



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

**Welfare of Animals Bill:
Departmental Officials**

22 June 2010

NORTHERN IRELAND ASSEMBLY

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RURAL DEVELOPMENT**

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Departmental Officials**

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Members present for all or part of the proceedings:

Mr Tom Elliott (Deputy Chairperson)

Mr P J Bradley

Mr Willie Clarke

Mr Pat Doherty

Mr William Irwin

Mr Kieran McCarthy

Mr Francie Molloy

Mr Jim Shannon

Witnesses:

Ms Kate Davey)

Mr Andrew Kell)

Mr Paddy McGuckian)

Ms Colette McMaster)

Department of Agriculture and Rural Development

The Deputy Chairperson (Mr Elliott):

Good morning. I welcome Colette McMaster, Kate Davey, Paddy McGuckian and Andrew Kell. Whoever is leading today should make a presentation, after which members will ask questions.

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

Thank you for giving us the opportunity to address the Committee on the Welfare of Animals Bill. We are grateful for the opportunity to update the Committee as part of the process of continuing engagement in advance of the formal scrutiny of the Bill. I am accompanied by Kate

Davey, head of the Welfare of Animals Bill team, her deputy, Andrew Kell, and Paddy McGuckian, our veterinary adviser on animal welfare issues.

Since our previous update on 16 March 2010, agreement to the Bill's introduction to the Assembly was obtained at the Executive meeting on 10 June, and it was introduced to the Assembly yesterday, 21 June. To give the Committee a better understanding of the legislative objectives, we forwarded a copy of the Bill and the explanatory and financial memorandum to the Committee Clerk on 10 June on an in-confidence basis. I hope that all members received that. Following the introduction of the Bill to the Assembly yesterday, the delegated powers memorandum was issued to the Committee yesterday afternoon.

Before I outline the provisions in the Bill, I will set out a brief background to it and the reasons for the need for the new legislation. The Bill is intended to replace the current Welfare of Animals Act (Northern Ireland) 1972, which is almost 40 years old and is no longer sufficient to deal with animal welfare issues. The Bill updates and strengthens the powers in the 1972 Act. The new powers will address the gap between the high level of protection that is afforded to farmed animals compared with the somewhat limited protection that is given, at present, to non-farmed animals, including domestic pets. The Bill will also introduce higher penalties for the more serious welfare offences, such as causing unnecessary suffering and animal fighting.

The key benefits of the Bill are: it introduces a duty of care for all protected animals, including domestic pets; it provides powers to take action to prevent animals' suffering, as opposed to the current position whereby action can be taken only after suffering has occurred; it strengthens the current powers on animal fighting, including dogfighting; it provides powers to regulate, through subordinate legislation, a wide range of activities involving animals, such as dog-breeding establishments, the use of animals in travelling circuses and the keeping of non-dangerous exotic pets; and 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 of the Bill, and the remaining clauses and schedules outline the procedural aspects of how it can be implemented.

I will now take a few minutes to set out the Bill's key provisions in more detail. Part 1 covers clauses 1 to 3 and outlines the scope of the Bill, which covers all vertebrate animals. Clause 1 also provides the power to extend, in the future, the definition of an animal to include invertebrates, should scientific evidence become available that those animals are capable of feeling pain. Although 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 those that are "commonly domesticated in Northern Ireland", are "under the control of man" and "not living in a wild state".

Clause 3 defines who is responsible for the animal. Although the owner is always regarded as being responsible for an animal, a person who is "in charge" of an animal on a temporary or permanent basis is also responsible for an animal while it is under his or her 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 that are aimed at preventing specific types of harm, one of which is unnecessary suffering. It will be an offence to cause or permit unnecessary suffering, whether by a positive act or by an omission.

The title of clause 5 is “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 clause 5 are set out in schedule 1.

Clause 6 covers 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 deals with the “Administration of poisons, etc.”. It will be an offence to give any poisonous substance or drug that is not normally poisonous in such quantities that it effectively becomes a poison to a protected animal 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 is entitled “Fighting etc.”. 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 in 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 to an animal fight. The change is that those existing offences will become offences whether or not unnecessary suffering is caused.

In addition, new offences have been added. Those are: to train or keep an animal for use in connection with an animal fight; to cause an animal fight to take place or to 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 of the Bill 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 for a person to fail to ensure that the needs of an animal for which they are responsible are met to the extent that is “required by good practice”. The Bill also sets out what the needs of animals are. Those are based on the five freedoms: the need for a “suitable environment”, the need for a “suitable diet”, the need 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 the action that 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, similar to those that are already widely used for farm animals. Such codes will be subject to consultation with stakeholders.

The 1972 Act provides powers to make regulations to secure the welfare of farmed animals, and, in 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 of those establishments, and it 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. That will allow, for example, 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 it leaves the detailed matters to subordinate legislation. That will allow the flexibility for legislation to keep pace with advances in animal welfare without needing to come to the Assembly to change primary legislation. All subordinate legislation that is made under the powers in the Bill will be subject to consultation with relevant stakeholders and to Committee scrutiny. Any regulations made under the Bill will be subject to affirmative resolution.

Clause 14 makes it an offence to abandon an animal, whether or not the animal suffers. Clause 15 makes it an offence to give an animal as a prize to anyone under the age of 16, unless the child is accompanied by an adult who is responsible for the “care and control” of the child. Clause 15 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 a pet.

Part 3 is concerned with animals in distress. Clauses 17 to 20 outline the steps that an inspector or constable can take to alleviate immediately an animal’s suffering or to prevent an animal from suffering should its circumstances not change. The clauses in Part 3 of the Bill also outline the powers of entry and provide powers to apply to a Magistrate’s Court, in advance of any criminal hearing, for disposal of the animals that have been taken into the possession of the enforcement body. Following the court’s determination, the owner of the animals has a right of appeal. The power of entry to a dwelling will, in the main, be by warrant. Schedule 3 to the Bill sets out a range of safeguards for powers of entry, inspection and search under warrant. Those include the use of a code of practice similar to that agreed by the Committee for the Diseases of Animals Act (Northern Ireland) 2010.

Enforcement, prosecutions and post-conviction powers are dealt with in Part 4. The enforcement powers are contained in clauses 21 to 28 and provide powers of entry and general powers of inspection in relation to offences and powers in the Bill. Many of the existing arrangements will remain in place. Similarly to what happens now, for example, DARD will appoint inspectors to implement and enforce provisions that deal with farmed animals on agricultural land. The powers that are currently afforded to the PSNI will remain. The PSNI will, as necessary, continue to provide support for the appointed inspectors and will also lead on welfare issues involving organised animal fighting or where other criminal activities are involved. The Bill will provide powers to councils to appoint inspectors. It is proposed that councils will implement and enforce the provisions that deal with non-farmed animals.

Clauses 29 and 30 cover prosecution powers and provide district councils with powers to initiate prosecution proceedings for offences under the Bill. Those powers will also remain with the Department. Proceedings for prosecutions will start within three years of the commission of

the offence or within 12 months from the date on which sufficient evidence becomes available to justify a prosecution.

Clauses 31 to 44 and, in Part 5, clauses 50 and 51, set out the post-conviction powers and provide for increased penalties for serious welfare offences, such as animal fighting, to a maximum of two years' imprisonment and/or an unlimited fine. Powers are also provided to the courts following a conviction to deprive a person of the animal in question, to order the destruction of the animal, disqualify a person from keeping animals and order the forfeiture of equipment and cancellation of licences.

Clauses 45 to 49 and clauses 52 to 54 in Part 5 set out the general aspects of the Bill and provide powers to the Department and district councils to appoint inspectors. Part 5 also explains that the Bill does not apply to anything done lawfully under the Animals (Scientific Procedures) Act 1986 or anything that occurs in the normal course of hunting, coursing or fishing.

Part 6, comprising clauses 55 to 60, sets out the Bill's general housekeeping aspects.

I have gone through the main aspects of the Bill fairly quickly. However, I hope that my 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 prevent unnecessary suffering to any vertebrate animal and to promote and enhance the welfare of all protected animals, including domestic pets.

The Bill's Second Stage is provisionally scheduled for Tuesday 29 June 2010, which would allow Committee Stage to start on 30 June. We look forward to working with the Committee during the Bill's formal scrutiny. We note that, later today, the Committee will consider a motion to extend the Bill's Committee Stage. We urge the Committee to consider extending Committee Stage to no later than the week beginning 29 November 2010, as happened with the Dogs (Amendment) Bill, or earlier if possible. There is likely to be significant time pressure on Assembly plenary sittings as Departments seek to get their legislation through before the end of the current mandate. The extension of Committee Stage to no later than the week beginning 29 November should ensure that sufficient time remains for the Bill to complete its Consideration, Further Consideration and Final Stages and for Royal Assent to be obtained before the Assembly rises.

We are happy to clarify any issues or answer any questions that members may have.

The Deputy Chairperson:

Thank you for that information, Colette. I will begin with a couple of technical questions. Where are non-farmed animals defined?

Ms McMaster:

The Bill covers all vertebrate animals and does not define farmed or non-farmed animals. The legislation applying to farmed animals is the Welfare of Farmed Animals Regulations (Northern Ireland) 2000.

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

As Colette says, the Bill does not go as far as defining farmed or non-farmed animals. The Bill provides protection for all vertebrate animals that are under the control of man — that is, a protected animal. The definition in the Bill is that of a protected animal. Within that definition, all farmed and non-farmed animals are automatically covered.

The Deputy Chairperson:

However, there is a distinction. Colette, did you say that the enforcement of the protection of non-farmed animals will be the responsibility of councils? There must be a distinction, and I am trying to find out where that distinction is defined. Is it in another piece of legislation?

Ms McMaster:

The existing arrangements for enforcement and the current legislation provide a higher level of protection for farmed animals. The arrangements for enforcement are that the DARD veterinary service enforces the welfare legislation powers in respect of livestock on agricultural land. In effect, that is the definition of farmed animals in working practice.

The Deputy Chairperson:

You say livestock on agricultural land. Surely that could include dogs or cats.

Ms McMaster:

The Welfare of Farmed Animals Regulations (Northern Ireland) 2000 does not cover domestic pets, but farmed animals are defined in that legislation.

Ms Davey:

An administration or arrangement, such as a service level agreement, will be put in place with the councils in which the areas that they will take forward and the areas that the Department will take forward will be defined. It will not be legislated for. The powers in the Bill allow the inspectors appointed in councils to look at any animals, as is the case with the Department. The powers of the inspectors are wide, but an administrative arrangement will be put in place to define who has what role, so that there is clarification for the public. They will know that they should contact the council if they have an issue about a particular type of animal and that they should contact the Department if they have an issue about a different type of animal.

The Deputy Chairperson:

I am concerned that, if councils or inspectors bring forward a legal case against an individual for cruelty to animals, that individual may be able to benefit from a loophole due to an argument about whether the animal was farmed or non-farmed. I want to ensure that that is clear and that there is no loophole.

Ms Davey:

Our legal services tell us that there is no loophole. There is no definition of farmed or non-farmed animals in the Bill, and there is certainly no loophole. The powers of council inspectors are for any protected animal and any vertebrate animal. Departmental inspectors and council inspectors have a wide range of powers. There is no loophole, and we have had discussions to ensure that that is the case.

The Deputy Chairperson:

The Dogs (Amendment) Bill has had its Second Stage. Do the two Bills complement each other? I wonder how closely the two Bills work together because some aspects of one Bill may rely on legislation in the second Bill.

Ms McMaster:

The Dogs (Amendment) Bill is concerned with the control of dogs, and the Welfare of Animals Bill is concerned with the welfare of animals, which includes the welfare of dogs. Our two Bill teams are aware of each other's work, and they are progressing in parallel. Therefore, we are

aware of any implications of this Bill on the Dogs (Amendment) Bill. As the Bill teams developed the two Bills, they took into account what is covered by existing legislation and, indeed, by any new Bills.

Ms Davey:

One Bill complements the other. Legally, the same powers cannot be in two pieces of legislation. Therefore, we have to ensure that, if the Dogs (Amendment) Bill includes a certain matter, this Bill does not, and vice versa. As Colette said, we must also ensure that there is no loophole. Although one Bill complements the other, they certainly do not carry the same powers, because, legally, that cannot be done.

The Deputy Chairperson:

I appreciate that. However, I would not want the two Bills to work against each, especially where cruelty to dogs, through dog fighting, is concerned.

Ms McMaster:

We have made it quite clear that dog fighting is covered by the Welfare of Animals Bill, because it covers not only dogs but fighting that involves any animal. The regulation of dog-breeding establishments will also be dealt with by the Welfare of Animals Bill, and we will introduce subordinate legislation on that regulation that will be similar to that for other activities involving animals. We want to keep that in clear focus.

The Deputy Chairperson:

The Committee will scrutinise both Bills, and, if we identify any flaws, we will bring those to your attention.

Ms Davey:

I can give you a clear example. Clause 12(8) provides for a specific power that repeals some of the powers currently in the Dogs (Northern Ireland) Order 1983 and takes them into the new Bill. Therefore, as Colette said, we would have the power to regulate dog-breeding establishments. We feel that it is more appropriate for those powers to be in the Welfare of Animals Bill as opposed to the Dogs (Amendment) Bill to prevent unnecessary suffering and provide a duty of care.

The Deputy Chairperson:

I have a query about tail docking, which has been a hugely controversial issue and will continue to be so. We had representations from both sides of the debate and heard no clear scientific evidence that tail docking causes significant pain or long-term damage. Where does the Department stand on tail docking? Do you have any specific evidence to show us?

Ms McMaster:

On 16 March 2010, we provided evidence, on request, to the Committee. Our assessment is that there is substantial evidence to support a ban on tail docking for all dogs. We put together a list of evidence in support of tail docking and against tail docking. There is a wide range of scientific evidence to demonstrate that tail docking causes pain in neonatal puppies, deprives dogs of a major body appendage and can result in behavioural changes in individual dogs. Tail docking also deprives dogs of a vital form of canine expression and may result in post-docking infections and complications. We considered evidence and advice from expert witnesses such as the Royal College of Veterinary Surgeons, the British Veterinary Association, the British Small Animal Veterinary Association and Veterinary Ireland, which are opposed to the non-therapeutic docking of dogs' tails. We listed a range of evidence for and against tail docking. As the Committee is

aware, two additional pieces of research are expected, which will provide further information. We will assess that research in light of the other available information. However, we identified a range of research to support a ban on tail docking.

The Deputy Chairperson:

I assume that all that evidence is available to the Department for Environment, Food and Rural Affairs (DEFRA) in England and Wales?

Ms McMaster:

Yes, it is. All that evidence is published and is available.

The Deputy Chairperson:

I am curious to know whether tail docking has been banned in England and Wales.

Ms McMaster:

The Animal Welfare Act 2006 provides an exemption for working dogs. However, as I understand it, that is quite difficult to enforce in practice. Professional veterinary bodies that have experience of working with that exemption have come to that conclusion. The Scottish legislation did not provide such an exemption, and it banned outright the docking of dogs' tails. It has been found that that is a much clearer and more effective approach to enforcement.

The Deputy Chairperson:

It would be useful if we had some information about DEFRA's experience of dealing with that.

Ms Davey:

We can certainly get the Committee some information on that. I have spoken to DEFRA and the Royal Society for the Prevention of Cruelty to Animals (RSPCA), both of which enforce the legislation in respect of non-farmed animals and domestic pets in England, and, as Colette said, they do not think that the exemption works very well. The exemption is one of the most contentious and difficult parts of the legislation to implement. DEFRA advised us that the decision made in England was not based on scientific evidence. A political decision was taken in the House that an exemption would be allowed for working dogs. Most of the evidence that we provided to the Committee is also available in England. Ultimately, the decision was a political one and was not based on evidence. I have no doubt that the Assembly will come to its own conclusions about the matter.

The Deputy Chairperson:

That is right, Kate. The Assembly will probably come to its own conclusions. In fact, there is no "probably" about it; the Assembly will come to its own conclusions. In the end, it will be a political decision. However, I assume that politicians will try to base that on evidence. I am sure that you can appreciate that we are receiving confusing and conflicting messages at the moment.

Mr Irwin:

I have concerns about tail docking, which has gone on for decades without any real controversy. I think that an exemption on working dogs is a sensible way forward. Clause 6(5) introduces a ban on the showing of dogs whose tails have been docked after the legislation has come into operation. Does that mean that dogs that have their tails docked because of injury cannot be entered for a show? That is what it says here.

Ms Davey:

You are talking about an exemption that will apply on very few occasions.

Mr Irwin:

That is not mentioned in the clause.

Ms Davey:

I appreciate that. A vet will dock a dog's tail only if that is the ultimate means of curing the animal as opposed to treating it. I accept fully that there is a reference to that in the Bill.

The Deputy Chairperson:

The docking of dogs' tails is dealt with in clause 6.

Ms Davey:

Rather than giving the Committee an interpretation of that today, we will take legal advice on it and come back to the Committee. I think that that would be better.

The Deputy Chairperson:

What happens if a dog's tail has been docked before the legislation comes into operation?

Ms Davey:

There is no difficulty in that respect.

Mr Irwin:

I am concerned about dogs that have their tails' docked because of an injury after the legislation comes into operation.

Ms Davey:

We will seek legal advice on that and come back to the Committee with a definitive answer.

The Deputy Chairperson:

Will it be an offence to show a dog here whose tail was docked in England, where it is legal to dock working dogs' tails?

Ms Davey:

It will be an offence if the dog's tail was docked after the legislation was enacted.

The Deputy Chairperson:

Is that still the case even if the dog's tail was docked in England?

Ms Davey:

Yes, it is.

The Deputy Chairperson:

That will be quite difficult.

Mr W Clarke:

The Deputy Chairperson covered most of the points on which I wanted clarification.

The Deputy Chairperson:

I hope that you are not saying that you and I think alike.

Mr W Clarke:

Will you clarify the situation on the licensing of dog-breeding establishments? You mentioned

separate legislation. Breeders told the Committee that they wanted greater regulation, as applies in other sectors of the agriculture industry — horses, for example.

The docking of dogs' tails will probably be the most controversial issue, because of a lack of information. You spoke about DEFRA. Does the Department have reports on evidence-based information that was presented to the Parliaments on damage to dogs' tails, both in Europe and across the water? Is there any evidence base, particularly in relation to working dogs? Clarity is important on the exemption of working dogs from tail docking. That issue will be raised in Committee regularly. Is there any information on the percentage of working dogs, particularly in England, that are exempt?

Does the Department have information about any increase in animal neglect, particularly in the current economic climate? Has there been a huge increase in the past year or so?

Ms McMaster:

We are aware that dog breeders would welcome regulation of their industry. They think that regulation would strengthen their industry and enable them to market their dogs elsewhere, and so on. That will be part of the range of activities that we will seek to introduce through subordinate legislation. As with any subordinate legislation, the details will go out to public consultation and be subject to scrutiny by the Committee.

The Deputy Chairperson:

Can that not be done in the Bill?

Ms McMaster:

The Bill will introduce the powers to regulate any activity involving animals through subordinate legislation. A range of activities could be included in that, of which dog-breeding establishments could be one.

The Deputy Chairperson:

Would it not be simpler to do it on the face of the Bill?

Ms McMaster:

We are doing it through subordinate legislation to allow flexibility. To do it on the face of the Bill would limit the activities that can be regulated because the Bill will define those activities. There will be advances and new industries will emerge, and the regulations will remain current and will allow us, where necessary, to regulate on new activities or any other animal welfare issues that arise. Subordinate legislation can be reviewed and kept up to date as opposed to having to change primary legislation. Subordinate legislation can also go into a level of detail that is not generally appropriate for primary legislation. The primary legislation will deal with principles and regulating powers. Dog-breeding establishments are included as one of those activities involving animals on which we will seek to introduce subordinate legislation.

The Deputy Chairperson:

I simply thought that it might be more convenient to include that on the face of the Bill so that further subordinate legislation would not be required.

Ms McMaster:

We have not consulted on the details. We want to consult on the issue of dog-breeding establishments with the relevant stakeholders.

The Deputy Chairperson:

I am sorry to have interrupted you.

Mr W Clarke:

So, you will be consulting as the Bill is being processed and not at the tail end: please excuse the pun. Getting the Bill passed within the lifetime of this Assembly, and consulting after that, will take a considerable period of time. This is a very emotive issue. Rogue elements in breeding establishments are getting all good dog breeders a bad name, and I am concerned that the process could drag on for four years.

Ms McMaster:

I do not dispute the length of time with you. When we come to determine the subordinate legislation that we will be introducing, we will need to identify and develop the priorities for inclusion in that legislation. People have commented a lot about dog-breeding establishments, so those are likely to be included at the start. As regards consultation, we need the powers that are in this Bill to enable us to introduce subordinate legislation.

Mr W Clarke:

That is dead on.

Ms McMaster:

We know that that is a priority for a lot of people.

Mr W Clarke:

I have a few other points.

Ms McMaster:

You mentioned the docking of dogs' tails and asked whether there were any reports providing evidence-based information about the damage to tails.

Ms Davey:

We have provided reports to the Committee, and I think that Ms McMaster alluded to this earlier; a report that has looked at evidence of tail injuries is due to be published next weekend. We have been told numerous times that it will be published, and we hope sincerely that it will be available next weekend. Once that is published, we will supply it to the Committee and members will see the available evidence.

You also asked about data on working dogs. There are different definitions of the phrase "working dog" in English and Welsh legislation. Wales has a list, whereas England kept things very general and defined three of four breeds. It is exceptionally unlikely that England will be able to provide us with the number of working dogs that exist or have been docked, but we will certainly ask for that information. As a result of an earlier question that you asked, we tried to get similar data in Northern Ireland, but it was just not available. We provided the Committee with the basic data from the Kennel Club and councils; the Kennel Club gave the number of pups that were born by breed and the councils gave the number of dogs that are generally licensed. Five councils were able to break the information down, but 21 councils had no idea of the breeds of dogs here. The data available is fairly limited, but we will certainly ask those questions.

Mr W Clarke:

Exemptions are a problem because we do not know how many dogs would be affected. My thoughts are that nearly all dogs are domesticated, in one form or another, to do work. That, primarily, is what most breeds were for, so nearly all breeds would be exempt.

Ms Davey:

We analysed the data, which was based on England, to see the implications. We defined working dogs as working gun dogs rather than working sheepdogs because, obviously, the tails of sheepdogs such as collies are not docked traditionally. By gun dogs, we mean springer spaniels and cocker spaniels, etc, which are docked traditionally. We defined those from the information we provided to the Committee, and we calculated the average lifetime of a dog. On the basis that it was around 11 to 12 years, we calculated that, in respect of gun dogs collectively, there are probably around 5,000 pups born every year. If an exemption were allowed, those are breeds that could have their tails docked. However, they are very general figures. The information is general; it does not provide a definitive figure.

Ms McMaster:

Your final point was about the increase in neglect. We have more information about farmed animals, because that is what DARD has been dealing with under existing legislation. There were a number of high profile animal welfare cases last winter because of the severe conditions, and the Veterinary Service was involved in 12 cases, some of them serious. However, having said that, the overall number still represents a very small percentage of farms in the North.

Ms Davey:

All of the powers that we have for farmed animals in the 1972 Act are replicated in this Bill. There is very little additional power for farmed animals in the Bill, because we have such an extensive range of farmed animal legislation at present. The powers that we have in connection with farmed animals will continue, so we are not expecting to see a rise in the number of farmed animals that we will have to deal with. There will be a rise in the numbers of non-farmed animals, such as cats and dogs, and the Bill will give us powers, which we do not have at present, to deal with those cases.

Mr W Clarke:

In what category are horses?

Ms Davey:

The horse is defined as a non-farmed animal.

Mr W Clarke:

Has there been a rise in the neglect of horses?

Ms Davey:

There is little substantive evidence of that. There is anecdotal evidence, but we cannot say that there is a wide range of horse welfare cases. I am aware of only one welfare case in respect of horses.

Mr Molloy:

If inspections were carried out, horses might come into one of those categories. However, let us address this point. The aim of the Bill is animal welfare, is it not?

Ms Davey:

Yes.

Mr Molloy:

Your final point is one that I have made before, but it has not been taken on board. If this Bill is about animal welfare and stopping suffering, why are we not changing legislation in relation to pigs, sheep and other animals that undergo the pain of castration? How is your assessment of pain made? Who makes it?

Ms Davey:

One has to look at the evidence and at the reasons for the pain. The pain has to be unnecessary for it to constitute neglect.

Let us talk about the docking of lambs' and pigs' tails. There is a clear husbandry need for lambs' tails to be docked, but it should not be done as a matter of course. Each farmer should look at his flock, and his decision should be based on the breed, the animals and the conditions. On that basis, he should decide whether the animals should be docked. Docking will cause pain, but if it is not done, there is likely to be greater pain caused later to the animals through fly-striking or whatever.

The same goes for the docking of pigs' tails. The legislation states clearly that docking should not take place as a matter of course. Proper arrangements should be in place to try to control the biting of tails. It is only when that fails, and on the basis of veterinary advice, that farmers should dock pigs' tails. It is not the case that a certain level of pain is acceptable; it is about looking at the circumstances and judging whether to act now to save substantial pain later and whether there is an alternative.

Mr Molloy:

When a dog bites, one puts a muzzle on it. You are not suggesting that one should put muzzles on pigs. If this is about biting, and it is not about pain, surely you should be trying to stop the other dog or pig biting.

The argument between welfare and pain falls short. I believe that this issue is being driven by vets, because there is financial reward in it for them in the long run and because we know the process that will be gone through.

As regards the power to make those decisions, you have the power with respect to animal welfare. You are saying that if a dog's tail is infected or injured, the matter should be dealt with by a vet, and the tail may not need to be docked even at that stage. Surely, the same applies to sheep or lambs? We all know that the majority of lambs are docked at birth, and the Veterinary Service provides rubber rings or bands to do that, in the same way that it does for castration. Who decides what is and what is not an acceptable level of pain?

Ms Davey:

It depends on the circumstances. You gave an example of the muzzling of pigs, but I do not think that the farming community would accept that.

Mr Molloy:

We are not talking about the farming community. We are talking about your legislation. You are making the decisions.

Ms Davey:

The implications of our legislation ultimately affect farmers or owners of domestic pets. We have got to be practical about what we introduce.

Mr Molloy:

Are you saying that pain does not matter?

Ms Davey:

No; pain does matter. The point is to look at the circumstances and justify the decision on the

basis of what will happen during an animal's lifetime.

I am not clear about the point you made about vets being rewarded. I am not sure what the reward would be.

Mr Molloy:

There is a clear line. If a working dog's tail is damaged, it would have to have veterinary surgery. Anyone who deals with vets knows that what the cost of that would be.

Ms Davey:

I will make two points. Veterinary surgeons are currently allowed to dock tails, but they will lose that business. A veterinary surgeon can currently dock any dog's tail, and that will stop.

Mr Molloy:

That does not often happen.

Ms Davey:

That is what the law currently states: if the tail is docked, it must be done by a veterinary surgeon. Evidence shows that very few working dogs will be injured. I think we will be in a better position next weekend when the report is published to give some —

Mr Molloy:

Can I ask a question? You said that "very few" working dogs' tails will be injured. Why is that? Is that because their tails have already been docked? You cannot use the current injury figures as a comparator, because the working dogs' tails have been docked. Those figures would have to be reviewed in five years' time to see what the injuries would be.

Ms Davey:

Evidence-based on work already done in England, Scotland and Wales since their legislation has been introduced is due to come out next year. The Scottish introduced a complete ban, so there is evidence. As this is the first time that evidence is coming forward, we look forward to seeing it and examining the basis for it.

Mr Molloy:

How many pups are born to working dogs? Do you know the total number of sheep and pigs that are born?

Ms Davey:

No, not off the top of my head; but we have sheep electronic identification (EID), as members are aware, and we can certainly look at the number of sheep that are registered with farmers. I am sure that we can work it out. I think that the average is a lamb and a half per ewe.

Mr Molloy:

This piece of legislation on docking falls short because it does not deal with animal welfare; it deals with one specific issue of animal welfare. If it is practical to say that a certain level of pain is acceptable for the rest of the animals, there is nothing to say that the sheep, lambs or pigs do not suffer. Imagine what would happen if the first thing someone did when a newborn baby's teeth came up was to cut them off. That is what is happening within the normal protected species of pigs and that is justifiable according to this legislation. This is not about welfare; it is about your particular ideas of what we should be doing and how. Dog breeding is also farming. The practice could be called dog farming; it is just the category that has come through.

You said that the RSPCA was the enforcing authority in England. Is there any proposal to make the USPCA as the enforcing authority here? What is the role of the inspector? We have had some very bad experiences with the USPCA, its enforcement and powers of entry. I want assurance that the enforcement role will not transfer to the USPCA in any future legislation.

Ms McMaster:

To pick up on what Kate said about pigs and lambs. An overall welfare assessment has been made in those cases, and it is in the greater interest of those animals to dock the tail rather than to —

Mr Molloy:

When was that decision made? How many years ago?

Ms McMaster:

That is part of the legislation on the welfare of farmed animals.

Mr Molloy:

How long has that legislation been in place?

Ms McMaster:

It is quite current and is updated regularly through the EU.

Ms Davey:

The legislation has been in place since 2000 and has been updated regularly to the present.

Ms McMaster:

Therefore, it is based on current assessments of welfare.

The USPCA has no statutory role under the legislation; it is an independent charity. There will be no change to the role of the USPCA in the Bill. The Department will continue to work closely with the USPCA on the welfare of animals, as it has been doing through welfare cases. There is nothing in the Bill that will change the current arrangements.

Mr Molloy:

The Department works along with the USPCA but does not have control over it. The irresponsible actions of the USPCA have left a number of dog breeders in difficult situations. Those people have had no recourse, but when the Department has been challenged, it has walked away from the problem. The Department has a responsibility if it is co-operating and working with those organisations.

As happened with the legislation relating to brucellosis, would it be possible to have sight of your proposals before this Bill's provisions are finalised?

Ms McMaster:

That will not be possible, because there is a potential for quite a large programme of subordinate legislation to arise from the Bill. One of the issues with the primary legislation is the very tight timescale that we are working to so that it gets it through the Assembly. If the Bill is to be passed before the Assembly goes into recess, time will be one of the constraints.

We will be bringing the programme of subordinate legislation to the Committee, and the Committee will have close scrutiny of every piece of legislation in that programme.

Mr Molloy:

My worry is that if the substantial Bill is passed, the Department will be able to bring through whatever legislation it wants to afterwards. If it is possible to bring forward the Bill, I would have thought that it would also be possible to bring forward the subordinate legislation. The Committee should delay approving the Bill until the subordinate legislation is visible.

When we raised that issue during the legislation relating to brucellosis, it was possible for the Department to bring forward qualifications. Therefore, the Department should be working overtime to ensure that the Committee has the subordinate legislation so that it can see the long-term implications never mind the short-term ones.

Ms McMaster:

To clarify, the Bill will introduce the principles and the powers to introduce a range of measures. It will not specify the details that will be contained in the subordinate legislation. In the Diseases of Animals Act (Northern Ireland) 2010 there is specific reference to brucellosis, which we will not have in this Bill.

There will be a programme of subordinate legislation following the Bill, which may be update, refined or added to over the years in line with advances in animal welfare. So, it is not something that will be possible to bring forward now.

Ms Davey:

We are not talking about one piece of subordinate legislation; we are talking about the potential for numerous pieces of subordinate legislation. For example, as we said earlier, we could have subordinate legislation for dog-breeding establishments or on the use of wild animals in circuses. Those will be independent and separate pieces of subordinate legislation.

As Colette said, we will have the power to take account of future science and to develop subordinate legislation accordingly. Every piece of subordinate legislation will be consulted on with stakeholders and with the Committee.

The Deputy Chairperson:

One option could be the use of affirmative resolution rather than negative resolution for the subordinate legislation. That would give us much more of a say and make the legislation more responsive to the Assembly.

Ms Davey:

Members probably have not had the opportunity to look at the delegated powers memorandum that came through yesterday evening, which shows that the vast majority of legislation arising from the Bill will be subject to affirmative legislation. Only minor points will be subject to negative resolution.

When the Committee has had the opportunity to look at the memorandum, and if specific regulation-making powers are currently subject to negative resolution and the Committee would prefer them to be subject to affirmative resolution, it can advise us of that. However, the vast majority are already subject to affirmative resolution.

The Deputy Chairperson:

OK. We will pursue that issue as time goes on, Francie.

Mr Doherty:

Thank you for the presentation. I have two general questions. Colette, you said that the Bill was introduced to the Assembly yesterday and will be debated next Tuesday. You mentioned other timescales. I did not quite pick up on those. There is an awful lot of material to study.

Ms McMaster:

Second Stage is provisionally scheduled for Tuesday 29 June, which will allow Committee Stage to start on 30 June. The subsequent stages include Consideration Stage, Further Consideration Stage and Final Stage, after which Royal Assent needs to be obtained. When the Committee comes to consider the motion to extend the Committee Stage, we urge it to consider extending it to no later than the week beginning 29 November 2010 or, if possible, earlier. That is similar to the extension that the Committee agreed for the Dogs (Amendment) Bill.

As the Committee is aware, the Committee Stage of both Bills will run in parallel, because we anticipate that there will be significant pressure on the Assembly's plenary time as a range of Departments seek to get their legislation through before the end of the Assembly mandate. If Committee Stage is completed no later than the week beginning 29 November, there should be sufficient time to progress the Bill through its remaining stages and obtain Royal Assent before the Assembly rises.

The Deputy Chairperson:

The Committee has not taken any decision on the extension of the Committee Stage yet. You mentioned the Dogs (Amendment) Bill, which we started to scrutinise a couple of weeks ago. I am aware of the date and know that that Bill is much smaller than the Welfare of Animals Bill. Although there is pressure on the Department, the Assembly and the Bill staff, there is also pressure on the Committee. Therefore, we will consider that matter. I want to make you aware that we have not yet made any decision.

Mr Doherty:

I perhaps should not even comment on this. However, Kate, you suggested that politics should follow evidence.

Ms Davey:

I suggested that decisions, not politics, should follow evidence.

Mr Doherty:

I thought you said that politics should follow evidence. I thought to myself that that would be pure logic and a new concept to politics.

Ms Davey:

I would not be so bold as to say that. I said that decisions should follow evidence.

Mr Doherty:

Political decisions should follow evidence. I thought that you were implying that even though evidence had been built up over years, politicians often took contrary decisions.

Ms Davey:

I was repeating what I had been told by my counterparts in England and Wales that an evidence-based decision was not made on tail docking. I have been told that it was a political decision and that the evidence was set to one side.

Mr Molloy:

That is quite a political statement.

Ms Davey:

I am purely quoting what I have been told.

Mr Molloy:

It is quite a political statement to make in the Committee to say that evidence was ignored. We have not seen any evidence yet to justify that here. Therefore, we could maybe make the same statement.

The Deputy Chairperson:

That issue will come before the Committee again soon.

Mr P J Bradley:

I want to raise three points. Is the term “unnecessary suffering” all-embracing? I cannot find any reference to the word “starvation” in the Bill, although it may be in there somewhere, or reference to a lack of fresh water. I take it that the term unnecessary suffering includes both those. It might be beneficial include that.

My second point is about disqualification. Under the current law, disqualification is almost a joke because people drive a horse and cart through the legislation. People have been disqualified from keeping animals, only to be allowed to do so again within days because there are so many loopholes. Francie talked about you getting more overtime, and I hope that plenty of overtime will be devoted to copper-fastening the legislation so that disqualification really means disqualification.

My third point is a minor one. Clause 53 provides that anything that occurs during the normal course of hunting or coursing is not covered by the Bill, unless:

“the animal is released in an injured, mutilated or exhausted condition”.

It is often when an animal that is being hunted becomes injured or exhausted that it is more prone to attack or being killed. It is important that the words “or hunted” be included after “released”.

Ms McMaster:

You raised the question about starvation, water and so on. Clause 9 defines the duty of care. It is based on the five freedoms of animals:

For the purposes of this Act, an animal’s needs shall be taken to include -

- (a) its need for a suitable environment,
- (b) its need for a suitable diet,
- (c) its need to be able to exhibit normal behaviour patterns,
- (d) any need it has to be housed with, or apart from, other animals, and
- (e) its need to be protected from pain, suffering, injury and disease.

Ms Davey:

The term “unnecessary suffering” is all-embracing. It covers everything, including cruelty and any action that causes unnecessary pain.

We fully take your point about disqualification, and we have tried to extend the powers in clause 33 of the Bill to prevent the situation that you have described, in which someone is disqualified and, two days later, animals appear on the land. Clause 33 sets out clearly that the disqualified person is disqualified from owning animals, keeping them, participating in keeping

them and being any party to someone else keeping the animals. We tried to extend the power, but we are limited by human rights legislation. For example, if a husband is disqualified, his wife cannot be banned from keeping animals. She has her own human rights, and she cannot be disqualified if she has not committed an offence.

Mr P J Bradley:

That would also apply to his neighbour.

Ms Davey:

Yes, that is the unfortunate problem. Penalties can be imposed only on the person who has been convicted. They cannot be imposed on someone else who is an innocent party. We are limited in what we can do, but we feel that we have taken the legislation to the limit of what we can do to strengthen the existing powers.

Ms McMaster:

You asked whether we could consider adding the words “or hunted” after the word “released” to clause 53(1)(a).

Ms Davey:

Responsibility for hunting does not rest with the Department of Agriculture and Rural Development. My understanding is that no Department has been allocated that responsibility by the Executive. We have not put anything in the Bill that is outside the Minister’s remit. We have held it to what is within her remit, and that is why that wording has been used. The Minister of Agriculture and Rural Development does not have responsibility for hunting.

The Deputy Chairperson:

Has the Department of Agriculture and Rural Development not been asked to keep a watching brief on the private Members’ hunting Bill that is coming forward?

Ms McMaster:

If a ban on hunting were introduced as a result of a private Members’ Bill, we would need to look at that.

The Deputy Chairperson:

I am talking about the Bill’s passage. Was the Department of Agriculture asked to keep a watching brief on the Bill?

Ms McMaster:

No, that private Member’s Bill has not been allocated to a particular Department. Certainly, the Department of Agriculture does not regard hunting as an agricultural activity, and DARD’s responsibilities towards animals in the wild are very limited. That is not a Bill for which DARD would have lead responsibility.

Mr Molloy:

I imagine that it would be consigned to the bin.

The Deputy Chairperson:

Mr Shannon has just joined us, and he has one specific, short point to make on that issue. He assures me that it is very short.

Mr Shannon:

Does the Department of Agriculture not have some responsibility for the control of vermin that could cause loss of livestock on land and hills? I cannot really see how the Department does not have a role in that.

Ms McMaster:

With regard to the welfare of animals, certainly we do have —

Mr Shannon:

I am talking about hounds. The Chairperson mentioned hounds. There may be proposed changes to hunting with hounds. The Chairperson mentioned that, and you replied that there was not a role for the Department. I thought that the Department had a role in the control of vermin in relation to livestock losses. That is not a tenuous link, by the way. It is a genuine link.

Ms McMaster:

Under welfare of animals, clearly there are responsibilities for the welfare of animals generally, and we set those out with regard to the control of vermin.

Mr Shannon:

Foxes. Be specific: foxes.

Ms Davey:

That certainly does not fall within the Welfare of Animals Bill. Farmers obviously have a duty to protect their animals, but that is not legislated for in this Bill. Whether that is foxes attacking lambs, we are not putting anything in this Bill to prevent animal protection.

Ms McMaster:

The responsibility for farmers to protect their animals is in the welfare of farmed animals legislation.

The Deputy Chairperson:

OK, thank you very much.