



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

Welfare of Animals Bill

19 October 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 Roy Beggs (Deputy Chairperson)

Mr P J Bradley

Mr Willie Clarke

Mr Pat Doherty

Mr Simpson Gibson

Mr William Irwin

Mr Kieran McCarthy

Mr Francie Molloy

Mr George Savage

Witnesses:

Ms Kate Davey)

Mr Andrew Kell) Department for Agriculture and Rural Development

Mr Paddy McGukian)

Ms Colette McMaster)

The Chairperson (Mr Moutray):

We proceed to a clause-by-clause consideration of the Welfare of Animals Bill. I welcome departmental officials Colette McMaster, Kate Davey, Paddy McGukian and Andrew Kell to the session. The aim of the consideration is to seek agreement in respect of the clauses on which the Committee is not minded to seek an amendment and to focus on those on which it wishes to see amendments.

I will begin with clause 1, which deals with the animals to which the Act applies. The Committee has asked the Department to amend that clause to make clause 1(3) subject to the affirmative resolution process in line with similar legislation in England and Scotland. Is the Department content that that amendment be proposed?

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

We proposed that any regulations made under clause 1(3) should be subject to negative resolution because an extension of the definition of animals to include some of or all invertebrate animals would be welcomed by stakeholders, and that was likely to be non-contentious. If the Committee wishes any future regulations under clause 1 to be subject to affirmative resolution, the Minister is content for that to be the case.

The Chairperson:

That is a good start.

Ms McMaster:

Clause 55(2) will be amended to reflect that.

The Chairperson:

There were no issues raised in respect of clause 2. Do members agree to set clause 2 aside until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

There were no issues raised in respect of clause 3 'Responsibility for animals'. Do members agree to set aside clause 3 until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

There has been representation from some consultees who seek to have live animals in circuses banned as part of clause 4. However, the Department has stated that there is no evidence available to support a ban at the moment but that the matter could be revisited should such evidence become available. On that basis, do members agree to set clause 4 aside until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

There were no issues raised in respect of clause 5. Do members agree to set clause 5 aside until the formal clause-by-clause scrutiny of the Bill?

Ms McMaster:

Since the Bill was published, we have had a number of requests for clarification on what routine farming procedures would be permitted to be carried out.

In light of that, we think that it would be beneficial to set out in subordinate legislation the routine farming procedures that are currently permitted and that will continue to be permitted when the Bill is enacted. We put that to the Committee.

The Chairperson:

Would the Committee get advance indication of what those procedures may be?

Ms McMaster:

Yes, we can provide the Committee with a list of all procedures that are currently permitted and that will continue to be permitted.

The Chairperson:

Are members content with that?

Ms McMaster:

Clause 5 will need to be amended to reflect that we will bring forward subordinate legislation or regulations that will list the procedures that remain permitted.

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

We will give the Committee sight of the wording that we are proposing for that amendment.

The Chairperson:

Are members content?

Members indicated assent.

The Chairperson:

Clause 6, on the docking of dogs, has received a great deal of consideration. The Committee's current position is that it wishes to see the clause removed. However, members have indicated that, rather than see the cosmetic docking of tails continue, they would be in favour of an exemption for working dogs. What is the Department's view on the matter, bearing in mind that the Committee has formally asked, on two occasions, for an opinion?

Ms McMaster:

We have gone back to the Minister to update her on the current position and to tell her that, at its previous meeting, the Committee decided to recommend that clause 6 be removed. She indicated that before she comes to a conclusion on the clause, the Committee's recommendation, and the issue generally, she is keen to hear the oral evidence that was still to be presented by external witnesses. We heard further evidence today, and the Minister is aware of that.

The Chairperson:

I appreciate that. When can we expect a response?

Ms McMaster:

The Minister will want to give consideration to the evidence that has been presented. However, we will advise her that you are seeking a response.

The Chairperson:

Will you come back to the Committee Clerk on that?

Ms McMaster:

Yes. We will advise the Minister that the Committee is seeking an exemption for working dogs.

The Chairperson:

The current Committee position is that the clause should be removed. However, some members

have indicated that they would be content with an exemption for working dogs.

Ms McMaster:

We will reflect that position to the Minister.

The Chairperson:

Are members content to defer the matter?

Members indicated assent.

The Chairperson:

No issues have been raised on clause 7, which deals with the administration of poisons. Is the Committee content to set the clause aside until our formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

The Committee Clerk has informed me that the same position applies to clauses 8, 9, 10 and 11, and that no issues were raised in respect of those. Are members content to set those clauses aside pending formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Clause 12 concerns the licensing or registration of activities involving animals. There is an outstanding query as to whether the Department has the legislative competence to make legislation that places additional responsibilities on local councils. Does the Department have a response on that?

Ms McMaster:

The question was put to us in writing as to whether the Department has the authority to transfer statutory responsibilities to local councils. There is no provision in the Welfare of Animals Bill giving the Department the authority to transfer statutory responsibility to district councils, as it was not envisaged that that would be necessary.

The Department has been empowered by the Northern Ireland Executive to bring forward the Welfare of Animals Bill. The policy paper that was submitted to the Executive and agreed at an Executive meeting on 5 November 2009 stated that some powers in relation to non-farmed animals would be undertaken by district councils. The Bill has been drafted to reflect that policy position and will allow district councils to appoint inspectors under clause 45. It is, therefore, proposed that district councils implement certain aspects of the Bill, in respect of clause 12, specifically the registration and licensing of activities involving non-farmed animals.

The Chairperson:

Is that a legal opinion?

Ms McMaster:

Our draft has been cleared by our solicitors and the OLC. That is, therefore, a legal view; yes.

The Chairperson:

I am just aware of the LAGs in respect of additional responsibilities and of the need to go through

the Local Government Act (Northern Ireland) 1972.

Ms Davey:

As Colette said, the emphasis here is on obtaining agreement from the district councils. If that agreement is not obtained, we may have to revisit the way in which we divide up the work generally, rather than the clause itself. That will probably affect clause 45 rather than this clause. In the Department's opinion, this clause would stand, irrespective of who is actually implementing it. However, if we do not obtain agreement from the councils, we may need to do something in the Bill, possibly around clause 45, at a later stage.

Mr W Clarke:

I want to ask a question about the dog breeding establishments. Under the clause, councils will have the power to regulate dog breeding establishments. However, it is the Committee's opinion — I think that I am right in saying this — that the Department should be the body responsible for regulating dog breeding establishments. What is the Department's view on that?

Ms McMaster:

Under existing legislation in the Dogs (Northern Ireland) Order 1983, councils have responsibility for dog breeding establishments. That is the current position. It is the intention that, in future, the councils will also undertake responsibility for the licensing and registration of non-farmed animals, for which DARD is currently responsible. In order to be consistent with the approach taken for other legislation, it is intended that responsibility remain with the councils. Therefore, it is not the case that the Department is currently responsible for dog breeding establishments and that that will become the councils' responsibility, because councils already play a role in that.

Ms Davey:

I would add that the clause is also consistent with the Dogs (Amendment) Bill, under which councils will play an active role in licensing. Through the clause, we are trying to ensure that dog breeders have only to deal with one independent body rather than two and that that body will look after all the issues around dog breeding, including licensing. That was part of our thinking when we proposed that that power continue to stay with councils.

Mr W Clarke:

In their presentations at Committee, dog breeders have told us that they want to be regulated by the Department and treated like any other farm business. However, that will not be the case under this clause. Do you know where I am coming from? I am not being dogmatic. *[Laughter.]*

I am not sure at what stage we will actually deal with that. It has been mentioned that there will be further legislation to deal with dog breeding in general. However, dog breeders — people who are and want to be responsible and who want to be regulated and treated like any other farm business — feel that they are being treated differently under this clause.

Ms McMaster:

I do not think that the clause itself specifies who will enforce and be responsible for a particular enforcement on a particular type of licensed premises.

Mr W Clarke:

Maybe I am reading it wrong.

Ms McMaster:

I think that the power relates to issuing regulations.

Ms Davey:

The clause itself, as I said earlier, will not determine who does it. Taking your argument one step further, we are talking here about all licensing and registration activities. We are also talking about what the future could hold for riding establishments, livery yards and places like that. Riding establishments — Paddy will correct me if I am wrong — are currently licensed. That argument could be cascaded to a range of activities, not just dog breeding.

We had to look at what we felt was viable in the Department, with its current work programme and priorities, and what we could also give to councils that fitted with their current role. We can obviously take the Committee's view back to the Minister, but the Minister's view is that that work would pass to councils.

Mr W Clarke:

My feeling is that the expertise is in the Department. District councils do not have the high level experience that the Department has. There will be massive resource implications for local government. Has any thought been given to what that will mean for local government? I declare an interest as a councillor.

Ms Davey:

There are two parts to the answer to that. You said that the Department has the expertise. The Department currently does not deal with dogs, so it would be questionable whether the Department has any more expertise in that field than district councils.

Mr W Clarke:

It has vets.

Ms Davey:

Yes, I fully appreciate that it has vets, but dogs, cats, etc, are not part of that remit at this point in time. Where expertise is needed, certainly with regard to resources, we looked at what resources councils would need.

There are two issues. With regard to functions such as licensing and registration, it is Government policy that such functions are provided on the basis of full cost recovery. In subordinate legislation, therefore, we would obviously have to discuss what the fees would be for licensing a dog-breeding establishment. We should be going down the road of full cost recovery. That would reimburse the cost of carrying out that activity, whether it is carried out by councils or the Department.

The second issue is the general resourcing of councils. We advised the Committee on that. In the Budget 2010 exercise, we submitted a bid for £750,000 to help to implement the powers on non-farm animals that we see transferring to councils. Obviously, that bid has not yet been decided.

The Chairperson:

Council officials indicated at the last meeting that they would welcome further consultation on the clause. Clause 12(9) places a duty on the Department to consult with such persons as the Department believes represent any relevant interests. That must be done before regulations are made. Can I ask the Department to ensure that responsibilities will not be devolved to councils

before appropriate consultation?

Ms McMaster:

Absolutely. We discussed that at an earlier stage with senior officials of the Northern Ireland Local Government Association, the chief executives and chief environmental health officers group. We fully intend to meet officials and elected representatives to outline the proposals.

The Chairperson:

So there will be more consultation?

Ms McMaster:

Yes.

The Chairperson:

OK. Thank you.

Ms McMaster:

There will also be full consultation on any regulations that are brought forward.

The Chairperson:

Thank you. No issues were raised on clauses 13 and 14. Do I have the agreement of members to set those clauses aside until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Clause 15 deals with the transfer of animals by way of sale or prize to persons under 16. The Kennel Club expressed disappointment that this clause did not ban the sale of dogs or puppies from pet shops. However, members appear content with the Department's response that licensing inspection requirements are key controls in ensuring that the welfare of those animals is maintained. Are members content that we set aside this clause until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Clause 16 deals with codes of practice. It has been the norm that the Department commits to submitting such codes of practice to the Committee for scrutiny in advance of publishing them. I therefore ask whether the Department will confirm that it will do that in this case.

Ms McMaster:

Absolutely. Any new draft codes will be subject to the consultation process and scrutiny by the Committee.

The Chairperson:

Thank you.

Clause 17 deals with powers in relation to animals in distress. Local council officials raised the issue of "new burden" funding in respect of this clause and, in particular, with regard to the costs of expertise and accommodation. We seek additional reassurance from the Department on how this additional financial burden on councils will be sourced.

Ms Davey:

I will repeat what I said earlier. We have made a bid for £750,000, and I hope it will address the issue. The outcome of the bid is not yet known. That is the current position.

The Chairperson:

What happens if the bid fails? The statutory obligation is on the council, not on the Department.

Ms Davey:

If the bid fails, the Minister will have to look at other available options. At this time, we have submitted a bid and we cannot pre-empt its outcome. If we pre-empt the outcome of the bid, we do away with the need for it.

Mr Beggs:

My interest as a local government councillor should be formally declared.

The Chairperson:

I too declare my interest as a local government councillor.

Are members content to defer consideration until there is greater clarity on the issue?

Members indicated assent.

The Chairperson:

Clause 18 deals with power of entry for section 17 purposes. The Department is familiar with the Committee's view on powers of entry, which saw it agree to an amendment under the Diseases of Animals Act (Northern Ireland) 2008. That amendment introduced a code of practice for entry under warrant. Given the sensitivity over, for example, entry into breeding establishments by the USPCA, I want to take members' views on whether a similar code is required in those circumstances.

Have members any views in relation to that? I ask the Department whether it is willing to introduce a code of conduct on this matter.

Ms McMaster:

Schedule 3(4) on page 38 of the Bill, already covers that:

“An inspector who enters any premises by virtue of a warrant must comply with a code of practice which has been published under sub-paragraph (4) and has not been withdrawn.”

Schedule 3(4) also states:

“The Department must prepare a code of practice in connection with the exercise by inspectors of a power of entry conferred by virtue of a warrant.”

The Chairperson:

That is fine. Thank you.

Mr Beggs:

It is stated only that there has to be a code of practice. What is in the code of practice is not defined. Presumably, the Committee does not have to interact to give its views on it. If the legislation goes through, the Department can introduce whatever it wants. Will the Committee see the code of practice in advance after the legislation has passed?

Ms McMaster:

Yes. We will bring any code of practice to the Committee.

The Chairperson:

No issues were raised in respect of clauses 19, 20 and 21. I therefore seek the agreement of members to set them aside until the formal clause-by-clause scrutiny of the Bill. Are members content?

Members indicated assent.

The Chairperson:

Is clause 22 covered by the code of practice as laid out in schedule 3 to the Bill?

Ms McMaster:

Yes.

The Chairperson:

Are members content with clause 22?

Members indicated assent.

The Chairperson:

No issues were raised in respect of clauses 23 to 28. Do I have the agreement of members to set those clauses aside until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Clause 29 deals with powers of councils to prosecute. Council officials indicated that there was very little consultation on that matter or on general welfare complaints about the keeping of companion animals such as a dog or cat. Councils are reluctant to accept those powers as it would give rise to a public expectation that councils will investigate and prosecute cases of animal negligence and cruelty in the domestic setting.

I suggest that that clause is not empowered until such times as the Department has urgently consulted and agreed the scope of the power with councils. Are members content?

Members indicated assent.

The Chairperson:

Does the Department want to make any comments in relation to clause 29?

Ms Davey:

As we have said, we will be returning to the councils to try to agree their future role. We fully appreciate that it is an area that they have not been involved in. As Collette said, we have held discussions with people probably at a higher level than those who were with the Committee last week, but that message needs to be widespread.

Ms McMaster:

Just to clarify, the bid that we submitted is intended to cover the range of prosecutions and whatever other powers will go along with it.

The Chairperson:

Thank you.

No issues were raised in respect of clauses 30 and 31. Do I have the agreement of members to set aside those clauses until formal the clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Clause 32 deals with deprivation. New legislation on dangerous dogs is currently proceeding at Westminster. Part of that Private Member's Bill will provide the power to the courts to prevent a household, rather than just an individual, from keeping animals. I suggest that the Department explores that matter and reports urgently to the Committee, before the Committee sets the clause aside prior to its formal clause-by-clause scrutiny of the Bill.

Ms McMaster:

We are aware of the Private Member's Bill in England and we want to seek legal advice on it.

The Chairperson:

OK. Are members content to defer consideration of that clause?

Members indicated assent.

The Chairperson:

The same situation applies to clause 33, which deals with disqualification. Are members also content to defer consideration of that clause?

Members indicated assent.

The Chairperson:

No issues were raised in respect of clauses 34 to 44. Do I have the agreement of members to set aside those clauses until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Clause 45 deals with inspectors. Council officials and a number of other organisations voiced concerns about the role, experience and expertise of the appointed inspectors, with some calling for the Department's veterinary officers to undertake that role. Local council officials also indicated that there is a resource implication that has not been addressed.

It is noted in clause 45 that inspectors are to be appointed by councils with:

“regard to guidance issued by the Department.”

I suggest to the Department that that guidance should include the qualifications, experience and expertise of the proposed inspectors.

Additionally, I recommend that the Department issues a code of practice that includes the roles, responsibilities and limitations of inspectors. I also want to explore how the Department foresees the resourcing of the additional financial implications of council-appointed inspectors.

Ms Davey:

We have covered the resource issue, which is as stated. I will start by apologising for not having provided an answer to the Clerk in advance of today's session. It is fair to draw out the full meaning of clause 45. Clause 45 provides the Department and councils with powers to appoint inspectors. It is the Department's intention that such inspectors must be employees of either the Department or district councils. However, clause 45(3) provides for the power to allow the Department to draw up a list of persons whom the Department considers suitable for appointment by the councils as inspectors. That it is probably slightly wider than the definition that the Chairperson outlined.

Clause 45(2) requires the council to have regard to the guidance issued by the Department. The intention of the two subsections is that, should it prove necessary in the future to allow councils to appoint inspectors who are not direct employees, others bodies could take forward that role. Therefore, there is an extra power in 45(2) and 45(3) that the Committee needs to be aware of.

The Chairperson asked about the guidance on training. It was not the Department's intention to specify in the guidance what training or qualifications are required. Certainly, the Department intends to give advice to councils on the training and skills that an inspector needs to have. The Department also wants to provide direct advice and support to allow the councils to understand what the Bill is about, the powers that an inspector will have and what their roles and responsibilities will be. The Department will provide that information before that element of the Bill goes live.

The Chairperson:

If no qualifications or requirements are brought down from a higher level, how can we ensure that councils operate on a level playing field?

Ms Davey:

The Department will certainly want to monitor the implementation of its policy as part of its monitoring role. However, although we have bid for money for councils, we will not dictate how they enforce that role. Councils may desire to come together to deliver the service from one or two sources, and that might be a more beneficial arrangement. Therefore, although I appreciate the concern that 26 councils might operate in 26 different ways, that may not, ultimately, necessarily be the case. I am aware that councils have probably not come together to deliver such services previously. However, that is not to say that it will not happen.

The Chairperson:

Are members content that we defer consideration of the clause until we have answers to some of the questions that have been raised?

Members indicated assent.

The Chairperson:

Clauses 46 and 47 again go to the issue of codes of practice. Are they covered in schedule 3?

Ms Davey:

Yes. Clause 47 introduces schedule 3 and makes it a legal entity. Clause 46 sets out very clearly the conditions that must be followed before a warrant is applied for or issued by a magistrate.

The Chairperson:

Are members content that we set that clause aside until formal clause-by-clause consideration?

Members indicated assent.

The Chairperson:

No issues were raised in respect of clauses 48 to 58. Are members content that we set those clauses aside until the formal clause-by-clause scrutiny of the Bill?

Members indicated assent.

The Chairperson:

Are members content that we do the same in respect of clauses 59 and 60?

Members indicated assent.

Ms McMaster:

In respect of clause 55, earlier we discussed the change to clause 1 in relation to affirmative resolution, so there will be an amendment to clause 55(2) to reflect that.

The Chairperson:

There will be an amendment to clause 55?

Ms McMaster:

Yes. There will be an amendment to reflect the change to the procedure from negative to affirmative resolution.

The Chairperson:

That is fine. Thank you.

Are members content that we defer consideration of schedule 1 in relation to tail docking?

Ms Davey:

Excuse me, Chairman, I apologise, but the earlier amendment that we talked about in respect of prohibited procedures and making subordinate legislation to outline permitted procedures would, in effect, do away with the need for schedule 1. It would be removed. It might be helpful to explain that the first two paragraphs of schedule 1 would be taken into the body of the Bill and paragraphs 3 to 6 would be covered as permitted procedures in subordinate legislation. The amendment that we will produce will clarify that.

The Chairperson:

Are members content?

Members indicated assent.

The Chairperson:

We now move to schedule 2. There is an outstanding query in respect of whether the Department has the legislative competence to make legislation that places additional responsibilities on local councils. The Committee will take advice on that matter.

In addition, council officials indicated at the last meeting that they would welcome further

consultation on that matter. Clause 12(9) places a duty on the Department to consult with such persons appearing to it to represent any relevant interests as the Department considers appropriate. That must be done before regulations are made. Therefore, I confirm with the Department that responsibilities will not be transferred to local councils without appropriate consultation. I also suggest that the matter remains under consideration of the Committee until such times as outstanding queries are resolved.

Ms McMaster:

The clause enables the Department to make regulations, and we are obliged to consult on any of those regulations. Therefore, we will consult with any party involved in those regulations. We intend to have further discussions with the councils about their role in relation to taking on the powers that are proposed in the Bill.

The Chairperson:

Thank you.

Are members content that we set aside schedule 3 for the moment, as it relates to the code of practice?

Members indicated assent.

The Chairperson:

No issues have been raised in respect of schedules 4 and 5. Are members content that we set those aside until our formal clause-by-clause consideration?

Members indicated assent.

The Chairperson:

Thank you for your attendance. That brings us to the end of this session in respect of the Welfare of Animals Bill. I record my thanks to all the witnesses who have attended this afternoon.