



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

Welfare of Animals Bill

30 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 Willie Clarke
Mr Pat Doherty
Mr Simpson Gibson
Mr William Irwin
Mr Kieran McCarthy
Mr Francie Molloy
Mr George Savage

Witnesses:

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

The Chairperson (Mr Moutray):

We continue with the scrutiny of the Welfare of Animals Bill. I remind members that only the policy associated with the Committee amendment to clause 6 will be considered at this stage as the Department has not confirmed whether it wishes to introduce the original clause, its first proposed amendment, or the further amendment that was presented at the last meeting.

Clause 1 (Animals to which this Act applies)

The Chairperson:

The Department has agreed to amend clause 1 to make subsection (3), by means of clause 55, subject to affirmative resolution in line with similar legislation in England and Scotland. This issue will also be considered, therefore, at clause 55(2).

Question, That the Committee for Agriculture and Rural Development is content with clause 1 as drafted, put and agreed to.

Clause 1 agreed to.

Clauses 2 to 4 agreed to.

Clause 5 (Prohibited procedures)

The Chairperson:

There were two issues in respect of this clause. First, since the Bill was published, the Department has received a number of requests to clarify which routine farming procedures would be permitted to be carried out. Secondly, members were concerned that the clause had a consequential impact to clause 6 in that, as originally proposed, tail docking would have become a prohibited procedure.

On the first point, members agreed that it would be beneficial to set out in subordinate legislation the routine farming procedures currently permitted and that will continue to be permitted when the Bill is enacted. Therefore, clause 5 needs to be amended to reflect that the Department will bring forward subordinate legislation or regulations that will list the procedures that remain permitted. That will result in schedule 1 to the Bill being replaced, and members indicated that they are content with that. I will put the question on that matter when members consider that schedule.

The second issue is whether there is a consequential impact to clause 6 in that tail docking would become a prohibited procedure. I advise Members that that is not the case, as subsection (7) of the amended clause 5 reads as follows:

“Nothing in this section applies to the removal of the whole or part of a dog's tail (which is dealt with in section 6)”.

Question, That the Committee for Agriculture and Rural Development is content with clause 5 subject to the amendment recommended by the Committee and agreed by the Department, *put and agreed to.*

Clause 5 agreed to.

Clause 6 (Docking of dogs' tails)

The Chairperson:

I will bring in the Committee Clerk at this point.

The Committee Clerk:

As members will be aware, the Committee agreed last week to amend clause 6 to specify various types and breeds of dog for tail docking. In conjunction with that, members wanted to see the paper that was tabled by the Department and the Minister a couple of weeks ago on subordinate legislation. For members' information, we have tabled a draft sample of clause 6, and we require members to confirm that they are content with the policy as contained in the clause.

The draft clause is an amalgam of the Bill as presented, the Animal Welfare Act 2006 and the Docking of Working Dogs' Tails (England) Regulations 2007. Subsections (1) and (2) indicate that it is an offence to remove the whole or part of a dog's tail and that a person commits the offence if that person is responsible for the dog or if another person removes the whole or any part of a dog's tail. That is required to protect against cosmetic docking of a dog's tail.

Subsection (3) allows an exemption for working-types, stating that:

“A person does not commit an offence under subsection (1) or (2) if the whole or any part of a dog’s tail is removed —

(a) by a veterinary surgeon for the purpose of medical treatment; or

(b) in order to prevent or remove an immediate danger to the life of the dog in circumstances where it is not reasonably practicable to have the tail, or, as the case may be, any part of the tail, removed by a veterinary surgeon.”

Subsection (4) states that subsections (1) and (2) do not apply to dogs that are certified working dogs not more than five days old. Subsection (5) indicates that the dog will have to be certified as a working dog by a veterinary surgeon. Subsection (6) provides exemptions in respect of law enforcement activities of the armed forces, lawful pest control, or the lawful shooting of animals.

Subsections (7) and (8) create various offences under the clause. Under subsection (8), a person commits an offence if he owns a dog and fails to take reasonable steps to secure, before that dog is eight weeks old, that it is a certified exempted dog. There has been a slight change in that the timeline for that would normally have been three months. That is now down to eight weeks. After discussions that we had with the Department, the certification that the Department proposes comes in two stages; the first before the five days, and the second would normally have been completed after the pup was three months old. There was a concern that the second part would not be carried out due to the fact that the animal may well have been with an owner by that stage. To ensure that the breeder is responsible for both sections of the certification, it is proposed that the period be reduced to eight weeks. In normal circumstances, the pup would still be getting weaned at that stage, so it would require the breeding establishment to carry out the certification. The remaining subsections are a direct lift from the Animal Welfare Act 2006.

There is then a draft schedule in members’ papers. We have to confirm with the Bill Office that the best route for introducing the exemption is through a schedule attached to the Bill, or through subordinate legislation, which would ultimately be brought by the Department. In either

case, the specification is lifted from the Docking of Working Dogs' Tails (England) Regulations 2007. The specified types of dogs are hunt point retrieve breeds of any type or combination of types, spaniels of any type or combination of types, and terriers of any type or combination of types.

The Chairperson:

I seek members' approval on the policy of the clause, and ask that the Committee Clerk liaises with the Bill Office for an amendment to be considered. I therefore seek approval to defer scrutiny of the clause until a substantive amendment is available to the Committee.

Members indicated assent.

Clauses 7 to 11 agreed to.

Clause 12 (Licensing or registration of activities involving animals)

The Chairperson:

Members expressed concern that breeding establishments would not come under the aegis of the Department but would be a function enforced, as it is currently, by local councils. Members gained some assurance from the fact that resourcing the licensing of breeding establishments would be undertaken on a full-cost-recovery basis thus ensuring that local government would not be burdened by additional resource implications. In addition, members expressed that they were content with that area being the first to receive subordinate legislation in order to have stricter regulation of breeding establishments.

Question, That the Committee is content with clause 12 as drafted, put and agreed to.

Clause 12 agreed to.

Clauses 13 to 15 agreed to.

Clause 16 (Codes of practice)

The Chairperson:

It has been the norm for the Department to commit to submitting codes of practice to the Committee for scrutiny in advance of publishing them. During the evidence sessions, the Department confirmed that any new draft codes will be subject to the consultation process and to scrutiny by the Committee.

Question, That the Committee is content with clause 16 as drafted, put and agreed to.

Clause 16 agreed to.

Clause 17 (Powers in relation to animals in distress)

The Chairperson:

Members have had concerns surrounding the financial impact of this clause and clause 29 on local councils. However, clauses 17 and 29 cannot be empowered until clause 45 is approved. Although it is somewhat out of sync, I would like to discuss clause 45 as that will cast some light on clauses 17 and 29.

Clause 17 refers to an “inspector” or “constable”. Although the term “constable” is defined earlier in the Bill, the appointment of inspectors does not occur until clause 45, which states:

“45.—(1) In this Act, ‘inspector’, in the context of any provision, means a person appointed to be an inspector for the purposes of that provision by—

- (a) the Department; or
- (b) a council.”

However, members have expressed concerns about the financial implications of the two clauses on councils and have called for them to be made dormant to allow for further consultation with the Department and councils. The Minister, content that such consultation is required, has proposed an amendment to clause 45, which reads:

“45.—(1) In this Act, ‘inspector’, in the context of any provisions, means—

(a) in so far as that provision relates to farmed animals, a person appointed to be an inspector for the purposes of that provision by the Department;

(b) in so far as that provision relates to other animals, a person appointed to be an inspector for the purposes of that provision by a council.”

The proposed amendment distinguishes between the appointment of inspectors in respect of farmed and non-farmed animals.

The Bill replaces the 1972 Order. It is therefore essential that the Department empowers the ability to inspect farmed animals in respect of, for example, TB, brucellosis and other diseases. That will be achieved through the proposed amendment to clause 45(1)(a). Understandably, the Department is intent on enforcing that part of the clause immediately.

Clause 45(1)(b) empowers inspectors to undertake the proposed responsibilities delegated under clauses 17 and 29 of the Bill. The Minister originally suggested that those clauses might not be commenced until further consultation with elected council representatives has been undertaken. The Committee has suggested that that period is not less than 12 months.

If members are content, I will put the following question: that the Committee for Agriculture and Rural Development is content with clause 17, subject, first, to the amendment recommended for clause 45 by the Committee and agreed by the Department and, secondly, to confirmation by the Minister that clause 45(1)(b) will not be commenced for a period not less than 12 months.

Mr Molloy:

To clarify the matter with respect to the inspector of farmed animals, this Bill is not dealing with farmed animals. The Department, obviously, appoints its inspectors at present. Why is that provision being added here?

The Committee Clerk:

The amendment that the Department has brought forward will remove the appointment of inspectors that is defined in the 1972 Act. Therefore, the Department has to re-empower itself, and it does so at clause 45(1)(a). There is a concern that if the entire clause were made dormant, the Department would not be in a position to appoint those inspectors.

Mr Molloy:

On that same line, the legislation that we are dealing with relates to all non-farmed animals, but if the Department needs legislation in relation to farmed animals, the danger is that it will give itself the authority to appoint inspectors who will inspect non-farmed animals.

The Chairperson:

On that point, will the departmental officials come forward please? Perhaps they can shed some light on that issue. You are very welcome.

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

The Welfare of Animals Bill provides new powers in respect of non-farmed animals. It also provides powers in respect of farmed animals, as it replaces the Welfare of Animals Act (Northern Ireland) 1972. The Bill introduces powers that will apply to all animals, farmed and non-farmed. The definition of “animal” in the Bill is “a vertebrate other than man”. Therefore, it refers to all vertebrate animals.

The powers in the Bill will apply to all those animals. The enactment of the Bill will replace the existing legislation, which will then fall. The existing powers of the Department to enforce welfare provisions will go when the existing legislation falls, and we will rely on the new piece of legislation to provide the powers to enforce welfare in respect of farmed and non-farmed animals.

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

As Colette said, we already have those powers, but they are very much under the 1972 Act and the welfare of farmed animals legislation, which is underpinned by the 1972 Act. Therefore, once that is taken away, we will not have those powers. The only additional power that the Bill is giving in respect of farmed animals is that it allows the Department the power of seizure. Currently that power of seizure is held only by the police. That is the legislative basis to allow us to continue to do what we currently do. The only additional piece is the power for the Department to seize animals, as opposed to only the police having that power to seize.

Mr Molloy:

This is a very late stage for the Department to give clarification of that. All along, the issue has been around non-farmed animals. The new power of seizure has not been debated. When we talked about the seizure of dogs, the matter of who will have authority in that situation did not come into it. However, at this very late stage, the Department is saying that if we move from the 1972 Act, it will have no authority whatsoever. Are we getting a muddle of legislation being put together and some sleight of hand to give the Department power over something that has not been clarified up to now?

The Chairperson:

Do you want to come back on that issue?

Ms McMaster:

This is the Bill as it was introduced. That policy was in the Bill when it was cleared by the

Executive and introduced in the Assembly. This is not something that has been introduced at a late stage; it has been there from the outset. When the Minister introduced it in the Assembly, she was very clear that it was replacing the existing legislation.

Mr Molloy:

My point is that when we were discussing animal welfare and the docking of dog's tails, we were told all along that this was nothing to do with farmed animals. When I made the comparison between farmed animals and dogs, I was told that this was not about farmed animals, but about dogs and non-farmed animals. The debate was about why something could be done to a pig or a lamb but not to a dog, and that the two were completely separate.

Ms Davey:

No. That was not what you were told. We have said from the outset and in numerous presentations that the Welfare of Animals Bill replaces the Welfare of Animals Act (Northern Ireland) 1972. The Bill gives us the same powers for farmed animals. The new element is that the Bill gives us similar powers to deal with non-farmed animals. We have not said that it is not about farmed animals. The only difference is that the Bill gives us a power of seizure, which currently rests with the police. I take the point about lambs' tails and pigs' tails, but we have said that clause 6 affects only dogs. The powers in the Bill allow us to look after the welfare of all vertebrate animals. At this point, we have not looked at docking lambs' or pigs' tails, because husbandry systems are being put in place to improve that. It is not the case that the Bill does not have power in that regard; that may happen in the future.

Mr Molloy:

During a previous meeting you said that you were considering that power.

Ms Davey:

I said that it was something that could be considered in the future if the proper systems were in

place and the farming industry were ready for that.

Mr Molloy:

The introduction of that power is a possibility.

Ms Davey:

The Bill does not introduce the power. It provides powers to ensure the welfare of animals. Any other powers would be introduced through subordinate legislation, which the Committee would scrutinise.

Mr Molloy:

We started off by discussing the cost to councils. If the Department has, through legislation, the power to appoint inspectors, surely it can direct those inspectors to ensure the welfare of all animals, whether farmed or non-farmed, instead of putting an extra burden on councils.

Ms McMaster:

We proposed that councils carry out an enforcement role in relation to non-farmed animals for a number of reasons. It strengthens the role of councils, which have existing skills in that area. We spoke to representatives of some of the enforcement areas in GB, who told us that the vast majority of non-farmed animal welfare cases that they deal with concern cats and dogs. Council staff already have complementary skills and experience to draw on in dealing with dogs and other non-farmed animals. Councils are well placed to deliver those services to communities in urban and rural areas. It will be an opportunity to build and strengthen councils. Additional funding of up to £2 million could potentially go to councils as a result of this.

Mr Molloy:

The Minister is prepared to give a firm commitment to provide £760,000 a year in this financial term. However, the Minister's term ends in May, so the guarantee to councils only lasts until then. The Committee has been told that it will be advised of any proposed change in funding. It is of little benefit to local government that the Committee will be advised that councils will lose money. In fact, it will become the cushion for the Department to tell the Committee about it. I do not think that that, in any way, secures the funding for local government.

We have been talking about the appointment of inspectors even though there is no commitment about who will fund those inspectors in the medium-to-long term. There has not been proper consultation with local government on that situation up to now. I declare an interest as a member of Dungannon and South Tyrone Borough Council, which has still not been consulted. The idea that the Department will not have any cover because the Act will have changed is incorrect. If this were deferred, the present legislation would continue until the new Act comes into place.

Ms Davey:

Elements of it will certainly continue, but the key point is that the Department will not have powers of seizure in respect of animals in distress. Therefore, it is about trying to move the legislation on farmed animals forward rather than letting it sit where it is. We are trying to progress the whole animal welfare provision, and the Minister has already given a commitment, which has been re-emphasised a number of times, that we will carry out a full consultation with the councils to take the provisions on non-farmed animals forward to try to get the benefits as quickly as possible for those animals.

Mr Molloy:

On the basis that the proposed revised clause 45 will remove the legal power that the Department has, surely, we should defer everything until the matter is clarified? The Department is asking the

Committee to approve the appointment and enforcement provisions without any real consultation on what enforcement will mean. That is a new power that the Department is taking on itself. We asked a number of times whether the Department will carry out enforcement itself, whether it will give it off to someone else in the future or whether it will appoint someone to do it. We have not had clarification on that.

Ms Davey:

The Department will take forward the appointment of inspectors as it does for farmed animals currently. That will continue under the Bill. In the Minister's letter to the Committee, she says that she is prepared to leave clause 45(1)(b) so that it will not commence until 12 months after Royal Assent. That leaves 12 months in which councils will not have any involvement in the Bill. That will allow consultation and implementation arrangements to be put in place and will allow the Department to continue to work with the new legislation and to enforce any new powers with respect to farmed animals.

Mr Molloy:

We do not have to defer the consultation until the Bill is in place or even until the 12-month period afterwards. By this point, we have not seen any change in the Department's attitude towards consultation with local government.

Ms McMaster:

The Minister has made that commitment, and she has given a guarantee to the Committee.

Mr Molloy:

It has not started.

Ms McMaster:

There has been some consultation previously, and we have re-engaged with the councils in recent weeks and had meetings with various representatives of councils and with the Society of Local Authority Chief Executives (SOLACE). We have undertaken to continue those meetings with representatives of the councils, including the Northern Ireland Local Government Association (NILGA). We asked NILGA to advise us of its availability to meet with DARD officials as soon as possible, and we have asked the chairperson of the NILGA rural affairs committee to attend that meeting. We are committed to doing that immediately and to continuing that engagement.

The Minister has made a firm commitment that officials will engage with council representatives and provide practical assistance to help council officials prepare for the new enforcement role on non-farmed animals. She has given a guarantee that councils will be given time to prepare for their enforcement role before powers for councils to appoint inspectors are commenced.

She has agreed that clause 45(1)(b) will not be commenced until 12 months after Royal Assent, at which time it will be introduced by commencement order, unless councils advise that they are in a position to start implementation earlier than that. The Minister has made a number of guarantees, and she has reaffirmed those so that the Department will be working with councils to help them prepare for enforcement.

Mr Molloy:

My understanding is that we have not had any guarantee, except that councils will not have to take action until 12 months after the legislation is passed. I thought that we were thinking about the legislation being approved by councils before we pass it. I did not envisage that, once the Bill was enacted, there would be a period of time for councils to organise themselves to implement it. The issue should be whether councils will or will not take on that role; not that we pass the

legislation now and give it 12 months to come into operation, after which enforcement will transfer to councils.

Ms McMaster:

In recent weeks, we have re-engaged with council officials and representatives, and they have said that they want engagement with us to help to prepare.

Mr Molloy:

We have been through this a number of times. The Department has not engaged with local government. It may have engaged with officials in local government and with NILGA officials, but it has not engaged with local government. To come here and say that councils want to do this and that is rubbish, because councils have not been asked, they have not made a decision, and there has not been any discussion. Do not come here and tell us that councils have taken on, or want to take on, this issue, because it has not been discussed. It cannot be discussed until the councils decide on it, but too many officials like you take what other officials think to be what councils think. That is not the situation.

Ms McMaster:

I am telling you what the officials have told us. We have sought a meeting with NILGA, and we are waiting for NILGA to give us dates for that meeting. We are committed to engaging closely with them over the next period.

Ms Davey:

The policy was subject to Executive agreement before the Bill was introduced. Therefore, the Bill is being introduced based on Executive policy, which is that the Department will look after farmed animals and that councils will take forward a role in respect of non-farmed animals. That is where the Department's policy sits.

Mr Molloy;

That brings us back to the original point. Why are we being asked to pass legislation on which the Department has power already? The power that it has not stressed that it wants is the power of seizure. We have seen the Department in action on the power of seizure, and it does not have a good record. Budgets are tight, but if the Department were to continue in the way that it has done, its budget might run out very quickly because of the compensation that it would have to pay.

Ms McMaster:

We do not currently have powers of seizure. One of the new improvements that will result from the Bill is that the Department will have powers of seizure. We have been working without those powers to date.

Mr Molloy:

We have to be careful on the powers of seizure, because we saw raids on farms and “inspections”, as departmental officials called them. Officials now say that they have no powers to do that, and the Department has to pay out compensation in a number of situations. We need to be careful with the power of seizure being available to departmental officials.

Ms Davey:

It might help if I clarify the current powers of seizure. The 1972 Act contains powers of seizure for farmed animals. Those powers are carried out by the police, with the presence of the Department’s veterinary officials. The police act on behalf of the Department and do not see that as their role, and that is why the Department is taking that power. I emphasise that powers of seizure are the last resort. The legislation is not about the Department seizing animals. As we set out previously to the Committee, we have the facility to issue improvement notices.

Improvement notices will be the first steps put in place when an animal is suffering or likely to suffer. The farmer — or owner, in the case of a non-farmed animal — will be given clear instructions and a timeline as to what he must do to improve the animal's conditions. The inspector will visit again. Seizure is something that we do not want to do. The Department has not had the police seize any farmed animals in years. Paddy can vouch for that.

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

That is right.

Ms Davey:

Seizure is not something that we try to do. We try to work with the owner to get the animals into a condition where they are healthy and well looked after. We do not want to seize animals. That is definitely the last resort. However, we have to have this power because there will be circumstances in which there will be no option other than to take the animals.

The Chairperson:

Mr Molloy, are you comforted by the fact that seizure is a last-resort measure that has not been used for a considerable time?

Mr Molloy:

I am not comfortable with this because of the history of the Department. I have concerns because of some of the farms on which that has happened. Furthermore, I am not that comfortable because this is the first that we have heard of this. That may be our fault as well, because we have not been raising this issue. The Department has not highlighted its role in seizure or in relation to farmed animals. Until now, we have been talking about non-farmed animals only. Farmed animals have only come in now in relation to the appointment of inspectors and giving the Department power in that. It has that at the moment to some extent, and it wants that power

increased. That has not been highlighted.

Ms McMaster:

Let me clarify. In our earlier presentations to the Committee, we set out an overview the Bill and the clauses in it, the implications of those clauses, what the powers meant, and how they would be used. We have done that for the Committee.

Ms Davey:

We have clearly set out the powers of seizure. The discussion on seizure powers for farmed animals has already taken place at this Committee.

The Chairperson:

Thank you for that.

Mr Irwin:

I am a farmer. I do not wish to see animals seized, but, in the last resort, there may be occasions when that must happen. I see that a veterinary surgeon has to certify that an animal is suffering or is likely to suffer. Is that the Department's veterinary surgeon or an independent one?

Ms Davey:

It depends whether we are exercising these powers in respect of farmed animals, in which case it would be the Department's veterinary surgeon. He would look at the animal and assess it.

Mr McGuckian:

That is the way it would be.

The additional power that you have rightly highlighted is that where the animals are likely to suffer, we would be in a position to seize them. We have explained that before this Committee, and I concur with my colleagues on that. We have been through that process and explained how it would happen. You are quite correct. If animals are suffering or are likely to suffer, we would have power to seize them. However, we do not envisage having to do that often, because of the use of the improvement notices. We find that the improvement notices make all the difference in the vast majority of cases. It is a written notice that tells the owner that he or she has a problem and must fix it. If he or she does not fix it, he or she is at risk of losing the animals. That makes people sit up, waken up, acknowledge that they have a problem and take action.

The weakness in the existing legislation, as we have frequently explained, is that at the moment under the Welfare of Animals Act (Northern Ireland) 1972, we do not have the power to seize. The police will sometimes seize under the Police and Criminal Evidence Act 1984 (PACE). However, the police take the animal as evidence, they do not do so under the Welfare of Animals Act (Northern Ireland) 1972. The police can seize in situations where animals are in distress, but we have never been able to seize healthy animals that are likely to suffer. That issue has been raised by members of the public over and over again as a weakness in the current legislation. We are trying to address that in this legislation.

Ms Davey:

A set of circumstances might explain that for members. If we go into a situation on a farm where there are animals suffering, dying and dead on the farm, and there is another group of animals that are not at the stage of suffering, we have to walk away and leave the animals that are not suffering, knowing that, in two or three weeks' time, they will be suffering. Only when they suffer can action be taken.

The legislation is not about the Department wanting to seize animals, because, once we do that, those animals are exceptionally expensive to keep. Our Veterinary Service will work with

farmers and their families to put arrangements in place to ensure that the animals are properly cared for on farms, so that we do not have to go down the road of seizure.

Mr Irwin:

I am slightly concerned that the Department's vets will make those decisions. There is sometimes a feeling among the agricultural community that some of the Department's vets do not live in the real world.

The Chairperson:

How would they get that idea? *[Laughter.]* Will there be a code of practice for seizures?

Mr McGuckian:

We have already said that there will be. At the moment we do not seize, but we said earlier that there will be something like a code of practice to assist people with the process.

Mr W Clarke:

Retaining the annual £760,000 budget will be essential if councils are to take on the powers. I understand that the Minister can only stand over her mandate and that it is difficult to look into the future, but councils need a fallback position. The councils need to know that if the funding is withdrawn, the Department will look at things again and take the powers back in-house, which is something that it does not do with non-farmed animals. The councils will not have the resources if the funding is withdrawn, and they could say that they cannot afford to do the job. What guarantees can the Department, rather than the Minister, give on that?

Ms McMaster:

Concerns were raised on the security of the funding. We are aware of those concerns, but the

Minister and the Department are committed to providing a baseline of £760,000 each year for the duration of the forthcoming Budget period. The Committee will be aware that the Minister has entered a bid in the Budget 2010 process for £760,000 a year to assist councils with that work. The Minister has given a firm commitment that the £760,000 will be allocated through the Department's budget even if that bid is unsuccessful and that that funding will be entered as a baseline for the next Budget period to assist councils with enforcement of the Bill.

The Minister has asked us to highlight that, if there is any proposal to change funding in the future, the Committee would be advised of that and that it would be open to scrutiny by the Committee. The Department has no reason to believe that any future Minister would seek to change that position. The Welfare of Animals Bill has obtained cross-party support, and we do not anticipate that a Minister from a different party would change that provision in the future.

Ms Davey:

Although the Bill will place a statutory responsibility on the Department and councils to enforce the Bill, the powers are permissive in that they will allow the councils and the Department to decide how best to implement them within the available resources. It is about looking at what resources will be available and what can be done. It is unlikely that every welfare case will be dealt with, and we will need to work with councils to see how they prioritise work, what cases should be dealt with and what cases can be left.

Some minor welfare complaints will not be investigated. It is about trying to address matters within available resources. The resources will be there, but, should there be a time when they are cut, and we do not think there will be, we would have to look at how we reprioritise.

Mr Beggs:

I declare an interest as a local councillor. My mum and dad also have a family farm business.

With regard to the Department's vets looking at purely agricultural animals, is it not possible to have a joined-up approach between local government and the Department? If there is a complaint, I suspect that a council's environmental health officers would carry out an initial investigation. However, in cases when veterinary opinion is needed, is it not possible to draw on departmental resources, instead of employing additional vets at council level?

Ms Davey:

That is certainly not the Minister's proposal. The Minister wants to concentrate the Department's resources on the fight against animal diseases such as TB and brucellosis. She is resourcing councils so that they take forward that work. At this point in time, it is certainly not the Minister's policy that they combine.

We also want a clear divide so that members of the public know who they can contact if they have a complaint. Once an organisation starts to take an investigation forward, it is probably best if that organisation continues right through, if necessary, to prosecution. That makes for a more easily prepared case, rather than people dipping in and out.

Mr Beggs:

Are there models elsewhere that may work here? Given that there are 26 local councils, I can see it being a very bureaucratic process if each starts to employ vets on a part-time basis or whatever. There will be a need to develop expertise in that area and have consistency. Did you look at that?

Ms Davey:

We will do that in working with councils to implement the Bill. There is no requirement for all 26 councils to start to employ individual officers. We will look at how that money is given to councils, and there will be the opportunity, if councils so wish, to have one or two centres of excellence to take forward all or parts of that enforcement element. We can work through those

implementation issues with councils. However, we are certainly not saying that every council has to do every last element. It may be better if parts of it were to be provided by a central group, where expertise could be developed.

Mr Savage:

Kate, you summed it up well when you said that when inspectors are on the farm and see something that should not be happening, such as cruelty to animals, they are powerless and have to walk away. You must have powers to do something, or there is no use you being there. Paddy said that a weakness in the 1972 Act needed to be overcome. Why can that not be done?

Ms Davey:

The new Bill will give us the power to take action when an animal is likely to suffer. If this Bill is put on hold, and clause 45 is put on hold, we will not have the power to do anything.

Mr Savage:

That problem needs to be addressed, and then everyone will be a winner.

Ms Davey:

I agree entirely.

Mr Savage:

There could be overlap between councils and the Department. However, if something happens that should not be happening, then that problem has to be addressed.

Ms Davey:

I agree.

Mr Molloy:

Five minutes ago, I was advised by the departmental officials that the advice that they give to farmers alleviates the problem of seizure. They do not have to seize, because once they tell a farmer to do something, it is always sorted out. We are now being told that they have no power to do anything. They have to turn their eyes and walk away.

We heard the emotional stuff from Kate about animals dying and all the rest of it. We are dealing with reality here, and here is the idea that you have to turn your back, walk away and do nothing. Ten minutes ago, you told us that when you advise farmers, they are normally regulated, and seizure is not necessary. This is legislation being slipped through by the back door.

Ms Davey:

This is not legislation that has been slipped through. The Department sat at this table on numerous occasions and clearly spelled out what the legislation, additional powers, and changes are about.

Mr Molloy:

No. Going back again to the issue of seizure, are you saying that the Department has not, over the past number of years, entered premises and farms, seized animals and restricted others and had no authority to do so?

Ms McMaster:

We are talking about welfare in this instance. In the case of welfare, the Department has not had

the power to seize. We explained earlier that, currently, the PSNI has power to seize, and it will do so on behalf of the Department in certain cases. However the Department itself has no such power. This Bill is specifically about the welfare of animals; it is not about other areas of work in which the Department is engaged. In this area of our work, animal welfare legislation is deficient —

Mr Molloy:

Is it not a good thing that the Department has to consult with others? Sometimes when the Department makes decisions on its own, and it does not consult with anyone, it makes bad decisions.

I return to the issue about councils and the delay in implementation. The last sentence of Kate Davey's letter states that we will have a period of 12 months after Royal Assent before this provision is introduced by a commencement Order. It says:

“That will allow Councils time to get the necessary resources, systems and procedures in place and be ready to implement the new powers before they come into force.”

Therefore, it is not about consideration for the role of councils or consultation with them. Commencement is only deferred to allow the councils to get resources into place. Probably, at that stage, the Department's resources will have dried up. Councils will probably have to employ staff to run the systems that they put in place. We have also been told that the Department's officials and vets will not be available.

Councils need to be very clear that this is being passed on to them, lock, stock and barrel. The message is: “do not ask us about this afterwards. Do not ask our vets or interrupt them, they have too many other things to do.” Councils will be taking on this role completely. They need to be very clear about that. The deferment of 12 months is not to allow for proper consultation or to

do anything other than give councils time to put the provisions into operation.

The Chairperson:

Mr Molloy paints a very black-and-white picture. Is it the case that the Department will wash its hands of this after 12 months and leave councils totally on their own?

Ms McMaster:

The Minister has said that she is committed to DARD officials giving practical assistance to councils. That is not something that we foresee ending after 12 months. That will be ongoing, and we will have engagement with councils thereafter. This will continue to be a welfare of animals issue. We will monitor and continue to take feedback from councils as to how that role is delivered by them. It is something in which we will have an ongoing interest.

Mr Molloy:

When Mr Beggs asked whether veterinary assistance would be made available, the Department just said no, it was not what the Minister envisaged.

Ms Davey:

We do not anticipate that the Department's vets will go out and assess non-farmed animals. That is not the Minister's policy. Rather, it will be taken forward. The legislation will still be owned by the Department, and councils can seek advice from it. There is no point in trying to mislead you. This is why the funding is being given to the councils. It is to allow them to seek the veterinary expertise in cases where they need it on the ground and to build up that expertise for prosecutions etc. However, the Department still owns the policy and the legislation, so of course it will be available for advice and guidance.

Mr Molloy:

On the evidence that this Committee has heard, £760,000 would only pay half a dozen court bills. It would not cover the employment of inspectors or the implementation of this policy. If this is the Department's Bill and the Department has ownership of it, the Department should implement it, instead of putting down legislation and then passing it over to local government without the resources to enforce it. There is no guarantee of resources after this year. The Department should take on the responsibility for it.

Ms Davey:

The Minister has given a guarantee that she will create a budget line for the next CSR period. The next Budget period is four years. She is putting that —

Mr Molloy:

The Budget has not been agreed yet.

Ms Davey:

I appreciate that. However, the Minister has clearly said — she said it at this Committee — that, irrespective of whether or not her bid for £760,000 is met, she will find £760,000 and put it in a budget line for that work for the next Budget period.

The Chairperson:

Mr Molloy asked about the consultation between local councils and the Department. Would it help if the Committee were to meet every three months with local council representatives, as we did the other week, and with the Department to see whether there has been adequate consultation and whether the local councillors are content?

Mr Molloy:

I want that consultation to happen before we pass the Bill. Once we pass the Bill, the Department will snub its nose at it and will tell the councils that it is up to them and that they should get on with it. That is exactly what will happen. Once we pass it, the Department will be out of the door as quickly as possible, and the councils will pay for it. That is clearly the Department's role. We want consultation prior to the Bill being approved and prior to Royal Assent.

Ms McMaster:

Firm guarantees have been given about the engagement that the Department will undertake with councils. The Minister has reaffirmed those guarantees. Therefore, it is not a case of washing our hands of the issue once the Bill is passed. That is not what has been said.

Mr Molloy:

We were told that the consultation had already happened over the past four years, that the councils were all happy with that and that they wanted to get stuck into this as quickly as possible. However, when the councils came to the Committee, they said that there had been no consultation. Therefore, making promises and keeping them are two different things.

Mr Savage:

Am I right in thinking that the councils will do the work on behalf of the Department, given that the Department owns the legislation?

Ms McMaster:

Councils will have powers to act under the legislation. Therefore, the legislation itself will give councils the powers to act. They will not act under the direction of the Department.

Ms Davey:

They will work under guidance from the Department. We will issue guidance on the appointment and role of inspectors, and that is outlined in clause 45. Councils will have to work under the guidance on how to implement the legislation.

Mr Savage:

I am clear in my mind now.

Mr Molloy:

When does a farmed animal stop being a farmed animal? Is it only a farmed animal when it is living, or is it a farmed animal when it is dead? In cases of fallen animals, the Department has not given councils any resources to deal with that problem. The Department for Regional Development's Roads Service does not take any responsibility for an animal on the road, and the Department of Agriculture and Rural Development is supposed to look after the welfare of farmed animals. The welfare of animals can take in a whole lot of different aspects, including the dead animal and the animals around it. However, the Department has never come to terms with that legislation at all.

Ms McMaster:

There is a definition of farmed animals, and Kate will clarify that for members. This legislation does not relate to fallen animals; it relates to the welfare of animals.

Mr Molloy:

What is the legislation on fallen animals? Who deals with fallen animals?

Ms Davey:

That comes under the Department's legislation on animal by-products.

Mr Molloy:

Can you give us some clarification?

Ms Davey:

The definition of a "farmed animal" is included in the proposed amendment to clause 45(2). It is:

"any animal bred or kept for the production of food, wool or skin or for other farming purposes."

Mr Molloy asked about welfare cases. Welfare is about an animal when it is alive. However, the evidence could suggest that dead animals on the ground have been welfare cases when they were alive. Therefore, it is not a case of looking at live animals only; we will look at the evidence when we go out to assess a welfare case.

Mr Molloy:

That is the point that I am making. The Department is taking no responsibility for animals that lie fallen on roads, in rivers or fields. There have been cases in the past of children walking past dead animals on their way to school, yet the Department and everyone else refuses to take responsibility.

Ms Davey:

Again, we are talking about welfare cases —

Mr Molloy:

I am talking about welfare.

Ms Davey:

The animals that you are speaking about are unlikely to have died as a result of a welfare case. It is more likely that they have died as the result of an accident or an illness.

Mr Molloy:

It does not matter how it happened. The Department is taking on the welfare of animals. When animals die, will the Department wash its hands of any responsibility?

Ms Davey:

That is not a welfare issue. It depends on the reason why animals die: if they die through neglect and suffering it is a welfare issue; if they die through disease or natural causes it is not.

Mr Molloy:

To cut to the chase, are you saying that when an animal dies it is not the Department's responsibility?

Ms Davey:

I said what I said; it depends on the reason why animals die. We are only here to look the Welfare of Animals Bill.

Mr Molloy:

The Department does not go out and ask —

Mr McGuckian:

Can I come in?

Mr Molloy:

If animals lie dead at the side of roads, the Department does not go out and inspect them to see why they died. It simply says that it is not its responsibility.

Ms McMaster:

The Bill is about improving the welfare of animals and preventing their unnecessary suffering.

The Chairperson:

I think that we are getting away from the point.

Mr Molloy:

We are not getting away from the point.

The Chairperson:

With respect, we are.

Mr Molloy:

We are asking about where resources come from, and, in the past, the Department has washed its

hands of this issue. It will be judged on its history.

The Chairperson:

Mr Molloy has serious concerns with clause 17, and he has relayed those concerns this morning. If the Department were to be seen by the Committee as having fallen down in delivering in that area, could the Committee take forward primary legislation to amend the Bill?

Ms Davey:

There would be nothing to prevent the Committee from taking that forward.

The Chairperson:

OK. The Committee has discussed this issue at length, and it needs to move on.

Question put, That the Committee for Agriculture and Rural Development is content with clause 17, subject, firstly, to the amendment recommended at clause 45 by the Committee and agreed by the Department and, secondly, confirmation by the Minister that paragraph 45(1)(b) will not be commenced for a period not less than 12 months.

Mr Molloy:

I do not agree. I propose that the Committee defers its decision until it gets clarification from the Department on both issues. The present legislation continues and does not lapse.

The Chairperson:

We have a proposal from Mr Molloy that the Committee defers. Are Committee members content?

Members indicated dissent.

The Chairperson:

We will take a vote on Mr Molloy's proposal.

Mr Molloy:

I beg to move

That the Committee defers its decision until it gets clarification from the Department on both issues.

Question put.

The Committee divided: Ayes 1; Noes 5.

AYES

Mr Molloy

NOES

Mr Beggs, Mr Gibson, Mr Irwin, Mr Moutray, Mr Savage

Question accordingly negatived.

Question, That the Committee for Agriculture and Rural Development is content with clause 17, subject, firstly, to the amendment recommended at clause 45 by the Committee and agreed by the Department and, secondly, confirmation by the Minister that paragraph 45(1)(b) will not be commenced for a period not less than 12 months, put and agreed to.

Clause 17 agreed to.

Mr Molloy:

I record my disagreement with that decision. I must leave the meeting to take the Chair in the House.

The Chairperson:

OK. That has been noted.

Clauses 18 to 28 agreed to.

Clause 29 (Power of councils to prosecute offences)

The Chairperson:

The background to clause 29 was discussed previously at length during our deliberations on clause 17.

Question, That the Committee is content with the clause, subject, first, to the amendment at clause 45 recommended by the Committee and agreed by the Department, and, second, confirmation by the Minister that clause 45(1)(b) will not be commenced for a period of not less than 12 months, *put and agreed to.*

Clause 29 agreed to.

Clause 30 agreed to.

The Chairperson:

The amendment to clause 6 will result in consequential amendments to clauses 31 to 33.

Clauses 31 to 33 referred for further consideration.

Clauses 34 and 35 agreed to.

Clause 36 referred for further consideration.

Clauses 37 to 40 agreed to.

Clause 41 referred for further consideration.

Clauses 42 to 44 agreed to.

Clause 45 (Inspectors)

The Chairperson:

The background to the clause was previously discussed during our deliberations on clause 17.

Question, That the Committee is content with the amendment recommended by the Committee and agreed by the Department, subject to confirmation by the Minister that clause 45(1)(b) will not be commenced for a period of not less than 12 months, *put and agreed to.*

Clause 45 agreed to.

Clauses 46 to 54 agreed to.

Clause 55 (Regulations)

The Chairperson:

The Department has agreed to amend clause 1 to make clause 1(3), by means of clause 55, subject to the affirmative resolution process in line with similar legislation in England and Scotland. This will be considered, therefore, at clause 55(2). In addition, the amended clause 6 will have a consequential amendment.

Clause 55 referred for further consideration.

The Chairperson:

As no issues were raised in relation to clause 56 to 60, I propose to group them.

Mr Savage:

I have a question about clause 56. The definition of “farmed animal” has been discussed from time to time. Are dogs and horses farm animals or are they not? I am talking about a dog on a farm.

When inspectors come in to do a farm quality assurance inspection or anything like that, one of the questions that they ask is whether the dog is wormed, and they ask for proof from the vet. That is a big question. If you have no proof that the dog was wormed, you are in trouble. That is something that has to be sorted out. It affects everybody, because Department inspectors visit all farms and ask whether the dog has been wormed.

Ms Davey:

I will clarify that. The proposed amendment to Clause 45(2) of the Bill clarifies the definition of a “farmed animal”. I will read it again and then explain a little element of it:

“‘farmed animal’ means any animal bred or kept for the production of food, wool or skin or for other farming purposes.”

If you are talking about a sheepdog, that would be included in the category of farmed animals, in that it is kept for other farming purposes purely as a sheepdog. However, if you are talking about the pet poodle in the house, it would not —

Mr Savage:

There are Alsatians on our farm. The first question that was asked was: is the dog wormed?

Ms Davey:

Are they used for farming purposes?

Mr Savage:

Yes; they are on the farm, and have more access to it than any person on the farm.

Ms Davey:

If the dog is used for farming purposes, it would be included under the category of “farmed animal”. If the animal is not used for farming purposes, it would not.

Mr Savage:

It is a grey area. I am just bringing it to the Committee’s attention, because I know that question is asked quite frequently.

Clauses 56 to 60 agreed to.

Schedule 1 (Procedures to which section 5 does not apply)

The Chairperson:

I spoke earlier on clause 5 of the Bill in respect of the prohibited procedures and making subordinate legislation to outline permitted procedures, which would, in effect, do away with the need for schedule 1. It would be removed. It might be helpful to explain that the first two paragraphs of schedule 1 would be taken into the body of the Bill, and paragraphs 3 to 6 would be covered as permitted procedures in subordinate legislation. The Department has previously tabled a new schedule 1.

Question, That the Committee is content with schedule 1, subject to the Committee’s proposed amendment as agreed by the Department, *put and agreed to.*

Schedule 1 agreed to.

Schedules 2 to 5 agreed to.

The Committee Clerk:

We do not agree the long title until the other clauses that the Committee has agreed to defer have been dealt with.

The Chairperson:

That concludes the meeting for this morning. I thank the officials for attending once again.