



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

Welfare of Animals Bill

2 November 2010

NORTHERN IRELAND ASSEMBLY

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RURAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Roy Beggs (Deputy Chairperson)
Mr Trevor Clarke
Mr Willie Clarke
Mr Simpson Gibson
Mr William Irwin
Mr Kieran McCarthy
Mr Francie Molloy
Mr George Savage

Witnesses:

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

The Deputy Chairperson (Mr Beggs):

We will now continue with the session on the Welfare of Animals Bill. With us today are several officials from the Department of Agriculture and Rural Development (DARD). I welcome Colette McMaster, Kate Davey, Paddy McGuckian and Andrew Kell.

I understand that the Department has agreed to amend clause 1 to make clause 1(3), by means of clause 55, subject to the affirmative resolution process in line with similar legislation in England and Scotland. Are members therefore content to move on to the next clause?

Members indicated assent.

The Deputy Chairperson:

Moving on to clause 5, I understand that some consequential amendments may be required. Therefore, the Committee may wish to defer its consideration of the clause until issues with other clauses, particularly the issue of tail docking, have been resolved. Are members content to come back to clause 5?

Members indicated assent.

The Deputy Chairperson:

Clause 6 deals with the docking of dogs. Included in Committee packs for members is a copy of a letter from the Minister relevant to the clause. Have all members read the letter, or do you want a few moments to go through it?

Mr Molloy:

I do not understand the Minister's letter. The Committee has already made clear its position that clause 6 should be removed. We heard evidence on the issue, but nothing that changed members' minds. I think that it is now up to the Department to come back with its proposed amendments. I do not think that the Committee has a role in that, given that it has already expressed its opinion on the clause.

The Deputy Chairperson:

Does anyone from the Department wish to add further information?

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

We are aware of the Committee's position, which is that clause 6 be removed. However, at the previous meeting on the matter that we attended, the Chairperson pointed out that some members would favour an exemption for working dogs. The Department was asked to give an opinion on that position, so we agreed to take it to the Minister. The Minister has indicated that she is currently considering that position and that she will get back on the Committee's request.

The Deputy Chairperson:

Do you have any indication as to when that might be?

Ms McMaster:

The Minister wanted to ensure that all the oral evidence from the various stakeholders had been heard. That stage has now been completed. Currently, she is looking at the issue of tail docking, and we will be briefing her after this meeting. After she has considered the issue, she will respond.

The Deputy Chairperson:

Tail docking is quite a significant issue and one that the Committee would like to see resolved as soon as possible. For the benefit of new members, perhaps the Committee Clerk can clarify when the Committee decided that it wished the entire clause to be removed.

The Committee Clerk:

I will need to check the actual date. However, it was roughly around four to six weeks ago.

The Deputy Chairperson:

From a personal perspective, I sympathise with those who want to prevent the cosmetic docking of tails. Rather than see the entire clause withdrawn, I would like restrictions to apply.

The Committee Clerk:

On that point, a table was sent to the Department advising that Committee members required additional consideration not only of the complete removal of clause 6 but an exemption for working dogs. Such an exemption would take your concerns into account.

The Deputy Chairperson:

I see that no members wish to comment further on that. If we can have a final decision from the Department on its intentions as soon as possible, the Committee can take any decisions that it wishes to at that point.

We will move to clause 12. Does the Department have a further update on information on that clause to impart to us?

Ms McMaster:

Clause 12 provides powers to enable the Department to make regulations for the introduction of licensing and registration regimes on activities that involve animals for which a person is responsible for the purposes of securing the welfare of animals or the progeny of those animals. When we discussed that issue at the previous meeting, the Committee was taking legal advice on a particular aspect of the clause. That was to do with the clarification of the legal position on the transposition of the powers to councils through the Bill. Therefore, that was one issue to be followed up.

The Deputy Chairperson:

Has there been an update from the Department? Where will we get that information from?

The Committee Clerk:

It was indicated at this morning's meeting that we are still awaiting the response on that advice.

Ms McMaster:

We obtained some advice on that ourselves, and we can share that with the Committee now, if you want to hear it.

The Deputy Chairperson:

I think that we would welcome your opinion.

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

We have taken legal advice, which says that the welfare of animals is a devolved matter for the purposes of the Northern Ireland Act 1998. That means that the Northern Ireland Assembly has the power to legislate on the issue of non-farmed animals and to create and distribute powers under that legislation. In this case, that refers to empowering councils where certain functions are concerned, including taking on the enforcement, licensing and registration functions for non-farmed animal. The policy of the Bill was proposed by DARD as the sponsoring Department in the same way that any Department sponsors legislation. However, the policy has been adopted by the Executive in line with the ministerial code, but it can be enacted only by the Northern Ireland Assembly. It is the authority of the Assembly, coupled with Royal Assent, that will enable the creation of the new legislative structure and give power to the proposals.

The Committee's question was whether the Department has the power to delegate that

function to the council. It is not the Department as such that will delegate that power to the councils; the enactment of the Bill will do that. As I said, the Northern Ireland Assembly has the power to do that. Therefore, legally, any function in the Bill depends entirely on its being within the competence of the Assembly. This issue is within the competence of the Assembly. Therefore, if the Assembly votes to accept the Bill and it gets Royal Assent, that will give the legislative power to require the councils to take forward work on non-farmed animals. That is the advice that we have.

The Deputy Chairperson:

At that point, I had better declare an interest as a member of Carrickfergus Borough Council.

Mr Molloy:

I am a member of Dungannon and South Tyrone Borough Council.

Mr Irwin:

I am a member of Armagh City and District Council.

The Deputy Chairperson:

I want further information on that issue, because it requires the involvement of local councils. Can you give us some assurance that the powers in clause 12 will not be delegated until additional and substantial consultation has been undertaken with local councils? That will ensure that we do not simply create laws before there is preparatory work at the coalface to enact it and respond to it on the ground.

Ms McMaster:

The intention is that new subordinate legislation will be required under the Bill before any new

and current licensing and registration functions are transferred to district councils. As part of that process, district councils will be consulted during the development of the policy proposals and the formal consultation process.

The Deputy Chairperson:

Therefore, are you saying clearly that the Department views clause 12 as an enabling clause?

Ms McMaster:

Yes. Clause 12 is an enabling clause.

The Deputy Chairperson:

Do members have any other questions at this stage? If not, we will move on to clause 16.

Ms McMaster:

I wish also to deal with the query about the licensing of breeding establishments. I think that the question was whether the responsibility for the licensing of breeding establishments will be retained by DARD rather than by local government. Under the Dogs (Northern Ireland) Order 1983, district councils are currently responsible for the registration of dog breeding establishments. It is, therefore, proposed that the responsibility for any new licensing requirements for dog breeding establishments will continue to rest with the district councils. In line with the proposal that district councils will also have a responsibility for the welfare of non-farmed animals, that proposal will provide a clear split in responsibility for the matter. That is the position on dog breeding establishments, which was a particular point that was raised.

Mr Molloy:

Will you clarify where the regulations on breeding establishments lie? That is not clear at

present. Does the legislation cover local government for both the licensing and supervision of breeding establishments?

Ms McMaster:

The current regulations come under the Dogs (Northern Ireland) Order 1983. Local government is responsible for licensing dog breeding establishments. However, the regulations do not currently extend to the specific welfare aspects of those establishments. The intention is to introduce new regulations under the Welfare of Animals Bill that focus on the welfare aspects of dog breeding establishments.

The Deputy Chairperson:

Will you speak up for the benefit of Hansard and members?

Ms Davey:

I wish to clarify something that Colette said. A power in the 1983 Order requires district councils to register dog breeding establishments. The councils take that forward, and the responsibility for it sits solely with them. That legislation and the regulations set out the requirements that must be met before a dog breeding establishment becomes established, such as the number of bitches, the size of kennels and so on. That will be greatly enhanced by the subordinate legislation under the Bill. As Colette said, the powers will literally transfer to the Welfare of Animals Bill under clause 12(8).

Mr W Clarke:

As regards breeding establishments, how will the Bill enhance protection against puppy farms, with which the South Down area, in particular, is awash?

Ms Davey:

The Bill provides the primary power to allow us to make the subordinate legislation. I am sure that you are aware that the Committee asked us to bring forward our policy principles for that, and we are currently working on that. The subordinate legislation that will come into force will actually provide the stronger regulation. The Bill itself will provide powers that we do not currently have to protect non-farmed animals. However, there are already a range of general powers that will protect all non-farmed animals, irrespective of whether they are dogs in a breeding establishment or singly owned pets. Those powers are there.

However, there is now a requirement to have a duty of care for non-farmed animals, and that applies immediately to any dog in a breeding establishment. As I said, there will be subordinate legislation. We have already told the Committee that we would see that as the first piece of subordinate legislation that the Department will work on following the enactment of the Bill. However, we cannot make that legislation until the Bill has been enacted.

Mr W Clarke:

I do not wish to go back over details that we heard previously, but to obtain funding, breeders wanted to be regulated by the Department and treated like any other group that looked after animals, particularly where farm business numbers are concerned. Why have breeders not been regulated like other groups?

Ms Davey:

It is not a case of their not being regulated like other groups. The Department is preparing a Bill for the Assembly. Even though the Department proposes that enforcement work be taken forward by councils, that does not mean that breeding establishments are any less of a business. However, we are trying, for a number of reasons, to make a clear divide so that councils do all the work on non-farmed animals. Regardless of whether the establishments deal with breeding, riding or other work, the responsibility rests with councils. The public will be able to see a clear

split in responsibility, so that, if they have a concern about a non-farmed animal, they know that they can go to the council, and if they have a concern about a farmed animal, they go to DARD.

It is not a case of making those establishments either less or more of a business just because that work is enforced by the council. We foresee enforcement work being done in exactly the same way, irrespective of what body takes it forward, as all bodies should be following the powers under the Bill exactly.

Mr W Clarke:

Some councils are very small and have very small budgets, and giving them enforcement responsibility will have serious implications through the whole process. If the review of public administration (RPA) gets up and running, there would be merit in giving councils extra responsibilities; however, given councils' current format, I do not think that they will have the revenue or the personnel to deal with that.

Ms Davey:

It is, and has been for some time, the Department of Finance and Personnel's (DFP) policy to take forward licensing and registration functions on a full cost-recovery basis. We will include powers in subordinate legislation to allow councils to recover the entire costs of approving a breeding establishment or any other establishment that needs to be approved under the legislation and to monitor compliance. Therefore, there will be full cost recovery.

We had discussions this week with council officials on how the work might progress. It has been suggested that the work might not necessarily have to be taken forward in all 26 councils and that there could be other options, such as establishing one, two or even half a dozen centres of excellence to service the Province. We do not expect to find a massive amount of work, so it may not be logical to divide it among 26 councils.

Mr W Clarke:

Thanks for that.

The Deputy Chairperson:

Trevor, do you have a question?

Mr T Clarke:

No, I think that that has largely answered my question and clarified the issue for me.

Mr Molloy:

I have two points to make. It is a different story talking to council officials rather than to councillors. Officials deciding councils' future is a different story altogether. You should first talk to councillors about the idea that one or two councils or Belfast City Council should run the entire system before you take it any further. RPA proposed a veterinary services officer (VSO), and councils ruled the idea out. Talking to officials from the Northern Ireland Local Government Association (NILGA) is not the same as talking to local government.

Ms Davey:

We fully accept that.

Mr Molloy:

My colleague mentioned puppy farms —that was my colleague's description — and breeding establishments. How do you distinguish between the two? The term "puppy farm" is a label that the media have given to some establishments. Some of those puppy farms are very badly run and are not recognised as breeding establishments. Therefore, where will the distinction between puppy farms and breeding establishments be? We could talk about lamb farms, for example, in

the same way.

Ms McMaster:

The principle is that any regulations that the Department brings forward to regulate dog breeding establishments will limit the number of times that a person can breed from dogs and bitches, how frequently that can happen and so on. In effect, those will define what a legitimate dog breeding establishment is, and those standards are the ones with which anyone who operates in that area must comply, otherwise they will not be operating as a legitimate business. As Kate mentioned, we are working on a paper to set out the broad principles that we propose to include in any subordinate legislation or regulations that are brought forward. That paper will not go into specific details, but it will let the Committee know about the sorts of areas that will be covered, including the limits that I discussed.

Ms Davey:

“Puppy farming” is a term that is bandied about. The legislation is about first ensuring that breeding establishments are registered if they are required to be, and secondly, ensuring that they operate to the correct standards. As Colette said, it will also be about controlling the number of litters a bitch can have, the age it can breed at and the number of staff against the number of dogs and bitches in the kennels. It will be about all that; it is not about just one issue that will distinguish the two from each other. It is about ensuring that proper controls are put in place and that breeding establishments are run as proper businesses in which animal welfare is to the fore.

Mr Molloy:

Will that be controlled by local government or by Mr Philpott and the USPCA?

Ms Davey:

It is proposed that local government will control it.

Mr Molloy:

A lot of bad work has been done in this area, and sometimes the television cameras seem to deal with it before the legislation does. We need to have a situation whereby we deal with the issue through regulations and ensure proper management and control.

Mr T Clarke:

I know that clause 12 enables the Department to make regulations, but why could those not be in the Bill, particularly where breeding establishments are concerned? There is concern among the wider public about the bad practices of breeding establishments. Is there no opportunity to start a process so that the owners of breeding establishments are regulated before they can breed, with more detail added later?

Ms McMaster:

The legal basis is that the Bill must be enacted in the first instance to give the Department the power, under clause 12, to bring forward regulations. However, we can do some prior work to develop what might go into any regulations.

Ms Davey:

I can answer that question directly. The level of detail that will be required in the subordinate legislation is too great for primary legislation. For example, that detail will go down to including the age at which a bitch is allowed to breed and the number of litters that she can have. Legally, that information is not what should be put into primary legislation.

Ms McMaster:

The Department intends to bring forward subordinate legislation, and it can do some work towards developing what will go into that.

Mr T Clarke:

That is one of the areas in which the wider public will see a benefit. There is a lot of concern about the conditions in which some dogs are kept. It may be useful if some reference was made to that in the Bill.

Ms Davey:

You may have missed what we said earlier, which was that we are currently working on a paper to bring forward those principles. We will allow the Committee to see that at an early stage, and we hope to have it within the next couple of weeks. That paper will include principles rather than proposals, as we want to work up those proposals with stakeholders.

The Deputy Chairperson:

There are no other comments from members on that clause.

Clause 16 deals with codes of practice, to which I have alluded a little. It has been the norm for the Department to submit codes of practice to the Committee for scrutiny in advance of publishing them. Is that the Department's intention in this case?

Ms Davey:

Yes.

The Deputy Chairperson:

There are no other comments from members on clause 16. We move to clause 17, "Powers in relation to animals in distress". Has the Department any comment to make on this?

Ms McMaster:

This clause authorises an inspector or constable who finds a protected animal that is suffering to take immediate steps to alleviate the animal's suffering. The Committee was concerned that clarification should be received in respect of funding for councils, should the Department's bid for budget in 2010 not be met. I can talk about that. We have submitted a bid for £760,000 of funding as part of Budget 2010 to assist the district councils to enforce new powers in the Bill in respect of non-farmed animals.

We cannot pre-empt the outcome of the bidding process. The coalition Government has announced the outcome of the spending review, and the Northern Ireland Executive knows the budget available to it for the next few years and will assess the implications of the spending review and decide how to allocate the available money to Departments. The position is that the bid has been made. If, at this stage, the Department were to set out a contingency plan in case the bid was not met, it would undermine the bid.

The Deputy Chairperson:

You understand that ratepayers might be concerned that they will end up paying this cost?

Ms McMaster:

Absolutely. We met with representatives of district councils last Thursday, and the issue of funding for the work that will come to them was one of the concerns that they raised. We explained to them the basis of the bid and the volume of work that we estimate will be involved. We are aware that it is a concern for the councils that, if the functions become the responsibility of the councils, funding would be provided, given the current economic climate. If it were not provided, that would increase the pressures that councils are under. We had a useful meeting with the representatives of NILGA and the Society of Local Authority Chief Executives and Senior Managers (SOLACE) last Thursday, and the chief executive of Banbridge District Council was also present. We were able to clarify and outline the proposed powers in the Bill that will

come to councils and the arrangements for licensing and registration. Officials welcomed the fact that, for the first time, they will be able to recover their costs in full, not just in respect of dog-breeding establishments but of any other licensing and registration functions that will come to them.

Ms Davey:

All I can add to that is that we have also made the Minister aware of the councils' and the Committee's concerns about the funding issue. The Minister is aware of them and will consider them in the light of the outcome of the bid.

Mr Gibson:

I wonder whether clause 17 has implications for farmers who may, on occasion, legitimately dispatch an animal in order to alleviate its further suffering. There will be occasions when a farmer will come across a sheep that is about to expire or a dog that has strayed onto the road and been horribly injured. Does it preclude a farmer from taking action?

Ms Davey:

No. There is nothing in the Bill that prevents a farmer from humanely destroying one of his own animals if it is suffering. Obviously, that is to be done in a way that causes no unnecessary suffering.

Mr Molloy:

How is that done humanely?

Ms Davey:

It depends on the incident. Paddy can keep us right from a veterinary perspective, but there are

different ways of putting an animal down. There may be instances in which, given the circumstances, the only humane way to destroy an animal is to shoot it. In other instances, it may be better for a veterinarian to put the animal down. It depends on the individual circumstances.

Mr Molloy:

Simpson made a good point. Who decides that? If I decide that shooting an animal is the best way to deal with it, somebody may report me and say that that was inhumane. How can that be qualified, and who makes that judgement? We are getting into political correctness. How an animal is put down is still open to interpretation. For example, a vet may say that lethal injection is perhaps the only way to do that.

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

May I interject?

Animals are put down by vets, sometimes using firearms and sometimes through humane destruction by euthanasia, depending on what is judged most appropriate for the situation. A farmer can use his own shotgun to put down an animal. The Humane Slaughter Association recommends ways of shooting or killing animals. It is important that people put animals down without causing UPUD — unnecessary pain and unnecessary distress. For example, if someone were to take a shotgun and batter an animal to death with the end of it, that would be a different matter to shooting the animal. The way in which the equipment is used is the important thing.

Mr Molloy:

Could we see the minutes of the local government meeting at which the consultation took place between NILGA, SOLACE and Banbridge council? It is important that we know exactly what was agreed. Or perhaps we should seek a meeting with local government to find out what the situation is.

Ms McMaster:

As well as what we have outlined today, we can provide a note of the broad points that were discussed at that meeting. Further engagement will take place this week. We will be meeting SOLACE on Friday to make a presentation on the Bill and on the proposals for implementation.

Mr Molloy:

It is important to remember that talking to SOLACE is only one aspect of this, and SOLACE does not communicate back well to its members on councils. You really need to be talking to local government, and, unless you are talking to elected members, you are not talking to local government.

Ms Davey:

To add to what Colette said about what was agreed during the consultation, it was not the case that that meeting was about agreeing anything. The meeting was to discuss the Bill, to advise on what stage it was at and for those attending to ask questions. Ultimately, no agreement was made for anyone to do anything other than meet again.

Mr Molloy:

The minutes of that meeting would be useful and would add to our evidence.

The Deputy Chairperson:

As members have no other questions on clause 17, we will move on to clause 18.

Mr Savage:

Chairman, I am very concerned about the powers of entry provided for in clause 18. If those powers are for entry to individual farms, why do farmers not have to be consulted? We discussed

this six months or a year ago. Just because someone has a name tag that says that he or she is employed by the Department of Agriculture and Rural Development does not mean that he or she can walk onto any farm willy-nilly. There is a code of conduct, and I would like to see included in it a requirement that farmers must be consulted before anybody is allowed onto their farm. There may be special circumstances in which that has to happen, but, having read the clause very carefully, I see nothing in it that protects the farmer. Farmers needs to be protected, and I am not going to sit here and approve something that allows the Department to do what it likes. To me, that is not on.

The Deputy Chairperson:

I declare an interest as the owner of 28 acres of agricultural land.

Mr T Clarke:

There is a difficulty with that. Surely that power is in the Bill for a reason? Why would an official consult a farmer who is inhumanely keeping animals? He will prevent the official from getting access to that animal. Therefore, I see reasons for that.

The Deputy Chairperson:

Can we hear from the Department at this stage?

Mr Savage:

The special circumstances are not clear.

Mr T Clarke:

It is to protect animals that are believed to be suffering or likely to suffer.

Mr Savage:

The farmer should not allow animals to suffer on his field.

Mr T Clarke:

Exactly.

Ms Davey:

I will interject and give some advice. There must be a genuine reason to believe that an animal is suffering or is likely to suffer before an inspector takes action. Therefore, there will be a limited number of cases, and the inspector will make his presence known. At that stage, a farmer can tell an inspector to get off the land, and an inspector will then look for a warrant. However, most people will co-operate with the inspector. There has to be a genuine reason to go on to the land in the first place. It is not the case that inspectors will, for example, decide to go to see whether anything is happening on George Savage's land today. We do not have that power. The inspector must establish a genuine reason.

Mr Savage:

I am quite happy with inspection if there is a genuine reason. However, I still think that the farmer needs to be consulted first. As I told the vets six or eight months ago when they visited the Committee, if I were to walk around your house at an unsocial hour, you would take a very dim view of that. I would take a very dim view if one of your officials were to walk around my place without a reason. I have said that before, and I make no excuse for saying it again. At the present time, most farms have CCTV cameras, and, if someone is sitting in the house watching what is going on outside in the cattle sheds and sees somebody knocking about through the cattle, they will take a very dim view of it. It is not a big job to lift the phone and treat people with respect.

Ms Davey:

It is different. I am not sure what Mr Savage is asking for. Is he asking for advance notice? Quite often, that will undermine the reason for the visit. We are talking about the welfare of animals and about cases where there is genuine reason to believe that there is a problem. Therefore, as Trevor Clarke said, giving advance notice will probably not enable us to address that problem. However, we expect the inspector to make his presence known to the farmer immediately and to outline that he is there to inspect the farmer's animals because he has a genuine concern about them. We do not expect the inspector to go off willy-nilly and have a look around before he speaks to the farmer. Correct me if I am wrong, but that is how it happens and that is the courtesy that we extend. Advance notice will undermine the purpose of what we are trying to do.

Mr Savage:

That is fair enough. However, why not come clean and tell the farmer that there is a special reason for the visit and that you suspect that he is doing something untoward?

Ms Davey:

We have the powers of entry only if there is genuine reason. Clause 17 sets out the reasons for the powers, and the Bill does not give us powers to go on to the farm without a genuine reason. Moreover, we have already given the Committee an assurance that there will be a code of conduct for enforcement officers. That is in schedule 3. That will govern how they deal with a search under warrant. That only applies to searches under warrant, because, if an inspector is on the farm without a warrant, he or she is on the farm with the farmer's permission or is away to get a warrant. The Bill does not give inspectors power to do what they want.

Mr Savage:

I understand that. However, that should not happen unless there is special reason for it. I now know that that will happen in special circumstances where people have been doing things that

they should not have been doing. However, the Bill classes all farmers as the same. That is the problem as I see it. If two or three farmers do something that they should not do, the Bill classes all farmers as the same.

Ms Davey:

It does not.

Mr Savage:

That is my reading of it. I want something in the Bill to make the difference very clear.

Ms Davey:

I think that that is already in the Bill. There are also reassurances in paragraph 5 of schedule 3, under which an inspector must produce evidence of why he is there. An inspection will take place only in cases where there is a genuine concern about the welfare of an animal.

Mr McGuckian:

The only other thing that I wish to bring to the Committee's attention is that we are required to carry out unannounced inspections under the whole regime for single farm payments. However, that does not mean that we can walk all over a farm without first asking the farmer's permission. We have been criticised for ringing people up a few days in advance of a welfare inspection to tell them that we will be coming. We are not even allowed to do that; we have to arrive unannounced. Ninety-nine per cent of the time, the farmer is quite happy with that.

Mr Savage:

I have no objections to that. However, I would rather have seen something in the Bill about doing that only if there is something suspicious going on at a farm. However, I cannot see anything like that in the Bill. Nevertheless, I know that you referred to that briefly.

Ms Davey:

Clause 17(1) states:

“If an inspector or a constable reasonably believes that a protected animal is suffering”.

Therefore, there has to be a genuine belief that an animal is actually suffering or is likely to suffer.

Mr Savage:

I certainly will not be —

The Deputy Chairperson:

I would like to move this line of questioning on, and perhaps someone can come in on the following point. I appreciate and understand that the Bill states that there has to be reasonable belief. However, is there a code in place to ensure that the constable or inspector who comes onto the premises respects biosecurity?

Mr McGuckian:

The Department has a biosecurity code.

The Deputy Chairperson:

Is that linked to this legislation? Can someone from the Department who is not currently empowered to enter to premises be empowered to do so? Does the need to respect biosecurity have to be included in the code?

Ms McMaster:

The inspectors of farmed animals will be from DARD; therefore, the same biosecurity code that

applies to all DARD inspectors will apply to those inspectors on the farms. Is that correct, Paddy?

Mr McGuckian:

Yes, that is the way that it will be.

The Deputy Chairperson:

I presume that the word “constable” may mean a police constable?

Ms Davey:

Yes.

The Deputy Chairperson:

How will the Department ensure that constables are required to show respect for biosecurity? For example, how will you ensure that they do not walk from one farm to another carrying infection? How will be they covered? This goes back to my previous point: does that requirement need to be included in the code of conduct, or does the code encompass everyone who is mentioned in this legislation?

Ms Davey:

Under the legislation, constables will play a support role. It will, therefore, be exceptionally unusual to find a constable on a farm on his own without an inspector. We are proposing that the departmental inspector will take the lead on farmed animals and that he will expect a policeman to accompany him only when there is an expectation that there may be a breach of the peace. Police should not, therefore, be on farms particularly often, and we do not expect them to be there on their own.

Mr Molloy:

Mr Savage's main concern was raised because of past activities. We know that past inspections were not confined to dog breeders' businesses but that inspectors went into their homes. Mr Philpott and others from the USPCA, accompanied by a policeman, entered those breeders' homes and took the likes of the certificates for breeding pure-bred dogs. Those are the concerns that we are talking about. In the past, those who had no authority or power whatsoever to enter premises still did so.

Ms Davey:

There are no powers in the Bill to enable anyone to enter domestic premises. An inspector can enter domestic premises in two ways: by invitation or with a warrant, but he cannot enter them without one of those two things.

Mr Molloy:

Are there any other possible definitions of "constable" apart from "police constable", which the Deputy Chairperson mentioned?

Ms Davey:

Not that I am aware of.

Mr Molloy:

I thought that there might have been a wider definition under animal welfare legislation or something along those lines.

Ms Davey:

No. We are talking about a police officer. The term "constable" is generically used, but it could

refer to any grade of officer.

Mr Molloy:

There is an issue about anyone coming onto farms. We expect visitors to be diplomatic in the way they do that. However, I must put on record that we do not always see diplomacy from departmental officials and vets. Those people come onto farms, and sometimes they think that they are a law unto themselves. If we are to deal with the issue properly, they must recognise that they too have an obligation to behave properly.

Ms Davey:

That obligation is already there for the Department's inspectors and there are procedures to deal with and reprimand staff who breach those conditions. Those procedures are there irrespective of the reason for a search or visit to a farm.

Mr T Clarke:

This will probably fly in the face of the last person to speak. I understand the clause, and I am happy enough with it. However, I do not understand — and this may go further than the previous member's point — why it does not extend to private dwellings, given that an animal there can suffer equally as badly as, if not worse than, one on a farm? We have seen many instances over recent months, and some of the animals were kept in private dwellings. Philpott might have been there or not, but, at the end of the day, we are discussing the welfare of animals. So, if there is reason to believe that an animal is inhumanely kept in a home, why does this provision not extend to a private dwelling?

Ms Davey:

We are trying to find a correct balance. You will find that, 99.9% of the time, an inspector will call at the door of a private dwelling and be invited in. That has been the experience in Britain.

Under common law, if an inspector is invited in, he can go in and the issue can be dealt with. If there is a severe issue in the house, and the inspector is not invited in, then he must get an urgent warrant.

Mr T Clarke:

Why do you not extend that to this situation? Surely, such a provision could be made in this clause? At the end of the day, we are still talking about the suffering of animals.

Ms Davey:

If the Committee feels that it wants to give powers to an inspector to go into private dwellings —

Mr W Clarke:

Do not go down that road.

Ms Davey:

We have tried to get the balance right.

Mr T Clarke:

I have absolutely no problem with that because we are talking about the welfare of animals. Why should anyone who is keeping animals responsibly have any concern if an inspector turns up at the house in the belief that an animal is suffering? If they prevent an inspector from entering, they have something to hide.

Mr Molloy:

That is an assumption that you are making —

Mr T Clarke:

No. If they have nothing —

The deputy Chairperson:

Members, speak one at a time. Trevor has the Floor at the moment.

Mr T Clarke:

All I say is that, if householders have nothing to hide and nothing to fear, they will let in an inspector. If I were an inspector and I turn up at your house, and you would not let me in, I would assume that you have something to hide. Why should I have to wait and go and get a warrant to see your dog or parrot or whatever it may be, to satisfy myself that it is being kept humanely?

Ms Davey:

As I said, this is about trying to get a balance. I fully appreciate where you are coming from, but you have to respect the individual. It is the individual's home, and you cannot just decide that you are going to barge in, irrespective of your beliefs. Where you have a genuine reason for entering, you must get a quick warrant. That involves a couple of hours delay, but it protects the innocent householder. We are trying to strike a balance.

Mr Molloy:

My issue is not about an animal in distress but about the occupants of the house in distress. Mr Philpott and a police constable searched the cupboards in the house, including high-line cupboards, which could not be used for keeping dogs or bitches in. It became clear, thereafter, that the certificates proving that the animals were pure-bred dogs were taken out of that property, under the supervision of a warrant and in the presence of a police constable, and they have never been returned. I want to ensure that that type of thing does not happen again. It is not about keeping dogs or cats or any other animal in the house. By all means search if the animal is in

danger, but we want to be clear what is the search for and what its focus is.

Mr T Clarke:

Surely that point, the purpose of the search in relation to private dwellings, could be encompassed within the wording of the clause?

The deputy Chairperson:

I will take a range of views and then come back to this issue. Does any other member wish to speak on this?

Mr Savage:

I am concerned about the powers of entry. I am sure that you know very well that a number of cattle have been stolen from farms around the country recently. The boys who are doing that do not need an education in how to do their business. Suppose that they say that they are your officials, and the next day a farmer has 10 or 12 cattle missing. Something needs to be put in the Bill to protect your people and to protect the farmers. That is the only concern that I have.

Ms McMaster:

Schedule 3 includes a duty to provide evidence of identity.

Mr Savage:

I would just like to see something inserted in the Bill.

Ms McMaster:

There is a duty to produce evidence of identity, so that should reassure farmers that a person may only exercise a power of entry when, if requested to do so, he or she produces evidence of his or her identity and entitlement to exercise the power. That is in the Bill, and that may address your

concern.

Mr Savage:

We have had a lot of experience, over this past year or 18 months, of cattle being stolen; even from your own farm, Chairman. I am putting a marker down that there needs to be something to protect yourselves and to protect farmers. If it is in the Bill, I have not seen it, but I will certainly look to find it.

Ms McMaster:

It is on page 38 of the Bill.

Mr Savage:

Yes, but there is no point in talking whenever the cattle are away.

Mr W Clarke:

I think that there is a good balance with regard to the power of entry into a dwelling. It is about striking the right balance. You do not want officials going in to anybody's house willy-nilly, as Francie was saying. They have to obtain a warrant. I want to clarify whether officers will stay at the scene if there is an animal in distress and not leave the land while a warrant is being requested. I am not just referring to farms; that could be anywhere. I want clarity that if, during a search of land, officials identify that there is further distress within the dwelling, the process of getting the magistrate's warrant to gain entry to the house will be very quick. Obviously there will also be protection in the code of practice, but I want clarity on that.

The Deputy Chairperson:

It would be helpful if officials would also clarify that this is not just about farms. Basically, there is a restriction for home property — the building that someone resides in — so could you clarify that that applies whether it is garden sheds or farms?

Ms Davey:

There are two issues. There is a power to gain entry using force, although not into a private dwelling, if there are circumstances that warrant that, such as trying to save an animal. However, officials are still required to gain a warrant to enter someone's private dwelling.

Regarding the member's point about whether we would stay on the scene; that is not normally what would happen. There is normally a single officer out on the initial investigation, and it will probably be that officer who will apply for the warrant. It is unlikely that he or she will stay at the scene. Sometimes they may not be able to stay at the scene once they have made their presence known; they may well have to get police support to go back under warrant.

Mr W Clarke:

That is what I am trying to get at. I am talking about a scenario in which a member of the public brings it to the attention of an officer or the council that an animal is in distress. If an officer visits the scene, tries to gain entry by permission, looks through the window and sees animals in distress, I do not think that it is good enough for that person to say, "I am going to leave here for a couple of hours, get a warrant and then come back". The animal could be shot and removed from the premises. The scene has to be secured, whether by the PSNI or someone else, until the warrant is obtained.

Mr Savage:

That is strong talk: talking about shooting animals if you do not own them.

Mr W Clarke:

Even if they do not shoot it, they might remove the animal from the scene.

Ms Davey:

We do not normally legislate for the exception to the rule, which is what we are talking about. In 99.99% of the cases, there will be an opportunity for officers to go back with a warrant. In the

circumstances that you described, it would probably not be viable for a single officer to stay on the scene; they would probably need to leave and come back later with support.

The Deputy Chairperson:

There is a danger with primary legislation stipulating exactly what the officer will do.

Mr W Clarke:

I understand that, but we need to be sure what we are talking about.

Ms Davey:

Drawing on our experiences with farm animals here and on the information and advice from our colleagues in England, we know that, in the vast majority of cases, inspectors are allowed to enter private dwellings. Again, it is about striking that balance and ensuring that we legislate for the majority of cases rather than specifically bad instances.

Mr Gibson:

The clause refers to “reasonable force”. Can that be exercised by the inspector, or must it be exercised by the constable?

Ms Davey:

It can be exercised by both the inspector and the constable. Again, however, we are not talking about a private dwelling.

The Deputy Chairperson:

The clause has had a fair airing, and we have explored different possibilities. One of the issues

that arose was that a balance must be struck, particularly when it comes to private property, as that brings in other areas, such as human rights and other matters. Are members content with the balance that is shown in clause 18? Does the Committee want any changes to be made, or is it content with that clause?

Mr T Clarke

I am not particularly content. If we are talking about the welfare of animals, it should not matter whether they are kept in a private house or in someone's outhouse — we are still talking about an animal. Therefore, the rights should be extended across the board.

I understand what Kate said about that. I do not mean this in a bad way, but it is probably playing politics to get a political, rather than a reasonable, balance for the welfare of animals. I am not a farmer; rather, I do not have outbuildings, so I can say that —

The Deputy Chairperson:

Let us be clear; the provision is not just about farmers. It could apply to someone living in a housing estate, another private dwelling or on a farm.

Mr T Clarke:

That is what I was trying to clarify. If I had outbuildings, they could be examined, but I can keep animals in my house, treat them whatever way I want to and no one could gain access. I think that that is wrong.

Mr Molloy:

Access could be gained with a warrant.

Mr T Clarke:

Yes, but that means that the animals suffer for longer. If people are genuine about how they keep their animals, they should not prevent anyone from seeing them. I have no reason to hide my animals.

The Deputy Chairperson:

Let us see whether we can come to a conclusion or whether we need more time. Trevor expressed the opinion that a warrant should not be required to enter a private house. Are there any other views on that?

Mr Molloy:

The provision is fine as it is; it does not need to be extended. If a warrant is required, we can be quite certain that it will be got and that the matter in question will be dealt with.

The Deputy Chairperson:

Is there a consensus that an officer who enters a private residence should require a warrant and that the balance in the clause is appropriate? There are individual arguments on this going both ways, but we must come to a collective view as a Committee. Are members collectively agreed that the clause is reasonably worded?

Mr Savage:

I have my own concerns about it. The people who will be using those powers of entry are not those who are sitting at the bottom of this Table. The people who I am talking about are ruthless. I know one or two of them, and I have heard of two or three cases. That is the only reason that I have for concern.

The Deputy Chairperson:

The Committee must come to a conclusion on the clause. Do members need any more information, or is the Committee content with the general balance of the clause?

Mr T Clarke:

I am the one who raised the concern, but I will go with the Committee's consensus to allow it to move forward.

The Deputy Chairperson:

Are members agreed?

Members indicated assent.

The Deputy Chairperson:

Moving on, clause 22 deals with entry and search under warrant in connection with offences. The Department has agreed to forward any new codes of conduct to the Committee for consideration in advance of publication. Do members wish to make any other comments on that at this stage?

Mr Molloy:

Obviously, we are holding this back, because clause 22 may deal with tail docking.

Mr T Clarke:

Which one is that?

Mr Molloy:

It is clause 22.

The Deputy Chairperson:

It is another clause that will flow from previous clauses. We will park that at this stage.

Mr T Clarke:

I am sorry, I was late in arriving. What is the Department saying about clause 6?

The Deputy Chairperson:

The latest information that I have is that the Department is still minded to go for a total ban. It has not said anything different at this stage. Is that an accurate reflection of the position?

Ms McMaster:

Yes. The Department is aware of the Committee's position, and we have gone back to brief the Minister about that and about the fact that some members are open to an exemption for working dogs. The Minister is considering that, and she will respond.

The Deputy Chairperson:

We move to clause 29, which deals with the power of councils to prosecute offences. This clause gives a power allowing councils to initiate prosecution proceedings for any offence under the Bill. The Committee agreed that the clause should not be enacted until such times as the Department had consulted and agreed the scope of powers with councils.

Do members wish to take any issue further with the officials? Do the officials have anything

further to say as to when that consultation with councils will take place?

Ms McMaster:

The consultation is ongoing. We had a meeting last week, and we will be having further engagement with councils on the whole issue.

The Deputy Chairperson:

Let me take this opportunity to highlight the issue that Mr Molloy raised. At some point, there is a need to consult with all the councils, not just with one or two groups. You might find it helpful to firm up where you are in smaller discussions, but, at some point, you should consult with all the councils.

Mr T Clarke:

You referred to Mr Molloy. Correct me if I am wrong, but I thought that Mr Molloy was, at one stage, the chairman of the organisation that we are talking about. Surely that organisation was set up to represent councillors. I do not like to defend the Department, but it will be difficult for it to go around 26 councils to gauge opinion. The Northern Ireland Local Government Association was set up to present a representative view of the councils. I do not know what has happened to Mr Molloy — were you not the chairperson of NILGA at one stage?

Mr Molloy:

Yes.

Mr T Clarke:

NILGA represented the councils' views, and there were selected members of all 26 councils on that organisation. I think that the Committee is being a bit silly to suggest that the Department

must speak to all 26 councils.

The Deputy Chairperson:

I am conscious that the Department told us earlier that it had spoken to SOLACE and to Banbridge District Council.

Mr T Clarke:

Does SOLACE not basically represent the directors of the councils?

The Deputy Chairperson:

It is the chief executives.

Mr T Clarke:

I would disregard what they say; I would agree with Mr Molloy on that. The directors are not elected, but NILGA is an elected body, composed of elected representatives of each of the 26 councils who are supposed to speak for the councils. People in SOLACE are self-appointed in making diktats and try to dictate to councils what they should be doing. Therefore, there is a difference. If the Department has spoken to NILGA, that should bring in a broad consensus on what councils are suggesting.

Mr Molloy:

Let me clarify. During my time as chairperson of NILGA, it had been its consistent policy that, in consultations, any delegations meeting with Government Departments should be made up of elected members plus officials. However, when a NILGA delegation came here, it was made up of just officials, not elected representatives.

NILGA agreed to always consult with the 26 councils before making decisions, not just on matters that NILGA was making a decision on. That is what NILGA does. However, I think that the Department's consultation should be with all the councils. The Department is inclined to talk to the chief executive, the environmental health officer, or someone else in a council, rather than to council members. NILGA's delegation should be made up of elected members plus officials.

Mr T Clarke:

Does that mean that you endorse NILGA?

Mr Molloy:

Yes.

Ms McMaster:

The acting chief executive of NILGA was present at our meeting last week. We will have further discussions with NILGA and other bodies that we have already spoken with. When we get to the stage of developing policy proposals for subordinate legislation for any regulations that arise from the Bill, we will have full consultation. That involves a formal process, whereby we write to each council. Therefore, there is an opportunity for councils to feed in to that, and that is how we intend to proceed. However, that will not happen in our immediate discussions within the timescale for the Committee's scrutiny of the Bill.

Mr T Clarke:

I suggest to Colette that, when she writes to the councils, she should explain that some of the information has already been discussed with NILGA. If representatives of NILGA, who are representatives of the councils, are not taking that information back, that is a failure on their part. They should inform their councillors. Two or three councillors from every council are NILGA representatives. They should bring that information back. When you send your letter, it will be

useful to outline that you have had the necessary conversation with NILGA and that maybe councils should address their problems with their NILGA representation.

The Deputy Chairperson:

Therein lies the problem.

Mr Molloy:

My point is that when departmental officials say they had consultation with councils, they are usually talking about council officers. If they say that they are talking to the council, they should talk to all elected members on the council. Given the present-day use of e-mails, it is not a big job to consult councils.

Mr Savage:

I would love to see something in the Bill that would give councils more power because, two years ago, there were big floods and an animal was washed right down the river. It stopped in a very prominent place, and the council and the Department of Agriculture and Rural Development fought and argued over it for about a week, but nobody lifted it. Something needs to be sorted out whereby, in such situations, somebody lifts the animal and the problem is sorted out after that. Somebody needs to be given the power to take the animal out of the river, or whatever the case may be, and sort the problem out later, because it must be lifted immediately.

The Deputy Chairperson:

I want to draw members back to clause 29, which is quite interesting and contains only one line. It says:

“A council may prosecute proceedings for any offence under this Act.”

Do members have any comment on that?

Mr Molloy:

As has been said previously, my only comment is about the cost of such proceedings. Resources will have to be provided to councils for that.

Mr Savage:

An animal can be lifted for £55.

The Deputy Chairperson:

Are members content to defer that clause until further information on the matter becomes available?

Mr T Clarke:

Surely at the moment, the council has that power, so the Bill is merely reinforcing that. I do not see why we need any more information.

The Deputy Chairperson:

Are members content to accept the proposal?

The Committee Clerk:

Councils do not have powers to deal with the welfare of animals; their powers relate only to dogs. This Bill extends beyond dogs and contains additional powers. In their responses, council officials indicated that they have concerns about, first, the lack of consultation and, secondly, as Mr Molloy said, the resource implications implementing the provisions.

Mr T Clarke:

Does that not refer to any part that comes under councils' remit where dogs are concerned?

The Committee Clerk:

No, it goes beyond that. For example, in a recent case, 78 horses were seized. They were not farm animals. If, for example, Ballymena Borough Council, Antrim Borough Council or any other council had come across those animals, the councils would have had to put in place the facilities and accommodation to house those animals at a cost to them. Therefore, there are financial implications.

Mr T Clarke:

This all rolls back to the Bill and the regulations. For example, if the council is doing the right work with breeding establishments and regulating all those services, it should have the power to look after non-farmed animals, such as horses.

The Committee Clerk:

The council officials are saying that they do not believe that there has been adequate consultation on what powers will be given to councils. As Mr Molloy said, there have been no discussions as yet on the resources and the financial burden that comes with those powers.

The Deputy Chairperson:

Members, the choice is yours: do you wish to defer or to accept the clause at this stage?

Mr Molloy:

I think that we should defer at this stage. The cost to any council for one such case could be £10,000, and we need to be careful with where that resource is put in. The Department has made

a bid of £760,000 for that, which is at least something. However, until that is clarified, it would be foolish to insist that the council is the prosecuting authority in such cases. Alternatively, the original proposer of the Bill — the Department — could be the prosecuting authority.

Ms McMaster:

The amount bid for is based on an estimate of the enforcement work, including prosecution activities, that councils are likely to do. That is incorporated into how we made up the bid, and it is one of the matters that we discussed at the meeting with senior council officials last Thursday. We explained the basis of that bid and the range of activities it covered, including prosecutions. We also explained how we came to those figures. The prosecutions element is very much based on the experience in GB, where the vast majority of cases are resolved long before they ever get to the prosecution stage. Only a very small number of cases end up ever being prosecuted.

Mr Molloy:

We need to be cautious, because, as the example of the Bill covering fallen animals showed and as Mr Savage said, the Department of Agriculture and Rural Development has complete responsibility for stock on farms. However, if animals die, are dumped in a river, or fall at the side of the road or anywhere else, the Department does not take any responsibility for collecting them. Local government ends up having to do that, and it is put out by thousands of pounds in doing so. Nobody else will take responsibility. The bid for £760,000 has been made, but until we see the colour of the money, it would be foolish of local government to take on the role of prosecutor.

Mr W Clarke:

Similar to Francie Molloy, I am happy enough with the clause, but we need the resource issue to be clarified. In the current climate, how confident are we of getting that money? We are also talking about prosecution, which, if there are a lot of cases, will involve considerable legal fees. I come back to the fact that councils are bigger across the water. They have many more resources

and officers. The cost would be a big burden on small councils here, such as Moyle District Council.

Ms Davey:

It may be helpful if I clarified the prosecution issue. The Bill provides for a duty of care, and the issuing of improvement notices is a key instrument in enforcing the Bill. We can draw on two sets of experience. The first is our current experience with farmed animals, for which the equivalent of improvement notices are already issued in Northern Ireland. The second set is the experience in England with non-farmed animals.

Mr W Clarke:

Does the Department do that?

Ms Davey:

Sorry; the Department does where farmed animals are concerned. In England, that is not —

Mr W Clarke:

Is that fully resourced?

Ms Davey:

Yes, but that is not the case in England.

My point is that we are talking about a very small number of prosecutions. It may be helpful if I were to quickly outline what would happen in the process here. Someone would make a complaint. Experience has shown that 50% of such complaints can be wiped out

straightforwardly, either on the phone or by a quick visit. Therefore, we are down to a smaller number.

Experience shows that more than 99% of cases in England involving non-farmed animal can be dealt with through an inspector issuing either basic advice or an improvement notice. Therefore, a very small number of cases are taken forward that could lead to a formal warning or prosecution. That has proved key both there and here for farmed animals. Paddy McGuckian will correct me or give me further information on that; however, we have found that, when issued, an improvement notice works in 99% of cases. That alleviates the animal's suffering and deals with the problem without having to go down the road of formal prosecution. However, I fully accept that there will be cases where the answer is prosecution.

The Deputy Chairperson:

Members, have you been reassured by what you heard? Alternatively, are you content to defer clause 29?

Members indicated assent.

Mr T Clarke:

Can we clear up the situation where farmed animals and domestic animals are concerned? Surely the Department is still responsible for farmed animals as opposed to domestic animals.

Ms Davey:

Yes.

Mr Molloy:

Is that made clear in the Bill?

Mr T Clarke:

I want to ensure that it is clear.

Ms Davey:

It is. The Department does not intend to make the councils responsible for farmed animals; rather, it will continue with its work to ensure the welfare of those animals.

The Deputy Chairperson:

We will move on to clause 32.

Mr T Clarke:

I want to go back to the previous discussion. What position does that leave us in at the moment? Are the councils still responsible for domestic animals?

Ms Davey:

Councils currently have no powers to ensure the welfare of non-farmed animals. That is actually a new power. The Welfare of Animals Act (Northern Ireland) 1972 provides powers to address only cruelty offences to all animals and powers that deal with livestock on agricultural land. We are, therefore, introducing the same protection for non-farmed animals that is currently in place for farmed animals. In 2000, the EU also introduced legislation on farmed animals. Therefore, we are now giving the same protection to non-farmed animals, and we are placing the responsibility for that with councils.

Mr Savage:

Just to follow on from that, is there not a possibility that the Department is trying to make itself more popular through this measure? You spoke about the 99.9% of cases. However, there is always a percentage of people who will call up an MLA or another elected representative and say that there is an animal lying somewhere that needs to be lifted. That actually happened two weeks ago.

The Deputy Chairperson:

I think that your point is outside the scope of what we are talking about.

Mr Savage:

This is factual.

The Deputy Chairperson:

I know, but is it relevant to the clause?

Mr Savage:

Very much so.

The Deputy Chairperson:

Please explain.

Mr Savage:

The Department of Agriculture and Rural Development and the councils argued among themselves for two or three days about who should lift the animal and get it out of the road. The

next thing, the press were on it, and the situation was blown out of all proportion. Provision should be made in Bill for the Department to give somebody the power to remove animals in such cases. The other problems can be sorted out afterwards.

Mr Molloy:

Perhaps there is another way of asking that. If, for instance, the Department goes to a farm on which cattle have died or are in a bad shape, by animal welfare standards, whose responsibility would it be to remove those animals?

Ms McMaster:

Are you talking about animals that are suffering?

Mr Molloy:

Suffering or dead animals.

Mr McGuckian:

We would serve a notice on the herd keeper to remove the animal by-product, because it is their legal responsibility to do that.

The Deputy Chairperson:

Therefore, because it is a farmed animal, is it the Department's responsibility?

Ms Davey:

Yes. If the live animals were in the state that you described, and if it was not viable to leave them on the farm to be looked after, we would seize them.

Mr Molloy:

When a farm animal, such as a cow or a calf, is found in a river or on a road with no ear tag, because that will obviously have been removed —

Mr McGuckian:

We are talking at cross-purposes here, because dead animals and animal by-product are not what this Bill is about. There is a whole different raft of legislation to deal with that, and none of us is an expert in it.

The Deputy Chairperson:

Members, we have thrashed this issue about a bit. However, we all agree that we should defer the decision on the possible cost implications.

We will now move to clause 32, which deals with deprivation. I understand that the Committee asked the Department to take legal advice on the implications of the private Member's Bill on dangerous dogs — the Dogs Control and Welfare Bill — that is going through in Westminster. Does the Department have any further information on that matter?

Ms McMaster:

We have taken advice on that. The Westminster private Member's Bill does not contain any provisions to disqualify a household from keeping an animal. Our legal advice is that only the person who has been convicted of the offence can be deprived of keeping animals and that to deprive an innocent person of keeping animals because of an offence that someone else has committed is likely to be a breach of the European Convention on Human Rights. That is, therefore, outside the competence of the Northern Ireland Assembly.

Mr T Clarke:

Could the offence be made address, rather than person, specific?

Ms Davey:

The question of whether the Department could just ban the household was basically what was asked, and the answer is no; the Department cannot do that.

Mr T Clarke:

It would not be the household, it would be the address.

Ms Davey:

Only one person can be guilty of the offence.

Mr T Clarke:

We all know of people who have been convicted of such offences, yet the practice continues, because the ownership of the animal is transferred to another family member's name. Therefore, the problem has not been fixed.

Ms Davey:

The Department greatly strengthened the power to ensure that those who are guilty of the offence are not allowed to have any interaction, involvement or oversight of those animals. However, we cannot actually —

Mr T Clarke:

I am sorry, how is that policed?

Ms Davey:

It can be policed in a number of ways. It will normally be done through complaints having been received rather than through constant checking. Again, it is about trying to get the resource balance right.

We have strengthened the power as far as we are legally allowed to do. If we had overstepped that mark, we were told clearly that that would have placed the Bill outside the competency of the Northern Ireland Assembly and the Executive. As a result, a competency certificate would not be issued, so we would not be able to make the legislation.

The Deputy Chairperson:

What would happen if there was clear evidence that other members of the family or household were aware of animal suffering yet did not take appropriate action such as reporting it? I would have thought their properness to own or look after an animal could be questioned. Has that been considered?

Ms Davey:

You are obviously talking about an offence in which someone was convicted. In the investigation of such an offence, officers will examine whether others should also be prosecuted, and, quite often, more than one person is prosecuted for an offence. However, that would be dealt with at the time of the original offence, rather than some time later. Inspectors cannot decide that someone is guilty by association.

The Deputy Chairperson:

The Committee has heard an explanation from the Department. Is the Committee content with that explanation, or do members want further information on the clause? Are members content?

Members indicated assent.

The Deputy Chairperson:

Moving on, clause 45 deals with inspectors. The Committee agreed that the Department should identify in legislation what qualifications, experience and expertise an inspector is required to have. Does the Department want to make any further comment on that?

Ms McMaster:

The question was whether the Department should determine in legislation what qualifications, experience and expertise that inspectors are required to have. We intend to provide advice to the local councils on the knowledge, skills and experience that inspectors should have. However, we feel that it is not appropriate to have that sort of information in primary legislation. The advice to district councils is that they appoint their own staff for whatever functions they are needed, and it is for them to determine what qualifications those employees need to deliver the job in question.

The Deputy Chairperson:

The provisions will obviously widen responsibility to local councils for a range of animals that they may not have been involved with in the past. Is the Department proposing to make training available to local government? I imagine that some of the responsibility will fall on environmental health officers or whoever councils deem to be appropriate and that some central advice and training would be given to those individuals.

Ms McMaster:

Yes, it is intended that the Department will provide advice and training to district councils on the requirements of the Bill.

The Deputy Chairperson:

Are members content with clause 45?

Members indicated assent.

The Deputy Chairperson;

Clause 46 deals with the conditions for granting a warrant. The Committee agreed that DARD would forward any new codes to the Committee for consideration in advance of publication. Do any members wish to comment further on that point?

Mr Molloy:

This goes back to a question that was asked earlier. Does the Department have any further information on that?

Ms McMaster:

The principle is that the Department will forward any new codes of practice to the Committee in advance of publication. That is the intention with the code that would apply to search under warrant. As the Committee is aware, a code of practice for search under warrant is being developed in the Diseases of Animals Act (Northern Ireland) 2010. The same provisions could also be used for a code under the Welfare of Animals Bill that would ensure that the same sorts of standards for search would apply to search under warrant, irrespective of which legislation it applied to.

Mr Molloy:

Perhaps we could get the Department to forward those standards to us before consultation. We could hold it up but not say no. The Bill does not say what the conditions for a warrant would be for.

The Deputy Chairperson:

What sort of schedule is it on? Is the code of practice likely to be produced before the legislation is finalised?

Ms McMaster:

Schedule 3 to the Bill applies to that, but we will consult on the code of practice. We will bring that to the Committee before consultation.

The Deputy Chairperson:

That will be further down the line, after the legislation has gone through.

Ms Davey:

To clarify Mr Molloy's point, schedule 3 and the body of the Bill set out the conditions that must be complied with before a warrant is issued. Those are already set out in the Bill, and that is simply an additional reassurance.

To add to what Colette said, the code of practice that is being developed for the Diseases of Animals Act is for the Department's staff. The code of practice for the Welfare of Animals Bill will apply to inspectors, irrespective of whether they are the Department's inspectors or district council inspectors.

The Deputy Chairperson:

Are members content with clause 46?

Members indicated assent.

The Deputy Chairperson:

I dare say that the situation with clause 47 is similar. It gives effect to schedule 3, and we were advised that any new codes would be brought to the Committee for consideration in advance of publication. Are members content with clause 47?

Members indicated assent.

The Deputy Chairperson:

Clause 55 sets out which regulations made under the Bill will be subject to affirmative resolution and which will be subject to negative resolution. The Department has agreed to amend the clause to make clause 1(3) subject to the affirmative resolution process. Are members content?

Members indicated assent.

The Deputy Chairperson:

Schedule 1 sets out the procedures to which clause 5 does not apply, and I understand that that is about some of the tail docking issues in clause 6. Do members agree to defer schedule 1 until the consideration of clause 6 is completed? It would be too late to go back to it if we agreed it already, and there might be implications in that.

Members indicated assent.

The Deputy Chairperson:

Schedule 2 deals with regulations under clause 12. Do members agree to defer the schedule until the issue of legal competence has been resolved?

Members indicated assent.

Mr Savage:

If we had done that at the start, we would not have had to have done all that talking today.

The Deputy Chairperson:

That ends this session on the Welfare of Animals Bill. I thank the officials for their co-operation and guidance and for helping us to a better understanding of the legislation and, hopefully, our attempt to refine and improve it.