



Northern Ireland
Assembly

COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT

OFFICIAL REPORT
(Hansard)

Animal Welfare Bill
Pre-Legislative Scrutiny

13 October 2009

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR AGRICULTURE AND
RURAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Ian Paisley Jnr (Chairperson)
Mr Tom Elliott (Deputy Chairperson)
Mr Thomas Burns
Mr Pat Doherty
Mr William Irwin
Mr Patsy McGlone
Mr Francie Molloy
Mr George Savage
Mr Jim Shannon

Witnesses:

Ms Kate Davey)
Mr Andrew Kell) Department of Agriculture and Rural Development
Ms Colette McMaster)
Mr Paddy McGuckian)

The Chairperson (Mr Ian Paisley Jnr):

We will receive a presentation on the draft animal welfare Bill from Department of Agriculture and Rural Development (DARD) officials Colette McMaster, Paddy McGuckian, Kate Davey and Andrew Kell. You are very welcome. The purpose of the Bill is to update existing legislation, and to introduce new powers and penalties to deal with new types of offences and other matters. Colette, please make your presentation, after which we will ask some questions.

Ms Colette McMaster (Department of Agriculture and Rural Affairs):

Thank you for this further opportunity for the Department to update the Committee on the proposals for the new animal welfare Bill. This follows our initial presentation on 22 September, and is the second in a series of engagements that the Department plans to have with the Committee on the Bill as it develops. We hope that this will continue to be a helpful way to update the Committee and to take its views on the Bill as it develops.

We will provide an update on the Bill's proposals following the Department's consideration of the written comments that it received after a stakeholder workshop that was held on 17 September, and the Committee's comments on 22 September. After the workshop, stakeholders had until 25 September to provide the Department with written comments about the proposals in the draft Bill. That brought to a close the formal public consultation phase on the Bill. The Department received 31 sets of comments from a wide range of stakeholders who attended the workshop, and comments from others who were unable to attend.

Written comments very much reflected the view that was expressed by stakeholders on the day of the workshop. There was overall support for a new Bill, and for a large number of its proposals, for example, increased powers to deal with animal fighting; new powers to address actions that result in animals suffering; new powers about a duty of care; a new offence to cause physical or mental suffering by a positive act or omission; and clarification about who is responsible for an animal.

Although there was good support for a wide range of proposals, not all of them received unanimous support. A range of views was expressed about the proposals referring only to vertebrates; banning tail docking of all dogs, including working dogs; banning the giving of animals as prizes to under 16s; regulating circuses through subordinate legislation; and increasing the maximum penalties to 51 weeks imprisonment and/or a £20,000 fine.

Clarification was also sought about a number of issues, including whether the Bill would provide powers to take action in cases in which an animal is likely to suffer; whether it would include the "five freedoms" under good practice; and how the new powers would be enforced. The issues that were raised by stakeholders are similar to those that were raised by Committee members at our first presentation on 22 September 2009.

I will now hand over to Kate, who will outline the Department's thinking on the issues that have been raised.

Ms Kate Davey (Department of Agriculture and Rural Development):

I will start with the issue about definition of an animal. The proposal that was presented to stakeholders and the Committee was to protect all vertebrates from cruelty and unnecessary suffering and to provide enabling powers to amend the range of animals that would be protected through subordinate legislation should that prove necessary in future.

Of the 31 written responses to the consultation, 15 took the view that the definition should be extended to include some invertebrates such as octopus, squid, lobster and crab. We have considered the evidence that was provided and the views of stakeholders, and we believe that, at this time, there is still insufficient evidence to justify extending the definition of animal to include invertebrates. We plan, therefore, to continue with our original proposal, which is in line with powers in the animal health Acts in England, Scotland and Wales. However, as I said, the enabling powers would allow us to extend that definition at a later date, if evidence becomes available.

We also proposed to remove the exemption for the tail docking of dogs and to make it an offence to dock all dogs' tails and to take a dog out of Northern Ireland to have a prohibited procedure carried out. Of the 31 written responses received after the workshop was held, four welcomed the total ban, while three believed that there should be an exemption for working dogs. A number of Committee members also supported the exemption for working dogs.

The Department reconsidered the evidence and the views of stakeholders and members, but it still feels that no new evidence has been presented that warrants a change to the proposal at this time. As we said at the previous meeting, the Department is aware of ongoing research in Britain that is specifically considering the risk factors for tail injuries of working dogs. The results from that research will be available around the end of the year. At that stage, the Department will study the outcome of the research and consider whether it has any implications for our current proposals.

The Chairperson:

Sorry to interrupt, but are you telling us that the Department still has an open mind on the matter

and will await the outcome of the research?

Ms Davey:

We are saying that we have a firm proposal and that should something emerge from the research that gives us cause to reconsider the proposal, we will do so.

We proposed to ban the giving of an animal by sale or prize to anyone under the age of 16. Fifteen of the 31 written responses took the view that there should be a total ban on the giving of animals as prizes to anyone, irrespective of their age. Four respondents also suggested that animals should not be sold to anyone under the age of 18, thereby raising it from 16. One respondent opposed our original proposal. Moreover, some Committee members expressed concerns that the proposal may prevent children from farming backgrounds, for example, owning animals and getting involved in looking after them at an early age. During our presentation on 22 September 2009, we assured the Committee that that was not the case and that that was not the intention of the proposal. It would not stop children from keeping pets in a family situation.

We are talking about a situation in which a child arrives home unexpectedly with an animal and the parent or guardian does not agree that he or she can keep it, leaving the animal neglected or abandoned. The proposal will not stop a child owning an animal in a family situation. It is about getting the balance right, while protecting the animal. The Department plans to continue with the proposal to make it an offence to give by sale or prize an animal to a person under 16 years of age. However, an adult can still accept that prize on a child's behalf. We are not proposing to change it, as some respondents wanted, by banning it completely.

Another proposal that we put to stakeholders and to the Committee was to extend the current enabling powers to prohibit the continuation of activities that involve animals without a licence or registration for a range of activities, including circuses. Subordinate legislation would then be introduced with specific powers for each of those activities, and there would be full consultation on that. Ten of the 31 respondents called for a ban on the use of all animals in circuses, and the remaining 21 did not comment on that proposal. The original consultation in 2006 sought views on banning only the use of certain non-domesticated animals in circuses and regulation through licence or registration. In 2007, the Department for Environment, Food and Rural Affairs (DEFRA) initiated a study on wild animals in travelling circuses. An academic panel considered that, on the issue of animals in circuses, to justify a change to the status quo:

“the balance of the evidence would have to present a convincing and coherent argument for change. On the basis of the scientific evidence submitted to it, the Panel concluded that such an argument had not been made out.”

The panel went on to conclude that:

“there appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments.”

The Department is therefore minded to continue with the current proposal to extend the enabling powers to allow licensing or registration of circuses. Should it become necessary to make secondary legislation in the future, that specific proposal will be consulted on.

The last issue about which there was concern or disagreement is the increase in penalties for cruelty offences. The proposal was to increase the maximum penalty for cruelty offences from three months imprisonment and/or a £5,000 fine, to 51 weeks imprisonment and/or a £20,000 fine. The increased maximum penalties for cruelty were welcomed by many of the stakeholders, while nine of the written responses stated that they were too lenient. A Committee member asked if a minimum penalty could be introduced in the new Bill. We referred that to the Departmental Solicitor’s Office, and it is under consideration. We will update the Committee on the outcome of those deliberations during our next update on 1 December. In line with penalties in GB, the Department is minded to continue with the current proposal for the maximum penalties for cruelty offences.

Colette mentioned that a number of issues require clarification. The first of those was the case of animals that are “likely to suffer”. We were asked whether the Bill would include powers to prevent animals from suffering. I confirm that the Department proposes to include powers to allow actions to be taken in cases in which non-farmed animals that are likely to suffer, if the conditions that they are kept in are not improved. We already have such powers for farmed animals under the Welfare of Farmed Animals Regulations (Northern Ireland) 2000 as amended, and that is already actively enforced.

The second issue was about whether the “five freedoms” would be included in the new legislation. A number of stakeholders asked whether, under the duty of care, we would document those in the Bill. Those freedoms are the need for a suitable environment; the need for a suitable diet; the need to be housed with or without other animals depending on the species; the need to be allowed to exhibit normal behaviour; and protection from pain, suffering, injury and disease. Subject to the legislative draftsman’s final decision, the Department will want to include those in the Bill so it specifies the needs of an animal.

The last issue that required clarification was about enforcement. As the Committee is aware, the Welfare of Animals Act (Northern Ireland) 1972 is enforced by DARD in respect of farm animals, and by the PSNI in respect of cruelty offences. At present, local councils undertake the registration of dog breeding establishments under the Dogs (Northern Ireland) Order 1983. They have no specific role in implementing the animal welfare legislation in the 1972 Act.

In the 2006 consultation on the new animal welfare Bill, views were sought solely on local councils being given a role in enforcing animal welfare legislation, and that was not extended to other bodies. The Department's proposal was to take enabling powers to make subordinate legislation that would allow other bodies to carry out enforcement on its behalf, and those other bodies may have included councils. Not unexpectedly, that was an issue that generated the most interest from stakeholders and the Committee. Many people sought clarification about how the new powers would be enforced, and two stakeholders suggested that an independent enforcement agency should be created. Three respondents suggested that only DARD and the PSNI should be given enforcement powers, and two stakeholders were opposed to local authorities being given any role in enforcement.

The Department has considered the comments and views of the Committee. We have also sought advice from the Departmental Solicitor's Office, and views from the Office of the Legislative Counsel, which would be drafting the legislation, about the Department's proposal to take enabling powers to allow other bodies to carry out those functions. Taking account of all the views of stakeholders, the Committee and the legal advice, the Department is now proposing to take primary powers in the Bill to allow local councils to appoint inspectors to carry out enforcement activities. That will be done under guidance from the Department.

A range of meetings have been organised for this month with officials from the Department of the Environment's local government division, the Northern Ireland Local Government Association and the PSNI to discuss the detail of how those new enforcement powers for non-farm animals will be implemented. When we have held those meetings, we will come back to the Committee on 1 December 2009, and will be happy to provide details of the discussions and the Department's thinking on their outcome.

I will hand you back to Colette, who will outline our next steps.

Ms McMaster:

As I said at the beginning, the assessment of the comments that were made at the stakeholder workshop brings the formal public consultation phase of the proposed Bill to a close. The next stage involves a proposal from the Minister to seek the Executive's agreement at their meeting on 5 November 2009 to progress the Bill through to enactment during the lifetime of this Assembly.

The Bill team will start to draft instructions for the Office of the Legislative Counsel, and, as Kate said, we will come back to the Committee to update it on the issues about which members have asked questions, particularly on enforcement. We will engage further generally with the Committee about the Bill as we proceed. Our next update is scheduled for 1 December 2009. We are happy to receive comments or take questions about any issues that members want clarified.

The Chairperson:

Thank you for appearing before the Committee and for continuing with the rolling dialogue about the progress of the Bill.

I welcome representatives of the Royal Society for the Protection of Birds (RSPB) to the Public Gallery. If members want to make themselves available informally to members of the RSPB after the meeting, they will be happy to chat just about the Bill and other matters.

You said that you are going to come back to the Committee about the enforcement issue. Some suggestions that were received during the consultation period state that the existing legislation is not really the issue; rather, it is the lack of enforcement of the existing legislation. Therefore, although the changes that are to be made in updating the legislation are to be welcomed, it has been suggested that the big issue to get right is enforcement. When you come back to the Committee about that issue, you should bear in mind the need for a clear definition of "officers" and "inspectors", as referred to in the draft legislation. There is some uncertainty about the term "officers". Does it refer to PSNI officers, to DARD officials, or to both, and, if so, in what circumstances?

If local authorities appoint inspectors, as is the case in England and Wales, what role do you envisage that the Ulster Society for Prevention of Cruelty to Animals (USPCA) will have, if any,

in the implementation of the Act? Will improvement notices be used to avoid seizures and prevent suffering? Are arrangements in place to care for the seized animals that are being held as evidence? Such issues have been raised by stakeholders, and that is something that the Committee wants to hear your views on. If that is not possible today, you can come back to us. I know that the Department will be considering the enforcement issue next, as Kate said.

I note that, in its briefing, the Ulster Farmers' Union (UFU) raised concerns about powers of entry, and feels that a third party should be present at the time of entry to premises. Please reflect on that point. There is also a need to clarify the issue about the accidental administration of poisons. If a poisonous substance has been released accidentally, is there any protection for the person who was responsible, or will that person be subject to the same enforcement powers? I note that the inclusion in the Bill of powers of appeal would be welcomed, again, in the interest of protecting someone who has innocently been caught up in doing something that they did not mean to. Those are the matters that have been brought to my attention.

Will you explain why the Department is not accepting the proposal from a lot of respondents who said that they want invertebrates to be included in the Bill?

Ms McMaster:

You raised a number of issues, and perhaps we will need to come back to the Committee on some of those.

As Kate said, we have left it open for provision to be made in the Bill, at a later stage, to include invertebrates in the definition of "animal". That will happen if further evidence emerges to demonstrate that invertebrates are sentient. Such evidence is not available to us as yet. However, we are leaving that open to reconsider if such evidence does become available.

The Chairperson:

Your Bill team will then need to make a decision about whether the inclusion of invertebrates will be in primary or secondary legislation.

Ms McMaster:

That would be covered in secondary legislation. The primary Bill will allow for an Order to be made.

The Chairperson:

It will give the flexibility to adopt that.

Ms McMaster:

Yes.

There is no intention to change the role of the USPCA. It is an independent charity, and nothing in the Bill will change that. The Department will continue to work closely with the USPCA.

The Chairperson:

Sometimes, experts from the USPCA are called on if a suspected offence is taking place. The USPCA would ultimately take a role, not necessarily in policing — that is too strong a word — but in trying to manage a situation of cruelty. Will you be considering its role, and will any requirements be placed upon it? If so, will such requirements have to be legislated for?

Ms McMaster:

We are not planning to place any requirements on the USPCA in the draft Bill.

Ms Davey:

Perhaps I should address a couple of those issues. You asked a specific question about improvement notices, Chairperson. Improvement notices will be issued; they are already being issued for farmed animals. The intention is that, as a stepping stone, improvement notices will be issued for non-farmed animals so that there will be no need for immediate seizure of the animal. That will provide an opportunity to change the conditions in which the animal is kept.

You also asked about the issue of powers of entry, which was of concern to the UFU. The Committee will be aware that the Diseases of Animals Bill contains provisions for third parties to accompany inspectors. We will examine closely the powers contained in that Bill to determine whether we can replicate them in the draft animal welfare Bill.

I will move to the issue of poisons. We are not talking about accidental poisoning; we want to address the situation in which a drug that is not normally classified as dangerous is used

deliberately to cause unnecessary harm or suffering to the animal. The innocent farmer who accidentally administers a little too much drug will not be affected by the proposals in the draft Bill. We want to focus on cases of deliberate malpractice in the use of drugs that are commonly available.

The courts will decide the outcome of the vast majority of cases in which animals are seized, should they be in distress or suffering cruelty. The courts offer a right of appeal against such decisions, because, ultimately, the courts decide where the future of the animal rests.

Ms McMaster:

You are looking for a clearer definition for officers and inspectors and the circumstances in which they can act. That is a part of the discussions that we want to have over the next few weeks.

The Chairperson:

I appreciate that. Kate did say that the Department was going to go into that point. I would like you to come back to us on that issue because it has been raised with us.

It is also important that the consultation with the Committee is taken seriously. I note that, after our most recent meeting, we put some issues to you about the docking of tails. You are still on the other side of that issue, as is the case with the issues around sales of animals to children under 16 years of age, circuses still being allowed, and invertebrates. There must be some give and take in the consultation; we accept that. Members will expect to see some give and take in order to allow the issues to flow and to see them through. I am not asking you to respond to that; I am just marking your card. We want to see some flexibility when it comes to discussing the proposed changes.

Mr Elliott:

Thank you for your presentation. One of the big issues will be enforcement, and the level of authority that will be given to inspectors. There is confusion in the community about the current legislation. Will the draft Bill insist on the presence of veterinary surgeons at inspections? There is an argument that veterinary surgeons know best about the welfare of animals and that they have a key role to play. Has any thought been given to that?

Ms McMaster:

The existing powers are enforced by the Department in respect of farmed animals. The councils will avail themselves of departmental guidance when it comes to appointing persons who will have enforcement responsibilities.

Ms Davey:

We previously outlined the issues with regard to animals in distress. We explained that the authority of an officer to take possession of protected animals is certified by a veterinary surgeon, who determines whether an animal is suffering or likely to suffer. That has to be done in the vast majority of cases where animals are going to be seized. There is —

Mr Elliott:

What do you mean by the “vast majority”?

Ms Davey:

I was about to explain that. The “vast majority” means a very small number of cases where emergency action has to be taken because, for example, an animal is bleeding to death or whatever. The animal may have to be put down before a veterinary surgeon arrives if, for example, it has been severely injured in a road traffic accident. There are exceptions, but they are exceptional exceptions. Paddy can comment from a veterinary surgeon’s perspective.

Mr Paddy McGuckian (Department of Agriculture and Rural Development):

The system that is in place has worked reasonably well. A police constable can put an animal to sleep if he is unable to reach a veterinary surgeon in an emergency. That system has operated for a long time.

Mr Elliott:

My understanding is that, under the current legislation, the seizure of animals does not have to be authorised by a veterinary surgeon.

Mr McGuckian:

The difficulty is that the current legislation provides no power to seize a healthy animal.

Mr Elliott:

That seems to have happened though.

Mr McGuckian:

DARD does not have the power to seize a healthy animal.

Mr Elliott:

The police seem to be able to do that. There seems to be an anomaly in the current legislation. My information suggests that the system does not work properly; I am keen to resolve that.

Mr McGuckian:

That is why we are trying to change the legislation. We want to put officers in a position where they can seize animals that are likely to suffer. That will correct the problem with the current legislation.

Mr Elliott:

I realise that the Department will come back to us on this issue. I am sorry to go over it, but it is important and must be dealt with, right from the start. You outlined a couple of options, including an independent enforcement agency. Some people have rejected council involvement. What is the Department's train of thought on how to deal with the matter and on who will deal with it? Will it be the councils or an independent enforcement agency? I am keen to ensure that whoever deals with it has the relevant expertise. I will be blunt: the PSNI has authority to seize animals. I mean no disrespect to some officers, but they do not know when an animal's welfare is in danger. That is no reflection on the officers; they are simply not trained in that area.

The Chairperson:

I met the PSNI this week to discuss that issue. The reason for the meeting was that police officers felt restricted because the money that was required to pay for such incidents came from their local budget. However, I received an assurance that the money comes from a central PSNI budget. Therefore, officers in specific regions should not feel under any pressure that a requirement to seize an animal will affect their local budget. Local commanders will be asked to drive home that point in their localities. Members should be aware of that.

Ms McMaster:

There are several issues on enforcement and resourcing that we want to discuss with the police and the local councils, and we will explore those matters at forthcoming meetings. There are several problems with the existing legislation, and that is why we want to introduce the new Bill. We want to identify any issues and decide how to address them. You are right that there are issues, and those may come up in the course of our discussions.

Mr Elliott:

Will some of the guidance be put into the draft Bill before it goes to the Executive on 5 November 2009?

Ms McMaster:

On 5 November, we will seek formal clearance to introduce the draft Bill. We need agreement for its broad policy principles to go forward in this period of the Assembly.

The Chairperson:

Is it correct to say that, once the Bill has been drafted, it has to return to the Executive for approval? Is that the green light that is required to allow it to go forward?

Ms McMaster:

The draft Bill has to undergo a number of stages of Executive approval. We are at the stage of gaining clearance to proceed to the drafting of legislation.

The Chairperson:

It is a case of getting approval for the draftsmen to do the work.

Ms McMaster:

Yes; that is absolutely right. The Bill clearance stage and the pre-introductory stage come before the Committee Stage, so we have to go back to the Executive a number of times. Once the draft Bill has been formally agreed, we can move forward to its development.

The Chairperson:

This stage facilitates the Department's acquisition of the money that is required to get the draftsmen to do their work; is that correct?

Ms McMaster:

Yes.

The Chairperson:

We have clarified that the draft Bill will go back to the Executive.

Ms Davey:

I will clarify something for Mr Elliott, who asked specifically about the Department's proposal for an independent enforcement agency. That is not in the Department's thinking — it was the view of two stakeholders. We feel that the PSNI already carries out enough enforcement on farmed animals. We propose that the draft Bill makes provision for the Department to appoint or to get local councils to appoint inspectors.

Mr Savage:

I wish to refer back to the powers of entry. If someone wants to go onto a farm, that person has to notify the farm holder. However, your proposals state that departmental officials can go onto a farm without notifying the owner. That defeats the purpose of the powers of entry. Why do you not have to notify the farmer before going onto his farmland? You would expect me to notify you if I was going to one of your places — what is the difference?

I have always argued that the farmer will treat you with respect if you treat him with respect. Given the number of animals and cattle that are stolen, a farmer will be very concerned if he sees someone walking suspiciously across his land, if he has not received any notification of a visit. Officials from the Department of Agriculture and Rural Development are very important people, and they should treat farmers with a wee bit more respect.

Mr McGuckian:

The Welfare of Animals Act 1972 gives powers of access to departmental officers, and that legislation is reasonable. Regardless of the herd-keeper's view, we sometimes have to go onto land in order to protect the welfare of animals. On other occasions, we try to ensure that the farmer is given prior notice. We have to apply the principle that no notice is given for welfare inspections. That welfare inspections must take place without notice is a guiding principle that is imposed on us by the European Union. In every circumstance, we try to work under that guiding

principle.

Mr Savage:

You may have your notions, but I still think that, no matter where an inspection takes place on a farm, the landholder should be notified of that inspection. I know that you have a job to do, but what you have said reeks of a suspicion that farmers are trying to do something that they should not be doing. You must take that suspicion out of the system. The bulk of farmers welcome inspectors on to their farms, but it raises suspicion when something that is seen as untoward is done behind their backs. That must be eliminated. I speak as a farmer, and I have nothing to hide from any official from the Department who comes on to my land. However, farmers would not be pleased if inspectors were to try to come on to farms without letting them know.

Paragraph 20 in annex B refers to a provision to ensure that owners of animals exercise reasonable care with their animals. It refers to a duty of care for their animals being placed on owners. During Question Time in the House yesterday, I tried to ask a question about the cattle that were stolen in the Loughgall area, and I was ruled out of order, but the opportunity has arisen today. I am very concerned about that issue. The draft Bill will place a:

“duty to take steps that are reasonable in all the circumstances to ensure an animals needs are met to the extent required by good practice and where a person abandons an animal for which he is responsible so that anyone who leaves an animal without taking reasonable steps to ensure that it is capable of fending for itself and living independently will commit an offence.”

You will know that, a few days ago, animals suffering from TB and brucellosis were collected from farms. They were left on the side of a road in a lorry, and no one was with them. Can you explain how the provision covers that? The animals were under the duty of care of the Department of Agriculture and Rural Development, because, when they were lifted from the farms, a piece of paper was exchanged between the farmer and the Department for which someone had to sign. When the animals went on to the lorry, they were the responsibility of the Department.

Ms McMaster:

Are you referring to article 20 the Welfare of Animals Act (Northern Ireland) 1972?

Mr Savage:

I am referring to paragraph 20 in annex B to the Department’s correspondence that we received

today. How can the Department justify what happened in the example that I mentioned? If a farmer had done that, you would throw the book at him. The first thing that you would do would be to take his herd number and his single farm payment from him. I think that that is totally wrong.

Ms McMaster:

That is one of the areas that are being carried forward from the existing legislation. It will be enhanced. We want to enhance the protection of all animals —

Mr Savage:

With all due respect, that area is covered by the Welfare of Animals Act (Northern Ireland) 1972. The paper has come before me today, and I am drawing it to your attention. If we are to make rules and regulations, we have to be able to stand over them.

Ms McMaster:

If you have a specific concern about an existing provision, we can come back to that separately.

Mr Savage:

It is very plain that that is the case. If you cannot give me an answer today, I will look for an answer some other day.

Ms Davey:

We are happy to get you an answer, but we need the details of the specific case to which you refer. We are not aware of it.

The Chairperson:

To be fair to George, it is a relevant question. He mentioned the Welfare of Animals Act (Northern Ireland) 1972 and he referred to case of the animals infected with TB which were stolen from the side of the road. They were taken from farms by officials from the Department; they were handed into the Department's custody. The trailer was unhitched and left at the side of the road while the officer went to collect other animals, and the cattle were stolen from the trailer.

If I interpret it correctly, George, your point is that, had a farmer shown a complete lack of duty of care towards the beasts, the full rigour of the new legislation would have hit him severely.

Does the same rigour of the law apply to departmental officials who — I do not refer to this case; I am speaking generally — may be regarded as having been careless with animals which they had seized?

Mr Savage:

That is my point exactly.

Ms McMaster:

The case you describe will be investigated in the Department. The Department and Veterinary Service will look at the circumstances of the case, and if there are issues that fall under the legislation, they will be looked at —

The Chairperson:

On the general issue, would the penalties apply to a departmental official who demonstrated a lack in his duty of care towards beasts that he had seized? I imagine that there can only be one right answer to that.

Ms McMaster:

It is an offence under the Animal Welfare Act. The law applies to the owner of the animals.

The Chairperson:

Yes; but if the animals are seized by the Department and signed over, they then fall to the care of the Department. Is that not correct?

Mr Savage:

Remember, Chairman, those animals were diseased. It took a long time and a lot of money to find them on the farms. To leave them in an unhooked wagon at the side of the road is totally careless. We must be careful what we pass in this instance, for it could come back to haunt us some day. I have drawn this to the attention of the Committee, and it must be very careful.

Ms McMaster:

The member has a specific query, but we recognise that there is also a general issue. We will come back to you on that.

The Chairperson:

Do. If I owned a dog, which I left in kennels while I went on holiday, the kennel would have the duty of care towards the animal, rather than me, unless I conspired with the kennel owner to be cruel to my dog while I was away, which would be a difficult thing to prove. I assume that the legislation would apply to the person who commits the offence, whether he does so wilfully or through neglect. A departmental official would, therefore, be subject to the same penalty as the owner. I understand that you will come back to us with a response, but George has raised a good question, and it needs an answer.

Ms McMaster:

Absolutely. We will do that. The intention of the duty of care legislation is that responsibility for the animal moves to whoever is the keeper of the animal at the time of the offence. However, we will come back to the Committee with a response.

The Chairperson:

Thank you.

Mr Shannon:

I refer to the issue of tail docking. In reply to the Chairman's question, Kate mentioned that the Department still intends to include it in the legislation, but you said that are prepared to look at the issue. What exactly do you mean by that?

Ms Davey:

In GB, research is still ongoing on tail docking and the risk of injury to working dogs. The outcome of that research will not be available until the end of the year. We are interested in that research because it may have implications for our proposal, and we need to consider those.

Mr Shannon:

For the record, I am very much opposed to banning the docking of working dogs' tails. The evidence that we have received, which consists of comments and some fairly lengthy information from different people, including experts, indicates that it would be wrong for the Department to impose a tail docking ban in Northern Ireland, at this stage at least. Do you not feel reassured by looking at the examples of England and Wales, where working dogs can have their tails docked and that is fairly satisfactory? Based on the evidence that you have before you, do you not feel

that, perhaps, the Department should not wait until it gathers all its evidence, because the evidence is here already?

Ms Davey:

No, that is not what the Department feels at this stage. We have also considered the advice from the Royal Veterinary College that tail docking causes unnecessary suffering to an animal and that there is no justification for docking all dogs' tails just in case a number of them may be injured in later life. Obviously, we have considered the comments in the evidence and those from the Royal Veterinary College. Our assessment at this time is that we remain with our current proposal and that we will look at it again in the light of further research that will become available.

Mr Shannon:

Some of the evidence —

The Chairperson:

Are you prepared — sorry to interrupt, Jim — to meet the Committee halfway and recognise what has been put to us, which is that, although the restriction of docking of dogs' tails should have limited impact at farm level, there is a belief that it is important to retain the ability to dock tails where it is essential to do so for the welfare of the animal, and that some traditional breeds, for example, of gun dogs, benefit from the docking of tails as it could be counterproductive to their welfare not to do so? Are you prepared to meet us halfway on that point? It allows you to retain a discretionary flexibility.

Ms McMaster:

Our position is that the purpose of the new Bill is to avoid unnecessary suffering and cruelty. That is really where the Department sits on the docking of animals' tails. It is to —

The Chairperson:

Sorry, Colette, but, as I said, what if it is essential to do so for the welfare of the animal?

Ms McMaster:

The ban that we are proposing does not preclude tail docking if there are medical reasons for doing so.

Mr McGuckian:

In other words, if a dog gets its tail injured in a door, a veterinary surgeon will remove that dog's tail.

The Chairperson:

Or caught in a barbed wire fence, perhaps, or something like that?

Mr McGuckian:

Yes. The vet will fix the tail. That is still acceptable under the proposal.

We heard from some members that veterinary surgeons are best placed to advise on the welfare of animals. Please be clear that the British Veterinary Association and the Royal College of Veterinary Surgeons are very opposed to tail docking.

The Chairperson:

I have heard your point on that. I am asking that the legislation emphasises that flexibility — that it has to show that it is essential to dock the tail for the welfare of the animal. That flexibility would be to your advantage.

Mr McGuckian:

The proposed legislation will still allow a veterinary surgeon, if an animal is injured, to remove the injured part of the tail and to fix the dog's tail. The ban relates to the mass removal of dogs' tails.

Mr Shannon:

I have never talked about not banning the mass removal of dogs' tails. My point is that working dogs should be an exception.

I tell you, quite honestly, that I am minded to oppose the proposed legislation when it comes before us. The Chairperson said that issues should be dealt with at this stage to ease the legislation's passage through the Committee and, ultimately, on the Floor of the Assembly. If provision is not made for working dogs, I will make my voice heard on that, as will others. I am sorry to say it, but I do not think that the Department has considered the information that we have before us fully and honestly at any stage. The information that Committee members have refers

to there being no evidence that adult gun dogs have any memory of pain associated with docking. Those are working dogs, and no provision is being made for them. We are suggesting that the exemption in England and Wales works. Should we not follow the example of something that is working?

Ms Davey:

Whether it is working or not is questionable. As you said, there is an exemption in England and Wales for working dogs to have their tails docked by a veterinary surgeon before they are five days old. A veterinary surgeon has to certify that that dog is going to be a working dog later in its life. That is exceptionally difficult for a veterinary surgeon to stand over in the case of dogs that are up to five days old. We all know that some dogs end up as household pets, even though they are traditionally bred as working dogs. Veterinary surgeons in England and Wales are being asked to judge whether a five-day old pup will be a working dog for the rest of its life or during its life. That is exceptionally difficult to do.

The Chairperson:

Do the owners not make the call, as opposed to the vet? The owner can make a judgement that his pup will become a working dog.

Ms Davey:

At that stage, the owner is the breeder, not the person who will own the dog at a later date.

The Chairperson:

Is his purpose not to breed working dogs as opposed to breeding pups?

Ms Davey:

Yes, but there is no guarantee that that pup is going to end up as a working dog. Quite a few will end up as ordinary pets.

The Chairperson:

I would have thought that the price determined that, and that a working dog is expensive. It is bred and bought for that purpose.

Ms Davey:

Paddy may want to give an opinion from a veterinary point of view. We are finding that veterinary surgeons have to make an exceptionally difficult call, because they certify the dog.

Mr McGuckian:

It is not a popular task for a veterinary surgeon to have to undertake. The guidance that we are given is that the practice of docking is a mutilation, and that it is something that we should not do. Soundings that I have taken from colleagues indicate that it is not being well practised in England and that it is not popular with the veterinary profession.

Mr Shannon:

Is there any evidence to prove that?

Mr McGuckian:

We have taken soundings.

Mr Shannon:

Where is the evidence? With respect, soundings are not evidence. We have been given an opinion, Chairperson, rather than a factual appraisal of the issue. Has anyone here seen a working dog whose tail has not been docked and the damage that resulted?

Mr McGuckian:

As a veterinary surgeon, I have seen it in practice. People bring dogs with damaged tails to the surgery, and the vet has to deal with that. However, most vets would agree that that is a rare event.

Mr Shannon:

Why is it a rare event? It is a rare event because most dogs' tails have been docked. It is not a rare event because it does not happen. It is a rare event because dogs' tails have been docked at an early stage because the dog is going to be a working animal. We are obviously going to disagree on that matter. Just for the record, I will oppose that when the time comes for it to be discussed by the Committee. I suggest that the Department examines the issue carefully and truthfully and comes back with something sensible.

The Chairperson:

We are still in the consultation period. I hope that the Department is taking note of the consultation, and that there will be a way of reconsidering the issue. In the meantime, you have made your views very clear, Jim.

Ms McMaster:

We have to go back to the principle of whether it is necessary to dock all dogs' tails because a proportion of dogs would get injured. The evidence shows that not all dogs will get injured. That is what that part of the draft Bill is based on. It is important to clarify that the intention is to prevent unnecessary suffering and cruelty.

Mr Shannon:

Every working dog that I ever owned had its tail docked, and there was no problem with "bloody tails", if I may use that terminology. Not every dog will be used for working purposes, but those that are should be protected.

I want some clarification on the issue of children under 16 being unable to buy a dog. In some situations, dogs will have been given to someone, as opposed to being bought. Where does that fit into the process? In the countryside where I live, dogs are more usually given as a gift, rather than purchased.

Ms McMaster:

The parent or guardian is ultimately responsible to ensure a duty of care for the animal in the home if the person who received the dog is under 16. That is the principle of the proposed legislation. The ban is specifically about giving pets as prizes or selling them to those under 16. Therefore, there is no specific ban on a present.

Mr Shannon:

In other words, pets given as gifts are outside that ban. That is fair enough. I have one last question on which I need clarification. A brave few of the people who responded to the consultation referred to the banning of snares. What is the Department's position on that?

Ms McMaster:

There are no proposals in the legislation to ban snares. Under the Wildlife (Northern Ireland)

Order 1985, the Department of the Environment takes the lead on legislation about snares.

Mr Shannon:

I just wanted to check that, because a fair few of the respondents mentioned it. Snares, as long as they are checked, as they should be, are quite legitimate. I will leave that as a statement rather than a question.

Mr Molloy:

I apologise for being late. Hopefully, the Department will withdraw the proposal about docking dogs' tails as quickly as it withdrew the dog licensing legislation. The issue of working dogs is one thing; however, having spoken with a number of breeders, it would seem that most dogs are not the way they are because of nature. Rather, they were bred in different ways. For example, terriers have long tails — which does not actually suit them — and finish up hurting themselves just by swiping it. I recently saw examples of a dog bleeding simply because the tail was swiping back and forth as the dog had been in and out of bushes. Therefore, that needs to be considered from the cruelty aspect to save and protect the dog. Sometimes it seems that although all the proposals may look good on paper, they do not correspond to reality, especially for working dogs. A small dog with a big tail can injure itself and do itself harm with the weight of the tail and way that it swipes it about.

Is the Department proposing to stop the docking of all animals, because pigs' tails are docked, as are those of sheep and lambs? Are we talking about all animals' tails, or just dogs'?

Ms McMaster:

We are talking about dogs.

Mr Molloy:

In that case, why are we talking only about dogs? Surely docking affects pigs and other animals? Again, the reality is that if pigs' tails were not docked, there would be more cruelty with other pigs biting them. We must be consistent about what constitutes cruelty and what causes it.

Mr McGuckian:

Be clear that veterinary advice is that removing an appendage, such as a tail, from an animal, should not be done. That is the principle on which our approach is based. We are talking about

dogs' tails today. Pigs' tails are covered by separate legislation, which is another day's debate. Lambs' tails are covered by separate legislation, and that is another day's debate. The principle is that docking is equivalent to baby's little finger, and you would not amputate a baby's finger because it may suffer some damage later in life. That is the principle of the matter.

Mr Molloy:

We are talking about animal welfare; therefore, we are talking about more than just dogs, because the principle of docking applies across the board. If you were to say "we will not amputate the child's finger, but we will cut its nails to stop it from scratching itself", the same thing applies to dogs.

The Chairperson:

I am uncomfortable with comparing animals to children.

Mr Molloy:

I did not start it.

The Chairperson:

I know that you did not.

Mr Molloy:

Animal welfare must involve all animals; otherwise, we are simply talking about dog legislation. It must be wider.

Ms McMaster:

We are proposing a situation similar to that in Scotland, which has banned the docking of dogs' tails. The docking of farm animals such as lambs and pigs continues to be permitted based on the assessment of welfare issues about farm animals.

The Chairperson:

I hope that it is not the thin end of the wedge. On that point, I will dock this conversation and thank the officials for attending. We look forward to the next round of consultation on the legislation.