



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

**Welfare of Animals Bill:
Departmental Briefing**

21 September 2010

NORTHERN IRELAND ASSEMBLY

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RURAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)

Mr P J Bradley

Mr Trevor Clarke

Mr Willie Clarke

Mr Pat Doherty

Mr Simpson Gibson

Mr William Irwin

Mr Francie Molloy

Witnesses:

Ms Kate Davey)

Mr Andrew Kell)

Mr Paddy McGuckian)

Ms Colette McMaster)

Department of Agriculture and Rural Development

The Chairperson (Mr Moutray):

I call to the table Colette McMaster, Kate Davey, Paddy McGuckian and Andrew Kell. You are very welcome. Do you wish to make any brief opening comments before we go to members' questions?

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

Yes. Thank you for giving us the opportunity to address the Committee today as part of its scrutiny of the Welfare of Animals Bill. We look forward to working with the Committee during that scrutiny. I am accompanied by Kate Davey, head of the Welfare of Animals Bill team, her deputy, Andrew Kell, and Paddy McGuckian, who is a veterinary adviser on animal welfare issues.

I am aware that some members recently joined the Committee, and, therefore, it may be helpful if I briefly outline the key benefits and key provisions of the Bill at the outset. The Bill introduces a duty of care for all protected animals, including domestic pets. It provides powers to take action to prevent animals from suffering, as opposed to the current position whereby action can be taken only after suffering has occurred. It strengthens the current powers in respect of animal fighting, including dogfighting. It provides powers to regulate, through subordinate legislation, a wide range of activities that involve animals, such as dog-breeding establishments, the use of animals in travelling circuses and the keeping of non-dangerous exotic pets, if necessary. It increases the penalties for serious animal welfare offences, such as animal fighting.

The Bill is set out in six parts with a total of 60 clauses and five schedules. The first 18 clauses and schedule 1 set out the substantive policy behind the Bill, and the remaining clauses and schedules outline the procedural aspects of how the Bill can be implemented. I will take a few minutes to focus on Parts 1 and 2. Part 1 is the introductory part, and Part 2 sets out the key clauses that introduce the offences in the Bill.

Part 1 covers clauses 1 to 3 and outlines the scope of the Bill, which covers all vertebrate animals. Clause 1 also provides power to extend, in the future, the definition of “animal” to include invertebrates if scientific evidence becomes available that those animals are capable of feeling pain. While all vertebrate animals will have protection from cruelty and unnecessary suffering, the Bill affords protected animals a higher level of protection. Clause 2 defines protected animals as animals that are commonly domesticated in Northern Ireland, under the control of man and not living in a wild state. Clause 3 defines who is responsible for an animal. Although the owner is always regarded as responsible for an animal, a person who is in charge of an animal on a temporary or permanent basis is also responsible for that animal while it is in their

care.

Part 2 sets out the powers for the protection of animals through the prevention of harm and the promotion of welfare. Clauses 4 to 8 create a number of substantive offences aimed at preventing specific types of harm. Clause 4 relates to unnecessary suffering. It will be an offence to cause or permit unnecessary suffering, whether by a positive act or by an omission. Clause 5 relates to prohibited procedures. It will be an offence to carry out a procedure that involves interference with the sensitive tissues or bone structure of an animal, unless the procedure is carried out by a veterinary surgeon as part of the animal's medical treatment. There is no intention to interfere with normal farming practices. Those will still be permitted, and exemptions to the clause are set out in schedule 1.

Clause 6 relates to the docking of dogs' tails. It will be an offence to dock a dog's tail or to take it to another jurisdiction to have the procedure carried out other than for the purposes of its medical treatment by a veterinary surgeon or to safeguard its life. Clause 7 relates to the administration of poisons. It will be an offence to give to a protected animal any poisonous substance or drug, which is not normally poisonous, in such quantities that it effectively becomes a poison, where the person has no lawful authority or reasonable excuse. That provision will not prevent the laying of poisons for the control of vermin.

Clause 8 relates to animal fighting. The Bill strengthens the powers in respect of animal fighting that are contained in the Welfare of Animals (Northern Ireland) Act 1972. It is currently an offence to cause unnecessary suffering to an animal by causing, procuring or assisting at an animal fight; promoting, causing or permitting any performance; taking part in an animal fight; keeping, using, managing, permitting or assisting in the keeping of any premises for animal fighting; receiving, causing or procuring money for admission to an animal fight; and by being a spectator at an animal fight. Those existing offences will become offences whether or not unnecessary suffering is caused. In addition, new offences have been added, which are to keep or train an animal for use in connection with an animal fight; to cause an animal fight to take place or attempt to do so; to supply, publish or show a video recording of an animal fight; to possess a video recording of an animal fight with the intention of supplying it; and to place or accept a bet on an animal fight.

Part 2 also aims to promote good animal welfare through a variety of substantive offences and regulation-making powers that are contained in clauses 9 to 16. Clause 9 will ensure a duty of care for all animals for which a person is responsible. It will be an offence if a person fails to ensure that the needs of an animal for which they are responsible are met to the extent required by good practice. The Bill also sets out what the needs of animals are. Those are based on five freedoms, which are the need for a suitable environment; the need for a suitable diet; the need to be able to exhibit normal behaviour; as appropriate, the need to be housed with or apart from other animals; and the need to be protected from pain, suffering, injury and disease.

Under clause 10, if a person fails to ensure that the needs of their animals are met, an inspector will have the power to issue an improvement notice, which will specify what action needs to be taken to rectify the situation and the period for compliance. It will be an offence not to comply with an improvement notice. To help owners and keepers to understand their responsibilities and to comply with that duty of care, a power has been taken under clause 16 to allow codes of practice to be produced, which are similar to those already widely used for farm animals. All such codes will be subject to consultation with stakeholders and this Committee.

The 1972 Act provides powers to make regulations to secure the welfare of farmed animals. Under clause 11, those regulating powers will be carried forward and extended to allow regulations to be made to secure the welfare of non-farmed animals, including domestic pets.

Clause 12 and schedule 2 provide powers through subordinate legislation to license or register activities involving animals. That will allow, for example, dog-breeding establishments to be licensed. That will improve the standards for those establishments and will be welcomed by many legitimate local breeders as it will help them to promote and market their dogs.

Clause 13 contains powers to prohibit, through subordinate legislation, the keeping of certain animals at domestic or other premises. For example, that will allow, if there is supporting scientific evidence, a ban on wild animals in travelling circuses or the keeping of non-dangerous exotic animals as pets.

The Bill sets out the key principles of animal welfare but leaves the detailed matters to

subordinate legislation. That will allow the flexibility for our legislation to keep pace with advances in animal welfare. Using subordinate legislation to introduce detailed requirements will also ensure that the relevant stakeholders are consulted on the issues that directly affect them. All subordinate legislation that is made under the powers in the Bill will be subject to consultation with the relevant stakeholders and scrutiny by this Committee. Most regulations that are made under the Bill will be subject to the affirmative resolution procedure.

Clause 14 makes it an offence to abandon an animal, whether or not the animal suffers. The clause does not prevent the release of game birds that have been reared for shooting purposes or the release of a wild animal following rehabilitation. Clause 15 makes it an offence to give an animal as a prize to anyone under the age of 16 years, unless the child is accompanied by an adult who is responsible for the care and control of the child. That will not prevent a child from keeping or looking after pets or from actively learning about the husbandry needs of animals. However, the power will ensure that a responsible adult makes the decision about the keeping of pets.

I have gone through the main aspects of the Bill fairly quickly, and I hope that the presentation has been helpful to the Committee. In summary, the Bill will update, strengthen and improve the framework for animal welfare that was set out in the 1972 Act. It aims to stop cruelty and to prevent unnecessary suffering, and it also aims to promote and enhance the welfare of all protected animals. We are happy to clarify any issues and to answer any questions that members have.

The Chairperson:

Thank you. You will have had the opportunity to hear the previous witnesses' views on the matter, and, indeed, the majority of responses to the consultation seek an exemption to tail docking for working dogs. Is the Department willing to compromise on that matter?

Ms McMaster:

I will respond to what the British Association for Shooting and Conservation (BASC) said, and I will set out the position in the Bill as it stands. It has been beneficial to hear the BASC's concerns about working dogs, and we are aware of the strongly held views of some stakeholders

on the need for an exemption for working dogs. The Minister is, of course, keen to hear the views of the Committee and stakeholders after the Committee's scrutiny of the Bill. Through our engagement with stakeholders, we are equally well aware of the strongly held views of other stakeholders in support of a ban on tail docking without an exemption. That, of course, is the position that has been taken in the Bill, and that is the position that the Minister has taken.

I will explain the reasoning behind coming to that position. The Minister has considered a wide range of scientific evidence and professional opinion, which demonstrates that tail docking causes acute pain to puppies. In some cases, it can also cause long-term pain. It may also reduce the strength of the dog's back and compromise its balance and agility. As the Committee has heard, neonatal dogs, as is the case with other young animals, are likely to feel pain just as intensely, if not more so, than more mature dogs. The removal of the tail deprives the dog of an important means of expression of its intentions and emotions, and that can lead to misunderstandings both with people and with other dogs.

The recent research by the Royal Veterinary College and Bristol University on tail docking, which was referred to earlier, confirms that, overall, the risk of tail injuries to dogs is small. The report found that the risk of tail injury to a working dog is less than a third of 1%. As the Committee heard, the report concluded that the tails of 500 puppies would need to be docked to prevent one tail injury in later life. BASC pointed out that that referred to all dogs. However, the report also looked at working dogs, and it found that the risk of injury to a working dog was also less than a third of 1%.

The Royal College of Veterinary Surgeons, the British Veterinary Association and the British Small Animal Veterinary Association are all opposed to the tail docking of dogs, except for the therapeutic docking of an injured or a diseased tail. As the Committee is aware, a similar total ban has been adopted in Scotland.

In England and Wales, where an exemption is allowed, the Royal Society for the Prevention of Cruelty to Animals (RSPCA), as the enforcement body, has found it difficult to enforce the exemption. For example, in England, the legislation allows cross-breed terriers, spaniels and hunt-point retriever dogs to be exempt. That means that it is virtually impossible to prove or

disprove whether a dog that has been docked is an exempt breed. That continues to make difficult the investigations into whether tails were lawfully removed. As it is not an offence to own a dog with a docked tail, it allows some individuals to claim exemption without an evidential burden on them to point towards reliance on that exemption. Therefore, we are aware of some difficulties in the regime of enforcing that exemption in England and Wales.

We need to know the Committee's position on the issue.

The Chairperson:

Is the Department willing to compromise on the matter?

Ms McMaster:

Is that the Committee's position?

The Chairperson:

I want to establish a consensus of members' views on the issue. Do members feel that there should be an exemption? If you do, do you agree that we should take the matter to the Bill Office and present a Committee amendment in relation to clauses 5 and 6?

Mr T Clarke:

I would go further and remove it altogether. The clause on docking should not be there. Docking is common practice for pigs and lambs, but we seem to be penalising dog owners. I propose that the Committee removes the clause on docking.

Mr W Clarke:

I have not read the Scottish report in great detail, but its evidence makes a case for cocker and springer spaniels. We are early in the process and have not yet heard all the evidence or seen all the presentations. It is premature to be taking a motion at this stage; we are too early. From what I have heard so far, there is a case for spaniels, but I have not yet seen any evidence, even from the Scottish report, of a case for terriers, pointers, Labradors or collies. The breed specifically named is the spaniel. We need to investigate that further.

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

We need to clarify a number of points before members go down the road of voting.

Mr Molloy:

The Committee will decide at what stage it makes decisions. It is not up to officials to tell us when to do so.

Ms Davey:

Sorry, I was not doing that.

Mr Molloy:

Departmental officials should recognise that they are here to give evidence. If the Committee wants to make a decision now, it is entitled to do so. The Department has listened to the same debate on three occasions, but it has yet to respond to any of the issues or to modify its way. If they want to drag this piece of legislation out to the last, they are going the right way about it. If they want to get the legislation through in a realistic way, they should modify it to meet the need and demand that exists to have, at least, the derogation of some breeds. No evidence has been produced by the Department of Agriculture and Rural Development that there is any difference between the docking of dogs' tails, pigs' tails and lambs' tails. They have not made that differential, and no evidence has been produced.

The Chairperson:

You have heard some members comment, and they feel strongly about the issue. Is the Department prepared to go away, reconsider and come back next week on the issue? It is early in the Bill process to get bogged down, and it does not bode well if we cannot get over this hurdle.

Ms McMaster:

We will take away what the Committee is asking us to look at and do that. I want to be clear about what we are being asked to look at. Is it an exemption? If so, what sort?

Mr Doherty:

I have not made up my mind on this issue, but it is clear that we need evidence around specific

breeds. There is a strong lobby that working dogs should have an exemption. “Working dogs” is a broad term. That needs to be broken down into the breeds that are regarded as working dogs. When that is done, let us look at it.

Mr Molloy:

The clearest definition of a working dog is that it works with organised groups of people who are hunting. However, dogs do not always work in such a way, and a dog can hunt on its own. The docking of some dogs in hunting and kennel clubs may be done in a controlled way. We have heard no evidence that makes a case that there should not be a complete withdrawal of the provision to ban the docking of dogs’ tails. Cases can be made for the exemption of certain dogs, but different dogs will hunt in different ways, and different dogs will have their tails injured. The fact that many of the working dogs here have had their tails docked over the years means that the evidence is not clear. That has been the traditional way in which hunting dogs have been worked. The Department must produce evidence that justifies a complete ban on the docking of dogs’ tails. The legislation that the Department is trying to push through is draconian. The Department needs to be realistic about the demands and needs of people who work with and use dogs and about the fact that dogs can be injured.

The Department has not made a justified differential between the legislation that allows the docking of lambs’ and pigs’ tails and the proposed legislation that will ban it for dogs. It has said that the docking of 500 dogs’ tails may prevent only one injury, but it has not provided any indication of how many lambs’ tails are docked and how many would be infected if they were not docked. There is no justification at all in that regard.

We are considering the Welfare of Animals Bill. It is animal welfare legislation that needs to be about the welfare of the animal, not about an idea or system that the Department wants to bring in for the purposes of simply legislating.

The Chairperson:

Given the comments that have been made by members today, the Department needs to go back, have a think about this and put new proposals to the Committee. The Committee will then take it from there.

Ms McMaster:

There may also be a lack of clarity regarding the evidence that the Committee has heard about, including the Scottish report and the RCVS position that were referred to today. Officials have referred to that evidence, but we have drawn from it a position that is different from the one that the BASC talked about in its presentation. Perhaps it would be helpful if we provided that clarity.

The Chairperson:

For clarity, the Department needs to go away and bring back something that the Committee can work on; otherwise, the Committee will make its own amendments right from the start. Is that OK?

Ms McMaster:

Yes, that is fine. We will take that away. You are also seeking clarity on some of those issues.

The Chairperson:

Yes, absolutely. The Committee Clerk will seek clarity in the meantime.

Do members have any questions on the broader aspects of the Bill that they want to pose today?

Mr Molloy:

I believe that this legislation started off as a way of controlling fighting dogs. If the Department wants this legislation to be passed — we would all support it in that — it should not bring in personal issues that it may have as regards the docking of dogs' tails.

The Chairperson:

OK. That is fairly clear. Are there any other questions on the more general points?

Mr Gibson:

There is a reference to the castration of, I presume, cattle and sheep. How will the suggested amendment change the current position?

Ms Davey:

There will be no change in the current position as regards the castration of lambs, sheep, cattle, and so on as a result of the Bill.

Mr W Clarke:

Will you elaborate on the issue of dog breeding and how that regulation will come about? The Committee has heard from people who want greater regulation of that. Also, will there be further legislation — probably in the next mandate — that will deal with circuses?

Ms McMaster:

Dog-breeding establishments have been referred to; that issue came up in earlier discussions. The Welfare of Animals Bill will introduce powers to regulate the activities of establishments that have animals. The Minister has said that she intends to use those powers to regulate and license dog-breeding establishments in order to improve standards and to assist legitimate local breeders to market their dogs. Subordinate legislation will follow to regulate those establishments once the Bill is enacted and the regulatory powers are available. The detail of that subordinate legislation will be consulted on with stakeholders and brought before the Committee as part of the process of developing it.

The issue of circuses —

Mr W Clarke:

And pet shops and that type of thing.

Ms McMaster:

Pet shops are currently required to be licensed, and that requirement will continue. On the question of circuses, there will be powers in the Bill to introduce subordinate legislation to prohibit the keeping of any animal should that be necessary to secure its welfare. If the need emerges to regulate circuses or the use of animals in circuses, the Department will examine the evidence and bring forward a proposal for subordinate legislation to deal with the issue. We would work through the normal process of developing subordinate legislation; it would be drafted and brought to the Committee and consulted on with stakeholders.

Mr Molloy:

The League Against Cruel Sports has made a proposal about the use of the Ulster Society for the Prevention of Cruelty to Animals (USPCA). Does the Department have any views about the USPCA's role? The proposal refers to the appointment of inspectors. Who would those inspectors be?

Ms McMaster:

There is no intent in the Bill to change the role of the USPCA, which, currently, has no statutory role in animal welfare. However, the Bill includes the power to appoint inspectors to enforce the Bill's provisions and potentially extends that enforcement role to the Department and district councils or to people appointed by councils under the guidance of the Department.

Mr Molloy:

Who will control the USPCA?

Ms McMaster:

The USPCA is a charitable organisation.

Mr Molloy:

Yes, but in the past, it has worked in conjunction with DARD. It has pens, and it seizes dogs from other pens. Who will control the USPCA? Who will police the policers?

Ms McMaster:

The USPCA is one of the animal health and welfare stakeholders that we deal with. That is the relationship between the Department and the USPCA. It is not used to police any of the provisions of animal welfare legislation.

Mr Molloy:

I want to follow that up. There have been instances in which the USPCA seized animals from breeding kennels on the word of DARD. Who is going to ensure that the messengers from DARD are going to carry out those instructions?

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

The USPCA has no statutory function. It sometimes works with the police, who have the power to seize animals. The USPCA may, on occasions, persuade the police to seize animals, but it has no power to seize, nor does DARD. That is one of the reasons why we are trying to bring forward this legislation.

Mr Molloy:

At this point, Chairperson, I should again declare an interest as a member of Dungannon District Council. That council and other councils will have to address the financial and resource implications of the legislation. Are there proposals on how councils will be supported and resourced if they are to take on new roles?

Ms McMaster:

Yes, absolutely. We have been looking at the resourcing required to deliver enforcement of the Bill. The significant difference in the Bill is the new duty of care for non-farmed animals. The Bill provides power for inspectors to be appointed by the Department or by district councils under guidance from the Department. We have been looking at the role of district councils in enforcement with regard to non-farmed animals. We submitted a bid for around £750,000 in the Budget 2010 exercise to assist with the enforcement costs of the Bill. Essentially, the purpose of that is to cover the cost of the new duty of care for non-farmed animals.

Mr Molloy:

Subordinate legislation has been mentioned a number of times. As we did with brucellosis, I would like the Committee to see that subordinate legislation before we go into Committee to approve any Bill that may come forward. As with everything else, the issue will be in the fine detail. Furthermore, is an equality impact assessment (EQIA) being carried out on this piece of legislation?

Ms McMaster:

The Bill is a framework of primary powers, and it will, among other things, create powers to make subordinate legislation across a range of areas. The primary legislation is intended to have a long life, and the purpose of not defining the scope of the Bill's powers in the primary

legislation is to allow us to revise and introduce new subordinate legislation, if appropriate, in areas that we do not know about today but which may become welfare issues. At this stage, we do not know and cannot know the full range of areas for which we may need subordinate legislation in the future. We do know about some areas: for example, we want to bring forward subordinate legislation in the area of dog-breeding establishments.

Mr Molloy:

Can we see that legislation in advance?

Ms McMaster:

That will be early subordinate legislation, but we cannot bring that legislation forward or consult on it until we have powers in place.

The Chairperson:

You can bring us the policy behind the primary power.

Ms McMaster:

Yes, we can certainly discuss with you key principles at that level. That may be helpful for the Committee.

Mr Molloy:

What about the EQIA?

Ms Davey:

The Bill has been ruled not to have any equality impact on any of the section 75 groups.

Mr Molloy:

Who made that decision?

Ms Davey:

It would have been made in the Department. A full screening exercise would have been carried out.

Mr Molloy:

I would like to see that screening exercise. If we are talking about legislation that will impose on various different sectors, an EQIA is not something on which the Department can decide and is something that the Department should be implementing.

Ms Davey:

There is a screening document that we can produce.

The Chairperson:

You can produce that for us. Thank you.

Mr Doherty:

It is quite clear that Scotland went through a process such as this and came out with one conclusion. England and Wales went through a similar process and came out with a different conclusion. What is happening in the South?

Ms McMaster:

The South is working on an animal health and welfare Bill. We are further ahead. For a start, we have a separate Diseases of Animals Act. That was what we worked on last year. We are now working on the Welfare of Animals Bill. The South is working on both aspects as part of the one Bill.

Mr Doherty:

What stage are they at?

Ms McMaster:

They are not as far on as we are, in that we have not seen the final policy proposals from the South. However, from discussions with counterparts in the South, we know that they are looking at broadly the same range of issues as part of the welfare aspects of their Bill. We have looked at the powers in the new legislation that was brought forward in England, Scotland and Wales. The welfare of animals legislation in Britain was updated several years ago, and we want to have welfare standards here that are, at least, equivalent. That is something that the South has been

looking at as well.

Ms Davey:

They hope to be in a position some time later in the year or early next year to bring forward the headers of their Bill, which will set out the policy basis.

Mr Doherty:

As we move forward, and as they move forward, particularly on issues of common purpose and common impact, will you keep us aware of what is going on?

Ms Davey:

We certainly will. We keep in regular touch with them, so that we understand where they are.

Mr McGuckian:

It may be useful for you to know that Veterinary Ireland, the professional veterinary body in the South, is totally opposed to tail docking, as is the British Veterinary Association.

Mr Molloy:

Is that for financial reasons? They would make more money if it had to be done later.

Mr McGuckian:

If you read its website, you will see that it takes that position from a scientific basis, which is that, as my veterinary colleague said, the animal suffers acute pain when its tail is docked.

The Chairperson:

Are you talking about cosmetic tail docking?

Mr McGuckian:

I am talking about tail docking across the board.

Mr Gibson:

Colette referred to the regulation of breeding establishments, rather than the regulation of

breeding. It is my judgement that most of the pups in the Province come from those who have one bitch, rather than from breeding establishments. Did I hear correctly that the regulation just extends to those establishments, rather than the regulation of the breeding of dogs? Is it the intention that the responsibility for that regulation will be with local government?

Ms McMaster:

It is likely that the regulations will define a breeding establishment. Recently, the authorities in the South brought forward legislation relating to their breeding establishments. They have defined a breeding establishment as not necessarily being a commercial premises; it depends on the number of dogs involved. A definition that means that it does not have to be a commercially established organisation is something that we can look at here.

Ms Davey:

Clause 11 allows regulations for securing the welfare of animals. That provides powers to regulate for the animal and the animal progeny, if that proved necessary. So, the progeny are also included in the Bill. However, as Colette said, it is about defining a breeding establishment. That would be part of the process of making those regulations.

Mr Gibson:

I also asked who would have responsibility to carry out the regulation and to monitor the establishments to ensure that their activities were consistent with the regulations.

Ms McMaster:

Currently, responsibility for monitoring licensed premises lies with DARD in many respects. The Bill proposes that the enforcement and the monitoring of licensed premises would be carried out by district councils. It is likely that, under future subordinate legislation, those functions in relation to breeding establishments would fall to the councils.

Ms Davey:

The powers within that legislation would allow that to be done on a full cost recovery basis, which is in line with government policy on the provision of licences, etc.

The Chairperson:

There are no further questions. Thank you for your attendance. We would like you to appear before the Committee next week with the necessary evidence on tail docking. The Committee Clerk will liaise with you on times.