



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

Welfare of Animals Bill

23 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 Kieran McCarthy
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 now move on to the clause-by-clause consideration of the Welfare of Animals Bill. I welcome Colette McMaster, Kate Davey, Paddy McGuckian and Andrew Kell from the Department

Clause 5 is contingent to clause 6, which relates to the docking of dogs' tails. Committee members acknowledged the Minister's proposals for an exemption to clause 6 of the Bill, and welcomed the additional controls as detailed in the tabled draft document, 'Tail docking of dogs - exemption proposal'. However, members agreed that the Minister's proposal for an exemption continued to be too restrictive, particularly the limiting of the exemption to pure breed spaniels and hunt point retrievers and the exclusion of terriers as an exempted type of working dog. Members agreed that the specific types of dogs should follow those contained in schedule 1 to the Docking of Working Dogs' Tails (England) Regulations 2007, namely:

"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."

Committee members agreed that those exempted types, in conjunction with the development of the exemption proposal, would allow for appropriate enforcement of the Bill. They also agreed that it would allow for the Department's policy of banning the cosmetic docking of dogs' tails, including those of terriers that are kept as pets, to be enacted in Northern Ireland. Do the departmental officials wish to make any comments on that?

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

Yes. We responded to the DALO this morning through a letter that that was sent to the Committee Clerk. In that letter, we explained that we had advised the Minister of the Committee's recommendation. Following discussions that the Minister had with a number of Committee members yesterday, she is prepared to remove the requirement for the sire and dam to be registered pedigree dogs. That was an issue that stakeholders also had raised, and they suggested that, although their dogs were pure bred, they were not necessarily registered with the Kennel Club or equivalent organisations. However, both parents will still need to be pure bred of the same breed, because the Minister is not prepared to extend her proposed exemption to include cross-breeds.

As no documented evidence has been produced to justify an exemption for terriers, the Minister is not prepared to extend the exemption to cover any breed of terrier. As the Minister advised last week when she attended the Committee, she is prepared to provide an exemption only for dogs which are likely to be working dogs and which have an increased risk of tail injury.

We need to learn the lessons from England and Wales and close any loopholes in the legislation. The Royal Society for the Prevention of Cruelty to Animals (RSPCA) told us that its experience of enforcing the exemption in England was that the lack of banning cross-breeds made it virtually impossible to prove or disprove that a dog that had been docked was of an exempt breed. That summarises our response to the Committee's requests.

The Chairperson:

Thank you. You referred to the report from the RSPCA. Was that report peer reviewed?

Ms McMaster:

It is not a research report. It is a review of the experiences of RSPCA officers in implementing the Animal Welfare Act 2006 in England and their recommendations for the future.

The Chairperson:

You also referred to the Airlie Bruce Jones report, which was not peer reviewed either.

Ms McMaster:

That was a study that was carried out on tail docking. The RSPCA report is a review of its officer's experiences in implementing the Animal Welfare Act 2006 in England.

The Chairperson:

I accept that, but the Committee was told that the Department dismissed the Airlie Bruce Jones report as it was not peer reviewed.

Ms McMaster:

We did not dismiss it. We noted that it was not peer reviewed when we referred to it. The difference is that that is a piece of research or a study, while the RSPCA report is not a study or, as far as I am aware, it is not intended to be one. Kate obtained it from the RSPCA when we sought information about its experience of operating the exemption in England.

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

That is true. A report of that nature is not normally peer reviewed; it is purely a factual account of experiences as opposed to, as Colette said, a scientific research paper, which is normally peer reviewed.

The Chairperson:

But, the report has been used extensively by the Department?

Ms Davey:

We have drawn on the experiences detailed in the report. The report is a documentation of the RSPCA's experience. Obviously, that has been approved by the RSPCA. An outside body would not be in a position to peer review that.

Mr T Clarke:

I am disappointed that the Minister has not taken on board the comments that the Committee made last week.

What checks and balances are there to ensure that dogs are pure-breds? You are still saying that the sire and dam have to pure-bred, but how will that be proven? We are talking about any combination of breeds when it comes to spaniels. I do not have a copy of the English legislation that contains the list of combinations that the Committee proposed to lift and use last week. Can the Committee Clerk give us the list in the English legislation again?

The Committee Clerk:

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.

Terriers of any type or combination of types.”

Mr T Clarke:

How do you identify pure-breds?

Ms McMaster:

As the pups tails will be docked before they are five-days old, the breeder will bring them for docking. So, identification would be based on the breeder’s declaration that the pups are pure-bred.

Ms Davey:

It is much the same as what happens in Wales with the pure-bred spaniels and the pure-bred terriers. As Colette said, there is self-certification by the owner to say that the dam and the sire are the same breed.

Under the legislation, it will be an offence to give false information to a veterinary surgeon.

That is how that aspect of the Bill will be enforced. The dam will also be present when the vet is docking the tail, so he or she will be able to confirm the breed of dam by looking at it. That is as far as we are going to take the requirement, because the sire may not necessarily belong to the breeder; it could belong to somebody independent.

Mr W Clarke:

As I mentioned last week, that is a good compromise. The Department and the Minister have moved on the issue. There was some concern, particularly from Francie, about papers, the Kennel Club and things like that. The self-certification role improves the amendment. Obviously, some people will still not be happy and will want cross-breeds included. However, the enforcement of that would be impossible. For that reason, we should support the amendment and vote on it today.

Mr Gibson:

I have one question regarding the position of vets. Vets are central to implementing this clause. I can envisage circumstances in which vets are placed in a very difficult position.

Let us say that there is a rogue vet who is prepared to dock tails beyond what is permitted. What happens to that vet? Is he committing an offence, or is it up to the professional body to keep him in check? What discipline is applied to the veterinary profession to ensure that it will act in accordance with the Bill?

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

First, the veterinary profession is bound by whatever legislation is passed. That is how it works in England and Wales. Secondly, vets are governed by Royal College of Veterinary Surgeons guidance. People can make a complaint to the college's disciplinary committee if they are not happy with the way that a veterinary surgeon is operating. There are two mechanisms: the law of

the land, and the professional body that oversees the veterinary profession.

Mr Gibson:

Yes, and he would be committing an offence if he —

Mr McGuckian:

Obviously, he would be committing an offence if he were to break some part of whatever legislation is created by this process.

Mr T Clarke:

I know that you have had a proposal from the floor, and I have already outlined my disappointment, but I do not think that there is any member of this Committee who is not concerned about the welfare of animals. Even the proposed amendment affects the welfare of animals, because there is clear evidence, whether or not the Department accepts it, and it obviously did not accept it, that some dogs will still have their tails damaged.

If this is all about welfare, the only compromise that we can get is that the majority of the Committee last week was in favour of the English model. I cannot accept the proposed amendment from the Department. I propose that the Committee proposes an amendment that lifts the wording from the English model. That does not open it up; it protects more dogs and the welfare of animals, and that is the whole purpose of the Bill. That probably directly negates the other proposal, but the wording of my proposal should be a direct lift from the English legislation.

Mr W Clarke:

Just to correct what the member said, the vast majority of the Committee was not in favour of the English model, because no vote was taken on it.

The Chairperson:

How do members wish to take the matter forward? Mr Molloy is not here, and he very much supported the English model last week. Are members content to leave voting until after lunch?

Mr W Clarke:

I think that we should vote now.

The Chairperson:

We have two proposals before us. Willie Clarke's proposal is to accept the Minister's paper that came before us today. Are members in favour of that proposal?

Members indicated dissent.

The Chairperson:

We then put the other proposal —

Mr T Clarke:

I leave it to the Committee Clerk to provide the exact wording, but I propose that we lift it directly from the English model. In fact, we should go slightly further in relation to the paper that was tabled last week by the Minister, and the conditions that were attached —

The Chairperson:

Are you talking about the Committee proposing an amendment?

Mr T Clarke:

Yes, a Committee amendment, but it should go slightly further than the English model and put in

the conditions attached and proposed in the paper that was tabled last week by the Minister to prove the requirement, specifically for terriers, for proof and evidence before the tails of terriers are docked.

Mr Beggs:

Sorry, when you talk about going further than the English model, what, specifically, are you talking about?

The Committee Clerk:

Just for clarity, the Minister, when she made her presentation last week, brought a draft paper that espoused the principles of what subordinate legislation to control tail docking may be. That paper basically beefed out what would happen: the requirement of a veterinary certificate etc. Members believed that it would make the English model easier to enforce.

Mr Beggs:

Will the proposer accept that the Committee should bring forward proposals for discussion following the English model? When we see the exact wording of the amendment, we can develop that.

Mr T Clarke:

That is fine.

The Chairperson:

What is your proposal?

Mr T Clarke:

I have taken on board what Roy Beggs has just said, but are we time-bound? We are running out of time to lay an amendment before the Bill is brought to the House. Therefore, we probably need that wording. I am happy to lift the English model, without any other conditions attached, if that suits.

Mr Beggs:

OK.

The Chairperson:

OK. Are you proposing that we lift the English model?

Mr T Clarke:

It is slightly more relaxed than what I was proposing, because the wording of the Minister's paper gave more assurances. For example, without it, 90% of terriers that are used for domestic pets would be allowed to have their tails docked. That is why I was adding that caveat.

Mr Beggs:

If that is the nature of the caveat, I am content with it.

Mr T Clarke:

Then we will go back to the original proposal.

The Chairperson:

Are members content with the proposal?

Members indicated assent.

The Chairperson:

The Committee will bring an amendment in relation to that clause.

Moving to clause 12, members indicated that they were of the view that responsibility for the registration and control of the farming of dogs should be retained within the Department in the same way as responsibility for all other farmed animals. Do the departmental officials wish to speak about the clause?

Ms McMaster:

Yes. Clause 12 provides enabling powers to allow the Department to make subordinate legislation for the licensing and registration of activities involving animals. We want to set out the consequences of making that clause dormant. If that provision is left dormant, it would mean that the Department could not bring forward any new subordinate legislation in that area, for example, on dog breeding establishments or any other activity involving animals.

The Committee's particular concern was around the proposed role of councils and the role of inspectors in councils. However, we would like to point out that clause 55(1) already provides that all subordinate legislation under clause 12 can only be made using the draft affirmative procedure. That means that, in effect, the Committee and the Assembly would have control over what licensing function passes to councils in every piece of subordinate legislation that is brought forward. However, the main point is that if clause 12 were to be left dormant, there would be no powers there to bring forward any new subordinate legislation in relation to activities involving animals. It would not only affect what councils may do; it would affect what the Department may do as well.

Mr Savage:

Councils should be given the power to take control of the issue. Councils were dealing with it, and they had the responsibility for matters around the setting up of breeding establishments and kennels. The councils have the full responsibility, and, with all due respect, I do not see why DARD should be getting involved now, when the councils are doing all the work. That is my only concern.

The Chairperson:

Are members content that we defer clause 12 until the clause-by-clause scrutiny of the Bill?

Mr T Clarke:

In relation to George's point, have the councils not expressed concern about taking on that role?

The Chairperson:

They have.

Ms McMaster:

Clause 12 relates to licensing and registration functions. Any functions that councils undertake under clause 12 would be on the basis of full cost recovery. Therefore, any subordinate legislation that is brought forward would be on the basis of recovering the costs of those activities. From that point of view, we have heard no concerns from councils in terms of the funding aspect.

Ms Davey:

Under the Dogs (Northern Ireland) Order 1983, councils already take that role in respect of dog breeding establishments. They are responsible for registering all dog breeding establishments and

have been for nearly 30 years. Therefore, you would be taking work away from councils that they are responsible for doing.

When we met official representatives, and we told them about the proposal to introduce full cost recovery, they welcomed the fact that they would be able to fully recover their costs in respect of dog breeding establishments. The legislation that we are proposing that needs to come forward with stronger powers will build on what is already there. That is why the Minister is keen to leave that responsibility with councils as opposed to bringing it back to the Department.

The Chairperson:

It was our understanding that dog breeding establishments wished the responsibility to be with the Department as opposed to councils.

Ms Davey:

Some stakeholders expressed that view, and the Minister was aware of that. However, her view is that it should continue to rest with councils. They have had that responsibility for 30 years.

The Chairperson:

Members have indicated that they are content to leave the matter until the Committee's formal clause-by-clause scrutiny of the Bill.

Mr Savage:

I might be reading the wrong bit of the paper, but I agree with what you are saying about the councils taking control of the issue. There was a query yesterday and building control and environmental health were involved, and it was all to do with councils. Therefore, I do not see why DARD should become involved. I agree with what you are saying, Kate, but the issue is not

clear from what I am reading.

The Chairperson:

OK. Clause 17 relates to powers in relation to animals in distress, and clauses 29 and 45 relate to council resourcing. Does the Department wish to make any comments?

Ms McMaster:

Clauses 17, 29 and 45 are linked. The Committee asked that clauses 29 and 45 be laid dormant. Clause 45 provides powers for the Department and councils to appoint inspectors. Therefore, it is quite a significant clause, because, if it is made dormant, very few aspects of the Bill will be enforced. The effect would be that neither the Department nor councils would have the powers to appoint inspectors to investigate complaints and offences or to seize animals that are suffering or are likely to suffer if their circumstances do not change under the Bill. No enforcement body could issue improvement notices. Only the PSNI would have any powers under the Bill, but it would not have powers to issue improvement notices under the Bill.

To address the concerns that were raised in relation to the council's role and to give councils the time to prepare for the new enforcement role, the Minister has proposed an amendment to clause 45, which separates enforcement roles of DARD inspectors in respect of farmed animals and council inspectors in respect of non-farmed animals. The purpose of that amendment is that it would allow for the enforcement role for DARD inspectors to be commenced immediately following the enactment of the Bill. It would also allow for the enforcement role for councils to be commenced at a later date, via a commencement Order, when councils have had time to prepare for their new enforcement role. Clause 45 provides powers for both the Department and councils to appoint inspectors.

Clause 29 rests on clause 45. Clause 29 relates to councils' prosecution powers. It will be

exercised only when councils can appoint inspectors to enforce the Bill. Until the proposed amended clause 45 is commenced in respect of council inspectors, councils cannot enforce clause 29. Clause 17 is similar.

Ms Davey:

Until inspectors are appointed by councils, they will have no role in clause 17. The Minister has also asked us to reiterate to the Committee the assurances in respect of the work transferring to the councils that she provided last week. She assures you that she will guarantee funding of £760,000 for the next Budget period. She also gave a firm commitment that her officials would work with councils and council officials to get them to a stage where they would be ready to implement those clauses. She clearly said that that would be the case, even if it took six to nine months, and she also said that, during that time, she would not commence the powers for councils to appoint inspectors. Therefore, in effect, nothing would transfer to the councils without that power of inspection. She has given those assurances, and she has stated in writing to the Committee that she is prepared to stand over those. That is her view at this point.

The Chairperson:

The Committee would need something a lot firmer in writing from the Minister about the dates of the commencement and the resourcing of the responsibilities.

Ms Davey:

Will the Committee give us a clearer indication of its exact thinking, rather than asking for something “firmer”?

The Chairperson:

You mentioned a period of six to nine months. Can that be firmed up?

Ms McMaster:

Do you want something in writing to confirm that?

The Chairperson:

Yes.

Ms Davey:

I would like clarity. Are you content for the Minister to give you a written guarantee that she will not enact this clause until nine months from Royal Assent? Is that what the Committee wants?

The Chairperson:

We are not content, but we can defer it until clause-by-clause scrutiny. Why will the Minister not give a year, as she has done for the Dogs (Amendment) Bill?

Ms Davey:

Is that what you are asking for?

The Chairperson:

We are asking the Department to come forward with proposals. Why not a year?

Ms Davey:

The Minister has said, if it is a year —

Ms McMaster:

We are confirming what she said last week in the Committee; I think that we have confirmed it this morning in the departmental Assembly liaison officer's (DALO) letter of response. If the Committee is saying that more time than that is needed —

The Chairperson:

There is also the issue of resources, because we have been led to believe that £760,000 is insufficient.

Mr T Clarke:

The other problem with the resources is that £760,000 is for the first year only. After that, councils would be left to their own devices.

Ms Davey:

That is not the case.

Mr T Clarke:

I was under the impression that it was a one-off payment.

Ms McMaster:

The Minister has confirmed that she has guaranteed the funding for the Budget period.

Mr T Clarke:

How long is the budget period?

Ms Davey:

Four years.

The Chairperson:

At what level?

Ms McMaster:

She has guaranteed £760,000 per year.

Ms Davey:

I will clarify things. Last week, the Minister said that if she was the Minister in four years' time she would, without a doubt, want to guarantee it. This is as far as she, in her period as Minister, can take something forward. It is the intention that this will roll forward. We can guarantee that, if the funding were to be changed by a subsequent Minister, the proposal would come back to the Committee before that would happen. However, the intention in putting that money in is that the process should roll on into subsequent comprehensive spending review (CSR) periods. It is outside the Minister's control to do that, but the Department can guarantee that it will come back to the Committee to highlight, at least, the fact that there are likely to be changes, should such changes occur in the future.

The Chairperson:

So, really, the guarantee of funding is worthless after the current CSR period.

Ms Davey:

It is not worthless. It is the opposite. We are saying that the intention is that it will continue to roll on. The Department can give a guarantee to the Committee today that it will come back to advise you should there be any change or any likelihood of change.

The Chairperson:

But, with respect, if we have a different Minister after next May —

Ms Davey:

If the Department gives a guarantee, it will come back to the Committee. Of course, the Minister can make whatever decisions he or she wishes to make, but at least the Department has given the undertaking to advise you of that. There would be an opportunity for the Committee to discuss the matter with officials and any subsequent Minister.

The Chairperson:

I do not want to press you on that, but if we have a different Minister after next May and the priorities are different, councils may be left to find the resources themselves. Is that not the bottom line?

Ms Davey:

The Minister has given a guarantee for four years. A Minister can make decisions, but he or she is also answerable to the Committee, whether he or she is the current Minister or the next Minister. That Minister would have to come back to the Committee and, at least, tell the Committee. The Minister can only guarantee that which is within her control.

The Chairperson:

I accept that.

Mr Beggs:

I am just trying to fish out what stronger guarantee could be given. I am not sure that that is an easy question to answer, other than, perhaps, if the current Budget were finalised and the Executive were able to give that guarantee. I do not know exactly what it is that the Chairperson

wants us to get from the Department. I am looking at it from the Department's point of view, and it is probably the strongest guarantee that can be obtained at this stage.

The Chairperson:

That is what we are after.

Mr T Clarke:

I am content with some of the comments that have been made.

The Chairperson:

Is the Department content to go back to the Minister to firm up that guarantee in a letter to the Committee?

Ms McMaster:

Yes. The Committee wants to see in writing that which the Minister confirmed at last week's Committee meeting? Can we be clear that the six- to nine-month period that the Minister referred to is sufficient?

The Chairperson:

To cut it short, if we can get the Committee Clerk to listen to the recordings, he will relay what is required. Is that OK?

Mr T Clarke:

I see what the letter says. It says:

“even if that takes 6-9 months”.

She is not saying that she will give six months. That could mean anything from one month to nine months.

Ms McMaster:

The intention is that —

Mr T Clarke:

The DALO’s letter says, “even if that takes”. There is no guarantee that six months will be given.

Ms McMaster:

The Minister would be prepared to guarantee a period.

Mr W Clarke:

We should run the six- to nine-month period past the NILGA representatives to determine whether they are happy with that time frame. It could be extended to 12 months if need be, but there will be a welfare issue. Prolonging the period to 12 months will result in an inability to act on behalf of animals in distress. As Roy Beggs said, we can only go as far as this mandate. An Executive could not give a guarantee, because, under new mandate, a new Executive could produce a new Budget. It is not perfect.

Mr Beggs:

I thought that we were getting a four-year guarantee.

Mr W Clarke:

You cannot guarantee that. A new Executive could come in and produce an entirely new Budget. We have no control over that.

The Chairperson:

Are members content that the Committee Clerk writes to the Department about this matter and that we take up Willie Clarke's suggestion that we write to NILGA?

Mr Beggs:

I agree that there is a balance to be found. We want sufficient time to allow the process to be set up, but if it goes on too long there is a welfare issue that we need to be aware of.

The Chairperson:

Are members agreed?

Members indicated assent.

The Chairperson:

That ends the consideration of the Welfare of Animals Bill for today. I thank the officials for their attendance.