



**Northern Ireland
Assembly**

Committee for Agriculture and Rural Development

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From: Stella McArdle, Clerk Committee for Agriculture and Rural Development
To: Christine Darrah, Clerk, Committee for Justice
Date: xx November 2015
Subject: Increase in Penalties in the Welfare of Animals Act (NI) and the Justice (No 2) Bill.

The Committee for Agriculture and Rural Development had previously corresponded with you in connection with increase in Penalties in the Welfare of Animals Act (NI) and the Justice (No 2) Bill.

The Committee had a briefing from DARD on this issue at its meeting 10th November 2015. The Hansard of that briefing is attached as is a table provided by DARD to show the actual offences which are being amended.

The Committee requested that the Committee for Justice note that it is emphasised that while Members welcomed the increase in penalties, they had ongoing concerns about:-

- Enforcement;
- the possibility that some individuals – those disqualified from keeping animals and farmed animal in particular, may be circumventing the Act; and
- the need to keep a register of those with disqualification or deprivation orders under the Act.

Regards the issue of enforcement, the Committee requested that DARD provide it with statistics on the number of cases taken under the Welfare of Animals Act (NI) 2011 by DARD, the PSNI and the councils from April 2012 to date; the number of convictions secured; and the number of prison sentences imposed. It will forward this to the Committee for Justice, for information, when it is received.



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Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Penalties for Offences under the Welfare of
Animals Act (Northern Ireland) 2011:
DARD, DOJ

10 November 2015

NORTHERN IRELAND ASSEMBLY

Committee for Agriculture and Rural Development

Penalties for Offences under the Welfare of Animals Act (Northern Ireland) 2011:
DARD, DOJ

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Members present for all or part of the proceedings:

Mr William Irwin (Chairperson)
Mr Sydney Anderson
Mrs Jo-Anne Dobson
Mr Declan McAleer
Mr Kieran McCarthy
Mr Oliver McMullan
Mr Ian Milne
Mr Edwin Poots
Mr Robin Swann

Witnesses:

Mr John McConnell	Department of Agriculture and Rural Development
Ms Jackie Robinson	Department of Agriculture and Rural Development
Mr Andy McKnight	Department of Justice

The Chairperson (Mr Irwin): I welcome Jackie Robinson, the head of the animal identification, legislation and welfare branch; John McConnell, a deputy principal in the animal identification, legislation and welfare branch; and Andy McKnight from the Department of Justice. I am sorry for keeping you waiting for so long. Please give us your presentation, after which we will ask questions.

Ms Jackie Robinson (Department of Agriculture and Rural Development): Thank you very much, Mr Chairman, for that warm welcome, and thank you, members, for giving us the opportunity to talk to you. I want to give you a quick update on the review of the implementation of the Welfare of Animals Act (Northern Ireland) 2011. I will then go into detail about the proposals for penalties for serious animal welfare offences. Our objective today is to inform you of Minister O'Neill's proposals on sentencing and to seek your support for that approach.

The review, as you know, is being jointly carried out by officials from DARD and the DOJ. We published an interim report earlier this year for consultation. We received 54 responses and are finalising the report. Many aspects of the review are at an advanced stage. Issues nearing completion include how the enforcement bodies will work with each other and together as well as serving the public. A few areas are still being finalised, but the report should be with you by the end of the year.

We have commenced work on some recommendations that were supported in the consultation, such as having a single animal welfare web presence and increasing penalties for animal welfare offences.

We are planning to have a single web page with information on animal welfare and details on whom to contact should members of the public be worried about animal welfare.

The final report will be accompanied by an action plan that will draw together the recommendations linked to responsible enforcement bodies, and it will give indicative timetables for implementation.

I will now talk about penalties. You are aware that it was public perception about the leniency of sentencing that convinced some people that there was a need for an Assembly motion. That happened in March 2014, after which Minister O'Neill commissioned the review of the implementation of the Welfare of Animals Act. Sentencing in criminal cases is a matter for the independent judiciary, taking into account sometimes complex factors before determining the appropriate sentence in a case. Those factors include the severity of the offence; the maximum and sometimes minimum penalty set by law; the range of available disposals; the circumstances of the offender, including previous convictions; protection of the public; the impact on the victim; and any aggravating or mitigating circumstances.

The review considered the penalties available in other jurisdictions for animal welfare offences. It also considered the statutory maximum penalties in the 2011 Act and broadly compared those with the sentencing framework. It concluded that there was scope to increase the statutory maximum penalties. As a result, the interim report recommended that DARD considered increasing penalties for the more serious summary offences and for indictable offences.

The proposed changes will ensure that Northern Ireland has among the toughest sentences on these islands for animal welfare crime. That should help to address the concerns of stakeholders and underscore the seriousness with which such offences are viewed. Minister O'Neill endorsed the emerging findings of the review on sentencing, and, given the wide support received during public consultation, asked us to implement the recommendations as soon as possible. The changes, however, require primary legislation, and DARD has no suitable Bill coming forward in this mandate. The Department of Justice's Justice (No. 2) Bill deals, among other things, with fine collection and prison services, so the proposed amendments come within its scope. The Justice Minister has agreed to carry the required amendments in this Bill, and we have been working with officials on that.

I now turn to the current provision for offences in the Act. The two main modes of prosecuting criminal offences are summary prosecution and indictable prosecution. A summary offence is of a less serious nature, and it will be dealt with in a Magistrates' Court. An indictable offence is of such a serious nature that it must be dealt with at the Crown Court. Offences that are triable either summarily or on indictment are referred to as hybrid offences.

I will now move on to talk about the proposed amendments in more detail. To achieve our objectives of having penalties available to the courts that reflect the serious nature of animal welfare crimes, we propose that penalties on summary conviction for the offences of causing unnecessary suffering and animal fighting are increased from the current term, which is six months' imprisonment and a fine of up to £5,000 to 12 months' imprisonment and a fine of up to £20,000. For conviction on indictment, we propose that the maximum period of imprisonment be increased from two years to five years. We propose that the following summary offences be amended to make them hybrid: supplying, publishing and possessing with intent to supply photographs, images or videos of an animal fight; breaching a disqualification order; and selling or parting with an animal pending the outcome of an appeal to a deprivation order. In addition, we propose that the range of ancillary post-conviction powers available to the court following conviction for animal fighting offences be made available following conviction for supplying, publishing and possessing with intent to supply photographs, images or videos of an animal fight. This will, for example, give courts the power to confiscate an animal from an owner convicted of supplying images or videos of an animal fight and to disqualify such a person from owning or keeping animals. We do not plan to amend the other penalties available in the Act.

We believe that increasing the maximum penalties available on summary conviction for the more serious offences will increase public confidence that animal cruelty will not be tolerated in Northern Ireland. It will permit the courts to hand out sentences that take into account the financial gain achieved by some offenders. The substantial increase to the maximum penalty available on conviction or indictment should act as an increased deterrent against future offending and address concerns over the maximum sentences raised by the public. Our amendments will ensure that the penalties available to courts in Northern Ireland are the most severe in these islands, reflecting the views of the public on the serious nature of animal welfare crime. Amending certain offences so that they become hybrid will allow the more serious instances of possession, supply, publishing or showing of an image of an animal fight and the more serious breaches of court orders to be tried in the Crown

Court. Making the ancillary post-conviction powers in the Act available to the courts for offences in relation to animal fighting will allow the court to acknowledge the connection between offences relating to an image of an animal fight and animal fighting itself, as well as the seriousness of these offences, thereby handing out sentences that are reflective of the nature of these crimes.

The Justice (No. 2) Bill is at Committee Stage until 15 January and, subject to Assembly scheduling, is likely to reach Consideration Stage in mid-February. We will, of course, keep you informed of the Bill's progress, and, as I mentioned in my letter to you, the Department hopes that this Committee will support the Bill when it comes before the Assembly.

That is a very quick update on where we are with the review and the immediate plans to amend the penalties available to the courts for animal welfare offences. I would appreciate the Committee's support for our proposals, which will allow increased penalties for the most serious animal welfare offences to be brought into force at the earliest opportunity and will send out a strong message that such offences will not be tolerated.

We are, of course, happy to take any questions that you have for us today.

The Chairperson (Mr Irwin): Thank you very much for your presentation. I am aware that there has been considerable interest from some key stakeholders about changing the penalties for offences under the Welfare of Animals Act. Have you consulted those stakeholders? What are their proposals or views?

Ms J Robinson: We had two periods of consultation with stakeholders. The first happened in summer 2014, when we had a series of workshops involving all the major stakeholders. As a result of that, we took action to set up four working groups, and they came up with recommendations. Those recommendations were included in the interim report that was published earlier this year. Off the top of my head, there were 42 recommendations. We now have the responses to that, so the consultation on the interim report went out to public consultation. It involved everybody who was available, and those comments, as you can imagine, were extremely wide-ranging.

The Chairperson (Mr Irwin): Everyone has had their say. It is all very well having penalties. I am very much into animal welfare, and I fully understand that we need stiff penalties. I just hope that minor offences are not punished disproportionately. It can be something very minor, and sometimes it is a judgement call as to whether it is an offence. I have some concern about such cases. I do not want the full letter of the law wielded on someone when a judgement call has to be made. I am talking about minor offences, not serious ones, about which I have no problem.

Ms J Robinson: One thing that I have not touched on today — I probably should have — is that we are talking about sentencing for the most serious offences. The Act allows for different methods of enforcement, and the first one would be improvement notices. If an offence is deemed to have been caused, a range of penalties or measures are available before you would go to court.

The Chairperson (Mr Irwin): That is important. I am afraid that someone will fall into a category in which they should not be.

Ms J Robinson: I have spent a fair wee bit of time looking at cases that have gone to court, and, to date, I do not see any evidence of that happening.

The Chairperson (Mr Irwin): That is good. Do you think that the PSNI has enough resources to investigate and follow up such serious cases properly?

Ms J Robinson: Three enforcement bodies take forward the provisions of the 2011 Act: the PSNI for criminal activity; DARD for farmed animals; and councils for non-farmed animals. We have looked at resourcing as part of the review. The PSNI has one wildlife officer, and all PSNI officers are trained to a level to allow them to deal with criminal activity in relation to animal welfare. We believe that that is sufficient at this stage. It is a good model of practice that allows a large number of PSNI officers to be available to take forward those offences if necessary.

Mr Swann: Jackie, thanks for your update. The shift seems to be on specific animal cruelty and fighting issues. In my constituency, there is concern about premises being marked for the theft of pets. I suppose that that provides the supply for this barbaric sport. Is there anything in your legislation to make the targeting of pets, or their theft as part of this sport, more severely punished?

Ms J Robinson: There is nothing in the legislation. I am aware of those concerns, and, in fact, they were raised at an event that I was at in east Belfast earlier in the year, which the police attended. The police did not have any evidence to support the findings, but they are aware of the issue on the ground. If the public are concerned, even if they do not have evidence that there is necessarily a crime, we tell them to report it to the PSNI, because, if the PSNI gets several reports, it becomes more of an issue. It all leads to intelligence building.

Mr John McConnell (Department of Agriculture and Rural Development): If a case concludes with a prosecution for dogfighting, the proposal is that the punishment would increase from a potential maximum of two years to five years. The proposal weighs very heavily on the area of dogfighting.

Mr Swann: It is the final act rather than the theft —

Mr McConnell: Yes, you have to prove the dogfighting to achieve that.

Mr Swann: I am trying to tie this down. I received correspondence about an incident such as you spoke about in which a man was videoed climbing a tree, taking a cat out of the tree and throwing it down to waiting dogs. What sort of penalty would that man be liable for? It is a very specific case, and ones like this have already been in front of the courts.

Mr McConnell: It is hard to comment on individual cases. Ultimately, it is a matter for the judiciary —

Mr Swann: What range of penalties would now be available under the proposed legislation?

Ms J Robinson: I assume that that could be unnecessary suffering.

Mr Andy McKnight (Department of Justice): For a summary penalty, someone could face a maximum of 12 months' imprisonment and a fine of up to £20,000. For the more serious cases that are heard in the Crown Court, there could be an imprisonment term of up to five years.

Mr Milne: Thanks for your presentation. Is there anything in the proposed legislation that covers not only the person who committed the crime but the land owned by the person? If a person who is given six months' imprisonment for animal cruelty and is banned from keeping animals for 12 months lets his land to somebody else who stocks the farm, and, in a short time, that person becomes the runner of the animals on the farm, it would not matter if you gave them 10 years, because that practice can still continue. I know what I am talking about because I have come across such cases. It has been well publicised, there have been court cases, and DARD has been involved. Animals have been returned to the fields via another farmer, and, when the person does his jail term, he gets out and takes over the running of the land again. Should there not be something in law that states that there should be a ban on animals being kept at all on that land for a considerable period? Otherwise, it makes a mockery of it all.

Ms J Robinson: We have not gone as far as placing a ban on the land. I wonder whether your issue is about the enforcement of disposal orders or deprivation orders, whereby somebody is not allowed to keep animals for a time.

Mr Milne: I am talking about someone who has been convicted of cruelty to animals and banned from keeping stock for a considerable period, and then, the next day, the area has been stocked with animals.

Ms J Robinson: As long as the person who is banned is not the one who is keeping the animals —

Mr Milne: If, however, you are living in a house beside the land and own the land, there are loopholes that have to be addressed.

Ms J Robinson: I have not thought about that.

Mr McConnell: The legislation attempts to address this issue. People were aware of it before the decision was made. The decision now states that the person can be disqualified from keeping animals or controlling or influencing the way in which animals are kept —

Mr Milne: That is the point.

Mr McConnell: — or being party to keeping animals. That legislation seems to be quite comprehensive in the way in which it is worded. It becomes an enforcement issue as to whether we can prove that the person who is living next to the land —

Mr Milne: That is an impossibility.

Mr McConnell: — or who owns the land is, in some way, party to how the animals are kept. We have not considered going as far as saying that the land cannot be used at all for keeping animals on.

Mr Milne: Could the Department look at that?

Ms J Robinson: We could definitely take a look at it and take your issues on board.

Mr Milne: It is a very serious problem. I know about such situations.

The Chairperson (Mr Irwin): I know where Ian is coming from, but it could be quite difficult. A son or someone else could want to farm that land. If you ban the land from being used by animals, it would be very difficult.

Ms J Robinson: With the enforcement of deprivation orders, if somebody is not allowed to keep animals any more, the review looks at how we enforce that. The PSNI, for example, as a result of ongoing work, has changed the way in which it records the information so that a closer eye will be kept on people. Even if people do not have a dog in their front garden, if we know that they have been disqualified or have cows in a field or whatever, the councils and DARD will take similar action to make sure that those are followed up and enforced.

Mr Milne: Sorry for going on about this, but that is easier said than done. The PSNI has been involved in the cases that I am talking about but cannot do anything. If cattle are running all over the place on neighbours' lawns and fields and there is no proper fencing, you cannot be there to see who is feeding the cattle. That is nothing to do with the PSNI, but it is an enforcement issue. There is not only a legal aspect but a DARD aspect.

Ms J Robinson: I will take those comments on board.

Mr McCarthy: Thank you very much for your presentation. Two things come to mind. First, someone mentioned resources. Where does the Ulster Society for the Prevention of Cruelty to Animals (USPCA) fit into this equation? In times gone past, that organisation has done fantastic work in finding out where the cruelty to the animal happened in the first place and in bringing it to the attention of the authorities. In your estimation, is there support for that organisation?

Ms J Robinson: The three enforcement bodies in the legislation are DARD, the councils and the PSNI. I strongly recommend that any member of the public or of an organisation, including the USPCA, reports any animal welfare issue that they become aware of to the relevant enforcement body. Certain skills are needed to take proper enforcement action at the right time and in the right place, and they have to make sure that they have the right evidence. Those enforcement bodies have the scope and skills to do that, so they should always be the first point of contact. I totally agree that the USPCA has done very valuable work, which we commend. We suggest immediate referral to the enforcement body for action.

Mr McCarthy: Secondly, where do you stand on circuses? There are sometimes calls for action for circus animals.

Ms J Robinson: Circus animals are looked after by council animal welfare officers. If people have any concerns about animal welfare for circus animals, they should report them to their council, and its animal welfare officer will go out to visit and take any enforcement action that is needed.

Mr Poots: Before I start on my topic, may I say that I think that Mr Milne's issue is valid and warrants further examination so that we do not have people, who have clearly broken the law, circumventing it within days and basically giving the two fingers to everyone who has brought them to court in the first instance?

I welcome these proposals, insofar as they go. Thus far, however, I have heard that the problem lies with enforcement and not so much with sentencing. I welcome tougher sentencing, and, hopefully, that will be implemented. You said that the arrangement with the PSNI seems to work well. I do not think that it works well. There is a lot of badger-baiting in my constituency. People have rung the PSNI on numerous occasions, and, on numerous occasions, the people who were engaging in the activity have been long gone before the PSNI is seen. I do not believe that it is a policing priority, and, consequently, people get away with it. People who engage in badger-baiting, dogfighting and those types of activities are engaged in crime in general, so taking them out for one of those things is probably useful in taking criminals off the scene. I do not think that the PSNI is doing enough in that regard.

I will concentrate on the abuse of non-agricultural animals; we can deal with the welfare of agricultural animals separately. How many people have been sentenced to prison over the last three years for dogfighting or that type of abuse?

Ms J Robinson: Forty-one cases have been taken by councils, and 20 cases have been taken by DARD. I do not have the number taken by the PSNI.

Mr Poots: How many of them ended up with a prison sentence?

Ms J Robinson: I do not have that information to hand.

Mr Poots: There have not been a lot that I am aware of. I know of one in my constituency where Cody the dog was burnt and Andrew Stewart was, quite rightly, sent to jail. Reference was made to one in east Belfast where a cat was pulled from a tree. Those guys walked out of court laughing. There is not much point in the Assembly saying that we need to do more and you, the Department, doing more — and I appreciate what you are doing — if we are not going to see it implemented when it hits the ground. We need to see people who abuse animals getting stiff prison sentences and it being known that it is totally unacceptable and will end up with a long period in jail. I do not think that this on its own will do it.

Ms J Robinson: I want to hand over to Andy specifically on the sentencing guidelines framework. Sentencing is for the judiciary. The Department can go only so far by setting guidelines that we think will allow the judiciary sufficient scope to take that on board. I am not sure how much more that we can —

Mr Poots: We could have mandatory minimum.

Ms J Robinson: We could have mandatory minimum. It was something we thought about as part of this review. When we thought about minimum sentences, it went back to the Chair's point about whether you would get to the stage where people would be taken to court and imprisoned for very minor offences. That is where we would like the judiciary to have the full scope. Setting a minimum does not give it full scope.

Mr McKnight: Traditionally, Parliament and the Assembly have tried to recognise the independence of the judiciary and give it as much discretion as possible to hear the full facts and circumstances of a particular case. It is possible that the difficulty with animal welfare is that it is such a broad area. As Jackie mentioned, there are three enforcement bodies looking after farmed and non-farmed animals and cases involving other criminality. So, there is scope for a very wide range of circumstances for somebody who, ultimately, might be charged with an offence of causing unnecessary suffering, which could be through neglect or some form of active mistreatment. The approach we took was to increase the overall maximum penalties. Ultimately, it is for the judiciary to decide the applicable level.

Mr Poots: What I am saying is that, in a lot of those cases that have been heard, the outcomes have been publicly unacceptable. So, whatever the judge was thinking on that particular day did not catch the mood of the Northern Ireland public, in particular the case in east Belfast. That was a despicable act carried out by despicable people who got a slap on the wrist, in the views of most people.

Ms J Robinson: One of the things that we have already talked about is the way that we are going to increase some sentences to make them hybrid, which will mean that they can be tried in the Magistrates' Court or the Crown Court, and unnecessary suffering is one of those. Even in the Magistrates' Court, the sentence will increase from a term of six months imprisonment to a potential for 12 months, and from a £5,000 fine to a £20,000 fine. So, even within that, we are giving scope. We are also giving scope of up to five years in the Crown Court.

In addition, one of the pieces of work we are trying to do in parallel with this is to work with the Department of Justice on the review of unduly lenient sentencing, which is being taken forward. It is highly likely that the offences that we are making hybrid — that is, unnecessary suffering and the two in relation to animal fighting — will also become part of the unduly lenient sentencing scheme, which will mean that they could be sent to the court on appeal. That, again, may help in producing sentencing frameworks.

Mr Poots: That is one element where, if you can appeal a sentence, it would be a help.

Ms J Robinson: As I said, we are working in tandem. We are trying to do a lot of things to make this better overall.

Mr McMullan: Thanks for your presentation. Where do you stand on sheep worrying in so far as animal suffering is concerned? That has never come about.

Ms J Robinson: It has not come up in any of the public consultations we have undertaken in relation to this issue.

Mr McMullan: That does not surprise me. It is one of the things that are forgotten about. I saw horrifying pictures in 'Farming Life' this week of a sheep that was attacked. The full side of its fleece was hanging off right down to the skin. There has to be something there. It could be dealt with by the council and DARD.

Ms J Robinson: It would be dealt with by DARD, potentially. If we think that there is a dog involved in sheep-worrying, then councils may become involved as well. One of the things we are looking at as part of the review is how bodies work together. We have come across a slightly grey area regarding which organisation should take primary lead. One of the recommendations coming out of the review is that we set up memorandums of understanding. We will look at where it is a council issue and where it is a DARD issue and we will set up memorandums of understanding between the two organisations so that we know who is going to take the lead and when. This may help in these sorts of cases.

Mr McMullan: Again, that takes time. Sheep-worrying has never been addressed. Packs of dogs go out and stalk through fields. The same thing happens year on year, and we never seem to deal with it. I would like to see it being dealt with using the same vigour as we deal with the other ones.

Ms J Robinson: We will definitely take that on board and look at it.

Mr McMullan: Some members have spoken about a man who owns ground inflicting cruelty on an animal. You said that he may have a son. If you put a ban on his ground and he gets a lengthy sentence, it would be very easy for him to change the farm to his son's name. I would like to see the single farm payment stopped, if it is being paid to that farm. The payment would be in his name. If he inflicts cruelty on an animal, the payment should be stopped as well. That would act as another deterrent. We see this happening quite a lot. We have sentencing and all of that — there are a lot of cases, and, not so long ago, there was a case involving horses — but these sorts of things can also be looked at when you look at your guidelines. I am only asking you to look at them. I do not know the complexity of doing that. However, a man who is sentenced may have a son who could carry on with the farming and receive his single farm payment.

Ms J Robinson: It might not be well known but, at the moment, when DARD is called to a welfare inspection for any reason, the inspector will do that welfare inspection and cross-compliance type of inspection. The person can be penalised a single farm payment because of the outcome. The connection between the welfare compliance and cross-compliance penalties is actually in place now.

Mr McMullan: I am glad you brought that up, because it makes my point. That is not known, as you rightly say, but it should be known. It should be known that, if you do what Ian talked about, you will

get penalised not only through the courts but through cross-compliance on your single farm payment. It is all right getting fined, but you can still go back and receive your payment etc. However, if that payment were stopped —

Ms J Robinson: That is a communication issue for us as it is already in place. We will take that on board.

Mr McMullan: Another one is on keeping animals. To my mind — and tell me if I am correct or wrong — the only animal that needs to be muzzled is a greyhound.

Mr McConnell: The Control of Greyhounds Act from the 1950s requires greyhounds to be muzzled and on a lead when in public. The act relates only to greyhounds. Other breeds of dog, of course, are covered. There is no mandatory requirement to muzzle them, but they are covered by dog licensing and those sorts of controls. So, yes, you are right that that act covers only greyhounds.

Mr McMullan: I would like to see that act covering all dogs because, if a dog gets off in public, it could run anywhere. However, if it is muzzled when it is out, that is protection. You are not doing the dog any harm, but it is protection for the public. Having only one breed of a dog being required to be muzzled when you take it out makes a little bit of a nonsense of trying to control what some dogs are capable of doing.

Ms J Robinson: In this review, we are looking at welfare. The control of the animal is a slightly different issue. The control of dogs legislation, again, is within my remit and it is something that we can have a look at in future.

Mr McMullan: I would like all dogs to be muzzled when they are out, not just greyhounds. It used to be that you could walk a lion or a tiger down the street without a muzzle and you have to muzzle a greyhound when you take it out. The Director of Public Prosecutions (DPP) has a big role to play in this. When we talk about sentencing and everything else, it is not encouraging public confidence. We have done everything that we can do here through tougher sentencing and everything else, but the public is saying that the DPP is letting them down. I know that there could be complexities with the law, but the DPP has to know that the public has confidence.

Mr McKnight: Do you mean the judiciary as opposed to the DPP?

Mr McMullan: Yes, well, when you talk to the police they say that it is not their fault; it is the fault of the DPP, who let them down. The police will blame him and it goes round like that. While all that is happening, confidence is out the window.

Mr McKnight: At times, it can be difficult to talk about sentencing because, ultimately, without going over the details of any particular case, the judge will hear the particular facts and circumstances of the whole case and may be privy to information that does not enter the public domain. I will exercise a wee bit of caution here, because when it comes to sentencing, sometimes what is reported in the media might not be entirely the picture that the judge is getting in court. I realise, however, that getting the sentence right will enhance public confidence.

Mr McMullan: Yes, but when the sentence is passed and they come out the court and put two fingers up in the air and laugh, there is no deterrent.

Mr Anderson: Thank you for your presentation. A number of my questions have been touched on. We have talked about joined-up working between the agencies but in a number of cases I have found that that is not working. We do not know who wants to take the case to court, nor do we know who wants to gather the evidence and whatever. I have witnessed gangs roaming the countryside with spades and shovels over their shoulders. They are there for all to see.

I know that they keep animals for badger-baiting and such like locked up in pens during the day, and maybe for a week, without feeding them and then they bring them out to hunt the badgers. The fighting takes place and the badger comes off worse. In some cases, I have seen dogs with their jaws bitten off and everything else. You have the badger, which is the wild animal, and you have the dogs, and there is no one in between who is able to bring anyone to justice over this.

I witnessed that in my own constituency. I knew where the pens in which the dogs were being kept were located; I went along and witnessed it. I went to the police, and the USPCA were involved; but at the end of the day nothing was done because they said that the dogs were being kept there and were being used to hunt foxes now and again. I welcome any laws that are being toughened up to get these people to court, but I still wonder how we get the offenders into court and properly sentenced. We have witnessed some horrific cases throughout the countryside but I still do not believe that we have the right joined-up approach with the different agencies here. Do you wish to comment on some of that?

Ms J Robinson: One of the things that we have done as part of the review is to look at how the organisations — the PSNI, DARD and the councils — work together. One of the good things that have come out of the review, by doing it, is that those relationships have already started to strengthen. We are spending more time talking to these people and we are going to recommend regular meetings to exchange information and intelligence; and that may help. I go back to the earlier point that, if anyone is aware of any case, you should report it to the PSNI. It may be that a single incident is not enough for them to take a case, but, if they start to see a trend, the information you have given over a period of time becomes intelligence that allows them to take a case in the future.

Mr Anderson: Your point is well taken, Jackie, but the point is that it is about building a case. It still seems very difficult, when people have committed the crime, for anyone to stand up and say, "We have proof that you carried out a certain crime". I am wondering about that aspect. You talked about the hybrid case. How do you move a really bad case? How do you move that case into a different scenario to help effect a hybrid prison sentence?

Ms J Robinson: If you are moving it from a summary into a —

Mr Anderson: Will the district council or DARD move it?

Ms J Robinson: It will be whoever is taking the enforcement case; it will be their legal services. In the case of DARD and the PSNI, enforcement cases are taken through the PPS. In the case of councils, they are taken through their legal supplier and their legislative framework. Legal people will make the call on the severity of the case and whether it will be tried in the Magistrates' Court or the Crown Court.

Mr Anderson: My colleague Edwin talked about minimum sentencing, but this is perhaps a way of getting a greater sentence and bringing it as a hybrid case. Is that what you are saying? If it were at a higher level, it would attract a bigger sentence. Is that what you were trying to tell us earlier?

Ms J Robinson: Yes.

Mr Anderson: I think that it will probably be difficult to move it through the system and get it to a higher level because of a lack of evidence in many cases.

Mr McKnight: One of the considerations that the PPS or any prosecution body will have when it is looking at a case is the strength of the evidence —

Mr Anderson: It will be evidence-based, yes.

Mr McKnight: — and the seriousness of the case. If it feels that the evidence is there and the case is serious enough, it has the option of taking it to the Crown Court, where the higher penalties will apply. It will be for the prosecution body to make that call.

Mr Anderson: I still see problems, but, as I say, I welcome any efforts to get tougher sentencing.

Others have touched on moving animals to other land, other owners or to their brothers. Could a register of people who are banned be enforced to ensure that someone is not allowed to keep animals — dogs or whatever — for a number of years? They get a sentence for five or 10 years, but they could move anywhere and keep animals. Is there anyone to track them? Could a register be brought forward?

Ms J Robinson: Throughout the review, we looked at keeping the central register that people have talked about. I want to separate this. When I am talking about this, I want to be very clear and separate it into two different things. We are planning for all the enforcement bodies to have access to the central information hub, or data hub, which is called the criminal record viewer. It is a system that the police have access to already. We are making arrangements for DARD to have access to it and, hopefully, that should be finalised this side of Christmas. Once that is done, we will then extend it and see whether we can give the information to councils. That will be for only their enforcement bodies, but it will mean that all those bodies will have the information on disqualification and deprivation orders. That is one side of it.

The other thing that people were asking for was for the likes of rehoming charities to get that information or to have a central database that any member of the public could use. To be honest, it looks like that will be much more difficult to do. We have been looking at it and have spent an awful lot of time going through the detail. There are significant issues around allowing people to access legally under freedom of information. We also need to make sure that any solution we put in place is proportionate. Some solutions will just be very, very expensive. In addition, we have to look at the public interest, and I am very aware of cases in the past where somebody who was alleged to have been involved in animal welfare crime has been targeted. We need to be very careful and make sure that we do not put people or their families at risk. There are a lot of things to be considered. On the good-news side, the enforcement bodies will almost certainly have access to a central list. We are giving an awful lot of thought to whether we are able to compile a register, but I urge caution and will say that, at this stage, it looks less likely that we will be able to do so.

Mr Anderson: Do you foresee a time when that will happen, or is it something that will possibly never happen?

Ms J Robinson: Never say never. We have not concluded the discussions: they are ongoing, and we are working very hard to see if there is a solution. All I am trying to do today is manage expectations and say that I do not think that that solution is imminent. I cannot say whether the position will be different in a number of years or whether we would look at it differently if we had a different evidence base. Again, I go back to the proportionate idea; we need to make sure that anything that we bring forward — and it would have to be a legislative solution — is proportionate to the risk and the need.

The Chairperson (Mr Irwin): I have some concerns about the fact that, and I am not sure if you have the figures on this, probably very few people actually got the maximum sentence. We are increasing sentences, which I have no problem with, but the issue is to ensure they make a difference. I am not so sure that they will. Do you understand where I am coming from? Within the penalties that exist, very few people receive the maximum sentences.

Mr McKnight: One of the things to bear in mind is that the 2011 Act is still relatively new. As more cases make their way through the courts and more experience is gained, you might see the level of sentencing settling a bit.

The Chairperson (Mr Irwin): I fully understand that it is not an issue that you are responsible for; it is for the courts. Sometimes, there is disillusionment with the sentencing in some very serious cases. Many of us are concerned that serious cases do not seem to have the proper sentencing.

Ms J Robinson: It was looking at those cases that made us come to the conclusions we have outlined today on sentencing and on which cases should become hybrid or have their sentences increased.

One of the recommendations, going back to the interim report, was for the Department of Justice to look at how we could raise awareness of the sentencing available. Potentially, issuing the final report, which we hope to do towards the end of this year, would give us the opportunity to do that; maybe not necessarily directly with the judiciary but with the public in general. That may help.

Going back to Andy's point about the number of cases that have been taken, I was reading this morning that councils have taken something like 41 prosecutions since the act came into force and have 98 pending prosecutions going through the system. That adds weight to the view that we are on an uphill trend: we started from nothing when councils got the powers in 2012, and we have gone up a fairly steep curve. Hopefully, it will continue to go in the right direction.

The Chairperson (Mr Irwin): Hopefully. Thank you again for your presentation.

Sentences in the Welfare of Animals Act (NI) 2011

The offences below are contained in section 31 of the Act and currently carry a maximum of sentence of –

1. on summary conviction – 6 months imprisonment and/or up to a £5,000 fine; and/or
2. on indictable conviction – 2 year imprisonment and/or unlimited fine.

Under current Magistrates’ Courts Rules a District Judge can impose a penalty of up to 12 months imprisonment on conviction for 2 or more offences.

	Change from summary to hybrid	Increase maximum sentence on indictment of 5 years imprisonment and/or unlimited fine	Increase maximum penalty on summary conviction of 12 months imprisonment and/or a fine of up to £20k	Rationale
Offences in Welfare of Animals (NI) Act 2011				
s.4 – Causing unnecessary suffering	Already hybrid	Yes	Yes	To respond to public concern and achieve parity with ROI on indictable offences and with Scotland on summary offences. Allow magistrates’ courts to impose longer sentences and higher fines where necessary, to reflect the serious nature of this offence, acting as a deterrent to potential offenders.
s.8(1)&(2) – 2 animal fighting offences	Already hybrid	Yes	Yes	To respond to public concern by reflecting serious nature of animal fighting crimes, and achieve parity with ROI on indictable offences and with Scotland on summary offences. Also in order to ensure the level of fine is available to take into account potential financial gain associated with dog fighting.
s.5 – Prohibited procedures	Already hybrid	Yes	No	To respond to public concern and achieve parity with ROI on indictable offences. Dependant on severity may attract Section 4 offence.
s.6 (1,2,11,12)– offences in	Already hybrid	Yes	No	To respond to public concern and achieve parity with ROI

connection with tail docking				on indictable offences. Dependant on severity may attract Section 4 offence.
s.7 – poisoning protected animals	Already hybrid	Yes	No	To respond to public concern and achieve parity with ROI on indictable offences. Dependant on severity may attract Section 4 offence.
s.8(3) – Supplying, possessing with intent to supply, publishing images of an animal fight Extension of ancillary powers (see below)	Yes	Yes	No	To respond to public concern by reflecting serious nature of animal fighting crimes. Allow for this offence to be included with offences under s81&2 when necessary and given the potential scale of such an offence, to allow for trial in Crown court when appropriate.
s.33(9) – Breach of a Disqualification Order	Yes	Yes	No	Hybrid offence to allow breach to be referred to the court that issued order (or to higher court if made in MC and seriousness merits). Increase in sentence reflects potential serious nature of issue and increase in fine also allows cognisance to be taken of potential financial gain from failure to comply by breaching an Order.
s.40(7) – Selling or parting with an animal to which a Deprivation Order under s.32 applies	Yes	Yes	No	Hybrid offence to allow breach to be referred to the court that issued order (or to higher court if made in MC and seriousness merits). Increase in sentence reflects potential serious nature of issue and increase in fine also allows cognisance to be taken of potential financial gain from failure to comply by selling an animal (eg in the case of dog breeders, farmers etc).

Extension of the ancillary post-conviction powers – to include section 8(3) offences

- Section 32 – Deprivation
- Section 33 – Disqualification
- Section 36 – Destruction in the interests of an animal
- Section 37 – Destruction of animals involved in fighting offences
- Section 38 – Reimbursement of expenses relating to animals involved in fighting offences.

Other offence contained under section 31 of the Welfare of Animals (NI) Act 2011 which we do not propose to change.

Offence
s.6(10) – Failing to identify a dog with docked tail as a working dog in accordance with the regulations.
s.6(12)- Showing a dog which has had its tail docked at an event.
s.9(1) Failing to take such steps to ensure animals needs are met to the extent required by good practice.
s.10(6) - Failure to comply with an improvement notice.
s.12(6) – Carrying out a specified activity in contravention of a licence or registration.
s.17(12)- Obstructing an officer exercising powers in relation to animals in distress.
s.19(7) – Obstructing an officer from executing a court order under section 17(5).
s.50(3) – failure to deliver documents relevant to carrying out a court order.
Para 17 of Schedule3 – Obstructing an officer from exercising powers of entry, inspection and search
Regulations made under s.11 – securing animal welfare
Regulations made under s.12(7) – licensing or registration of activities involving animals
Regulations made under s.13 – prohibition on keeping certain animals

Rationale

- The current maximum penalties for these offences is imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both as set out at section 31(1).
- These offences were considered as lesser offences, which do not involve evidence of unnecessary suffering of animals, and this level of fine was considered appropriate at the time they were set. It remains similar to the level of the penalties available in GB. We remain of the opinion that these penalties are proportionate to the level of the offence.
- In many cases these offences constitute a “technical breach” of the provisions of the 2011 Act, or where there are adverse welfare effects on one or more animals associated with the offence, the more serious aspects of that welfare violation are covered by offences contained in section 4 (unnecessary suffering) for which we propose to increase the maximum penalty .
- Given the nature of these offences we consider it unlikely that trial in the Crown Court would be justified and, therefore, it would not be appropriate to allow a defendant to elect for trial by jury in these cases.