House of Commons

Environment, Food and Rural Affairs Committee

The Animal Welfare Bill

Third Report of Session 2005–06

Report, together with formal minutes, oral and written evidence

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Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

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Mr Michael Jack (Conservative, Fylde) (Chairman)
Mr David Drew (Labour, Stroud)
James Duddridge (Conservative, Rochford & Southend East)
Patrick Hall (Labour, Bedford)
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Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/efracom.

Committee staff

The current staff of the Committee are Matthew Hamlyn (Clerk), Jenny McCullough (Second Clerk), Jonathan Little and Dr Antonia James (Committee Specialists), Marek Kubala (Inquiry Manager), Andy Boyd and Alison Mara (Committee Assistants) and Lizzie Broadbent (Secretary).

Contacts

All correspondence should be addressed to the Clerk of the Environment, Food and Rural Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5774; the Committee's e-mail address is: efracom@parliament.uk.

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Report

The Animal Welfare Bill

1. In 2004 our predecessor Committee undertook detailed scrutiny of the Government's draft Animal Welfare Bill, published in July that year. The Committee's Report was published on 8 December 2004 and the Government replied on 14 February 2005.[1] Defra accepted a great many of the Committee's recommendations, particularly in relation to the structure of the Bill and the drafting of its definitions. The Department also promised to revisit the Regulatory Impact Assessment it had prepared for the draft Bill—a key document, given the range and extent of the delegated powers provided for in the draft Bill.

2. The Animal Welfare Bill was presented on 13 October 2005. On 24 October 2005 we announced a short inquiry to follow up the work of our predecessor Committee. We received 22 memoranda and are grateful to all those who submitted written evidence. We benefited from informal briefings from Defra officials and from Mr Mike Radford, Reader in Law at the University of Aberdeen, who also submitted written evidence.[2] We held a single oral evidence session on 15 November with the Minister for Animal Welfare, Mr Ben Bradshaw MP, and Defra officials.

3. In replying to our predecessor Committee's Report on the draft Bill, the Secretary of State said:

> The Committee's hearings and the Report itself have been of considerable assistance in helping me improve the Bill, and I am confident that the Bill I am preparing for introduction is better as a result.[3]

Defra officials echoed her remarks in evidence to our inquiry.[4]

4. We are pleased that the Government has taken up our predecessor Committee's recommendations in key areas and we agree that the process of pre-legislative scrutiny has helped to produce a better drafted Bill. Our predecessor Committee was especially concerned about the scope of the secondary legislation to be introduced by the Bill. We were therefore glad to receive reassurances from the Minister that the Government intends to undertake "full consultation" on the individual issues to be dealt with by means of secondary legislation.[5] We share our predecessor Committee's interest in the proposed secondary legislation on such matters as the docking of dogs' tails, pet fairs, performing animals and animal sanctuaries,[6] and we reiterate our predecessor Committee's call for public consultation on, and the closest possible Parliamentary scrutiny of, the proposed secondary legislation in these areas.[7] We also welcome the Animal Welfare Minister's

1 Environment, Food and Rural Affairs Committee, First Report, Session 2004–05, *The Draft Animal Welfare Bill*, HC 52-I; Environment, Food and Rural Affairs Committee, Fourth Special Report, Session 2004–05, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, HC 385

2 Ev 58

3 HC (2004–05) 385, p1

4 Q 2

5 Q 81

6 HC (2004–05) 52-I, paras 336–341, 302–317, 370–385 and 362–369

7 HC (2004–05) 52-I, paras 316 and 367; paras 180–185

commitment that the House will be given the opportunity to express its opinion on tail docking during the passage of the Bill.[8]

5. We are publishing all the written and oral evidence received as a follow-up to our predecessor Committee's work and hope that it will inform the House's scrutiny of the Bill at Second Reading and at subsequent stages.

8 Q 76

Formal Minutes

Wednesday 7 December 2005

Members present:

Mr Michael Jack, in the Chair

Mr David Drew	Mr Dan Rogerson
James Duddridge	Sir Peter Soulsby
Patrick Hall	David Taylor
Lynne Jones	Mr Shailesh Vara
David Lepper	Mr Roger Williams

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Draft Report [*The Animal Welfare Bill*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 5 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

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[Adjourned till Wednesday 14 December at 2.30 p.m.

Witnesses

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List of written evidence

Reports from the Environment, Food and Rural Affairs Committee since 2003

The following reports have been produced (Government responses in brackets):

Session 2005–06

Second Report	Reform of the EU Sugar Regime	HC 585-I
First Report	The future for UK fishing: Government Response	HC 532

Session 2004–05

Ninth Report	Climate Change: looking forward	HC 130-I (HC 533 05–06)
Eighth Report	Progress on the use of pesticides: the Voluntary Initiative	HC 258 (HC 534 05–06)
Seventh Report	Food information	HC 469 (HC 437 05–06)
Sixth Report	The future of UK fishing	HC 122 (HC 532 05–06)
Fifth Report	The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill	HC 408-I (Cm 6574)
Fourth Report	Waste policy and the Landfill Directive	HC 102 (Cm 6618)
Third Report	The Work of the Committee in 2004	HC 281
Second Report	Dismantling Defunct Ships in the UK: Government Reply	HC 257
First Report	The draft Animal Welfare Bill	HC 52-I (HC 385)

Session 2003–04

Nineteenth Report	Water Pricing: follow-up	HC 1186 (HC 490 04–05)
Eighteenth Report	Dismantling of Defunct Ships in the UK	HC 834 (HC 257 04–05)
Seventeenth Report	Agriculture and EU Enlargement	HC 421 (HC 221 04–05)
Sixteenth Report	Climate Change, Water Security and Flooding	HC 558 (HC 101 04–05)
Fifteenth Report	The Departmental Annual Report 2004	HC 707 (HC 100 04–05)
Fourteenth Report	Sites of Special Scientific Interest	HC 475 (HC 1255)
Thirteenth Report	Bovine TB	HC 638 (HC 1130)
Twelfth Report	Reform of the Sugar Regime	HC 550-I (HC 1129)
Eleventh Report	GM Planting Regime	HC 607 (HC 1128)
Tenth Report	Marine Environment: Government reply	HC 706
Ninth Report	Milk Pricing in the United Kingdom	HC 335 (HC 1036)
Eighth Report	Gangmasters (follow up)	HC 455 (HC 1035)
Seventh Report	Implementation of CAP Reform in the UK	HC 226-I (HC 916)
Sixth Report	Marine Environment	HC 76 (HC 706)
Fifth Report	The Food Standards Agency and Shellfish	HC 248 (HC 601)
Fourth Report	Environmental Directives	HC 103 (HC 557)
Third Report	Caught in the net: Cetacean by-catch of dolphins and porpoises off the UK coast	HC 88 (HC 540)
Second Report	Annual Report of the Committee 2003	HC 225
First Report	Water Pricing	HC 121 (HC 420)

Oral evidence

Taken before the Environment, Food and Rural Affairs Committee

on Tuesday 15 November 2005

Members present:

Mr Michael Jack, in the Chair

James Duddridge
Patrick Hall
Mrs Madeleine Moon
Mr Dan Rogerson
Sir Peter Soulsby
David Taylor
Mr Roger Williams

Memorandum submitted by Defra

I am grateful to you and the members of the Select Committee for your continuing interest in the Animal Welfare Bill, and for the opportunity you have offered Ben Bradshaw to give further evidence about the Bill on 15 November.

In advance of that meeting, I am enclosing a paper that explains the principal differences between the Animal Welfare Bill, as introduced in the House of Commons on 13 October, and the draft Bill, published last year. The paper, which deals with substantive rather than drafting changes, should be read in the light of your report of 8 December, 2004 and my response of 14 February, 2005.

I look forward to reading the Committee's report in due course, and to further debate as the Bill continues its passage through Parliament.

1. This paper explains the key differences between the draft Animal Welfare Bill published in July 2004 and the Bill as introduced in the House of Commons on 13 October 2005. It should be read alongside the Government's response of 14 February 2005[1] to the EFRA Select Committee's report of 8 December 2005.

2. The paper is arranged around eight central themes: scope; cruelty offences; welfare offences; delegated powers; animals in distress; enforcement powers; prosecutions; and post-conviction powers. The paper deals only with important, substantive changes to the draft Bill, passing over minor, drafting changes.

3. In response to a recommendation of the EFRA Committee we have rearranged the Bill, to make it clearer and more simple. Unless otherwise stated, references throughout this paper are to Clause numbers in the Bill as introduced on 13 October.

4. Annexed to this paper are two tables, enabling readers of the draft Bill to find the comparable clauses in the Bill as introduced on 13 October (Annex A), and vice versa (Annex B).

Scope of the Bill

Animals to which the Act applies: Clauses 1 and 52

5. We have accepted EFRA's recommendations 1–3, and included a new subsection (4) in Clause 1. This now sets out the criteria according to which the power to extend the Act's application may be exercised. We agreed that this power should be exercised only on the basis of scientific evidence.

6. We have limited Clause 1(4), however, by requiring scientific evidence of the capacity of invertebrates to experience pain and suffering. We do not agree that evidence of a capacity to experience "distress and lasting harm", without evidence of a capacity also to experience pain and suffering, should be sufficient for extending the Bill's application. That would be inconsistent with the offences in Clauses 4–7 of the Bill, which are based on causing pain and suffering.

7. The evidence for including cephalopods and crustaceans in the Bill remains under review, and we await the outcome of ongoing deliberations within the Europe Union on this matter.

8. Our policy not to apply the Bill to animals held under an ASPA [Animals (Scientific Procedures) Act 1986] licence is unchanged.

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[1] Published by the Select Committee in its *Fourth Special Report of Session 2004–5,* HC385 [3 March 2005].

9. However, a number of drafting amendments have been made to this Clause to ensure that our policy aim of preserving the status quo regarding these animals is achieved. Rather than exclude the application of the whole Bill with a saving provision for the cruelty and fighting offences, new Clause 52 excludes particular parts of the Bill on designated premises.

— subsection 2 excludes powers of inspection and search from being exercised on designated premises, save for Clause 24 powers to enter farming premises. This will ensure that inspections in connection with animals kept on designated premises will generally be the responsibility of the Home Office. The power to enter farming premises has been included so that the current power to enter and conduct searches and inspections on "dual purpose farms" under the Agriculture (Miscellaneous Provisions) Act 1968 is preserved. This will give responsibility for animals kept on designated premises for farming purposes to inspectors acting under the provisions of the Animal Welfare Bill.

— subsection 3 excludes the welfare offence from application to animals kept, bred, kept for breeding, or kept for supply, for use in regulated procedures. The welfare of these animals is already provided for by conditions attached to the ASPA licence when it is granted.

10. The approach in subsection (3) has been taken to ensure that other animals kept on designated premises, such as farm animals, the guard dog and the office cat, are still protected by the welfare offence. By oversight, the draft Bill did not achieve this; all animals on designated premises were excluded.

11. The cruelty and fighting offences will protect all animals on designated premises. If cruelty is inflicted on research animals, outside the terms of the ASPA licence, an offence will be committed under the Animal Welfare Bill. The Protection of Animals Act 1911 is already applicable in these circumstances, and its enforcement in these circumstances is the responsibility of the Home Office. Clause 52 will preserve this approach.

Definition of "Protected Animal": Clauses 2 and 53

12. As noted in our response to the Committee of March, we do not agree with recommendation 6 that we should adopt a broad definition of an "animal" and then exclude protection of those animals in certain situations.

13. We have separated Clause 54(2) of the draft Bill from the General Interpretation Clause (previously Clause 54, now Clause 56), and moved it to a more prominent and logical position in the Bill, ie Clause 2. The drafting has also been simplified, though the animals covered remain the same. Clause 2 (together with Clause 3, referred to below), should also address the Committee's concerns, expressed at recommendations 10 and 11, that the Bill's definitions and their interrelationship were not clear and easily accessible for readers.

14. We also accepted the Committee's concern, expressed in recommendations 8 and 9, that if we did not reconsider our definitions here, fish caught by anglers might be covered by the term "temporarily in the custody or control of man". In the light of the Government's manifesto commitment not to do anything which could adversely affect fishing and angling, Clause 53 ("Fishing") has been added; it excludes "anything which occurs in the normal course of fishing" from the Bill.

15. By virtue of Clause 1, fish are covered by the Bill, and if a fish is under the control of man it will be a protected animal under Clause 2. However, the effect of the exemption in Clause 53 is that, when a fish comes under the control of man in the course of fishing, the Bill will not apply to anything that happens to the fish in the normal course of that activity. So, for example, the use of livebait and the practice of catch and release will not be subject to the Bill.

16. This approach is the same as that which is currently being proposed in Scotland under the Animal Health and Welfare (Scotland) Bill, currently being considered by the Scottish Parliament.

17. We intend the term "fishing" to apply to the ordinary activities of fishermen and anglers, and also the ordinary activities of those who own and run stocked ponds in allowing fishing activities to take place on their ponds.

18. If unnecessary suffering were caused outside what is commonly understood to be "the normal course of fishing", that would be an offence caught by the Bill.

19. The Bill applies to all inland waters (rivers, streams, lakes and ponds) and to estuaries, but not to the sea.

Definition of "Responsibility": Clause 3

20. Clause 3 ("Responsibility for Animals") has also been included following the Committee's recommendations 10 and 11.

21. Previous references to animal "keepers" have been deleted. The welfare offence in Clause 8, and the power to make secondary legislation in Clauses 10–15, are both now linked to a single concept of "responsibility" to ensure consistency, and Clause 3 is intended to aid interpretation of this term. Ultimately

it will be for the courts to determine whether a person is "responsible" for an animal. However, Clause 3 has been included for the sake of certainty to make sure that the following cases will all be considered cases of having responsibility:

— having temporary responsibility for an animal;
— being in charge of an animal;
— owning an animal; and
— being responsible for a child who in turn is responsible for an animal.

22. This approach should address the Committee's concerns that the Bill's definitions and their interrelationship were not clear and easily accessible for readers, and also that the welfare offence and delegated powers should employ the same language.

Territorial extent

23. No changes have been made to the Bill's territorial extent. The substance of Clauses 40–44, on enforcing English and Welsh disqualification orders in Scotland, is unchanged. Their form has changed so as to accord with the procedures for enforcing disqualification orders in Scotland that are outlined in the Animal Health and Welfare (Scotland) Bill.

CRUELTY OFFENCES (PREVENTION OF HARM)

24. As recommended by the Committee (recommendations 12–13) we have separated the previous Clause 1 into a number of different clauses, along the lines that the Committee proposed. As mentioned at paragraph 21, we have also removed the definition of "keeper" and added a new Clause 3 which defines when a person is responsible for an animal. We agree with the Committee that this approach makes it easier for the reader of the Bill to identify the specific offences of cruelty as well as the more general offence of causing unnecessary suffering.

Mens Rea

25. The Committee expressed concern (recommendation 14–17) that it was not clear whether an objective or subjective test of *mens rea* would be employed. We have not amended this Clause because we consider that the drafting makes clear than an objective mental test will apply—"knew or ought reasonably to have known".

Mutilations

26. In response to the Committee's recommendation 20, we have included a definition of "mutilation" at Clause 5(3). This explains that a mutilation is "a procedure which involves the interference with the sensitive tissue or bone structure or the animal". This is the definition used by the Royal College of Veterinary Surgeons and its inclusion is important in helping to clarify this offence. We have also included a duty to consult before using the power to specify exceptions in regulations under Clause 5(4).

Cruel Operations

27. In line with our general aim of simplifying the Bill and the Government's commitment to the better regulation agenda, we have removed the previous Clause 1(9) from the Bill. This Clause carried forward from the 1911 Act the offence of performing an operation without due care and humanity, but was superfluous to general provisions in the Bill. Performing an operation without due care and humanity will, by definition, generally cause an animal unnecessary suffering and constitute an offence under Clause 4.

Fighting offences

28. In our response to the Committee's report we explained (at recommendation 23) that we intended to remove some of the detail from the fighting offence. The draft Clause 2(1) listed ten separate activities related to animal fighting that were to be offences. Each of these activities will still be an offence, but the drafting in Clause 7 of the Bill as introduced in the Commons is simpler than its predecessor. The terms "arranging", "making arrangements" or "carrying out arrangements" for an animal fight will capture all of the specific offences that have been removed.

29. The offences in the previous draft Clause 2(2)(b)–(d) (recording animal fights) have also been deleted. On further consideration, we believe that the difficulty of enforcing these provisions would have made them inoperable. It would have been virtually impossible to prove that any particular fight for which a recording existed took place within the jurisdiction of the courts in England or Wales. It would also have been

exceedingly difficult to prove that the animals involved were actually harmed or, eg, that the fight wasn't a computer-generated image. The Obscene Publications Act (1959) and the Cinematographic Films (Animals) Act 1937 will continue to apply.

Welfare Offence

30. We accept the Committee's recommendation that, since "welfare" is a neutral term, the welfare clause should be clarified. We have therefore rephrased Clause 8(1) to say that a person commits an offence if they do not take reasonable steps "to ensure that the needs of an animal… are met to the extent required by good practice".

Transfer of animals to under 16s

31. The previous Clauses 4 and 5 have been amended and incorporated into a single Clause 9. Since children are less likely than adults to be fully aware of the implications of pet ownership, our aim with this clause is to prevent their gaining a pet, whether by purchase or in a competition, without adult consent. Children will still be able to own a pet, provided that an adult has bought it for them or has consented to the receipt of a pet in a prize competition.

32. The draft Bill proposed a total ban on giving pets as prizes. In the Bill as introduced in the Commons, this ban has been limited to unaccompanied children under the age of 16. The narrower scope of the ban reflects the Government's commitment to better regulation, and the view that adults should have the same freedom to exercise their own responsibility in relation to the winning of animals as prizes, as they do in buying animals.

Abandonment

33. As noted in our response to the Committee's recommendations 31–32, the Bill as introduced in the Commons does not contain an explicit offence of abandonment. In the interests of a simple Bill we do not consider a specific offence to be necessary since the act of abandoning an animal will be caught by both the welfare offence in Clause 8 and, potentially, the cruelty offence in Clause 4.

Delegated Powers

34. The changes to the delegated power in Clause 1(3) have already been addressed in paragraph 5.

Duty to consult

35. In response to the Committee's recommendation 41, we have inserted subsection (6) in Clause 10, to impose a duty to consult when making regulations for the promotion of animal welfare. A similar subsection (5) is also included in the power to make a regulation exempting certain mutilations from the general ban in Clause 5.

Regulations to promote welfare

36. We shared the Committee's concerns that the detail contained in the previous Clause 6(2) might have curtailed the powers in Clause 6(1) by implication. Clause 10(2), therefore, now contains a shorter, more general list of examples for which the power could be used.

37. The explicit inclusion of Clause 10(2)(a) which allows us to impose specific requirements for the purpose of ensuring that an animal's needs are met takes account of the Committee's suggestion that the welfare offence and regulation making clause ought to be better aligned.

38. Clause 10(1) will allow regulations to be made not only to promote the welfare of animals for which a person is responsible, but also to promote the welfare of the progeny of such animals. This is to ensure that should a Government wish to regulate the breeding of animals, for example to restrict the breeding of animals with harmful characteristics, they would have the power to do so.

Licensing and registration

39. The Committee previously expressed some concern that the provisions relating to licensing and regulation were only touched upon briefly within the previous Clause 6. We have responded to these concerns by creating a separate Clause and Schedule (11 and 1 respectively) which set out more clearly the requirements of any licensing/registration regime. They give greater clarity to the roles and powers of local authorities in this regard.

40. We have also included in Clause 11 a new subsection (8). This "Henry VIII" power is intended to allow an appropriate national authority to repeal certain specified legislation which provides for licensing or registration. The previous Clause 6(3)(f) would have permitted the amendment or repeal of any existing enactment, but only in consequence of the introduction of a licensing or registration system under the previous Clause 6(1). The new Clause 11(8) will allow the specified licensing or registration systems to be repealed without the need to replace them with further licensing or registration systems. We do not currently envisage using this power, but it is important that the Bill be drafted in such a way that it can accommodate unforeseen future needs, which may include regulation of these areas by means other than licensing or registration. The Government's commitment to the better regulation agenda means it needs the power to repeal existing legislation if it were found to be unnecessary, for example, once the welfare offence had been enacted.

Animals in Distress

41. The number of clauses relating to animal in distress has been reduced. There is no longer a distinction made between "animals in distress", and "animals in distress: proceedings pending". This is because, whether proceedings are pending or not, if an animal is in distress a constable or inspector will be able to use their emergency powers. We do not see the need to maintain a distinct system for owners who are the subject of proceedings.

42. The provisions relating to animals in distress have therefore been simplified. There is one single system for handling animals in distress, with one set of powers and one procedure for the courts to determine their future. Clause 16 now outlines a single set of emergency powers, including the power to destroy, administer treatment, and take an animal into possession. Clause 17 contains a single power of entry that can be exercised to help an animal in distress. Clause 18 outlines a single procedure for recourse to the courts.

43. In line with the Committee's recommendation 47, the time limit during which an animal seized while in distress can be retained has been removed. An owner or person with sufficient interest in the animal can make an application for the release of the animal immediately under Clause 18(1)b. If no such application is made, anyone with a sufficient interest in the animal (which may be the animal's present keeper, the inspector who seized it, the person who wishes to offer it a new home, the sanctuary through whose hands the animal has passed, or the veterinarian who has given it treatment) will be able to make an application for its disposal. This could be an application for its release to them, under Clause 18(1)b, an order for its sale, for its destruction, or its disposal by other means.

44. The Government had indicated in its response to the Committee's recommendation 61 that provisions would be included in the Bill relating to written agreements with the Secretary of State for making applications in relation to animals seized under emergency powers. On reflection, we considered that this would actually involve an undue level of bureaucracy. The Bill makes provision for the owner of an animal, or anyone who has "a sufficient interest" in it to make an application under Clause 18. This means that the courts have discretion as to whose applications they hear, rather than the Secretary of State retaining this discretion. We consider this more appropriate.

45. As we noted in our response to the Committee, we do not consider it possible to specify further the circumstances in which there will be "no reasonable alternative" to an inspector or constable destroying an animal, nor to define the expression "reasonable alternative". Flexibility is important; any such restriction could be a disincentive to putting a suffering animal out of its misery. The term therefore remains unchanged in Clause 16(4).

Enforcement Powers

Order in the Bill

46. The order of the enforcement Clauses in the Bill has been changed, in line with the Committee's recommendation 46. Powers relating to animals in distress are now followed by enforcement powers, prosecutions, and then post-conviction powers.

Definition and liability of "Inspector"

47. The definition of an "inspector" hasn't changed since the published draft. It remains for the police, local authorities, and national authorities (in practice, the SVS) to enforce the Bill. Clause 45 reflects the previous Clause 44 on Appointment of Inspectors by Local Authorities, Clause 45 on Protection of Inspectors, and Clause 54(1) on General Interpretation. The new Clause 45 is consolidated and simplified.

48. The Committee did query, at recommendation 56, whether the definition of an "inspector" should be changed to an "approved person", to clarify the status of the RSCPA inspectors as distinct from the Bill's "inspectors". As noted in our response, we considered such a change in definitions would make the Bill more, rather than less, confusing. The term "inspector" is used throughout existing animal health and welfare legislation. If the definition were changed, it would not be clear whether there was a distinction to be drawn between an "approved person", and SVS and local authority inspectors.

49. We did not accept the Committee's concerns at recommendation 55 that RSPCA inspectors may be appointed as Bill "inspectors" by local authorities. We consider it unlikely that this would happen. However, if it did, the RSPCA inspector would be fully accountable to the local authority for the discharge of their duties as an "inspector".

50. Nor did we accept the Committee's concerns at recommendation 55 that we include, on the face of the Bill, "characteristics" of persons who may be appointed as inspectors, or appropriate categories of such persons. To include such limitations on the face of the Bill would be a severe limitation on its flexibility. We agree that it will be important to issue guidance, but we consider it important that the guidance be capable of evolving in light of emerging scientific knowledge and management practices. We therefore intend to issue guidance on this under the powers contained in Clause 45(2)–(4), rather than include it on the face of the Bill.

51. The Government are currently working on a Memorandum of Understanding with the Home Office and Association of Chief Police Officers. This will clarify police responsibilities under the Bill and prevent an unreasonable enforcement burden from falling on them.

52. The previous Clause 45 on the Protection of Inspectors is now reflected in Clause 45(5). In line with our response to the Committee, this Clause remains unchanged in spite of recommendation 57. However, a new Clause 45(6) has been added to make clear that the local and national authority which employs the inspectors may still be held vicariously liable for their employees' actions, even though the inspectors cannot be held liable personally.

Powers of Entry

53. As noted in our response to the Committee, the Bill's powers to enter and search for evidence of the commission of an offence, contained in Clause 20, have been amended. They are now restricted by a warrant requirement.

54. This change was made following a careful consideration of human rights law, and in particular the decision of the European Court of Human Rights in *Camenzind v Switzerland RJD-III 2880*. According to this judgment, powers of search and seizure must be proportionate and subject to adequate safeguards. In view of the general approach to search and seizure taken in the Police and Criminal Evidence Act 1984, which applies to more serious offences than animal cruelty and welfare, we do not consider a power to enter and search for evidence without a warrant could be justified.

55. The other powers of entry in the Bill remain the same.

56. The Bill also now contains a clarification of what is meant by "a part of premises which is used as a private dwelling". This is in Clause 56(3), in line with the Committee's recommendation 52. However, in line with our response to the Committee, this clarification makes clear our intention that any part of the premises which is used for dwelling, even if it is also used for other purposes at the same time, should be included. This is to ensure that constables and inspectors cannot enter a kitchen that is also used as an office etc, without a warrant. It should not affect farming premises, as the Committee was concerned it might, as those areas used for commercial farming purposes are highly unlikely to also be used for dwelling purposes.

Power of Arrest

57. The previous Clause 35, which amended the Police and Criminal Evidence Act 1984 to allow arrest without a warrant of those committing cruelty and fighting offences, has been deleted.

58. This does not represent a change of policy. It has been made because the Serious Organised Crime and Police Act 2005 will come into force in January 2006, and will give constables a general power to arrest without warrant anyone who is about to commit an offence and anyone who is in the act of committing an offence (at Section 110). An amendment to PACE to add to the list of offences subject to arrest was therefore no longer necessary.

Improvement Notices

59. As indicated in our response to the Committee's recommendation 60, we have not amended the Bill to make provision for issuing improvement notices. As this remains a common enforcers' Bill we do not see how it would be possible to make provision for private individuals to issue statutory notices.

Costs incurred

60. The Bill has been amended, in line with the Committee's recommendation 48, to allow for the recovery of costs by inspectors. This is now reflected in Clauses 16(11), 18(4)d, 32(1)e, 33(3)e, 34(3)e, and 35(1). These clauses do not explicitly state that only "reasonable costs" are to be recoverable, because, as indicated in our response to the Committee, the court is a public body and therefore under a duty to act reasonably.

PROSECUTIONS

61. No changes have been made to the powers to bring prosecutions. The Bill remains a private enforcers' Bill, and still empowers local authorities to bring prosecutions. The time limits outlined remain unchanged.

62. Some questions have recently been raised in the media about the powers of NGOs, and in particular the RSPCA, to bring animal welfare prosecutions. We consider these concerns misplaced. Animal welfare legislation has, as a matter of common law, always been private enforcers' law. The role of the RSPCA in particular in enforcing animal welfare law is fundamental, and it would be entirely inconsistent with the aims of this Bill if we were to take away their power to bring prosecutions.

63. We understand that claims have been made to the effect that, because of its charitable status, the RSPCA is entitled to reclaim some of its costs through the legal aid system, whereas defendants are not, and that it is therefore common to plead guilty rather than incur the expense of defending a case. Again, such concerns are entirely misplaced. The Department of Constitutional Affairs have assured us that any defendant in a criminal prosecution will be entitled to claim legal aid, and have the court determine the merits of his claim. Cases are decided individually. They are not barred by the prosecution having been brought by a private enforcer, rather than the Crown Prosecution Service.

64. In this regard we agree with the Committee's recommendation 62.

POST-CONVICTION POWERS

65. As explained in paragraph 32 we have included greater detail in the Bill on how licensing/registration systems would work. A new subsection (3) in Clause 28 requires that any regulation made under Clause 10 or 11 will have to specify the penalties that will apply for offences committed under that regulation. This too adds greater certainty to how any licensing/registration or general regulation would work.

66. Clause 29(3) has also been inserted, to empower a court to include any "dependent offspring" in a deprivation order. Under the draft Bill a court would only have been able to order that a person be deprived of ownership of an animal in relation to which an offence was committed. Cases were brought to our attention of owners being deprived of ownership of a pregnant animal, and the offspring having to be returned to the previous owner once they were born. We do not consider this desirable, and so have inserted the power to deprive of the offspring as well.

67. We have amended Clause 30(2)(d) so that "being party to an arrangement under which he is entitled to control or influence the way in which animals are kept" would also be covered by a disqualification order. This is in line with the Committee's recommendation 64 and will help to close the loophole by which those who have been disqualified seek to evade that prohibition.

68. Under the draft Bill someone who was subject to a disqualification order could apply after one year and every year after that to have the disqualification lifted. Clause 30(6) has been inserted to reduce unnecessary applications under this provision. It will allows the disqualifying court to specify a minimum period before which the individual is not able to apply for the disqualification order to be lifted.

69. The previous Clause 31 stated that an animal involved in a fighting offence could only be destroyed if it constituted a danger to public safety or that it may be used in the commission of further offences. We considered these situations too restrictive and inflexible, and Clause 34 now empowers the court to order the destruction of a fighting animal for reasons other than the interests of the animal.

70. The Committee recommended (number 65) that conviction for a fighting or certain other animal cruelty offences should carry an automatic disqualification. We consider that automatic disqualification places an unnecessary restraint on the ability of the courts to impose proportionate and appropriate penalties based on the facts of each case. Automatic disqualifications could also breach the right to peaceful enjoyment of possessions as set out in the European Convention on Human Rights. We are therefore content to leave it to the courts to decide on the penalties in each case.

Annex A

KEY TO THE ANIMAL WELFARE BILL—COMPARISON OF STRUCTURES

Draft Animal Welfare Bill compared to Animal Welfare Bill published 14 October

Clause in draft Bill	*Title of Clause*	*Related Clause(s) in Introduced Bill and Title(s)*
Specific offences relating to animals		
1	Cruelty	4—Unnecessary Suffering 5—Mutilation 6—Administration of poisons etc
2	Fighting etc	7—Fighting etc
3	Welfare	8—Duty of person responsible for animal to ensure welfare

Clause in draft Bill	*Title of Clause*	*Related Clause(s) in Introduced Bill and Title(s)*
4	Sale to persons under 16	9—Transfer of animals by way of sale or prize to persons under 16
5	Giving as prizes	9—Transfer of animals by way of sale or prize to persons under 16
Animal welfare regulations and guidance		
6	Regulations to promote welfare	10—Regulations to promote welfare 11—Licensing or registration of activities involving animal Schedule 1—Regulations under section 11
7	Codes of practice	12—Codes of practice
8	Making and approval of codes of practice: England	13—Making and approval of codes of practice: England
9	Making of codes of practice: Wales	14—Making of codes of practice: Wales
10	Revocation of codes of practice	15—Revocation of codes of practice
Animals in distress: general		
11	Powers to take possession of, and retain, animals in distress	16—Powers in relation to animals in distress
12	Powers to remove and care for animals in distress	16—Powers in relation to animals in distress
13	Other powers in relation to animals in distress	16—Powers in relation to animals in distress
14	Entry to search for and deal with animals in distress	17—Power of entry for section 16 purposes 46—Conditions for grant of warrant 48—Power to stop and detain vehicles 49—Power to detain vessels, aircraft and hovercraft
Animals in distress: proceedings pending		
15	Application of sections 16 to 19	Clause deleted
16	Orders in relation to animals owned or kept by the defendant	18—Orders in relation to animals taken under section 16(5)
17	Orders for disposal of animals taken under section 11(1) or 16(1)	18—Orders in relation to animals taken under section 16(5)
18	Orders for release of animals taken under section 11(1) or 16(1)	18—Orders in relation to animals taken under section 16(5)
19	Powers in connection with orders under section 16(1) or 17(1)	18—Orders in relation to animals taken under section 16(5)
20	Orders under section 16 or 17: financial provisions	16—Powers in relation to animals in distress 18—Orders in relation to animals taken under section 16(5)
Animals kept for fighting etc		
21	Powers to take possession of, and retain, animals kept for fighting etc	19—Seizure of animals involved in fighting offences
22	Powers to remove and care for animals kept for fighting etc	19—Seizure of animals involved in fighting offences
23	Entry to search for and take possession of animals kept for fighting etc	19—Seizure of animals involved in fighting offences 46—Conditions for grant of warrant 48—Power to stop and detain vehicles 49—Power to detain vessels, aircraft and hovercraft
Powers following conviction		
24	Imprisonment or fine	28—Imprisonment or fine
25	Deprivation	29—Deprivation
26	Disqualification	30—Disqualification
27	Duty to explain non-exercise of powers under sections 25 and 26	29—Deprivation 30—Disqualification
28	Seizure of animals in connection with disqualification	31—Seizure of animals in connection with disqualification 32—Section 31: supplementary
29	Seizure under section 28: financial provisions	32—Section 31: supplementary
30	Destruction in the interests of the animal	33—Destruction in the interests of the animal

Clause in draft Bill	*Title of Clause*	*Related Clause(s) in Introduced Bill and Title(s)*
31	Destruction of fighting animals	34—Destruction of animals involved in fighting offences 35—Reimbursement of costs relating to animals involved in fighting offences
32	Orders under section 25, 28, 30 or 31: pending appeals	37—Orders under section 29, 31, 33, 34 or 36: pending appeals
33	Orders with respect to licences	38—Orders with respect to licences
34	Termination of disqualification under section 26 or 33	39—Termination of disqualification under section 30 or 38
Enforcement powers		
35	Arrest without warrant	Clause deleted
36	Inspection of records required to be kept by licence	21—Inspection of records required to be kept by holder of licence
37	Entry and inspection in connection with licensed activities	22—Inspection in connection with licences
38	Entry and inspection of farm premises	24—Inspection of farm premises
39	Entry and search without a warrant	Clause deleted
40	Entry and search by force without a warrant	Clause deleted
41	Entry and search with a warrant	20—Entry and search under warrant in connection with offences 46—Conditions for grant of warrant 48—Power to stop and detain vehicles 49—Power to detain vessels, aircraft and hovercraft
Prosecutions		
42	Power of local authority to prosecute offences	26—Power of local authority to prosecute offences
43	Time limits for prosecutions	27—Time limits for prosecutions
Inspectors		
44	Appointment of inspectors by local authorities	45—Inspectors
45	Protection of inspectors	45—Inspectors
General		
46	Powers of entry: supplementary	47—Powers of entry, inspection and search: supplementary
47	Power to stop and detain vehicles	48—Power to stop and detain vehicles 49—Power to detain vessels, aircraft and hovercraft
48	Obtaining of documents in connection with carrying out orders etc	50—Obtaining of documents in connection with carrying out orders etc
49	Offences by bodies corporate	51—Offences by bodies corporate
50	Scientific research	52—Scientific research
51	Crown application	54—Crown application
52	Orders and regulations	55—Orders and regulations
53	"Animal"	1—Animals to which the Act applies
54	General interpretation	56—General interpretation 2—"Protected animal" 45—Inspectors
55	Minor and consequential amendments	58—Minor and consequential amendments
56	Repeals	59—Repeals
57	Short title, commencement and extent	63—Short title 62—Commencement 61—Extent
Schedules		
1	Powers of entry: supplementary	Schedule 2—Powers of entry, inspection and search: supplementary
2	Minor and consequential amendments	Schedule 3—Minor and consequential amendments
3	Repeals	Schedule 4—Repeals

Annex B

KEY TO THE ANIMAL WELFARE BILL—COMPARISON OF STRUCTURES

Published Animal Welfare Bill of 14 October compared to Draft Animal Welfare Bill

Clause in Bill	*Title of Clause*	*Related Clause(s) in draft Bill and Title(s)*
Introductory		
1	Animals to which the Act applies	53—"Animal"
2	"Protected animal"	54—General interpretation
3	Responsibility for animals	1—Cruelty 3—Welfare 54—General interpretation
Prevention of harm		
4	Unnecessary Suffering	1—Cruelty
5	Mutilation	1—Cruelty
6	Administration of poisons etc	1—Cruelty
7	Fighting etc	2—Fighting etc
Promotion of welfare		
8	Duty of person responsible for animal to ensure welfare	3—Welfare
9	Transfer of animals by way of sale or prize to persons under 16	4—Sale to persons under 16 5—Giving as prizes
10	Regulations to promote welfare	6—Regulations to promote welfare
Licensing and registration		
11	Licensing or registration of activities involving animals	6—Regulations to promote welfare
Codes of practice		
12	Codes of practice	7—Codes of practice
13	Making and approval of codes of practice: England	8—Making and approval of codes of practice: England
14	Making of codes of practice: Wales	9—Making of codes of practice: Wales
15	Revocation of codes of practice	10—Revocation of codes of practice
Animals in distress		
16	Powers in relation to animals in distress	11—Powers to take possession of, and retain, animals in distress 12—Powers to remove and care for animals in distress 13—Other powers in relation to animals in distress 20—Orders under section 16 or 17: financial provisions
17	Power of entry for section 16 purposes	14—Entry to search for and deal with animals in distress
18	Orders in relation to animals taken under section 16(5)	16—Orders in relation to animals owned or kept by the defendant 17—Orders for disposal of animals taken under section 11(1) or 16(1) 18—Orders for release of animals taken under section 11(1) or 16(1) 19—Powers in connection with orders under section 16(1) or 17(1) 20—Orders under section 16 or 17: financial provisions
Enforcement powers		
19	Seizure of animals involved in fighting offences	21—Powers to take possession of, and retain, animals kept for fighting etc
20	Entry and search under warrant in connection with offences	41—Entry and search with a warrant
21	Inspection of records required to be kept by holder of licence	36—Inspection of records required to be kept by holder of licence
22	Inspection in connection with licences	37—Entry and inspection in connection with licensed activities
23	Inspection in connection with registration	New clause

Clause in Bill	*Title of Clause*	*Related Clause(s) in draft Bill and Title(s)*
24	Inspection of farm premises	38—Entry and inspection of farm premises
25	Inspection in relation to Community obligations	New clause
Prosecutions		
26	Power of local authority to prosecute offences	42—Power of local authority to prosecute offences
27	Time limits for prosecutions	43—Time limits for prosecutions
Post-conviction powers		
28	Imprisonment or fine	24—Imprisonment or fine
29	Deprivation	25—Deprivation
30	Disqualification	26—Disqualification
31	Seizure of animals in connection with disqualification	28—Seizure of animals in connection with disqualification
32	Section 31: supplementary	28—Seizure of animals in connection with disqualification
33	Destruction in the interests of the animal	30—Destruction in the interests of the animal
34	Destruction of animals involved in fighting offences	31—Destruction of fighting animals
35	Reimbursement of costs relating to animals involved in fighting offences	31—Destruction of fighting animals
36	Forfeiture of equipment used in fighting offences	New clause
37	Orders under section 29, 31, 33, 34 or 36: pending appeals	32—Orders under section 25, 28, 30 or 31: pending appeals
38	Orders with respect to licences	33—Orders with respect to licences
39	Termination of disqualification under section 30 or 38	34—Termination of disqualification under section 26 or 33
Scotland		
40	Effect in Scotland of disqualification under section 30	New clause
41	Deprivation orders in connection with offence under section 40(2)	New clause
42	Seizure orders where disqualification breached: Scotland	New clause
43	Appeals against deprivation orders and seizure orders	New clause
44	Deprivation orders, seizure orders and interim orders: offences	New clause
General		
45	Inspectors	44—Appointment of inspectors by local authorities 45—Protection of inspectors 54—General interpretation
46	Conditions for grant of warrant	14—Entry to search for and deal with animals in distress 21—Powers to take possession of, and retain, animals kept for fighting etc 41—Entry and search with a warrant
47	Powers of entry, inspection and search: supplementary	46—Powers of entry: supplementary
48	Power to stop and detain vehicles	47—Power to stop and detain vehicles
49	Power to detain vessels, aircraft and hovercraft	47—Power to stop and detain vehicles
50	Obtaining of documents in connection with carrying out orders etc	48—Obtaining of documents in connection with carrying out orders etc
51	Offences by bodies corporate	49—Offences by bodies corporate
52	Scientific research	50—Scientific research
53	Fishing	New clause
54	Crown application	51—Crown application
55	Orders and regulations	52—Orders and regulations
56	General interpretation	54—General interpretation
57	Financial provisions	New clause
58	Minor and consequential amendments	55—Minor and consequential amendments

Clause in Bill	*Title of Clause*	*Related Clause(s) in draft Bill and Title(s)*
59	Repeals	56—Repeals
60	Transition	New clause
61	Extent	57—Short title, commencement and extent
62	Commencement	57—Short title, commencement and extent
63	Short title	57—Short title, commencement and extent
Schedules		
1	Regulations under section 11	New schedule replacing the licensing aspects of clause 6
2	Powers of entry, inspection and search: supplementary	Schedule 1—Powers of entry: supplementary
3	Minor and consequential amendments	Schedule 2—Minor and consequential amendments
4	Repeals	Schedule 3—Repeals

November 2005

Witnesses: **Mr Ben Bradshaw,** a Member of the House, Parliamentary Under-Secretary of State, **Mr John Bourne,** Head of the Animal Welfare Division, and **Ms Caroline Connell,** Lawyer, Department for Environment, Food and Rural Affairs, examined.

Q1 Chairman: We have the Minister with us for animal welfare matters accompanied by John Bourne, Head of the Animal Welfare Division, and Caroline Connell, the Defra lawyer who has been very helpful to the Committee, as has Mr Bourne, in our previous considerations of the Bill. For us it was a novel experience carrying out pre-legislative scrutiny on this Bill, we certainly learnt a lot about it and it was a process we enjoyed. We think the Select Committee was able to make some important contributions to improving the draft of the original Bill, but can I ask what your Department itself learnt from this process?
Mr Bradshaw: That may be a better question for my officials rather than me.

Q2 Chairman: If you want to ask them, they are here.
Mr Bourne: Chairman, we found it a very useful forum for hearing people's views, in addition to those we had heard in our own consultation, and in particular around the framework of the draft Bill. Yes, there is not much more to say other than that we found it a constructive experience and we very much hope, as you say, as a result the outcome is a much better draft Bill which has been introduced into Parliament.

Q3 Chairman: I appreciate you will not be directly involved in the Marine Bill when it eventually appears, or you might be—you might volunteer to do that task—but are there any things you might do differently in terms of the pre-legislative process which you did not do on this one?
Mr Bourne: There is always the issue of timing. We went through a widespread public consultation. There is an issue of, having published a draft Bill, whether one could go through another public consultation as Defra before going to pre-legislative scrutiny, and the decision on that is always likely to be taken on a case by case basis depending on the timetable that is driving that particular Bill.
Mr Bradshaw: We are also mindful, Chairman, of your Committee's capacity and enthusiasm or otherwise for doing the work and the tensions which have existed in the past sometimes with the Lords and whether they might have a say in pre-legislative scrutiny as well.

Q4 Chairman: I am sure there will be lessons learnt for us all. Let us move on to the Bill. One of the significant changes has been the way that you have altered the start of the Bill in terms of the definition of animals, and we had quite a lot of evidence as to what the legislative definition of animals should be. We are still receiving submissions about the fact that cephalopods and crustaceans are not part of the process. In fact, in clause 1(4) of the Bill, you talk about the fact that scientific evidence underpins the definition that you are prepared to accept as to what is an animal, but it is clear there is a difference of opinion within the United Kingdom on the science. As I understand it, the Scottish Parliament's parallel Bill to this contains a different definition of what is an animal. So if within the United Kingdom there is a lot of common science to base these assessments on, why is there a difference? What is this scientific opinion which is determining these matters?
Mr Bradshaw: John may want to comment on the detail of the scientific opinion. I accept that this is one of the few recommendations you made we have not accepted because the advice I have received is that the scientific evidence at the moment would not merit the inclusion of crustacean and cephalopods in the definition of animals which can feel pain. John may want to comment on the difference in the Scottish Bill. I am advised we do not think there is a difference, Chairman.
Mr Bourne: I have the Scottish Bill in front of me and I am slightly bemused, Chairman, as to what the difference is.

Q5 Chairman: That is what I was advised when I was reading round the subject and there is a voluminous amount of material. I will put my hand up and apologise if I am wrong. Are you telling me it is exactly the same wording?
Mr Bourne: As far as I am aware.
Mr Bradshaw: Would it help if we read it out, Chairman?

Q6 Chairman: Yes.
Ms Connell: The Scottish Bill says, "animal to which this part applies . . .", that is the part on animal welfare because, as you know, there is a part on animal health, ". . . means a vertebrate other than man", so I do not think that covers cephalopods and crustaceans, does it?

Q7 Chairman: I suppose that is a slight difference in wording. Certainly in other jurisdictions, like Australia for example—said he swiftly moving on from Scotland—they do have cephalopods and crustaceans in their animal welfare law. What is the difference? I do not know whether you talked to the Australians to be able to answer this question but why do they scientifically think it is correct to have cephalopods and crustaceans in their Bill and we do not? Does it not come down to the interpretation of science?
Mr Bourne: Yes, up to a point. Science will always illustrate but it rarely gives a definitive answer, and particularly in the world of animal welfare where there is usually an ethical element in any decision. I think it is worth bearing in mind that animal welfare bills in other jurisdictions are framed differently and interact differently with other legislation in that jurisdiction. Chairman, we have tried to keep a reasonably consistent approach across the legislation in this country so that there is a consistent approach for people to understand and it is different in New Zealand and Australia and other places.

Q8 Chairman: We have received some further evidence from the Shellfish Network[2]—and I do not want to go over ground we have covered in some detail before—and they make to the layman a fairly strong case that the animal species I have just mentioned have characteristics to be able to feel pain.[3] On that basis, as a layman reading that, you would say, "Why not?" Why not on a precautionary principle put them in so they are covered and if it turns out afterwards they do not feel pain, you can always take them out, just as you can reinterpret the science and put them in. Why not put them in on a precautionary principle? Why do you say, "No, we completely dismiss the evidence which has been put forward by scientists" who would argue those species do have complex brain and nervous systems and do show the characteristics of experiencing pain under certain circumstances?
Mr Bradshaw: You have to draw the line somewhere, Chairman, and this Bill gives us the flexibility which we have not had before to add species if and when the scientific evidence becomes a bit more conclusive than we think it currently is as to whether certain species can feel pain.

Q9 Chairman: Are you the final arbiter of the science? Is it ultimately you as the Minister, when the submission comes up from the officials, who say, "Professor X, Y or Z has produced another paper and has put compelling evidence but we, Defra, do not agree with this. What do you think?" The buck stops with you, does it?
Mr Bradshaw: Ultimately it stops with Parliament.

Q10 Chairman: If Parliament does not have the opportunity to take the decision, because you have decided on the basis of the scientific evidence it is not worth putting it to Parliament, Parliament cannot have that decision.
Mr Bradshaw: I make a decision or recommendation based on the advice I am given which will take into account disagreements and conflicts, if they exist, within the scientific community as to whether a particular type of animal can or cannot feel pain. I do not think I can do very much more than that. If you are asking me whether I am qualified to make a personal decision, no, I am not.

Q11 Chairman: I am intrigued to know how this further appraisal of the evidence is going to be carried out. Are you going to sit back as the Department and wait for somebody to produce another scientific paper? Are you going to positively try to recruit those opinions? Is it purely and simply Defra's own scientists who determine whether a case has been made out or not?
Mr Bradshaw: No, it is not. We, Defra, over a whole range of policies will depend on and listen to and take the advice of independent scientists. We have our own Science Advisory Council which, if we feel there is a disagreement or a dispute about the quality or basis of certain evidence, we will ask for advice. There are a number of safety and review mechanisms, if you like, to test the science which we use all the time, not just on this but on a whole range of issues. Our Department is one which is very dependent on science and evidence. If we were to adopt the precautionary principle you are advocating, where do you stop?

Q12 Chairman: I am asking it in the context of the information which the Committee received, both in its last inquiry and once again reiterated in this one. Just for the record, when you decided the science on this occasion, was the committee to which you referred consulted?
Mr Bourne: I think the answer to that is no, it was not on this occasion.

Q13 Chairman: So you are telling us that you have put in here a piece of law which takes these species out on the basis of science, and then the Minister

[2] Ev 53
[3] Environment, Food and Rural Affairs Committee, First Report of Session 2004–05, *The Draft Animal Welfare Bill*, HC 52II, Ev 164

tells us you receive advice from the Scientific Advisory Committee but on something like this you have effectively been judge and jury?
Mr Bourne: We have consulted with the Home Office, who have a very similar issue with their own legislation. We are aware of an EU review which is coming up very shortly to look at the ability of cephalopods and crustaceans to have a conscious awareness of pain. But on this occasion, we have not. We have read the science, we reviewed it and we did not think there was a need to go out to further scientific analysis.

Q14 Chairman: I would put it to you, Minister, on something like this where there was quite a considerable amount of concern by those who follow these matters more closely than I do, that in a way illustrates the point because it says in the Bill that you are going to continue to use scientific evidence, and the one opportunity you had to make a consultation on this, you did not do it?
Mr Bradshaw: It is not one opportunity. There are disputes about almost every element of policy which Defra is responsible for. If we were to farm a fraction of those out to the SAC to give an opinion on, they would never stop.

Q15 Chairman: I can appreciate that.
Mr Bradshaw: The implication of your question is that our own in-house scientists and officials have not fairly studied the balance of evidence in coming to the recommendation they have.

Q16 Chairman: In fairness to those who submitted evidence, not every species attracted a supporters' club, not every species had somebody arguing for their inclusion in this Bill. This particular species in this context, cephalopods and crustaceans did have.
Mr Bradshaw: May I suggest that is because they are right on the cusp, if you like, and it is inevitable in my view that those organisations and others who want to go further to promote animal welfare are going to pick on the next species that they think should be included, rather than one much further down the line.
Chairman: Despite the fact that other jurisdictions in bringing a similar animal welfare legislation to our own come to a different conclusion. It is on the record as to what you did not consult with so we will move on.

Q17 Patrick Hall: Can I ask a question arising out of your rapid visit and departure from Scotland earlier on, where you referred, Chairman, to the parallel Bill but there it is called the Animal Health and Welfare Bill or Act. Minister, I believe you have made it clear on a number of occasions that there is a clear distinction in Defra's view between animal welfare and animal health. I have never been clear about that distinction because if there is good welfare there is likely to be good health, but the separation is made quite clear and quite repeatedly, and I wonder if you could quickly clarify that matter for me.
Mr Bradshaw: I think you are right, Mr Hall, there is a relationship and the other way round as well, if there is good health there is likely to be good welfare. I cannot speak for Scotland, I do not know why they have called their Bill Health and Welfare but Caroline may be able to answer that.
Ms Connell: I think what Scotland are doing is including some of the provisions which were enacted in the Animal Health Act 2002 which amends the Animal Health Act 1981, and putting that in the same piece of legislation as what is, broadly speaking, a very similar Bill to our Animal Welfare Bill and they are just putting the two in one. But they are two very, very different sections, so the animal health side talks about slaughter to prevent the spread of disease, testing and so on.
Mr Bradshaw: Animal gatherings, biosecurity codes, the field animal stuff which we have already dealt with in England.

Q18 Sir Peter Soulsby: I would like to follow up with another definition, this time the definition of good practice. Clause 8(1), we have the very welcome duty to ensure that the needs of an animal, for which persons are responsible, are met to the extent required by good practice. Clearly there are going to be different views as to what constitutes good practice in particular circumstances. How confident are you that there is a sufficiently established consensus about what does constitute good practice across a whole range of activities that this is likely to cover?
Mr Bradshaw: Where they do not already exist, Chairman, we intend to draw up codes of conduct which will outline in more specific detail what constitutes good practice. They will be drawn up in collaboration with animal welfare organisations, specialists, experts. I think they do already exist for some species, if I am correct, but we intend to produce them for all of the species over time.

Q19 Sir Peter Soulsby: The RSPCA I think said in the absence of Bills or until they are available there could be ". . . a complex and lengthy point to discuss and prove in court."[4] Those were the words they used. What sort of timescale do you envisage for the establishment of these codes?
Mr Bourne: It will vary. On the back of our Regulatory Impact Assessment we set out a rough timetable because this was a matter of resources, we cannot produce them all at the same time. It will take up to four or five years, we said, to complete most of them and plainly there will never be codes which cover absolutely everything, given the range of animals there are.
Mr Bradshaw: It is inevitable that the issues are going to have to be tested in court anyway.

Q20 Sir Peter Soulsby: It does sound as if the RSPCA could be right, that there could be some lengthy and difficult points in those court cases in the intervening period.

[4] Ev 36 [Clause 8]

Mr Bradshaw: There are bound to be arguments in court, whatever happens, as to what constitutes the welfare needs of an animal being met or not.

Q21 David Taylor: I think there is broad consensus that the Bill, clause 8 as it now is, is better laid out than its equivalent was in the draft 2004 version of the Bill. In restructuring and representing it, 8(3)(b) was added which is the circumstances relevant to an offence can include—and this is the addition—"... any lawful activity undertaken in relation to the animal". What was the purpose of adding that in?
Mr Bradshaw: Caroline is the person to explain this because there has been some misunderstanding about what this refers to. Caroline, do you want to clear that up?
Ms Connell: Yes. Clause 8(3)(a) and (b) refer to the circumstances which it is relevant to have regard to when applying the duty of care in subsection 1. Subsection 1 says that you have to take such steps as are reasonable to ensure the needs of the animal are met to the extent required by good practice. When you are looking at what is reasonable, what are the reasonable steps that are required in any given situation, you can have regard, amongst other things, to the lawful purpose for which the animal is kept and the lawful activity undertaken. That means, for example, that when you are looking at a caged hamster, for example, that animal is kept as a pet, it is not running around in burrows in the Syrian desert, similarly farmed animals will be kept in certain situations which are not perhaps the sort of situations that they might expect if they were wild.

Q22 David Taylor: Are you, therefore, qualifying one or more of the five needs of the animal as spelt out in subsection two then, in certain circumstances?
Ms Connell: Yes. The need to exhibit normal behaviour patterns will in certain situations of necessity be somewhat limited. You will have to take into account the lawful purpose for which the animal is kept and look at that purpose and see whether in the context of the purpose for which that animal is lawfully being kept, for example farming, are you taking reasonable steps to ensure their welfare needs are met.
Mr Bradshaw: "Have regard" is not a get-out clause.
Ms Connell: No.

Q23 David Taylor: Some people have suggested that it might be.
Mr Bradshaw: I know and that is not the purpose. We are not saying that as long as something which is currently lawful is lawful then you cannot be got by the welfare offence.

Q24 David Taylor: So if the purpose and activity are not unlawful, they are lawful?
Ms Connell: It is not a complete defence. For example, if you are keeping an animal in a circus, the fact that a circus is a lawful activity does not mean you cannot fall foul of the welfare offence in relation to how you keep that circus animal. You can keep it well in relation to that activity or you can keep it badly in relation to that activity. It is not a complete defence.
David Taylor: I think we are coming on to circuses later on.

Q25 Chairman: Can I just establish who will be the arbiter of determining the good practice in this clause?
Mr Bradshaw: Experts in court.

Q26 Chairman: Experts in court?
Mr Bradshaw: Experts will give evidence to courts who will decide.

Q27 Chairman: It is basically for the keeper to make his or her mind up as to whether they are following good practice but it will be the courts that determine what it is going to be?
Mr Bradshaw: There will be codes of conduct, Chairman, that we have outlined already. There are the five freedoms that Mr Taylor has referred to already.

Q28 Chairman: Let us just stop at the codes of conduct, who is going to draw those up?
Mr Bradshaw: Defra will draw them up in collaboration with experts and animal welfare organisations.

Q29 Chairman: This is the bit that you have taken powers to consult on?
Mr Bradshaw: Yes.

Q30 Chairman: We had a discussion in our previous session on the fact that, for example, with birds imported to the United Kingdom it is almost common practice that a number arrive dead, for various reasons, as I understand it.[5] In paragraph 26 of the Regulatory Impact Assessment, there is reference to Standards and Keepers. Paragraph 26 says "Concern has been expressed about the appropriateness of keeping certain types of animal. Defra are currently consulting the public on measures concerning primates . . . The measures are aimed at ensuring the effectiveness of the CITES regulations. Although it is not our intention to use the Bill to ban the keeping of animals on welfare grounds, the standards required from keepers will be raised through the introduction of a duty to ensure welfare and the codes of practice." As paragraph 26 referred to animals which were imported, if I bought a consignment of birds free on board, that is I accepted the responsibility from the time at which the person, wherever, delivered the birds to a piece of transport to bring them back to the United Kingdom, I would assume responsibility for the care of those animals. Under such circumstances, does this Bill apply?
Mr Bradshaw: I would think so. Do you have a view, Caroline?

[5] Environment, Food and Rural Affairs Committee, Minutes of Evidence, Tuesday 15 November 2005, *Avian Influenza*, HC 682-i

Ms Connell: That is a very interesting question.
Mr Bradshaw: Inside the country or outside the country?

Q31 Chairman: That is an interesting repost because the problem is—it might be a very interesting point—after a long flight or other mode of transport, with the aforementioned animals not being under constant surveillance, if a number were to die en route, it might be that they died in the United Kingdom air space or they might die somewhere else. What I am saying is that a British national, a UK, in this case an English or Welsh national, who would have had responsibility, could receive, due to inadequate care and welfare on the route, a consignment of animals for which they had responsibility which were dead. Therefore, it raises the question in my mind as to whether if those actions to look after the animals were inadequate for the duration of the journey, this particular part of the Bill applies?
Ms Connell: I think that you have to make a distinction between contractual responsibility to look after the animals and criminal responsibility under the provisions of this Bill. I think that the latter would be decided by reference to whether or not an offence has been committed in the jurisdiction. I am not really equipped to say, at this moment, as to what stage that will be reached with a consignment of birds flying in from another country but it is certainly true to say that once the birds arrived in Heathrow and were being cared for, and once they arrived further on from there and were in the care of the purchaser, then obviously the purchaser would have a duty to look after the welfare of those birds.

Q32 Chairman: The answer is there is a possibility, depending on the circumstances?
Ms Connell: If I buy a consignment of birds and I am responsible for those birds then it seems to me quite likely that the duty of care would fall upon me. It may be that I might employ somebody else to look after those birds and discharge my duty in that way and it may be that if they already arrive suffering from some sort of illness that it is quite difficult to say that I have committed an offence there, but it would depend on the circumstances.
Mr Bradshaw: We are advised, Chairman, that separate legislation applies to animals in transit under CITES, the responsibility lies with the importer, the person who is importing.

Q33 Chairman: I presume, though, that not all species are covered by CITES?
Mr Bradshaw: That is correct.

Q34 Chairman: It is an interesting area to contemplate.
Mr Bourne: Chairman, almost regardless of precisely where the jurisdiction starts and ends, it is important to remember that you are only asked under the welfare offence to take all reasonable steps in the circumstances. Therefore, if these birds are dying for a reason that has got nothing to do with what you have done, and you have taken reasonable steps, ie they have the necessary paperwork, et cetera, then I do not see that any court is likely to find that you have failed to take necessary steps.
Chairman: I think what triggered the thought was, firstly, the area of application as to how far the Bill reached but, secondly, as the Minister pointed out, it will be courts that will ultimately determine what is going to be good practice. Madeleine, did you want to come in on this?

Q35 Mrs Moon: I find it incredible that we can be arguing that as long as we have filled in the paperwork appropriately, if 100% of your consignment of birds arrive in this country and are all dead that would not be an offence that we could start looking at, when we are keen to look at the appropriate good practice in terms of the health and welfare of animals.
Mr Bourne: Chairman, I think I did say "*et cetera*", what I was trying to suggest was that provided you have taken the necessary steps, that would include best practice. I think the situation the Chairman was discussing was when they have arrived and you have had very little to do with them other than that you are the importer. Plainly when they have been in quarantine *et cetera*, and you have been looking after them, it is a different matter. I do have the figures in front of me for the deaths on arrival—and this is not in quarantine—for 2004–05, it depends slightly on the type of bird, a maximum of 1.1% and a minimum of 0.26%.

Q36 Mrs Moon: Could I have those again?
Mr Bourne: A maximum of 1.1% and a minimum of 0.26 per cent.

Q37 Chairman: Out of how many?
Mr Bourne: That was a percentage.

Q38 Chairman: What was the population?
Mr Bourne: I am afraid I do not have that.

Q39 Mr Williams: 600,000.
Mr Bradshaw: I need to get the Chief Vet back to give you the figures. They are in the public domain.

Q40 Patrick Hall: A maximum of 1 point something and a minimum of 2?
Mr Bourne: 0.26.

Q41 Chairman: 0.26, I thought it was 2.6.
Mr Bourne: I apologise, I was not being clear.

Q42 Chairman: Perhaps the easiest thing if you could drop us a note for the record and make certain we get the right number of what the percentage is of.
Mr Bradshaw: 0.26 minimum, 1.1 maximum.

Q43 Patrick Hall: Nonetheless the point seems to be being made that with non-CITES wild imported creatures, there is no responsibility on the part of the importer for animal welfare conditions?
Mr Bradshaw: I do not think that is the case. There is responsibility.

Q44 Patrick Hall: For non-CITES, the majority?
Ms Connell: CITES is an international convention, therefore I am not an expert on CITES law but I think that because it is an international convention then certain regulations in that convention can extend to other contracting parties for that convention. If you are talking about non-CITES imports, as I say, obviously once the consignment is within the jurisdiction and somebody is responsible for it, then somebody will have a duty under the welfare offence to be responsible for looking after their welfare. The question that I think the Committee is interested in is to what extent can that spread its tentacles beyond our shores and go to where these animals originate and make sure they are packaged properly, transported properly, et cetera.

Q45 Patrick Hall: The answer that was passed to you by somebody further back was that responsibility lies with the importer with regard to CITES-listed creatures and therefore it concluded that it did not apply, logically, to non-CITES listed creatures. Therefore, if it is outside the UK jurisdiction, how is responsibility brought to bear on importers?
Ms Connell: I do not know that that can be a matter for UK criminal law.
Mr Bradshaw: There are, as I understand it, international transport regulations governing the transport of all wild animals, including birds, whether or not they are CITES species.

Q46 Mr Williams: Before we go on, I understand, if I remember correctly, that codes of good practice have been established for people who keep farm animals. I remember there have been Statutory Instruments involved. I did detect a faint suggestion that there may be codes of practice set up for each species of pets which might be kept by the people in Britain?
Mr Bradshaw: I think not every single species but generic codes of conduct which will help people to make informed decisions as to what the welfare needs of that animal are, and may help as well courts arrive at a view as to whether they have been met.

Q47 Mr Williams: I understand the vets think that it might be difficult to draw up a code of good conduct for keeping cats. Have you heard of that or is it not in existence at the moment? It seems as if there is such a common pet as a cat without an adopted code of good practice—
Ms Connell: There is a draft code of practice on cats but obviously there are quite a lot of variables on an animal like a cat. I think New Zealand has a code on dogs, Sweden has a code on reptiles and exotics, and with something like a reptile or an exotic type of pet, like an iguana or a snake, then maybe you can be a bit more specific about the types of temperature that it likes to be in, what type of food it likes to eat, whether it likes its mice frozen or defrosted.

Q48 Mr Williams: Moving on again, the draft Bill, as I understand it, has been amended so that it would not now be an offence for somebody to provide as a prize a living animal or pet in a competition to a person under 16 who is accompanied by an adult. Why have you decided to do that? A number of organisations are not happy about it.
Mr Bradshaw: Basically, there was a view across Government that to ban outright the giving of pets as prizes or to prevent under 16s winning them in the company of an adult, at a fair or winning a horse in a gymkhana event or something like that, was too nanny-ish. As long as you had the security that there was an adult involved in the transaction that was a more proportionate approach.

Q49 Chairman: What is your definition of adult?
Mr Bradshaw: Over 16 year olds.

Q50 Chairman: The wisdom of adulthood under your definition arrives at one minute, or even a lower time order, past the arrival of the 16th birthday. You could have a situation where you had got twins, one of whom was born at, if you like, 59 minutes to the hour and the other one is born at one minute past the hour so one is the adult and one is still the child.
Mr Bradshaw: They still get the animal though, do they not? Wherever you set an age limit, Chairman, on anything you will get those people who are either side of the cusp.
Chairman: We will come back to that in a minute but Mr Williams wants to continue.

Q51 Mr Williams: How easy is it going to be to enforce this type of legislation? Is it proportional? It seems that the effort that we are going to enforcing this type of legislation will not gain benefit in terms of animal welfare. The best way to learn how to look after an animal is as a child, is it not, and then that good practice goes through with you to adulthood?
Mr Bradshaw: Yes, but the difficulty that we had was that we were raising the age at which a child could buy a pet from a pet shop from 12 to 16, that is making an informed choice. There was a feeling, I think it was shared by this Committee, that it was better that somebody should make an informed choice before owning a pet than if they were able to just win one. There was then a debate about at what age a child should be allowed to win one and what we have tried to do is we have tried to have consistency at 16 for both buying and winning, as long as there is an adult present.
Chairman: I will come back to my own experience in this field in a moment but Mr Taylor has a small question he wants to put on this.

Q52 David Taylor: The Minister will know that I tabled EDM863 calling on the Government to incorporate within the Bill a clause to ban the sale of unweaned puppies in pet shops. You gave me informal advice that you felt that good practice would exclude that particular activity. There is still a problem pursuing that through the courts, it would be rather more difficult to successfully prosecute

someone for that offence in the absence of a code of practice. How long are we going to have to wait for codes of practice which will articulate this?
Mr Bradshaw: This is already clearly illegal and if it is happening and is being reported it should be acted upon.

Q53 David Taylor: It is illegal, why?
Mr Bourne: Caroline will know this.

Q54 David Taylor: As long as the answer goes on to the record and into the public domain, I am happy to leave it at that, Chairman. This was the only opportunity I had to say this to the Minister.
Mr Bradshaw: My advice is that this practice is illegal already.

Q55 Chairman: Let me return to this question about a transfer of animals by way of sale or prizes to persons under 16. I am all in favour of an animal, whenever it goes into the care of anybody, being properly looked after, which is the purpose of this Bill. Let me ask you factually: how many cases a year is your Department aware of where the winning, by a means of a prize, or sale to a person under the age of 16, has today caused a problem? What evidence is there that you need to legislate in this area?
Mr Bradshaw: I do not know that we have those figures available, Chairman.

Q56 Chairman: Something must have informed your decision to have clause 9 in the Bill.
Mr Bradshaw: It was a principle that the welfare needs of an animal are more likely to be met if a conscious decision has been made to own that animal by somebody who was of an age to have some idea about what looking after an animal involves. A lot of parents will say to you that—

Q57 Chairman: Minister, you are ducking away from my question. I want to know what the evidence is, Mr Bourne, perhaps, wants to tell us?
Mr Bourne: I think I can enlighten you, Chairman. Firstly, I am going to come back to your immediate point, secondly, in terms of the sales of animals, there are some very well documented issues, such as during the craze on Ninja Mutant Turtle, which you may recall, Chairman—

Q58 Chairman: I do, yes.
Mr Bourne:—when under 16s bought quite a lot of terrapins and then they died because they were badly looked after. It would have been rather inconsistent if we had addressed that issue to do with sales of animals to under 16s and then said it was all right to win it as a prize.

Q59 Chairman: I hear what you say. Would you say, from your feeling and knowledge in this field, that there are more problems caused by adults who mistreat animals than children?
Mr Bradshaw: I think the RSPCA would be a better organisation to give you a view on that.[6] I suspect there are a considerable number of examples of children buying or pressurising parents to buy pets and not giving careful enough thought as to how the welfare needs of that animal are going to be met. When this was announced we had representations from members of the public saying "That is a relief, that takes the pressure off us from our children putting pressure on us because of other children saying they have got a particular pet, so can we have one too".

Q60 Chairman: I do not want to hog this. I am scarred by the experience of winning a goldfish at a fair many years ago, and lovingly looking after this goldfish, only to find that my dear mother dropped a rock on it in its pond and killed it. I am informed by this particular piece of background in that it is not always the child which causes the problem. I think there are certainly examples of children who might well be brought up in a rural environment who would be very good keepers of animals because they fully understood, whereas in certain urban environments, in exactly the same kind of pressures and background that you have just enunciated, it might lead to bad choices. Therefore, it is more a question of the circumstances of the acquisition of the animal which seems sensible. I wonder how on earth all of this is going to be policed?
Mr Bradshaw: Nothing in this Bill will ban the child owning or keeping an animal. It is the transaction that is the issue here.
Chairman: I hear what you say. I remain slightly sceptical.

Q61 Mrs Moon: This question is really around what used to be a commonly held power of entry for RSPCA inspectors where somebody rang and there was a dog, perhaps, in the yard or a shed or locked in an outhouse. It would appear that right of entry, where there is a report of an animal in distress, has now been removed under this Bill unless there is a warrant in place. That seems to have been specifically put there by Defra. In terms of an emergency situation where the good neighbour has rung in saying "This dog is tied up in the shed, we are very concerned" then the inspector or the concerned person is left with an illegal entry unless they go through the whole process of getting a warrant. Why have you taken that route and why have you made it so much more complicated for action to be taken where there is an animal in distress? The other example that is cited is perhaps a dog on a balcony that is dangling on a lead, choking, and nobody can get to its rescue without an appropriate order.
Mr Bradshaw: Can I clarify, Mrs Moon, you are talking about changes to this Bill rather than the legal status quo because at the moment those powers do not exist. We were proposing to give them in the draft Bill in an emergency situation. Having consulted with the Home Office about human rights

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and proportionality we have decided that to enter a private dwelling you will need a warrant and that warrant will need to be got from the courts. It does not mean to say that the RSPCA will not be able to continue to do their work because in practice they do not have the powers at the moment, but they are usually given access. If they are not given access and they want it, they will have to get a warrant and that is on the advice of the Home Office in terms of European Human Rights Convention compliance.

Q62 Mrs Moon: I can understand if you are talking about entry into someone's home but we are talking about entry into a backyard, a garage or an outhouse, and they are being extended as part of the definition of a private dwelling. Why have those areas been added when it limits the capacity in an emergency to protect an animal in distress because more often than not the animal is in the shed, the outhouse, the garage, the yard, and now there is a warrant needed to get in and rescue that animal. That seems almost a hindrance to the protection of animals rather than an improvement.
Ms Connell: Three or four points on that. First of all, under the current law, as it stands, the RSPCA do not have rights of entry at all, they do not have any rights of entry to go on to people's private property. Often they are invited on but that is the only basis on which they are allowed to go on. Secondly, as a result of the powers in the Bill, we are creating powers for police and inspectors to take action in emergencies, and those powers do not really exist at the moment except in very restricted terms in the Protection of Animals Act 1911. The powers are new. As far as the rights of entry into people's sheds, outhouses, garages, gardens, et cetera, I think the Committee asked last time for us to define dwelling and it is really a question of trying to draw a balance between the need to protect animals in an emergency and the need to protect people's private property from inspectors and police entering in what they perceive to be an emergency. It is a question of trying to draw a balance and in trying to draw that balance we have looked at human rights case law, we have looked at Home Office guidance and it is clear to us that in this context the correct balance is to require the production of a warrant before somebody can enter a private house. It is then a question of argument as to whether you class somebody's garden or somebody's garage as part and parcel of their private dwelling from the point of view of their human rights and powers of entry. It may be a question of degree in some cases, I suppose. If you have got a very, very large estate, it may be a bit of a stretch to say that is part of your private dwelling. On the other hand, in an ordinary terraced house, it may be that most people would think that their garage, which is full of bicycles and stuff, is part of their dwelling. It is a question of trying to draw a balance. If an animal is suffering and it is necessary to get a warrant, it does not necessarily take that long to get a warrant. The police do get warrants all the time. It does not prevent action.

Q63 Mrs Moon: You could have a situation where an inspector is called, he can see there is an animal suffering and in distress, chained up in a garden, chained up in a yard, what we are saying is the inspector would be required to go and get a warrant before they can go in and alleviate that suffering?
Mr Bradshaw: If they are refused access in the first place, yes.

Q64 Patrick Hall: What is the case now?
Mr Bradshaw: They do not have any rights of access at the moment.

Q65 Chairman: If it were to be the case, just to be absolutely clear, that somebody had got a very big house and they had built a cock fighting pit in the cellar, the only way you can gain access to that, under the terms of this Bill, would be to have a warrant before you arrived?
Mr Bradshaw: Yes.
Ms Connell: In somebody's house, yes.
Mr Bradshaw: That is the same for all criminal investigations or police activities in relation to somebody's house and that is why we have tried to make it consistent with the rest of criminal law.
Chairman: At least we are clear on how that part of the Bill operates.

Q66 David Taylor: I have a brief question on prosecutions before moving on to abandonment. The regulatory impact assessment, paragraph 14, anticipates savings will be made by reducing the number of cases which are brought to court, although there may be an initial rise until the offence beds in and prosecutions will eventually fall because intervention at a much earlier stage will help prevent cases progressing into the courts. What estimate has Defra made as to the range of likely numbers of cases which will eventually finish in courts? When we talk about an early rise, what sort of range do you anticipate there?
Mr Bradshaw: I do not think we have made an estimate of how many people will end up in court. We have given some figures in the box above paragraph 14 as to why we think savings will be made because of the lack of need to make so many visits—if you are able to make one visit, maybe two visits, and get the problem sorted out. If it is not sorted out, we will be able to prosecute.

Q67 David Taylor: I accept that but it is the judicial process I am focusing on.
Mr Bradshaw: It may well be that the RSPCA can give you a better estimate of the number.[7] What is logical to expect is that there will be an initial rise in the number of prosecutions for welfare offences which at the moment cannot be prosecuted. Medium- and long-term there will be a reduction in the number of serious offences prosecuted because, hopefully, if you can intervene at an earlier stage and prevent something happening that will lead to a reduction in prosecutions for more serious offences, but we have not put a figure on it.

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Q68 David Taylor: So you are qualifying that a little then? You are saying it is serious offences which are likely to reduce in terms of court appearances?
Mr Bradshaw: We do not know about welfare offences because that is a new offence, but I would hope in time as people became aware they were liable for prosecution on welfare offences and were made aware of what they needed to do to make sure they were looking after the welfare needs of that animal, using codes of practice and other advice, that there would be fewer welfare offences as well.

Q69 Mr Williams: There have been difficulties in the past where a private householder has been prohibited from keeping cats, for instance, because of a prosecution, and it is difficult to enforce that because of the very reason you have said about difficulty of access to that house. Do you think such a prosecution and such a sentence now will be easier to enforce because of this legislation?
Mr Bradshaw: It should be, and I think having a database will help police forces around the country enforce it. Closing the loophole allowing ownership to pass between family members, for example, will also help the law mean what most people I think would like it to mean, which is you cannot keep animals.

Q70 David Taylor: In our report on the draft Bill we said we would not object to the removal of a specific reference to abandonment, provided the Government were certain abandonment of an animal would not service to divest a person of responsibility, and that a charge could still be laid and prosecuted under duty of care. Animal Defenders International object to the abandonment provision being removed, they say it is inappropriate and an unnecessary change of direction. Can you reassure us yet again that the abandonment of the abandonment offence will not lead to new problems?
Mr Bradshaw: We are confident that abandonment is covered under the welfare offence. I also think the Committee should be aware of some of the potential difficulties of including the abandonment reference specifically, such as stocking fish ponds or releasing pheasants. The definition of abandonment would be one which would be quite difficult to reach an agreement on. I think it is much better to cover it in the welfare offence if courts think the welfare needs of this animal have not been met, ie if it has been abandoned in the real sense of the word then that is an offence under the welfare offence.

Q71 David Taylor: The Scottish Parliament has retained abandonment in their legislation, has it not?
Mr Bradshaw: Yes, I think that is going to give them trouble.

Q72 David Taylor: You think so?
Mr Bradshaw: I think that will give them problems, yes, for the reasons I have outlined about stocking fish ponds, carp ponds, letting pheasants go. In theory, someone could take out a prosecution in Scotland to prevent people releasing pheasants is my understanding of it, if they stick to their guns on that.

Q73 David Taylor: Something which occurs a great deal in our area, because of the nature of the area—close to the motorway system, fair numbers of people from travelling communities—is long-term tethering of horses that appear not to be given any sustenance or treatment or moved around in any way; is this not abandonment? Are you telling me those sorts of problems where they occur will be prosecutable under other sections outlined in this Bill or other legislation?
Mr Bourne: Yes. It would not fall under abandonment under the current law, by definition.

Q74 David Taylor: It is abandonment to a normal person.
Mr Bourne: Certainly it would fall foul of the welfare offence if you are failing to provide their needs and in terms of long-term tethering, you would be very pushed to. We do intend, and we have made that clear, to produce a code of practice on tethering which will address exactly that issue and provide clear guidance on what is good practice for tethering, ie when it is acceptable and when it is not.

Q75 David Taylor: That code of practice will be linked to this Bill?
Mr Bourne: It will be linked to the Bill, we have made a clear commitment to producing one, yes.

Q76 James Duddridge: What further consultations will take place in relation to tail docking before the introduction of regulations? Can I ask, specifically, whether the Government will give the House an opportunity to express an opinion on tail docking during the progress of the Bill rather than simply after the Bill?
Mr Bradshaw: Yes, is the answer to the second part of the question. Yes, there would be consultation on any of the regulations that would be introduced under this Bill as part of secondary legislation before consultation.

Q77 Chairman: We had a view put to us by Mr Mike Radford, who gave us some very helpful evidence when we did our original inquiry, and it was really an observation of his about the nature of the Bill as a whole. It was this: he felt that the Bill did not define terms as well as they should be but you had left this to the notes on clauses to do that. I was interested as to whether there was a conscious effort to write the notes on clauses to define what was in the Bill, when in actual fact some of the definition should have been on the face of the Bill in the first place.
Mr Bradshaw: You are looking at Caroline, Chairman, and I am going to ask her to answer the question.

Q78 Chairman: Of course I am because Caroline will be able to answer this question I am sure.
Mr Bradshaw: Mike Radford is a lawyer so I think it is for a lawyer to answer it.

Ms Connell: I am not quite sure which terms in the Bill he is suggesting should have been better defined. I think one of them was "control".

Q79 Chairman: "Temporary" was one that he drew to our attention in clause 2 referring to an animal under the control of man on a temporary basis but temporary is not defined. I think that he was concerned that things like that should be defined in the Bill as such. You are right about "control" also, that was one of the other ones that he drew to our attention.
Ms Connell: Yes.
Mr Bradshaw: On control, we think this Bill is more precautionary than the existing legislation which talks of captive animals. To be honest, we do not agree with him on this.
Ms Connell: The general point that you make, Chairman, about definitions of terms in the Bill, obviously one tries if there is obvious ambiguity to define a term in so far as you can but the more you try and define—and I know that we have had discussions with parliamentary counsel on this precise point—the more you run the risk of excluding things that you might want to include. Obviously it is impossible to foresee every single instance that might arise. Mr Radford has specifically commented on a failure to define the word "control" and I think that is something the Committee mentioned last time. It is very difficult to come up with a comprehensive definition of the term "under the control of man". There may be cases where it is absolutely obvious that I control my cat or I control my dog or a farmer controls his stock, and there may be cases where it is absolutely obvious that I do not control the birds in my garden. There will be borderline cases where it is not entirely clear. Mr Radford has cited about five cases which have been decided since the 1911 Act where there were border line cases. A hedgehog that rolled up into a ball apparently was one—
Mr Bradshaw: Stranded whales, a stallion injured in a road accident, a rabbit restrained by throwing a coat over it. These, I suggest, are more likely to come under the definition of "in the control of man" than they would have been under captive animals, but that is a lawyer's argument.
Ms Connell: I think the point Mr Radford makes is that those were decided on the term "captive", and the court decided that captive implied a certain element of permanence, not just an animal which happened to have been run into a corner and was standing there, like the deer in the course of a hunt which fell into a ditch. The court imported an element of a more permanent relationship with the animal than that. I think his point is that that case law will not be any use any more when defining the question of control, and that is correct, it will not be strictly in point. There may be cases coming up in the future when someone tries to litigate the question of what is and what is not under the control of man, for example to what extent is an animal trapped in a trap or a snare under your control. It is conceivable something like that would come up. I think really it is impossible to iron out and the fact it only came up five times since 1911 indicates to me that perhaps it was not such an area of great difficulty afterwards, and one would hope the same would be the case with control. Most magistrates are quite capable of deciding when they think a word like that applies and when it does not.
Mr Bourne: On the use of the word "temporary", the reason we put that in was because if we had not put it in, someone might have argued that control only applied to permanent control, so it is there to say you cannot have the defence, "Ah but I only had control of it for a few minutes". What it is saying is, if you have control of it, you have a duty not to be cruel to it.

Q80 Chairman: Certainly I have a duty not to be cruel to my cat but I think he is the one in charge rather than the other way round. I have a couple of questions I wanted to put to you. We have had some evidence from the National Gamekeepers' Organisation, who I think are still worried that certain aspects of the Bill may impact on what they are doing.[8] They have asked for clarification as to whether in fact a gamekeeper using legal traps and snares in accordance with what they describe as "other relevant laws" will suddenly find themselves falling foul of the contents of this Bill. Could you say a word or two about that and any other aspects of the work of gamekeepers? Can they carry on untrammelled by this as long as they look after their animals properly?
Mr Bradshaw: Yes.
Chairman: That is a very short, simple answer. I hope all gamekeepers have taken note of what the Minister has had to say.

Q81 James Duddridge: In terms of secondary legislation, some of the most controversial points of the Bill, when you come to the detail, are going to be covered in secondary legislation; the things which hit the postbag like the pet fairs, mutilation, performing circus animals. Then there is another set which perhaps is not hitting the postbag like the massive impact in terms of the cost of implementing secondary legislation, Regulatory Impact Assessment, for example things like pet shops, riding schools and secondary legislation around greyhounds. I have a concern that all of that is going to take place away from the floor of the House and will not be debated in detail. Can you confirm what the level of scrutiny will be under the secondary legislation provided for in this Bill for things like the subjects mentioned and outlined by the Department?
Mr Bradshaw: Mr Duddridge, you have put your finger on the dilemma one faces if one is putting through an enabling Bill rather than a kind of Christmas tree Bill on to which different organisations hang their particular issues. What this Bill tries to do is provide a legislative framework which gives Government the flexibility—we discussed earlier the definition of animal—to deal with most of these issues in secondary legislation and

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to take account of changing mores and changing scientific evidence. But that inevitably means that you are dealing with the individual issues in secondary legislation. There will be full consultation not just public consultation; I am sure your Committee will want to take a close interest in some of these areas. There will need to be procedures in both Houses of Parliament before those secondary regulations are agreed. But the judgment we have made is that in order for this legislation to be fit for the next 100 years, it needs to have that element of flexibility and not everything crammed on to the face of the Bill that particular organisations or lobby groups want.

Q82 Chairman: I have counted up here, according to your publication, seven regulations and codes to be produced next year if they are going to be enforced in 2007, and Parliament will shut up shop for the summer after seven months of work at the beginning of the year. Are all of these going to be out for consultation within that timescale?
Mr Bourne: That is the plan. Plainly the later it is that the Bill gets enacted the more that timetable is likely to slip, because the Bill will be occupying our time. Many of these are largely existing, things like riding schools, animal boarding, pet shops, so it is not a massive initial set of new ideas as might first appear, and tethering of horses will be a code of practice. Yes, there is a very significant load ahead of us for quite a number of years. It will be challenging for all of us to keep to that timetable but we will do our best.

Q83 Mr Williams: Will that type of regulation in Wales be made by the Assembly ?
Mr Bradshaw: Yes.

Q84 Patrick Hall: I have a couple of points on pet fairs. About a year ago, I passed a copy of a DVD to you, Minister, which I suppose I ought to say purported to show conditions at a very large pet fair in the Midlands, I believe, with more than 10,000 individual animals, mainly birds, on sale. I believe you looked at that and saw that short film. I did as well. I have not seen it since but I remember the impact it made. It certainly gave me the impression of an operation at which it would be rather difficult to maintain high standards of welfare. I am not sure of the detailed conditions that the local authority concerned put down in its licence to allow that pet fair to go ahead, but I believe that one of those conditions was that whilst the event was taking place there needed to be a vet on site, but many of the creatures on sale were exotics, probably wild-caught, brought in from abroad and not many people in the world, certainly not in this country, would have detailed knowledge of their particular needs. So it struck me looking at that, and maybe it did you too, that one vet would not have (a) the detailed knowledge to cover the range of creatures there nor (b) perhaps the time and capacity to see what was going on with thousands and thousands of creatures in cages in a very large building. So the issue is, is there not some *prima facie* evidence that very large commercial pet fairs, pet markets—as opposed to small hobbyist gatherings in village halls, et cetera, where there should be good welfare standards but nonetheless quite different from that—really could not maintain acceptable animal welfare standards? This Bill is broadly welcome because it promises to raise standards across the piece. Therefore the pet fair commitment—the commitment to license, to regulate, to publish codes of practice and to remove the doubt about their very legality—in the Bill is controversial, as I am sure you will understand, because the evidence that is around does pose some serious questions as to whether or not by their very nature the very large commercial organisations could maintain acceptable welfare standards. What is your view?
Mr Bradshaw: This is one of the issues which will be dealt with in secondary legislation, so there will be a whole debate, discussion, consultation on this again at that time. I am not convinced that it is sensible to make law based on evidence of a case of welfare needs not being met unless, to use your words, we can be satisfied that it is impossible in certain circumstances for the welfare needs of those animals to be met, in which case under our proposals as they stand it would not be licensed. There was a debate about this last week in Westminster Hall involving the Hon Member for Uxbridge who is a bit of an expert on bird care, as you know, and he made the point, slightly contrary to what you were saying, Mr Hall, that often these events are attended by enthusiasts who care deeply about their birds, know a lot about them, are very important for the exchange of information on good husbandry and if they did not happen there is an argument that that information would not be exchanged in the way it is at these events.[9] This is something which will continue to be debated but, as things stand at the moment, we do not believe that it is impossible to meet animal welfare at these events. If a judgment is taken that it is, they would not be licensed, or for a particular species they would not be licensed.

Q85 Patrick Hall: I did say there was a distinction between hobbyists meeting and exchanging information and possibly buying each other's pets or creatures which have been bred by people looking after them and a very large operation. I was quite shocked by that film, that such things happen on that scale. Yes, there may well be hobbyists present, but that was not the only purpose of the operation and people clearly who make a living by this were dominating, and I thought there was evidence there of poor welfare standards. You have yourself already ruled out the possibility of selling cats and dogs under such circumstances, so a question lies over this matter as to why it is therefore okay to sell other creatures, not cats and dogs, under those circumstances. Could I turn to something that this Committee looked at when we were examining the draft Bill? One of the points this Committee made on pet fairs at the time was that—and I am quoting from it but do not ask me the page number—"Defra

[9] HC Deb, 8 November 2005, col 49WH

proceeded straight to the question of asking how pet fairs should be regulated without asking whether they should be clearly legalised."[10] So there is controversy about whether they are legal or not, which we all acknowledge there is ambiguity about—some say definitely they are not legal and others say they are—so you will wish to resolve that ambiguity, but Defra has said they should be legal and therefore how do we regulate them rather than should we. I believe your Department's response, Minister, on that point was to promise to consult in public again. I think you did that last summer. Could you outline briefly what happened with that consultation?
Mr Bourne: We went back to all the people who had responded to our original consultation, summarising what we believed to be their views and saying, "Have we understood your views correctly" so we made absolutely sure we understood what they had to say. What we have committed to is a public consultation on the regulation we put forward, so there will be a full public consultation yet to come, but we have made real efforts to make sure we have understood the views of those who have responded so far, including whether they want them banned or not. Whilst we accepted the Committee's original comment we had not consulted on the ban option at that stage, we are clear we do understand who wants the ban, and when we consult fully on the regulation we will have as one of the options under the structure of those consultations whether there should be a complete ban on one or more different types of pet fairs. As you rightly say, there is an enormous range of different varieties.

Q86 Patrick Hall: That is very helpful and that is a commitment to the full public consultation on the Regulatory Impact Assessment next year containing those sorts of questions.
Mr Bourne: Or the year after, 2006–07 I think we said.

Q87 Patrick Hall: I thought it was 2006 in order to regulate in 2007. I thought the consultation was next year.
Mr Bourne: We have not committed to a specific time.
Chairman: I think we have already had an indication there is an element of flexibility in this timetable.

Q88 Patrick Hall: There are clearly people out there who think it is immoral to own a cat or a dog. I do not think this Committee has spent any time looking at those issues, although I suppose we should not be unfair and say we should not even consider them, but there is a strong body of responsible concern about animal welfare issues and whether or not high standards can be met and maintained under various circumstances that we are concerned about, and certainly pet fairs is one of those that really does need thorough examination. I think you have just said, your officials have just said, Minister, that there will be the opportunity to do that with the consultation on the Regulatory Impact Assessment.
Mr Bradshaw: Yes.

Q89 David Taylor: On to circuses. It is true, is it not, Minister, that Defra vets have always said there is a lack of scientific evidence to demonstrate any particular form of entertainment involving animals is by its very nature cruel and therefore should be prohibited? That still remains the view of the Department, does it?
Mr Bradshaw: Yes, but this of course introduces a welfare offence.

Q90 David Taylor: I understand that and I know the Department is discussing the possibility of a regulatory system for services run by PAWSI, Performing Animals Welfare Standards International. What sort of response are you getting from the consultations and discussions you have had from welfare organisations about the accuracy of that suggested arrangement?
Mr Bradshaw: I do not think it is any secret that most animal welfare organisations would like to see a complete ban on the use of wild animals in circuses, and most animal welfare organisations would like to see a lot of things banned which we are not proposing to ban under this Bill. It is not a banning Bill, as your colleague Mr Hall has just said, it is a Bill about improving animal welfare. Our view is that the welfare offence, even before the introduction of any secondary legislation on circuses, is likely to lead to a significant improvement in welfare standards in circuses and make it unlikely certain animals will continue to be kept.

Q91 David Taylor: So are welfare organisations reluctantly accepting the role you envisage for PAWSI in circus regulation?
Mr Bradshaw: I am not aware that they have commented on that specifically, but they are welcoming the fact—

Q92 David Taylor: Mr Bourne?
Mr Bourne: I would not say they necessarily welcome it, they are part of the process of discussion, so they do have a voice and we are working with them and not just with the people who run circuses.

Q93 David Taylor: Finally to animal sanctuaries. I have a medium-sized one which is just in Hinckley and Bosworth but right next to the field boundary of North West Leicestershire so perhaps I can declare that interest. The original intent was to license the larger ones and register the smaller ones, was it not, but you have now amended that to wholesale registration with a maximum period of registration of five years? Is that correct?
Mr Bourne: Yes, we have gone to a registration process.

[10] Environment, Food and Rural Affairs Committee, First Report of Session 2004–05, *The Draft Animal Welfare Bill*, HC 52-I, para 316

Q94 David Taylor: Will that incorporate inspection?
Mr Bourne: Yes. There is a certain sort of terminology around this issue and people have rather fixed ideas. It is a bit grey. What we propose is that everyone should register their sanctuary so the local authority will know where the sanctuaries are in their area, and they will charge for that process of registration. Using that money, and it will be up to them to an extent as to how exactly they manage this, they will be able to inspect the ones which they think to be at the highest risk. So it will not be, "You will have to be inspected every year regardless of how good or bad you are". We hope by this means we can target the local authority enforcement resources on the ones which are likely to pose the highest risk, and that is the proposal.

Q95 David Taylor: You are phasing them in or by 2010, are you not?
Mr Bourne: Yes.

Q96 David Taylor: Is it not the case that the implementation of this, what will become an Act, will in fact require an increase in demand for animal sanctuaries as there will be more animals needing the protection of such institutions, will there not, and they will be unregulated for several years after the implementation of the Act?
Mr Bradshaw: We are looking at the timescale of the regulation of animal sanctuaries for that very reason.

Q97 David Taylor: So it is possible that 2010 may be advanced?
Mr Bradshaw: It is possible.

Q98 Chairman: Minister, I know you are not responsible for everything that happens in the House of Commons but when is your diary blocked out for the Second Reading of this Bill?
Mr Bradshaw: Currently it is the first week back after the Christmas break.

Q99 Chairman: Very good.
Mr Bradshaw: But anything could happen. It could be before that.

Q100 Chairman: I appreciate that you are not the master of the destiny of what happens in the Commons but obviously it has been on the Order Paper for some time and we are aware that it is gradually moving up to a position when it will be discussed. I can see we are all going to have some very interesting Christmas reading and talking to our pets about the implications of this measure. Can I thank you and your officials, Mr Bourne and Ms Connell, for your contributions and we look forward to the debate when it comes.
Mr Bradshaw: Thank you.

Supplementary memorandum from DEFRA on the sale of unweaned puppies in Pet Shops

1. You have requested advice concerning the sale of unweaned puppies in pet shops.

2. Our veterinary adviser tells us that it is unlikely that a pet shop would want to sell unweaned puppies. Although breeders will hand feed puppies that a dam rejects, or where the dam has no milk, it is a time consuming job and not a job that a pet shop owner would want to take on. Our adviser also understands that some owners do wean puppies as early as 6 weeks although he would not consider this a good practice.

3. Under S1(3)(c) and S1(7) of the Pet Animals Act 1951 it is an offence for a pet shop to sell a mammal at too early an age. In addition under the Protection of Animals Act 1911 it is an offence to cause unnecessary suffering to an animal. We therefore consider that there is already adequate legislation in place to deal with the type of situation that was mentioned at Tuesday's session.

4. It is our intention that the legislation which eventually replaces the 1911 and 1951 Acts will continue to ban the selling of unweaned puppies and, if necessary, deal with any weaknesses in the current law.

November 2005

Written evidence

Memorandum submitted by The Kennel Club

1. Introduction

1.1 The Kennel Club was called upon to give oral evidence to the Environment, Food and Rural Affairs (EFRA) Select Committee during its inquiry into the draft Animal Welfare Bill at which the Kennel Club emphasised to the Committee its concerns that:

- Electric Shock Collars had not been outlawed on the face of the draft Bill (mainly due to the vested commercial interest in them).
- Annex G of the draft Regulatory Impact Assessment (RIA) proposed to ban or restrict the docking of dog's tails.
- The draft Bill failed to place a requirement on Animal Welfare Inspectors to achieve a national, minimum qualification.
- The sale of puppies in pet shops had not been outlawed.
- The draft Bill failed to amend the ineffective Dangerous Dogs Act 1991.

1.2 The Kennel Club was grateful that the Committee took up its concerns—especially those relating to electric shock collars, the qualifications of animal welfare inspectors and the sale of puppies in pet shops.

2. Current Concerns with the Final Bill

The Kennel Club appreciates that this inquiry will be brief, focusing on the differences between the current version of the Bill and that which formed the basis of the Committee's comprehensive Report. As a result, the Kennel Club's comments and questions have been confined accordingly.

2.1 The Kennel Club would encourage the Committee to ask why the Government did not address its concern that the requirements to provide advice to new pet owners did not extend beyond pet shops and dog breeding establishments to other vendors of pet animals such as those sold at pet fairs and other types of breeding establishment in its final publication of the Bill.

2.2 The Kennel Club would encourage the Committee to ask why the Government did not address its concerns, that the Bill did not specify the appropriate categories of person or "characteristics" of persons who may be appointed to the role of inspector ie a national, minimum qualification, in its final publication.

2.3 With regards to tail docking, the Kennel Club welcomes the final RIA which does not include the proposal to ban or restrict the docking of dogs tails and also paragraph 15 of the final RIA in which the Government states "sincere views were held by those who both support and oppose a ban on cosmetic docking and our view is there should continue to be freedom of choice".

2.4 The Kennel Club would continue to emphasise to those seeking amendments in relation to tail docking that legislation should not be introduced in the absence of independent research proving tail docking to be a welfare issue. Without this, the Kennel Club continues to highlight its pro-choice position on tail docking ie it should be up to the individual breeder to decide whether to dock their puppies' tails (providing this is performed by a veterinary surgeon within the first few days of a puppy's life—before the eyes are open), given that Kennel Club breed standards now provide descriptions for traditionally docked breeds with tails.

The Kennel Club would like to thank the EFRA Committee for looking once again at the Animal Welfare Bill and for inviting comments from interested parties.

November 2005

Memorandum submitted by the British Veterinary Association

Introduction

1. The British Veterinary Association (BVA) is the national representative body for the veterinary profession in the United Kingdom and represents circa 10,000 members. Our chief interest is to protect and promote the interests of the veterinary profession in this country and we therefore take a keen interest in all issues affecting the veterinary profession, be they animal health, animal welfare, public health or employment concerns.

2. The BVA welcomes the opportunity to contribute evidence for the EFRACom evidence session with the Minister and have the following points to bring to the Committee's attention.

Differences Between the Animal Welfare Bill and the Animal Health and Welfare (Scotland) Bill

3. A major concern of the Association is that the Animal Welfare Bill and the Animal Health and Welfare (Scotland) Bill have some marked differences. The act of abandonment for example is covered in Scotland but not in England. It is felt that this may cause significant problems for those enforcing the powers set out in the Bills. BVA entirely supports the Committee's view that abandonment should continue to be a specific offence for the reasons the Committee stated. We have not changed our view and urge the Committee to press the government on this matter.

Specific Comments on the Animal Welfare Bill

4. BVA are disappointed that Defra have not seen fit to include a provision for statutory improvement notices which would have been a useful adjunct to enforcement and are disappointed that the Government have chosen not to include the facility in the Bill. In particular we view improvement notices as particularly useful when implementation of secondary legislation on sanctuaries takes place because we consider it less likely that some will close. Closure of a significant number of sanctuaries would inevitably result in animals being killed because no place can be found for them.

5. The restraints following animal ownership disqualification are also felt to be incomplete.

6. BVA is concerned about the powers of entry into private dwellings where there is an animal welfare emergency and would like to recommend that this be looked at in more detail.

7. Mental suffering: BVA notes that the Government have failed to take up the Committee's recommendation that there should be specific reference to mental suffering in Section 4 of the Bill. We strongly support the Committee's recommendation and wish to see the words "physically and mentally" inserted in appropriate places in this section.

8. Mutilations: BVA is content with the definition of mutilation in the Bill and welcomes the ban on mutilations. However the Association remains concerned that the explanatory notes and RIA refer to permitting tail docking in certain types of dogs. The Minister has verbally referred to Parliament taking a free vote on this issue which is a relaxation of his previous line that cosmetic docking would be banned. Both cosmetic docking and non-therapeutic or prophylactic docking should be completely banned, as outlined in the RCVS' Guide to Professional Conduct (Annex A). This is a mutilation that the majority (over 90%) of veterinary surgeons find abhorrent. In fact most veterinary students are no longer taught to dock tails.

9. Fighting: The Bill is significantly watered down from the draft Bill as the range of offences is smaller. BVA cannot conceive why this universally condemned activity is not the subject of an offence whatever the connection. We suggest that the making, sale or possession of any recording of a fight should also be an offence (similar to child pornography) and would urge you to act to ensure that this barbaric practice is forever prevented.

10. Sale of pets to minors and pets as prizes: The section, as currently drafted, is muddled and shows no clear thought process. These are two separate issues and should remain so, as they were in the draft Bill.

11. Delegated powers: We support the wide powers available, which will allow legislation to be kept up to date with current science and best practice and we agree with the Committee that the sole purpose of the legislation being delegated is to achieve that. However, we suggest that the language of these sections could be improved.

12. Pet fairs: should be made illegal because it is almost impossible to protect the welfare of the animals involved. Certainly cats and dogs should not be allowed to be bought or sold at such events but there is grave concern over the transport and display of other exotic animal species, such as birds and reptiles.

13. Inspection intervals: we are extremely disappointed to see that licences are to be issued for between three and five years. We fail to see any animal welfare benefit in such proposals and consider that adverse effects are almost inevitable. While we could accept a risk based approach to inspection we consider that the minimum should remain an annual licence.

14. Greyhounds: We welcome the fact that the proposed regulation is to be brought forwards.

15. Dog breeding: Puppy farms are of huge concern given that many see them as a source of income and have little regard for the welfare of the animals. Regulation of dog breeding must be tightened to ensure that all breeding dogs are carefully regulated.

Annex A

DOCKING OF DOGS' TAILS

RCVS position

[Please note that due to an error the advice from the 1993, rather than the 1996, Guide to Professional Conduct was originally set out in this Guide; corrected September 2000]

Leading Counsel has advised:

1. Docking, which may be defined as the amputation of the whole or part of a dog's tail has, since July 1993, been illegal under UK law, if performed by a lay person.

2. The Royal College has for many years been firmly opposed to the docking of dogs' tails, whatever the age of the dog, by anyone, unless it can be shown truly to be required for therapeutic or truly prophylactic reasons.

3. Docking cannot be defined as prophylactic unless it is undertaken for the necessary protection of the given dog from risks to that dog of disease or of injury which is likely to arise in the future from the retention of an entire tail. The test of likelihood is whether or not such outcome will probably arise in the case of that dog if it is not docked. Faecal soiling in the dog is not for this purpose a disease or injury, and its purported prevention by surgical means cannot be justified.

4. Similarly, docking cannot be described as prophylactic if it is undertaken merely on request, or just because the dog is of a particular breed, type or conformation. Council considers that such docking is unethical.

5. Docking a dog's tail for reasons which are other than truly therapeutic or prophylactic is capable of amounting to conduct disgraceful in a professional respect. In the event of disciplinary proceedings being brought in respect of tail docking, it shall be open to the RCVS by evidence to prove, and to the Disciplinary Committee on such evidence to find, that any therapeutic or prophylactic justification advanced for the docking in question is without substance. If such a finding is made, the Disciplinary Committee may proceed to consider and to decide whether in the circumstances the veterinary surgeon who undertook that docking knew, or ought to have known, that such purported justification is without substance.

6. For the avoidance of any doubt, any instance of tail docking which is found to have been undertaken for reasons which were not truly therapeutic or prophylactic will necessarily constitute an unacceptable mutilation of the dog, which, if carried out by a veterinary surgeon who knew or ought to have known of the lack of true justification

November 2005

Memorandum submitted by the Centre for Animal Welfare and Anthrozoology

Here are some brief comments on the current draft of the Animal Welfare Bill which are relevant to the discussions on Tuesday.

Contents page (etc.) Heading to section 8–10, titles of sections 8 and 10.

1. The use of the word welfare is scientifically incorrect. As explained below, this should read "Promotion of good welfare", "promote good welfare", "ensure good welfare". This is a serious error showing lack of appreciation of hundreds of scientific papers, many of which will be used in evidence in court cases. Twenty years of scientific development in the discipline of animal welfare science are being ignored.

2. It is valuable to use the word "welfare" in the title and body of this Act because of the effect on those who read it and because it reflects modern discussions. Animal welfare has been the subject of much scientific study in the last 20 years in many countries and the term is now used in EU legislation, Council of Europe Recommendations and OIE draft recommendations with a gradual evolution towards precise usage. Animal welfare scientists would all agree: that animal welfare is a state of an individual animal that can be assessed scientifically, that welfare varies on a scale rather than being an ideal state, and that welfare ranges from good to poor (or high to low in some translations of the word). It is therefore illogical and unscientific to say "ensure an animal's welfare". Since this is stating that something which can be negative should be ensured.

Section 4

3. The words "unnecessary" and "suffering" cause many problems in law as explained below. The phrase "unnecessary suffering" has been a major cause of failure in the functioning of the existing legislation. There is now an opportunity to move forward by dropping it.

4. The heading should be "Causing poor welfare without a sound reason".

5. It has been my experience in court cases concerning animal welfare matters, and I believe the experience of many others, that the greatest problems have arisen from the ambiguity of the term "unnecessary suffering". I have defined suffering as "one or more bad feelings which last for longer than a few seconds". I do not know of a more precise definition. This concept is imprecise. Although we know when we ourselves suffer, it is not easy to assess the degree of suffering, ie of pain and other bad feelings, in other individuals. This is the reason why animal welfare scientists, who want to assess bad feelings, generally refer to the extent of poor welfare rather than to suffering. Measures of behaviour, physiology, extent of disease, extent of injury, etc are precise and are used to evaluate how poor the welfare is.

6. This scientific development should be taken into account in the wording of the Act. I appreciate that there is a case law referring to suffering. However, it is confusing and we should now move to the more precise term "poor welfare".

7. It has often been unclear on what grounds pain, suffering and distress were considered unnecessary. This issue is clarified somewhat by the explanation of what constitutes unnecessary. However, the phrase used in German law is "without a sound reason". It seems to me that it will be clearer to explain the grounds upon which poor welfare might have sound reasons, rather than being unnecessary.

Explanatory notes, Clause 5

8. There is a reference to the Royal College of Veterinary Surgeons' definition of mutilation but it would be clearer to define the term in the bill, eg "A mutilation is the removal of or damage to sensitive tissue".

Scope of Act.

9. It remains my view that, as in other modern animal welfare Acts in several countries, this Act should cover all situations where animal welfare is affected by man. In particular, the welfare of animals used in experimentation should be covered here. With respect to the arguments against this that Mr Bradshaw made in his letter to me of 31 January 2005, here are three comments.

(i) Any potential conflict between DEFRA funded research and the necessity for a licence for experimentation could be covered by having separate systems for licensing and funding with independent advice. The Home Office sometimes funds research that needs a licence and is able to cope with any conflict.

(ii) Consultation between those involved in licensing experiments and those enforcing legislation against animal rights extremists is entirely possible if these people are in different Ministries. The police can liase with any Ministry.

(iii) The advantages of bringing all animal welfare issues under DEFRA is greater than the minor disadvantages mentioned. A general Animal Welfare Committee, with sub-sections, is necessary to advise on all animal welfare issues. At present, major areas are neglected.

Professor Donald M Broom

November 2005

Memorandum submitted by the Dogs Trust

1. Dogs Trust is pleased to be able to comment on the Animal Welfare Bill prior to the EFRA Committee taking evidence from Ben Bradshaw MP. Dogs Trust is the largest canine welfare charity in the UK with 15 Re-homing Centres and providing reduced rate neutering for those on means tested benefits, veterinary care for the homeless and responsible ownership education to children. We are probably best known for our strap-line "A dog is for life not just for Christmas".

2. *Mental suffering*: Dogs Trust notes that the government have failed to take up the Committee's recommendation that there should be specific reference to mental suffering in Section 4 of the Bill. We strongly support the Committee's recommendation and wish to see the words "physically and mentally" inserted in appropriate places in this section.

3. *Mutilations*: Dogs Trust is content with the definition of mutilation in the Bill. However we remain concerned that the explanatory notes and RIA continue to refer to the retention of tail docking of some dogs. The Minister has verbally referred to there being allowed a free vote on this issue which is a relaxation of his previous line that cosmetic docking would be banned. Dogs Trust continues to consider that there is ample evidence to support a total ban on docking and would wish to have that included on the face of the Bill.

4. *Fighting*: The Bill is significantly watered down from the draft Bill as the range of offences is smaller. Dogs Trust cannot conceive why this universally condemned activity is not the subject of an offence whatever the connection. In previous evidence we suggested that the making, sale or possession of any recording of a fight should also be an offence (similar to child pornography) and are dismayed to see that our suggestion has not been taken up.

5. *Abandonment*: Dogs Trust entirely supports the Committee's view that abandonment should continue to be a specific offence for the reasons the Committee stated. We have not changed our view and urge the Committee to press the government on this matter.

6. *Sale of pets to minors and pets as prizes*: The Bill is a significant weakening compared to the draft. The section, as currently drafted, is muddled and shows no clear thought process. These are two separate issues and should remain so, as they were in the draft Bill. Dogs Trust considers that the Bill should be amended to retain the sections in the draft.

7. *Delegated powers*: We support the Committee's view that the language of these sections could be improved. Although we support the wide powers available, which will allow legislation to be kept up to date with current science and best practice, we agree with the Committee that the sole purpose of the legislation being delegated is to achieve that. We do not consider that the Bill achieves that as currently drafted.

8. *Improvement notices*: Dogs Trust supports the Committee in asserting that improvement notices would be a useful adjunct to enforcement and are disappointed that the government have chosen not to include the facility in the Bill. In particular we view improvement notices as particularly useful when implementation of secondary legislation on sanctuaries takes place because we consider it less likely that some will close. Closure of a significant number of sanctuaries would inevitably result in animals being killed because no place can be found for them.

9. *Sentencing*: We support the Committee's view that offences under sections 4 to 7 should be triable either way so that increased sentences might be imposed for the deliberate cruelty offences.

10. *Pet fairs*: Dogs Trust remains concerned at the intention to license pet fairs without properly investigating the potential effects on animal welfare. We consider that such events would inevitably prove detrimental to dogs', and particularly puppies', welfare and consider they should remain illegal.

11. *Inspection intervals*: Dogs Trust was extremely disappointed to see that, in spite of the Committee's comments, licences are to be issued for between three and five years. We fail to see any animal welfare benefit in such proposals and consider that adverse effects are almost inevitable. While we could accept a risk based approach to inspection we consider that the base line should remain an annual inspection.

12. *Greyhounds*: Dogs Trust is pleased to see that the proposed regulation is to be brought forwards.

13. *Dog breeding*: Dogs Trust appreciates the efforts of the Kennel Club to institute their accredited breeder scheme. However we are aware that the scheme is currently very limited in its scope, is not inspected and does nothing to address the real issue which is puppy farms. We consider that the dog breeding industry has had ample chance to put its house in order and has manifestly failed to do so. Consequently we wish regulation of dog breeding to be included in the first tranche of regulations.

C J Laurence QVRM TD BVSc MRCVS
Veterinary Director

November 2005

Memorandum submitted by the Association of Lawyers for Animal Welfare

What we need is clarity: pet fairs and the Pet Animals Act 1951

1. It was concerns about the depressing conditions in which pet animals were being sold at certain London markets that led Parliament to enact the Pet Animals (Amendment) Act 1983. That Act amended the Pet Animals Act 1951 so that it provided, in Section 2, that "[i]f any person carries on a business of selling animals as pets in any part of a street or public place, or at a stall or barrow in a market, he shall be guilty of an offence." The 1983 amendment eventually led to the complete eradication of pet-selling stalls at regular markets.

2. Since the exotic pets craze of the early 1990s, however, a new form of market-type selling of pet animals has emerged which perhaps presents even greater animal welfare negatives than the market stalls which used to so sadden the compassionate market-goer. In many towns and cities across the UK, in community halls, leisure centres and schools, exotic animal fairs are taking place, often calling themselves "reptile exhibitions", at which animals are sold as pets directly to the public. The typical event consists of a number of different trestle-table stalls from which 10s, 100s, or even 1000s, of reptiles and other exotic animals are displayed and offered for immediate sale by different independent breeders and dealers. In many ways the format is that of a jumble sale, albeit that the "goods" sold are sentient creatures rather than unwanted bric-a-brac. The animals have often been transported for many hours in the backs of hot cars and vans, before being displayed in unsuitable cages stacked one atop another. Many visitors to these "exhibitions" will make impulse purchases of exotic animals that have highly specialised care requirements, and will do so without the benefit of appropriate care advice from the sellers.

3. Pet birds are also being sold at such occasional events. Indeed, bird fairs tend to take place on a much larger scale than their reptilian counterparts. The National Cage and Aviary Bird Exhibition, organised by IPC Media (the publishers of *Cage and Aviary Birds* magazine), is the highlight of the bird dealers' calendar. The 2003 event, which took place in early December of that year at the National Exhibition Centre near

Birmingham, was granted a pet shop licence by Solihull Metropolitan Borough Council for the selling of up to 100,000 birds. Undercover investigators from Animal Aid visited the event and documented a number of apparent breaches of the conditions attached to that licence, as well as of the Wildlife and Countryside Act 1981.[1] The multiple independent traders offering birds for sale at that event were drawn from across the UK, with at least one coming from another EU Member State. Plainly, therefore, the sellers were not mere small-time hobbyists, but were serious commercial operators. Many thousands of birds are believed to have changed hands in the course of that event.

4. Quite apart from the obvious welfare concerns that are posed by such events, campaigners against them also point to the potential risks to public health. Whatever claims may be made by the sellers of birds and reptiles at such fairs, it is improbable to deny that at least some of the animals being offered for sale will have been caught in the wild or will at least have recently mixed with wild-caught animals. Indeed, such events would appear to be an ideal outlet for the disposal of animals by black market dealers or persons involved in various forms of wildlife crime. The Animal Aid report[2] recorded that, of a sample of five birds which were purchased at the event and tested for *Chlamydia psitacci* (psittacosis), one (a Senegal parrot) had the infection, which can be transmitted to humans. The avian flu outbreak in Asia, and the continuing spread of the virus around the world, would appear to highlight the dangers inherent in bird-human interaction in large-scale market-type situations.[3] Reptile fairs also present significant public health risks, particularly in view of the absence of quarantine requirements for imported cold-blooded animals and the documented cases of fatal infection of humans with salmonella through contact with pet reptiles. Indeed, the occurrence of two infant deaths in the UK within six months as a result of salmonella infections from reptiles prompted the Department of Health to re-issue a warning in 2000 that children under five years of age, pregnant women, the elderly, and the immuno-compromised should all avoid contact with reptiles.

5. What, then, is the legal position with regard to these events? Do they fall within the prohibition, in Section 2 of the 1951 Act, of selling animals from market stalls and in public places? And if they do not, then do they require a "pet shop licence" from the local authority in order to avoid the commission of criminal offences contrary to Section 1 of that Act, which prohibits the keeping of a pet shop except under the authority of such a licence? Campaigners against such events have faced considerable frustration at the variety of views of the law adopted by different local authorities, who bear the responsibility for granting licences and prosecuting offences under the 1951 Act. While most local authorities have accepted the campaigners' arguments that these events fall within the Section 2 prohibition, some have licensed them under Section 1, while yet another group of local authorities regard these events as outside the scope of the 1951 Act altogether so they are left unregulated.

The Section 2 prohibition on selling animals in public places and from market stalls

6. What exactly is a "public place" for the purposes of the 1951 Act? The phrase is not defined in the Act itself, but has generally been defined in other regulatory legislation as "[a]ny place to which the public have access whether on payment or otherwise".[4] Such a definition would appear to be capable of embracing leisure centres, racecourses, school playing fields, agricultural showgrounds and other places where pet fairs typically take place. The difficulty with giving such a broad scope to the phrase, however, is the need to exclude conventional pet shops, which it plainly cannot have been the intention of the legislature to prohibit.

7. Further confusion has been caused by the organisers of pet fairs who have sought to portray their events as being open to "members only", essentially as a device to circumvent rulings by some local authorities that pet fairs that are open to the public, whether on payment of an admission fee or otherwise, are properly regarded as being held in public places and thus as falling within the Section 2 prohibition. Often the "memberships" sold are a thinly disguised sham, with "membership cards" being provided on payment of what is in truth no more than a nominal admission fee payable at the door.

8. Whether or not a pet fair is held in a public place, however, it will still fall within the Section 2 prohibition if it involves the selling of animals as pets from market stalls. The usual common law definition of a "market" is "a concourse of buyers and sellers". It seems likely that the selling of animals from a stall

[1] "From Jungle to Jumble—National Cage and Aviary Birds Exhibition 2003: Evidence, findings and recommendations", a report by Animal Aid, March 2004.

[2] Ibid.

[3] The death of an imported parrot in an Essex quarantine facility from the H5N1 strain of avian flu (the lethal strain which can be passed on to humans) in October 2005 led to a temporary EU ban on the selling of birds at pet fairs: Decision 2005/745/EC, Article 1 of which inserted a new Article 2a into Decision 2005/734/EC. The ban is due to expire on 31 December 2005.

[4] Licensing Act 1902. Other examples of the use of the same or a similar definition are: Indecent Displays (Control) Act 1981; Environmental Protection Act 1990, Part VIII, Section 149(11); Dangerous Dogs Act 1991, Section 10(2).

at an event which consisted of a number of different independently-run stalls gathered together in an open-plan setting would come within that definition, whether the event was held indoors or outdoors, and whether it took place regularly or occasionally.

9. Until this issue is resolved by the higher courts, however, confusion will continue to reign as to whether or not pet fairs do involve the commission of criminal offences contrary to Section 2.[5]

Assuming the events do not involve violations of Section 2, is a pet shop licence required under Section 1?

10. Section 1 of the 1951 Act makes it an offence to "keep a pet shop except under the authority of a licence granted in accordance with the provisions of [the] Act". The definition of a "pet shop" is provided in Section 7(1):

> "References in this Act to the keeping of a pet shop shall, subject to the following provisions . . . be construed as references to *the carrying on at premises of any nature (including a private dwelling) of a business of selling animals as pets*, and as including references to the keeping of animals in any such premises as aforesaid with a view to their being sold in the course of such a business, whether by the keeper thereof or by any other person." (emphasis added)

11. Thus, it is not only conventional "high street" pet shops that are required to be licensed.[6] Accordingly, it would seem that, even if pet fairs do not involve the commission of criminal offences under Section 2, such offences would nevertheless be committed under Section 1 by any person "carrying on . . . a business of selling animals as pets" who was not doing so under the authority of a valid licence.

12. A question therefore arises as to the party who must apply for, and be issued with, a valid licence in order to "keep a pet shop" at the event (ie carry on a business of selling animals as pets). Section 1(2) of the1951 Act appears to provide a simple answer:

> "Every local authority may, *on application being made to them for that purpose by a person who is not for the time being disqualified from keeping a pet shop*, and on payment of such fee . . . as may be determined by the local authority, *grant a licence to that person to keep a pet shop* at such premises in their area as may be specified in the application and subject to compliance with such conditions as may be specified in the licence." (emphasis added)

13. Thus, the legislation appears to envisage pet shop licence applications being made only by the intending keepers of pet shops, ie the legal or natural persons intending to carry on a business of selling animals as pets (but not by persons employed within someone else's pet selling business). If that is correct, then it would appear to follow that every trader intending to sell animals as pets at a pet fair must apply for, and obtain, a valid licence from the local authority. It would not be open to local authorities to grant (as a small number have) an "umbrella" pet shop licence *to the organiser* of a pet fair under which all persons selling animals as pets at that event could shelter. The organiser of a pet fair is not, after all, the keeper of a pet shop at all since it is not the organiser who is carrying on a business of selling animals as pets. Rather, the organiser is carrying on a business of "renting out" stalls from which other parties (the independent traders) carry on their quite independent businesses of selling animals as pets.

14. Once again, however, we cannot be sure that this analysis represents the law until the point has been decided by a court of precedent.

Clarifying the law: the Animal Welfare Bill

15. The draft Animal Welfare Bill which was published by the Department for the Environment, Food and Rural Affairs (DEFRA) in July 2004 included powers for the Secretary of State to repeal the 1951 Act in its entirety and put in its place delegated legislation regulating the selling of pet animals. It was made clear at the time by DEFRA that they were minded to resolve the confusion over the legality of pet fairs by making express provision for such fairs to be licensed and repealing section 2 of the 1951 Act—a change which would have been likely to lead to an increase in the number of such fairs, which would then have been unarguably legal. DEFRA sought to portray the proposed change as a pro-animal welfare move bringing pet fairs within

[5] Section 2 has been the subject of a number of decisions in the magistrates' courts (see, eg, *Rogers* v *Teignbridge District Council* (Torbay Magistrates' Court, 7 November 2000); *Rapa Limited* v *Trafford Borough Council* (Trafford Metropolitan Magistrates' Court, 18 June 2002); also the Scottish case *White* v *Kilmarnock and Louden District Council* 1991 SLT (Sh Ct) 69). However, Section 2 has not yet been the subject of a decision by the High Court or the Court of Appeal, and thus no binding authority exists.

[6] In *Chalmers* v *Diwell* (1975) 74 LGR 173, it was held that a premises where birds were held prior to export to overseas purchasers required a pet shop licence. The premises were effectively no more than a holding center: birds usually stayed on the premises for less than 48 hours, though they had occasionally remained on the premises for up to 12 days. Nevertheless, the defendant was held to have been keeping a pet shop. Giving judgment for the Court, Lawton J attached no weight to the fact that purchasers did not visit the defendant's premises. It was sufficient that the defendant was: "in fact carrying on a business of selling animals [as] pets. He [was] in fact keeping those pets on the premises for the purposes of his business, even though it [was] for a limited time." The defendant appears to have supplied the birds directly to the final purchaser (ie the party who would keep the bird as a pet). It therefore remains unclear whether all premises that hold animals that are in the pet trade supply chain require a licence, or whether the requirement only applies to premises from which a business is carried on of supplying animals as pets to the final consumer (ie the pet owner).

the licensing control of local authorities for the first time. Accordingly, the question posed by DEFRA in its consultation documents was whether pet fairs *should be regulated*, and not, as anti-pet fair campaigners would have preferred, whether pet fairs *should be legalised*.

16. The draft Bill was considered by the Commons Environment, Food and Rural Affairs Committee in the 2004–05 Parliamentary session.[7] The Committee criticised DEFRA's consultation exercise in relation to the regulation/legalisation of pet fairs, recommending that DEFRA consult again, this time asking interested parties whether the confusion over the law should be resolved by expressly legalising pet fairs or banning them altogether.

17. The Animal Welfare Bill which is now making its way through Parliament does not provide a power for the Secretary of State to repeal section 2 of the 1951 Act, since only section 1(1) of that Act can be repealed in consequence of the making of delegated legislation. It is unclear whether that change was the result of a happy drafting error or a genuine change of heart by DEFRA. Curiously, the Regulatory Impact Assessment accompanying the Bill continues to state that pet fairs will be regulated (rather than prohibited). DEFRA's present position on the pet fairs issue is therefore unclear, and the Bill (as currently drafted) will do nothing whatsoever to resolve the confusion over the legality of pet fairs (which was, after all, DEFRA's original justification for its intention to introduce regulation of such events). It thus seems that the legality of pet fairs will ultimately be decided by the courts, rather than the legislators we elect to make policy choices on the nation's behalf. What is needed is for the Bill to be amended to, in turn, amend section 2 of the 1951 Act to make it clear that all commercial selling of animals as pets by more than one independent trader at a temporary event falls squarely within the section 2 prohibition.

Memorandum submitted by The BioVeterinary Group

We herein provide a concise submission based on your kind invitation to interested parties to offer brief comment regarding differences between the first draft of the Animal Welfare Bill and such differences as may now have evolved on presentation at First Reading in the HoC.

1. While the Committee is particularly seeking "differences" between the first draft of the AWB and the Bill in its present form, we must emphasise the LACK of change in the Bill that is at least as important as those changes that have been made. Despite powerful opposition to pet fairs/markets and even the EFRA Select Committee's strong criticisms of the way in which DEFRA handled its consultation and thus conclusions regarding pet fairs/markets, DEFRA have repeatedly stated their firm intention to legalise these events. DEFRA repeatedly also state their intentions to hold further consultations but these "consultations" are presented as ways of refining their plans to legalise these events and not to consider their prohibition. This intransigent approach by DEFRA in our view clashes with and shows disrespect for the cautionary comments regarding pet fairs/markets that the EFRA Select Committee emphasised in its report on the Bill.

Further, and significantly;

2. since the publication of the draft Bill DEFRA have admitted that:

   a. they have NO support from animal welfare, scientific, or veterinary organisations for their proposal to legalise pet fairs, and that;

   b. they have NO scientific evidence to support their proposal to legalise pet fairs/markets.

In addition;

3. Pet fairs/markets are now OPPOSED by: The British Veterinary Association, RSPCA, RSPB, Animal Protection Agency, BioVeterinary Group, International Fund for Animal Welfare, World Society for the Protection of Animals, Captive Animals Protection Society, Born Free Foundation, Animal Aid, Wildlife Conservation Society, and the Tortoise Trust to name a few.

4. The issue of avian influenza H5N1 ("bird flu") and pet fairs/markets are inextricably linked, and regardless of current and probably enduring concerns over bird flu our firm view is that one or another emergent disease will transpire from wild animal imports and pet fairs/markets (references available).

5. The recent concerns regarding bird flu have demonstrated what medical scientists have been stating for decades that serious disease and health risks emerge from wildlife trade and that issues such as incurable animal smuggling by-pass any form of quarantine. It is no coincidence that the importation of wild birds and pet fairs/markets were immediately targeted as high risk disease dissemination sources. Important lessons must be learnt by DEFRA that its plan to legalise pet fairs/markets is dangerous and scientifically unfounded and will not be tolerated by the media and the public.

6. Ben Bradshaw's intransigence regarding his technically and politically defunct plans to legalise pet fairs/markets has arguably brought himself, DEFRA, other DEFRA Ministers, the Government and the AWB into ridicule and disrepute.

7. It is our firm advice that both the ban on importation of wild birds as well as the ban on pet fairs/markets should be permanent. Any relaxation of these bans will be a retrograde step in animal welfare as well as public health and agricultural animal health.

[7] HC 52-I, December 2004.

8. Contrary to some statements by DEFRA officials it has clearly been possible to distinguish in legislation between entirely non-commercial "exhibitions" of birds (to which, save for the bird flu issue, we would hold no objection) and the commercial display, buying, selling and exchange of birds at pet fairs/markets (to which, regardless of bird flu, we object most strongly). These clear differences also apply to exhibitions and pet fairs/markets involving other animals such as reptiles, amphibians and fish. The October amendment to the Animal Health Act carried clear distinctions between "exhibitions" and "pet fairs/markets" that we feel that these distinctions would be an important inclusion in the redrafted AWB which would enable clear reading of a prohibition on pet fairs/markets. The Committee will recall that the EU ordered a ban bird exhibitions and pet fairs/markets to protect against the spread of bird flu whereas Mr Bradshaw had been asked to enact such a ban only two days before the EU order and he refused outright to take such action.

Submission prepared by

Phillip C Arena BSc(Hons), PhD

Biomedicine and Public Health

Roberto Paules-Villar MRCVS

Veterinary Surgeon

Catrina Steedman BSc(Hons), GIBiol

Animal Biology and Behaviour

Clifford Warwick PGDipPHC(Med), EurProBiol, CBiol, FIBiol, FRSH, FRIPH

Zoonotic Infections and Public Health

November 2005

Memorandum submitted by Animal Defenders International

1. EFRA has invited interested parties to submit brief written evidence on the Animal Welfare Bill, asking that comments should be confined to any significant differences between the draft version and the Bill now presented. Below is the contribution from Animal Defenders International (ADI).

Clause 1: Animals to Which the Act Applies

2. This clause holds on the inclusion of cephalopods under the proposed Act. This is inconsistent with the Animals (Scientific Procedures) Act 1986. Since the Government's stated purpose with this Bill was to draw together disparate pieces of legislation and bring consistency and modern thinking into animal welfare law, this omission seems illogical.

3. Whilst ADI supports the provisions in Clause 1 that will allow other species to be included at a later date, it would seem logical to ensure that the new Act is up-to-date and in line with other legislation when it is first passed.

Clause 4: Unnecessary Suffering

4. The section has changed considerably and although many of the changes appear to represent a tidying up, we are deeply concerned at the insertion of a new paragraph 4(3)(d); an industry-protection measure in an Animal Welfare Act—we refer to the insertion of the phrase "proportionate to the purpose of the conduct".

5. For many animals, this will negate the protection of the Act and continue the situation as it stands. For example it is currently legal to beat an animal in a circus (or to perform for film or TV) until it complies with what the trainer wants; it only becomes illegal if the trainer/handler continues to beat the animal after it has complied. This particular scenario was tested at the trial of Mary Chipperfield Cawley and her husband Roger Cawley (both were convicted of cruelty to other animals). The court watched the violence used to train camels, guanacos, and elephants, and noted that, although those present did not like what they saw, it was currently legal. Likewise the violence caught on film with various other trainers (circuses and performing animals industry) remains legal.

6. An Animal Welfare Act should not allow that some level of beating, meted out as an industry norm (when no life is in danger) is "proportionate".

7. The purpose of this act is surely to bring a logical consistency towards the treatment of animals across various industries; provisions for this are dealt with in the licensing and proposed codes of practice.

8. It is entirely unnecessary and, we would argue, a significant shift in policy since the Draft, to make provision for suffering and violence in the commercial use of animals for the purposes of entertainment.

Clause 7: Fighting

9. ADI concurs with the query raised by the Royal Society for the Prevention of Cruelty to Animals (RSPCA) about this section—Defra needs to clarify whether there is a possible loophole with regard to viewing recordings of animal fights.

Clause 8: Duty of Person Responsible for Animal Welfare

10. This section has been significantly weakened since the Draft Bill. Section 3 in the Draft made specific and clear provisions which have disappeared, or been merged and weakened:

11. 8(2)(e) has lost "diagnosis and treatment"—we would regard this as a significant loss since lack of veterinary care for animals travelling with circuses is a major problem. Animals with circuses travel when pregnant and give birth on the road; when injured or sick, animals are frequently treated by workers (ADI has videotaped evidence of this).

12. 8(2)(d): the emphasis on the need of group or herding species to live with members of their own kind has been lost—the company of an animal from a completely different species may be no company at all. Circuses frequently keep inappropriate animals together, or in sight of each other.

13. 8(3): This section has weighted the Act in favour of industry protection rather than animal protection. In place of the "abandonment" section in the Draft Bill, we have a clause about the purpose of the use of animals, rather than the protection of animals. Again, this is an inappropriate and unnecessary change of direction—a significant policy shift.

14. A recent MORI opinion poll has shown that the public unequivocally opposes the use of violence in the training of performing animals. Therefore anything that would be deemed cruel when done by an individual should also be illegal when carried out during training for a performance.

Clause 10: Regulations to Promote Animal Welfare

15. Section 6 (2)(a) to (2)(c) in the Draft Bill provided a description of protection for animals in specific industries, followed by an outline of the basic needs in the construction of accommodation. Although what is now written is a broader "catch-all" which might appear to be an improvement in that it allows for new uses of animals in the future to be included, it is in fact a significantly weaker proposal as a whole.

16. Subsection (2)(l) and (m) have been removed completely. These allowed for the consideration of the welfare of animals in light of a type of commercial use:

- provision for prohibiting the keeping of animals of a specified kind in specified circumstances;
- provision for prohibiting the use of animals of a specified kind for a specified purpose.

17. The removal of these provisions in the new Clause 10 means that no matter how much evidence might be put forward from studies, that there are some circumstances where animals simply should not be used because would do so would inevitably expose them to harm or suffering—there is no provision to act globally to protect them.

18. Any future regulations will be unable to achieve any significant affect in the way animals are treated. This appears to be at odds with the views of the public, Members of Parliament, and even suggestions by EFRA after its review of the Draft Bill.

19. To rely upon case law to build protection for these animals (as has been suggested) would leave many animals exposed. For example, most zoos in the UK agree that it is not possible to keep polar bears in the zoo environment in a way that keeps them healthy and happy, both physically and mentally. Responsible zoos do not keep them. But irresponsible, low-grade operations calling themselves zoos can continue to keep such animals.

20. In the case of travelling circuses it has been shown over the course of many studies that, given the circumstances, it is simply not possible for travelling circuses to provide their animals with the space, environmental enrichment, companionship, and diet that would provide good welfare and maintain them in a healthy and happy condition. For example, animals must be loaded onto transporters when the circus breaks down to move on. Although the journey may only last for a few hours, the animals must stay in their transporters until the workers have completely set up the big top and stable tents, usually the next day. This has resulted in animals remaining in their transporters of periods of up to 30 hours (which would be unacceptable if they were farm animals). The very circumstance of the travelling circus industry drives the abuse.

21. The changes made in this new Clause 10 will create a situation where basic standards of animal welfare are different across different industries, which is confusing and illogical. We believe it will cause confusion amongst the general public, and possibly result in contradictory decisions by magistrates in different areas.

22. To allow for significantly differing standards of welfare does not draw together the legislation, update it and make it consistent, as the Government intended.

23. Subsection 10(c) makes provision for the establishment of one or more bodies with functions relating to animal welfare advice, and follows on from 6(q) in the Draft. Although this is not a change as such, and we support it in principle, we are concerned that there is no clarification in the Explanatory Notes. A body such as an Animal Welfare Committee would need authority to draft up codes and progressively move forward the legislation in line with current scientific knowledge. However, the Government's intention is unclear and in the light of the removal of key elements of the "regulation" section, more detail is urgently needed.

Clause 11: Licensing and Registration (and Clauses 21–23)

24. We believe that the current provisions for both licensing and registration are confusing. There should be just one, simple, system that everyone can understand. We strongly favour one simple licensing system with attendant regulations.

25. Regulations and codes of practice to protect the welfare of animals should not be derogated for the reason that an individual, a small business, or a small sanctuary does not have the means (either financial or organisational) to reach the standard. This is to be an Animal Welfare Act. If an enterprise cannot attain acceptable standards of animal welfare, they should not be allowed to keep animals.

Clause 12: Codes of Practice

26. If these codes are to have any meaning, they must be consistent across the different industries covered by this Act.

27. It is illogical and confusing to both public and industry if different standards are made for different industries. For example the transport regulations for farm animals prohibit some of the common practices found in travelling circuses. Regulations for animals kept in zoos, or as hobby pets such as show ponies or dogs, should not be significantly different from animals kept in circuses or with other performing animal suppliers.

Clause 30: Disqualification

28. ADI is in support of the view of the International League for the Protection of Horses (ILPH), that paragraph 30(2) sub paras (a) to (d) should include the words "or using". This would have the effect of preventing someone disqualified from keeping or owning a horse, from riding it as well—this is an important protection.

Regulatory Impact Assessment, Annex A: Proposal to Regulate Trainers and Suppliers of Performing Animals

29. Para 2 states that: "Defra veterinarians consider that there is a lack of scientific evidence to support the view that any particular form of entertainment involving animals is by its very nature cruel and therefore should be prohibited. However, there is a considerable amount of anecdotal evidence that suggests that welfare standards in some instances fall below acceptable standards."

30. However, successive studies and filmed observations have shown that welfare of animals in circuses is severely compromised: Kiley-Worthington in "Animals in Circuses", 1989, found that all species observed exhibited signs of abnormal behaviour and that some were shut in their wagons for over 90% of the time. Creamer & Phillips in "The Ugliest Show on Earth", 1998, found that various species spent 75–99% of their time in their wagons (dependant upon species, from horses to elephants).

The Current Situation:

31. The current Bill fails to address the fact that voluntary industry codes of practice have failed to prevent any of the abuses exposed within the performing animals industry. Our opposition to the proposed circus industry code can be summarised thus:

- the code put together by the Association of Circus Proprietors (ACP) and being proposed for the circus industry has been written by a ringmaster who saw nothing wrong in the actions of Mary Chipperfield Cawley at her trial, yet Cawley was subsequently convicted of cruelty;
- the code is long on concept and short on detail—it is fanciful and unrealistic;
- the ACP only represents a minority of the circus industry in the UK—not all circuses are members;
- the ACP has no money, infrastructure or power to regulate the industry or enforce standards;
- the Cawleys were both members of the ACP until their conviction.

32. Roger Cawley was in fact a Government Zoo Inspector at the same time that he was instructing his elephant keeper to keep his own elephants permanently chained in a barn, with no exercise. Voluntary codes have been tested in the industry and found wanting—it is only legislation with teeth that will genuinely protect these animals.

Travelling Circuses Versus Other Performing Animal Suppliers

33. It is necessary to differentiate between commercial animal training centres (for TV, advertising, films etc) and travelling circuses. It is now generally acknowledged that it is not possible to adequately provide for the needs of animals if they are living in temporary accommodation and moving locations from week to week for most of the year. Static circuses on permanent sites, however, should in theory be able to raise their standards to those at least equally zoos.

34. Nevertheless an enormous amount of evidence remains on videotape depicting the violence that is generally used to maintain control over performing animals, in particular, exotic (or wild) animals, especially those considered dangerous. In order to get these unwilling animals to move from one mark to another on a film set, it is considered necessary to whip, hit, shout, scream, beat, deprive of food or intimidate them in some way. This needs to be addressed clearly and separately to the issue of animals in travelling circuses.

35. Many trainers have moved from circuses to supplying animals for television, advertising and the movie industry, taking with them the same attitude and practices in training and animal husbandry. Eradicating the inevitable animal suffering of the travelling circus is a simple step, but steps must also be taken to eradicate social deprivation, abuse and violence in the performing animal industry as a whole.

Jan Creamer
Chief Executive Animal Defenders International

Tim Phillips
Campaigns Director

November 2005

Memorandum submitted by the RSPCA

1.1 The RSPCA is pleased to be able to respond to the EFRA Select Committee's request for evidence on the Animal Welfare Bill as published on 14 October 2005. We note you are interested in looking at the differences between the draft Bill and the latest version and so our comments are restricted to this exercise.

1.2 The Society has decided to focus on key areas of the Bill so, with that in mind the following information is by no means exhaustive. However, we believe the issues raised cover some of the most important and interesting areas.

1.3 For ease of reference the information has been put into a table format (please see over the page). The Society would be more than happy to respond further to any points that are of interest to the Committee.

2. General Comments:

2.1 Generally, the Society welcomes the latest version of the Bill and the new Regulatory Impact Assessment (RIA). Many of the concerns previously raised appear to have been addressed, although there are still some areas that need further attention to ensure that the Bill is effective from the day it comes into force.

2.2 The restructuring of the Bill makes it far easier to read, in particular with the enforcement provisions. The breakdown of the main offences is better as well and adds clarity. The Society is also glad to see the positive aspects of the draft Bill, such as the penalties and that much of the welfare offence has remained in the latest version.

2.3 The RIA is a much more useful document with clear costings and more detail about the provisions for the secondary legislation. Although, it is apparent from reading the annexes that the position on some of the proposals may change and this does cause concern in terms of ensuring understanding of the issues and being kept aware of the policy decisions taken by government.

2.4 The introduction into the Scottish Parliament of the Animal Health and Welfare Bill in October and the issues in the Animal Welfare Bill that have been devolved to the National Assembly for Wales such as the definition of an animal and the introduction of codes of practice, means that the potential for different standards in three regions of the UK have immeasurably increased and it is important that legislators are aware of this.

3. TABLE OF ISSUES:

Issue	*Draft Bill*	*EFRA Comments*	*Final Bill*	*RSPCA comments*
Definition of "animal"	Clause 53	— Noted there was a strong case to include cephalopods but not sufficient evidence. — Called on Defra to reassess the grounds on which the definition has been based, with the regard to evidence on inclusion of cephalopods and certain crustaceans.	Clause 1	— The Society believes that there is already enough scientific evidence to include cephalopods in the definition. — It is incongruous that the Common Octopus and immature vertebrate forms receive protection under the Animals (Scientific Procedures) Act 1986 yet will not be protected under this new Bill. — The Society believes cephalopods should be covered under the definition.
Cruelty offence	Clause 1	— Various sub-clauses should be separated into distinct offences. — The cruelty offence should be amended to make it clear that mental suffering is included.	Clause 4	— RSPCA welcomes the clarification of this offence and the separation of the different issues into distinct offences. — The Society believes the offence in clause 4(1)a should make explicit that suffering covers both physical and mental. — It is welcome that the *mens rea* element has been further clarified in the Bill.
Fighting offence	Clause 2	— The fighting offence should be amended to make it clear that the offences are committed when the preparatory acts take place and the prosecution do not have to wait for the fight to have occurred.	Clause 7	— The RSPCA does not believe that this clause adequately consolidates the existing offences relating to the fighting and baiting of animals. — The new clause changes the whole tone of the offence by making it necessary to prove a connection to a specific fight rather than fighting *per se*. — The detection of such crimes rarely takes place at actual fights, it is primarily done either before or after a fight—this new clause would add the burden of connecting the act to a specific fight which may be very difficult in some instances. — The language "participates in making, or carrying out, arrangements for animal fights" does not cover all the offences being deleted in the Protection of Animals Act 1911. — Furthermore, the new clause does not cover equipment used for fights;

Issue	*Draft Bill*	*EFRA Comments*	*Final Bill*	*RSPCA comments*
				for example being in possession of "spurs" for a cock-fight, which is currently an offence, under the Cockfighting Act 1952, would no longer be an offence as that Act is being repealed. The draft Bill provided for such an offence which covered equipment relating to all forms of fighting. — The new clause also does not make it an offence to provide premises (or parts of premises) for and make recordings of such an event unless it can be connected with a specific fight. See previous comment above re proving fighting offences. The draft contained provision for these offences.
Welfare offence	Clause 3	— Require clarification of what kind of welfare a keeper needs to ensure. — Clause 3(1) to be expressed as a positive duty of care, rather than as an offence of omission. — Supported the modified use of the five freedoms.	Clause 8	— The RSPCA believes that the welfare offence adequately addresses the issue of abandonment and that there is no need to have a separate offence. — The Society believes that the reference to "good practice" at the end of clause 8(1) could be a complex and lengthy point to discuss and prove in court. (Especially if the codes of practice do not come into force at the same time as the welfare offence). — The Society feels the original wording in the draft bill which includes reference to "reasonableness" (which has been retained in the latest version of the Bill) and "appropriate manner" (old clauses 3(1) and 3(4)) is a clearer concept for the court to grapple with. — Clause 8(3) in the final version is a new sub-clause which the Society believes should not be included. It could be utilised by those carrying out a nominally lawful purpose to argue for a lower standard of welfare for the animals kept for that purpose. For example, animals in circuses could be disadvantaged by the proprietor being able to

Issue	*Draft Bill*	*EFRA Comments*	*Final Bill*	*RSPCA comments*
				argue that the restricted ability in a circus environment to provide for the animals' needs should mitigate his liability to ensure their welfare. — This qualification is contrary to the public presentation of the welfare offence by the government as a way of ensuring animals' welfare needs are met. The Minister has publicly explained that, although practices which may be detrimental to an animal's welfare will not be banned by the bill, the safeguard is that they will be subject to the welfare offence. The insertion of the qualification in this clause detracts from this argument. — It also has the potential to create different standards of acceptable welfare for the same types of animals depending on the circumstances in which they are kept.
Licensing	Clause 6	— Did not support Defra's (then) proposal to introduce 18-month licences rather than annual ones. — Also felt that with respect to pet fairs and similar events, licences for pet fairs should apply to a single event only, and that each separate event should require a separate licence.	Clause 11, Schedule 1(5)	— Although there is no lower time limit in the Bill the RSPCA does not believe that licensing authorities would perform more frequent inspections than three years maximum in the proposal, unless this is spelled out in the secondary legislation.
Devolution	Clause 6, 7, 8, 9, 10		Clause 1(3), 10, 11, 12, 13, 14, 15, 40, 41, 42, 55, Schedule 1	— This bill raises some important practical issues. — Not only will secondary legislation be devolved but also the definition of animal. This means that there could be different regulations, codes and definitions of animals in England and Wales (and Scotland via the Animal Health and Welfare Bill). — In terms of enforcement and in order to make this legislation clear and accessible to members of the public, it is essential to ensure consistency between the jurisdictions, particularly in respect of the definition of animal.

Issue	*Draft Bill*	*EFRA Comments*	*Final Bill*	*RSPCA comments*
Secondary legislation procedure	Clause 6, 7, 8, 9	— Felt that Defra should enter into a "memorandum of understanding" with EFRA and undertake to publish in draft form any proposed regulation and inform the Committee of this.	Clause 10, 12, 13, 14, 55	— The Society is interested to see that there is a negative resolution procedure for the codes of practice (clause 13) and a positive resolution procedure for the regulations (clause 55). — The Society would be interested to know EFRA's position on this in light of their previous comments about proper consultation and consideration by Parliament on this matter.
Animals as prizes	Clause 5		Clause 9	— The Society does not believe that animals should be given as prizes under any circumstances and does not understand why Defra has amended the provisions on this matter. — Allowing animals to be given as prizes goes against the Bill's objective of securing and maintaining responsible pet ownership. — Owning an animal should be a considered act, not something that can happen by chance. (Interestingly this is the view that the Scottish Executive and other countries have taken when prohibiting the giving of animals as prizes—see clause 28 of the Scottish Bill).
Power of arrest	Clause 35			— New provisions under s24 and 24A of Police and Criminal Evidence Act will contain an applicable power of arrest which should adequately replace that currently contained in the Protection of Animals Act 1911. — We understand that the new provisions will come into effect on 1 January 2006 so there will a power of arrest for police officers for offences under this Bill.
Definition of "premises"	Clause 54	— Asked for clarification of the meaning of the words "any part of premises which is used as a private dwelling". — Recommended greater powers of entry with respect to premises which	Clause 56	— The RSPCA is concerned that the definition of "part of a premises which is used as a private dwelling" has been extended to include yards, gardens and sheds. A warrant would therefore be

Issue	*Draft Bill*	*EFRA Comments*	*Final Bill*	*RSPCA comments*
		were not only used as a private dwelling.		required to search these. — The Society's experience is that most offences involving poor welfare occur in these parts of premises. The Society accepts that entry to a private dwelling should require a warrant but the extension of the requirement for a warrant in respect of these areas will expend unnecessary time and resources (for the police and courts) and could prolong suffering. — The RSPCA believes that the definition of private dwelling should be limited to the principal dwelling building—as in many other pieces of animal welfare legislation.
Emergency powers for animals in distress	Clause 14	— Felt that the serious nature of some offences justifies inspectors and constables to enter premises, other than private dwellings, without a warrant. — Recommended that the government should clarify what is meant by "any part of premises which is used as a private dwelling".	Clauses 16 and 17	— The RSPCA welcomes clause 16 as this provides emergency powers for dealing with animals in distress, eg dogs in hot cars. — However, clause 17 exempts these powers in relation to "private dwellings". (See previous point). Again the Society understands the reasons for this. However, in an emergency situation for example, a dog hanging by its lead over a balcony or banister that is choking itself to death, there is no time to obtain a warrant. Yet it would appear this is required for such situations and so the chances of saving the animal would appear negligible.
Penalties	Clause 24	— Considered that the gravity of the offences under the Bill should be reflected in increased sentencing powers. — Recommended that certain offences (eg fighting and most serious cruelty offences) should be triable "either way" (summary or indictable) in order to give the courts the ability to impose longer sentences in appropriate cases.	Clause 28	— Although it appears on the face of the Bill that penalties have been increased from the current six months for conviction of offences under the new bill. It should be noted that the effect of "custody plus" is to limit the custodial period to a maximum of thirteen weeks. (See the explanatory notes para 102). — The Society is concerned that this provision may mean that there will not in effect be a

Issue	*Draft Bill*	*EFRA Comments*	*Final Bill*	*RSPCA comments*
				higher sentence and that convicted people will serve only a maximum of 13 weeks if they receive a custodial sentence followed by a "licence" period. This would not act as a suitable deterrence for offences, in particular the most serious offences such as fighting and some cruelty. — The Society believes that for the most serious offences a higher sentencing regime should be offered and that such offences should be triable either way.
Mutilations	Clause 2(4)	— Tail docking in dogs should be banned for cosmetic reasons, but allowed for therapeutic reasons, where it is in an animal's best welfare interests. — Supported Defra's proposal for prophylactic docking for certain breeds or types of working dogs, but recommended that certain conditions should be met to ensure there is not abuse of the system.	Clause 5	— RSPCA welcomes the ban on all mutilations on the face of the Bill. The Society agrees that tail docking of dogs should only occur where there are genuine therapeutic reasons. — Society does not believe that there is a justifiable need to allow for prophylactic docking of dogs' tails.
Circuses	Annex A	— Recommended that Defra should amend its proposals to licence the use of performing animals in circuses by distinguishing between the use of wild animals and domesticated animals, with a view to prohibiting the use of the former.	Annex A	— RSPCA believes the circuses by their very nature cannot provide an adequate environment for animals and believes, at the very least that wild animals should be prohibited from use in a circus.
Pet fairs	Annex B	— Considered that it is important for the legal status of pet fairs to be determined before Defra proceeds to draft regulations which would repeal the 1951 Act and introduce a licensing regime. — Recommended that Defra should reappraise the basis on which its proposed regime for licensing pet fairs is predicated.	Annex C	— RSPCA believes that those events that are currently illegal under the 1951 Act should continue to be prohibited. Therefore, pet fairs which involve commercial trading should be prohibited. Genuine members' only events should be allowed to continue, but only where the welfare of the animals can be protected by appropriate regulations and following good practice. — The RSPCA notes that the Government in their announcement on 26 October to a temporary ban on bird fairs due to health concerns about

Issue	*Draft Bill*	*EFRA Comments*	*Final Bill*	*RSPCA comments*
				avian influenza have implicitly acknowledged the health control problems in pet fairs which will continue even after the present avian influenza epidemic has passed.
Animal sanctuaries	Annex E	— Considered that all animal sanctuaries should be licensed regardless of size.	Annex F	— The RSPCA is concerned that Defra has replaced its proposed licensing scheme for larger animal sanctuaries with a registration requirement for all sanctuaries. This is surprising given that Defra has acknowledged the drawbacks of the current registration scheme for performing animals. — The RSPCA believes that all sanctuaries should be covered by a regulatory regime which requires inspection.
Shock collars		— Considered Defra should take further research on this matter. — Felt that electronic shock collars and perimeter fencing should be outlawed for use expect perhaps for suitably qualified veterinarians.		— Defra is proposing to undertake some research on this area. — RSPCA would support prohibition of the use and sale of electronic shock collars and perimeter fencing for training of companion animals, and electric goads for the training of performing animals and control of livestock.
Fishing		— Both commercial and recreational fishing should not be in the remit of the Bill. — Supported an exemption for fishing but wished to see welfare standards to continue to apply where appropriate.	Clause 53	— The Society believes that welfare standards should apply and that codes of practice should be referred to in the Bill. — The exemption in the Bill undermines the positive benefit of the codes of practice currently issued by angling associations.

November 2005

Memorandum submitted by International Fund for Animal Welfare (IFAW)

EXECUTIVE SUMMARY

The International Fund for Animal Welfare (IFAW) would like to focus its submission to the Committee on the following changes that have been made to the Animal Welfare Bill since its publication in draft form:

— Clause 10, "Regulations to promote welfare" (formerly Clause 6 in the draft Bill);

— The proposals in the Regulatory Impact Assessment (RIA) for Internet sales (Annex B, formerly Annex D in the draft Bill);

— The proposals in the RIA for animal sanctuaries (Annex F, formerly Annex E).

IFAW appreciates that the RIA does not strictly form part of the Bill, but it does outline the way in which the Government intends to implement much of the proposed secondary legislation. We therefore consider it is worthy of the Committee's attention.

IFAW urges the Committee to seek clarification from the Minister on the following issues:

- Whether the suggestions for uses of the regulations to promote welfare, as outlined in the non-exhaustive list in the draft Bill, would still be possible under Clause 10(2)(a) of the final Bill, and in particular, whether it would still be possible, at some point in the future, to prohibit the keeping of animals, despite this not being the Government's intention at present. (paras 9 and 10)
- Whether it is the Government's intention to create a statutory code of practice for all Internet sales of live animals, which will extend beyond sites whose deliberate purpose is to sell animals to those sites such as auction sites and chat rooms, that facilitate the sale of live animals over the Internet. (para 15)
- Why the Government has now decided licensing is not necessary for any animal sanctuaries and that registration alone will be sufficient? (para 24)
- For animal sanctuaries not open to the public and not subject to inspection through licensing, how the Government expects welfare concerns to come to light given that a sanctuary is unlikely to incriminate itself in its application for registration? (para 24)
- What steps the Government is taking now to establish capacity and standards in animal sanctuaries, and the ability of sanctuaries to cope with any increase in animals in need of re-homing following the introduction of the new welfare offence? (para 24)
- If the Government only intends to register animal sanctuaries, mostly without inspection, why is it waiting until 2009 to put this in place rather than doing it straight away, so as to be ready for any increase in the numbers of animals needing sanctuary following the introduction of the new welfare offence? (para 24)

1. The International Fund for Animal Welfare (IFAW) would like to focus its submission to the Committee on the following changes that have been made to the Animal Welfare Bill since its publication in draft form:

- Clause 10, "Regulations to promote welfare" (formerly Clause 6 in the draft Bill);
- The Regulatory Impact Assessment, specifically with regard to the proposals for Internet sales (Annex B) and animal sanctuaries (Annex F). (Formerly Annex D and Annex E respectively in the draft Bill.)

2. While IFAW appreciates that the RIA does not strictly form part of the Bill, it does outline the way in which the Government intends to implement much of the secondary legislation that will arise from the Bill. We therefore consider it is worthy of the Committee's attention.

Clause 10—Regulations to Promote Welfare

3. While IFAW is pleased to see Clause 10, Regulations to promote welfare, in the Bill, significant changes have been made to it since the Committee considered the Bill in draft form. These changes have raised some concerns and there is a need for the Government to clarify the points outlined below:

4. The clause relating to regulations to promote welfare in the draft Bill (Clause 6) contained a wide-ranging but non-exhaustive list of areas for which regulations could in particular be made (Clause 6(2) draft Bill). This list no longer remains in the final version of the Bill but has been replaced with a far more general provision through regulations to impose "specific requirements for the purpose of securing that the needs of animals are met" (Clause 10(2)(a)).

5. The removal of the list is understandable in certain cases, such as the former Clause 6(2)(h) relating to licensing, which is now covered by Clause 11 in the final Bill. However, this is not the case for many of the other suggested uses for regulations in the draft Bill, particularly those which related to prohibitions (for example, Clause 6(2) paragraphs (d)–(g), (j)–(m)).

6. IFAW is particularly disappointed to see the removal of the suggestion that regulations to promote welfare could include making provision for prohibiting the keeping of certain animals (formerly Clause 6(2)(l)). IFAW is campaigning for the keeping of primates as pets to be phased out in the UK on both conservation and welfare grounds. We are disappointed that the Government has stated in the Regulatory Impact Assessment (RIA) accompanying the final Bill that it does not intend to prohibit the keeping of animals (including primates, in particular) on welfare grounds (RIA, para 26). This would appear to be a change of focus from the possible use of regulations under this Clause in the draft Bill, where it was suggested that such regulations could be used for prohibitions on keeping certain animals or for prohibitions of certain activities.

7. The non-exhaustive list included in Clause 6 of the draft Bill was particularly useful as a guide as to what the regulations could be used for. IFAW would urge the Committee to seek clarification from the Minister as to whether the suggestions outlined in the non-exhaustive list in the draft Bill would still be possible to regulate for under Clause 10(2)(a) of the final Bill.

8. In particular, we would urge the Committee to seek clarification from the Minister as to whether it will still be possible, at some point in the future, to prohibit the keeping of animals under Clause 10 of the final Bill, regardless of whether this is the Government's intention at present.

9. IFAW would like to make one further point regarding the prohibition of the keeping of animals on welfare grounds. A specific section allowing for prohibition by regulation has been included in the Animal Health and Welfare Bill (Scotland) Bill. Should the Scottish Executive choose to prohibit the keeping of any species, this raises the prospect of cross-border inconsistencies on prohibitions if the Bill relating to England and Wales no longer allows this to take place.

Regulatory Impact Assessment (RIA)—Annex B, Proposal to Continue to Licence Pet Shops (Including Internet Selling)

10. IFAW wishes to draw the attention of the Committee to the changes in the RIA relating to how the Government proposes to address the issue of Internet sales of live animals, as outlined in Annex B (formerly Annex D in the draft Bill).

11. The RIA of the draft Bill stated, "Trading in pet animals over the Internet is not subject to the same provisions that regulate pet shops"[8]. In contrast, the RIA accompanying the final Bill states, "Anyone in the business of selling pet animals over the internet, and who is based in Great Britain, requires a licence under the Pet Animals Act 1951. This is because they are no different from a pet shop." (RIA, Annex B, p 20) This clarification in the revised RIA is a welcome statement highlighting that traders of live animals on the Internet cannot escape licensing.

12. The RIA draws a distinction between the actual selling of animals over the Internet and pet shops merely advertising their business on the Internet but without the facility to sell animals on it. The RIA goes on to point out that "there are very few Internet sites, based in England, that offer the facility to purchase companion animals". While this observation may be true of actual sites dedicated to the sale of live animals, it does not appear to acknowledge the number of sales of live animals by individuals over the Internet which occur via auction sites, chat rooms and web adverts based in the UK.

13. IFAW does not believe the Internet is a suitable forum for the trade in live animals. Purchasers do not see the condition of animals prior to purchase; it may be difficult to determine whether an animal is actually of the species claimed by the seller (some species look very similar but have different legal status that may require certain paperwork to make a sale legal); the seller may not be able to determine the age of the purchaser; and the quick and easy nature of the Internet encourages "casual" purchases without due regard to the levels of care and husbandry that will be required for the animal purchased.

14. For these reasons IFAW would rather not see the sale of live animals over the Internet and encourage website owners and Internet Service Providers (ISPs) to prohibit the advertising and sale of live animals and animal parts. However, for those site owners and ISPs who do allow the advertising and sale of live animals, there must be a statutory code of practice in place to ensure both the highest possible standards of welfare, and the legality of sales. Without such a code, the anonymous nature of sales on the Internet will undermine other aspects of the Government's proposed secondary legislation, such as raising the age limit to 16 for the purchase of pet animals (Annex D of the RIA for the final Bill), and the proposal that vendors of all pet animals provide written details on husbandry and care to prospective buyers (Annex E of the RIA).

15. Annex D in the RIA accompanying the draft Bill suggested the possibility of a statutory code of conduct to cover all Internet sales. However, the RIA accompanying the final Bill (Annex B) no longer mentions such a statutory code of practice for all Internet sales. IFAW urges the Committee to inquire as to whether it is the Government's intention to create a statutory code of practice for all Internet sales of live animals, which will extend beyond sites whose deliberate purpose is to sell animals, to those sites such as auction sites and chat rooms, that facilitate the sale of live animals over the Internet.

Regulatory Impact Assessment (RIA)—Annex F, Proposal to Register Animal Sanctuaries and Rehabilitation Centres

16. IFAW wishes to draw the attention of the Committee to the changes in the RIA relating to how the Government proposes to address the issue of animal sanctuaries, as outlined in Annex F (formerly Annex E in the draft Bill).

17. In the RIA accompanying the draft Bill, the Government proposed to licence larger animal sanctuaries and register smaller sanctuaries (Annex E, RIA of the draft Bill). It envisaged this would result in about half of the estimated 700 sanctuaries in England and Wales being licensed (on 18 month licenses) and the other half being registered.

18. Annex F of the RIA accompanying the final Bill no longer proposes to licence any sanctuaries but rather just to register them. Registration will be for a five-year period and will be subject to an endorsement by a veterinary surgeon. Furthermore, Defra expects that in most cases registration will be granted without the need for an inspection. Inspection would only take place "where the evidence submitted in support of

[8] *Launch of the draft Animal Welfare Bill,* London: Defra, Cm 6252, p 87.

an application for registration indicated that an inspection was needed" (RIA, para 49). Even if licensing were to take place, Schedule 1 of the final Bill extends the maximum licence period to three years rather than the 18 months originally suggested by Defra in the draft Bill.

19. This change of policy seems to run directly against the recommendations of the Committee in its consideration of the draft Bill (that all sanctuaries should be licensed with annual inspections), and even against some of the comments made by Defra in its response to the Committee's recommendations. For example, in its response to Committee's report, Defra agreed with the recommendation regarding the need for consultation on the definition of a sanctuary (recommendation 90), stating "consultation will also clarify in what circumstances either registration or licensing is most appropriate".[9] However, the RIA accompanying the final Bill seems to suggest Defra has made the decision that registration is most appropriate without any further consultation.

20. It is imperative that there is a clear definition of what constitutes an animal sanctuary in order for the Government or local authorities to ascertain the number of sanctuaries that presently exist. It is likely that following the introduction of the new welfare offence in the Bill, there will be an increase in the number of animals in need of re-homing. Many premises currently offering sanctuary do so with the best of intentions but feel unable to refuse to take animals they do not have the facilities or capacity to care for properly. It is vital, therefore, that the Government or local authorities are aware of what capacity exists (and to what standard) so that any new amount of animals in need of re-homing can be directed to those sanctuaries with the capacity to house them. Otherwise some sanctuaries will try and take in more animals without the capacity to care for them, which will create further welfare problems.

21. A definition of a sanctuary and a code of practice that stipulates controls with regard to capacity are therefore urgently needed following the introduction of the new welfare offence. However, the RIA does not propose to introduce even a registration scheme until 2009. Work must begin immediately to establish what capacity exists, and to what standard, if the benefits of the welfare offence are not to be lost or problems not transferred from people's homes to inappropriate sanctuaries. Furthermore, any definition must specify that the primary purpose and objective is to ensure the welfare of the animals in the sanctuary's care. This would prevent the current practice of some sanctuaries that breed and trade animals to generate funds. This practice exacerbates welfare problems if newly bred animals then go into inappropriate ownership and eventually need re-homing. A clear definition of a sanctuary would also prevent breeders and traders defining themselves as sanctuaries to circumvent controls that may be in place for breeding and trading of certain species.

22. IFAW believes that ensuring adequate welfare standards in sanctuaries can only be achieved through licensing and therefore regular inspection. Furthermore, we believe licensing schemes should be determined with regards the kinds of species held as well as the number of animals, due to the varying welfare needs of different animals. For example, the extremely complex needs of primates in sanctuaries deserve special attention, which could only be consistently provided for by licensing and regular inspection. While this may result in a few very poorly run sanctuaries closing, it would ensure that sanctuary placements for animals removed from private dwellings as a result of the new welfare offence provide adequate welfare standards or are working towards this.

23. In the RIA, Defra uses the opposition of the National Animal Sanctuaries Alliance and some independent sanctuaries as part of its justification not to recommend the licensing of sanctuaries (RIA, Annex F, p 26). This implies that there is not support for licensing from animal sanctuaries, which is in fact not the case. For example, well-established, independent sanctuaries such as Redwings Horse Sanctuary and the Monkey Sanctuary Trust both support the licensing of all sanctuaries.

24. Given the concerns outlined above, IFAW urges the Committee to seek clarification from the Minister on the following issues:

- Why the Government has now decided licensing is not necessary for any sanctuaries and that registration alone will be sufficient?
- For sanctuaries not open to the public and not subject to inspections through licensing, how the Government expects welfare concerns to come to light given that a sanctuary is unlikely to incriminate itself in its application for registration?
- What steps the Government is taking now to establish the capacity and standards in sanctuaries at present, and the ability of sanctuaries to cope with any increase in animals in need of re-homing following the introduction of the new welfare offence?
- If the Government only intend to register sanctuaries and mostly without inspection, why is it waiting until 2009 to put this in place rather than doing it straight away, so as to be ready for any increase in the numbers of animals needing sanctuary following the introduction of the new welfare offence?

November 2005

[9] House of Commons, Environment, Food and Rural Affairs Committee, The Draft Animal Welfare Bill: Government Reply to the Committee's Report, Fourth Special Report of Session 2004–05, February 2005, London: The Stationery Office, HC 385, p 34.

Memorandum submitted by National Gamekeepers' Organisation

1. The National Gamekeepers' Organisation is pleased to make the following short comments to the EFRA Committee considering the recently published Animal Welfare Bill.

2. For the record, the NGO was founded in 1997 and now has over 9,500 members. It represents the gamekeeping profession in England and Wales. More details about the organisation can be found on our website: www.nationalgamekeepers.org.uk

3. The NGO has supported the concept of a revision to animal welfare legislation since it was first suggested some four years ago.

4. In general we are pleased with the Animal Welfare Bill as published. The long period of consultation has been helpful in reaching agreement.

5. The twin concepts of "prevention of harm" and "promotion of welfare" are well addressed in the Bill.

6. The idea of leaving the detail for each sector (including game rearing) to secondary legislation has our support.

7. In this context we welcome the Government's stated intention to use the existing code of the Game Farmers' Association to assist in formulating a Defra code for game rearing in due course.

8. We note the Government has also said that the Bill is not intended to affect shooting.

9. The provision of live quarry shooting depends in large measure on the work of the gamekeepers we represent. An important part of any gamekeepers work is the legal control of predatory species such as foxes, crows, magpies, rats and stoats.

10. The definition of protected animal used in the Bill (Clause 2) would include wild animals held in traps and snares.

11. Defra have confirmed in their recent response to the report of the Independent Working Group on Snares that an animal caught in a snare would also "after a time" become the responsibility of the person who set the snare (Clause 3).

12. We want to be certain that a gamekeeper using legal traps and snares in accordance with other relevant laws will not fall foul of offences under the Animal Welfare Bill in relation to caught birds and mammals. We ask for the EFRA committees' support on this point.

13. We have related concerns about the possible (mis)application of the welfare and cruelty offences to gamebirds released for shooting. Although the Government has assured us that the Bill as drafted is not intended to prevent the shooting of released birds, they have also said that the question of whether a gamekeeper might still be deemed "responsible for" his birds under Clause 3, and therefore guilty of a cruelty offence under Clause 4 if he allowed someone to shoot them, is ultimately a matter for the courts.

14. We do not think the passage of a Bill which is open to question on this point is consistent with the Government's oft-stated support for shooting and we ask for the EFRA committees' support in tightening this up.

November 2005

Memorandum submitted by Game Farmers' Association

1. The Game Farmers' Association welcomes the Westminster Animal Welfare Bill.

2. The Government made very clear in writing when the Bill was published its intention that the Bill should not affect shooting. (eg: press and public briefing on the Defra website).

3. The accompanying papers published with the Bill also make clear that secondary provisions on game rearing will be assisted by the existing and widely respected GFA Code of Practice.

4. We note and welcome that as a result, the Government estimates the cost to game rearers of any new regulations as "negligible". (Regulatory Impact Assessment).

5. We still have some concern that although there is no policy intention to restrict shooting, some clauses in the Bill, in combination, might inadvertently restrict gamebird releasing. Defra has assured us that their lawyers believe this is not the case but we will nonetheless be looking for Ministerial assurances on these detailed points during the passage of the Bill.

6. We also have concerns that the considerable powers of inspectors made under the Bill could, in the wrong hands, be used to make mischief. We will be asking for the guidance on their appointment approved by the Secretary of State (Clause 45(2) to be extended to ensure that such inspectors are appropriately trained, qualified and conduct themselves in a fair and reasonable way.

November 2005

Memorandum submitted by the Country Land and Business Association (CLA)

Introduction

1. In its submission to the Committee regarding the Bill when it was in draft form, the CLA stated that, overall, the Bill was a welcome codification and consolidation of the existing laws. Such concerns as the CLA had then were largely to do with the structure of the draft Bill, which we found rather cumbersome, and with various matters of detail.

2. The CLA is very pleased to note that the Bill has improved since the Committee's last examination.

3. However, we are still concerned with the extension of the time limits for prosecutions and the use of powers of disqualification or deprivation as an alternative to a conventional punishment. We hope that both the Committee and DEFRA will think about this again.

4. In any event, the CLA looks forward to working with DEFRA on the various pieces of secondary legislation and codes of practice.

5. We outline our comments on the Bill as follows:

A. Protected Animal and Animals for which a Person is Responsible

6. This definition is an improvement of that which appeared in the draft Bill, in that the wording is much more certain.

7. In so far as there is any uncertainty, such as regards the status of animals that have been released into the wild or wild animals that have been caught in traps etc, the CLA considers that the wording of the relevant offences is such that the scope for unforeseen or vexatious prosecutions is unlikely. Nevertheless, we suggest that a statement from the Minister as to how it is intended these powers should be used would be welcome and avoid any future uncertainty.

B. Mutilation

8. We are pleased to see that the definition of this now excludes medical treatment. This should save the need to produce regulations covering matters that most people would find uncontroversial.

C. Duty to Ensure Welfare

9. The new wording to the effect that the welfare needs of an animal are to be met to the "extent required by good practice" is to be welcomed, as are the references to the purpose and activity for which the animal is kept. We believe that this achieves the correct balance between ensuring that the welfare needs are catered for, whilst not imposing disproportionate burdens on the owner or person responsible.

D. Animals in Distress—Powers of Entry

10. Limiting the use of reasonable force to those occasions where entry is required before a magistrate's warrant can be obtained, incorporates a welcome element of proportionality into what might otherwise be considered excessive powers.

E. Orders in Relation in Relation to Animals Taken

11. Clause 18 is far less cumbersome than the equivalent provisions in the draft Bill as is therefore welcomed.

F. Time Limits for Prosecutions

12. The CLA remains concerned about this. Limitation periods exist for good reasons. With the passage of time recollection fade and evidence goes astray. In cases concerning animal welfare animals recover and wounds heal, possibly the animal will have been destroyed. All of these factors go against the possibility of a fair trial. As such, we remain of the view that the interests of justice require that the present position be retained.

G. Deprivation/Disqualification

13. We remain of the view that to deprive someone convicted of a welfare offence of the ownership of the animal can never be an appropriate alternative to a conventional punishment as is apparently envisaged by clause 29 and 30 and the wording "instead or in addition to dealing with him in any other way". Of course, it is right that a person should be deprived of an animal if the welfare needs of the animal require it, but that is not the same as it being a punishment.

14. To say otherwise is just vindictive and creates uncertainty. Is the intention that, with deprivation, there should be a reduction in, say, the length of a custodial sentence that would otherwise be imposed? If not there will be inconsistency in the sentencing of two people convicted of the same offence. If so, how will it work? Will so many weeks be deducted from a term of imprisonment in respect of each animal taken? Should the number of weeks be the same for a cow as for a sheep? This strikes us as, in practice, being very arbitrary.

15. Punishment should take the conventional forms of a fine or imprisonment. Deprivation or disqualification should only be available when required by animal welfare considerations and be in addition to the punishment.

H. Inspectors

16. The introduction of a list of persons considered suitable to be local authority inspectors and guidance on how they may be appointed is welcomed and should reduce the possibility of an inappropriate person being given authority under the Bill.

I. Protection of Animals (Amendment) Act 2000

17. We welcome the repeal of the Protection of Animals (Amendment) Act 2000 and the removal of the proposal in the draft Bill to introduce any equivalent powers. As we noted previously, it is wholly inappropriate to give statutory powers to a pressure group, particularly ones that have adopted an overt campaigning role.

November 2005

Memorandum submitted by the National Farmers Union

1. The NFU submitted evidence to the Committee's inquiry into the draft Animal Welfare Bill in August and October 2004. We believe that the Committee's report on the Bill, published last December, which contained a number of constructive criticisms with which we agreed, has been instrumental in persuading Defra to develop the improved Bill now before Parliament. We confine our comments to changes of note from the draft Bill.

2. Clause 4, now labelled "unnecessary suffering" (previously "cruelty") is now clearer than its predecessor, and it is sensible to give mutilation its own clause (clause 5). We expect the Government to exempt the well-established farm animal procedures from the mutilation offences, and welcome the duty to consult in subsection (5).

3. The Bill has recast the previous approach to a new offence concerning welfare, and we believe the formula based on the need to take reasonable steps to ensure the needs of animals are met to the extent required by good practice in clause 8 is now much clearer and fairer, and can be used to encourage good welfare practice by owners and keepers of animals.

4. With regard to the wide-ranging power to make regulation to promote welfare (clause 10), we welcome the Government's acceptance that there should be a duty to consult (subsection (6)), and that regulations will be subject to affirmative resolution approval by Parliament. It remains our view, however, that the minister (or National Assembly) should be guided by "science not sentiment" in making regulations; the relevance of scientific evidence is now built into the definition of protected animals (clause 1) and should be built into this clause too.

5. The powers to make welfare codes for farm animals in the 1968 legislation (subsumed in this Bill) allows time for persons to adjust to code requirements and we would wish to see this replicated in clause 12. We still find the "default" approach to Parliamentary approval of codes in clause 13 (described as "a version of the negative resolution procedure" in the explanatory notes to the Bill) as odd, relying it seems on Parliament being vigilant if it wants to query the content of codes.

6. Regarding relieving animals in distress we support the powers in clause 16 in principle, but we are concerned that under subsection (11) an owner could be faced with a bill for an inspector's expenses even where no proceedings for unnecessary suffering have taken place. The need for inspectors to act reasonably and in good faith is recognised in clause 45 and we hope that this issue will be examined carefully as the Bill proceeds.

7. Nothing in the powers of entry in clause 17 obliges inspectors or the police to comply with any need there may be to respect biosecurity to prevent the spread of animal disease. Either the Bill should be amended to cover this, or it should be put in place by other regulations.

8. Whilst we understand that the provisions in the deprivation and disqualification clauses (nos 29 and 30) will oblige courts to provide information on why they have not decided to make deprivation or disqualification orders, we are concerned at the risk of a presumption in favour of such orders being made over and above the penalties for persons convicted of offences. A relatively minor breach by a person whose livelihood depends on the keeping of animals should not lead to him in effect forfeiting his livelihood by the use of such orders. We hope that the House will look at how it can be ensured that such orders will be used appropriately and proportionately as the Bill proceeds.

November 2005

Memorandum submitted by the Peoples Dispensary for Sick Animals (PDSA)

1. I am writing to convey the views of PDSA on the Animal Welfare Bill, published on the 14 October 2005. PDSA fully supports and endorses the aims of the Animal Welfare Bill, especially the aim to introduce wider legislation with the purpose of updating the existing animal welfare provision in the UK.

A. Executive Summary

2. PDSA supports the Animal Welfare Bill and believes that it will help to ensure that owners recognised the responsibility of animal ownership. PDSA also supports the proposals under the Bill that would make it an offence to fail to provide a basic level of care for an animal.

3. PDSA is pleased that the Bill contains a radical review and welcomes the effort to modernise the existing Animal Welfare legislation. PDSA hopes that this Bill will constitute the framework for appropriate action in tackling the occasions where a companion animal, although not currently suffering, is being kept in such a way that suffering will inevitably follow. This is always going to be a difficult area to legislate for and PDSA believes that the Bill does balance the individual's privilege to own or keep a companion animal with his or her responsibility for ensuring its welfare.

4. PDSA is pleased with the emphasis on the responsibility of the care for a pet being placed with owners. The imposition of this responsibility of such a duty of care within the Bill is welcomed. It is welcomed that the Bill ensures people who own, or are responsible for, non-farmed animals will have a duty in law to ensure their animals' welfare.

B. Additional Comments

— The keeper of an animal commits an offence if he fails to take reasonable steps to ensure the animal's welfare. These needs are taken to include "the need for appropriate protection from, and diagnosis and treatment of, pain, injury and diseases". Does this have more of an impact than considered? What happens if a pet owner does not get their dog vaccinated—offering protection from disease? Clearly an understanding of the application of this worthy aim is required. Additional guidance in light of this Bill will be required by the Royal College of Veterinary Surgeons to ensure that Veterinary Surgeons are put into difficulties with regard to client compliance to the Bill.

— Similar to the promotion of welfare of farmed animals, PDSA welcomes the fact that this Bill will provide powers to introduce secondary legislation and codes of practice to protect the welfare of non-farmed species. This is of particular value as scientific knowledge and the understanding of animal welfare issues do change. Ensuring that such changes can be enacted is of vital importance to ensure the long term credibility and ongoing effective implementation of Animal Welfare legislation in the UK.

— PDSA supports a ban on mutilations-such as the tail docking of dogs—subject to exceptions that are limited to good, sound and evidence based reasons for the procedure. PDSA would recommend the inclusion of the term "evidence based" in any justification and believes that the Bill currently does not enable this requirement.

— PDSA would also continue to call that the Bill ensures animal breeders phase out certain characteristics in cats and dogs that result in a compromise of the breed's health and welfare. This Bill would actually provide the ideal forum for such legislation. Whilst breeding out of such detrimental characteristics is a long term objective, PDSA feels that a regulatory framework should be in place and incorporated within this Bill rather than rely upon voluntary codes of practice. Our experience through our own Veterinary services indicates that the health and welfare of many breeds has to date been compromised by inappropriate selective breeding. PDSA believes that this must be incorporated within the Bill to impact on this important aspect of the promotion and protection of Animal Welfare.

— Section 16 allows an inspector or constable to take whatever steps need to be taken to alleviate the animals suffering. Subsection (4) allows an inspector or constable to kill an animal without waiting for a vet. Whilst these are rare occurrences PDSA would urge that consideration is given to the practicalities of this power and whether individuals tasked with such a responsibility can discharge it effectively.

— Clause 1 defines animals as vertebrate animals other than man. A definition in the Scottish Executive Draft Animal Welfare Bill was "any non-human vertebrate, cephalopods or crustacean kept by, owned by, managed or dependent on people." Whilst recognising that subsection (3a) allows further definition to be applied through regulations PDSA would suggest consideration should be given to using the above definition for clarity and consistency given the increasingly diverse pet owning characteristics of the general public in the UK.

C. Conclusion

5. PDSA believes that the Animal Welfare Bill represents a major step forward in the legal regulation of animal welfare especially relating to companion animals. This Act provides not only the necessary emphasis on the prevention of cruelty but also the promotion of animal welfare from a much more effective and holistic basis.

6. This Bill represents a significant step forward in the requirement for increasing the awareness of animal welfare and PDSA believes that the Bill applies correctly the duty of care. The emphasis that such responsibility exists to the individuals who oversees the welfare needs of animals within their control is firmly supported.

Richard Hooker BVMS (Hons) MRCVS
Chief Veterinary Surgeon,
PDSA

November 2005

Memorandum submitted by the League Against Cruel Sports

1. The League Against Cruel Sports campaigns to protect the welfare of animals used in, or affected by, "sporting" practices.

2. This submission focuses on the differences between the draft Bill and the published Bill, but also addresses some areas where Defra do not seem to have taken on board the report of the EFRA Select Committee (first report of 2004–05)

3. There is a new definition of mutilation.

4. Our concern is that the definition is still unclear. While the phrase used, namely "interference with" sensitive tissues or bone structure, seems to prohibit the fitting of "masks" to game birds where these pierce the nasal septum, it is not clear whether it covers the fitting of bits, or the fitting of masks that rest against or cause constant pressure on sensitive tissues.

5. We note that the RCVS have not considered the issue of such treatment of game birds in 20 years.

6. We note that the policy memorandum issued alongside the Animal Health and Welfare (Scotland) Bill states that Scottish Ministers will issue a draft Order "specifying which mutilations will continue to be permitted, and the circumstances in which they will be permitted" "at the time the Bill progresses through its Parliamentary stages." We would welcome such a statement in England and Wales.

7. The Bill has dropped the clarity that abandonment does not cause a loss of responsibility. The Animal Health and Welfare (Scotland) Bill, published at about the same time as this Bill, retains the language which Defra has dropped.

8. We are particularly concerned about this downgrading given that the Select Committee concluded (para 138) the abandonment should be upgraded to a cruelty offence.

9. We sense in the Bill a distinct switch in emphasis from regulations to codes. This is concerning because there are some activities with respect to animals that are clearly incompatible with good welfare. Regulations are a more effective means of addressing such issues than codes of conduct. If an activity is clearly unacceptable, is can hardly be desirable that the prosecution should have to prove its detrimental effect each time the issue goes to court.

10. The language of the clause on regulations is much less specific; there is, in the context of the previous paragraph of this submission, no explicit power to outlaw various procedures, as was the case in the draft Bill. We are concerned at the loss of this explicit power.

11. The Bill contains a new definition of "part of a premises used as a private dwelling" which cannot be entered without a warrant. Such premises now include outhouses. We believe that this is unduly restrictive given that outhouses are often used for agricultural or industrial purposes. We would prefer a definition that reflects the difference between dwelling accommodation and adjacent non-domestic accommodation.

12. We are concerned, in relation to game rearing, that the Regulatory Impact Assessment still suggests that the cost of compliance with a code of conduct will be negligible. Both animal welfare groups like the League and industry groups like BASC have roundly criticised the use of unenriched battery cages for egg producing game birds.

13. It is particularly disappointing that Defra persist in this view after the EFRA select committee said (para 352) that it was "disturbed" by Defra's lack of knowledge of the concerns about game rearing. The fact that industry sources are expressing such concerns when Defra are not is profoundly disturbing.

November 2005

Memorandum submitted by the Captive Animals' Protection Society (CAPS)

In response to the request by the Environment, Food and Rural Affairs Committee, we submit the following comments regarding the differences between the draft version of the Animal Welfare Bill and the Bill as now presented.

1. Executive Summary

1.1 There have been some changes to the text of the Animal Welfare Bill that could have a negative impact on the welfare of animals and could hinder action in the future despite new evidence about welfare problems.

1.2 We are concerned at the change that now scraps the giving of animals as prizes altogether and instead allows it under certain circumstances. No reason has been given for this change.

1.3 Evidence about the cruelties of animal use in circuses, and pet fairs—the latter currently illegal—has been ignored.

1.4 We are concerned at the suggestion of what appears to be self-regulation of the performing animals industry.

2. Clause 8: Duty of Person Responsible for Animal Welfare

2.1 A significant change has been made to what an animal's needs shall be taken to include: Clause 8(2)(d) concerns the need for an animal to be housed with, or apart from, other animals. The Bill now excludes reference to other members of the animal's own species. Animals who would normally live with other members of their own species need to be housed in that way. The Draft Bill—Clause 3(4)(d)—did include that measure and there appears to be no good reason for removing it.

3. Clause 9: Transfer of Animals by Way of Sale or Prize to Persons Under 16

3.1 The Draft Bill (Clause 5—giving as prizes) was clear in it's intent: "A person commits an offence if he gives an animal to another as a prize."

Presumably the reason behind this clause was to end the suffering of animals who are given away without the opportunity for the winner to understand their full duty in responsibly caring for the animal.

3.2 The new Clause 9 now allows for animals to be given as prizes as long as the person giving the animals believes the recipient is not under the age of 16 years.

3.3 While there may be more opportunity for an adult to decline the prize of an animal, many people will still be receiving animals as prizes without having sufficiently understood their responsibilities or ensured they can provide for the needs of that animal. Under the new clause, children under the age of 16 would be able to win an animal as a prize as long as they were accompanied by an adult.

3.4 There appears to be no good reason to "water down" the original clause which provided a clear and unambiguous protection for animals.

4. Clause 10: Regulations to Promote Animal Welfare

4.1 We are concerned that the updated version of this section appears to have removed what were subsections (2)(l) and (2)(m) of Clause 6 of the Draft Bill. This would remove:

— provision for prohibiting the keeping of animals of a specified kind in specified circumstances;

— provision for prohibiting the use of animals of a specified kind for a specified purpose.

4.2 Our concern is that this would limit powers to act to end the use of animals in specific situations even where sufficient evidence is provided that the use of animals in such a way has serious negative impacts on their welfare.

Regulatory Impact Assessment

5. Annex A: Proposal to Regulate Trainers and Suppliers of Performing Animals

5.1 Paragraph 2, commenting on the view of Defra veterinarians that there is "a lack of scientific evidence to support the view that any particular form of entertainment involving animals is by its very nature cruel and therefore should be prohibited" is astounding.

Defra have never been able to provide any evidence to support their own view of continuing to allow the use of animals in circuses.

5.2 While published scientific data on this topic is not extensive as that on animal behavioural problems in zoos—mostly because the animal circus industry would be unwilling to allow such studies to be carried out—what studies have been published have been damning.

5.3 The study by Dr Kiley-Worthington in 1989—"Animals in Circuses"—found severe confinement to be common (big cats spent over 90% of time confined to "beastwagons") and abnormal behaviours occurred in all species of animals in circuses and in some cases occupied 25% or 30% of time. The RSPCA concluded that the data provided "clear evidence of widespread stress and suffering experienced by circus animals."

5.4 A more recent study—"The Ugliest Show on Earth, the use of animals in circuses" (Creamer and Phillips, 1998) revealed confinement, ill-treatment and violence towards animals to be common-place in circuses.

5.5 Reference is made to current industry Codes of Practice such as those produced by the Association of Circus Proprietors (ACP) and the Performing Animal Welfare Standards Initiative (PAWSI).

5.6 The ACP codes were widely criticised when they were published, as being misleading, weak and loosely worded.

In 2004 only 13 British circuses were members of the ACP and only three of those use animals (out of seven circuses currently using animals). It is clear that the ACP does not represent the animal circus industry in Britain.

The ACP also appears to have no real resources to enforce its own standards.

5.7 We are concerned that Defra are suggesting that a regulatory system for those involved with training and supplying performing animals would be run by PAWSI who are part of the performing animal industry. We have further concerns in the comment that "we would not expect individual trainers and suppliers who are regulated by PAWSI to be normally subject to local authority licensing inspections."

6. Annex C: Proposal to Licence Pet Fairs

6.1 As with the issue of animal use in circuses, we are concerned at statements made by Defra that appear to be not based on any firm evidence. For example, the comment: "There is a lack of evidence to suggest that pet fairs by their very nature cannot maintain acceptable welfare standards."

6.2 It is our view that sufficient evidence has now been submitted to show that not only would it make a mockery of an Animal Welfare Act to legalise pet fairs which were prohibited under the 1983 amendment to the Pet Animals Act 1951, but that pet fairs, by their temporary nature, cannot provide for the needs of the animals on sale.

November 2005

Memorandum submitted by The Shellfish Network

Definition of Animal

1. (All quotations are taken from the Report by Advocates for Animals, Cephalopods and Decapod Crustaceans, Their Capacity to Experience Pain And Suffering).

2. So far the definition of the term "animal" is restricted to vertebrates other than humans in the provision of the Bill. Revision has not yet included any invertebrates such as cephalopods and decapod crustaceans. At present EFRA has stated that the Committee requires yet more evidence from the scientific community that these creatures are capable of feeling pain and suffering; requirements for "proof" in determining the definition of animal.

3. Since pain and suffering are highly subjective, the scientific assessment of any capacity for these sensations lies in the method known as "argument by analogy". (p3,3) there is a wealth of scientific evidence using this method showing that decapods and cephalopods possess the capacity to experience pain and "should be given the benefit of the doubt in all human activities that have the potential to cause them suffering." (p3,3)

4. Evidence for this can be shown from the fact that cephalopods and decapod crustaceans possess a nervous system and also a nociceptive system, which is the "ability to detect and respond to potentially painful, harmful or noxious stimuli". (p3,4). To prove that a creature is capable of suffering these sensations, scientists generally need to show that:

A. The creature has nervous and related neurochemical and physiological mechanisms.

B. There is some indication that it avoids or escapes painful situations.

C. It demonstrates behaviour which indicates the mental capacity to react and respond to situations.

5. Both cephalopods and decapod crustaceans possess a nervous system and a nociceptive system. Also, opioid molecules have been found in these creatures and it is suggested that these have a role in mediating pain in crustaceans in a similar way to that found in vertebrates. These crustaeans also react to painful and threatening situations, avoiding them where possible.

6. Cephalopods have a complex brain and nervous system and are capable of "complex and flexible behaviour." (p4,6) In fact, cephalopods and decapod crustaceans can be shown to fulfil the three criteria set out by the scientific community that the creature: "(1) is in principle capable of feeling pain, (2) gives some indication in its behaviour that it feels pain, and (3) can behave in ways that show some mental capacity." (p8,4)

7. In light of this evidence, and the fact that other jurisdictions such as New Zealand, The Australian Capital Territory, Queensland and Norway have included them in their Welfare laws, we believe that cephalopods and decapod crustaceans should be included as animals in the new Draft Animal Welfare Bill and therefore given the same protection as other animals.

The Shellfish Network

November 2005

Memorandum submitted by BirdsFirst

1. We would like to thank the EFRA Committee for giving us the opportunity to make a further submission on this matter. We will be as brief as we can.

2. We understand that you wish to have comments concerning the differences between the first draft of the Bill and the later Bill as introduced in the Commons on 13 October 2005. Our main concern with the Animal Welfare Bill relates to itinerant sales of pet birds (pet markets and auctions etc) and we actually see few *significant changes* have been made between the draft Bill and the Bill as published on October 13. Since we last submitted information to you a number of events have occurred which we feel support our view that itinerant sales of birds should remain a criminal offence, as per the Pet Animals Act 1951–83 (PAA).

3. Firstly, and with regard to how the PAA is interpreted, the matter of whether a pet shop licence can be given to allow pets to be sold in a market will be the examined in the High Court early in the New Year. Secondly, the first case of avian flu has been reported in the UK in a wild-caught Amazon parrot which had been imported from Surinam for the pet trade.

4. Despite these events and the implications for human health and animal health and welfare, Defra remain as intransigent as ever and seem determined to reintroduce itinerant pet markets through a Bill which is supposed to be concerned with the welfare of animals. Defra are well aware that they have absolutely no support from any animal welfare organisations for their intentions to de-criminalise itinerant sales of pets. Indeed, many bodies including the British Veterinary Association, the British Small Animal Veterinary Association and the RSPCA have already voiced their opposition to the notion of itinerant trading in pets.

5. With regard to the "legitimacy" and public acceptance of having "licensed" pet markets, we note that Defra have persisted in failing to address points that BirdsFirst and your Committee and other animal welfare groups have raised. Defra have still not asked the public the simple open question "*Should* pets be sold at temporary pet markets?" When Defra did ask the public a clear open question "Should the sale of animals in pet shops be banned?" 58% of respondents stated that even these "ordinary" licensed (regulated) pet shops should not be selling pets (The Consultation on an Animal Welfare Bill; Defra, August 2002).

6. Despite our opposition to itinerant pet *sales* we wish to re-state that BirdsFirst (and almost all other animal welfare groups) have no opposition to any *exhibitions* of animals: it is only *sales* at temporary events that we find incompatible with the birds' welfare requirements.

7. With any new legislation, there are always going to be unforeseen consequences and we wish to raise a possible consequence of permitting pets to be sold by itinerants. If pet markets are decriminalised and an outbreak of a contagious or zoonotic disease occurs at these events, we envisage that Defra, and/or the State Veterinary Service will require special powers to try to eradicate such an outbreak as rapidly as possible. In cases of Newcastle disease or avian flu etc we consider that the relevant authorities would need powers to enter private premises to examine, remove or destroy any pet birds recently purchased at a pet fair where the disease would have been traced to. Failure to take such action would permit a route for the disease to continue to spread.

8. Defra, and the Minister himself have said on many occasions that the AW Bill is intended to "clarify" the situation with regard to pet fairs. In order for this to occur, significant changes would have to be incorporated in the AW Bill to this end. This has not happened, despite the Minister having had plenty of opportunities to do so.

9. We note, with some relief, that although the AW Bill would repeal sections 1 and 3 of the PAA, it does not repeal section 2 which states "If any person carries on a business of selling animals as pets in any part of a street or public place, or at a stall or barrow in a market, he shall be guilty of an offence." When, on 7 November 2005 the Animal Protection Agency asked Defra why section 2 of the PAA was not to be repealed in the primary legislation, Defra were unable to supply an answer and stated they would try to reply within a few days. We suspect that those writing the Bill for its introduction to the Commons overlooked the retention of section 2, and had in fact intended to repeal it as well. Despite the fact that the AW Bill is intended to "clarify" matters on this point, it plainly fails to do so.

10. Before introducing the Bill into the Commons, we feel Defra should have acknowledged their error in previously having asked a leading question with regard to whether pet fairs should be better "regulated" rather than whether they should be permitted at all. We feel Defra should have accepted your advice and, through public consultation, asked the question, "Should animals be sold as pets at pet fairs and auctions?"

11. Defra seem committed to remaining intransigent on the point of pet fairs and we assume the Minister will now ask for section 2 of the PAA to be repealed as soon as possible. Sadly, we have seen nothing done by Defra over the past few months to indicate that they intend to accept either our hopes for ending the itinerant trade, or your advice that they re-examine this issue from first principles. Such stubbornness on the simple matter of how pet animals are to be traded under the proposed legislation (which is supposed to *enhance* animal welfare) would seem worthy of further investigation.

12. Of the few changes between the draft Bill and the Bill published in the Commons is a further retrograde measure: that of retaining the act of giving animals as prizes. The earlier draft Bill had excluded the use of animals as gambler's prizes but the published version permits them. Again, and as with the issue over pet fairs, the Bill has failed to grasp the issues and address them from the point of view of animal welfare needs. We do not feel it is the function of sentient creatures to be used as prizes where the animals' fate is being determined by the vagaries of chance and gambling. Had the Bill been an "Animal *Trading* Bill" this might have been understandable (though still unacceptable). The fact that the Bill, being promoted as a major piece of "welfare" legislation fails to take on board some basic recommendations from animal welfare and veterinary groups gives those involved in animal welfare issues, cause for much concern over these aspects of this "welfare" Bill.

13. We have been told by the Minister and Defra officials that the reason for Defra not wanting to stop itinerant pet sales is that they do not want to be seen to be "banning" anything via the proposed new Bill. Section 8(2) of the Bill requires that animals' needs include "a suitable environment" the ability to "exhibit normal behaviours" and its need to be "protected from pain, suffering, injury and disease." The very makeshift nature of the itinerant trade where birds are routinely transferred between travelling cages, display cages and subjected to repeated transportation between venues renders these needs incompatible with the nature of itinerants' trading practices. In the light of this, we feel such treatment of birds would be incompatible with their welfare needs (as intended by the Bill itself) and therefore such treatment should be illegal.

Greg Glendell, BSc (Hons)

November 2005

Memorandum submitted by the Animal Protection Agency

RE: ANIMAL WELFARE BILL

We are very grateful to the EFRA Committee for the opportunity to give our further thoughts on the Animal Welfare Bill and how it differs from the draft version. Our comments are as follows:

1. During the EFRA Committee's consultation on the Draft Bill, the Animal Protection Agency (APA) submissions focused on the issue of pet markets. DEFRA's proposal was at that time to resolve the "ambiguity" that it regarded as being there with respect to the legality of pet markets by expressly legalising these events and subjecting them to a licensing regime. It appeared from the legislation that DEFRA would achieve this by introducing a licensing regime for pet fairs under Draft Bill Clause 6(2)(h) and then using the power under Clause 6(3)(f) to repeal the entirety of the Pet Animals Act 1951, Section 2 (as amended in 1983) of which makes it an offence to sell animals as pets from a market stall or in a public place. The APA regarded this as a highly retrograde step. The view that pet markets are unlawful was (and is) shared by almost every experienced local authority in the country (only two councils currently issue licences for pet markets), no less than three barristers specialising in animal welfare law, the Chartered Institute of Environmental Health, four magistrates courts' findings, and the RSPCA's legal team. It would be an ironic as

well as a wholly undesirable development if a Bill that was intended to improve animal welfare was to in fact transpire to be a vehicle through which a ban that has been in place since 1983 could be repealed.

2. The APA is therefore pleased that the Bill, as now drafted, does not appear to empower DEFRA to repeal Section 2 of the Pet Animals Act 1951 (because Clause 11(8) of the Bill only allows for the repeal of Section 1(1) of the 1951 Act). While the continued provision of Section 2 of the Pet Animals Act in the Bill is a welcome inclusion it is, however curious, because the Regulatory Impact Assessment attached to the Bill states that DEFRA maintains its intention to licence pet fairs. Given the view of the vast majority of experienced local authorities that pet fairs are prohibited by Section 2 of the 1951 Act, DEFRA would effectively be seeking to licence events that a provision of primary legislation states would involve the commission of criminal offences. In other words, the current Bill will not resolve the ambiguity that DEFRA claims existed and that it was seeking to resolve. On the contrary, the Bill seems likely to exacerbate the confusion that, for some, already exists.
3. The APA believes that the way forward would be for a very short amendment to be tabled to the Bill. This would insert a new subsection into Section 2 of the 1951 Act to ensure that any confusion about the legality of pet fairs is resolved against allowing these events to take place. The APA will be drafting such an amendment and seeking support for it from MPs in the coming weeks.
4. The APA has previously supplied the Committee with evidence (including video footage) of the appalling welfare conditions inherent to these events and the way in which they provide a conduit for the disposal of animals by dealers involved in wildlife crime (eg the sale of illegally obtained species). We will be sending further evidence to members of the Committee within the next few weeks (not least because the membership of the Committee has changed). Recent events connected to the threat of avian flu have also highlighted the dangers to human and animal health, to which the selling of animals as pets in market-type situations gives rise, and has led to a temporary EU-wide ban on pet markets (European Commission Decision 2005/745/EC).
5. We therefore urge the Committee to encourage DEFRA to embrace and carry forward into the Animal Welfare Bill the legal majority view of an existing prohibition on the carrying on of businesses of selling animals as pets at temporary events known as "pet fairs", "pet markets" and "pet sale days". Such a prohibition would not affect the exhibiting of animals at shows or meetings of hobbyists where no buying or selling of animals take place and would bring current gatherings of exotic animals and people in-line with other respectable functions such as "Crufts" (canine events that are strictly non-commercial meetings that pose no contentious threat to human or animal health and welfare). We hope that, even at this late stage, DEFRA may yet reconsider its refusal to support such an unequivocal "ban". Further, we feel that in terms of clearly defining acceptable and unacceptable "gatherings" of exotic animals, the recent emergency provisions of the Animal Health Act 1981, in response to the order from the European Commission, are most helpful. Under these provisions, brought in to prevent the introduction and dissemination of avian influenza, displays and exhibitions of pet animals are considered to be "low" to "medium risk", whereas events that involve the buying, selling or exchange of animals are considered to be "high risk" (Animal Health Act 1981, subsection Avian Influenza (Preventative Measures) Regulations 2005.
6. Although the EFRA Committee highlighted the bias and "significant deficiency" in the original consultation by DEFRA on pet markets and recommended that DEFRA "reappraise the basis on which its proposed regime for licensing pet fairs is predicated", this was seemingly ignored. DEFRA circulated a document, dated 23 June 2005, as a follow-up enquiry to the original respondees on the issue of pet markets, that set out DEFRA's understanding of both sides of the argument and respondees were asked to confirm whether or not the points listed fairly represented their views and to add to, or amend, the comments. Even from this document it was clear that the arguments against pet markets were detailed and authoritative, whereas the arguments in favour of pet fairs were disjointed and weak. As the stated purpose of DEFRA's request was merely to clarify the arguments, it did not carry the weight of a consultation exercise and therefore EFRA's recommendation has still not been complied with.
7. The proposal to legalise pet markets originated within DEFRA itself and the Minister has recently acknowledged to the APA that his Department has no support for this measure other than that from animal dealers and vested interest groups. Although DEFRA historically claimed that plans to "regulate" pet markets had good support from animal welfare organisations it has since been established that this finding came about as a result of the misleading question that was posed in the original consultation. The EFRA Select Committee criticised DEFRA for asking whether pet fairs should be better regulated rather than asking whether they should be clearly legalised. No animal welfare organisation supports a proposal to bring back pet markets. We agree with the EFRA Select Committee that DEFRA's question on pet fairs was inappropriate. Further, we believe that the inherent bias in DEFRA's question effectively deprived respondents to express a preference for the prohibition of pet fairs. Had an open question been asked in the first place then the matter would probably by now be closed. Further, while DEFRA agreed to the EFRA Committees' and others' calls to commence a fresh consultation that would ask "whether pet fairs

should be legalised" and thus avoid the previous biased question and skewed and false result that DEFRA obtained, DEFRA has instead again published its full intention to legalise pet fairs without having first conducted the promised consultation.

8. The Minister has given assurances that any further consultation on pet markets will ask "whether" and not "how" pet fairs should be legalised. However, paralleling this claim is the Minister's recent statement in response to questions from animal dealers (at a meeting of the Associate Parliamentary Group for Animal Welfare on 18 October 2005 at the House of Commons) that they will indeed be able to hold pet markets when the Bill becomes an Act. Thus, the Minister is showing contempt for the consultation process and all responsible advice to carry forward the existing ban on pet markets.
9. The matter of whether or not pet markets can be lawfully licensed will be examined in the High Court early next year. We are confident that the selling of pet animals in public places and markets constitutes a criminal offence, whether or not the event is licensed.
10. DEFRA has shown that, on the matter of pet markets, it will even put vested interests before public health. At a meeting of the Associate Parliamentary Group for Animal Welfare on 18 October 2005 at the House of Commons, the Minister was asked by the APA, whether in the light of the avian influenza risk associated with the wild bird trade, DEFRA would immediately ban bird markets and scrap any proposals to legalise them through the Animal Welfare Bill. The Minister's reply was short and he stated only the word "No!" Two days later, the Government was *ordered* by the European Union to bring into effect an immediate ban on bird markets.
11. Bird markets—or any events where birds are traded as opposed to simply exhibited—are considered to be "high risk" by DEFRA's Exotic Disease Prevention & Control Division with regards to the risk of introducing or transmitting the avian influenza virus. Yet, DEFRA's Animal Welfare Division was warned over a year ago by the BioVeterinary Group of the public and animal health risks associated with pet markets, including avian influenza, but failed to take these warnings seriously. In our view, DEFRA's lackadaisical approach to the pet market proposal has failed comprehensively to take into account the full implications relating to animal welfare and public health. The legal basis on which DEFRA has based its decisions is also highly questionable.
12. Directly linked to the issue of pet markets, is that of quarantine. This was illustrated by the recent exposé of Stafford bird market, that took place on 9 October 2005, where birds from an infected quarantine facility appear to have been sold (Daily Mirror 7/11/05). Incidentally, this event was held in an agricultural showground and so cross-contamination to poultry cannot be ruled out.
13. The intervention of the European Union and of Animal Health Division of DEFRA regarding the imposition of the recent temporary ban on pet markets is a clear demonstration that DEFRA's intention to legalise pet markets is unsustainable. This is especially true given that the harmful implications of pet markets go well beyond animal welfare to include animal and human health and safety issues. Thus any decision by DEFRA to legalise these events would sit in isolation of any responsible decision making process.
14. Lifting the current ban on pet markets would bring about an upsurge in the exotic pet trade—both legal and illegal—and all its associated problems and as well as this it would create an unnecessary animal and public health risk. Leading experts in exotic animal welfare and biology maintain that it is impossible for standards of husbandry at markets to meet even current minimal pet shop standards. Legalising these events would lead to more cases of cruelty and neglect and more exotic animals—purchased on impulse and no longer wanted—being dumped at rescue centres, most of which have neither the facilities nor the expertise to care for them. The view of APA is that sufficient monitoring and enforcement of the laws relating to the sale of pet animals at markets would place an unmanageable burden on local authorities, the police and HM Customs & Excise.
15. We note that the Bill no longer outlaws the giving of animals as prizes. This, in our view, undermines the Bill and the concept of a "duty of care" as it encourages people to acquire animals on impulse. We hope that the ban on giving animals as prizes is reinstated at some stage in the Parliamentary process.
16. The view of the APA is that the Minister has already brought himself, his Department and Government into disrepute through his intransigence on the issue of pet markets and by bringing in any measure to legalise these events, he stands to place the nation's animal and human population at increased risk of epidemics.

November 2005

Memorandum submitted by Mike Radford, Reader in Law, University of Aberdeen

Executive Summary

While welcoming the thrust of the policy underlying the Bill, this paper draws attention to a number of matters which are thought to require further consideration if the legislation is to be effective. These include:

- The evidential threshold to include invertebrates is too high;
- The meaning of "control" in relation to the definition of a "protected animal" remains unclear;
- The offence of causing unnecessary suffering does not replicate the existing offence of cruelty;
- The offence of fighting is too narrow;
- The precise nature of the duty of care is remains ambiguous;
- The provision relating to offering animals as prizes is inconsistent with the purpose of the Bill;
- The powers of entry require clarification;
- The duty of care is not an adequate substitute for further regulation.

Introduction

1. The Animal Welfare Bill is—potentially—a very significant innovation. The changes it is intended to introduce are widely acknowledged to be necessary and overdue, and its provisions have the possibility of making a very positive impact on the treatment and protection of animals in England and Wales. It is sincerely to be hoped that it attracts a fair wind during its passage through Parliament.

2. Indeed, the Government's proposal to introduce the Bill has created a remarkable consensus. As DEFRA observed, the Department has consulted with representatives of over 200 stakeholder groups, including commercial interests, the police, local authority enforcement officers and welfare groups, and "[e]very group—regardless of its agenda—wanted to see the modernisation of existing welfare laws".[10]

3. Likewise, during the course of its pre-legislative scrutiny of the draft Bill, the Committee experienced a similar response: "In written and oral evidence to us, submitters and witnesses were almost universally supportive of the fact that the Government has put forward a draft Bill on animal welfare."[11]

4. However, while the Committee indicated that it "fully support[s] the Government initiative of seeking to modernise and improve animal welfare legislation", it has also recognised that the draft Bill raised "many important and often complex issues which must be resolved before a final Bill is introduced to Parliament."[12]

5. Undoubtedly, the Bill introduced in the House of Commons on 13 October generally represents, in respect of both its structure and its content, a very significant improvement in comparison with its predecessor. This may be attributed in large measure to the effectiveness of the pre-legislative scrutiny undertaken by the Committee. Credit must also be given to the Minister and his Bill team for the positive manner in which they have responded to many of the Committee's observations and recommendations.

6. Nevertheless, significant issues remain to be addressed. Many of these are questions of form rather than substance, and it is perhaps regrettable that the Department has not demonstrated the same degree of openness and willingness to consult on the drafting of the Bill since the Committee published its report as was the case previously. If it had been otherwise, concerns could have been expressed and, if the Department was persuaded of their merits, the Bill could have been amended administratively prior to publication.

7. In particular, the Bill contains a number of ambiguities and uncertainties as to its precise meaning, and it is essential that these be clarified. As a matter of principle, the criminal law should be as clear and unambiguous as possible in order that all those to whom it is addressed can understand the nature and extent of their respective duties, powers and responsibilities.

8. Furthermore, if the Bill is to achieve the Secretary of State's ambition to become "a watershed in ensuring that this country re-establishes itself as the pace setter for animal welfare standards throughout the world",[13] not only must its provisions be appropriate for the twenty-first century, but they must also be easily understood and straightforward to implement.

9. It is not intended to address all of the matters to which the Committee drew attention in its Report, but rather to focus on issues which are considered to be of particular significance.[14] For convenience, these are discussed in the same order as they appear in the Bill.

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[10] DEFRA, *Regulatory Impact Assessment,* October 2005, para 7.

[11] EFRA Committee, *The Draft Animal Welfare Bill,* First Report of Session 2004-2005, HC 52-I, para 9.

[12] Ibid, Summary, p 5.

[13] DEFRA, *Launch of the Draft Animal Welfare Bill,* 2004, Cm 6252, Foreword.

[14] This submission is made in a personal capacity. It should not be assumed that the views expressed are necessarily endorsed by any organisation with which the author is associated.

Definition of "Animal"

10. It is to be regretted that the Department has maintained its position that, for the time being at least, the legislation will not extend beyond vertebrates. The disparity between this position and that of the Home Office in relation to octopus vulgaris, which have been brought within the scope of the Animals (Scientific Procedures) Act 1986, is self evident.

11. In its response to the Committee's report, the Department stated:

> Defra veterinarians have reviewed the scientific evidence for the inclusion of cephalopods and crustaceans. We do not consider there is sufficient scientific evidence to suggest that crustaceans can experience pain or suffering to warrant their inclusion. The evidence for cephalopods is more balanced and we will continue to review.[15]

12. Having—presumably—kept this "more balanced" evidence under review, the explanatory notes seek to justify the Department's position with the dogmatic assertion that "[t]he Act will apply only to vertebrate animals, as these are currently the only demonstrably sentient animals".[16]

13. It is submitted that the reason for the apparent inconsistency with the approach adopted by the Home Office is that the evidential threshold in the Bill is too high. While it is accepted that the decision to extend the scope of the legislation should be based on scientific evidence, the test to be applied should be sufficiently flexible to give the benefit of the doubt to a type of animal in relation to which there is a respectable body of scientific opinion which considers that it may be sentient. To this end, it would be in the interest of animal protection if clause 1(4) were amended to read:

> The power under subsection (3)(a) or (c) may only be exercised if the appropriate national authority is satisfied, on the basis of scientific evidence, that animals of the kind concerned may be capable of experiencing pain or suffering.

The Meaning of "Protected Animal"

14. The explanatory notes clearly indicate that sub-clauses (a) and (b) of clause 2 are to be read as though the word "or" were included at the end of sub-clause (a). However, without the assistance of the explanatory notes, it is possible to interpret the definition as though the word "and" were present. Even though the wording may satisfy drafting conventions, it is submitted that, for the avoidance of doubt, the word "or" should be inserted at the end of sub-clause (a).

15. More significantly, the meaning of "control" remains undefined, notwithstanding that the Committee recommended,

> at the very least, a definition of the word "control" should be included on the face of the Bill. Such a definition should be drawn sufficiently narrowly so as to ensure that the protection offered by the draft Bill would not extend to wild animals, living in the wild.[17]

16. The Bill addresses the latter issue by virtue of clause 2(c). However, the boundary between "under the control of man" on the one hand, and "living in a wild state" on the other, continues to lack clarity. For example, is a wild animal caught in a trap to be regarded as an animal living a wild state, albeit restrained, or one that is at that time under the control of man (notwithstanding that the animal may escape and return to the wild without human intervention, or, indeed, a human even being aware that it has been caught)?

17. This may seem a somewhat esoteric issue. In the vast majority of circumstances it will be self-evident whether or not an animal is to be regarded as a "protected animal". Nevertheless, the definition is fundamental to the scope of the legislation, and its boundaries should be clear.

18. In response to the Committee's recommendation, the Department conceded that the meaning of a "protected animal" becomes "less clear when a wild animal is, for example, stranded, or trapped, or injured in a road accident."[18]

19. In the view of the Department,

> once an animal is under the control of man, it is incumbent on man not to cause it, or permit it to be caused, unnecessary suffering. We do not believe that wild animals in these circumstances should be exempted.[19]

20. The principle is wholeheartedly supported, but it still leaves open the meaning of "control".

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[15] EFRA, *Fourth Special Report,* Session 2004–05, response to Recommendation 4.
[16] DEFRA, *Animal Welfare Bill—Explanatory Notes,* October 2005, para 10.
[17] Note 2 above, para 41.
[18] Note 6 above, response to Recommendations 5 to 9.
[19] Ibid.

21. The Department reports that it has been

> advised against attempting a definition of "under the control of man" by Parliamentary Counsel since it is thought more likely to confuse than to aid interpretation. Listing or categorising every scenario that may cause an animal to come under the control of man is not possible and in most cases the meaning of "under the control of man" will be clear. In borderline cases, our view is the term should be open to interpretation by the courts.[20]

22. Although one accepts that any attempt to produce an exhaustive list would be impractical, in view of the variety of situations in which humans come into direct contact with wildlife, it would seem to be entirely desirable that the concept of "control" should be better defined.

23. "Under the control of man" is clearly intended to have a wider meaning than the concept of responsibility contained in clause 8. Moreover, the explanatory notes state that it is intended "to be a broader expression than 'captive animal', which was used in an equivalent context in the Protection of Animals Act 1911."[21] The latter term having been, as the explanatory notes acknowledge, interpreted narrowly in the courts (strange, then, that the courts are being relied upon to interpret and apply its replacement).

24. Against this background, it is appropriate to consider the situations in which the courts have decided that an animal which is otherwise unable to escape is not captive for the purposes of the 1911 Act. These include:

- stranded whales (*Steel v Rogers* (1912) 76 JP 150);
- stag injured in a road accident (*Rowley v Murphy* [1964] 2 QB 43);
- hedgehog rolled in a ball to protect itself (*Hudnott v Campbell,* QBD, *The Times,* 27 June 1986);
- rabbit restrained by throwing a coat over it (*Woods v RSPCA,* QBD, 5 November 1993); and
- fox cornered in a culvert (*Barrington v Colbert,* QBD, 10 November 1997).

25. It is not immediately apparent which, if any, of the above situations might amount to an animal being "under the control of man". Accordingly, it is a matter of concern that, without further detail, the problems associated with the notion of a "captive animal" are being re-invented.

Unnecessary Suffering

26. It is unfortunate that the term "cruelty" has been expunged from the Bill: it is a word of huge symbolic importance as well as being a concept which is widely understood (even though its precise legal meaning may not be appreciated).

27. It is therefore strongly urged that "Prevention of cruelty" be substituted for "Prevention of harm" as the sub-heading for this section. Not only would this restore the word to the legislation, it would also be more apt: it is possible to cause an animal harm without causing unnecessary suffering.

28. Of greater concern, however, is the drafting of clause 4. According to the explanatory notes, this clause is "intended to replicate the protection provided by the 1911 Act, but to simplify and update the legislation."[22]

29. While this may be the intention, it is submitted that the drafting of the clause will alter significantly the way in which offences arising from unnecessary suffering are decided by the courts.

30. Legal authority for the way in which magistrates should determine whether a person is guilty of the offence of causing unnecessary suffering under section 1(1)(a) of the 1911 Act can be found in three cases.

31. In *Ford v Wiley*, the Court held that to cause an animal to suffer in the absence of a legitimate object is *prima facie* evidence of unnecessary suffering. Where the suffering arises as a consequence of furthering a legitimate purpose, however, it suggested that determining necessity was a two-stage process. First, it must be shown that the animal's treatment was to effect an "adequate and reasonable object"; secondly, "There must be proportion between the object and the means."[23]

32. According to the court, in deciding whether a defendant was guilty, should ask:

> Whether the animal had suffered?
>
> If it had, whether the suffering was in pursuit of a legitimate purpose?
>
> If not, the suffering was unnecessary; if it was for a legitimate purpose, then one moves on to the third question:
>
> Was the amount of suffering caused proportionate to the purpose to be attained?

33. Hence the inclusion of the terms "legitimate" and "proportionate" in, respectively, 4(3)(c) and (d).

[20] Ibid.
[21] Note 7 above, para 14.
[22] Note 7, para 17.
[23] (1889) 23 QBD 203.

34. The other two cases involved the interpretation of the offence of wantonly or unreasonably doing, or omitting to do, any act which causes any animal unnecessary suffering. In *Hall v RSPCA*[24] and *RSPCA v Isaacs*,[25] the English High Court has held that "unnecessary" in this particular context (and only in this context) is to be interpreted to mean "not inevitable" or "could be avoided or terminated". This is because it is the only offence of cruelty which specifically includes the adverbs "wantonly or unreasonably" in relation to causing unnecessary suffering.

35. In *Hall*, Holland J held that considerations such as the reason for the suffering, together with its nature, intensity and duration are to be taken into account in determining whether the defendant acted unreasonably. It would be inappropriate, he said, to repeat this exercise in deciding whether the suffering was unnecessary. It is this which allows the court to equate "unnecessary" with terms such as "avoidable", or "not inevitable". According to Holland J, "unnecessary" is to be taken to mean that the statute "implicitly postulates that for an animal there may be suffering which is inevitable despite proper husbandry so as to be 'necessary'", and the word therefore "seeks to distinguish as an element for a prosecution that suffering which is not inevitable; that suffering which could be avoided or terminated and is thus 'unnecessary'". Such a meaning cannot be applied to "unnecessary" in relation to the other offences of cruelty defined by reference to unnecessary suffering, which are made up of only two components: suffering, which is unnecessary. To do so would thereby make any suffering which was not avoidable or inevitable potentially illegal, regardless of its purpose, nature, duration, or intensity. While this might be welcomed by some animal welfare campaigners, it is clearly not the intention underlying the legislation.

36. Furthermore, in *Hall*, a case involving alleged cruelty to pigs, Holland J, with whom Mann LJ agreed "unhesitatingly", held that the word "unreasonably" in the offence connoted "a purely objective test". It refers, he said, "not to a state of mind, but to a prevailing external standard so that a subjective input is essentially irrelevant". Applying this principle to the facts of the particular case, the appropriate objective standard against which to compare the defendants' conduct was that of "the reasonably competent, reasonably humane, modern pig farmer". Similarly, the same court applied an objective test in Isaacs, which arose from the failure of a dog owner to consult a veterinary surgeon. In these circumstances, the test applied by the court was whether a reasonably caring, reasonably competent owner would have made the same omission.

37. Uniquely, therefore, this particular offence of cruelty is made up of three separate components:

1. unreasonable conduct on the part of the defendant;
2. resulting in an animal suffering; and
3. that suffering being unnecessary.

38. Combining the court's interpretation of "unnecessary" under the second limb of section 1(1)(a) with its view that "unreasonably" connoted an objective standard in relation to *mens rea*, the court posed three questions:

1. Did the pigs suffer?

— If yes,

2. was the suffering necessary "in the sense of being inevitable"?

— If no,

3. would a reasonably competent, reasonably humane modern pig farmer have tolerated such a state of suffering?

— If the answer is again no, the defendant is guilty of the offence.

39. The day following their decision in *Hall*, the same two judges applied an identical formula in *Isaac*. In these circumstances, the questions posed were:

1. Did the dog suffer?

— Yes.

2. Was the suffering inevitable, in that it could not be terminated or alleviated by some reasonably practicable measure?

— No.

3. Would a reasonably caring, reasonably competent owner have made the same omission?

— No.

40. This novel analysis of the meaning and application of the second limb of section 1(1)(a) of the 1911 Act laid down in the *Hall* and *Isaacs* cases is to be welcomed both for its clarity and effect. It is easy to understand, straightforward to apply, and the objective test it imposes is greatly preferable to a subjective one based on the sensitivity and standards of the individual defendant, which may fall considerably below those of the reasonably caring and humane person.

[24] QBD, 11 November 1993.
[25] [1994] Crim LR 517.

41. Hence the terms "avoided" and "reduced" in 4(3)(a), and "a reasonably competent and humane person" in 4(3)(e).

42. The difference between the existing case law and the Bill as drafted is this: although the analysis of how the court should determine a case before it is not presented in the judgments in such a formulaic manner as suggested above, the effect of all three decisions is to provide the trial court with a distinct route by which to reach its decision. Issue A, leads to B, leads to C. The drafting of clause 4(3) is quite different. While some of the terminology is clearly drawn from the case law, the way in which the sub-clause is structured fails to give the court any guidance as to how it should apply these tests, let alone provide a structure by which the court may arrive at its decision. Rather, the sub-clause provides the court with a (non-exhaustive) list of relevant considerations, without any indication of how they should be applied or weighed one against the other.

43. It is submitted that, despite the claim in the explanatory notes, the effect of clause 4(3) is not to replicate the existing law, but to change it—and to change it for the worse. Not only will the meaning and application of the unnecessary suffering test change, but the case law which has provided a very valuable guide to the courts will no longer be directly applicable.

Fighting

44. It may be that most of the activities specified in clause 2(1) of the draft Bill can be included in clause 8(1)(a) of the current Bill, but for the avoidance of doubt, the former drafting would seem to be preferable.[26]

45. Furthermore, the definition of an animal fight—"an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting"—suggests that a fight has actually to take place before the offence is committed. It is submitted that clause 7 should be amended so as to state expressly that the offence may also be committed by acts preparatory to a fight, provided that the prosecution can demonstrate that the defendant intended that a fight should take place.

46. It is also a cause for concern that the offence appears to be committed only if the specified actions can be related to a specific fight, rather than to involvement in fighting generally. If this is so, it would represent a significant change from the present position.

Duty of a Person Responsible for Animal to Ensure Welfare—The Welfare Offence

47. As has been widely acknowledged, this is the most significant clause in the Bill. As such, it is essential that there is a general understanding of the nature of the duty which it imposes. Indeed, the wording is extremely unusual for defining an offence. Just how unusual can be demonstrated by the fact that there are only four instances in the entire statute book of similar wording in the definition of an offence,[27] but none is directly comparable to the present provision.

48. There are six issues which merit consideration. First, on the basis of the wording of clause 8(1), it is assumed that this is to be a strict liability offence. That is to say, the person's state of mind at the time the offence is committed is irrelevant: criminal liability turns exclusively on the person's conduct. This would be consistent with the Committee's recommendation.[28]

49. If it is indeed a strict liability offence, this is entirely welcome in terms of its impact. However, the relatively low threshold means that it is essential that there should be a general understanding as to its meaning, and consideration should be given to including safeguards against it being used in an oppressive manner. The latter point is discussed further below.

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[26] Clause 2(1) of the draft Bill provided:
A person commits an offence if he—
(a) arranges an animal fight;
(b) knowingly publicises an animal fight;
(c) uses a place, or permits a place to be used, for an animal fight;
(d) keeps a place, or permits a place to be kept, for the use of an animal fight;
(e) receives money for admission to a place which is being or is to be used for an animal fight;
(f) gives or receives money (or money's worth) by way of a bet on the outcome of an animal fight;
(g) keeps or trains an animal for the purposes of an animal fight;
(h) places a protected animal with an animal, or with a human, for the purpose of an animal fight;
(i) has in his possession anything capable of being used in connection with an animal fight with a view to its being so used;
(j) takes part in an animal fight.
Clause 7 of the present Bill provides:
A person commits an offence if he—
(a) arranges an animal fight;
(b) knowingly participates in making, or carrying out, arrangements for an animal fight;
(c) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight;
(d) takes part in an animal fight.
takes part in an animal fight.

[27] Wireless Telegraphy Act 1949, s 1B(1)(b); Theft Act 1968, s 24A(1)(c); Prevention of Oil Pollution Act 1971, s 7(1)(a); Merchant Shipping Act 1995, s 134(1)(b).

[28] Note 2, para 117.

50. Second, the English Bill uses the term "reasonable in all the circumstances", whereas the Scottish Bill omits "all". One can speculate on the significance, if any, of this difference in drafting. It is important, however, that the relevant circumstances should be circumscribed so as not to extend to factors which might excuse inadequate welfare. For example, the intention to protect animals would clearly be undermined if a court were able to take account as a mitigating factor circumstances which directly contributed to poor welfare, such as the person's ignorance or incapacity (financial, domestic, physical, or mental) to care for the animal to an acceptable standard.

51. Third, it is regrettable that the concept of "good practice" has been substituted for "appropriate manner". The latter is greatly to be preferred. "Good practice" suggests the existence of an objective standard against which a person's standard of care can be compared, and might encourage a "tick-box" mentality. "Appropriate manner" much better conveys the complex nature of welfare assessment, which involves looking at each animal as an individual, weighing a variety of factors, together with the exercise of considerable judgement.

52. Fourth, the explanatory notes categorically state that, in the opinion of the Department, clause 8 will apply to acts of abandonment. Given the wording of clause 8, it is by no means clear that it would have the general application in cases of abandonment as is suggested in the explanatory notes. The Scottish Executive has decided to retain a specific offence of abandonment. The Department has rejected a recommendation that a similar position be adopted in England and Wales.[29] It is submitted that the wording is more appropriate, and therefore more effective, given the nature of the offence, and it is strongly urged that a similar provision be included in this Bill.[30]

53. Fifth, there is a further inconsistency in the explanatory notes. While the Department offers its view of the reach of the clause in the case of abandonment and the temporary transfer of responsibility,[31] there is no mention of whether in the Department's opinion it extends to the permanent transfer of responsibility of an animal, such as a change of ownership. There is no reason in principle why a person who has been under a duty of care for such time as they have owned the animal, should not be under a responsibility to take reasonable steps to satisfy themselves that the person to whom they are transferring ownership is able adequately to ensure the needs of the animal. Such a requirement is entirely consistent with the intention underlying the legislation and, like abandonment, should be expressly provided for.

54. Finally, there is the issue of enforcement. Mention was made above that it may be necessary to provide safeguards against the oppressive enforcement of this offence. At the same time, it is important to appreciate that the impact and effectiveness of the welfare offence will not be achieved primarily through prosecution. Rather, in the vast majority of cases, its significance will be in allowing those who enforce the law to intervene, identify problems, and assist in correcting the situation.

55. To this end there has been some limited support for the provision of improvement notices to those whose standard of care is considered inadequate. This was the position adopted by the Committee.[32] Unfortunately, the Department has not been persuaded of the merits of this proposal. However, a halfway house is proposed. Both to prevent oppressive or disproportionate enforcement, and to inform and advise those whose standard of care has slipped below that which is required by law, it is suggested that, except in circumstances where an animal has been taken into possession under the authority of clause 16, the Bill should specify that no person may be prosecuted for an offence under clause 8 unless they have first been informed in writing by the person undertaking the prosecution: the basis on which it is alleged that they are in contravention of the duty of care; the steps they are advised to take to resolve the situation; and a reasonable opportunity to correct the situation. Such a measure would not impose any additional statutory powers on those to whom it was directed, but would be of general application, regardless of whether the prosecutor was bringing the prosecution under the authority of statute or in a private capacity. Failure to comply with the advice would not in itself amount to an offence.

[29] Note 2, paras 136–138.

[30] Clause 26 of the Animal Health and Welfare (Scotland) Bill provides:

(1) A person commits an offence if the person abandons an animal for which the person if responsible.

(2) A person commits an offence if the person leaves an animal for which the person is responsible and, without reasonable excuse, fails to make adequate provision for its welfare.

(3) The considerations to which regard is to be had in determining for the purposes of subsection (2), whether such provision has been made include—

(a) the kind of animal concerned and its age and state of health,

(b) the length of time for which it is, or has been, left

(c) what it reasonably requires by way of—

(i) food and water,

(ii) shelter and warmth.

[31] Note 7, paras 35 and 36.

[32] Note 2, para 242.

Prizes

56. Provisions relating to the sale of animals to children and the offering of animals as prizes were contained in separate clauses in the draft Bill. Why they now appear in the same clause is incomprehensible.

57. In particular, the amalgamation has resulted in a provision which makes it an offence to offer an animal as a prize only to a child. It is assumed that this is a mistake; if it were otherwise it would demonstrate a gross misunderstanding of why offering an animal as a prize is unacceptable. The decision to assume responsibility for an animal should only be taken after due consideration; it should be a positive decision, rather than an accident; and adequate preparation should have been undertaken before the transfer of ownership takes place. Furthermore, the person providing the animal should take reasonable steps to ensure that the needs of the animal can be met by the new owner. None of these criteria is consistent with offering an animal as a prize.

58. Clause 5 of the draft Bill should be reinstated in its original form as a separate and discrete clause.

Power of Entry for Section 16 Purposes

59. It is assumed that clause 17(2) is intended to have the effect of making it unlawful to enter a private dwelling for section 16 purposes without the authority of a warrant, rather than to impose a general prohibition on the entry to such premises. If it were otherwise, the effectiveness of clauses 16, 17 and 18 would be fatally undermined, especially in view of the regrettably wide definition of a private dwelling. Nevertheless, the way in which clause 17 is drafted has caused some confusion as to its precise meaning and application. For the avoidance of doubt over what is an extremely important decision, further consideration should be given to the drafting.

Enforcement and Regulation

60. It is important to recognise the significance of the regulatory regime which it is intended to introduce by means of secondary legislation. Although the so-called duty of care is concerned with welfare, it is predicted that, in practice, enforcement will be primarily concerned with situations in which an animal is already suffering, or is likely to suffer. However, welfare policy is about more than preventing suffering: it is attempting to promote a high quality of life.

61. The complexity of the subject is well demonstrated by the following extract from a report of the Companion Animal Welfare Council:[33]

> The term "welfare" is often used loosely to encompass two different concepts. One relates to the physical health and evolutionary fitness of animals; the other to the quality of their subjective feelings. There is much to be said for distinguishing clearly between these by employing the terms "health", "viability" and "evolutionary fitness" where these meanings are intended, and referring to "welfare" only where the quality of subjective feelings (eg pain, fear, warmth, pleasure) is at issue.That is not to say that health is irrelevant to welfare; it is certainly not—injuries and illness can result in very unpleasant feelings—but not all diseases cause welfare problems. There are many that very seriously compromise health and evolutionary fitness (for example, by causing infertility or death) but which are not associated with pain, fear or other unpleasant feelings. Such diseases are certainly serious from the point of view of health and evolutionary fitness, but they are not welfare problems.
>
> There are two difficulties associated with assessing welfare that it is helpful to identify. First, it is impossible to measure directly how an animal feels: we can only make inferences about this based on behavioural and other observations. It is appropriate therefore to be cautious in reaching conclusions about an animal's welfare. Secondly, there is a fundamental difficulty in defining precisely what constitutes good welfare. Good welfare cannot be equated with never having unpleasant feelings, because these are essential "sticks" that help keep us and other animals from harm (thirst makes us drink; pain often prevents us damaging ourselves; and so on). Is good welfare then to be defined as the absence of severely unpleasant feelings? Or does it also require the presence of pleasant feelings? If so, what feelings? And how prevalent and intense should they be? We can probably all agree that there are sensible balances to be struck here, but we may disagree about where precisely these balances lie. Again, this situation highlights the complexity of the subject and the need for caution in making hasty judgments about animal welfare.

62. With this in mind, effective regulation by way of licensing or registration of premises, personnel and activities can make a valuable contribution to raising and maintaining standards. It would be wrong to think of the duty of care as a substitute for effective regulation; rather, the two should be thought of as complementing one another.

[33] CAWC, *Report on the Welfare of Non-Domesticated Animals Kept for Companionship,* 2003, paras 5.1.1. and 5.1.2.

63. The Department should therefore be urged to press forward with its plans to introduce further regulation. Moreover, effective regulation requires knowledgeable, experienced, and competent staff to enforce it. Much responsibility will fall on local authorities. Neither the Department nor (except for a handful of honourable exceptions) local authorities have demonstrated that they have either fully recognised, let alone begun to address, this issue.

Conclusion

64. In the main, the Department's policy underlying the Bill is to be supported. However, in respect of a number of issues, it is by no means certain that the Bill as presently drafted meets the claims which are made for it in the explanatory notes. If the legislation is to succeed, these matters require urgent attention.

November 2005

Further memorandum from the RSPCA

The RSPCA found the evidence session you held last week most interesting and noted that the Minister suggested the Society may have the figures to questions you raised about statistics. I hope that the following information is of use to your consideration of the issues.

1. Animal Welfare Bill

The Society agrees with your concern about the definitions of "animal" (clause 1), "good practice" (clause 8(1)) and "lawful purpose/activity" (clause 8(3)). We hope that these and the other issues you raised will be debated further during the Bill's progress. The Minister was questioned about whether more problems of animal mistreatment were caused by children or adults (Q59) and in his response, he suggested that the RSPCA might be able to give a fairer review of this point.

The table below shows the number of juveniles convicted for cruelty to animals and as a percentage of the total conviction rate. As can be seen, the percentage rate is only 1–2% since 2002.

Year	*Total convictions*	*Juvenile convictions*	*Percentage of total convictions*
2002	910	15	1.60%
2003	928	19	2.00%
2004	870	14	1.60%

Your Committee also questioned the Minister about the likely number of cases that will occur following the Bill coming into force (Q67).

You may find the original evidence we presented to your Committee on the draft Bill helpful. *"We have said that we think that there will probably be an extra 100 or so prosecutions to begin with because as the duty of care welfare offence comes into effect that will increase, but in the long term what we should see happen is that the number of cruelty case prosecutions declines because the duty of care will be a precautionary approach, and we should see through the duty of care a more educational outlook being enforced by this legislation, so people should understand what they are doing before they get a pet animal and that should improve the conditions they are kept in."*[34]

It is very difficult to give a precise figure as no one will know the effect until the Bill comes into force, however the Society is preparing for the enactment of the Bill and is ensuring it has sufficient resources to deal with any extra casework as a result of the new offence.

The Society has been using a new welfare assessment scheme to record welfare advice given by RSPCA Inspectors where animals are suffering because owners are failing to meet their animals' needs but action cannot be taken for cruelty. Of all the people who received this advice (covering 68,732 animals) in the scheme's second year (1 June 2004–31 May 2005) some went on to ignore it (affecting 2,924 animals) and, without breaking the law, continued to neglect their pets. This may give some indication to the number of cases that may result in proceedings however, we believe that in cases where our advice was ignored, most of these owners would have followed our advice if it had been backed up by the potential for legal proceedings.

2. Avian Influenza

As an aside, the Minister was asked what percentage of birds coming into the UK are tested for diseases (Q52 and 53). The Minister responded to these questions however the Society would like to clarify this. Commission Decision 2000/666/EEC Annex C requires that:

— if sentinel chickens are used, those chickens must be tested, but only if the chickens test positive or inconclusive is there any need to test the imported birds;

[34] Q 932 EFRA Select Committee oral and written evidence on the Draft Animal Welfare Bill (HC 52-II).

— in the case of positive/inconclusive sentinel chickens, or if no chickens are used, then all imported birds must be tested if the total consignment is less than 60, but only 60 birds tested out of consignments larger than this.

Consignments of birds for the pet trade range up to 6,000 birds. So only a small proportion is actually tested.

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