



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

Welfare of Animals Bill

9 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 Stephen Moutray (Chairperson)
Mr Roy Beggs (Deputy Chairperson)
Mr P J Bradley
Mr Trevor Clarke
Mr Willie Clarke
Mr Simpson Gibson
Mr William Irwin
Mr Kieran McCarthy
Mr Francie Molloy

Witnesses:

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

The Chairperson (Mr Moutray):

We will move on to the clause-by-clause consideration of the Welfare of Animals Bill. I introduce departmental officials Colette McMaster, Kate Davey, Paddy McGuckian and Andrew Kell. Members will be glad to know that we are dealing with only the clauses that the Committee has deferred.

We will start with clause 5 on prohibited procedures. Some consequential amendments may be required, should the following clause be amended. Are members, therefore, content that we defer consideration of clause 5 until the issue of tail docking has been resolved?

Members indicated assent.

The Chairperson:

Clause 6 deals with the docking of dogs' tails. The Committee agreed that either the Department removes this clause completely — this is the current Committee position — or that an exemption, based on the English model, be applied. I make members aware that the Deputy Chairperson and I met the Minister yesterday to discuss the issue and that a subsequent letter from the Department is in today's tabled papers. Have members had an opportunity to look at that?

During yesterday's meeting, it was indicated that, although the Minister considers there to be inconclusive evidence to justify an exemption for working dogs, she is prepared to accede to the Committee's request to provide an exemption from tail docking for certain working dogs in specific circumstances. I ask the officials to come in at this point to go through the detail of that.

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

I will keep this brief, and I can clarify members' points as need be. The Minister has agreed an exemption for pure-bred spaniels and hunt point retriever breeds involved in lawful pest control and the lawful shooting of animals. The tail must be docked by a veterinary surgeon when the pup is five days or less of age. Evidence will need to be provided to the veterinary surgeon in order to demonstrate that the dog is likely to be used for work in lawful pest control or the lawful shooting of animals. That is basically the crux of the exemption. Obviously, the controls for that exemption will need to be detailed in subordinate legislation. Clause 6 will also need to be amended.

Mr Molloy:

There is no amendment and no change. How many pure-bred spaniels will actually be involved in hunting? Look at the legislation that deals with cross-breeds and spaniel types in other parts: the term "types" seems to be used to cover dogs that cannot be fully described.

The Minister and the Department also said that the exemption could not be extended to terriers as there is no documentary evidence. I suggest again, as we have done before, that the main reason for that is that the terriers' tails have all been docked, so there are no examples that could be used. I have never seen a terrier with a long tail. The Department is looking for evidence, but the main reason why there is no evidence is that the problem has been dealt with at an earlier stage. I do not think that the proposed exemption covers what we need. It covers two different types of dog, and the term "pure-bred" applies to a very restricted number of dogs.

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

The Minister wanted to provide the exemption because she was extremely concerned that the Committee had recommended the removal of clause 6, as that would have allowed the practice of cosmetic tail docking of dogs to continue. Her concern in bringing forward the Bill is to improve the overall welfare of dogs and other animals. The exemption that she has proposed is designed to improve the existing 1972 legislation, because it will restrict the tail docking that is currently permitted.

The Minister has looked at exemptions elsewhere, and wants the exemption to take account of lessons that have been learned from the existing tail-docking exemptions in England and Wales. For example, the Royal Society for the Prevention of Cruelty to Animals (RSPCA), which enforces the legislation in England, has advised us that, because the English exemption is extended to cross-breeds, it is virtually impossible to prove or disprove whether a dog that has been docked is of an exempt breed. That is why the Minister is prepared to exempt only specific pure-bred dogs. The exemption would also be restricted to dogs that are genuinely likely to become working dogs in later life, so it would not allow for all dogs of particular breeds to have their tails docked. The Minister wants the exemption to have stricter controls than that in England and Wales in order to address the loopholes that have been experienced there.

The exemption will be restricted to spaniels and hunt point retriever types. Although there is scientific evidence to support an exemption for those breeds, it is limited. However, there has been no scientific or documented evidence presented to support an exemption for terriers or any other breeds. A range of scientific papers and evidence has been considered.

Ms Davey:

I will add two things to what Colette has said. The tail-docking exemption for pure-breds is in line with the legislation in Wales, apart from the fact that terriers are excluded from that. We have had no feedback from Wales to say that it is not working there, and it addresses the concerns that the RSPCA has raised in respect of the English legislation. There has been little, if any, call from stakeholders, even verbally, to include terriers in the exemption. The calls have been for spaniels and hunt point retriever breeds. Basically, there is no evidence, even verbal — other than what the member has just said about tails already being docked — to support an exemption for terriers.

The Chairperson:

The British Association of Sporting Clubs asked for an exemption for terriers during a presentation to the Committee.

Mr Beggs:

The Minister's proposal is to have a tightly regulated area. Docking would have to be carried out by a vet, and evidence would have to be shown of the likelihood of the animal being involved in activities that could lead to tail damage etc. Then you have added a stipulation that the dog has to be pure-bred. I have no knowledge of that area of sport involving working dogs. I am just posing the question: are half-breed dogs involved in it, or is it purely a pedigree activity? I do not have that information.

Ms Davey:

Our understanding is that the key dogs that are involved are pedigree dogs as opposed to cross-breed dogs. The exemption is about trying to protect the welfare of dogs that are generally involved in that sport rather than putting in a loose exemption that opens the door to anyone to dock a dog's tail. That is not the purpose of this exemption.

Mr Beggs:

I can see the logic of allowing a vet to remove a dog's tail and the likelihood of the five-day exemption period being used. I am just seeking clarification. I want to have time to contact

others who have contacted the Committee to get information from them directly before agreeing or disagreeing with this suggestion.

The Chairperson:

Does the Deputy Chairperson require the Committee to write to those people who have given evidence in the past?

Mr Beggs:

That would be a pertinent and good idea if we still have time to do it.

The Chairperson:

We will do that.

Mr Molloy:

I do not know whether you are going to write to them all, Chairperson, but the issue of terriers has been raised. We have heard evidence about the damage that is done to terriers, particularly those that get buried in bore holes and cannot get out of them again.

Mr W Clarke:

It is a sensible compromise. I came to this topic with an open mind, perhaps tending towards a total ban on docking. However, as the evidence came before us, I was convinced that there were a couple of breeds — spaniels and hunt point retrievers — that would be subject to more welfare issues if their tails were not docked. That protects the rural way of life and the need for hunting and vermin control. I welcome that exemption; it is a big step forward for me and for many other members.

I have one question about new evidence that we need. What damage is being done in Scotland to terriers' tails from a veterinary point of view? I never heard any issues being raised about terriers' tails during our evidence sessions. I accept my colleague's view that most of them are docked anyway. If we could find out more about that, I would be happier.

Ms Davey:

We do not currently have any evidence concerning terriers' tails in Scotland. We will go back to our colleagues and ask whether there is any evidence, anecdotal or otherwise.

Mr Gibson:

I would welcome the Committee having sight of evidence to support the Minister's position. I want to ask about spaniels. In my observations, pure-bred spaniels, either springers or cockers, are used to hunt. There are other spaniels, such as the King Charles spaniel and the Cumberland spaniel. Does that throw an additional onus onto vets? We are being told that pure-bred spaniels will be exempt, but there are several types of spaniel.

Mr W Clarke:

The Irish water spaniel.

Ms McMaster:

Kate can explain that, but, similar to the Welsh legislation, the particular types within the breed would be specified.

Ms Davey:

As I said at the outset, that is just the wording that would be in the Bill. Subordinate legislation would have to be introduced which would specify exactly the breeds that could have their tails docked. As you said, there is a range of spaniels, some of which are not traditionally docked, such as the King Charles spaniel. We will not include them in any exemption.

Mr Gibson:

Will that include hunt point retrievers?

Ms Davey:

Yes. It covers a range of breeds. We are talking about a grouping as opposed to a breed, but we will certainly specify that and will consult on that so that we are sure that what we have covers the breeds that are traditionally used in Northern Ireland.

Mr Irwin:

I welcome the fact that the Minister has, in some way, moved on the Committee's concerns about working dogs. Like other members, I am concerned about the evidence on terriers, and sometimes the devil is in the detail of exactly where the line is drawn on working dogs. It is important that we know the full detail before we are totally happy.

Ms McMaster:

We will seek the further information on terriers in Scotland that we mentioned. As Kate said, the actual detail will be in subordinate legislation, which, clearly, will not be made until after the Bill is enacted. That will be subject to full public consultation, affirmative resolution, and so on. However, we will be able to provide the Committee with fuller details of the proposal once we have cleared the principles that will be in subordinate legislation with our legal services later this week.

Ms Davey:

The Minister has clearly restricted it to two areas: work on lawful pest control and the lawful shooting of animals. The work that dogs are involved in is pretty wide-ranging.

Mr Molloy:

Has that been put in because the Minister is interested in banning hunting completely?

Ms Davey:

No, it is not connected to hunting in any way. My understanding is that hunting hounds do not have their tails docked.

Mr Molloy:

Spaniels hunt as well.

Ms Davey:

There is nothing in the Bill about hunting. In fact, clause 53 clearly says that everything in the Bill sits outside of hunting. Therefore, it has no impact on hunting.

Mr Molloy:

The second paragraph of the letter says that the exemption is based on lessons learned. We never saw any evidence from the Department on the lessons learned in England or Wales.

Ms Davey:

The evidence from the RSPCA shows what it considers to be the disadvantages and the difficulties in implementing the legislation. If it is helpful, I can briefly tell the Committee about that now and outline exactly what the RSPCA has provided to us. It has advised that, given the loopholes in the English legislation, it is very difficult to identify breed types or cross-breeds. It has said that, as it is not an offence to own a docked dog, that loophole allows individuals to claim an exemption without requiring them to produce evidence of a reliance on that exemption. Therefore, that is probably very difficult to enforce.

It has also said that there is an inconsistency between the requirement to obtain a certificate of the exemption and a requirement for the certificate to accompany the animal and to be produced when requested. Therefore, we can learn from a number of things. If we take forward that exemption and the dog has to have a certificate, that certificate should travel with the dog and there should be a requirement and an onus, if an inspector asks to see it, on the person who owns the dog to produce that certificate. We need to build that into our legislation.

Mr Molloy:

The evidence that has been produced so far — the various surveys — has been discredited several times. Therefore, the Department needs to come up with some new evidence on working dogs. The people who attended the Committee to give evidence had a wider definition of working dogs than just two and the idea of just pure-bred dogs as well. It was certainly a wider remit than within that situation. Again, we should consult with those who are involved in the sport in rural areas. This idea of linking it to particular categories is a bit nonsensical, because it means that we are saying what a dog may and may not do, and that is not what that provision should be about.

Mr P J Bradley:

I declare that I am an honorary member of the British Veterinary Association (BVA) Northern Ireland. When Des Thompson, Brian McAuley and Ian Stewart gave evidence to the Committee,

they came up with a sentence that I will repeat:

“The bottom line is that the veterinary profession, taking all the evidence available to us, cannot support the concept of introducing an exemption for working dogs that would allow them to be docked.”

Why does the Minister’s and the Department’s opinion differ from the professional opinion?

Ms Davey:

Basically, the Committee wants that clause to be removed entirely from the Bill. However, the Minister has explained in her letter that the removal of that clause would allow cosmetic docking. The Bill is about the overall welfare of animals. It is, therefore, better to protect all dogs from cosmetic docking and to exempt some working dogs that might injure their tails in the future.

Ms McMaster:

Again, that exemption would still be an improvement on what is in the existing legislation. Under the existing legislation, I think that tail docking is restricted to the first five days of a pup’s life.

Ms Davey:

I think that it is actually before the pup’s eyes have opened, which is 10 days.

Ms McMaster:

That is what is in the existing legislation. The amendment would, therefore, improve that position.

Mr P J Bradley:

Do you agree that that differs from the professional advice?

Ms Davey:

There is no doubt that there is a difference.

Mr T Clarke:

I apologise for being late. However, I am thankful that I am speaking after P J. Although that advice differed from the Department’s, that was not the case with other advice. I do not mean to be rude, P J, but perhaps you were unable to be here when other evidence to the contrary was

presented.

I welcome the Department's departure from the original position, where there was no movement, and the fact that there has been some form of movement. However, I am disappointed that, as yet, it has not moved far enough. As time goes on, we may be able to bring the Department round to the right way of thinking, which is that all working dogs should be exempt. I hate being on the public record agreeing with Sinn Féin, but I agree with the point about the definition of pure-bred dogs. Dogs are either working dogs or they are not. It should not matter whether or not they are pure-bred dogs. I, therefore, have difficulties with that. In addition, it is well known that terriers are working dogs, so to exclude them from the exemption is unfair. Until the Department exempts all working dogs, I will not support the clause.

Ms Davey:

For clarification, we had to narrow the definition, because "working dog" is such a general term. That term covers everything, including, for example, a working sheep dog, so we had to confine it. The Minister has made the definition almost the same as the one used in England and Wales. In fact, the differences are very limited, and the scale is very similar to the one in the English and Welsh legislation. The nature of the exemption, for lawful pest control and shooting, covers a wide range of work in which a dog may be involved.

Mr Molloy:

May we have a list of which dogs are exempt under the English legislation, because I think that its definition of cross-breeds is wider than the one in this legislation?

The Committee Clerk:

The specified types of dog contained in the Docking of Working Dogs' Tails (England) Regulations 2007 are:

"Hunt point retrieve breeds of any type or combination of types.
Spaniels of any type or combination of types.
Terriers of any type or combination of types."

Mr T Clarke:

That would do me.

Mr Molloy:

I would go along with the English legislation. *[Laughter.]*

Mr T Clarke:

So would I. Can we ensure that that is recorded in the Hansard report?

Mr W Clarke:

One lesson that has been learnt in England and Wales is that including cross-breeds in the definition causes major difficulties in enforcement. At the end of the day, the Committee has to take on board the issue that councils will face the extra cost of establishing whether the dog is pure-bred or a cross-breed. We are about delivering good legislation. We have listened to the evidence, and we have to —

Mr Molloy:

There was not much question of that this morning.

Mr W Clarke:

Chairperson, I will finish. We have a responsibility to evaluate the evidence that we take. As I said earlier, the evidence that I heard concerned two types of dogs — spaniels and hunt point retrievers. That was the main body of evidence heard by the Committee.

The Chairperson:

We need evidence from the RSPCA as well, and we will, again, take written evidence from those witnesses who have appeared before the Committee. As this is a policy change, will the Department undertake an equality impact assessment (EQIA) on it?

Ms McMaster:

We sent the original equality screening document to the Committee. We can investigate whether this change will change anything in the original screening document.

Ms Davey:

From an equality point of view, it is unlikely that the decision to allow an exemption would have an impact on the section 75 groups. The Bill was certainly screened, so it is unlikely to change that, but, yes, of course we will look at it.

Mr Beggs:

I declare an interest as a councillor, because the Bill has ramifications for local government. To ensure that we consider which measures may or may not be appropriate, will the witnesses highlight what they regard as the loopholes in the English legislation?

Ms Davey:

Yes. We will provide to the Committee exactly what difficulties and good points have been identified in the legislation by the RSPCA, which enforces the English legislation.

Mr Molloy:

Did the Department not bring that forward before now because there are some good points about it?

Ms Davey:

That is not the case. It is certainly not a case of hiding evidence. The issue had not arisen. We look at numerous things that we will openly discuss with the Committee when the opportunity arises. The English legislation, like ours, bans cosmetic docking, and that is welcome.

Mr Molloy:

I believe that restricting the exemption to pure-bred dogs means that there is an equality issue. The majority of people who own spaniels do not necessarily own pure-bred spaniels or pure-bred dogs of any type. Therefore, there is an equality issue.

The Chairperson:

We will write to the Department about that.

Mr Gibson:

May I presume that the Bill's reference to the lawful shooting of animals does not preclude the shooting of birds such as pheasants and so on?

Ms Davey:

It does not exclude the lawful shooting of birds unless they belong to a species that it is illegal to shoot.

The Chairperson:

In summary, the Committee is waiting for more evidence and to consult further with witnesses. In the meantime, although the Committee has not approved a clause, it would probably be useful to see the text of any proposed amendment from the Department. Is the Department content to provide that?

Ms McMaster:

Yes. We will provide that as soon as possible.

Ms Davey:

As Collette said, if it would be helpful, we could also provide members with a framework of the type of measures that would be in the subordinate legislation.

Mr T Clarke:

Why can we not lift that paragraph directly from the English legislation? I think that Ms McMaster said that it was the same as ours. It would probably be easier to get a consensus on that wording. Although the Department refers to it and says that it is copying the English legislation, that does not, in fact, seem to be what is happening. The Committee Clerk's explanation differs from my interpretation of the wording in the Minister's letter.

Ms McMaster:

The exemption is not designed to be the same as the English legislation.

Mr T Clarke:

You said earlier that the part about the exemption is the same.

Ms Davey:

No, there are two differences.

Mr T Clarke:

Which are?

Ms Davey:

The Minister has proposed that the exemption here will be restricted to purebreds and that terriers are not included. Those are the two differences.

Mr Molloy:

At the beginning, you said that the amendment was to bring the legislation into line with the English legislation.

Ms Davey:

I do not think that those were the exact words. If they were, I am sorry, because that is not the case. At the outset, I read out very clearly the Minister's proposal, and, in case anyone is not clear about it, I will repeat it. The Minister proposes to allow an exemption for some working dogs. That is restricted to pure-bred spaniels and hunt point retrievers that are involved in lawful pest control work and in the lawful shooting of animals. She also said that the tail of the dog must be docked by a veterinary surgeon — that is the current law — before the pup is over five days old. That is the crux of the exemption.

The Chairperson:

Are members happy to defer until we receive more information?

Members indicated assent.

The Chairperson:

We move on to clause 12. Members will see that the letter contains a reference to clause 12 and the impact on local councils. I declare a pecuniary interest as a member of Craigavon Borough Council.

Mr W Clarke:

I am a member of Down District Council.

Mr T Clarke:

I am a member of Antrim Borough Council

Mr Irwin:

I am a member of Armagh City and District Council

Mr Molloy:

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

The Chairperson:

Yesterday, the Minister raised that matter and said that she wants to meet again to discuss it. Are members content for a cross-party group that is representative of the Committee to meet the Minister or should we ask her to come to address the Committee?

Mr Molloy:

It is probably best that the Minister addresses the Committee.

The Chairperson:

Do members agree to proceed on that basis?

Mr T Clarke:

Can we tie in the other part as well?

The Chairperson:

Which other part?

Mr T Clarke:

Tail docking.

The Chairperson:

We will do it all. Are members content?

Members indicated assent.

The Chairperson:

OK, we have deferred clause 12. We move to clause 17, which has cost implications for councils. Are members content to defer that clause?

Members indicated assent.

The Chairperson:

Clause 18 is entitled "Power of entry for section 17 purposes". The Committee agreed that The Department of Agriculture and Rural Development (DARD) should forward any new codes to the Committee for consideration in advance of publication. Do members agree?

Members indicated assent.

The Chairperson:

Clause 22 is entitled "Entry and search under warrant in connection with offences". Again, the Committee agreed that DARD should forward any new codes to the Committee for consideration in advance of publication. Are members content with that?

Members indicated assent.

The Chairperson:

Clause 29 is entitled “Powers of councils to prosecute offences”. Are members content to defer that clause until we have the meeting with the Minister?

Members indicated assent.

The Chairperson:

Clause 45 is entitled “Inspectors”. The Committee agreed that the Department should identify in legislation the qualifications, experience and expertise that are required for a person to be appointed an inspector. Does the Department want to comment on that?

Ms McMaster:

Yes. We think that the legislation is not the appropriate place to set out the qualifications and experience that are required of an inspector. That is likely to change over the years, subject to the role and depending on who is the inspector. However, given the proposed role for councils, we intend to provide advice to them on the knowledge, skills and experience that an inspector needs. If the district councils are to undertake that enforcement role, it would be for councils to define the job description for an inspector.

The Chairperson:

Why would you not bring that under subordinate legislation?

Ms McMaster:

As with any inspector’s job, the role can change, and, as I understand it, it is not normally specified in supporting legislation.

The Chairperson:

So, the legislation could be amended to reflect that.

Ms McMaster:

What is the Committee’s thinking on having it in subordinate legislation?

The Chairperson:

Consistency is the main interest.

Ms McMaster:

That is certainly something that we would seek to address. Consistency is a key issue for us too.

Mr Beggs:

I can see the Department's viewpoint. Over the years, university courses will change, and a new course that covers that area may come into being. Therefore, defining certain courses tightly in legislation might preclude that possibility in the future, so it would be very dangerous to put it into detailed legislation.

The Chairperson:

I accept that, but, at the end of the day, we still need a qualification to identify welfare issues.

Mr Beggs:

Training and guidance are required. Presently, I assume that the first line of contact with a council is through its environmental health service, which is able to identify activities. Additional training courses may be needed in order to ensure that staff members are recognised professionals. That may not require a qualification; it may require additional training courses and getting information to staff.

Ms Davey:

According to clauses 45(3) and 45(4), the Department may issue guidance to a council setting out what is required of it. The guidance could contain the qualifications that an inspector might require. Although guidance is not a legal entity, the fact that it is mentioned in the Bill would mean that councils would be obliged to take account of it. That might resolve the Committee's concern, and, if the Committee so wishes, we could bring the guidance to the Committee in advance of issuing it.

The Chairperson:

Are members content with that line?

Members indicated assent.

The Chairperson:

The Department has agreed to amend clause 55, “Regulations”, and to make section 1(3) subject to the affirmative resolution process. Is the text of the amended clause available to members?

Ms Davey:

Not at this time, because other amendments that we might make to the Bill could impact on the clause, so we will not go ahead until we are sure that we only have to amend it once. When all amendments are agreed, we will provide the text.

The Chairperson:

OK. At this point in time, should we also defer discussions on schedule 1?

Ms Davey:

I should clarify something. You will recall that we proposed removing schedule 1. The amendment to clause 5, “Permitted Procedures”, would, in effect, remove schedule 1.

The Chairperson:

Are members content with that?

Members indicated assent.

The Chairperson:

That ends the evidence session on the Welfare of Animals Bill. Thank you for your attendance.

Mr Molloy:

Before you finish, I note that, according to the minutes of the meeting between departmental officials and council officials, no elected members were present. Three elected representatives — from SOLACE and NILGA — attended on behalf of local government. The meeting was supposed to be consultation with local government, but no elected members were present. I

asked for the minutes because the meeting did not deal with whether local government could afford to implement the proposals. At the end of the day, in all those situations, councillors will make up the budgets and will have to stand over them. Throughout the process, consultation with local government has been flawed.

The Chairperson:

You have raised that on several occasions, Mr Molloy. Perhaps there is an opportunity for you to raise that with NILGA.

Mr Beggs:

You mentioned that schedule 1 is going to be removed entirely; what will replace it?

Ms Davey:

Clause 5 is to be amended to allow a list of procedures that are currently permitted to be included. That will be done through subordinate legislation. We sent that list to the Committee Clerk last week.

Mr T Clarke:

Are we coming to the tabled papers later? Is it possible to give the Department a copy of the survey figures of those who think it is a bad idea to dock tails? Whoever this guy Bruce Jones is, he has conducted some survey in relation to dogs. Some 80% of the respondents had to have their dogs' tails amputated. Perhaps it would be useful to pass that information on to the Department. Sometimes we work with rose-tinted glasses and can only look at certain pieces of evidence, so perhaps we could present that to the Department as another piece of evidence.

The Chairperson:

I am sure that can be forwarded to the Department. That concludes this evidence session. Thank you very much for your attendance.