

Environment Planning and Countryside Committee

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Ref No:

Date: Thursday 19 January 2006

Venue: Committee Rooms 3 & 4, National Assembly Building, Cardiff Bay

Title: Animal Welfare Bill

Purpose

1. To provide background information and proposed future developments of the outcomes on the Animal Welfare Bill.

Recommendation

2. To consider and comment on the implications of the Bill's proposals and the way forward.

Summary

3. The Animal Welfare Bill covers England and Wales. Its primary aim is to promote the welfare of all vertebrate animals, other than those in the wild, by harmonising requirements for the welfare of farmed and companion animals. In respect of the former, the Bill will mainly consolidate existing legislation, as welfare standards for farmed animals have generally kept pace with developments in scientific understanding.

4. Companion, sporting and show animals are currently covered by outdated laws made as long ago as the 19th century. The Bill proposes to modernise the legislation by enabling the introduction of welfare standards in line with those for farmed animals together with a number of other measures, which will be the responsibility of local authorities to enforce.

5. The Bill:

extends to all those responsible for an animal the duty to take reasonable steps to ensure its welfare. (A similar duty currently only applies to farmed animals);

modernises the definition of "cruelty";

strengthens and re-define offences related to animal fighting;

imposes a ban on mutilations (e.g. tail docking of dogs), can be subject to limited exemptions;

Enables the Assembly to make whatever provision it thinks fit for the purpose of promoting the welfare of animals for which a person is responsible or the progeny of such animals.

increases from 12 to 16 the minimum age at which a child may buy an animal; and

consolidates and clarifies existing powers on animal welfare, extends them and increases the effectiveness of enforcement.

6. For the non farmed animal sector, because this is a new area of work for the Assembly this work will be integrated via the Animal Health and Welfare Strategy with the appointment of appropriate persons to a sub committee able to advise as appropriate.

Background

7. The Bill is an enabling Instrument. It has limited impact on the current legislative framework for farmed animals other than providing new definitions for welfare and cruelty. In effect it should make enforcement procedures for ensuring the health and welfare of farmed animals more effective. Carwyn Jones will lead on the Bill and the outcomes arising from the enactment.

8. The Bill, which had its first reading on the 13 October 2005 and its second reading on 10 January 2006 is the result of four years work that began with a consultation at the beginning of 2002. The overwhelming response has been in favour of legislation to improve animal welfare.

9. Assembly officials and importantly the industry and interested bodies in Wales have been involved with these discussions from an early stage, primarily on the non-farm issues.

10. In February 2005, the then draft Bill was presented to the Assembly's EPC committee. The committee scrutinised the Bill from the farming aspects. Some issues were raised on tail docking in relation to working dogs, sheep etc and disease situations. The Bill, as drafted, does allow for such exemptions to be made within secondary legislation. Animal welfare organisations in Wales, the National Assembly's All Party Group on Animal Welfare, other organisations such as the farming unions and individuals have acted positively and contributed to the development of the Bill.

11. The current law on animal welfare in England and Wales is contained in over 20 separate pieces of legislation. This Bill consolidates and updates that legislation.

Key elements

The key elements are as follows:

Application

The Bill applies to all animals under the control of man except those used in scientific procedures which will continue to be subject of the Animals (Scientific Procedures) Act 1986. "Animal" is restricted to non-human vertebrates but there is a power to extend this definition to cover invertebrates should scientific evidence demonstrate that these animals are capable of feeling pain.

The term "protected animal" has been devised to define the animals under the control of man and means of a kind which is commonly domesticated in the British Islands, under the control of man whether on a permanent or temporary basis or not living in a wild state. This definition has been arrived at over a long period of time. The Animal Health and Welfare (Scotland) Bill) takes a similar view.

Welfare

The Agriculture Miscellaneous Provisions Act 1968 introduced a positive duty to ensure the welfare of livestock kept on agricultural land. This meant that in addition to an ability to prosecute offenders where animals had already suffered, animals could also be protected in circumstances where they were likely to suffer. The new welfare offence extends this protection to non farmed animals so that the duty of care now applies to all kept animals.

Clause 8, lays out this duty of care and is as follows:

"A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure the needs of an animal for which he is responsible are met to the extent required by good practice."

Clause 8(2) then puts into perspective what those needs are and enshrines the five freedoms of animal welfare.

In the context of this Bill an animal's needs shall be taken to include:

its need for a suitable environment,

its need for a suitable diet,

its need to be able to exhibit normal behaviour patterns

any need it has to be housed with, or apart from, other animals; and

its need to be protected from pain, suffering, injury and disease.

Clause 10 will give the National Assembly for Wales, as the appropriate national authority, the power to make such provision as it thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals. This will help augment, where necessary the general duty in clause 8.

Cruelty and Fighting

The provisions of the 1911 Protection of Animals Act no longer reflect modern practice and so lack legal certainty in respect of cruelty of animals. The Bill therefore proposes to create offences of causing unnecessary suffering and of permitting another person to cause unnecessary suffering e.g. a person who employs another to look after animals for all farmed and companion animals.

The Bill provides for penalties in respect of involvement with animal fights, but where another animal is used to capture another or for the purposes of legitimate activities it will not be considered to be "fighting" within the meaning of the clause.

Mutilations

The Bill contains clauses enabling the prohibition of mutilation of any animal cared for by man. In Clause 5(4), exemptions can be made by the appropriate national authority.

Purchasing an animal

In clause 9 the intent is to prohibit the sale of animals to a person under 16 by increasing the scope of the existing offence in section 3 of the Pet Animals Act 1951 which is currently limited to children under 12 and to the sale of animals as pets. Therefore a person under 16 unless accompanied by an older person will not be able to purchase animals. A similar ban will exist on giving pets as prizes.

Enforcement Issues

The draft Bill amends the Police and Criminal Evidence Act 1984 in order to make cruelty and fighting arrestable offences.

Powers are proposed to allow inspection of records maintained under licence; entry and inspection in connection with licensed activities; entry and inspection of farm premises; entry and search without warrant; entry and search by force without a warrant; entry and search with a warrant.

To assist enforcement agencies (local authorities and the State Veterinary Service), it is proposed to introduce a GB wide database to record all licensed activities under the Bill as well as any person subject to a disqualification/deprivation order (preventing them from owning/keeping animals or from operating animal related businesses).

Licensing and Registration

Local Authorities have for a long time, been arbiters of a licensing and registration systems for dealing with the promotion of animal welfare and animal related activities. That will continue, but it is important to understand that the National Assembly will be able to repeal existing law provisions and impose new ones.

Codes of Practice

An important part of the Bill is the provision to make codes of practice. Farm animal welfare has been subject to codes of practice for a number of years and this will extend the practice to non-farm animal welfare, for example, on the farm side the sheep welfare code was published in December.

These Codes will be made by the National Assembly for Wales in accordance with its procedures after appropriate consultation. They will provide non binding guidance not only to the owners of animals to provide the right care for their animals but the courts will be able to use them to confirm their understanding of what is acceptable or not.

Animals in Distress

Clauses 16 to 18 spell out what an inspector or a constable can do when finding such animals and sets out the procedure for the treatment, release, sale or other disposal or destruction of animals.

Enforcement powers

An important part of raising standards is to ensure that the enforcement process is sufficient. The powers of entry are broadly the same as before, but with one important change. The Bill's powers to enter and search for evidence of the commission of an offence, contained in clause 20 e.g. on cruelty, mutilations, fighting, welfare, carrying out relevant activities without a licence or registration have been amended. They are now restricted by a warrant requirement.

Careful consideration of human rights law and particular the decision of the European Court of Human Right in *Camenzind v Switzerland* RJD-III 2880 indicates that powers of search and seizure must be proportionate and subject to safeguards.

Prosecutions

No changes have been made to the powers to bring prosecutions. The Bill remains a private informers Bill so that organizations such as the RSPCA can still bring prosecutions.

What has changed is the time limit for any prosecution. Existing law requires prosecution to commence within 6 months of the offence being committed, whereas the Bill authorises prosecutions to be commenced within three years of the date the offence was allegedly committed, provided the proceedings commence within 6 months of sufficient evidence being available to mount a prosecution.

Post Conviction powers

Clauses 28 to 39 of the Bill set out the penalties available on conviction. They include imprisonment, fine, deprivation, disqualification, destruction, forfeiture of equipment and cancellation of a licence.

Imprisonment on summary conviction for causing unnecessary suffering will now not exceed a term of 51 weeks or a fine not exceeding £20,000 or both. The maximum penalty under the "welfare offence" will be £5,000 or 51 weeks imprisonment or both.

However, such penalties are of course a matter for the courts to decide.

Future developments

12. At the recent Wales Animal Health and Welfare Conference held on the 21 November at Builth Wells, partnership was depicted as one of the key elements, together with an understanding of roles and responsibilities of different parties in dealing with animal welfare. Partnership development will be undertaken through the Animal Health and Welfare Strategy that encapsulates both farm and companion animals by appointing a small sub committee similar to existing Strategy Committees to provide advice and guidance to Assembly officials, especially for non farm animals, on where the critical points lay.

13. It is clear though that during the last four years with contributions from a number of parties in Wales, there are areas of work which need examining. These include pet fairs, pet shops and internet selling, tethering, greyhound issues, livery yards, animal sanctuaries, performing animals, riding-schools, dog and cat boarding establishments, other means of carrying animals, breeding game birds, mutilations. In addition the production of codes of practice e.g. on cats and dogs and as guidance to Regulations will need to be made as well as any Regulations themselves. Because of the wide powers that are in the Bill, this list is by no means exhaustive and it is inevitable that in time new issues will arise for which the Assembly will need to provide appropriate advice and where necessary, legislation.

14. Of all the areas of concern that have been raised in Wales, one issue that is vexing a large number of people is the plight of racing greyhounds and what happens after they are of no racing value. This is an area which will be considered earlier rather than later, as the intent is to have a programme of work stretching initially to 2010 in consideration of these issues.

Framework Provisions

15. The use of framework provisions within the meaning of the Better Governance for Wales White Paper has been considered carefully.

16. The UK Government made a commitment in the Better Governance for Wales White Paper (which was published by the Wales Office on 15 June 2005) to draft Bills in a way which gives the Assembly wider and more permissive powers to determine the detail of how the provisions should be implemented in Wales. This commitment should enable the Welsh Assembly Government to pursue framework provision in appropriate circumstances allowing it to take a more flexible approach as to how and when its policy initiatives are taken forward in legislation.

17. It may also mean that, in appropriate circumstances, Bills may contain wider powers for the Assembly than those given to UK Ministers. The reason that this is possible is that any resulting legislation made under those wider powers will have to proceed through the Assembly's rigorous scrutiny procedures before it is made.

18. Clause 10 of the Animal Welfare Bill is virtually a framework provision in the way it is drafted, in that it provides that:

"the appropriate national authority may by regulations make such provision as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible"

Within the confines of the definition of "protected animal", it is difficult to think of a situation which could not be encompassed by such a clause. There are other clauses in the Bill which provide guidance on this clause, but they are "without prejudice to the generality of the power...". However, although it is widely drafted, clause 10 will not qualify as a "framework" provision for the purposes of the Better Governance for Wales White Paper as the Animal Welfare Bill makes identical provision in relation to England with the same wide power to make regulations being given to the Secretary of State. In other words, although clause 10 is widely constructed, it does not go further in relation to Wales than it does in relation to England.

19. In considering whether to seek an amendment to the Bill to include a framework provision, account has also been taken of the five years that this Bill has taken to be presented to Parliament. Considerable input and development has already been made by individuals and key organisations in Wales to shape the Bill. The powers that the Bill provides for the National Assembly (which are equivalent to those for England), will enable the Assembly to decide its own priorities especially for extending the definition of an animal; exempting procedures on mutilations; promoting animal welfare; licensing or registration of animal related activities; and introducing codes of practice. Similar regulation making powers for promoting farm animal welfare already exists and is conferred on the National Assembly for Wales.

20. Taking into account the above issues, it is contended that no framework provisions are required to cover the matters in the Bill.

Financial Implications

21. The Bill is not expected to lead to increases in public service manpower or to increase significantly costs to local authorities. It is not anticipated that there will be any increase in the volume of work that local authorities currently undertake in the welfare inspection and monitoring of farm animals.

21. The Bill will not introduce undue additional burdens on business, but promotes best animal welfare practice, which owners and keepers should be adopting anyway.

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