Contents

About the Author xv
What Is This Book For? xvii
Acknowledgements xix
Explanatory Notes xxi
The Meaning of Some Terms Used in the Law xxiii
A Note on Sex xxv
Abbreviations and Acronyms xxvii
Glossary xxxiii
Introduction xxxv

Part I Legal Principles and Concepts 1

1 Legal Systems: National, European and International 3
  1.1 Legal Jurisdictions 3
  1.2 National Laws 3
  1.2.1 What Is National Law? 3
  1.2.2 The Process of Enacting New National Laws 7
  1.2.3 Delegated Legislation 12
  1.2.4 Looking for National Laws 14
  1.2.5 Federal Systems of Law 15
  1.3 The European Union and European Law 15
  1.3.1 Principles 15
  1.3.2 Institutions 15
  1.3.3 EU Primary Legislation 17
  1.3.4 EU Secondary Legislation 18
  1.3.5 The Role of the European Court of Justice 21
  1.4 International Law 22
  1.4.1 Sources of International Law 22
  1.4.2 Principles 23
  1.4.3 Titles 23
  1.4.4 How a Treaty Is Formed 25
  1.4.5 Structure of International Treaties 25
  1.4.6 Soft Law 35
Contents

1.4.7 Memoranda of Understanding 38
1.4.8 International Institutions 38
1.5 Case Law and Law Reports 39
1.5.1 How Are Legal Cases Named? 43
1.6 Amending the Law 44
1.7 Where to Find the Law 45
1.7.1 Legal Encyclopaedias and Web Sites 45
1.7.2 Where to Find UK Laws 46
1.7.3 Where to Find US Laws 46
1.8 Reading Legislation 48
1.9 Legal Journals 50

2 Legal Principles and Ethics 53
2.1 Legal Personality, Locus Standi and Ultra Vires 53
2.1.1 Legal Personality 53
2.1.2 Locus Standi and Pressure Groups 53
2.1.3 Judicial Review and Ultra Vires 55
2.2 Ethics, Precaution, Equity and Presumption of Guilt 56
2.2.1 Environmental Ethics and Animal Rights 56
2.2.2 Intrinsic Value 59
2.2.3 Precautionary Principle 60
2.2.4 Rights of Future Generations: Inter-generational Equity 61
2.2.5 Strict Liability and the Burden of Proof in Wildlife Offences 62

3 Beliefs, Religion and History 65
3.1 Totems, Creation Myths and Fadies – the Protection of Animals and Ecosystems by Ancient Beliefs 65
3.2 Ancient Beliefs as a Threat to Wildlife 70
3.3 Animals and Religion 70
3.4 A Short and Incomplete History of the Laws Protecting Animals, Plants and Ecosystems 76

4 The Legal Status of Organisms and Access to Wild Places 83
4.1 Who Owns Wildlife? 83
4.2 Theft of Wildlife 88
4.3 Who is the Keeper of an Animal? 88
4.4 Liability for the Actions of Animals 89
4.5 Rights of Access to Open Land and Water 91

5 Definitions of Different Categories of Living Things 95
5.1 Introduction 95
5.2 The Binomial System of Nomenclature 95
5.3 Definition of a Species 99
5.4 What Is an Animal? 100
5.5 What Is a Plant? 101
5.6 Defining Habitat Types 103
5.7 Definitions of Wildlife and Types of Organisms 103
# Contents

5.7.1 Wildlife and Nature 103  
5.7.2 Wild Birds 104  
5.7.3 Fishes 105  
5.7.4 Game and Furbearers 107  
5.7.5 Parts, Trophies and Specimens 109  
5.7.6 Alien Species and Animal and Plant Pests (Weeds) 112  
5.7.7 Captive and Domestic Animals 113  
5.7.8 Dangerous Animals and Species 115  
5.7.9 Farm Animals and Livestock 116  
5.7.10 Companion Animals, Assistance Animals and Working Dogs 117  
5.7.11 Case Law and Definitions 119  

## Part II Mechanisms and Enforcement 121

### 6 Legal Mechanisms I: The Protection of Wild Animals and Plants 123  
6.1 Introduction 123  
6.2 The Species Approach to Wildlife Conservation 123  
6.2.1 Creating New Organizations to Protect Specific Taxa 123  
6.2.2 Listing Protected and Dangerous Species – Schedules, Appendices and Annexes 125  
6.2.3 Problems with Hybrids 131  
6.3 Killing and Harassment of Animals and Plant Exploitation 133  
6.3.1 Prohibition of Taking, Killing and Capturing Wild Animals 133  
6.3.2 Taking of Females and Their Young 134  
6.3.3 Protection from Disturbance and Harassment 137  
6.3.4 Protection of Breeding and Sheltering Places 139  
6.3.5 Protection of Birds’ Eggs 142  
6.3.6 Prohibition on Picking, Uprooting etc. of Plants 143  
6.3.7 Exemptions and the Licensing of Otherwise Prohibited Activities 144  
6.4 Regulation of the Methods and Timing of Taking, Killing and Capturing 146  
6.4.1 Regulation of Methods 149  
6.4.2 Close Seasons and Emergency Orders 161  
6.5 Sustainable Use of Resources – Hunting, Fishing and Bioprospecting 163  
6.5.1 Prohibition of the Exploration of Biological Resources 164  
6.5.2 Use of Resources by Indigenous Peoples 167  
6.5.3 No Take Zones 171  
6.5.4 Exclusive Economic Zones 173  
6.5.5 Restrictions on the Size of Animals that May Be Taken 175  
6.5.6 Sport Hunting 177  

### 7 Legal Mechanisms II: The Protection of Habitats and Ecosystems 183  
7.1 Defining Ecosystems 183  
7.2 Protection of the Earth’s Ecosystem and Sites of Global Importance 183  
7.2.1 World Heritage Sites 183
9.2 Gathering and Disseminating Information 300
9.2.1 Identification and Monitoring of Wildlife 300
9.2.2 Public Education and Awareness 301
9.2.3 Transfer of Knowledge and Exchange of Information 302
9.2.4 Promoting Research 303
9.3 Funding and Legislation 304
9.3.1 Transfer of Funding between Rich and Poor States 304
9.3.2 Allocation of Government Funding for Conservation 305
9.3.3 Agricultural Payments 309
9.3.4 Fund Raising for Conservation 310
9.3.5 Tax Benefits for Conservation 310
9.3.6 Improving Legislation and Its Enforcement 311

10 Animal Welfare and the Law 313
10.1 Introduction 313
10.2 Defining Cruelty 314
10.3 The Five Freedoms 315
10.4 Animal Cruelty and Violence towards Humans 315
10.5 Provision of Veterinary Treatment 316
10.6 Animal Rights Legal Cases 317
10.7 Legal Mechanisms Used to Protect and Control Domestic and Captive Animals 319
10.7.1 Limitation on, or Prohibition of, Excessive Physical Activity and Types of Restraint 319
10.7.2 Provision of Sanctuaries for Retired Working and Laboratory Animals 322
10.7.3 Limitation on Feeding Methods 323
10.7.4 Prohibition of Mutilation and Other Cruel Practices 323
10.7.5 Regulation of Animal Experiments 326
10.7.6 Requirement for Owners of Animals to Provide Proper Care and Accommodation 329
10.7.7 Provision of Public Education 338
10.7.8 Licensing of Premises Used for Keeping, Breeding, Boarding, Selling and Exhibiting Animals 338
10.7.9 Control and Licensing of Domestic Animals 344
10.7.10 Prohibition of Animal Fighting 352
10.7.11 Protection of Animals Used in Entertainment and Gambling 354
10.7.12 Regulation of the Transportation and Movement of Animals 358
10.7.13 Control of Diseased Wild Animals 364
10.7.14 Humane and Religious Slaughter 366
10.7.15 Bestiality 367

11 Crime Detection and Law Enforcement 369
11.1 Wildlife Crime Reporting 369
11.2 Wildlife Crime Forensics 369
11.3 Criminal and Civil Sanctions 375
11.4 Liability of Employers, Principals and Bodies Corporate 378
11.5 Inspectors, Animal Control Officers, Water Bailiffs and Other Specialist Officers
11.5.1 Inspectors and Other Specialist Officers
11.5.2 Forest Officers
11.5.3 Wildlife Wardens and Rangers
11.5.4 Specialist Conservation and Wildlife Police
11.5.5 International Police and Wildlife Crime Organizations
11.5.6 The Role of Non-governmental Organizations in Enforcing Animal Cruelty Laws
11.5.7 NGOs and Enforcement
11.5.8 Statutory Nature Conservation Agencies
11.6 Penalties
11.6.1 Death
11.6.2 Imprisonment
11.6.3 Fines
11.6.4 Bans on Keeping Animals and Seizure of Animals
11.6.5 Closure of Facilities Keeping Animals
11.6.6 Seizure or Forfeiture of Firearms, Vehicles, Equipment and Other Items
11.6.7 Injunctions
11.6.8 Restoration of Ecosystems
11.7 The Enforcement of International Law
11.7.1 International Court of Justice and Case Law
11.7.2 International Sanctions
11.8 Epilogue

Part III Major National, European and International Laws which Protect Animals, Plants and Ecosystems

12 National Laws
12.1 United Kingdom
12.2 United States
12.3 Canada
12.4 Australia
12.4.1 Australian State Laws
12.5 New Zealand
12.6 India
12.7 Kenya
12.8 Nigeria
12.9 South Africa
12.10 Tanzania
12.11 Thailand

13 European Laws
13.1 Directives, Regulations and Policies
13.2 Case Law

14 International Laws
I
Annex I Projects, EIA Directive 2011/92/EU 441
Annex II Projects, EIA Directive 2011/92/EU 442

II
A Chronology of Major Legislation Affecting Animals and Nature Conservation in the United Kingdom 445

III
A Chronology of Major Legislation Affecting Animals and Nature Conservation in the United States 449

References 451

Table of Laws and Cases 459

Index 475