



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

Welfare of Animals Bill

16 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 Pat Doherty
Mr Simpson Gibson
Mr William Irwin
Mr Francie Molloy

Witnesses:

Ms Michelle Gildernew) Minister for Agriculture and Rural Development

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

The Chairperson (Mr Moutray):

Minister, you are very welcome, as are your officials. You are here this afternoon to discuss two issues, namely tail docking and the impact and resourcing requirements of the Animal Welfare

Bill. We ask that you address them separately and allow a period for questions after.

The Minister of Agriculture and Rural Development (Ms Gildernew):

Thank you, Chairperson. This is the first time that I have been at a Committee in this room. It is a big improvement; it is not quite so cramped.

I know that members have had a busy day, and I want to thank the Committee for giving me the opportunity to address it on the Welfare of Animals Bill, but before I begin, I will take the opportunity to thank members for their scrutiny of the Dogs (Amendment) Bill, which I understand was completed earlier today. I also thank the Committee for its suggested amendments on training, a tax on companion animals and fixed penalties. I think that the Bill is strengthened because of those changes.

A key issue in the Bill is a requirement for compulsory universal microchipping, and my officials have offered the Committee a delay in the commencement of the microchipping clause of 12 months from the date of Royal Assent. I am pleased to take the opportunity to confirm my commitment on that, which will allow for guidance to be published and disseminated and for the necessary procedures to be put in place. I am quite happy to follow that up in writing, but the fact that I am saying it here today means that it is on record and that you have my assurance that there will be a 12 month delay from the date of Royal Assent. Those 12 months will also allow for a campaign by animal charities etc to microchip dogs in advance of the requirement coming into force. I am pleased that the Committee has agreed clause 2, and I trust that my statement today will give members the necessary reassurances.

I thank the Committee for its good progress on the scrutiny of the Welfare of Animals Bill, which is a massive piece of legislation, so it is encouraging to see just two issues outstanding: the tail docking of dogs and the proposed enforcement role for councils in respect of non-farmed animals. I hope that we can resolve those two issues today.

I remind members that the purpose of the Welfare of Animals Bill is to update and strengthen the powers in the Welfare of Animals Act 1972, which no longer meets society's expectations. In particular, the welfare standards for non-farmed animals, including dogs, lag well behind the

improved welfare standards that are already in place for farmed animals. The main aim of the Bill is to prevent animals suffering unnecessary pain and distress. By working together on that common aim, we can bring forward primary legislation that is both effective today and capable of continuing to meet society's challenging expectations in the future.

I shall deal first with tail docking. I have proposed a ban on the tail docking of dogs unless it is part of medical treatment. I believe that tail docking causes unnecessary suffering. The ban is contained in clause 6. The Committee voted to recommend the removal of clause 6, and it asked whether I would agree to that or whether I am prepared to include an exemption for working dogs. I want to make it clear that I would be extremely concerned by the complete removal of clause 6. I believe that it would be totally unacceptable to allow the horrific practice of cosmetic docking to continue, which is what would happen if the clause were to be removed. Therefore, I am not prepared to agree to its removal.

Turning to the second part of the Committee's request, I want to make it clear that there is no conclusive evidence to justify a general exemption for working dogs. However, faced with continuing the practice of cosmetic docking for any dogs or an exemption for some working dogs, I am prepared to accede to the Committee's request to provide an exemption for certain working dogs, but only under very specific conditions that can be tightly enforced.

I am aware that the Royal Society for the Prevention of Cruelty to Animals (RSPCA), which is responsible for enforcing tail-docking legislation in England and Wales, has identified a number of shortcomings and loopholes in the legislation there. For example, the RSPCA has advised that, in England, it is very difficult to identify breed types and cross-breeds. We have to learn from lessons in other areas, so I am prepared to provide an exemption only for dogs that are genuinely likely to be working dogs and that have an increased risk of tail injury.

In addition, I wish, as far as possible, to address the difficulties with and the loopholes in the English and Welsh models. The available research shows that some working spaniels and hunt point retrieve breeds have a small increased risk of tail injury associated, for example, with working in dense cover. However, no scientific or documented evidence in support of an exemption for any other breed has been presented to us. Therefore, I am prepared to provide a

tail docking exemption that is restricted to registered pedigree spaniels and hunt point retrieve breeds involved in lawful pest control or the lawful shooting of animals. Members should have a copy of the draft amendment to clause 6, and they will see that that detail is specified in it. The exemption will not be extended to any other breed.

The proposed amendment to clause 6 also provides the power to make subordinate legislation to set out controls for the exemption, for example, the certification process and the evidence required. The subordinate legislation will also identify the individual spaniel breeds and hunt point retrieve breeds that can be considered for docking. Members will also have received a paper setting out the policy principles for consideration before the drafting of subordinate legislation. As in other areas, the subordinate legislation will not be made until after the Bill is enacted. It will be subject to public consultation, scrutiny by the Committee for Agriculture and Rural Development and the affirmative resolution procedure. I am content to take questions on tail docking.

The Chairperson:

Thank you Minister. In its correspondence to the Committee, The National Working Terrier Federation stated that:

“The case for the need to dock working terriers is far greater than with any other type of dog.”

In its correspondence to the Committee, the Countryside Alliance stated that:

“not all working dogs are ‘pure bred’; indeed many are cross bred specifically to improve their work performance.”

However, the most interesting response came from the North of Ireland Veterinary Association, which stated that:

“If, as a result of the Agriculture Committee’s opposition to a total ban, there is an exemption for pure-bred spaniels and hunt point retriever breeds, we foresee major difficulties in implementation and policing.”

Would you like to respond to those views?

The Minister of Agriculture and Rural Development:

I agree with the last point made by the North of Ireland Veterinary Association. It will be difficult to police and enforce, which is why the Department initially legislated for a full ban on tail docking. The Department also wanted to create an offence of bringing a dog to a different jurisdiction to have its tail docked.

There is a widespread docking of dogs' tails here, which is not carried out under the provisions of the 1972 Act. That Act states that tail docking must be carried out by a veterinary surgeon before the dog is five days old or before its eyes have opened. That legislation is almost 40 years old but it was not written in a way that is easily enforced. As a result, there is a widespread docking of dogs' tails by those who are not veterinary surgeons and for purely cosmetic reasons.

A total ban on the dockings of dogs' tails was my preferred option. It would mean that if a dog had its tail docked and it was a certain age that that docking was done illegally and there would be consequences for the person who carried it out. If the exemption is accepted by the Committee, the Department will have to write into the subordinate legislation fairly laborious conditions to provide genuine scrutiny of dogs and to prevent the widespread docking of dogs' tails. The best case scenario would have been to accept my original proposals, but the Committee voted to remove clause 6 from the Bill. I am trying to find a pragmatic and workable solution, which takes the Committee's difficulties into consideration and which deals with the current situation.

I have not received any compelling or scientific evidence that suggests that there is a need to dock the tails of terriers. However, there is evidence that points to the belief that spaniels and some hunt point retriever breeds could benefit from having their tails docked, because of the nature of their tails and the work that they do. Without presenting the Department with evidence on the need to dock terriers' tails, I cannot accept that it is necessary. Quite a lot of terrier breeds have their tails docked for cosmetic purposes. They will never be used for hunting and are simply pets. I know people with Jack Russell terriers with docked tails that were never intended to be working dogs. That is why the exemption is not for all working dog breeds but for those dogs that actually work.

There were a number of discussions on the work that was carried out in England, which showed that for every dog that had its tail docked for welfare reasons, another 500 had their tails docked for cosmetic reasons. I have had to look at all of the available evidence and make a decision based on it. I have set out my position clearly on what our preferred option was. We now have a compromise in front of us — a way of finding a way in which we can all move

forward. We can sign off on that today.

The Chairperson:

Thank you, Minister. You quoted some evidence in closing, but that was hardly responsive in that it came from 52 veterinary practices out of some 4,800. We have raised that issue before.

Is it not a fact that you are prepared to move on an exemption because the Department has now accepted that the scientific evidence supporting a total ban on tail docking is flawed and inconclusive?

The Minister of Agriculture and Rural Development:

Not at all. As I discussed last week, this is an attempt to find a pragmatic solution to a difficulty that the Committee has. I have a position and the Committee has a position, and I am trying to find a point at which we can all agree so that we can all have ownership of the Bill. I do not accept your assertion at all. If we were to refuse to deal with the Committee's issues, you would accuse me of not taking into consideration the Committee's views. I respect the Committee's scrutiny role and that its 11 members have opinions on the Bill. As Chairman, you are trying to bring those opinions together in order to get a consensus. I believe that I am helping to try to find a consensus, but, if the Committee feels that I am not, I want to hear that.

The Chairperson:

The difficulty is that this is about more than the Committee's views; it is about the views of the rural population of Northern Ireland.

Mr Beggs:

Minister, one of the conditions that you set out is that the dog must be registered as a pedigree dog with the Kennel Club or such organisation as the Department specifies. If the exemption is being given to enhance the dog and limit damage to its tail, what does it matter whether the dog is registered as a pedigree dog? It is the same dog whether it is registered or not, and I assume that registration would involve a significant additional ongoing cost. I assume that there is an annual cost payable to the organisation for registering the animal as pedigree. Perhaps members can verify that. There is a significant additional cost to having a working dog.

The Minister of Agriculture and Rural Development:

My understanding is that registration takes place at the beginning of a pup's life, so there is a one-off registration cost and the dog is registered for life. There is no additional yearly fee. The Deputy Chairperson made a good point. The pup's tail needs to be docked before its eyes are open or it is five days old. You can imagine that you could hold some of those pups in the palm of your hand, and there are a number of characteristics of a breed that develop only as the pup gets older. The spots on a Dalmatian are a good example of that, because a Dalmatian pup does not look anything like its sire or dam.

The specific requirement that a dog be registered as a pedigree dog comes from our conversations about the legislation with people from many other places. We have heard clearly from the RSPCA in England, which recognises that there is a great deal of difficulty in identifying the breed of a five-day-old pup. Unless there is an ability to track the parentage of the pup, it is nearly impossible to know what breed it is at five days old before its eyes are open. If the sire and dam have registered pedigrees, one knows for a fact that, even if the pup looks like a large rat, it will turn out to be a cocker spaniel, a springer spaniel or whatever breed. If the person produces evidence of the pup's parentage, they have evidence that it is what they say it is. Vets have made the point that it is difficult to assess what breed a dog is when it is a very small pup and has not developed those characteristics.

We have looked at other areas where such legislation is proven. The legislation in England and Scotland is not very old, yet difficult consequences of that legislation have been identified, and the advice was that tightening that up would lead to better legislation that is much easier to enforce.

Mr Beggs:

You indicated that the regulations will require that evidence be produced to a veterinary surgeon. Where are those regulations? I want to see exactly what is being required, because if the legislation goes through, tail docking would be prevented until those regulations come through. They must, therefore, be carefully scrutinised in advance.

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

We have a summary of the key points that may be in the legislation, and we will circulate that to Committee members now.

Mr Beggs:

Do you accept that if the legislation goes through as is, there would be no tail docking whatsoever until the Committee approves the regulations? If that were the case, the decision-making of the Committee would be handed over to the Department, because we would not have any authority to pressurise it into altering those regulations. The Department would, therefore, be able to prevent all tail docking until the new regulations have been approved.

Ms McMaster:

No. That is not the case. Clause 6 will not actually commence until the Bill takes over from the previous legislation.

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

If I may explain the process, basically, tail docking will only be banned once there is subordinate legislation in place that sets out the exemptions. There are clearly exemptions built into that, so the two must go hand in hand. It is not about enacting the Bill and then forgetting about making the subordinate legislation. Clause 6 will not commence until the subordinate legislation is made, and both will be commenced on the same day. That is the process.

The Chairperson:

Will the subordinate legislation require affirmative resolution?

Ms Davey:

Yes. I think that the Minister already said that in her statement.

Ms McMaster:

The normal process is to bring any subordinate legislation to the Committee.

Mr Beggs:

I refer you to proposed new subsection 6 of clause 6. It states:

“The first condition referred to subsection (5) is that there has been produced to the veterinary surgeon such evidence as the Department may by regulations require”.

In other words, the regulations will be key to enabling any tail docking whatsoever. If the regulations do not go through or are not approved by the Committee and the Assembly, there will be no tail docking. Is that correct?

The Minister of Agriculture and Rural Development:

No. As we said, the subordinate legislation will be subject to consultation and the Committee’s scrutiny. Conditions are set out in the clause for the certification of docking so that we know that the correct dogs are being docked. Examples of the evidence that will be required include belonging to a gun club, being engaged in lawful pest control or having a letter from a landowner, a gamekeeper or a farmer. Those conditions will enable us to see whether a dog that is having its tail docked will be a working dog as opposed to a working dog that might never work and is, therefore, having its tail docked for purely cosmetic reasons.

The Chairperson:

Is it not a contradiction that the Department is asking people to register their dogs with the Kennel Club, given that that organisation wants the regulations around docking to be the same as those in England, which exempt working breeds and their types, in other words cross-breeds?

The Minister of Agriculture and Rural Development:

Again, we consulted heavily on that. The RSPCA came back and told us that the legislation will be difficult to operate and enforce because of the way in which it is written. It said that the legislation in England had proven to be very difficult to enforce. It, therefore, suggested ways in which we could tighten up our legislation to ensure that there is better enforcement as well as better assurances given to veterinary surgeons, who are to carry out the procedure, that dogs whose tails they dock will be working dogs. As I explained to the Deputy Chairperson, the difficulty is around identifying whether a three- or five-day-old pup is actually of a breed that the exemption covers and not of any other breed, because it is difficult to differentiate pups at that age.

Mr Beggs:

Do you accept that, if some people use a cross-breed dog as their hunting dog and are happy with it and want it to have pups, the legislation will prevent dogs from that litter being used for hunting?

The Minister of Agriculture and Rural Development:

I do accept that. However, in the interests of having legislation and an exemption that allays the concerns of the hunting fraternity, I thought that, if people have a cross-breed dog that they are happy with, although they will not be able to dock that dog's pups, they will still be able to train a pure-bred spaniel or retriever to hunt and will still be able to have a dog whose tail is docked. On the other hand, had our original proposals gone forward, those people would not have been able to dock the tail of any dog. Therefore, I am trying to find a compromise that works for people and is restrictive enough but not totally restrictive. As I said, we had one position, and the Committee had another position. I am trying to meet somewhere in the middle and trying to find a way to achieve legislation that is workable, can be enforced and does not make a nonsense out of the work that we have done to date.

Mr T Clarke:

The Chairperson and Roy Beggs have covered most of the points. However, I was disappointed in the Department's reluctance to make any movement. The Committee, at my suggestion, reluctantly proposed to remove that clause because the Department had given no consideration to the views of members. As you know, many of us are from rural areas and can understand the concerns not necessarily of the dog breeders but of the people who use gun dogs. Although you say that the Department had one position, the Committee had another and we are now somewhere in the middle, I personally do not believe that we have moved far enough. It is still very vague.

The proposed amendment puts a bit of meat on the bones of how we could police the exemption, but I am still concerned about the breeds of dogs that are listed in it. You said that you know people who have Jack Russells, and, equally, I am sure that you know people who use Jack Russells for hunting, given that you are from a rural area and see yourself as a rural champion. You appreciate that people have those dogs as pets, and I accept that there is no necessity to remove tails from dogs that are pets just because it looks nice. Given that you come

from a rural area, you will appreciate that people use them for hunting and put them down foxholes or rabbit holes. If we prevent those dogs' tails from being docked, that gives rise to the possibility of those dogs causing damage to their tails, which, in turn, will lead to amputation. What is your view on that?

The Minister of Agriculture and Rural Development:

Like Trevor, I am rural dweller, and I have talked to a lot of people during this year to ascertain their views. It is certainly clear to me that, while a small minority of people use Jack Russells for hunting, it is a very small minority, and the vast majority of Jack Russells are pets and have their tails docked for cosmetic reasons. To that end, I do not believe that the exemption should be extended to include terriers.

I also know that, if somebody is absolutely determined to own a Jack Russell with a docked tail for hunting purposes or to put down a foxhole, they will be able to acquire such a dog from elsewhere, where the legislation is not the same as ours. The legislation ensures that the 90-odd per cent of Jack Russells that end up as family pets do not go through a procedure before they are five days old that will be with them for life. Therefore, I am trying to find solutions that protect dogs that will be used as pets, but I do so with a view to trying to meet the needs of people who hunt with dogs and who absolutely believe in the need for those dogs' tails to be docked.

Mr T Clarke:

To a degree, I accept what you are trying to do. My problem is that your paper says that evidence must be produced to a veterinary surgeon before a tail is docked. Why would somebody with a Jack Russell go to the difficulty of providing all that evidence to have the dog's tail docked if they have no intention of using it for hunting? I think that you are creating a bigger problem than the one that is already there.

The Minister of Agriculture and Rural Development:

The difficulty is that the Jack Russell terrier is not a recognised or registered breed; it is already a combination of breeds. So, there are no papers to confirm the dog's breed, which makes the matter much harder to police and enforce. That throws the provision open to the extent that it will be unworkable. If we were to go down that route, a lot of the work that we set out to do

collectively to enhance the welfare of animals could be wasted.

I have thought long and hard about the issue. Without evidence that cannot be contradicted about the necessity for the ability to dock terriers' tails to be included, I do not see the need for it. My compromise, which allows spaniels and hunt point retrievers to have their tails docked if they are working dogs, goes a long way to addressing the needs of the hunting fraternity but does not go so far as to open up tail docking for all dogs.

Mr T Clarke:

Do you not accept that we would all be in an unfortunate position if you were to bring the legislation forward in its current form and it was to fall because of working dogs?

The Minister of Agriculture and Rural Development:

That would be very unfortunate. I genuinely do not believe that that will be the case. We have a situation in which the breeder, rather than the owner, decides whether the dog will work. We want to find a solution to that. If the legislation goes to the Floor of the House, it will be up to 108 MLAs to decide.

I am trying to find a way for us to collectively go forward. In previous legislation, we have seen that when the Department, the Minister and the Committee have worked together and have come to an agreed position, the rest of the journey for the legislation has been much easier.

You might disagree with me, but I do not see the benefit of us having this debate on the Floor of the House. I am prepared for that if it happens, but there are people with a desire to see animal welfare protected in the strongest possible terms. If we do not get agreement here today, the fall of the legislation could be a consequence. It is better to go to the Floor of the House with an agreed position that we can all sign up to.

Mr Molloy:

Thank you for the presentation, Minister. It is unfortunate that the documentation has come so late; a council would not accept documentation at such a late stage.

It adds an awful lot of conditions to the docking of tails for a small number of dog types. By and large, the Department has used a sledgehammer to crack a nut. If the Department had been listening earlier, we might have got further than we are.

We are very close to getting agreement. It would be unfortunate to throw the legislation out at this stage over the differences between us. To list a combination of dogs, as the English legislation does, would be preferable. As for the pedigree label, the majority of people who hunt with dogs do not have pedigree dogs. The breeders may have pedigree dogs for sale, but the majority of people have cocker spaniels or other dogs that are not pedigree dogs.

You said that no evidence was presented, but the Committee received evidence about terriers. As Trevor Clarke said, the same conditions for going to a vet for docking and receiving a vet's certification have to be met for terriers. All of the conditions attached to pedigree dogs could apply to terriers that are working dogs as well as spaniels and other breeds.

From watching hunts, I know that terriers are always with the hunts at the start. Terriers are always used on fox hunts, because they go into the burrows and pull out the foxes. One problem with their long tails is that they often end up broken.

We are close to agreeing on the legislation. We could go back through all of the evidence that the Committee has received, much of which has been flawed and contradictory. We receive one piece of evidence from one group and another piece of evidence that counteracts that from another group. We have been down that road and heard it all.

The combination that exists in the English legislation would satisfy us as regards variation in breeds. The listing of terriers would satisfy the extra provision that is required for working terriers. The same qualifications are also required for the veterinary classification.

The Minister of Agriculture and Rural Development:

I can only repeat that there is no incontrovertible evidence that terriers' tails need to be docked. The member raised anecdotal evidence, but there is also stark and compelling anecdotal evidence that nearly 100% of terriers do not work, yet they have their tails docked for cosmetic purposes.

I have a responsibility to bring in legislation that does what it says on the tin. This is the Welfare of Animals Bill. I am trying to find a compromise that addresses the needs of the members of the Committee, but there is not the same evidence for terriers as there is for spaniels and hunt point retrieve breeds.

I would like to see a solution to this today. I was working on this until 12 o'clock last night. I am trying to find a solution that we can all live with, but which does not open this up and become unworkable. As I said in my opening remarks, the 1972 Act is so full of holes that people are cosmetically docking dogs' tails willy-nilly without getting a veterinary surgeon to do it. I do not know what sort of conditions they are being docked in, or what tools are being used, but I hear from plenty of people that it is carried out. There is no ability to enforce or police that, and the legislation is so fundamentally flawed that we are coming back to it and trying to strengthen it to protect the welfare of animals.

Mr Molloy:

Despite whatever draconian legislation we bring in, docking will continue. You cannot stop it completely; that will take time. Nobody is suggesting that we open this up to dock the tail of every dog. There is a group of dogs that can be controlled. If that starts, and can be managed, then terriers can be listed — whether or not you include Jack Russells — as registered and recognised breeds. However, the pedigree label is unnecessary, because the majority of hunting and working spaniels are not necessarily pedigree dogs. Including the words “type or combination of types”, still restricted to a small number of dogs, is a way to get round that issue.

The Minister of Agriculture and Rural Development:

There is not a registered breed. It is a breed, but it is not registered, and that is the difficulty. The evidence is that the vast majority of spaniels work and a small minority are kept for pets.

It is the flip side of that coin for terriers, and you would be opening it up. In fairness, putting the conditions into the legislation will restrict the wholesale docking of dogs' tails, because we are asking for proof. It will then be an offence to dock a dog's tail without the necessary conditions being met. We are trying to enhance the welfare of animals. We know that thousands of dogs have their tails docked for no reason. We are trying to avoid that in the future.

I am conscious, Chairperson, that we still have quite a bit of work to get through in the time that we have.

Mr W Clarke:

Thanks for your presentation. You are welcome, Minister. A bit like you, at the beginning of this process I favoured a total ban on docking. After we received evidence, however, I saw that there was a need to exempt certain working dogs, particularly the spaniel breeds and the hunt point retrievers. Witnesses produced information about a greater welfare issue for those hunting dogs.

I also agree with you about not including cross-breeds, because that would allow the wholesale docking of dogs' tails. We need to learn lessons from England and Wales about that. Like the legislation that we discussed earlier today, this is about compromise and getting a balance.

I asked at last week's evidence session whether there was any information from the Scottish Parliament about how terriers have fared under the total ban. What is the injury incidence among terrier-type dogs that hunt in Scotland? Have we managed to get that information? The evidence that we have does not clarify for me whether there is a welfare issue with terriers. I would like to have that clear in my own mind.

Ms Davey:

Colleagues in Scotland told me that they had no evidence other than small snippets of anecdotal evidence, which we certainly cannot get through government sources. Unfortunately, no surveys have been undertaken that specifically cover terriers, so we do not have that evidence.

Mr W Clarke:

Is there even much media coverage of welfare issues related to terrier-type hunting dogs in Scotland?

Ms Davey:

There is nothing that I have been made aware of specifically in respect of terriers. In Scotland, there are ongoing issues about whether an exemption to the ban should be introduced. The Scottish Government are looking at the latest evidence in the reports that the Committee has seen to see whether seeking an exemption is justified. However, I can give no specific information to members on terriers.

Mr W Clarke:

We are short on time to get through the Bill. I may follow up my enquiry after the Minister leaves.

Mr PJ Bradley:

I thank you, Minister, for your presentation. The Committee's vote to remove clause 6 was not unanimous. I abstained for one reason: I thought that we could have done with extra evidence. That would have been helpful. I freely admit that the Department is doing its best to reach an acceptable compromise, and I hope that it gets there. I know the lobbying process that we all face. There are so many types of lobbying. Some people would not care whether all our dogs were like Manx cats, whereas others would ban tail docking completely. In trying to reach a compromise, we sit here as judge, jury and, almost, executioner.

I declare an interest as an honorary member of the North of Ireland Veterinary Association (NIVA). For the record, if the difficulties foreseen and predicted by the NIVA occur, will the Department revisit the regulations? Can it do so?

The Minister of Agriculture and Rural Development:

Do you mean problems in enforcing the tail docking ban?

Mr PJ Bradley:

The Veterinary Association states:

“If, as a result of the Agriculture Committee's opposition to a total ban, there is an exemption for pure-bred spaniels and hunt point retriever breeds, we foresee major difficulties in implementation and policing.”

If that were to prove true, would you revisit the regulations?

The Minister of Agriculture and Rural Development:

If that turns out to be true, I imagine that we would have to revisit the regulations and accept that the compromise had not worked. Ultimately, we would have to go back to our original position, which was to impose a total ban on the docking of dogs' tails and a ban on taking a dog to another jurisdiction to be docked.

Mr PJ Bradley:

The only reason why I want that on the record is that we will all be out of here in a few months' time, and newly elected people will be here. I believe that the issue will resurface, and I welcome that being put on the record. Thank you.

The Minister of Agriculture and Rural Development:

Thank you, and I appreciate your comments. We are all trying to do the right thing here in trying to find a solution that is workable and practicable. And yes, I imagine that the next Committee members and Minister, whoever they are, will have to deal with the issue if it ever arises. However, we may avoid that need by getting workable, enforceable legislation now.

Mr Doherty:

I thank the Minister for her submission. I started out in favour of the original legislation — a total ban — but I had to listen to Trevor and to Francie. I had to listen to Francie anyway because he is right beside me.

Mr Molloy:

You did not listen much, right enough. *[Laughter.]*

Mr Doherty:

I did, but Trevor made the same points. A Committee is about trying to work together and to be serious about the issues, and we have moved a lot closer to a resolution. The Chairperson and Deputy Chairperson played a big part in the dialogue with the Minister. However, I want clarification on something that I think you said your submission. Did you say that working terriers with their tails docked could be brought in from other jurisdictions?

The Minister of Agriculture and Rural Development:

We do not have the power to stop them being brought in from other areas.

Mr Doherty:

So, if that were to happen, it would not be illegal.

The Minister of Agriculture and Rural Development:

It would not be illegal, but those involved would have to show that that dog was brought from a jurisdiction in which the docking of terriers is allowed. They would have to provide evidence to show that they had brought the dog over with its tail docked. Failure to provide proof that a terrier with its tail docked had been born in England and had been docked there before its eyes opened would be an offence.

Mr Doherty:

If the proof was there, it would not be illegal to do that?

The Minister of Agriculture and Rural Development:

No. Such an instance would be tied into the dog licence system. The docking would be evident when the dog was licensed.

Mr Gibson:

I thank the Minister for her statement and acknowledge that an effort is being made to reach a compromise that will allow the business to proceed. Cross-breeding has become an issue in the past couple of meetings. I accept that there is a problem in identifying cross-bred dogs. The potential is there to include a lot of mongrel dogs, and, in such circumstances, the exemption would be extremely difficult to police in any shape or form. Nevertheless, I have become aware recently that responsible people are involved in cross-breeding dogs and in trying to amalgamate the various traits that the different breeds offer. Therefore, I wonder whether there is the possibility of a further compromise. Is there any way in which that first cross could be verified and accepted so that we can prevent a situation in which we will have all sorts of cross-bred dogs? That would be utterly impossible to control. If, for example, a first cross between a spaniel and a Labrador was accepted and could be monitored and policed, would a further

compromise be possible?

The Minister of Agriculture and Rural Development:

I appreciate the question. I have been thinking about the implications of the issue, and I have sought legal advice. The advice that I have been given is that it would be impossible. I accept what you are saying, Mr Simpson. The first generation of a mix is a cross-breed, but the pups of that pup are mongrels; therefore, I do not see that as a workable solution. You are suggesting that it would be possible to dock one dog, but it is clear that the pups from that dog would not be able to be docked. I am not sure that that is a big help either. People who breed cross-breeds to have the characteristics that they are looking for are not allowed to dock the second or third generations of those dogs anyway. That would render workable and enforceable legislation too wide open. It would create the kind of problems that we have heard about from the RSPCA on the English legislation and how it has proven to be very difficult to work with.

Do you want to follow up on that, Kate?

Ms Davey:

You have covered it entirely. That is where the difficulty lies.

The Minister of Agriculture and Rural Development:

We did look at it.

The Chairperson:

OK. I will allow Trevor Clarke to ask one quick supplementary question, because we need to move on.

Mr T Clarke:

I have two possible questions.

The Chairperson:

Make it one.

Mr T Clarke:

I will try to roll them into one. The Minister talked about evidence concerning terriers. I want to go back to the reason why we are trying to ban tail docking. What is your understanding of that, Minister? What are the reasons for banning tail docking?

The Minister of Agriculture and Rural Development:

It is an unnecessary procedure to put a pup through, and it is done mainly for cosmetic reasons.

Mr T Clarke:

In their evidence, the representatives of the Northern Ireland Veterinary Association likened the pain felt by a dog when its tail is being docked to us saying, "Ouch" when we suffer a burn. I am happy to have a compromise if we can get one, but I think that we are over-emphasising the stress that a dog goes through. Docking is not as painful as we were led to believe at the outset.

The Minister of Agriculture and Rural Development:

I have not gone through the detail of the pain today. My main concern is that for every 500 dogs' tails docked only one is docked out of necessity. Therefore, 499 dogs are put through an unnecessary procedure. It is not just about the pain of the procedure. Tail docking denies a dog a means of expression and communication for the rest of its life. The letter that the Committee has received from the North of Ireland Veterinary Association talks about dogs' balance being affected, because the tail is used by dogs for more than just wagging when they are happy or standing up straight when they are angry. The tail is used for a number of things. If 499 dogs have their tails docked for the sake of one dog, that is wrong.

Mr T Clarke:

That evidence, when we start to scrutinise it, is from some urban part of England and not a rural part. The evidence came from 50 veterinary practices out of almost 4,000. I remember one departmental official saying that it was not important where the evidence was from. However, I deem that to be very important, because there are differences in what dogs are used for, depending on the area. I am sure you understand, Minister, that someone in an urban setting will use a dog as a pet, but that others in more rural settings are more likely to use a dog for other purposes. The Department has continually used those statistics and has obviously brainwashed

you with the same statistics. However, those statistics do not wash with us, because, when scrutinised, they do not stand up.

Mr Molloy:

I thought that we had covered that. The evidence was found to be flawed. Yet it continues to be quoted.

On pain, we need to broaden the animal welfare issue. We need to go into the castration of bulls and the docking of pigs' and sheep's tails. How many lambs' tails are docked to stop perhaps one being infected with mites? If we really are to compare like with like, we need to take evidence on that. The evidence that the Department has continuously thrown up has been found to be completely flawed.

There is a straightforward, simple solution. One part of which amounts to allowing the combination of the breeds that we are talking about, which ties it down. The other is to detail the terrier dog as one particular breed. There is a solution if the Department wants to find it, and I hope that it can.

The evidence from England, and something that came up in various evidence, was that people are exporting dogs from here to England, and from Donegal to here and to England, due to the popularity of dogs and the level of demand for them.

In the legislation, I notice that within the conditions attached to the small number of dogs that are going to be docked, microchipping is automatic and compulsory. Before we have ratified the microchipping legislation in the Dogs (Amendment) Bill, compulsory microchipping for any dog whose tail is docked has been built in to this Bill. One piece of legislation is overlapping with another.

There is a solution. If we are to deal with animal welfare — or perhaps that is just a wee pet phrase around the docking of dogs' tails — we need to go back over the evidence. However, in the past, evidence presented by the Department has been flawed.

The Chairperson:

We are going to move on. Time is against us.

Minister, will you comment on the impact that enforcement responsibilities would have on the ratepayer? Will you comment on the absence of complete consultation on the Bill with elected council members, some of whom we met yesterday?

The Minister of Agriculture and Rural Development:

This is the issue of the enforcement role for district councils in the Welfare of Animals Bill. As you are aware, Chairperson, it is proposed that district councils will enforce the new powers of the Bill. Perhaps I can read from my speaking notes, which should answer part of your question.

We are trying to enforce the new powers in the Bill in respect of non-farmed animals. It is also proposed that councils will undertake the licensing and registration functions for activities involving animals.

I am aware of the concerns that councils and Committee members have about the new functions passing to councils without funding. As my officials have advised, I have included a bid for £760,000 from the 2010 Budget to assist councils in funding that work. The purpose of that funding is to assist district councils to implement the new powers in the Bill around non-farmed animals.

As the separate licensing and registration functions under clause 12 will be undertaken by councils on a full cost-recovery basis, there will be no financial burden on district councils or on the ratepayer; therefore, those functions are not included in the £760,000 funding bid. They will include enforcement work in respect of dog breeding establishments. I can assure the Committee that the licensing and registration functions under clause 12 will only transfer to councils as and when new subordinate legislation for each activity is made. My officials will liaise with councils to ensure that fees are set at the appropriate level to recover full costs.

I also recognise concerns that, although councils currently provide dog warden services, they do not have expertise on wider animal welfare. To help with that, I will outline the practical

assistance that my Department will give to councils to help them prepare for their new role. I give a firm commitment that my officials will work with council officials to ensure that they are ready to implement the powers in respect of non-farmed animals before they are commenced in the Bill. During that lead-in phase, my Department will provide guidance to councils on the skills, minimum qualifications and experience that an inspector will require. My Department will also provide advice and training to councils on the provisions in the Bill.

I do not want to put a time frame on how long it will take to prepare councils for this new role, but I can guarantee that, even if it takes six to nine months, the power for district councils to appoint inspectors will not be commenced until councils are ready to start enforcement work on non-farmed animals. To that end, I am proposing a change to clause 45 of the Bill.

Members have a copy of the proposed draft amendment to clause 45 and will see that the amendment will clearly set out the division of responsibility between inspectors appointed by my Department and council inspectors. It will also allow council inspectors' powers to be commenced separately through a commencement Order when resources, systems and procedures are in place.

To address the specific concerns that were raised by the Committee about clauses 17 and 29, my Department will provide guidance to inspectors on the powers of seizure and on how to take prosecutions forward. As regards the powers in clause 17 to seize animals, it will be up to councils, either individually or collectively, to source veterinary expertise and to put the necessary arrangements in place to care for seized animals. However, I stress that seizure should be seen as a last resort.

Experience has shown here with farmed animals and in England and Wales with domestic pets that the issuing of an improvement notice works in more than 90% of cases. Seizure by council inspectors should, therefore, only be necessary in a minority of cases. To try to minimise any seizure costs, powers have been included in the Bill to apply to the court for a disposal order for any seized animals in advance of a prosecution and to seek to recover costs at the time of the conviction. Any costs recovered by councils through the courts can be retained by the council to fund further welfare work.

In passing this enforcement responsibility and funding to councils, I intend to leave it to councils collectively to decide how to deliver those functions. Councils may decide that it will be more efficient and cost effective to deliver the service from one or two locations across the North; alternatively, they may wish to amalgamate the new activities with functions that are already delivered at a local level.

To summarise; we have bid for £760,000 for councils over the next comprehensive spending review (CSR) period to implement powers in respect of non-farmed animals. Those licensing and registration functions will be on a full cost-recovery basis. The responsibilities of the Department and councils will be made explicit in the Bill, and the respective enforcement provisions in the Bill will not be commenced until the necessary resources, systems and procedures are in place to allow councils to implement those powers.

I hope that my earlier explanation clarified why we have restricted tail docking. Before I ask for members' support, and in response to your question at the beginning, Chairperson, I accept that we could have carried out further consultation. I put my hands up to that. That is one thing that I would like to have seen improved. However, there has been consultation, and I believe that we have now found a way that addresses the needs of the Committee. Hopefully, you can support the two amendments to the Bill at clauses 6 and 45.

The Chairperson:

Thank you. The Committee will have to take some time to go through the detail of the papers that have been presented. However, why has the Department insisted throughout the process that it has had adequate consultation with councils, as opposed to consultation with council officials? It became patently clear yesterday, when we met a cross-party delegation of councillors from across the Province, that they had not been consulted.

The Minister of Agriculture and Rural Development:

The fact is that it can be difficult and unwieldy. I do not know exactly how many councillors there are in the North, but there are hundreds of them. When we did the consultation exercise on the Dogs (Amendment) Bill, we brought in a dog warden and an official, who may have been the chief executive, and there were a wide range of views when it was applied to 26 councils

multiplied by two people. I accept that, on any of these issues, two councillors from the same party in any of the 26 district councils could have totally opposite points of view. Therefore, the councillors' range of views is enormous, and it is difficult to find a way that we can consult with people. We consulted with NILGA, the Society of Local Authority Chief Executives and Senior Managers (SOLACE) and others, but to ask every single councillor for his or her views on every single issue would be next to impossible with the resources that we have to carry out consultation.

The Chairperson:

The chief executives indicated to us that the first correspondence that they had in relation to the issue was on 5 November. I want to bring in Francie Molloy at this point, because this is something that has been exercising him for some time.

Mr Molloy:

Yes, it has. If the Department had listened earlier, it could have had further consultation with the councils. Consultation with 26 councils is what happens in a democracy. It may be slow and cumbersome, but that is how it works. In Dungannon council, the chief executive does not represent the council. The elected members represent the council, and, as such, the consultation that the Department seems to have had was with individual council officials. That does not count as consultation.

When I brought up the issue at my council, in Dungannon, all the councillors disagreed with the legislation. Therefore, the response from Dungannon was clear. You can talk to individual officers and you can talk to dog wardens, but the councillors are the people who make the decisions.

I do not think that there was proper consultation. That was very clear yesterday. Departmental officials heralded some councils as leading the way in all this, but those councils did not even know what the discussion was about and had had no discussion around it. Therefore, the issue around consultation is a big one. Local government has had no explanation of the new role that councils will have to play as inspectors of all non-farmed animals, the cost of supervising and maintaining that, the cost of holding them, the cost of inspection and the cost of court cases, and there was no response from local government as regards how it will meet that

cost when it comes round to them. Therefore, that legislation is flawed and needs to go out to further consultation with all 26 district councils.

The Minister of Agriculture and Rural Development:

In 2006, the Department issued its consultation proposals to the 26 councils. Out of the 26 councils, only five responded, but they were in favour of councils having a greater role in enforcement. Those respondents were then invited to the welfare of animals stakeholder workshop in September 2009, in the Park Avenue Hotel, but no council representatives attended. Late last year, departmental officials apprised the Department of the Environment's local government policy division, the chief executive of NILGA, and SOLACE of the Bill's proposals. At that time, the Department held a number of meetings with council officials.

Granted, those were with council officials, and I take Mr Molloy's point. However, we agreed to try to quantify the size of the enforcement role in respect of non-farmed animals, and I understand that, in reality, that has proved to be a difficult exercise and has taken considerable time. Over the past couple of weeks, Department officials have had two meetings with NILGA and council officials, and I assure the Committee that such engagement will continue so that the best solution can be obtained for the implementation of powers in respect of non-farmed animals.

The Chairperson:

I hear what you are saying, Minister. However, 10 councillors from across the parties said yesterday that they had not been consulted.

Mr Beggs:

I declare an interest as a local councillor. Was making non-farmed animals the responsibility of councils originally planned with review of public administration (RPA) in mind, in that those councils would have been much larger bodies? It strikes me that we could be talking about a wide range of animals and that some very specialist knowledge could be required. Is that not better handled on a regional basis?

Councils, to my knowledge, do not have any vets. How many vets does the Department have? I assume that their expertise is not only on farmed animals but that their training covers non-

farmed animals as well. Therefore, why is there no proposal for the Department of Agriculture and Rural Development (DARD) to carry out that role as a regional service?

The Minister of Agriculture and Rural Development:

That was proposed because of the expertise that had been built up over decades in the councils through the dog warden system and the controls therein. Although the proposals were envisaged when we thought that RPA would be implemented shortly, it was envisaged, even then, that councils might work together and form clusters to implement this legislation. I recognise that one person in each of the 26 councils might not take that on but that councils might work together on issues such as waste management, and it makes sense for councils to combine expertise and resources to deal with this matter. Therefore, from that point of view, we felt that councils were ideally placed because they are local and are in the community and councillors have a very good grasp of what is going on in their locality. That was the obvious way to proceed.

We have environmental health officers as well as dog wardens, and people are trained and have a lot of the necessary skills. I have already said that the Department will ensure that that training and expertise is carried over. There are a lot of positives in carrying out that role at a local level with support and help from the Department. In the case of animals that are a wee bit more unique, any council has the ability to buy in veterinary services. As I said in my opening remarks, the work is done on a cost-recovery basis, and, if there are issues, there will be times when a council will have to buy in the veterinary expertise that is required.

Mr Beggs:

There has been criticism of the Department from the angle that, as various new regulations and legislation come forward, more and more red tape will come forward. Is it not a good challenge for the Department to run such a service itself? It could ensure that it would not be overly bureaucratic and that no undue burdens would be put on the Department. Therefore, when the Department is satisfied and has an accurate estimate of the cost base, the responsibility could be passed to local government.

The Minister of Agriculture and Rural Development:

We have looked at the experience in other places and at the amount of similar queries that come

to us. They probably average at one or two a week and are mostly about cats and dogs. We felt that the council could have such a role. Pardon me for smiling, but the Department has been accused a lot of times of adding red tape that local government would not add. Therefore, I thought that that was a very pragmatic solution and that, given the level of experience and level of the local knowledge that councils have, this would be an ideal power for them.

I met Minister Foster when she was Minister of the Environment and with NILGA, and they asked what further powers and roles we could give to councils to strengthen the role of local government. From the point of view of trying to find something that councils could easily do, for which they had the expertise and skills base, with support from the Department and funding guaranteed over the CSR period, I felt that that was not an insurmountable ask of local government.

Mr Beggs:

Is funding guaranteed over the next CSR period?

The Minister of Agriculture and Rural Development:

I have bid for £760,000 funding per annum over the next CSR period. I am making a commitment to the Committee that if that bid is not met, I will re-evaluate the priorities within my Department's budget and will make that money available over the CSR period, so that councils will not be taking on the responsibility without the funding to go with it. That bid is for £760,000, and that is what I am prepared to put on the table.

Mr W Clarke:

I welcome that commitment; it will give some comfort to local authorities. One issue that representatives came up with yesterday was about horses. They are extremely concerned about councils taking on the seizing and stabling of horses. A bit of work needs to be done on that.

Will the Department give a commitment to engage with a delegation of NILGA councillors or reps and officers immediately to work that through? From the meeting yesterday, that is what they seemed to be looking for. I take Francie's point that it is important to have more councillor representation at those meetings. You need to bring the people in those local authority areas with

you.

I think that you touched on the issue of how we protect smaller councils — I am thinking of the likes of Moyle — which come under severe pressure on veterinary costs. Some do not even have kennels. Bigger costs are coming down the line for them. I agree that the Bill is set in the context of RPA; it is hard to get away from that. However, we need councils to cluster for value for money and to protect smaller councils.

The Minister of Agriculture and Rural Development:

Had RPA gone through, there would have been an obvious cluster, but it is not impossible for councils to work in their own clusters. I want to emphasise that 90% of complaints are dealt with through an improvement notice. So, the cost of seizure, stabling and all that occurs in a small minority of cases.

I have already given commitments, and I stand over them, that my Department will work with local government to try to roll this out. There may be difficulties down the line that we will want to work with councils on. It has been shown to be the case in other areas that very few animals are seized. Instead, an enforcement or improvement notice is served on the person who owns or has responsibility for that animal. They are asked to improve its welfare standards, and that is generally done without the need for seizure or stabling. Given their skills base and knowledge of problems in their areas, I am content that councils will be able to take that on.

Mr W Clarke:

Do you give a commitment that the Department will meet with a NILGA delegation?

The Minister of Agriculture and Rural Development:

Absolutely; we will meet and have further discussions with the organisations.

Mr Molloy:

Stray dogs will probably become a small part of this whole problem. Stray horses and other animals will come in instead.

The Agriculture Department has a big responsibility for fallen animals. It passes that on to local government. Now, nobody has that responsibility. If an animal is dumped on the road, nobody has responsibility for lifting it. We have the same situation with the Rivers Agency. I gave an example yesterday of a woman who rang the Rivers Agency about an animal and was told to get a big stick and push it on down into the lough. That is the sort of response that we get from agencies in DARD.

The other issue is buy-in. Who pays? All we are seeing is the buck being passed to local government. One thing was clear when RPA was initiated: if new roles were coming to councils, the resources would follow. The commitment in this CSR period is important, but what will happen after that? Local government will have to pay. I declare an interest as a member of local government in case I did not do so earlier. A number of different figures were quoted about what the cost will be. The Department has continuously said that there will be no resource implications for councils, yet it has been proved that there will be.

I do not often quote the USPCA, but, like the Department, I use evidence when I like it and do not use it when I do not — the Department is very good at that. The USPCA stated that 7,000 calls were made to it about animal welfare each month, whereas the RSPCA said that it received only 460 complaints annually. There is a big difference in those figures, and if local government was receiving that number of calls per month it would be devastating. Then there is also the question of how they would deal with such responsibility.

These provisions have not been consulted on and local government is not aware of them. Ten councils with members from the different political parties were represented here yesterday, and they were not aware of the Bill's implications for them. If local government had a choice, I think that it would say that it does not want those responsibilities. There will be a cost and no resources or budgets have been put in place to deal with it. Councils are looking at their budgets and are being told that they must make efficiency savings and cutbacks, yet we continuously find that additional responsibilities are being placed on them as regards waste and other areas. Yesterday, a couple of the councils gave examples of fighting court cases about dogs, which cost them between £30,000 and £50,000. Councils would not have to fight too many of those cases before they began to experience serious implications for their budgets. All of that needs to be thought

out further.

The Minister of Agriculture and Rural Development:

I hope that the commitment for guaranteed funding during this CSR period will deal with the funding issue. Again, the councils asked the Department for additional powers and the ability to deal with more issues at a local level, and the Department is bringing a resource to that. It is timely that we are talking about two Bills today that have positive resource implications for councils. Overall, the Welfare of Animals Bill and the Dogs (Amendment) Bill will result in £2 million worth of funding going to councils. There is an opportunity for councils to work together to bring in the correct level of expertise and experience, to ensure that people have greater career progression opportunities and to do something that they are very capable of.

I am unsure whether the USPCA receives 7,000 calls a month. I would like to see where that figure came from. That seems to be an extremely high figure, and the USPCA has not shared that information with the Department.

Ms McMaster:

No it has not. The Department has some figures on the number of welfare cases that the USPCA investigated. It told the Department that it investigated 5,880 complaints in 2009.

Mr Molloy:

Perhaps you could make that evidence available?

The Minister referred to the Dogs (Amendment) Bill. This morning, departmental officials were asked whether the Department would compensate for people, such as pensioners, who will not pay the full dog licence fee. The same thing happens when central government makes up the difference for things that are not covered under rates for local councils. Is there any provision in the dog licence to cover that?

The Minister of Agriculture and Rural Development:

Off the top of my head, I recall that there has been no increase in the dog licence fee since 1983, not even as a result of inflation. We are bringing it up to a more realistic figure, which will create

a pot of money that councils can use to improve their service. The Department is not prepared to remunerate, nor has it thought about remunerating, councils for money they never had; that will not happen.

Mr Molloy:

Sorry; I was asking whether the Department will make up the money for the concessionary licence fees that pensioners and others receive.

The Minister of Agriculture and Rural Development:

No, it will not.

Mr Irwin:

I apologise for being late; I had other commitments in the House.

You said that the initial funding would help councils. Does that mean that further down the line councils will be on their own? In the past year or so, I have heard of council officers being disillusioned with some of the situations in which they have found themselves in cases concerning dangerous dogs. Full control has not even been handed over yet. In one case, council officers went to court nine times. At the end of the ninth appearance, the magistrate ordered that the owner could take his dog home if he muzzled and neutered it. Such cases are a nightmare for councils, and council representatives will tell you that. If there is only going to be initial funding, councils will be left with a sore head and big expenses down the line.

The Minister of Agriculture and Rural Development:

I accept your apology. I, too, have other commitments in the House, so I am going to have to think about leaving shortly.

Your questions are fair and reasonable. You referred to a case in which the judge gave a muzzle and neuter qualification. In the Dogs (Amendment) Bill, we are giving councils the ability to put those conditions on dogs without going through court. That should reduce dramatically the number of court cases that need to be taken. We are giving councils more powers for better enforcement without going to court.

The figure for funding that I quoted today is guaranteed over the CSR period. With the best will in the world, we will enter a new administrative period next spring. We will guarantee that funding over the course of the next CSR period, which is four years. I cannot make commitments for the next Minister and the one after that. I have already put my neck on the line on the issue.

That is the right thing to do, and we are not asking councils to take on the responsibility without the necessary resources. We recognise that we are committing considerable resources to councils to enable them to carry out the job. There will be better career progression opportunities for people who are involved in that field. Overall, there will be more powers for councils; more local accountability, which is what we are all looking for; and a better system of local government with the necessary funding.

Mr Irwin:

Let us hope that you are right.

Mr T Clarke:

I am sure that chief executives will be pleased that you are helping to create better positions for staff in councils. I declare an interest as a councillor. Yesterday, we were asked by councillors to put the brakes on this legislation until they have been consulted further. How do you answer that? It is easy to tick a box and for chief executives to create better positions and offer career progression for people in councils. However, as you know, councillors will go out to ratepayers to seek re-election. If they do not believe that they have been consulted on this and, therefore, cannot stand over it, how can we accept the proposals coming forward?

The Minister of Agriculture and Rural Development:

A public consultation was carried out. Obviously, we have equality impact assessments to do, and we have a consultation process that any member of the public, including councillors, can be part of. We are not putting councils under pressure. I am not talking about time frames today. I said very clearly in my opening remarks that the commencement Orders will be implemented as and when councillors are sufficiently trained up and skilled. We will work very closely with councils across the 26 district council areas to ensure that they are ready for the new powers and that we have given them all the help and assistance that we can to deliver an excellent quality

service in the local area.

The Chairperson:

Thank you for your attendance, Minister. The Committee still has to consider some issues, and I ask that the officials return to the public gallery while we do so.

We will return to clause 6 and discuss how to move forward. Members have two options; either to accept the Minister's proposed amendment or to propose an amendment that replicates the English model. Perhaps members wish to move forward in another way. I am open to suggestions.

Mr T Clarke:

How do we address the concerns that were raised yesterday?

The Chairperson:

We will come to that.

Mr T Clarke:

We must consider that before we say what we will do with it.

The Chairperson:

Clause 6 does not contain anything that relates to councils. Clauses 12, 17 and 29 do, and we will come to them afterwards.

Mr Molloy:

I think that clause 6 does relate to councils, because inspectors will be needed to work out whether a dog's tail has been docked legally.

The Committee Clerk:

The Department has said that if clause 6 were to be left as it is with the ban on docking, people would still be able to take dogs to a different jurisdiction. It would mean that when the dog owner licenses the dog, he or she would have to provide evidence that the dog was docked

outside the jurisdiction in order to receive a licence. From an enforcement perspective, however, it is not the case that dog wardens would be required to check on a dog with a docked tail if they were to see one. That would be done when the licence was being applied for.

Mr Molloy:

Who is going to do it? If that is not going to happen, we are talking in circles. If dog inspectors are appointed by councils, then all the issues of illegal activity concerning dogs will become part of the inspection process. Therefore, councils will have responsibility for that. As for tail docking, a small tweaking of the wording will get us what we need for terriers and combinations of types. Those combinations can be tied down; the English legislation has one version of wording that refers to combinations, but they could be listed in the Bill in order to get around the issue.

The Chairperson:

So you are not advocating the English model per se?

Mr Molloy:

The English model would be the first choice. There is room for negotiation.

Mr Gibson:

Can we be reminded of the English model?

The Committee Clerk:

I do not have the precise details in front of me, but the English model specifies the two breeds — spaniels and hunt point retrievers — and cross types. It also includes terriers and cross types. It is not restricted to pure-bred dogs; it includes spaniels, hunt point retrievers and terriers.

Mr Gibson:

Was any evidence presented to us as to the success or otherwise of the English model?

The Committee Clerk:

The only evidence that has been presented to date has been from the Department to say that the

RSPCA has found difficulties with it. No scientific evidence has been produced. For want of a better description, there has been only anecdotal evidence from the RSPCA.

Mr T Clarke:

What sort of evidence?

The Committee clerk:

It is anecdotal; there is nothing of a scientific base.

Mr Molloy:

Even in measuring problems or difficulties, one council could say that it is having difficulty with dogs, but another council may say that it has no difficulty. A lot of councils say that the licensing procedure handles the issue well at the moment, and others may say that there are problems. The measurement of difficulties is questionable. The words “combination of types” would give flexibility and would mean that the exemption would not be restricted to pure bred dogs.

The Chairperson:

Are members proposing, at this point in time, that we rule out the Minister’s proposed amendment and seek a wider definition?

Mr W Clarke:

Making the definition wider will create more enforcement issues. We should learn from the experiences in England and Wales, as have been mentioned, and the experiences of the RSPCA. I do not think that we should go down that road. I think that the Minister’s compromise is a reasonable one. The majority of the stakeholders are in favour of it, including the hunting fraternity. They are pushing for terriers and cross-breeds to be included, but that is their job. We have to strike a balance. People on the other side of the fence think that we are compromising too much, so I propose that we accept the amendment.

Mr Beggs:

I have not seen any reason why, if someone wanted to dock a dog’s offspring, the offspring has to be registered as pedigree. I would have thought that it was because they were to be used for

hunting. It is about the purpose of the dog, the risk to its tail and its welfare. I do not think that the question of whether it is a pedigree has a significant bearing. Rather than look at a completely new amendment, it is simply a matter of amending or going forward with options to remove or amend part of what is being proposed by the Minister and the Department. I think it is possible to simply remove the restriction to pedigree dogs and add “the cross-breed thereof” to some of the earlier paragraphs.

I would like to have more solid evidence about terriers. I have not really heard much said about terriers until we received some documentation yesterday or very recently. There is not the same degree of evidence on that. I am conscious that they are not as susceptible to damage as some other dogs.

I want to go back to the line of questioning that I used with the Minister when she was here. The proposed clause 6 (1) creates an offence of removing a tail. From day one, it is an offence to remove a tail. Subsection (4) indicates that it is not an offence if the dog is certified as being a working dog, and subsection (5) states that it has to be certified according to regulations made by the Department.

I would like to seek advice from the Assembly’s Clerk of Bills, Eilis Haughey. She is employed by the Assembly, so there is no cost in doing that. I would like advice, because my reading of that clause is that, once the primary legislation goes through, docking will be in the gift of the Department, because no dog’s tail can be docked until the regulations are made by the Department. If those regulations come to us for approval and are turned down, guess what: nothing can be docked. I am concerned that we could be passing all our decision-making authority to the Department by handing over that power. If we do not agree the regulations proposed by the Department, there will be no tail docking. I would like verification of whether that is the case, because, if it is, we are handing what limited cards we have away.

It is important that we get this right from the start. We need to see exact regulation or to amend the clause to say that those provisions will not be enacted until such time as the regulations are approved. I would like a mechanism of ensuring that we get what we, as a Committee, might want.

The Committee Clerk:

The process is that the Department would have to bring subordinate legislation to enact that particular clause, because the detail in respect of it will be contained in the subordinate legislation. Papers from the Department, which have been included in the information packs for members, show the principles behind that. The Department has also confirmed that the subordinate legislative process will be of the affirmative procedure, irrespective of the fact that subordinate legislation would have to come to the Committee. That change, from a negative resolution to an affirmative resolution, means that, to introduce and enact the clause, the Minister will have to take a motion to the House to be approved.

Mr Beggs:

Are you talking about all of clause 6?

The Committee Clerk:

Yes, because the details, including the veterinary checks and some of the details of the principles, which members have been provided with today by the Department, have to be enacted.

Mr Beggs:

If clause 6 is held for subsequent affirmative resolution —

The Committee Clerk:

It will not be brought into being until the detail has been brought in.

Mr Beggs:

That is OK.

Mr Doherty:

The reason I asked the Minister about the importation of dogs from other jurisdictions is that, if we accept a compromise, and that facility was there for those who want working terriers, would that allow people to move forward? We have been told that 90% of those dogs are pets and that the other 10% are for people who probably have contacts, through the hunting fraternity, to get the dogs from those other jurisdictions.

Mr T Clarke:

What we are saying is that, if we want to have hunting dogs in Northern Ireland, we have to depend on English legislation and on buying dogs from England and that our breeders cannot breed a sufficiently good enough dog to use for hunting here.

Mr Doherty:

I am not saying that that is perfect, but it may be one way to resolve the matter.

Mr Molloy:

Or you have to take your dog up to the border, push it across, catch it on the other side, dock its tail and bring it back again. *[Laughter.]* That is the codology of the whole legislation.

The point that Mr Doherty is making, if he were to think about it a wee bit further, is that we are talking about banning all terriers from having their tails docked to accommodate that 10%. The Department said that 90% of imported dogs are for pets, so no vet is going to certify docking their tails in the first place. If we are talking about only 10% of terriers being used as working dogs, why not include them? That would allow 10% whose tails could be docked, and that would leave it right.

Mr T Clarke:

The other reason for there being no evidence is that all Jack Russells and other terriers have their tails docked.

Mr Gibson:

There is such a variety of Jack Russells that vets are going to have one heck of a problem. A Jack Russell is not a pure breed; it is a combination of terrier breeds.

Mr Beggs:

Is it going to be included at all?

Mr Gibson:

For clarification, does the English model refer to pedigree or pure-bred? There is a difference.

The Committee Clerk:

I will have to check that. My understanding is that it refers to pedigree dogs plus cross-breed types.

The Chairperson:

We have one proposal on the table.

Mr Molloy:

Could we check whether it refers to terriers as pure-bred? Not that I agree with the pure-bred clarification, but I believe that Jack Russells and all sorts of different wee terriers are being shown and bred. Perhaps I am wrong.

The Chairperson:

Are members content that we adjourn for 15 minutes to look at the issue?

Members indicated assent.

The Chairperson:

I have business in the Chamber, so I will ask the Deputy Chairperson to take over.

The Committee suspended.

On resuming —

(The Deputy Chairperson [Mr Beggs] in the Chair)

The Deputy Chairperson (Mr Beggs):

We will now return to clause 6. The Minister has suggested amendments, and there have been various suggestions as to where we go from here. We adjourned to get precise details of the English legislation, and members will have received a copy. The Committee Clerk will explain further.

The Committee Clerk:

Members asked earlier about the wording of the English legislation. We have provided a copy of

schedule 1 of the Docking of Working Dogs' Tails (England) Regulations 2007 for you, and, as you can see, the specified types of dog 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 Molloy:

I am not saying that we take a hard and fast rule on it, but I propose that we suggest that. When you couple that with the paper from the Department regarding the conditions that are laid down before a vet will dock a tail, it will provide protection, as only working dogs tails will need to be docked, and a vet will have to certify that.

The Deputy Chairperson:

Are you suggesting that the Committee proposes an amendment to incorporate that into the legislation, or are you saying that we should open discussions on the issue?

Mr Molloy:

I think that it would be better to have discussions with the departmental officials to see whether it would be acceptable with the condition attached.

The Deputy Chairperson:

Will officials come back to the table please?

You will have heard a number of views expressed by members. However, there appears to be general consensus among members that, rather than restrict the breed-specific exemption to pedigree dogs, they are inclined to use the somewhat wider English terminology on the combination of types. Do you have anything further to say on that?

Ms McMaster:

As we explained last week, the practical experience of enforcing a cross-breed exemption in England and Wales highlights the difficulty of including such an exemption. The RSPCA, which is responsible for enforcement in England, said that when deciding which dogs may be docked, it is virtually impossible to distinguish between cross-breed and pure-bred dogs.

The Deputy Chairperson:

Do you accept that while there are no regulations in the Republic of Ireland, the potential exists to import dogs of that category from England, so the exemption would be very difficult to enforce?

Ms McMaster:

As we stated in a paper that we submitted previously, we would hope that tighter controls than the ones that operate in England and Wales could be put in place here to enable more effective enforcement. I know that members have not had a chance to look at the detail of that, but we could talk you through it.

Ms Davey:

I want to clarify the basis of the Minister's decision. Members must remember that a pup's tail must be docked before it is five days old. Ultimately, it is the breeder who decides whether a pup will be docked. Subsequently, the pup is likely to be sold six to eight weeks down the line, by which stage its tail will have been docked long ago. The new owner, who may just want the pup as a domestic pet, has absolutely no control over whether his pup has a tail or not. That is part of the equation. We must bear in mind that it is not about someone deciding to use a dog as a working dog; it is about breeders deciding that pups' tails should be cut off before they are five days old.

The Deputy Chairperson:

How would you deal with that difficulty?

Ms Davey:

The Minister wishes to restrict tail docking to a small number of pure-bred dogs that are more likely to be used for work. If you widen the exemption to include cross-breeds, there is a greater chance that docked dogs will become domestic pets.

The Deputy Chairperson:

Is there evidence that breeders are breeding cross-breeds, or are they breeding pedigree dogs?

Ms Davey:

The Minister has spoken to a number of breeders, and the evidence suggests that we should restrict the scope of the tail docking exemption. The Minister's policy is to ban tail docking; however, as she explained, she is trying to include an accommodation that would allow working dogs to continue to have their tails docked.

Mr Molloy:

Once you allow variations in, that is the way things go. Even breeders have to get a vet to dock tails; there must be a certificate. There are quite a lot of conditions in the Bill, including microchipping dogs before they leave the breeder. Surely the way to tie breeders down is to ensure that dogs with a docked tail cannot be sold as household pets. Consequently, breeders would be obliged to say whether a dog has been bred for hunting only, and that would be its only market. The proposed conditions would give tight control over the small number of dogs that are bred for hunting purposes.

Ms Davey:

I am not sure how you could restrict a breeder to selling a dog to only someone who will work the dog. I cannot see how that would work.

Mr Molloy:

If you go back to the amendment that the Minister proposed, the same thing would apply to spaniels and hunt point retrieve breeds.

Ms Davey:

Yes, but the Minister's policy is to ban tail docking. She is genuinely trying to reach a compromise that allows the docking of tails of dogs that stand a greater chance of having them injured through work. Nothing is perfect in allowing an exemption, and the Minister also made that clear. This is a compromise to try to allow the dog that may genuinely get its tail injured to have it docked. It is not to open the gates and change her policy.

(The Chairperson [Mr Moutray] in the Chair)

Mr Molloy:

Some breeders say that when they are exporting dogs to England, for instance, the buyers do not want the tails docked. A different breed and structure comes into play there. Most of the hunting fraternity breed their own dogs. I was talking to people involved with the Countryside Alliance, and they breed their own dogs within hunting circles. They do not just go and buy dogs from kennels. Such restrictions, and a very limited scope of three types of dog, would provide the regulation and control.

Ms McMaster:

When the Minister spoke to the Committee earlier, she set out why cross breeds were not included in the exemptions. It is down to restricting the list to certain breeds — breeds that are at more risk of injury. However, the Minister wants to do that in a way that avoids the problems experienced elsewhere, and to learn the lessons of elsewhere.

Mr T Clarke:

The Minister also reminded me that there are 108 MLAs. So, there is one Minister and 107 other MLAs, all with different opinions. We have come a long way, and the Department has come a long way. We are really getting to the stage of splitting hairs, because we are only one breed away from getting an agreement.

It is either that, or not getting agreement and proposing the removal of the clause entirely. If we cannot agree on this, we will not get a consensus. It would be a shame for the Department if it just could not move. I was surprised that Francie did not use the word “draconian” for some of the things that we have to put in before we can get that done. We are accepting that. All we are asking is for one other breed to be specified in the legislation, and then let us move forward. You will find a consensus for that.

Ms McMaster:

What we have heard some members talk about cross-breeds and an additional breed.

Mr Molloy:

Cross-breeds and terriers.

Ms McMaster:

That is widening it out with regard to cross-breeds. That is much wider than the English exemption, because it has the cross-breeds, but that also brings difficulties.

Mr T Clarke:

If we do stick rigidly to pure-bred and pedigree dogs, the legislation will be unworkable, because the majority of people in the shooting fraternity breed their own dogs, and they are not Kennel Club-registered or pedigree dogs. It will be absolutely unworkable. All dogs used for working will have to be brought into Northern Ireland, regardless of whether they are terriers, hunt point retrievers or spaniels.

Mr Gibson:

Does the Department see a distinction between pedigree dogs and pure-bred dogs? Trevor is correct in saying that people are breeding pure-bred springer spaniels, or whatever, for hunting purposes, and they are not necessarily registered. There may be a problem there.

I can see the concerns about control of the matter and the worry that it may get out of control. Was any consideration given to making it an offence to own a docked dog for purposes other than sporting after a particular period?

Ms McMaster:

We have looked at the legal definitions of the words “pedigree” and “pure-bred”. I will ask Kate to comment on that.

Ms Davey:

We looked at the difference. There is probably no difference between pure-bred and pedigree dogs, because both have their recorded history and breeds. We have linked the exemption to registration with the Kennel Club or an equivalent body to try to tighten those controls. That is where the Minister is coming from on this issue. We have teased out those issues. A pure-bred dog would be acceptable, as opposed to a pedigree, if we tie pedigree into Kennel Club registering. That can be considered.

Your second question related to offences. We have looked at offences. It is a question of how dog owners can prove that they have a dog that should not have its tail docked. We have not decided to go down that route of making that an offence. We do not think that it is enforceable, and we want to have offences that we can enforce.

Mr Molloy:

Are a lot of terriers, for instance, being bred with short tails? Their tails are not docked but are naturally short.

Ms Davey:

I am not a vet. Perhaps Paddy can answer that. I am not aware of that, and I am familiar with Jack Russells.

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

Will you rephrase your question, please?

Mr Molloy:

I may be wrong, but I assume that a lot of short-tailed terriers that we see have not had their tails docked. There is cross-breeding taking place, and they are being bred that way.

Mr McGuckian:

I have no evidence to support that.

Ms Davey:

Neither do I, and I am familiar with the breed. I have never seen that.

The Chairperson (Mr Moutray):

It has been proposed that the Minister's amendment be accepted. Are there any more proposals?

Mr T Clarke:

It is a direct negative.

Mr Molloy:

We need to have more discussion around it, instead of making a hard and fast proposal one way or the other, to see whether there is a way of incorporating these differences.

Mr Irwin:

It is possible to widen the scope of tail docking without opening it to abuse if there is clear guidance that the vet has a form to sign and that only working dogs are docked. There would be an onus on the vet and a certificate would be produced for each dog that is docked. That would cut out abuse.

Mr Beggs:

I understand that the Committee has to complete its examinations within the next two weeks. Is that correct?

The Committee Clerk:

No. We have to report by 14 December. Our examination of the Dogs (Amendment) Bill has to be completed in the next couple of weeks.

Mr Beggs:

I was concerned that we were continuing dialogue but running out of time. I have no difficulty with continuing dialogue if there is time to do so, but we will have to take decisions at some point. Unless we can reach agreement, we ought to be looking towards bringing in an amendment.

The Chairperson:

Willie Clarke has a proposal on the table.

Mr W Clarke:

If the Committee wants to have more discussion, there is time. I do not know where we are going on this discussion. Our discussions on cross-breeds, enforcement and the identification of breed of dog at five days are too wide-ranging. We are in all sorts of difficulties. If members need a bit more time, we can give it another week.

The Chairperson:

Are you prepared to withdraw your proposal today?

Mr W Clarke:

Yes; for the sake of consensus. It would be better to reach some sort of consensus. If we do not get it next week, we will have to go ahead.

Mr Doherty:

Does that mean that we have to deal with it next week, or do we have a week beyond that? What is the timescale?

The Committee Clerk:

The Committee has to report by 14 December. It would be good, from the Committee's perspective, to have consensus by that time. The report can be drafted to take account of what members have agreed or whether they are not in agreement.

Mr Molloy:

The proposal on the table at the moment is to exclude clause 6 completely. That is where we start from. We have come a long way, but consensus is so close that we should not lose the opportunity.

The Chairperson:

Do members want to defer the matter for a week to see whether the Department is prepared to look at that clause and look more closely at the English model?

Members indicated assent.

Ms McMaster:

What specific issues does the Committee want us to look at?

Mr Beggs:

“Combinations of types” was the term used.

Mr Molloy:

I suggest that you look at including “combinations of types”.

The Chairperson:

Is it sufficient for the Committee Clerk to take note of the Hansard report and relay the issues to the Department?

Mr T Clarke:

The Department should look at the first three lines of schedule 1 of the English legislation, which is about specified types of dogs.

The Committee Clerk:

Mr Molloy proposed that the Department look at the three lines of the English model in conjunction with the proposed subordinate legislation that the Department has tabled today. Is that the line along which members wish to correspond with the Department?

Mr Beggs:

There is one other issue. A range of dogs involved in emergency-type work are listed in schedule 2 of the English legislation. I am seeking verification that such dogs are included in our legislation because they can, no doubt, get themselves into vulnerable situations as well.

Ms McMaster:

I can clarify that the exemption is specifically for lawful pest control and the lawful shooting of animals. That is the Minister’s proposal.

Mr Beggs:

In that case, a specially trained drug-sniffer dog could damage its tail and be out of action because it got excited in a confined space.

Ms McMaster:

The proposed exemption relates specifically to working dogs in the hunting and rural sport scenario.

Mr Beggs:

Are you saying that emergency sniffer dogs would not be included if it were deemed appropriate?

Ms McMaster:

The types of work that are specified in the exemption are lawful pest control and the lawful shooting of animals.

Mr Beggs:

We could put at risk some highly trained dogs by putting them into confined spaces. Frankly, if those dogs are not around, drugs will be more freely available. We ought not to exclude the possibility of including them in the legislation.

Mr P J Bradley:

I heard the words “combination of types”. I do not know how anybody could ever define “combination of types”. Where would it ever end? How could we compile a list of combination of types?

Mr T Clarke:

We go by the ones that are not on it.

Mr P J Bradley:

That is bound to lead to a call for something else to be considered under combination of types.

Mr Molloy:

The list of conditions will be attached to give guidance on it.

Mr P J Bradley:

It would be a minefield.

The Chairperson:

We will move to clause 12, which is entitled “Licensing or registration of activities involving animals”. The Minister indicated that there will be no cost to councils because there will be full

cost recovery. If that is the case, why can the Department not do it?

Ms McMaster:

The licensing and registration functions in clause 12 tend not to be activities that relate to farmed animals, and there are some existing functions in relation to pet shops that we can list. For future activities, it will depend on whether it is appropriate for councils to take on the role of looking after non-farmed animals. That was the intention for dog breeding establishments: the role of monitoring those establishments already sits with the councils, and it is proposed that it will stay with them. Those functions relate primarily to non-farmed animals.

Ms Davey:

On the issue of trying to provide a clear divide for the public, the proposal is that the councils will look after non-farmed animals and the Department will look after farmed animals. As Colette explained most of the licensing and registration activities concern non-farmed animals, and, if there is a welfare issue, the public will have a clear port of call. It will be clear that those issues should be reported to councils and not to the Department.

Mr Molloy:

Will that cover circuses and those types of things?

Ms Davey:

If it makes subordinate legislation for circuses, the Department will look at the evidence. It depends on what happens with the subordinate legislation for circuses. I do not want to pre-empt that, but, if it were proposed that the use of wild animals in circuses should be banned, the Department would not licence or register those circuses but would use clause 13 to prohibit the use of certain animals. It depends on what the Department puts in to the subordinate legislation and how it is controlled, and it may not licence or register circuses.

To provide some assurance to the member, anything that the Department brings forward under licensing and registration will specify what it is in respect of and who the enforcement body will be. Should an incident involve farm animals and it is better for the Department to be responsible, the way that the clause is drafted will accommodate that.

Mr T Clarke:

What clause is that?

The Chairperson:

Clause 12.

Mr T Clarke:

What about clause 13?

The Committee Clerk:

Committee members indicated previously that they were content with clause 13 until the Committee carries out its formal clause-by-clause scrutiny of the Bill.

The Chairperson:

The issues the Committee has with clauses 12, 17 and 29 are the lack of consultation that was undertaken and the costs that they present to councils. Members expressed a wish that the Department makes those clauses dormant until full consultation is undertaken with councillors. Are members content that that remains the case and that that should be relayed to the Department?

Members indicated assent.

Ms McMaster:

To clarify, clause 12 is an enabling clause that will enable subordinate legislation to be brought forward. Subordinate legislation would be brought forward for each activity on an activity-by-activity basis, and there will be full consultation on each piece of subordinate legislation as it is drawn up.

The Chairperson:

OK, the Committee has noted that. That brings us to the end of today's consideration. Thank you all very much for your attendance.