lighting, ventilation, and sanitation. Vaccinations, registration, and identification are also compulsory.

#### **5.2.3.2 The Municipality Ordinance on the Control of Dog and Cat Release B.E. 2561 (2018)**

Enacted by the Nong Na Kham Subdistrict Municipality in Khon Kaen Province, in Section 18, it requires animal owners to vaccinate their animals against rabies when they are between 2

to 4 months old. Subsequent vaccinations must be administered as specified in the vaccination certificate. Additionally, owners are obligated to provide an appropriate living environment for the animals, ensuring sufficient space for their well-being, proper lighting, adequate ventilation, and a waste disposal system that meets sanitary standards, in line with local authorities' guidelines.

However, these local ordinances were passed under Section 29 of the Public Health Act of 1992. Their purpose is to maintain a suitable living environment for the community, prevent disturbance caused by dogs and cats, and reduce the transmission of zoonotic diseases. As such, these ordinances are anthropocentric in nature and not primarily focused on protecting animal welfare.

#### **5.2.3.3 The Notification of the Ministry of Agriculture and Cooperatives on the Provision of Cat Welfare in Cat Breeding Facilities B.E. 2563**

It provides detailed guidelines on the duties of cat owners in commercial cat breeding facilities. It systematically organises these duties into five categories: food and water, housing and environment, healthcare, natural behaviour, and the mental state. For example, Section 4(1) on the Management of Food and Water specifically requires that all cats receive clean, quality food and water in adequate amounts and at appropriate frequencies, considering their breed, age, body size, weight, and physical condition. Additionally, the section specifies that kittens up to 6 weeks of age must have access to appropriate and sufficient food at all times.<sup>317</sup> Kittens aged 6–16 weeks must be fed at least three times a day, while cats aged more than 16 weeks, pregnant cats, and nursing mother cats must be fed at least twice a day or as necessary to meet their nutritional needs.<sup>318</sup> Any uneaten food from each feeding must be discarded.<sup>319</sup>

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<sup>317</sup> Notification of the Ministry of Agriculture and Cooperatives on the Provision of Cat Welfare in Cat Breeding Facilities B.E. 2563, s 4(1)(a).

<sup>318</sup> *ibid* s 4(1)(b), (c).

<sup>319</sup> *ibid* s 4(1)(d).

### 5.3 Thresholds for Harsher Penalties in Thailand—Avenues for Reforms

In 2016, the Special Committee to Study the Issue of Animal Abandonment in Public Areas found that the abandonment of dogs and cats was worsening.<sup>320</sup> The main causes identified included incorrect attitudes among pet owners due to insufficient knowledge about pet care, leads to irresponsible ownership. Another contributing factor is the ineffective law enforcement.<sup>321</sup> Therefore, for Thailand, in the long terms, raising knowledge and awareness about animal protection can lead to sustainable protection for cats.

#### 5.3.1 The United Kingdom Model

The UK approach has three main strengths that Thailand could improve from. The first one is to specifically include the mental element in specific provisions to provide certainty and clarity. For example, Section 4(1) (b) of the AWA 2006 introduces an objective mental element, making it unnecessary to prove that a defendant actually knew their act or failure to act would cause suffering.<sup>322</sup> In Thailand, this approach could be done in two ways: first, amending some main provisions of the existing regulations such as Section 3 of the 2557 Act and the Notification, Sections 20 to 23 of the 2557 Act; second, issuing Sentencing Guidelines to clarify the intent elements for those same sections. Either way would bring benefits for all stakeholders including and cat) owners, authorities and ensure better protection for non-human animals-including cats.

Secondly, for improving the clarity of penalty provisions, harm and culpability should be objectively classified, as seen in the UK's sentencing guidelines. In Thailand, the highest level of culpability—such as sadistic behaviour or the use of significant force—is well established in case law as cruelty offences. However, less subtle cases can be challenging to

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<sup>320</sup> Committee on the Study of the Problem of Animal Abandonment in Public Places, *Report on the Problem of Animal Abandonment in Public Places* (National Legislative Assembly, 17 June 2016).

<sup>321</sup> *ibid.*

<sup>322</sup> Explanatory Notes to the Animal Welfare Act 2006, para 19.

distinguish. The guideline can offer a clearer picture when breaching Section 22 or 23 could amount to Section 20 offence and Section 31 penalty.

The sentencing guidelines should be definitive, exhaustive and objective to minimise interpretation problems. They should oblige every court to follow to assess the offender's culpability and harm caused or intended to the animal (cat) victim(s). Principal factual elements of the offence should also be given.

Intent should not be the sole reason to differentiate between a two-year imprisonment and a fine. As seen from the UK approach, well-intentioned but incompetent care, as well as momentary or brief lapses in judgement, can span across both cruelty offence and failure to provide welfare offence, each carrying a lower degree of culpability.

Likewise, minor harm should not be reserved only to welfare offence but should still carry with it a potential for reaching cruelty offence or imprisonment threshold. For example, in the UK, causing little or no physical or developmental harm or distress to animals can still be considered a cruelty offence, falling under Category 3.

On the same vein, death, high-level of suffering, or serious injury and harm should not be a fixed threshold that differentiate welfare offences from cruelty offence, depart clearly from the established case law of Sections 381 and 382 Thailand Penal Code. In the UK, these serious harms are listed for both welfare and cruelty offences. The same applies to prolonged neglect in the UK which can constitute both cruelty and welfare offences, each with varying degrees of culpability. The former carries a medium degree of culpability, while the latter involves a higher level of culpability.

Thirdly, the objectives of punishment should be clearly outlined either through amending the existing regulations or enacting new guidelines. The primary aims of punishment can be punishment, deterrence, retribution, and rehabilitation. Custodial sentence must be

proportionate to achieving the aims of sentencing, which is to punish by restricting liberty or rehabilitation to prevent future crimes. It should be reserved for the most serious offences and be a last resort when fines and community orders are insufficient. The underlying principle for imposing a fine should be that the cost of offending should not be less than the cost of complying with the law.

### **5.3.2 The German Model**

Thailand's position regarding penalty provisions is similar to Germany's in that it does not have formal, centralised sentencing guidelines. However, Germany clearly distinguishes between Section 17 and Section 18 of the TierSchG (equivalent to Sections 31 and 32 of the 2557 Act), classifying them under different branches of laws—criminal and administrative, respectively—and explicitly stating the intent element required for each provision. This distinction makes the penalty threshold much clearer, even in the absence of the sentencing guidelines.

Moreover, each branch of law contains separate legislation outlining penalty principles (Section 46(2) of the StGB for Section 17 of the TierSchG, and Section 17 of OWiG for Section 18 of the TierSchG). This offers greater clarity regarding the term 'proper welfare' and better determines cat owners' duties to provide it. These are approaches that Thailand could consider adopting.



## CHAPTER 6 CONCLUSION

Interpreting the term ‘proper cat welfare’ is challenging in many respects, not least because it spans across philosophical, legal, and scientific disciplines and are perceived differently across these epistemic communities. Essentially, each inter- and intra- disciplinary field differs in detail regarding how far ‘proper’ is proper enough, depending on their emphases. For inter-disciplinary perspective, philosophers with utilitarian and welfarist perspectives tend to adopt a more human- and sentio-centric perspective—since cats are sentient, they should be used humanely—whereas scientific approaches often lean towards a zoo-centric lens, focusing on individual cat’s states. Legal frameworks tend to occupy an intermediate position, balancing both dimensions to varying degrees.

Regarding intra- disciplinary perspective, at its philosophical core, there are stark—and at times parallel—contrasts in how the term is conceptualised, particularly between welfarism and abolitionism. The latter rejects the whole premise of proper welfare altogether, disregarding any relationship between human and non-human animals as structurally flawed. As long as cats are legal property, human interests will remain inevitably weightier than those of cats. Despite some similarity to welfarism, which does not challenge the continued use of cats, the three distinct scientific perspectives define cat welfare as a cat’s state of being—an inherently neutral term that can range from very good to very poor. However, they differ on *what* should be measured to assess this ‘state of being’ for ‘proper’ welfare. Offering a more nuanced way of defining the term using different indications, these approaches further complicate the interpretation of the term. Although combining them together create useful and holistic animal welfare models, such as the Five Freedoms and Welfare Quality ® (WQ), the models differ on their welfare criteria and do not offer balancing guidelines when they collide.

Nevertheless, the main features of proper cat welfare and the corresponding duties of their owners can be understood along a continuum: from a minimum standard, so that cats are not subjected to unnecessary suffering or cruelty, to a middle or upper-middle point, where they are treated humanely.

All three jurisdictions, although neither explicitly employs the term ‘proper cat welfare’ in their legislation, reflect these utilitarians and welfarists features, albeit to varying degrees in each jurisdiction. Three interacting scientific perspectives of ‘proper cat welfare,’ although fundamentally share the underlying features of utilitarianism and welfarism, have their different focuses and limitations.

This begs further questions on how each jurisdiction interprets context-sensitive terms such as ‘unnecessary,’ ‘cruelty,’ ‘suffering,’ and ‘humane.’ The results of which significantly influence how ‘proper’ is defined and applied in practice, and therefore influence the scope of duties of cat owners to provide proper cat welfare.

Thailand’s the 2557 Act (Sections 3 and 22) and the Notification (Sections 3 and 4) impose positive duties on cat owners to provide humane treatments which are somewhat aligned with scientific concepts and internationally recognised animal welfare models (the World Quality, alongside the predecessor Five Freedoms). However, the obligation can extend only in so far as compatible with the Constitution.

Negative duties of cat owners in Thailand revolves around indeterminate terms such as ‘unreasonable cause’ ‘inhumane,’ ‘unnecessary suffering,’ or ‘cruelty.’ These are challenging to define with clear boundaries. As science understanding progresses, terms such as suffering are subject to change. Also, Sections 3 and 31 of the 2557 Act contain wording similar to Sections 381 and 382 of the Penal Code, the intent elements are inconsistent. This unclear scope of the term ‘proper welfare’ has serious implications for interpreting the penalty provisions of the 2557 Act.

On the structural limitation, in Thailand, cats are considered legal property, and their owners have a constitutionally protected right to enjoy them. Therefore, the interpretation of secondary animal welfare laws such as the 2557 Act must remain compatible with the Constitution, meaning they cannot impose an unreasonable burden on property owners. Nevertheless, there are several ways to protect cat welfare against conflicting fundamental human rights. One example is the inclusive interpretation of existing human rights restrictions, as seen in the UK, pre-2002 German case law and the ECtHR jurisprudence. This can be achieved by relying on other legal justifications available in the existing Constitution,

such as public order and good morals within the meaning of Section 26. It remains to be seen to what extent legal authorities, such as the judiciary, will adopt this progressive and inclusive interpretation.

In the long term, Thailand could adopt a more holistic approach similar to that of Germany. Proper cat welfare can be inferred from the *TierSchG* to encompass the life and well-being of cats as fellow creatures. The German approach focuses less on cats' capacity to suffer and more on the de-reification of their status as mere things. Furthermore, their legal status is alleviated through Article 20a of the German Constitution. This may reduce the likelihood of courts striking a suboptimum balance between the interests of cats and their human owners. Although the de-reification process is not yet complete—since Section 90a of the German Civil Code provides that certain legal provisions applicable to things still apply to cats—for abolitionist and new welfarist perspectives, Germany is heading in the right direction. Thailand could follow suit.

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