RESEARCH PAPER 05/87
7 DECEMBER 2005

The *Animal Welfare Bill*

Bill No 58 of 2005-06

The *Animal Welfare Bill 2005* was published on 13 October 2005 and is due for its second reading towards the end of 2005 or the very beginning of 2006.

The Bill seeks to consolidate and modernise animal welfare legislation in England and Wales.

It is an enabling Bill under which a variety of activities and practices involving animals may be regulated. A number of these are discussed in a series of Library Standard Notes available on the Library intranet Animal Welfare Subject Page.

Oliver Bennett

SCIENCE AND ENVIRONMENT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

05/71	The *EU Accession Bill* [Bill 51 of 2005-06]	26.10.05
05/72	Afghanistan – The Culmination of the Bonn Process	26.10.05
05/73	The *Council Tax (New Valuation Lists for England) Bill* [Bill 57 of 2005-06]	01.11.05
05/74	Economic Indicators, November 2005	01.11.05
05/75	Background to the Forthcoming *Armed Forces Bill*	11.11.05
05/76	Unemployment by Constituency, October 2005	16.11.05
05/77	*Equality Bill* [Bill 85 of 2005-06]	17.11.05
05/78	*Northern Ireland (Offences) Bill* [Bill 81 of 2005-06]	17.11.05
05/79	The *Health* Bill: Part I Smokefree premises, places and vehicles [Bill 69 of 2005-06]	22.11.05
05/80	The *Health Bill* (excluding Part 1) [Bill 69 of 2005-06]	23.11.05
05/81	The *Childcare Bill* [Bill 80 of 2005-06]	23.11.05
05/82	The *Work and Families Bill* [Bill 60 of 2005-06]	24.11.05
05/83	The *Criminal Law (Amendment) (Protection of Property) Bill* [Bill 18 of 2005-06]	28.11.05
05/84	Economic Indicators, December 2005	01.12.05
05/85	The UK Parliament and European Business	02.12.05

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.uk***

ISSN 1368-8456

Summary of main points

The *Animal Welfare Bill 2005* was published on 13 October 2005 and is due for its second reading towards the end of 2005 or the very beginning of 2006.

The Bill will be the most significant piece of animal welfare legislation for nearly a century. It seeks to consolidate and modernise animal welfare legislation in England and Wales, bringing together over 20 Acts relating to farmed and non-farmed animals, some of which date from 1911. It does not relate to wild animals living in the wild.

Amongst other things it will introduce a new duty on people responsible for vertebrate animals to ensure their welfare, enabling enforcement agencies to take action if an owner is not taking all reasonable steps even where the animal is not currently suffering. It also seeks to close a number of loopholes in existing legislation as well as strengthening penalties and ensuring better enforcement of legislation. In addition it will increase from 12 to 16 the minimum age at which a child may buy an animal, and prohibit the giving of pets as prizes to unaccompanied children under the age of 16.

It is an enabling Bill under which a variety of activities involving animals will be regulated using secondary legislation. This is probably the most contentious aspect of the Bill, with activities such as tail docking, greyhound racing, and pet fairs all proposed to be regulated following Royal Assent. A number of Library Standard Notes give further information about these activities; they can be found on the Library intranet Animal Welfare Subject Page.

The Scottish Parliament is also currently updating animal welfare legislation. Information about this can be found at:

http://www.scottish.parliament.uk/business/bills/billsInProgress/animal.htm

List of Acronyms

ACPO	– Association of Chief Police Officers
ADI	– Animal Defenders International
APC	– Animal Procedures Committee
BHS	– British Horse Society
CDB	– Council of Docked Breeds
Defra	– Department for the Environment, Food and Rural Affairs
EFRA	– Environment Food and Rural Affairs Select Committee
FAWC	– Farm Animal Welfare Council
IFAW	– International Fund for Animal Welfare
ILPH	– International League for the Protection of Horses
LACORS	– Local Authorities Co-ordinators of Regulatory Services
NGO	– Non-Governmental Organisation
NFU	– National Farmers' Union
PACE	– Police and Criminal Evidence Act 1984
RIA	– Regulatory Impact Assessment
RSPCA	– Royal Society for the Prevention of Cruelty to Animals
SCL	– Society of Conservative Lawyers
SSPCA	– Scottish Society for the Prevention of Cruelty to Animals
SVS	– State Veterinary Service

CONTENTS

I Background

At present, the main piece of protection legislation for domestic animals is the *Protection of Animals Act 1911* which consolidated 19th century laws on animal welfare. It defined the basic requirement not to subject animals to unnecessary suffering. Over 20 Acts have subsequently been passed to regulate specific areas of animal welfare such as the use of animals in the performing arts, puppy farms and the tethering of horses. Examples include:

- *Performing Animals (Regulation) Act 1925*
- *Pet Animals Act 1951*
- *Cock Fighting Act 1952*
- *Abandonment of Animals Act 1960*
- *Animal Boarding Establishments Act 1963*
- *Riding Establishments Act 1964 and 1970*
- *Breeding and Sale of Dogs (Welfare) Act 1999*

More information is available on the Department for the Environment, Food and Rural Affairs (Defra) website about all of these Acts.[1]

The existing legislative framework has come under judicial criticism for ambiguities and out-dated language which have allowed loopholes in the law to occur. In addition, it is now widely accepted that animals do not suffer solely as a result of physical abuse or as a result of deliberate actions or neglect. Some commentators believe that an animal's quality of life in terms of its physiological and other needs should be adequately represented in legislation. There are also concerns that the existing legislative framework is out-dated, confusing and overly complex.[2]

Some animal welfare legislation is specific to a particular purpose such as the *Animals (Scientific Procedures) Act 1986* which lays down the rules under which animals may be experimented upon. The *Animal Welfare Bill 2005* ("the Bill") has no direct application to animals used in scientific procedures.

Defra launched a consultation on 2 January 2002 to look at ways in which animal protection legislation could be improved upon. A total of 2,351 responses were received from a variety of interested parties, amongst them animal welfare groups, commercial interests, dog breeding societies, veterinary surgeons and individual members of the public. An analysis of the replies can be found on the Defra website:

http://www.defra.gov.uk/animalh/welfare/domestic/awbillconsultanalysis.pdf

The consultation was followed by a series of meetings with stakeholder groups which culminated in the publication of a draft Animal Welfare Bill on 14 July 2004.

---

[1] http://www.defra.gov.uk/animalh/welfare/domestic/index.htm

[2] Defra, *The Consultation on an Animal Welfare Bill; An analysis of the replies*, August 2002 http://www.defra.gov.uk/animalh/welfare/domestic/awbillconsultanalysis.pdf

The response of animal welfare groups such as the RSPCA to the publication of the draft Bill was broadly positive. They welcomed the duty of care provision in the proposed legislation, the extension of powers to help animals in distress and the raising of some penalties.[3]

An area which polarised commentators was the proposed ban on docking tails (subject to certain exceptions for working dogs). The RSPCA and veterinarian associations oppose tail-docking for non-therapeutic purposes while the Kennel Club believes that cosmetic docking is a matter of choice for the owner, in consultation with a vet. Library Standard Note SN/SC/1694, Tail Docking, provides further background information on this controversial area.[4]

Following publication of the draft Bill, press articles varied in their responses, some focusing on aspects of the Bill such as the proposed ban on selling pets to under-16s and the banning of awarding animals, such as goldfish, as prizes. Prior to the draft Bill's publication, there had been press speculation that gardeners would face punishment for killing slugs and snails. This speculation proved unfounded as the draft Bill applied to vertebrates only. The draft Bill can be viewed at:

http://www.archive2.official-documents.co.uk/document/cm62/6252/6252.htm

The Environment Food and Rural Affairs Select Committee ("the Committee") scrutinised the draft Bill, leading to publication of a report on 1 December 2004. The Committee commended the Government for seeking to modernise and improve animal welfare legislation and many of the Bill's provisions. However, a number of issues were raised during the Committee's consultation process which it said 'must be resolved before a final Bill is introduced to Parliament'.[5]

A total of 101 recommendations were made by the Committee. These suggested either modifications to the Bill itself, or the policy underlying it. Some of the issues highlighted by the report included controversy surrounding the level of power granted to national authorities through delegated or secondary powers and the lack of a requirement to consult on regulations to be made under the Bill. The Committee also said that they welcomed the opportunity to consider the draft Bill but were concerned that it:

> […] was not an appropriate candidate for pre-legislative scrutiny by Parliament in the absence of the Government having first conducted its own consultation process. Defra last consulted on the policy proposals underlying the draft Bill two and a half years before its publication. Given the complexity of the draft Bill and the policy underlying it, and the widespread public interest in the legislation, we consider that it should have been subject to further consultation prior to being published for the purposes of pre-legislative scrutiny. We have worked extremely hard on the draft Bill in order to suggest what we consider are significant

[3] http://news.bbc.co.uk/1/hi/uk/3891119.stm as at 14 July 2004
[4] SN/SC/1694, http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-01694.pdf
[5] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p5

> improvements to it, and we trust that the Government will take up our suggestions.[6]

The full Committee report can be viewed at:

http://www.publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/52/5202.htm

As well as providing evidence during the Committee's inquiry, the Government gave a specific response to the report's recommendations on 3 March 2005.[7] Defra said that they welcomed the contribution that the report would make "to the preparation of the Animal Welfare Bill", and that they would address many, but not all, of the issues raised.[8] The full Government response can be viewed at:

http://www.publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/385/38502.htm

The *Animal Welfare Bill 2005* ("the Bill") was introduced to the House of Commons on 13 October 2005. Ben Bradshaw MP, Animal Welfare Minister, said:

> Once this legislation is enacted, our law will be worthy of our reputation as a nation of animal lovers. We are raising standards of animal welfare. Anyone who is responsible for an animal will have to do all that is reasonable to meet the needs of their animal. This is a much more appropriate way to ensure an animal's welfare than relying on a 94-year-old law that was only designed to prevent outright cruelty.[9]

The Defra press release that followed the introduction of the Bill stated that it would:

- Reduce animal suffering by enabling preventive action to be taken before suffering occurs.
- Improve animal welfare by introducing a duty on those responsible for animals to do all that is reasonable to ensure the welfare of their animals (for the first time for non-farmed animals).
- Simplify animal welfare legislation for enforcers and animal keepers by bringing more than 20 pieces of legislation into one.
- Deter persistent offenders by strengthening penalties and eliminating loopholes. For example, those causing unnecessary suffering to an animal will face up to 51 weeks in prison, a fine of up to £20,000, or both.
- Extend the power to make secondary legislation and bring current licensing powers into one place.
- Extend to companion animals the use of welfare codes agreed by Parliament, a mechanism currently used to ensure the welfare of farmed animals.[10]

---

[6] ibid, p6
[7] Select Committee on Environment, Food and Rural Affairs, Fourth Special Report, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385
[8] ibid, p2
[9] Defra News Release 449/05, *Raising the standards of animal welfare: new Bill published*, 14 October 2005
[10] ibid

A. Extent of animal cruelty and neglect[11]

The most comprehensive source of data for England and Wales is from the RSPCA's welfare assessment and inspectorate work. Their inspectors complete a welfare assessment form on every visit. They are used to identify welfare concerns that are not serious enough to prosecute.

In 2004 their inspectors visited 248,000 homes, farms and other premises and saw more than one million animals. Concerns were raised over the welfare standards for 69,000 animals and their owners were given advice on how to improve this. The most common problem was the lack of a clean environment (26,400 cases), but 23,500 animals had untreated injury, disease or pain and 19,400 did not have access to water. The most common group of animals involved were dogs (18,300), followed by farm animals (16,200), small domestic animals (7,600), cats (7,300) and equines (5,900). The Inspectors' advice had been ignored at year-end by 922 owners (2,900 animals). These forms were filled out for the first time in 2003. In that year the welfare of 38,500 animals caused concern to inspectors.[12]

To put these figures in context the Pet Food Manufacturers' Association estimates that in 2003 53% of all UK households owned a pet.[13] In total they estimated that there were 9.2 million pet cats and 6.5 million pet dogs in the UK. Their earlier estimates put rabbits (1.1 million), hamsters (0.86 million), budgies (0.75 million) and guinea pigs (0.73 million) as the next most popular pets.[14] In June 2004 there were 10.6 million cows, 5.2 million pigs, 35.9 million sheep and more than 160 million poultry on UK farms.[15]

1. Enforcement action and prosecutions

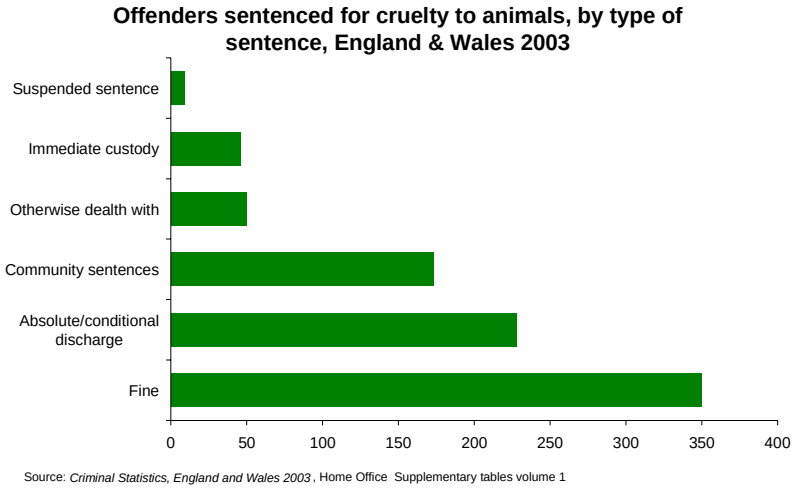
The RSPCA investigated 110,000 complaints of alleged cruelty in 2004. 157,500 animals were removed from danger or abuse in 2004; around 25,000 fewer than in each of the previous two years. 1,507 cases were serious enough to be reported to their prosecutions department, slightly more than in 2003. A total of 1,732 convictions were secured in 2004 against 870 defendants. Some of these convictions would have been connected to cases reported in previous years. The table opposite shows the most common types of animals involved in cases reported to the RSPCA prosecutions department.[16]

	2003	2004
Dogs/puppies	582	982
Cats/kittens	131	289
Horses/ponies	72	105
Rabbits	63	100
Exotics	14	88
Birds	70	70

Source: Cruelty Statistics '05, RSPCA

[11] Section provided by Paul Bolton, Social and General Statistics Section
[12] *Cruelty Statistics '05*, RSPCA
[13] *Pet ownership –facts & figures*, The Pet Food Manufacturers' Association
[14] 2001 estimates- *Health and Wellbeing –the value of pets to society*, Pet Food Manufacturers' Association press release 3 April 2002
[15] *Agriculture in the UK 2004*, Defra
[16] *Cruelty Statistics '05*, RSPCA

2. All prosecutions



Source: *Criminal Statistics, England and Wales 2003*, Home Office Supplementary tables volume 1

The total number of cases brought to court under all the legislation covering animal cruelty has been in the region of 1,300-1,500 a year in recent years.[17] This includes prosecutions brought by the RSPCA. The majority of prosecutions, between 900 and 1,100 a year over the last decade, were under the Protection of Animals Act 1911.[18] Again their total number have varied year-to-year but with no clear trend up or down. Conviction rates have been close to 80% for the whole of the last decade. The chart gives a breakdown of the sentences for defendants found guilty of animal cruelty in 2003. 350 offenders were fined (41%), half this number were given community sentences and 46 offenders (5%) were sentenced to immediate custody.

According to the RSPCA their actions led to nearly 700 banning orders in 2003 and 2004.[19]

II Animals to which the Bill applies

There are three key definitions contained in the Bill: “animal”, “protected animal” and responsible person”.

In order to establish that the Bill only applies to “demonstrably sentient” animals, the Bill gives a definition of animals to which it will apply. This definition can be extended on the basis of evidence. However, the offences in the Bill can only apply to “protected animals”, a term included in order to exclude wild animals that are not under the control of man.

In addition, a number of the specific welfare offences contained within the Bill can only apply to those animals for which someone is “responsible” i.e. someone has assumed responsibility for its day-to-day care or care for a specific purpose. If someone owns an animal they are “responsible” for it. These three definitions are discussed below.

---

17 HC Deb 18 November 2002 c2002-4w
18 ibid. and HC Deb 28 June 2000 c1135-37w
19 RSPCA Annual Review 2004

A. Definition of animal

Clause **1** of the Bill defines an animal for the purposes of the legislation as a vertebrate other than man. Vertebrates are those animals with a backbone: fishes, birds, mammals, reptiles and amphibians.[20] This definition could be extended to non-vertebrate animals (invertebrates) of any description under clause **1 (3) (4)**. The Bill also states that the definition of animal does not extend to animals in their foetal, larval or embryonic form, although this could also be extended by the relevant national authority (either the Secretary of State in England, or the National Assembly for Wales in Wales).

Extensions of the definitions to invertebrates and animals at an early stage in their development can be made by the appropriate national authority only "on the basis of scientific evidence that animals of the kind concerned are capable of experiencing pain or suffering".

1. Extension of the "animal" definition to certain invertebrates

The Committee in its scrutiny of the draft Bill heard evidence from a number of sources which argued for an extension of the definition of animal to certain invertebrate species which, they believe, are capable of feeling pain. Changes to the definition could be made either pre-enactment through the redrafting of the clause, or post-enactment through powers granted to national authorities to extend the definition of animal.

The RSPCA, the Born Free Foundation and Advocates for Animals all felt that the definition of animal should be extended to cephalopods (squid, octopus and cuttlefish). The Penguin Dictionary of Biology gives more information about these animals:

> The complexity of cephalopod eyes rivals that of vertebrates (and provides an example of convergent evolution), while the large brain enables powers of learning and shape recognition on a par with simple vertebrates. Much has to be learned about cephalopod communication; some believe that cuttlefish employ their phenomenal powers of colour and pattern change to this effect.[21]

The Pet Advisory Committee referred to "good scientific evidence that some cephalopods show sentience".[22] In addition, the RSPCA pointed out that under the *Animal (Scientific Procedures) Act 1986*, the common octopus *Octopus vulgaris* is a protected species due to its capacity for experiencing pain, suffering, distress or lasting harm.[23] In addition, the Animal Procedures Committee (APC), a statutory body which advises the Home Secretary on matters concerned with the 1986 Act, has recommended on a number of occasions that the same protection should be extended to all octopus, squid and cuttlefish:

---

[20] M. J. Clugston, *The New Penguin Dictionary of Science*, 1998, p803
[21] M. Thain & M. Hickman, *Dictionary of Biology*, Penguin Reference, 2004, p128
[22] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p12
[23] ibid, p12

> The APC has stated that there is nothing unusual about *Octopus vulgaris* as compared with other octopus, squids or cuttlefish—there is no valid functional difference which makes other octopus, squids or cuttlefish less capable of experiencing pain, distress or lasting harm. The APC also noted that the status of these species is being reconsidered in the current review of the EU Directive 86/609/EEC, and that they are covered by animal welfare legislation in other countries. New Zealand's Animal Welfare Act 1999 applies to any octopus or squid and the Australian Capital Territory's Animal Welfare Act 1992 covers all cephalopods.[24]

Evidence was also received from organisations who argued that other species should also receive protection under the Bill. The Shellfish Network argued that crabs, lobster and crayfish should be given protection due to a "significant amount of scientific research demonstrating that crabs, lobsters and crayfish suffered in the course of being trapped, transported, sold and killed".[25] The Shellfish Network compared these animals with farmed animals:

> [Crabs, lobsters and crayfish] should be included in the Bill because they are food animals. We are treating these as food animals, and therefore in all aspects we could say that these are similar to farmed animals, because once they have been caught, then they are treated in the same way: they are transported, stored and killed.[26]

The Committee stated as a comparison that the New Zealand Animal Welfare Act 1999 applies to any crab, lobster or crayfish and the Australian Capital Territory's Animal Welfare Act 1992 applies to "a live crustacean intended for human consumption".[27]

The Committee made the following statement on these points:

> We believe that a strong case has been made for the inclusion of octopus, squids and cuttlefish, and of crabs, lobsters and crayfish, in the clause 53(1) definition of "animal". The position of the Animal Procedures Committee on octopus, squids and cuttlefish is particularly persuasive in this respect. However, although it seems to us that octopus, squids and cuttlefish, and crabs, lobsters and crayfish, ought to be included in the clause 53(1) definition of "animal", we consider that we have received insufficient evidence on which to base a final conclusion on this matter. We therefore recommend that, prior to introducing a Bill to Parliament, the Government should reassess whether there are reasonable grounds to believe, on the basis of scientific evidence, that octopus, squids and cuttlefish, and crabs, lobsters and crayfish, have the capacity to experience pain, suffering, distress or lasting harm. The Government should have particular regard to evidence relied on by New Zealand and the Australian Capital Territory in choosing to include cephalopods and certain crustaceans in their respective animal welfare legislation. Whilst this assessment is being undertaken a code of practice should

[24] ibid, p13
[25] ibid, p13
[26] ibid, p13
[27] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p14

> be issued giving details of humane ways in which crabs and lobsters should be stunned prior to cooking.[28]

Crabs and lobsters are traditionally cooked while alive which some say is cruel. Humane ways in which to stun crabs and lobsters prior to cooking may include:

- severing the nervous system
- placing in a freezer prior to cooking
- placing in iced water prior to cooking
- stunning with an electric pulse

The Shellfish Network has produced a fact sheet on the humane killing of shellfish for human consumption.[29]

The Government responded:

> 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. We have noted the comments of the Committee concerning the conclusions reached by the Animal Procedures Committee and we intend to work closely with the Home Office and the European Commission, who are also reviewing this issue, as to the inclusion of cephalopods in the laws to protect animals in research.
>
> It will not be possible to issue codes of practice for animals not captured by the definition of animal, unless regulations extending that definition have already entered into force.[30]

2. The Bill

The Bill accordingly has not made changes to the definition of animal to take account of the above arguments. However, under clause **1 (3)** and **(4)** of the Bill, the appropriate national authority would be permitted to extend the definition to the species above, on the basis of scientific evidence.

The RSPCA highlights the fact that foetal and embryonic forms are excluded from the definition of animal by clause **1 (2)**, with the result that prosecutions for cruelty in relation to discarded hatchery waste will no longer be able to be taken.[31]

---

[28] ibid, p14

[29] http://www.shellfishnetwork.org.uk/facts/fact4.html

[30] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 4

[31] RSPCA personal communication, 16 November 2005

B. Definition of protected animal

The definition of "protected animal" (as well as "responsible persons") is applied in order to define those animals to which offences can be committed under the Bill.

1. Protected animal

The definition of protected animal is intended, in part, to exclude wild animals from protection under the Bill as according to Defra these animals are covered by other legislation, and the Bill is primarily about kept animals.[32]

The Committee gave more information about the legislation that protects wild animals:

- an offence of killing, injuring, taking, damaging or destroying wild birds, their nests and eggs

- an offence of intentionally or recklessly killing, injuring or taking certain wild animals which are endangered or require conservation including, for example, dolphins, porpoises and whales, bats, the red squirrel, species of amphibians, mussels, newts, shrimps, snakes and otters, and species of beetles, butterflies, moths, snails and spiders

- an offence of mutilating, kicking, beating, nailing or otherwise impaling, stabbing, burning, stoning, crushing, drowning, dragging or asphyxiating any wild mammal with intent to inflict unnecessary suffering (evidence of unnecessary suffering is not required).[33]

The Committee noted that the offences relating to wild animals are "not strictly offences of cruelty: the […] cruelty offence would arguably have a wider application than the offences outlined above".[34]

In scrutinising the draft Bill, the Committee observed that the extent to which the cruelty offence may apply to wild animals living in the wild would depend largely on the interpretation given to the phrase "temporarily in the custody or control of man". Defra officials explained to the Committee how they would expect the phrase to work in practice:

> [T]he cruelty offence […] does not extend right out to every single animal … you could have a situation where a boy is cruel to a wild animal, he shoots a catapult at it and hits it just for fun or he is cruel to it or whatever, and that at the moment falls outside the scope of this Bill … The cruelty offence is much wider in scope than the welfare offence so that you are not allowed to be cruel to an animal that is under your control. That can be a much more temporary relationship than an

[32] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p15
[33] ibid, p15
[34] ibid, p15

> animal that you are responsible for [that is, in terms of the welfare offence], or at least it is intended to be […][35]

However the Committee remained unconvinced that the definition given in the draft Bill would not apply to wild animals living in the wild. They said that:

> Defra seems to expect the courts to place a fairly narrow interpretation on "control", in particular, yet we can see nothing in the draft Bill that would necessarily lead the courts to such an interpretation. The courts could in fact interpret "control" widely, to mean that a person is merely in a position with regard to an animal such as to be able to cause it unnecessary suffering.[36]

They made the following recommendations:

> 39. We support the Government's position that the protection offered by the draft Bill should not extend to wild animals, living in the wild; such animals are better covered by other, existing legislation. However, we are unconvinced that the phrase "temporarily in the custody or control of man" in the definition of a "protected animal" will achieve the Government's intended position.
>
> 40. We therefore recommend that the Government adopt the approach taken in the Protection of Animals Act 1911 and in more recent Northern Ireland and New Zealand legislation of:
>
> - adopting a broad definition of what constitutes an animal, but
> - limiting the application of the definition by excluding specific activities from the scope of the legislation's protection, rather than by seeking to define a narrower class of "animal" (a "protected animal", in this case).
>
> Examples of activities to be excluded would include hunting or killing wild animals or animals in a wild state, including in accordance with relevant legislation for pest control or conservation purposes.
>
> 41. If the Government does not accept our recommendation then, at the very least, a definition of the word "control", as it is used in the phrase "temporarily in the custody or control of man", 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.[37]

The Government responded:

> Animals living in the wild do not fall within the definition of 'protected animal', so to that extent they are exempted. But we agree that the definitions become less clear when a wild animal is, for example, stranded, or trapped, or injured as in a road accident. Our approach is that once the animal is under the control of man, it is incumbent on man not to cause it, or permit it to be caused, unnecessary

---

[35] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p15
[36] ibid, p15-16
[37] ibid, p17

> suffering. We do not believe that wild animals in these circumstances should be exempted. We have been advised against attempting a definition of "under the control of man" by Parliamentary Counsel since it is thought more likely to confuse than aid interpretation. Listing or categorizing 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.
>
> […]
>
> We do not intend to exempt shooting from either the cruelty or the welfare offence. We consider animals at liberty in the wild, such as pheasants that are free to roam wherever they wish, to be in a wild state and not within the definition of 'protected animal'. However if a shot or hunted animal does come under the control of man, perhaps when wounded, it could fall within the definition of 'protected animal'. Generally it is difficult to envisage circumstances in which such animals would come under the control of man other than when the purpose was to kill the animal in an appropriate and humane manner. If gratuitous suffering were inflicted, it might amount to an offence of cruelty.
>
> The Bill will not affect lawful pest control activities.[38]

The relevant clause of the Bill is discussed in section 3 below (p20).

2. Fishing

As fish are vertebrates they fall within the definition of “animal”. Various witnesses to the Committee’s investigation suggested that both commercial and recreational fishing activities may contravene the cruelty offence.[39] The Committee described fishing organisations’ concerns:

> It was specifically the draft Bill's definition of "protected animal" which caused concern: the definition could apply to a fish caught in a net, [on] a rod or put in a keep net, as it could be said to be "temporarily within the custody or control of man". The clause 1 cruelty offence would therefore be engaged. A similar argument could apply to the definition of "keeper" in clause 3(2), in that a person who catches a fish could be said to be in charge of or responsible for the animal; if a court were to accept that argument, the clause 3 welfare offence would be engaged.[40]

In submitting evidence, Defra said that they felt that the draft Bill would not interfere with normal fishing activities but stated that they intended to include a specific fishing exemption in the actual Bill.[41]

---

[38] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee’s Report*, 3 March 2005, HC 385, recommendations 5-9

[39] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p17

[40] ibid, p17

[41] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p18

The Committee felt that clarification with regards to fishing was required:

> 46. We consider that, as the draft Bill is currently drafted, there is a strong argument that a person catching a fish, both in a commercial and a recreational context, could be liable to prosecution under the clause 1 cruelty offence, which would include the clause 1(4) mutilation offence in the case of fishing hooks and, perhaps, fishing nets. There is also an argument that a prosecution could be brought under the clause 3 welfare offence. We therefore doubt the Government's position that the draft Bill would be unlikely to have any impact on traditional fishing or angling practices.
>
> 47. We accept that neither commercial fishing nor recreational angling should fall within the remit of the draft Bill and we therefore support the Government's intention to exempt fishing as an activity—rather than fish as a species—from the scope of the legislation. Amendment is necessary: even if prosecutions for fishing-related activities were to prove unsuccessful when brought, the fact remains that those prosecutions should not be able to be brought in the first place. However, in exempting fishing, the Government should be careful to ensure that those persons who catch fish are not given *carte blanche* to inflict unnecessary suffering in the course of pursuing this activity; welfare standards should continue to apply where appropriate.[42]

The Government responded:

> In light of the Committee's recommendations, we will amend the draft Bill to include a specific exemption from the cruelty offence for fishing (including angling). The welfare offence will only apply to fish for which a person is responsible, and so will exclude situations commonly arising during fishing and angling. The welfare offence will, however, apply to farmed fish - which are already protected under EU Directive 98/58/EC concerning the protection of animals kept for farming purposes - and fish kept in other situations where man is responsible, such as in aquaria. If a person is fishing or angling, he will not generally assume responsibility for the fish. In cases where a person can be said to be responsible for fish, the court must take into account any lawful purpose for which an animal is kept and any lawful practice undertaken in relation to the animal in determining whether its welfare needs have been met in accordance with good practice. If a fish were kept in a stocked pond in order that it could be caught by anglers, this would be relevant in determining what steps ought reasonably to be taken to ensure its needs are met in accordance with good practice.[43]

3. The Bill

Clause **2** of the Bill gives the definition of "protected animal":

> An animal is a "protected animal" for the purposes of this Act if—
>
> (a) it is of a kind which is commonly domesticated in the British Islands,

---

[42] ibid, p18

[43] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 5-9

> (b) it is under the control of man whether on a permanent or temporary basis, or
> (c) it is not living in a wild state.

The definition retains the term "under the control of man", without a definition of the term, contrary to the Committee's recommendation.

In addition, Clause **53** of the Bill inserts a specific provision that:

> Nothing in this Act applies in relation to anything which occurs in the normal course of fishing.

The Countryside Alliance said that they were pleased to see the specific exemption for fishing on the face of the Bill.[44] The RSPCA was concerned that the Bill did not make specific reference to codes of good practice in relation to fishing.[45]

C. Definition of responsible person

The Committee raised a number of concerns about the definitions that the draft Bill used in order to describe the person who is responsible for an animal, and therefore to which certain offences apply. These included the terms "kept by man" and "keeper". The Committee said that they considered the definitions and their interrelationships in the draft Bill to be problematic and confusing.

The Government agreed and replaced these terms in the Bill with clause **3** which defines a person who is responsible for an animal:

> **3 Responsibility for animals**
>
> (1) In this Act, references to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis.
>
> (2) In this Act, references to being responsible for an animal include being in charge of it.
>
> (3) For the purposes of this Act, a person who owns an animal shall always be regarded as being a person who is responsible for it.
>
> (4) For the purposes of this Act, a person shall be treated as responsible for any animal for which a person under the age of 16 years of whom he has actual care and control is responsible.

The Explanatory Notes which accompanied the Bill explained the application of the clause:

> 15. Clauses 4(2) [unnecessary suffering caused by another person], 5(2) [mutilation], 6(2) [administration of poisons], and 8 [the provision of adequate

---

[44] Countryside Alliance, *Alliance welcomes Animal Welfare Bill*, 14 October 2005 http://www.countryside-alliance.org.uk/index.php?option=com_content&task=view&id=2116&Itemid=604

[45] RSPCA personal communication, 16 November 2005

> welfare] only apply to persons who are "responsible for an animal" as that phrase is understood under this clause. Similarly, the regulation-making power in clause 10 can be exercised only in relation to animals for which a person is responsible. The same is true for licensing and registration provisions under clause 11.
>
> 16. Responsibility for an animal is only intended to arise where a person can be said to have assumed responsibility for its day-to-day care or for its care for a specific purpose or by virtue of owning it. This will include a person who assumes responsibility for the animal temporarily (*subsection (1))* such as, for example, a veterinary surgeon, staff at boarding premises, and staff at animal sanctuaries.

III Offences

The offences contained in the draft Bill were based on offences found in section 1 of the *Protection of Animals Act 1911*, which are currently the core cruelty offences in animal welfare legislation.[46] Section 1 of the 1911 Act includes offences such as making it an offence to cruelly beat an animal, to cause it to fight or to administer a poisonous or injurious drug without reasonable excuse.

A number of the offences contained within section one of the 1911 Act were included in the draft Bill, although the fighting offence was separated into a different clause. The draft Bill also had a new offence of failing to take reasonable steps to ensure an animal's welfare (the so-called "duty of care" clause).

A. Prevention of harm (cruelty)

The legal definition of cruelty under the 1911 Act is widely drawn and is in the most part given in general terms enabling versatility in its interpretation. This is considered one of the Act's most advantageous characteristics. This has meant that, although the wording has remained largely unchanged since prior to the First World War, the situations in which proceedings can be taken under the Act have widened considerably, especially in light of developing scientific understanding.[47]

That is not to say that there are no criticisms of the 1911 Act. The reliance of the Act upon nineteenth century language and concepts has created problems, which led the English High Court to conclude that the law is "unnecessarily confusing".[48]

The Committee described the offences contained in the draft Bill:

> 61. Clause 1(1) of the draft Bill would be the nub of the cruelty offence under the draft Bill. It provides that an offence will be committed if a person causes unnecessary suffering to a protected animal, where the person knew, or ought reasonably to have known, that that suffering would result, or would be likely to

---

[46] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p21

[47] M. Radford, *Animal Welfare Law in Britain; Regulation and responsibility*, Oxford University Press, 2001, p196

[48] M. Radford, Memorandum submitted to the Committee, Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, Oral Evidence, 1 December 2004, HC 52-II 2004-05

result, from his or her act or omission to act. Clause 1(1) needs to be read in conjunction with clause 1(3), which lists factors to be considered in determining whether suffering is "unnecessary", and with clause 54(2), which defines "protected animal".

62. Clause 1 also creates other offences, all of which could be described as falling under the umbrella of 'cruelty'. These other offences can be summarised as follows:

- permitting another person to cause unnecessary suffering to an animal of which you are a keeper; this includes failing to exercise reasonable care and supervision: clause 1(2) and (10)
- mutilating a protected animal, or causing a protected animal to be mutilated, or permitting the mutilation of an animal of which you are a keeper: clause 1(4), (5), (6) and (10)
- administering an injurious drug to a protected animal, or causing an injurious drug to be taken, or permitting an injurious drug to be administered to an animal of which you are a keeper; in each case knowing the drug to be injurious: clause 1(7) and (8)
- performing an operation on a protected animal without due care, or permitting an operation to be performed without due care on an animal of which you are a keeper: clause 1(9).

63. The Government has said that clause 1 "is intended to retain all protection in the 1911 Act which remains relevant today and which has not been provided elsewhere in the [draft Bill]." The Government considers that the provisions of the 1911 Act "no longer reflect modern practice, lack legal certainty in modern circumstances and are not consistent with the [proposed] scheme of protection for vertebrates under the [draft Bill]". The Government's intention therefore seems to be [to] re-enact the substance of section 1 of the 1911 Act, in an improved and updated form.

Few witnesses commented on offences to the Committee but some criticised the complexity of the clause. The Committee agreed:

67. We consider that the clarity and utility of clause 1 would be greatly improved if it were divided into separate clauses, each setting out one offence. We recommend that each of the following sub-clauses or groups of sub-clauses should be separated out:

- sub-clauses (4), (5) and (6) (mutilation)
- sub-clauses (7) and (8) (administering injurious drugs)
- sub-clause (9) (performing an operation without due care).

[…]

69. We expressed our concern to the Minister that the definition of the offence of cruelty set out in clause 1(1) was too complex. We asked why the draft Bill did not simply provide that a person commits an offence if "an act of his or a failure of his to act causes a protected animal to suffer".

70. Defra officials explained that the offence was drafted so as to break it down into its component parts:

> … the way it is drafted is to read that, if you cause an animal to suffer and that, firstly, you knew that you were going cause it to suffer, secondly it is a protected animal and, thirdly, the suffering is unnecessary. All those three things have to happen before you commit an offence. It is not just causing a protected animal to suffer. It has to be unnecessary suffering and you have to have known that you would be causing it.

However, officials did undertake to consider whether the drafting of the offence could be simplified. We welcome the Government's undertaking that it will seek to simplify the drafting of clause 1(1).[49]

The Government responded:

> We agree that there is a logical distinction between on the one hand the offence of unnecessary suffering and the specific cases of unnecessary suffering referred to in the draft Bill. We will create separate offences as suggested by the Committee.[50]

1. The Bill

The clauses relating to "cruelty" offences in the draft Bill have been renamed and provided for in clauses **4** to **7** under the title "prevention of harm".

The Bill separates the offences as suggested by the Committee, although the specific offence contained in the draft Bill relating to the performance of cruel operations on an animal was removed and not replaced. The specific offence relating to mutilation is given by clause **5**, the administration of poisons by clause **6** and a specific fighting offence is provided for in clause **7** of the Bill.

2. *Mens rea* of unnecessary suffering offence

The offence of cruelty currently set out in the *Protection of Animals Act 1911* has both an *actus reus* (action) element and a *mens rea* (mental) element. This means that a prosecutor has to prove that a defendant not only committed an illegal act, but also "had the requisite 'guilty mind' at the time of the offence":[51] The Committee said

> […] The wording of the mens rea element of an offence should indicate whether the defendant is to be judged according to a subjective or an objective test. If the former, the prosecution will have to show that, as a matter of fact, the particular defendant before the court knew the consequences of his or her conduct (or must be assumed to have known them, on the basis of the evidence). If the latter, the prosecution will have to show that a reasonable person in the position of the defendant would have known the consequences of his or her conduct—

---

[49] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p24

[50] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 12 & 13

[51] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p25

> effectively, that the defendant *should* have been aware of the consequences, regardless of whether the defendant *was* in fact so aware.
>
> 73. The mens rea element of the cruelty offence in section 1(1)(a) of the 1911 Act is indicated by the use of the words "cruelly" and "wantonly or unreasonably doing or omitting to do". Case law has established that the appropriate test to be applied, in respect of the person directly responsible for the cruelty offence, is an objective test. Crucially, the application of an objective test in respect of this offence means that the offence applies not only to deliberate infliction of suffering but also to suffering which arises as a result of negligence or neglect. This provides protection for animals in a much wider range of circumstances than would be the case if a subjective test were to be applied in respect of this offence, because factors such as a defendant's ignorance, domestic or financial situation or health or mental state are irrelevant.[52]

Clause 1 (1) of the draft Bill stated that an offence is committed "*where the person knew, or ought reasonably to have known*, that his or her act or omission would cause an animal unnecessary suffering, or that it would be likely to have that effect".[53] The Committee felt that this neglected to clarify under what test the *mens rea* element of an offence be assessed:

> 75. The test to be applied in assessing whether the mens rea element of the clause 1(1) offence has been satisfied is therefore not entirely clear. Clause 1(1) refers to "ought reasonably have known", which indicates that an objective test is appropriate. However, clause 1(1) also refers to the concept of 'knowledge', which could be argued to indicate a subjective test. Given the approach taken in existing animal welfare law, we would have assumed that the Government intended that an objective test should be applied under clause 1(1). However, in the context of discussing the appropriateness of the proposed penalties in respect of the clause 2 fighting offence, the Minister stated:
>
> "Cruelty is not lack of attention … lack of attention comes under the welfare offence. Cruelty is deliberate cruelty which results in pretty serious suffering …"
>
> This clearly suggests that the Government intends that the clause 1(1) cruelty offence should apply only to deliberate infliction of suffering and that it should not extend to suffering which arises as a result of negligence or neglect.[54]

In addition to the above the Committee pointed out that draft clause 1 (2)[55] appeared to specify that an objective *mens rea* test be applied:

> 78. Clause 1(2) provides that a keeper of an animal would commit an offence if he or she permitted another person to cause the animal unnecessary suffering. Clause 1(10)(b) states that a keeper will be treated as having permitted

---

[52] ibid
[53] ibid
[54] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p26
[55] which specifies that a keeper is responsible for another person's actions if they do not take "reasonable care and supervision in respect of the animal"

> unnecessary suffering if he or she failed to exercise reasonable care and supervision in respect of the animal.
>
> 79. It is therefore clear that, in assessing whether the mens rea element of the clause 1(2) offence has been satisfied, an objective test is appropriate because of the use of the phrase "reasonable care and supervision". The offence of permitting unnecessary suffering would therefore extend to suffering which arises as a result of negligence or neglect on the part of a keeper but *only* where that suffering is caused by another person who is not the keeper.[56]

The Committee made the following comments:

> 80. We are extremely concerned that the Government apparently intends that the clause 1(1) cruelty offence should apply only to deliberate infliction of unnecessary suffering and that it should not extend to unnecessary suffering which arises as a result of negligence or neglect. As currently drafted, unnecessary suffering which arises as a result of negligence or neglect would appear to engage the cruelty offence only where the suffering is caused by another person who is not the keeper, as a result of the keeper's negligence or neglect. The Government's apparent position would represent a backward step in terms of animal protection: it would lessen the current protections in existing animal welfare law and would significantly restrict the scope of the cruelty offence.
>
> 81. We assume it is the Government's intention that unnecessary suffering which arises as a result of negligence or neglect should be dealt with under the clause 3 welfare offence. We consider such an approach is inappropriate for two reasons. First, the penalties available under the welfare offence are less serious than those available under the clause 1(1) cruelty offence. Second, and more importantly, we understand the purpose of the welfare offence to be to deal with those cases where the standard of care given to an animal is clearly inadequate, but where it is not possible to demonstrate that the animal has suffered unnecessarily. The distinction between the cruelty offence and the welfare offence should be whether the animal has suffered unnecessarily, not the mental state of the person who caused that suffering. The extent of an offender's mental culpability can best be reflected at the sentencing stage, where we would expect those whose negligence or neglect has caused unnecessary suffering generally to receive a lesser sentence than those who intentionally or recklessly caused such suffering.
>
> 82. We therefore recommend that the Government amend the draft Bill to make it clear that the mens rea element of the clause 1(1) cruelty offence should be assessed by means of an objective test, so that the defendant's conduct will be assessed on the basis of what a reasonable person in the position of the defendant would have known about the consequences of his or her conduct.[57]

---

[56] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p26-27

[57] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p27

The RSPCA said that they did not interpret the draft Bill in this way i.e. they felt the wording did imply an objective mental test. However, as the Committee interpreted the draft Bill in this way, they felt that it should be made more explicit on the face of the Bill.[58]

The Government said:

> The cruelty offence was always intended to capture acts of neglect where these amounted to unnecessary suffering. We agree with the Committee that it would be entirely inappropriate for acts of neglect leading to unnecessary suffering to be dealt with under the welfare offence.

It appears as though the Government concurred with the RSPCA that the draft Bill adequately stated that the objective mental test would apply as they did not indicate that they would change the wording of the relevant clause:

> We agree with the comments regarding the mens rea element and an objective mental test will apply, i.e. "knew or ought reasonably to have known".[59]

a. The Bill

The relevant clause (**4 (1)**) was not changed in light of the Committee's comments about the *mens rea* test:

> **4 Unnecessary suffering**
>
> (1) A person commits an offence if—
> (a) an act of his, or a failure of his to act, causes an animal to suffer,
> (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
> (c) the animal is a protected animal, and
> (d) the suffering is unnecessary.

The explanatory notes say that this wording would ensure the application of an objective test, contrary to what the Committee believed:

> 18. *Subsection (1)* sets out the circumstances in which a person who causes an animal to suffer commits an offence. It will be an offence to cause physical or mental suffering, whether this is by a positive act or an omission, to a protected animal where this is unnecessary and the person knew or could be expected to know that an animal would suffer as a result. The effect of paragraph (b) is to introduce an objective mental element. It will not be necessary to prove that a defendant actually knew his act or failure to act would cause suffering.[60]

---

[58] RSPCA, *Parliamentary briefing; Animal Welfare Bill*, 2005, p3

[59] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 14 - 17

[60] The Animal Welfare Bill, Bill 58, 2005-06, Explanatory Notes, p5

The RSPCA highlights, however, that the *mens rea* of the clause **6** administration of poisons offence is subjective only, so that a person does not commit an offence if they did not realise that the substance being administered is a poison.

3. Mental suffering

The cruelty offence under section 1 of the 1911 Act makes it an offence to "infuriate, or terrify any animal", which ensures that the cruelty offence encompasses the infliction of psychological abuse.[61]

The RSPCA expressed concern that the draft Bill would not adequately cover the suffering caused by psychological abuse:

> We believe that there should be an express provision to the effect that "suffering" includes suffering caused by physical or psychological factors. This is implicit under section 1(1)(a) [of the Protection of Animals Act 1911] which makes it an offence to do various things including "infuriate, or terrify an animal", but in our view it should be made explicit …[62]

Although it could be argued that the draft Bill would cover mental suffering under clause 1 (1), the Committee agreed that this should be made explicit, "whether or not that mental suffering is accompanied by physical suffering".[63]

The Government rejected this argument:

> Having discussed the matter with Parliamentary Counsel, we do not accept that it is necessary to amend the draft Bill to meet this recommendation. Suffering includes mental suffering, so to mention it specifically would both be unnecessary and would give it an inappropriate prominence and weight. In addition, we have concluded that it is not appropriate to restrict the application of the clause to specific forms of mental suffering as under the 1911 Act, i.e. infuriate and terrify. This would rule out other forms of mental suffering that might be relevant. In our view the most appropriate course is to allow the courts, taking into account the relevant evidence, a margin of discretion in applying this provision.[64]

The Bill was not amended in this regard.

4. Determination of unnecessary suffering

Clause **4 (3)** in the Bill gives the circumstances which "it is relevant to regard" in determining whether suffering is "unnecessary". These considerations can be summarised as being whether:

---

[61] M. Radford, *Animal Welfare Law in Britain; Regulation and responsibility*, Oxford University Press, 2001, p198

[62] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p27-28

[63] ibid, p28

[64] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 18

- the suffering could reasonably have been avoided or reduced (paragraph (a))
- the conduct which caused the suffering complied with law (paragraph (b))
- the conduct which caused the suffering was for a legitimate purpose (paragraph (c))
- the suffering was proportionate to the purpose of the conduct concerned (paragraph (d))
- the conduct concerned was that of a reasonably competent and humane person (paragraph (e))[65]

According to the Committee, this clause "is likely to be applied primarily by prosecutors, seeking to establish whether a prosecution can be mounted under [the clause], and by the courts, in seeking to determine whether a charge has been proven".[66]

Mike Radford, University of Aberdeen, thought that the clause was too complicated which could, in practice, result in it being difficult for a prosecutor to secure a conviction. He felt this was a result of the attempt to reflect two relevant aspects of case law:

> … what is going on there is that [paragraphs] (c) and (d) are taken from one line of case law which dates back to 1889, a case called *Ford v Wiley*, where the court talked about a legitimate purpose and proportionality, and [paragraph] (e) refers to case law dating from the early 1990s where the High Court laid … down as a test [whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person].[67]

The Committee considered the clause to be "unclear in its intent and application", with its current drafting raising a number of questions:

- Although "it is relevant" for the prosecutor and the courts "to have regard" to these considerations, are they required to do so?
- Must all of the five relevant considerations be met, or is it sufficient that only some of them are met?
- If some of the considerations are met, what weight should be placed on each consideration?
- Is it possible to establish unnecessary suffering if none of the five relevant considerations are met?
- If paragraph (b) is met—that is, the conduct which caused the suffering complied with law—is that an absolute guarantee that the suffering was not unnecessary?

> Further confusion is caused by the fact that, if suffering is to be established as unnecessary, paragraph (a) requires a 'yes' answer whereas paragraphs (b) to (e) require a 'no' answer.

---

[65] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p28

[66] ibid

[67] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p28-29

> We are concerned that, as presently drafted, the complexity of clause 1(3) will create uncertainty for prosecutors and the courts, which could make it difficult for a prosecutor to secure a conviction under clause 1(1) or (2). We recommend that the Government consider how clause 1(3) can best be clarified. [68]

The Government chose not to accept this recommendation and the clause was not changed:

> We do not believe that [the clause] is open to misinterpretation. This provision provides guidance on the meaning of unnecessary suffering and it is expected that it will be helpful both to the courts and those seeking to regulate their conduct in accordance with the provision.[69]

B. Mutilation

There is currently a wide range of secondary legislation banning or permitting certain mutilations in certain circumstances, as Defra officials explained:

> … certain mutilations are already regulated so some quite unpleasant sounding mutilations are already banned in regulations. There are other mutilations which are regulated in the sense you have to try something else first. So, for example, you are not allowed to do tail-docking on piglets as a routine thing. You have to try and address their needs for environmental enrichment to stop them fighting each other first. There are also other mutilations which only certain people can do. For example, only a veterinary surgeon can do a certain operation or only under certain anaesthesia.[70]

1. The draft Bill

Defra officials implied that the inclusion of a clause making mutilation an offence represented an attempt to bring all these regulations together in one place, and the Department confirmed that the main mutilation offence would not come into force until secondary legislation permitting certain mutilations is in place.[71]

Many witnesses to the inquiry expressed concern about the scope of the ban on mutilations and what would be exempt. There were particular concerns raised by farmers' organisations:

> The NFU emphasised that "what may be appropriate provision for companion animals is not necessarily appropriate for animals kept for commercial purposes as in farming" and sought reassurance that the draft Bill would not jeopardise farming practices such as "teeth clipping in pigs and castrating animals[,] which are not necessarily normal practices in terms of companion animals".

---

[68] ibid, p29
[69] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 19
[70] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p30
[71] ibid

The NFU also pointed out that, in some circumstances, farmers are required to carry out mutilations:

> In terms of taking the horns off cattle, under welfare codes and farm assurance, I have to do that as part of my good farming practice to be a farm-assured farmer … Surely, what you have to do is make sure that you look at what is necessary for the welfare of the animal …[72]

The RSPCA welcomed the outright ban on mutilations other than for the purposes of medical treatment but detailed a number of mutilations which it accepted required exemption from the ban including neutering, microchipping (or marking an animal), disbudding young livestock and docking and castrating lambs, piglets and cattle, in "prescribed circumstances only and subject to specific restrictions on the manner in which they are carried out".[73]

Defra said that exemptions would be made for mutilations that are necessary for reasons of welfare, good management practice and for necessary companion animal mutilations such as castration and neutering.[74]

On consideration of the draft Bill the Committee recommended:

> 101. On the basis of the evidence we have received, it is evident that the list of exemptions to the clause 1(4) mutilation offence is likely to be lengthy. We have therefore considered whether it is in fact appropriate or meaningful to have an absolute ban on mutilation on the face of the legislation, given that the ban is likely to be considerably less than 'absolute' in practice. This is particularly true given that farmed and companion animals can have quite distinct welfare needs and practices in this respect, and any exemptions made under clause 1(5) will need to distinguish between these.
>
> 102. On balance, we support the inclusion of clause 1(4) [mutilation] on the face of the Bill because it will send a strong message about animal welfare to the courts and the public. The inclusion of mutilation as a separate class of welfare offence is also important for evidential reasons: if acts of mutilation were left to be dealt with by clause 1(1) and (2), evidence of suffering as a consequence of the mutilation would be required.[75]

In response to the Committee's recommendations on mutilations the Government simply said that "they welcome the constructive comment from the Committee" and "agree with the Committee's conclusion that a definition of mutilation would be helpful in both a legal and a veterinary context".[76]

---

[72] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p31

[73] ibid & RSPCA personal communication, 16 November 2005

[74] ibid

[75] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p32

[76] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 20-22

The Committee did raise concerns, however, about the extent of the secondary powers that would be granted by the draft Bill in relation to the mutilation exemptions. The draft Bill gave the national authorities delegated power to specify which mutilations would be exempt from the general ban on mutilations proposed by the draft Bill. They said:

> Our comments about the extent of the clause 6(1) delegated power apply equally to the clause 1(5) delegated power. Although that power is not broad, in that it applies to only one specified area of policy, it is nevertheless open-ended. No directions are given or criteria set down to specify the way in which the power should be exercised. There is nothing, on the face of the legislation, to prevent the appropriate national authority from using clause 1(5) to effectively 'hollow out' clause 1(4). Exemptions given under clause 1(5) could be so broadly drawn that the clause 1(4) ban on mutilations would be diminished or meaningless.
>
> We recommend that the Government amend clause 1 so as to require the appropriate national authority to certify that any draft order proposed to be made under clause 1(5) is justified either on the basis of scientific evidence or because it meets a genuine welfare need evidenced by the consultation process on the proposed draft regulations. […][77]

The Government responded:

> Consultation, pre-legislative scrutiny where appropriate, and parliamentary debate will ensure that any proposals from the Secretary of State are fully debated in an open and transparent fashion. As mentioned above, there are issues other than scientific evidence which it will be necessary to consider before regulations can be introduced. We do not consider that certification is necessary.[78]

2. The Bill

Clause **5** of the Bill provides an offence of mutilation. Clause **5 (3)** gives a definition of mutilation similar to that recommended above:

> References in this section to the carrying out of a prohibited procedure on an animal are to the carrying out of a procedure which involves interference with the sensitive tissues or bone structure of the animal, otherwise than for the purpose of its medical treatment.

Clause **5 (4)** of the Bill would enable the appropriate national authority to make exemptions under which clause **5 (1)** would not apply. The Government has included a requirement that the appropriate national authority must "consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate" (clause **5 (5)**).

---

[77] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p47

[78] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 38

A separate standard note is available on the emotive subject of tail docking in dogs - SN/SC/1694. This can be found on the Library Intranet on the Animal Welfare Subject Page.

C. Fighting

The draft explanatory notes introduced the fighting offence component of the draft Bill:

> This clause makes separate provision about animal fighting which in the Protection of Animals Acts 1911 was subsumed under the general heading of "offences of cruelty". The offences under the clause reproduce the substance of the offence under section 1(c) of that Act, but with changes to reflect modern circumstances.
>
> Subsections (1) and (2) penalise various forms of involvement in an animal fight, which is defined in subsection (3) as an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting. Where fighting occurs but is incidental to another legitimate purpose no offence will be committed. For example, where an animal is used to capture another animal or for the purpose of other legitimate activities, it will not be considered to be "fighting" within the meaning of this clause.[79]

The Committee received "little substantive evidence" on the clause. It gave the following position:

> We consider that each of the acts specified in clauses 2(1)(a) to (e) [for example arranging a fight] of the fighting offence should be deemed to be offences at the time at which each act takes place. Provided that sufficient evidence exists in the absence of the fight, prosecutions should be able to be pursued in respect of such acts without the need for the animal fight to take place. The enforcing authorities should not have to wait for a fight to take place before being able to take enforcement action. We recommend that the Government amend clauses 2(1)(a) to (e) accordingly.

The Government responded:

> We agree with the Committee's comments. The Bill enables a court to convict for this offence if a fight does not take place, provided that there is evidence of arrangements for a fight. The fighting offence will no longer contain the detail of either the published draft or the equivalent provision in the 1911 Act, but we believe that it will capture all of the situations previously covered.[80]

---

[79] Draft Animal Welfare Bill, Explanatory notes, para 33

[80] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 23

1. The Bill

Clause **7** of the Bill provides for the fighting offence. The explanatory notes to the Bill state that some of the offences under clause **7** can be committed without a fight having taken place. The notes go on to say:

> 32. *Subsection (3)* defines an animal fight as an occasion on which a protected animal is placed with an animal or with a human, for the purpose of fighting, wrestling or baiting. The provision applies to any protected animal which under clause 2 includes any animal under the control of man, whether on a permanent or temporary basis. As a result, a person commits an offence in relation to an animal fight even if there is no one who is responsible for either animal within the meaning of clause 3.
>
> 33. Legitimate pest control activities which involve the use of one animal to catch another will not fall within the definition of an animal fight, as the animals are not placed together for the purpose of fighting, wrestling or baiting.

The RSPCA has concerns that the clause as currently drafted would enable convictions only where actions can be related to a specific fight, rather than being involved in fighting generally and states that this represents a "significant change from the present position".[81]

D. Promotion of welfare

1. The draft Bill

The draft Bill included a clause which would introduce a new offence of failing to take reasonable steps to ensure an animal's welfare. This has become known as the "duty of care" clause. This would apply to all animals for which someone is responsible as defined in the Bill (clause **3**). The key purpose of this would be to allow action to be taken when an animal's needs as set out in the Bill are not met; action which can not be taken under current legislation unless suffering occurs. The Government indicated that this would bring the legislation relating to companion animals in line with farmed animals:

> The Minister told us that "there is already a duty of care for farm animals which allows intervention to take place before suffering actually occurs and that is the critical difference between the existing legislation and what we hope to achieve with this Bill regarding non-farm kept animals." Similarly, Defra has described section 1(1) of the Agriculture (Miscellaneous Provisions) Act 1968 as imposing "a positive duty to ensure the welfare of livestock situated on agricultural land".[82]

The Society of Conservative Lawyers commented on this:

> The furthest reach of the … 1968 [Act] offence is where a person permits livestock that are on agricultural land and under his control to suffer any unnecessary pain or unnecessary distress and he has actual or constructive knowledge of it. This is a much higher threshold for committing an offence than

[81] RSPCA personal communication, 16 November 2005
[82] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p33

> [that proposed under] clause 3(1): the 1968 Act [refers to] causing or knowingly permitting "unnecessary pain" and "unnecessary distress" [which] is much closer to causing "unnecessary suffering" … than it is to failing to take reasonable steps to ensure an animal's welfare under clause 3(1) of the draft [Bill].[83]

The Committee felt that the Government was being disingenuous in presenting the new offence as a simple extension of the 1968 Act, and that the Government should make accurate representations to Parliament in this respect.

The Government clarified its statements about the 1968 Act comparison:

> We do not consider that we have misled Parliament, and we are concerned by the Committee's suggestion that we did so. However, we accept there may have been some confusion as to our meaning in the explanatory notes to the draft Bill.
>
> Offences under the Agriculture (Miscellaneous Provisions) Act 1968 relating to farmed animals are:
>
> (a) causing unnecessary pain or unnecessary distress contrary to section 1(1); and
>
> (b) a failure to fulfil the duty to ensure the animal's welfare, under the Welfare of Farmed Animals Regulations (2000) (WOFAR). A breach of WOFAR is an offence under section 2. Therefore the welfare offence is analogous to the offence in WOFAR but not to the offence under section 1.[84]

Regardless of the comparison with the 1968 Act, the proposal to introduce a concept of a "duty of care" was widely supported, by both the Committee and interest groups. The Committee said the introduction of the offence "should make a significant and important contribution towards enhancing animal welfare". [85]

Some witnesses made comments about the drafting of the clause:

> 114. Mike Radford made two specific comments in relation to the drafting of clause 3(1). He pointed out that it "is insufficient to use the word 'welfare' without qualification. An animal's welfare can be good, bad, or indifferent; although the clause is clearly intended to be about good welfare, this needs to be specified." He also noted that clause 3(1) "is already commonly being referred to as 'the duty of care'; it would be helpful if this concept were to be incorporated into the wording ..."
>
> 115. The Society of Conservative Lawyers also considered that, as currently drafted, clause 3(1) does not create a "duty of care":

---

[83] ibid

[84] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 24-25

[85] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p34

> … the clause 3(1) offence has been misleadingly publicised. It does not, in fact, impose a positive duty of care, providing that an offence would be committed if that duty is not met. Rather, it is an offence of omission and would be more clearly expressed if the word "commit" was excised: "A keeper of a[n] … animal shall be guilty of an offence …

The Society also commented on the mens rea, or mental, element of the clause 3(1) offence, noting that it:

> … appears to be a strict liability offence of omission … we think it entirely appropriate from a public policy perspective that a mental element of culpability is introduced: a person should only be capable of committing the clause 3(1) offence knowingly or recklessly."

The Committee wrote:

> 116. We recommend that the Government re-consider the wording of the clause 3(1) offence, in order to clarify the nature of the offence. In particular:
>
> - A keeper should be required to ensure an animal's *good* or *beneficial* welfare. As currently drafted, an offence would be committed if a keeper fails to take reasonable steps "to ensure the animal's welfare". "Welfare" in itself is a neutral term; clarification of what kind of welfare a keeper needs to ensure is required.
>
> - The Government should consider whether clause 3(1) would not be better and more helpfully expressed as a positive duty of care, rather than as an offence of omission.
>
> 117. We consider it is appropriate that the welfare offence should have only an actus reus (or action) element and no mens rea (or mental) element. This would mean that a keeper who unknowingly or negligently failed to take reasonable steps to ensure an animal's welfare would be as culpable as a keeper who intentionally or recklessly failed to take such reasonable steps. However, our endorsement of the elements of the clause 3 welfare offence should be read in the context of our comments on the mens rea element of the clause 1 cruelty offence.[86]

The Government responded:

> We understand the concerns about the way that the welfare clause was set out and the potential for confusion as to what constitutes good welfare. We accept that there is a sliding scale of welfare which runs from the minimum that is necessary to ensure good welfare to that which would be necessary to ensure an exceptionally high standard of welfare. We have amended the draft Bill to reflect this more clearly, and the current draft refers to an obligation to do all that is

[86] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p35

reasonable to meet the needs of an animal for which a person is responsible in accordance with good practice.[87]

2. The Bill

The "welfare offence" is found in clause **8** of the Bill. The wording of the clause has been changed from the draft Bill:

> **8 Duty of person responsible for animal to ensure welfare**
>
> (1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.
>
> (2) For the purposes of this Act, an animal's needs shall be taken to include—
> (a) its need for a suitable environment,
> (b) its need for a suitable diet,
> (c) its need to be able to exhibit normal behaviour patterns,
> (d) any need it has to be housed with, or apart from, other animals, and
> (e) its need to be protected from pain, suffering, injury and disease.
>
> (3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular—
> (a) any lawful purpose for which the animal is kept, and
> (b) any lawful activity undertaken in relation to the animal.
>
> (4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

The changes made do not fully address the Committee's concerns. Rather than changing the clause to specify that "good" or "beneficial" welfare is ensured, clause **8 (1)** simply provides that a person commits an offence should they fail to ensure the needs of the animal under their care are met, to the extent required by good practice. The Bill does not provide any guidance as to the meaning of good practice.

In addition, clause **8 (1)** retains the word "commit", meaning that, according to the Committee, it would remain an offence of omission. Both the RSPCA and Defra believe the Committee was mistaken in this respect.[88]

---

[87] Environment, Food and Rural Affairs Committee, Fourth Special Report, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 26-29

[88] RSPCA, personal communication, 16 November 2005
Defra, personal communication, 23 November 2005

3. Provision of basic welfare needs

a. The draft Bill

The relevant clause in the draft Bill listed those needs which would be taken into account when deciding upon the provision of a suitable level of animal welfare, upon which the welfare offence would be judged. These were:

- the need for a suitable environment in which to live
- the need for adequate food and water at appropriate intervals
- the need to be able to exhibit normal behaviour patterns
- any need to be housed with, or apart from, others of an animal's own or other species
- the need for appropriate protection from, and diagnosis and treatment of, pain, injury and disease.[89]

These would be applied to cases in "an appropriate manner" based upon the animal's species, its degree of domestication and its environment and circumstances.[90] It was intended that this would address those circumstances in which the above needs are unobtainable, such as the keeping of pets which may not be kept in a "natural" environment due to, for example, their living in a cage.[91]

The five needs set out in the draft Bill are based upon the so-called "five freedoms", which were set down by the Farm Animal Welfare Council (FAWC) in 1993 as a statement of what constitutes good animal welfare. FAWC describes the five freedoms as defining "ideal states rather than standards for acceptable welfare"."[92]

> The five freedoms are:
>
> a) *Freedom from hunger and thirst*—by ready access to fresh water and a diet to maintain full health and vigour
> b) *Freedom from discomfort*—by providing an appropriate environment including shelter and a comfortable resting area
> c) *Freedom from pain, injury or disease*—by prevention or rapid diagnosis and treatment
> d) *Freedom to express normal behaviour*—by providing sufficient space, proper facilities and company of the animal's own kind
> e) *Freedom from fear and distress*—by ensuring conditions and treatment which avoid mental suffering.[93]

The inclusion of the above needs on the face of the Bill was supported, but some reservations were expressed:

---

[89] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p35
[90] *Launch of the Draft Animal Welfare Bill*, Cm 6252, July 2004
[91] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p36
[92] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p36
[93] ibid, p36

[…] [T]he RSPCA argued for the list of needs to be expanded, describing the existing list as "non-exhaustive" and arguing that it should also include "the need for adequate exercise, appropriate environmental enrichment, appropriate freedom to move and the need to provide, whenever reasonably possible, conditions which avoid mental suffering including protection from fear and distress."

123. The Farm Animal Welfare Council was more cautious, emphasising that the five freedoms are intended to be aspirational:

> … the five freedoms are still very robust but we should recognise they are ideals, so one sees them as the target of a system and it gives a very good steer to farmers, stockmen and so on to understand what they should be targeting, but they are a set of ideals. It is not always possible to allow freedom to express normal behaviour because sometimes animals will kill each other if you allow them the freedom to express normal behaviour, so there are limits …

124. The Federation of Zoological Gardens was concerned that the five freedoms could not be applied entirely sensibly or appropriately to zoos and asked for the draft Bill to include instead, specifically in respect to zoos, the five principles enunciated in the Secretary of State's "Standards for Modern Zoo Practices":

> [The five principles are] not a subset [of the five freedoms], [they are] an improvement, [they are] less generic. The five principles actually were derived from the five freedoms but they were worded to specifically apply to the keeping of exotic animals, therefore they are more appropriate to apply to zoos than the much less precise five freedoms that are presently listed in the Bill. We think that using those would not be to the benefit of animals in zoos …

125. Similarly, the Federation of British Herpetologists suggested that the five freedoms might not apply sensibly to animals which exist both in the wild and in captivity; in relation to the need to be able to exhibit normal behaviour problems, the Federation asked how this would relate to feeding captive snakes with live prey: "… snakes in the wild feed on live prey … so that would mean we are not going to be able to feed them frozen food; we are going to have to feed them live mice … we would be opposed to having to introduce that".

126. The RSPCA suggested that clause 3(5) should be amended to mirror the factors set out in regulation 3(3) of the Welfare of Farmed Animal (England) Regulations 2000. Regulation 3(3) reads:

> In deciding whether an animal's needs have been met, the court shall have regard to their species, and to their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge.[94]

---

[94] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p36-37

The Committee felt that there should be a modified version of the five freedoms on the face of the Bill as this would "provide a strong statement of the ideal animal welfare circumstances towards which those responsible for animals should be working".[95] However, they felt that these needs should be framed as aspirational so it would be acknowledged that these needs are "not achievable in all circumstances".[96] The Committee also said:

> In respect of clause 3(5), we support the RSPCA's suggestion of amending the existing clause 3(5) so that it mirrors the factors set out in regulation 3(3) of the Welfare of Farmed Animals (England) Regulations 2000. The factors listed in regulation 3(3) should be more helpful to the courts in distinguishing the circumstances in which the clause 3(4) needs are not attainable. It also seems sensible to us to aim, wherever possible, for consistency in definitions in animal welfare legislation.[97]

The Government felt that the individual circumstances of the animal should be considered when making judgements as to an animal's appropriate welfare:

> The purpose for which the animal is kept and any lawful activity being undertaken in relation to it should be taken into account when considering whether its needs have been appropriately met. Exactly what constitutes good practice will vary according to the circumstances. In some cases regulations and codes of practice will provide greater clarity as to what is required for particular types of animal or activity. Where appropriate, prosecutors, courts and those responsible for animals will need to take into account evidence of good practice from other sources such as the opinion of experts, and reference books and guides.[98]

b. The Bill

The Government view outlined above was taken forward onto the face of the Bill through clause **8**. The five freedoms were not changed from those in draft Bill and are included as clause **8 (2)**. The Bill no longer includes the requirement that consideration is given to an animal's species, degree of domestication and its circumstances when deciding upon the provision of suitable welfare.

These aspects could be provided for through reference to good practice in clause **8 (1)**, and also through clause **8 (3)** which provides that it is relevant to have regard to any lawful purpose for which an animal is kept or lawful activity undertaken in relation to the animal.

As the clause is currently drafted, the welfare that would be provided for would be different for the same species of animal depending on their individual circumstances. In the case of broiler chickens, for instance, a person may be committing an offence if they

---

[95] ibid, p38
[96] ibid
[97] ibid
[98] Environment, Food and Rural Affairs Committee, Fourth Special Report, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 26-29

keep a chicken in the same conditions as those kept in commercial farms which would be exempt through clause **8 (3)**.

Animal Defenders International (ADI) raised concerns that this may arise in other situations. They felt that the welfare standards that may apply in circuses under the legislation could be much worse than those that would apply in zoos due to the difference in the animal's circumstances. Defra agreed that this may be the case.[99] Defra stated that "a court would have to take into account all the circumstances in which the animal was kept and that, while an animal's welfare needs may not vary, the court would have to consider what steps are reasonable in any given situation".[100]

4. Abandonment

Under the Abandonment of Animals Act 1960 a person is guilty of an offence of cruelty if:

> Being the owner or having charge of any animal, without reasonable cause or excuse, abandon it, whether permanently or not, in circumstances likely to cause the animal any unnecessary suffering; or cause, procure, or, being the owner, permit it to be so abandoned.[101]

Clause 3 (3) of the draft Bill, aimed to introduce the principle that "a keeper of an animal does not cease to be its keeper simply by abandoning it, and as such, continues to have responsibility for its welfare". Defra said that this would "re-enact […] in substance the *Abandonment of Animals Act 1960*".[102]

The RSPCA raised concerns that designating abandonment a welfare offence would not adequately re-enact the 1960 Act:

> [Clause 3(3)] does not, in its application, adequately replace the Abandonment of Animals Act 1960, which created an offence of cruelty. The effect of s3(3) is to downgrade abandonment to a welfare offence. We believe this is inappropriate and that its more serious status should be restored by maintaining within the AWB a specific offence of abandonment. It also seems to us that the welfare offence is committed only when the animal's needs are not met. The old offence of abandonment was committed as soon as the abandonment occurred.[103]

The NFU was concerned that that clause was ambiguous:

> […] where person A sold an animal to person B and person B subsequently abandoned the animal *but person B could not be traced*, the NFU considered that clause 3(3) could be read to mean that legal responsibility for the animal would revert to person A, who would be deemed to be the keeper of the animal. The Farmers' Union of Wales (FUW) asked at what point a sheep might be considered to be abandoned, in the context of Welsh farming practices. The FUW

---

[99] All Party Group on Animal Welfare meeting, 18 October 2005
[100] Defra, personal communication, 23 November 2005
[101] M. Radford, *Animal Welfare Law in Britain; Regulation and responsibility*, Oxford University Press, 2001, p206
[102] *Launch of the Draft Animal Welfare Bill*, Cm 6252, July 2004, p50
[103] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p39

noted that there have been hefted sheep on the hills of Wales for generations, with these animals being turned onto the open mountain in early May, to be gathered only for shearing, dipping and weaning the lambs, and suggested that a sheep could be considered to be abandoned only if it was untagged or without an earmark.[104]

The Committee said:

135. It appears to us that, in the current scheme of the draft Bill, abandonment is mentioned under the welfare offence in order to deal with the difficulty of bringing a person who has abandoned an animal under the current definition of "keeper"; a keeper must either own, or be responsible for, or in charge of, the animal. The mention of abandonment in clause 3(3) would not prevent abandonment forming the basis of a charge laid under the main cruelty offence, clause 1(1).

136. In respect of the clause 3 welfare offence, the Government appears to have concluded that a person who has abandoned an animal will still be able to be brought under the definition of "keeper" even in the absence of clause 3(3); that is, the courts will accept that such a person still owns or is responsible for the animal, as a matter of law. We do not object to the removal of clause 3(3) provided that the Government is certain that abandonment of an animal would not serve to divest a person of legal ownership or the responsibilities that follow on from it, and that a charge could therefore be laid and successfully prosecuted under clause 3(1). We have taken no evidence on the law and case law with respect to ownership and are therefore unable to comment on whether the Government's legal advice is correct.

137. However, we are concerned that the draft Bill would represent a significant weakening of the current law on the abandonment of animals. Under the Abandonment of Animals Act 1960, an offence is committed at the time at which abandonment occurs; no evidence of the animal having suffered is required, and a person who is found guilty of abandonment is deemed to be guilty of a cruelty offence within the meaning of the Protection of Animals Act 1911. Under the draft Bill, although an act of abandonment could form the basis of a charge laid under the main cruelty offence, clause 1(1), evidence of the animal having suffered would be required. Evidence of abandonment *without* evidence of the animal having suffered could form the basis only of a charge laid under the welfare offence, clause 3(1), which carries lesser penalties than the clause 1 cruelty offences.

138. We recommend that the Government amend the draft Bill so that the act of abandoning an animal continues to be treated as a cruelty offence without the need for evidence of the animal having suffered as a consequence of the abandonment. The present law presumably does not require such evidence for the very good reason that an abandoned animal may not be able to be traced, in order for its suffering to be able to be demonstrated. No doubt the 1960 Act was enacted in the first place to deal with the requirement in the 1911 Act that unnecessary suffering be demonstrated. The fact that the act of abandonment, in

[104] ibid, p39

> and of itself, constitutes an offence is a key animal welfare protection in current law and it is crucial that it be maintained.[105]

The Government disagreed with the Committee that the changes would result in weaker law on abandonment:

> The Abandonment of Animals Act 1960 provided for an offence to be committed under the Protection of Animals Act 1911 where a person abandoned an animal and the abandonment was likely to cause the animal unnecessary suffering. Under the welfare offence in the Bill, an offence will be committed if an animal is abandoned, and the abandonment amounts to a failure to take all reasonable steps to meet the needs of the animal concerned. If someone who is responsible for an animal abandons it and suffering actually occurs, this would engage the Bill's provisions on cruelty. There will be no weakening in the penalties and sanctions available to the court in comparison with those already available under the 1911 Act.[106]

a. The Bill

The specific clause relating to abandonment (3 (3)) was removed from the Bill, as discussed by the Committee. The Government did not, however, change the Bill so that the offence of abandonment would be covered solely by clause **4**, an offence of causing unnecessary suffering. The offence of abandonment would be provided for under the welfare offence (clause **8** of the Bill):

> 35. Note that the duty [to ensure welfare] will apply when a person abandons an animal for which he is responsible. The Abandonment of Animals Act 1960 is repealed and effectively replaced by this clause, and anyone who leaves an animal without taking reasonable steps to ensure that it is capable of fending for itself and living independently will commit an offence under clause 8.[107]

The Bill's explanatory notes do not say whether abandonment of an animal could also be an offence under the clause **4** unnecessary suffering provisions, although this may be the case where the necessary criteria are met. The Defra Bill Team state that a prosecution could be "brought under the cruelty offence if actual cruelty was involved otherwise action would be taken under the welfare offence".[108]

5. The giving of animals as prizes and sale of animals to under 16s

Clauses 4 and 5 of the draft Bill would prevent the sale of animals to persons under the age of 16 and the giving of pets as prizes respectively. The Committee made no

---

[105] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p39-40

[106] Environment, Food and Rural Affairs Committee, Fourth Special Report, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendations 30-32

[107] The Animal Welfare Bill, Bill 58, 2005-06, Explanatory Notes, p8

[108] Defra, personal communication, 23 November 2005

comment on these clauses as they received "almost no evidence" on them, and therefore assumed that witnesses endorsed the provisions.[109]

Clause 4, it was intended, would extend the scope of existing offences under section 3 of the *Pet Animals Act 1951* which currently prevent the sale of pet animals to children under the age of 12. Clause 5 would introduce a new prohibition on the giving of animals as prizes as it was "not thought to be consistent with a responsible approach to becoming an owner or keeper".[110]

Although these clauses were not considered in the Committee's report, it was often these two issues that generated the most interest in the press. Commentators either welcomed the proposals as "obviously overdue" or felt that the Bill represented a slide into "sentimentalism" or a "nanny state".[111]

The ban on the sale of animals to under 16s is provided for in clause **9 (1)** of the Bill, which remains largely unchanged from the draft Bill.

More extensive changes have been made with regard to the winning of animals as prizes. Clause **9 (3)** – **(6)** provides that, rather than there being a complete ban, animals could not be offered as prizes to under 16s without a consenting guardian being present, in most situations.

Ben Bradshaw MP, when asked on this issue, said that a total ban on the giving of animals as prizes would be "too nannyish".[112]

IV Delegated powers

The Bill includes a number of clauses which would allow delegated powers to:

- create regulations for the promotion of animal welfare
- establish a licensing and registration scheme for a number of activities involving animals
- provide exemptions from the mutilation offence

The Committee raised a number of concerns about these secondary powers during their inquiry. They also were concerned about the level of scrutiny, both public and parliamentary, that orders made under the secondary powers would receive. This is discussed in part D below.

---

[109] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p21

[110] *Launch of the Draft Animal Welfare Bill*, Cm 6252, July 2004, p50

[111] e.g. A, Macleod, "Goldfish will no longer be a prize catch in Scotland", *The Times*, 17 May 2005
M. McCarthy, "Overhaul for animal welfare laws", *The Independent*, 15 July 2004
A. Miles, "You can slap a child, but don't dare to step on a slug", *The Times*, 14 July 2004

[112] A. McSmith, "Children to be banned from buying pets under new Bill", *The Independent*, 15 October 2005, p19

A. Regulations to promote welfare

1. The draft Bill

The draft Bill would have delegated a power to the relevant national authority (either the National Assembly for Wales or the Secretary of State) to make regulations setting out provisions which the authority sees fit for the promotion of 'the welfare of animals kept by man'.[113]

It listed a number of circumstances under which regulations might be made including in relation to transport, training and accommodation conditions. This list was given, however, 'without prejudice to the generality of the power'. It also specified that these regulations may 'create offences, provide for fees and, in relation to regulations providing for licensing or registration, may amend or repeal primary or secondary legislation currently regulating this area'.[114]

Regulations would be made under the affirmative resolution procedure in each House.

The Committee reported that the majority of evidence that they received regarding draft clause 6 was supportive on the basis that it would enable 'flexibility and responsiveness in law-making, meaning that animal welfare law could therefore be more readily kept up-to-date'.[115] However, some contributors were critical of the proposals due to concerns that the Government was essentially leaving the 'hard decisions' to secondary legislation. It was felt by some that these 'difficult choices' should be on the face of the bill.[116]

Other concerns were raised by those who felt that the powers were too broad. The Countryside Alliance felt that the powers could be 'virtually limitless in scope' and that the wording was 'imprecise'.[117] The Alliance also highlighted the fact that the powers could be used to ban lawful activities without requiring primary legislation.

It was also felt by some that the Bill should require regulations to be justified in terms of scientific evidence or on the basis of evidence obtained through consultation to determine a genuine welfare need.[118] Suggestions were made about possible changes to the clause in order to provide some limits to the regulation-making power.

In evidence submitted during the Committee's inquiry, the Government explained that the powers were required 'in order to have the flexibility to meet the changing demands

---

[113] *Launch of the Draft Animal Welfare Bill*, Cm 6252, July 2004

[114] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p41

[115] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p41

[116] ibid

[117] ibid

[118] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p42

and increases in understanding of the animal welfare field'.[119] The Government also did not accept that the relevant national authority should be required to justify the making of regulations. They argued that the judicial review process would, in effect, provide sufficient scrutiny of the regulations.[120]

The Committee outlined their position on the regulation making powers:

> We are unconvinced by the Minister's justification for the breadth of the clause 6(1) delegated power. […] The suggestion that the mechanism of judicial review would provide a sufficient limitation on the exercise of the clause 6(1) power is unacceptable.
>
> […]
>
> We are disappointed by the Minister's reluctance to consider redrafting the clause 6(1) power in order to limit its breadth. We recommend that the Government amend clause 6 so that:
>
> - a more precise word than "promote" is used: "ensure" seems sensible, provided that it continues to be used in clause 3
> - the appropriate national authority must certify that any draft regulation proposed to be made under clause 6(1) is justified either on the basis of scientific evidence or because it meets a genuine welfare need evidenced by the consultation process on the proposed draft regulations.[121]

In their formal response to the Committee's recommendations, the Government said:

> We do not accept that the regulation-making powers contained in the Bill are unreasonably broad. Similar regulation-making powers for promoting the welfare of farmed animals are already conferred on Ministers under section 2 of the Agriculture (Miscellaneous Provisions) Act 1968 and have thus been in existence for over thirty years. The absence of a similar power to promote the welfare of non-farmed animals is an anomaly that the Bill is designed to address. Given the complexity of animal welfare, it is highly appropriate that this provision should be framed as a regulation-making power. As a result of the need to use primary legislation to update the law for nonfarmed animals, there has been a widening gap between the welfare standards that apply to farmed and non-farmed animals. We believe that the Bill addresses this in the most appropriate and direct way. In deciding whether to make regulations, codes or to use other means to promote animal welfare, we will of course need to follow general principles concerning the proper use of legislative powers, including the need to ensure that the degree of regulation is proportionate and not excessive.
>
> We judge that the use of the word 'ensure' in this clause would be inappropriate. It would be impossible to say that any set of regulations would 'ensure' welfare.

---

[119] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p43

[120] ibid

[121] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p44-45

> The Bill therefore enables regulations to be made which 'promote the welfare of animals' and restricts the scope of regulations to those which move the welfare of animals in a positive direction. The concepts of "promote" and "ensure" differ and, whereas in some instances one will be broader than the other, an obligation to "ensure" a given result could preclude the making of any regulations, thus reducing opportunities to improve animal welfare.
>
> We do not consider that certification is necessary. Consultation, pre-legislative scrutiny where appropriate, and parliamentary debate will ensure that any proposals from the Secretary of State are fully debated in an open and transparent fashion. While we shall take into account the latest scientific evidence when assessing the level of regulation that should apply to a particular activity, there are other issues such as good practice that we shall also need to consider. Any regulations introduced must be for the purpose of promoting the welfare of animals in accordance with subsection (1).[122]

a. The Bill

A number of minor changes to the regulation making provisions of the Bill were made; these changes did not fully meet the Committee's recommendations. The relevant clause in the Bill is clause **10**. The regulations would still be made through the affirmative resolution procedure in Parliament, the clause retained the use of "promote" and no certification or justification is required for the creation of regulations.

However a new clause (**10 (6)**) does increase the level of scrutiny to be given to regulations by providing that the national authority "shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate".

B. Licensing and registration of certain activities

1. The draft Bill

The draft Bill would have enabled the creation of licensing regimes for various practices; clause 6 (2) (i) would have enabled the registering of certain activities.

Concerns were raised by many about the provisions. The Committee suggested that this was due 'in no small part' to the fact that 'no indication as to the extent or nature of licensing powers to be delegated' had been given. Potentially these powers could make legal or illegal whole areas of animal ownership and practice, as well as placing a greater financial burden upon owners.[123]

Concerns relating to specific licensing arrangements, such as for greyhound racing, are discussed later in this paper and in a collection of standard notes which can be found on the Library Intranet animal welfare subject page.

---

[122] Select Committee on Environment, Food and Rural Affairs, Fourth Special Report, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, p12-13

[123] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p45

In evidence submitted to the Committee, concerns were raised that no protocol had been specified for the licensing regime which would be used by local authorities. Under the precedent set by the *Zoo Licensing Act 1981* it was pointed out that a local authority may attach conditions to licences in order to specify any welfare standards it deems necessary. The licensing authority must also have regard to standards set by the Secretary of State when deciding what conditions to attach.[124] The draft Bill gave no indication as to whether a similar system would be used.

The Committee said:

> We support the Animal Protection Agency's suggestion that more information should be provided on the face of the legislation about licensing conditions, particularly in relation to the need to ensure that welfare conditions are attached to licences. Clearly, individual local authorities cannot each have the expertise to know what welfare conditions should be attached to licences for different activities involving animals: the licensing regime will cover a broad range of activities, including animal fairs, animal sanctuaries, pet shops and greyhound tracks, and many others besides. We therefore consider that the legislation should make it clear that, firstly, a central set of standards exists, in the form of codes of practice issued by the appropriate national authority under clause 7, and, secondly, that licensing authorities are required to have regard to those standards in deciding whether to issue a licence and, if so, what conditions should be attached to it.
>
> We recommend that clearer requirements about the way in which licensing powers are to be exercised should be included on the face of the legislation, rather than being left for the appropriate national authority to specify under delegated legislation. It should be clearly stated that the licensing authority has the power to attach welfare conditions to a licence and to revoke a licence. The legislation should also require the licensing authority to have regard, in issuing a licence, to relevant guidance laid down in the form of codes of practice issued by the appropriate national authority under clause 7. [125]

In response the Government said:

> We accept that there should be clear requirements on the face of the Bill concerning licensing and registration, and will accordingly include more detailed provisions. These clarify the roles and powers of local authorities, as well as the Secretary of State and the National Assembly for Wales, and will be contained in a separate clause on licensing and in a new schedule.[126]

---

[124] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p46

[125] ibid

[126] Select Committee on Environment, Food and Rural Affairs, Fourth Special Report, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385

2. The Bill

The licensing and registration powers contained in the draft clause can be found in clause **11** and schedule 1 of the Bill. The Government has followed the Committee's recommendation by expanding greatly on the draft Bill, providing more information about the regime that will apply.

The clause specifies that certain activities may require a licence or registration before they can be undertaken which may be provided by either the local or national authority (clause **11 (1)-(2)**). An offence would be committed if a person undertakes an activity for which a licence or registration is required without being licensed or registered (clause **11 (6)**).

Subsection (3) of the clause enables registration rather than licensing of certain activities:

> The registration procedure would be used in cases where it is necessary for the enforcement authority to know of the existence and location of organisations or individuals who are keeping specific animals or carrying on particular activities, but where the additional controls and costs of a licensing regime are either unnecessary or would be unduly burdensome.[127]

This will be welcomed by a number of organisations. The Dogs Trust, for example, felt that such a scheme applied to animal sanctuaries would have welfare benefits:

> There are very many small organisations providing animal welfare services such as rescue and sanctuary, and any legislation which increased their costs might mean some would cease their operations. Any such move would be likely to significantly reduce the overall capacity to provide welfare services and result in the suffering or euthanasia of many animals. However there are undoubtedly some such organisations with unacceptably low standards and Dogs Trust considers that registration will enable improved monitoring and thus help to raise standards generally. While there will be some costs to Dogs Trust from this proposal, we consider this to be a price worth paying for the overall welfare benefit.[128]

Schedule 1 of the Bill gives more detailed information about the licensing and registration regimes. Part 1 of the schedule deals with licensing, part 2 with registration and part 3 contains general provisions.

The Committee was concerned that the attachment of welfare conditions to a licence was not included on the face of the draft Bill. Schedule 1 changes this through paragraph 8 which provides that a local authority may attach conditions to a licence, or that a relevant national authority may require it to do so if specified in regulations. In addition, paragraph 6 provides that a licensing authority may not grant a licence unless

---

[127] The Animal Welfare Bill, Bill 58, 2005-06, Explanatory Notes, p10

[128] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p95

satisfied that the activity meets requirements specified in regulations, and/or requires the authority to have regard to regulations when deciding whether to grant a licence.

An offence is committed under paragraph 9 if licence conditions are breached, and a relevant post-conviction power may be applied in such cases. Post-conviction power may include the cancelling of the licence, a specific recommendation made by the Committee.[129]

Paragraph 4 of schedule 1 provides that regulations may specify the length of period for which a licence is valid, a period not longer than 3 years. This is likely to concern some animal welfare organisations (see next section).

The RIA of the Bill gives further information about the licensing and registering regime that the Government proposes will apply, and the likely costs involved:

> The licensing/registering option will incur additional costs to those businesses that are currently not subject to such regulation. However, it is proposed to bring into registration/licensing a greater emphasis on risk-based inspections to tackle areas where there is the greatest risk of a welfare problem. This would involve better focused licensing inspections, possibly involving inspection by a veterinarian as well as the local authority inspector. Measures that would help to achieve this better focus include: ensuring that relevant written evidence has been produced before a business/activity can be registered; increasing the maximum length of licences from the existing 12 months to 3 years duration to allow resources to be concentrated on areas of greatest need; and the production of guidance for local authorities to help them identify businesses/activities that are most likely to present a problem. This will reduce the cost burden on businesses/activities that maintain good welfare standards.
>
> It is anticipated that the cost of licences will be in the range of £200 to £400. Registration would cost in the region of £150 if the applicant supplies a veterinary report. This would be a one-off fee unless any amendments are made at a later date. Registration is particularly appropriate for animal sanctuaries where there are welfare issues but the likely magnitude of the overall problem will not be sufficient to justify regular licensing inspections.
>
> 51. Overall we do not expect any significant additional expenditure for local authorities as an increase in responsibilities will be matched with reduced inspection requirements (see Annex P). However, there may be some initial training costs to ensure that local authorities are competent to handle the new concepts and ways of working that the Bill will introduce. The funding and content of this training would need support from the centre and would be directed at a limited number of local authority officials who would be key in facilitating changes to ways of working. The Local Authorities Coordinators of Regulatory Services (LACORS – a central body for local authorities) have been consulted and are in broad agreement with the regulatory proposals and support the move to more risk based inspections.

[129] Defra, personal communication, 23 November 2005

> 52. In the long term there are likely to be significant savings on enforcement and judicial costs as the Bill would encourage a more responsible attitude to animal ownership. Putting mechanisms in place to increase regulation and making the public more aware about the need to be proactive in good animal care would be key to reducing prosecutions. These are processes that could take up to 5 years from the passing of the Bill before they start to impact on the level of offences.[130]

The explanatory notes explain that part 2 of schedule 1 relating to registration mirrors the relevant licensing provisions from part 1, although no maximum period is stated for the frequency with which establishments have to re-register.

3. Other licensing issues

a. Shift to 36 month licences

Defra stated during the Committee's inquiry that they intended to introduce 18-month licences in respect of a number of policy areas including circuses and animal sanctuaries. The Committee stated that:

> [t]his would represent a change from many existing licensing requirements in animal welfare legislation, which provide that licences must be renewed annually, and would mean that businesses or premises would be inspected every 18 months instead of annually. Defra considers that an 18-month licence would reduce the costs for both businesses and local authorities as well as enabling inspection to be carried out at different times of the year. Defra acknowledges that an 18-month licence may prove "difficult" in respect of pet fairs which are held annually.
>
> 319. The evidence we received strongly opposed the proposal to make licences renewable at 18-month intervals, although we acknowledge the possibility that those submitters who supported the proposal did not feel the need to say so. Animal Defenders International and the National Anti-Vivisection Society argued that "setting aside animal welfare for the sake of reducing costs to business goes against the fundamental aims of the Bill." BirdsFirst described the proposal as "virtually nonsensical with regard to itinerant events", such as pet fairs, which can be annual events, or can migrate between local authorities.

They added:

> 320. We do not support Defra's proposal to introduce 18-month licences, rather than annual licences, in respect of licensing of circuses, pet fairs, livery yards or animal sanctuaries, or in respect of any other business currently licensed under animal welfare legislation. The proposal would reduce the frequency with which businesses or premises would be inspected, and would therefore not promote the highest standards of animal welfare because it would increase the period of time during which breaches of legislation could go undetected. We consider that any possible benefits to business offered by a shift to 18-month licences are outweighed by animal welfare considerations. In particular, we consider 18-month licences would be entirely inappropriate for itinerant, annual, often one-off events,

---

[130] Defra, *Animal Welfare Bill Regulatory Impact Assessment*, October 2005, p11

> such as pet fairs. We therefore recommend that Defra does not pursue its proposal to replace annual licences with 18-month licences. In respect of pet fairs and similar events, we recommend that a licence for a pet fair should apply to a single event only, and that each separate event should require a separate licence.[131]

The Government responded:

> We do not accept the comments regarding 18 month licensing periods. 18 months would be the maximum period between inspections, and it would be up to the local authority to use risk management techniques to decide whether more frequent inspections were necessary. In addition, a greater use of veterinarians or other experts in licensing visits will raise the current standards that apply at licensing inspections. We agree that should pet fairs be licensed, it would be appropriate to licence individual events.[132]

Following publication of the Bill's RIA it is apparent that a variety of licensing arrangements will be adopted, and the potential interval between visits has been doubled for a number of activities. The 18 month maximum duration between licence visits initially proposed for pet shops (and internet selling), livery yards and boarding establishments, has been lengthened to **36 months**. Currently pet shops and boarding and breeding establishments are licensed for and inspected at periods of not more than one year.[133] Animal sanctuaries would be inspected at least every **5 years** under the proposals as part of an application making process. The regulations will allow for inspections to be undertaken on a risk managed basis. Defra is still deciding on policy for a number of other activities in which such licences could apply such as circuses. These provisions are discussed in the relevant annexes to the Bill's RIA.

Defra gave more information about the licensing regime in the RIA:

> The licensing/registering option will incur additional costs to those businesses that are currently not subject to such regulation. However, it is proposed to bring into registration/licensing a greater emphasis on risk-based inspections to tackle areas where there is the greatest risk of a welfare problem. This would involve better focused licensing inspections, possibly involving inspection by a veterinarian as well as the local authority inspector. Measures that would help to achieve this better focus include: ensuring that relevant written evidence has been produced before a business/activity can be registered; increasing the maximum length of licences from the existing 12 months to 3 years duration to allow resources to be concentrated on areas of greatest need; and the production of guidance for local authorities to help them identify businesses/activities that are most likely to present a problem. This will reduce the cost burden on businesses/activities that maintain good welfare standards.[134]

---

[131] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p83

[132] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 77

[133] RSPCA, personal communication, 16 November 2005

[134] Defra, Animal Welfare Bill 2005, Regulatory Impact Assessment, October 2005

The RIA also outlines proposals to grant one-off licences for pet fairs and to grant annual licences for riding stables.

b. Frequency of veterinary inspections

Proposals under the draft Bill specified that inspection associated with the application for a new licence, or the renewal of an existing one, may or may not be accompanied by a veterinary inspection. The draft Bill also specified that a vet would be present at every 18 month inspection for riding schools, pet shops and pet fairs. Under the draft Bill a veterinary presence would only be required at inspections every five years for livery yards, animal boarding establishments and animal sanctuaries.

Some witnesses to the Committee's inquiry were concerned that these veterinary inspections would be too infrequent:

> For example, with respect to livery yards, the British Equine Veterinary Association recommended that a veterinary inspector should be present at "all initial inspections" and that:
>
> > Inspections should be carried out every 15 months with a maximum interval of 30 months for veterinary inspections. If the veterinary involvement is diluted further there is a real risk of compromising the quality of these inspections and therefore compromising the welfare of the animals kept in these yards.
>
> 323. We consider that a five-year interval between vet-accompanied inspections is too infrequent, particularly in the case of livery yards and animal sanctuaries, in respect of which Defra proposes to legislate for the first time under the draft Bill. Furthermore, the proposed five-year interval appears to us not to mesh with the proposed 18-month licence period—Defra surely intends to require vet-accompanied inspections every four and a half years, or at every third licence inspection.
>
> We recommend that vet-accompanied inspections of livery yards, animal sanctuaries and dog and cat boarding establishments should be required at least every two years, rather than Defra's proposed requirement of only once every five years. If Defra accepts our recommendation to provide for annual licences, rather than the proposed 18-month licences, then a vet-accompanied inspection should be required every two years—at the time of application and at every second licence renewal thereafter. If Defra proceeds with its proposal to introduce 18-month licences, then a vet-accompanied inspection should be required every 18 months—at the time of application and at every licence renewal thereafter.[135]

The Government rejected the need for an increase in veterinary involvement:

> […] although we agree that there is a need for greater veterinary support than currently is the case and that the regulations should specify the maximum period before which a veterinarian has to accompany the inspector. We consider that the

---

[135] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p84

> introduction of the welfare offence coupled with up-to-date regulations and government produced codes, should improve the overall quality of the inspection. For inspections that are at less than the maximum period set in the regulations for a veterinarian to accompany the inspector, it should be left to the discretion of the inspector to decide whether a veterinarian should be present.[136]

The separate annexes of the Bill's RIA contain information about the licensing regimes that are likely to be adopted, and the level of veterinary involvement for different activities involving animals:

- Pet shops – three year maximum duration between licences, annex did not refer to veterinary inspection
- Pet fairs – one off licence, no reference to veterinary inspection
- Animal sanctuaries – registration for fixed term of five years, veterinary inspection at issue of each licence
- Livery Yards – three years maximum duration between licences, veterinary inspection at issue of each licence
- Riding stables – annual licence, no reference to veterinary inspection
- Boarding establishments – three year maximum duration between licences, annex did not refer to veterinary inspection

Defra states that further work remains to be done on the frequency of veterinarian involvement. They also state that it is their intention that all licensing inspections would require veterinary input and are considering making this explicit in the RIA.[137]

The increase in the length of time that would be allowed between some veterinary-accompanied visits proved a major concern to animal welfare organisations including the RSPCA.[138]

C. Codes of practice

The Bill's explanatory notes introduce codes of practice:

> 53. Codes of practice are already widely used to promote the welfare of farmed animals and the Bill extends their use to non-farmed animals. The existing codes on the welfare of farmed animals, which have been made under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968, will be treated as if issued under the Bill when its provisions come into force. New codes will be made in relation to other situations.
>
> 54. Codes provide non-binding guidance - agreed by Parliament after appropriate consultation - that enforcers and the courts can refer to when making judgements on whether the relevant welfare standards stipulated in the Bill have been attained. Owners and keepers of animals may also find the codes a useful

---

[136] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 78

[137] Defra, personal communication, 23 November 2005

[138] RSPCA, personal communication, 16 November 2005

> resource by which to increase or confirm their understanding of acceptable welfare standards and to regulate their conduct accordingly. [139]

The Committee did not make any specific recommendations about clauses 7 - 10 of the draft Bill which provided for the use of codes of practice. However, they welcomed the inclusion of the duty for the appropriate national authority to consult on draft codes of practice which an authority proposes to make. They said that they "believe that an obligation to consult on draft codes of practice should improve the quality and relevance of the final codes".[140]

The Committee did receive evidence on specific codes of practice which would be made under the Bill, specifically in relation to the breeding of game birds and the sale of pet animals over the internet.

In addition, the Committee recommended that a code of practice for the humane killing of crabs and lobster be introduced due to evidence that these animals can suffer. The Government rejected this proposal:

> It will not be possible to issue codes of practice for animals not captured by the definition of animal, unless regulations extending that definition have already entered into force.[141]

D. Scrutiny of delegated powers

1. Consultation

The Committee commented that those clauses contained in the draft Bill relating to delegated powers contained no requirement for the appropriate national authority to consult about draft regulations, licensing procedures or exempt mutilations. The Committee pointed out that regulations made under these powers may, amongst other things, create criminal offences and repeal primary legislation. They recommended that a duty to consult should be included. [142]

The Government agreed and a duty to consult was inserted as clause **10 (6)** of the Bill:

> (6) Before making regulations under subsection (1), the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate.

The Committee also made recommendations regarding the use of working groups to help in the creation of regulations:

---

[139] The Animal Welfare Bill, Bill 58, 2005-06, Explanatory Notes, p11

[140] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p49

[141] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 4

[142] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p48

> […] Defra has indicated to us that it has set up a number of working groups to assist it in deciding the content of the future regulations. We understand that the groups operate earlier in the policy-making process, working on proposals which, if endorsed by the appropriate national authority, will be put out to consultation. We emphasise that working groups are not a substitute for full and appropriate consultation. Although it is not entirely germane to our pre-legislative scrutiny process, we note that we have received a great deal of evidence and correspondence expressing disquiet about the membership of a working group set up by Defra, which reported to Defra on animal fairs, and Defra's means of appointing the group. We make no comment on the membership of that group or the quality of the work done by it. We suggest to Defra that, if it intends to continue to use working groups to formulate animal welfare policy, then it would be well-advised to formalise the process by which the groups' membership and programme of work is decided, in order to ensure transparency and build confidence in the quality of those undertaking this work.[143]

The Government responded:

> The criteria for the working groups on the secondary legislation were that the members should reflect as broad a range of opinion as possible and be capable of working constructively with people who hold differing views. We accept that in one or two cases, some groups have felt excluded from what, by its nature, cannot be a totally inclusive process. However, we consider that these criteria should continue to be used as far as possible, although we recognise that there could be occasions where it may be necessary to depart from them. To put in place a formal selection process based on Nolan procedures would be excessively resource intensive for temporary working groups that only meet a few times and whose output is subsequently subject to public consultation.[144]

2. Parliamentary scrutiny

The Committee also criticised the procedure by which regulations and exemptions to the mutilation offence would be made. The draft Bill stated that the 'affirmative' procedure would apply, which the Committee criticised as only enabling either House to 'do no more than accept or reject a draft regulation or order; neither House can substantively comment on or amend a draft regulation or order'.[145]

The Committee felt that a different procedure should be adopted. They suggested that they themselves conduct pre-legislative scrutiny of the draft regulations. The Minister, in giving evidence, was broadly supportive of the proposal.[146]

The Committee recommended, on the understanding that the recommendations relating to consultation (above) were accepted, that:

---

[143] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p50

[144] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 43

[145] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p51

[146] ibid, p52

> [T]he Secretary of State agree to enter into a 'memorandum of understanding' with this Committee, undertaking to:
>
> - publish in draft form any regulation proposed to be made under clause 6(1) or order proposed to be made under clause 1(5)
> - inform the Committee of such publication
> - allow the Committee a period of 30 sitting days in which to report to the House on the draft instrument
> - agree that no motion to approve may be made until either the period of 30 sitting days has elapsed or the Committee reported to the House on the draft instrument, whichever occurs first.
>
> The memorandum of understanding should make it clear for what period of time such an arrangement should apply. It should also provide for the possibility that an exception could be made to this arrangement in circumstances of genuine emergency.
>
> If such a process were adopted, the Committee would have flexibility to decide either to call for evidence on the draft regulation or order and to examine it thoroughly, or to decide at an early stage that the draft regulation or order did not warrant a thorough examination and to report to the House that it had no matters to raise.[147]

The Government responded:

> We agree with the Committee that pre-legislative scrutiny is likely to be beneficial in these sensitive areas, and are grateful to the EFRA Committee for its offer of assistance. We wish to consider further the right mechanism for taking this forward and will wish to discuss with the authorities of the House of Lords as well as the EFRA Committee.[148]

The Bill has not been changed in this respect and regulations will still be made under the affirmative resolution procedure.[149] A memorandum of understanding has not yet been made.

V Enforcement, prosecution and penalties

A. Introduction

> "Securing legislative change is never to be regarded as an end in itself; if it is to fulfil its purpose, it must be implemented in a robust and consistent manner. Furthermore, the process of enforcement encompasses much more than simply hauling alleged offenders before the courts."[150]

---

[147] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p51-52

[148] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 45

[149] The Animal Welfare Bill, Bill 58, 2005-06, Explanatory Notes, p9

[150] M. Radford, *Animal Welfare Law in Britain; Regulation and responsibility*, Oxford University Press, 2001, p391

The existing framework for the enforcement of animal welfare legislation has been criticised for failing to operate effectively. It has been argued that without the RSPCA and SSPCA, enforcement would be "wholly inadequate". Mike Radford, University of Aberdeen School of Law, argues that "the fact that these two organisations, operating without public funding or the advantage of any special legal power, make at their own volition such a major contribution to animal protection should not be allowed to provide the statutory agencies with an excuse for abdicating their responsibilities in this regard."[151]

The Committee introduced some problems with current enforcement measures:

> 187. Existing animal welfare law has been criticised for the ease with which offenders have been able to circumvent disqualification orders imposed by the courts. Under section 1 of the Protection of Animals (Amendment) Act 1954, where a person has been convicted of the offence of cruelty to an animal, the court has the power to order that the person be disqualified from "having custody of any animal or any animal of a kind specified in the order." Offenders have evaded this provision by nominally transferring 'custody' to a third party while, in reality, maintaining control of the animal. Defra has acknowledged this issue:
>
> > It has proved difficult in practice to determine in many cases when a disqualified person 'has custody of' animals such as to place him in breach of a disqualification order and this has limited the effectiveness of such orders.
>
> 188. Furthermore, current [animal welfare law] lacks provisions to empower a court to make orders consequential to disqualification. Such orders might include making provision for the welfare of animals kept or owned by a disqualified person or the removal of animals on conviction. This gap in the existing legislation was highlighted in the recent case of *Worcestershire County Council v Tongue*. The defendants in that case had been convicted of cruelty to some of their cattle and were subsequently disqualified from having custody of cattle. The local authority claimants sought an order to enter the defendants' land to remove the livestock present. The court held that an enforcing authority is not currently permitted to enter a person's land to take possession of the owner's animals, despite the owner having been disqualified from owning animals.[152]

B. Enforcement

1. Animals in distress

A number of clauses in the draft Bill provided for the powers applicable to animals in distress, which include powers enabling an enforcement authority to intervene before suffering has actually occurred.

The draft Bill's explanatory notes explained further:

---

[151] ibid, p392

[152] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p53

> 52. In order to protect an animal's welfare without delay in an emergency, where a veterinary surgeon certifies that a protected animal is suffering or not being properly cared for or is likely to suffer or not be properly cared for, subsection (1) authorises the enforcement authority to take it into possession and retain it for a period of up to 8 days pending the commencement of proceedings for an offence under the Bill. This power extends the power in the Protection of Animals Act 2000 in three ways. Firstly, the power is available immediately and before proceedings are commenced. Secondly, it is not restricted to animals kept for commercial purposes. Thirdly, it covers not only the animals which are suffering but also those which are likely to suffer if action is not taken.[153]

The RSPCA welcomed the introduction of these pre-emptive powers, saying that "this could make a real difference to the lives of thousands of animals in England and Wales".[154]

However a number of points were raised about these clauses. The draft Bill would extend existing law by permitting a protected animal to be taken into possession and detained by an authorised person where it appears as though the animal is "likely to suffer or not to be properly cared for".[155] The Committee said

> Certification from a veterinary surgeon is normally required before an animal can be taken into possession but in emergency situations this requirement can be dispensed with if it appears "that it is not reasonably practicable to wait for a veterinary surgeon." Defra states that:
>
> > This is intended to cover an urgent situation such as, for example, a dog left in a hot car. Here there is a risk that the animal might die whilst waiting for the veterinary surgeon to arrive. It is anticipated that such a situation will be rare and that generally it will be appropriate to wait for a veterinary surgeon to attend.
>
> 193. Once an animal has been taken into possession under the terms of the draft Bill, it can be retained for no more than eight days unless relevant proceedings are commenced before the end of that period or an extension of time is granted by a magistrates' court. The RSPCA submitted that the eight-day retention period was unworkable. It recommended that:
>
> > … clause 11 be amended to reflect the present [legal] position. There should not be a time limit on the retention of an animal in distress but its owner should have the immediate right to apply to court for its return.
>
> The National Equine Welfare Council agreed with the RSPCA and submitted that an eight-day retention period was "insufficient" and should be extended to 21 days so that owners or other persons responsible for an animal could be identified.

---

[153] *Launch of the Draft Animal Welfare Bill*, Cm 6252, July 2004, p52
[154] RSPCA, *Parliamentary briefing; Animal Welfare Bill*, 2005, p1
[155] *Launch of the Draft Animal Welfare Bill*, Cm 6252, July 2004, p15

> 194. At the outset of our scrutiny process, Defra conceded that further work was required on clauses 11 to 19:
>
> > The question of how long animals can be retained before an application needs to go back to the court needs to be reviewed, and … we are looking at the whole question of how that dovetails into applications that can be made to a court once proceedings have been commenced.[156]

In light of this debate the Committee recommended:

> […] the retention of the existing legal position, whereby there would not be a time limit on the retention of an animal in distress but its owner would have the immediate right to apply to court for its return.[157]

The Government agreed:

> We accept this recommendation. The scheme for taking animals in distress into possession will be altered. There will no longer be any time limit for their keeping. The owner or other person with a sufficient interest in the animals will be able to apply for their release at any time after they are taken into possession. The Bill will allow action in an emergency, with an appropriate power of entry in support of these powers. There can be an application for the release of an animal at any stage, and the court will be able to make orders in relation to animals which have been taken into possession under the emergency powers. We feel this scheme provides protection for animals whilst at the same time protecting the rights of those with an interest in the animal, and preserves the role of the court whilst seeking to avoid unnecessary applications.[158]

The recovery of costs spent while taking action under the clause was also debated. The draft Bill provided that an animal taken into possession under clause 11, could be removed by an authorised person to a place of safety, to care for it either on the premises where it was taken into possession or elsewhere as the authorised person thinks fit. Clause 12 (4) allowed the recovery of costs from the owner of the animal taken under clause 11 (1).

Currently, where a court has made an order for the care, disposal or slaughter of animals, the *Protection of Animals (Amendment) Act 2000* provides that the prosecutor is entitled to be reimbursed for any reasonable expenses incurred by him in the exercise of his powers.[159] The draft Bill, however, did not contain this condition.

The Countryside Alliance felt that a court should only pass on reasonable costs to the owner, rather than the total costs:

---

[156] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p53-54

[157] ibid, p54

[158] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 47

[159] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p54

> This would also act as an important restraint against the abuse of these powers. Unless the power to recover costs is limited, those who own, keep, or are responsible for animals can suffer repeated financial penalties without ever having committed, or have been about to commit, an offence under the provisions of this Bill.[160]

The Society of Conservative Lawyers (SCL) shared this view:

> There is no check on the amount that is recoverable. There ought to be a court sanctioned proportionality check ... the Protection of Animals (Amendment) Act 2000 … does have a costs system which is compliant with human rights, because it does enable the court rather than the constable or the inspector to order the recovery of reasonable costs, and that meets all the requirements we point out.[161]

The Committee agreed and recommended that the reimbursement under various clauses contained in the Bill be amended to enable reasonable costs incurred by them to be recovered.[162]

The Government also agreed, but stated that the proviso only to reimburse reasonable expenses would not be put on the face of the Bill:

> We will amend the draft Bill so that the Magistrates' court may order that the person who incurs expense in dealing with a distressed animal may be reimbursed. It will be for the court, on the basis of the evidence put before it, to decide the amount to be reimbursed and by whom. We do not consider it necessary to put on the face of the Bill that the court should only order reasonable expenses to be reimbursed since as a public body the court has a duty to act reasonably in any event.[163]

In addition to the above, witnesses also commented on the powers included under draft clause 13 which would enable an inspector to take such steps as “appear to him to be immediately necessary to alleviate" a protected animal's suffering. The power extends to killing the animal where a veterinary surgeon certifies that there is no reasonable alternative. The requirement to obtain certification from a veterinary surgeon can be dispensed with where the inspector or constable believes that "the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon."

A number of organisations expressed concern about this power:

> The Dogs Trust submitted:
>
> > While we accept that there may be some situations where animals are *in extremis* and rapid euthanasia is necessary, we do have some concerns that constables and inspectors are authorised to kill an animal without

---

[160] ibid, p54
[161] ibid, p54-55
[162] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation, p55
[163] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 48

> veterinary advice and without any attempt at definition of such circumstances.

202. The Pet Advisory Committee shared this concern:

> … we feel that only a veterinary surgeon is properly qualified to make a diagnosis prior to euthanasia. We would like veterinary surgeons to be more explicitly involved in this decision as, whilst an inspector or constable may be acting with the best of intentions when presented with an injured animal, animals can often display or mimic symptoms that make injuries appear worse than they really are.

The Committee recommended:

> 203. We are satisfied it is appropriate that constables and inspectors should be empowered to authorise the killing of a protected animal where there is no reasonable alternative. However, we consider that constables and inspectors would be greatly assisted in their functions if the term "reasonable alternative" was defined in the Bill. Furthermore, we seek assurances from the Government that those persons tasked with animal inspection work will be properly trained in animal behaviour so as to recognise when it will be necessary to kill an animal; constables and inspectors should also be trained to kill an animal in as humane a way as possible.

The Government responded:

> We do not consider that the term 'reasonable alternative' is capable of further definition. We cannot foresee all the situations which might present themselves, and an element of discretion needs to be given to those dealing with emergencies. What is reasonable in each case will depend on all the facts and is best assessed by the inspectors and constables on the ground at the time. Some inspectors will be qualified veterinary surgeons and will therefore have received relevant training. Clearly it would be a good idea for local authority officers and the police to receive training in how to deal with suffering animals in an emergency and we will be considering how best to achieve this.

a. The Bill

Powers to deal with animals in distress are found in clauses **16** to **18** of the Bill. Clause **17** of the Bill provides powers of entry to deal with animals in distress.

These clauses would give much the same range of powers as were contained in the draft Bill:

> 58. This clause authorises an inspector or police constable who finds a protected animal that is suffering to take those steps that need to be taken immediately to alleviate the animal's suffering […]. Powers of entry are conferred by clause 17. Clause 16 is wider than the power in the Protection of Animals Act 2000 (which this Bill repeals) in three ways. First, the power is available even if no proceedings have been commenced. Secondly, it is not restricted to animals kept for commercial purposes. Thirdly, it allows inspectors to take into possession

> not only animals which are suffering but also those which are likely to suffer if action is not taken.[164]

Upon the Committee's recommendation, no time limit is specified for which an animal may be held under **16 (5)**. In addition, the owner is able to make an immediate application to the court for return of the animal under clause **18 (2)**.

Clause **16(11)** of the Bill provides that a Magistrate's Court may order that a person who incurs expense in dealing with a distressed animal may be reimbursed. The court would decide the amount to be reimbursed and by whom. No reference is made on the face of the Bill to limiting the amount of reimbursement to "reasonable costs" as advised by the Committee.

Reimbursement is also an issue in clause **18** which provides that orders can be made in relation to animals held under **16 (5)**. Clause **18 (1)** enables the Magistrate's Court to order the administration of treatment, giving up, sale, disposal or destruction of an animal taken under clause **16 (5),** provided the owner was given the opportunity to be heard or if the Magistrate was satisfied that it was not reasonably practicable to hear the owner. When deciding upon such orders the court would be required to have regard to avoiding increasing the costs that a person may be ordered to reimburse. The RSPCA also feels that the court should also be expressly required to consider what action would be in the animal's interests.[165]

The RSPCA is also concerned that under clause **35**, reimbursement of expenses incurred in connection with the keeping of an animal seized due to involvement in fighting is limited to the police. They feel this will impede the ability of other enforcement agencies such as the RSPCA to act in such situations.[166]

Under clause **16 (3)** & **(4)**, an authorised person will be able to kill an animal if its condition is such that it should be destroyed in its own interests. No definition of "reasonable alternative" is given.

2. Powers of entry

The draft Bill would have entitled entry into premises, other than private dwellings, without a warrant to search for evidence of the commission of an offence. The Committee agreed with this power:

> We believe that the serious nature of offences against animals justifies empowering constables and inspectors to enter premises, other than premises used solely as private dwellings, without a warrant on the basis of reasonable suspicion or belief that an offence is being or has been committed or that evidence of a relevant offence is on the premises.[167]

---

[164] The Animal Welfare Bill, Bill 58, 2005, Explanatory Notes, p11
[165] RSPCA, personal communication, 16 November 2005
[166] ibid
[167] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p56

In addition the Committee also felt that a warrant should not be required to enter buildings which may be used partly as a private dwelling i.e. a home office.[168]

However the Government felt that these powers would go too far:

> The draft Bill will be amended so that premises may only be entered for the purposes of searching for evidence of a suspected offence under the authority of a warrant. This change has been made after careful consideration of human rights law in this area. Recent authority, including the case of *Camenzind v Switzerland* RJD-III 2880 states that powers of search and seizure must be proportionate and subject to adequate safeguards. In that case, the European Court of Human Rights said that it would be particularly vigilant where national law allowed searches without judicial warrant and stated that very strict limits on such powers are necessary in order to protect individuals from arbitrary interference.
>
> We have taken the view that, given the general approach to search and seizure in the Police and Criminal Evidence Act 1984, it would be difficult to justify a power to enter without a warrant to search for evidence of offences under the Bill, where no similar power was necessarily available in relation to other, possibly more serious offences.[169]

These provisions were duly omitted from the face of the Bill. Clause **20** of the Bill provides that entry may be gained to premises to search for evidence of the commission of an offence, only where a warrant has been granted. Clause **46** of the Bill outlines the conditions under which a warrant may be granted. A warrant will be required before entry to any private dwelling (including garden, garage or outhouse). The RSPCA feels that the requirement to obtain a warrant for entry to a garden, garage or outhouse is too restrictive.[170]

a. Powers of entry for inspectors

The draft Bill proposed to give inspectors appointed under it a similar power of inspection and entry to those given to the police, which some witnesses to the Committee's inquiry felt was inappropriate. The Countryside Alliance said:

> The powers of inspection and entry in this Bill give equal powers to inspectors as to the police. In effect this creates an animal police. Yet it is not clear that the provisions of the Police and Criminal Evidence Act (PACE) will apply to inspectors as [they do] to the police. The only direct reference to PACE relates to the application for warrants.[171]

---

[168] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p58

[169] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 50

[170] RSPCA, personal communication, 16 November 2005

[171] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p58

The Committee discussed the issue further:

> 217. The Police and Criminal Evidence Act 1984 makes provision in relation to the powers and duties of the police, including the powers of entry, search and seizure. The Secretary of State must issue codes of practice in connection with the exercise of those powers. Although the police are accountable to the Secretary of State, it is unclear to whom inspectors would be answerable.[172]

They recommended:

> 218. Given that both inspectors and constables will be exercising the powers of entry and search under the draft Bill, we recommend that the draft Bill should be amended to include a requirement that the codes of practice issued under the Police and Criminal Evidence Act 1984 in connection with the exercise of those powers should be complied with when exercising search and entry powers under the Bill.[173]

The Government in response pointed out that PACE codes of practice are applicable to the police only and stated that they are not suited to be used in connection with the Bill. They went on to say:

> We do not object in principle to drawing up a similar code for searches under the Bill but this cannot be done immediately. In any event, the requirements of sections 15 and 16 of PACE do apply to applications for, and execution of, warrants under the Bill. In addition, Schedule 2 of the Bill contains other safeguards.[174]

The Bill made no mention of PACE. However, schedule 2 of the Bill has been extensively reworked, giving more detail regarding the use of powers by inspectors (and constables). This includes the specification that sections 15 and 16 of PACE apply to inspectors.

3. Appointment of inspectors

Clause 44 of the draft Bill provided that inspectors would be appointed by local authorities following guidance issued by the Secretary of State in the form of a list of suitable persons. There was widespread concern about the categories of person who would be eligible as inspectors:

> The National Farmers' Union (NFU) was concerned that the lack of detail on the face of the draft Bill about the appointment of inspectors could lead to confusion. The NFU stressed that it was "absolutely vital for professional animal keepers to know who the enforcement authorities were and what powers they had". The British Wildlife Rehabilitation Council believed that "the most obvious source of informed inspectors would be the RSPCA inspectorate." The BioVeterinary Group

---

[172] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p58-59

[173] ibid, p59

[174] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 54

acknowledged that the "RSPCA is in a very good position to be an investigative authority" but believed that the RSCPA did "not know what they are looking for" when inspecting unusual or exotic pets.

Lack of specialist knowledge was a concern shared by the National Sheep Association:

> It is very important that people who are inspectors should be properly qualified and properly examined so that they are [sure to be] of a certain standard and have a standard of knowledge.

221. Bryan Reed, who submitted evidence to the Committee on behalf of a number of parties, stated:

> The term "Inspector" needs clarification. While we have the greatest respect for the work of the RSPCA and other NGOs—under no circumstances should entry to any premises be allowed by NGOs without a warrant or without one or more of the following accompanying them: a Constable, Customs and Excise official, Veterinary Surgeon or a Defra Inspector. We appreciate that under *rare* circumstances it may be necessary to enter premises or vehicles without a warrant but anyone doing this should be able to substantiate their actions.

222. The Minister conceded that there was confusion surrounding the issue of appointment of inspectors. He acknowledged that Defra needed "… to do some more work on the whole area of enforcement and the roles of inspectors and their powers of entry". In respect of the role of the RSPCA, the Minister told us:

> … as currently drafted, the Bill does not give [the RSPCA] extra powers. All it enables them and others who are appointed as inspectors by the Secretary of State or by local authorities … to do is give them powers to intervene before suffering happens … Let me make it clear that the RSPCA are not being given powers of entry to seize animals. Powers of entry and inspection will be carried out by local authorities (and anyone they appoint under their direction), the State Veterinary Service and the Police. If the RSCPA need to enter premises to seize an animal it will be necessary for them to be accompanied by a police constable and the police constable will need to obtain a warrant from the court in order to obtain entry to domestic premises. The term "inspector" in the Bill means an officer of a local authority (or persons appointed by a local authority) who is accountable to the local authority, or a member of the SVS; it does not mean an RSPCA inspector.

223. Further confusion is caused by the fact the RSPCA refers to its own officers who investigate animal welfare cases as "inspectors". The RSPCA suggested that the vague terminology in the draft Bill had caused the confusion about its role and echoed the Minister in saying that the term "inspector" was defined in the draft Bill as "a person appointed to be an inspector by the national authority or the

> local authority; it is not an RSPCA inspector … Those two are completely separate."[175]

The Committee stated that as it was written the draft Bill would not prevent an employee of an NGO (such as the RSPCA) from being appointed as an inspector by the Secretary of State:

> […] We have only Defra's stated intention that the list will extend to only the State Veterinary Service and local authorities. If this is indeed Defra's intention, then we recommend that it should be specified on the face of the Bill. Currently, the draft Bill effectively delegates an unlimited power to the Secretary of State to decide who may act as an inspector. At the very least, the Bill should specify the appropriate categories of person or 'characteristics' of persons who may be appointed to the role. We further recommend that the draft Bill be amended to specify how inspectors will be appointed in Wales: currently, clause 44 makes reference only to the Secretary of State; no mention is made of the National Assembly for Wales.[176]

During the inquiry some witnesses expressed "deep reservations" at the possibility of RSPCA inspectors being appointed as inspectors under the draft Bill. When asked whether a different term could be adopted to help distinguish RSPCA inspectors from inspectors appointed under the Bill, the Minister said:

> … there may be a legalistic reason why we have to use that definition, but I am perfectly happy to look at different bits of terminology to avoid the confusion that arises because the RSPCA calls a lot of its own officers "inspectors" but they are not going to be inspectors for the purposes of this Bill.[177]

The Committee went on to recommend that

> To avoid confusion with the RSPCA's own inspectors, […] the Government [should] consider changing the term "inspector" in the draft Bill to "approved person", "approved officer", or some other term that sits appropriately with relevant legislation.[178]

The Committee also felt that inspectors should be held to the same standards as the police or other state officers in terms of criminal or civil liability.[179]

The Government in its formal response explained the use of the term inspector and the anticipated relationship of inspectors with the RSPCA:

> The term 'Inspector' for those appointed by the Secretary of State and local authorities is prevalent throughout animal health legislation and we judge that to use different terminology in this Bill would be more confusing rather than less.

---

[175] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p59-60
[176] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p60
[177] ibid, p61
[178] ibid
[179] ibid

> The draft Bill will be amended to deal with appointment of inspectors in Wales. We do not expect RSPCA Inspectors to be appointed as inspectors to undertake work on behalf of local authorities. But if they are so appointed, they, like any person appointed by the local authority to inspect on its behalf, will be accountable to the local authority for their behaviour and performance in that capacity.[180]

In terms of the liability of inspectors the Government stated that they felt inspectors should be protected where they act in good faith:

> […] We wish to retain this protection. There are precedents for this approach, for example in the Food Safety Act 1990. This approach is seen as particularly important in the field of animal welfare, since inspectors may need to act swiftly and on their own initiative in order to protect an animal from suffering. In addition, provided an inspector is acting in good faith and reasonably, then it is unlikely that a tort or crime has been committed. However, we will redraft the clause to make it clear that this protection is only afforded to the inspector personally, and not, for example, to the local or national authority that employs him and which could still be vicariously liable for his actions in the course of his employment.[181]

a. The Bill

The term "inspector" was retained in the Bill. Clause **45** defines an inspector in relation to the Bill and gives more information about their appointment. The Bill and explanatory notes did not expand further on the categories of persons who would be able to become inspectors, although any inspectors appointed by the appropriate national authority are "currently likely to be a State Veterinary Service inspector".[182]

In terms of inspectors appointed by local authorities, the explanatory notes explain that they will have to have regard to any guidance issued by the relevant national authority which is expected to include criteria such as relevant qualifications and experience.[183] As the Bill is currently drafted, persons from NGOs such as the RSPCA will be able to be appointed inspectors under the Bill.

Through clause **45 (5)**, the Bill retained the protection given to inspectors from liability, where they act in good faith.

4. Regional enforcement

Local authorities will be at the forefront of enforcement of the Bill through the appointment of inspectors, investigation, licensing, registration and prosecution of offences. A number of witnesses to the Committee's inquiry felt that consistency in approach between different authorities should be a priority, highlighting the fact that

---

[180] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 56
[181] ibid, recommendation 57
[182] The Animal Welfare Bill, Bill 58, 2005-06, Explanatory Notes, p26
[183] ibid

historically there has been very little. To aid in this, the Pet Advisory Committee suggested that there should be a system of regionalism:

> … if we can get a good level of expertise that is shared out around the country, that is going to help with better enforcement and it will give a good sound database which will aid in the training. We feel that training is required both on the enforcement side and for the people selling and dealing in animals, so regionalism would have a structure which would benefit from that.[184]

The Companion Animal Welfare Council stressed that enforcement needs to be "consistent, effective and … undertaken by people with expertise".[185] They highlighted that currently local authority enforcement may be undertaken by a wide variety of persons within the authority, none of whom may have the time or expertise to enforce the law in this regard.[186]

The Committee discussed a proposal which may improve local authority enforcement:

> 231. One proposal from Defra that may assist in achieving greater consistency in regional enforcement is the setting up of a national database for recording animal welfare licences, offences and best practice. Annex K to the RIA, which sets out the proposal, indicates that the RSPCA would be given responsibility for the database: "… it would only require the RSPCA to enter [into the database] on average the details of four people per working day. The RSPCA have confirmed that this would not be a drain on their resources."[187]

A number of witnesses felt that it would be inappropriate for the RSPCA to have responsibility for the database, a view that was also held by the Committee who made the following recommendations:

> 233. We consider that it is imperative that there is consistency in animal welfare enforcement between local authorities. It is most unsatisfactory and inequitable to have different standards of enforcement in different regions. We therefore recommend that the Government should adopt a system, such as a database, to ensure that enforcement across licensing departments in England and Wales is consistent. The information should be entered and held by local authorities. Although the RSPCA should be permitted to have access to the information, we consider it wholly inappropriate that the RSPCA should be given responsibility for compiling and maintaining the database. Defra should use its own resources to audit the consistency of enforcement between local authorities.[188]

The RSPCA argued that the Committee had mistaken the intentions of the Government in relation to the database:

---

[184] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p61
[185] ibid, p62
[186] ibid
[187] ibid
[188] ibid

> EFRA have misunderstood the position by reading Annex K of the Bill as saying the RSPCA would have responsibility for compiling and maintaining the proposed database. The only proposal thus far has been that the RSPCA should contribute information it holds to help ensure the database is an adequate resource for animal welfare enforcement. Information should also be provided by local authorities and anyone else who can usefully contribute. Defra should be responsible for holding and maintaining the database.[189]

The Government agreed with the Committee that consistency in enforcement was important and that the establishment of a database would "assist local authorities in raising enforcement standards and achieving a greater degree of consistency in the quality of their enforcement work".[190] In terms of the database, they stated that it would be held by central Government, with RSPCA inspectors and prosecutors being given access on an individual rather than organisational basis. Data sharing between enforcement agencies, in compliance with data protection legislation, would also be improved.[191]

a. The Bill

The regulatory impact assessment that accompanied the Bill gave more information about the database proposal and the improvement of regional enforcement:

> […] Defra would have the opportunity to provide advice and information for enforcers of the new legislation. Enforcers frequently need to obtain the advice of a specialist veterinarian or other expert when dealing with a less well known animal. As part of a coordinating role, Defra see merit in establishing a central database for enforcers to access information such as details of convictions for offences relating to animals, disqualifications from keeping an animal, and certain records relating to previous licences. At present there is no central record of those subject to disqualification orders and this is regarded as a significant handicap to effective law enforcement. The database could also keep a register of specialist experts ideally accessible to enforcers. Defra would ensure that the database fulfils the requirements of the Data Protection Act 1998.
>
> 43. Another opportunity would be to facilitate cross boundary working between local authorities. Local authorities' expertise in animal welfare varies from one authority to another. The national database would enable local authorities to post details of a local authority officer who has expertise on certain animal welfare issues which could be referred to by other local authorities who may lack experience in a particular area.
>
> 44. A central database would also assist in preventing offenders who are disqualified from doing certain activities relating to animals from evading detection by moving to another area of the country. Allowing enforcers access to a central database of animal welfare related criminal records would assist in the prevention of this type of circumvention.

---

[189] RSPCA, *EFRA Recommendations – RSPCA Response*, 13 December 2004

[190] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 58

[191] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 58

> 45. Issues relating to the Data Protection Act 1998, Human Rights Act and civil liberties issues in general would need to be addressed, to include further consultation with the Home Office, Department for Constitutional Affairs and possible reference to the Information Commissioner before any final decision is made on setting up a database. The setting up of a database would be beneficial but not critical as far as the success of the new Act is concerned.[192]

More information about the database is given in Annex O of the RIA.

5. Compensation and other protections

Clause 16 and 17 of the draft Bill would have enabled the disposal of an animal whilst proceedings are taken against the owner. Should the owner be cleared of all charges, there would be no redress for the owner in terms of compensation for their loss. The Reptile and Exotic Pets Trade Association submitted:

> We see virtually nothing in the [draft Bill] as regards protection or compensation for people who are wrongly accused. This draft bill leaves much to be desired in this respect and appears to invite exploitation by the strong presence of animal rights extremists …[193]

The Society of Conservative Lawyers (SCL) also submitted that this would contravene article 1 of the First Protocol to the European Convention on Human Rights: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions."[194]

The Committee said:

> 236. We recommend that provision should be made to provide that compensation may be made available to persons whose animals have been dealt with under clauses 16 or 17 but who have subsequently been acquitted of any animal welfare charges. The draft Bill should be amended to specify and limit the circumstances in which a court can order the slaughter of an animal. It should specify that the court can make such an order only where no reasonable or humane alternative exists.[195]

The Government responded:

> We consider that a power to remove animals in an emergency is extremely important in order to provide adequate protection where necessary. We therefore feel that the provisions in the Bill are an improvement on the present very restricted powers of protection to be found in the Protection of Animals Acts.
>
> In the Bill, the powers to deal with animals in distress and the power of the court to make orders in relation to animals removed in an emergency are no longer

---

[192] Defra, Animal Welfare Bill 2005, Regulatory Impact Assessment, October 2005, p9
[193] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p63
[194] ibid
[195] ibid

> linked to the existence or otherwise of prosecutions. If an owner or keeper feels that his animal has been wrongly removed or should no longer be retained, he may apply to the court at any time for its return. No compensation would ordinarily be payable following a successful application for the return of animals removed using powers in the Bill if the defence of statutory authority is available. Obviously, however, there is a need to exercise this power in a reasonable and proportionate manner, and compensation could therefore become appropriate if it was established that the power had been exercised unreasonably. We hope that such cases will be extremely rare, but if this should occur the claimant would be able to bring an action under existing procedures.
>
> If an owner or keeper is aggrieved at an order made by a court in relation to an animal which has been removed, then the appropriate remedy would be to appeal against that order.
>
> It is suggested that the draft Bill should be amended to state specifically that the court may only order the slaughter of an animal removed in an emergency where no reasonable humane alternative exists. We consider that it is highly unlikely that a court would make such an order if a reasonable alternative did exist. However, we are unwilling to tie the hands of the courts by inserting such a provision since it is impossible to foresee all the different sets of circumstances which may present themselves, and it is felt that the courts should be relied upon to make reasonable orders taking into account all relevant factors. If an order is felt to be unreasonable then the owner or keeper is protected by his right of appeal. In addition, the courts are bound to act in accordance with the Human Rights Act 1998 and will be mindful of this duty.[196]

The Government made no changes to the Bill.

C. Prosecution powers

1. Improvement notices

During the Committee's inquiry a number of witnesses proposed that inspectors should be permitted to issue improvement notices:

> 237. Improvement notices are a mechanism by which an owner or keeper of an animal who is failing to provide an acceptable level of care for an animal can be directed to improve their standard of care without the need to prosecute. Effectively, they would provide an 'intermediate' step in the enforcement process, and would not necessarily lead to prosecutions—indeed, they are intended to circumvent prosecutions in appropriate cases. Legislation on farmed animals' welfare currently provides for improvement notices to be issued.[197]

Some witnesses felt that such notices should be issued as a prerequisite or alternative to court proceedings:

---

[196] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 59

[197] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p63

The International League for the Protection of Horses suggested that:

> It may be worth considering a form of legal improvement notice to be given to an owner or to a sanctuary, saying that if within two weeks or a month you have not improved your grazing, your fencing, your drainage, your saddle-fitting or whatever, you will be prosecuted, but you have got a month or two weeks or whatever to get it right.

239. It was an approach also supported by the British Veterinary Association and Advocates for Animals. The latter submitted:

> This means … that the authorities, without having to go to the big expense and cumbersome procedures of going to court, can merely serve a notice on somebody saying, "You need to take the following steps about"—shall we say—"the way you are keeping your dog", which may be in a makeshift shelter in the garden, so that if the dog never has any proper shelter from bad weather, is not having any proper veterinary treatment though it is ill, is not getting proper food, a notice could be served. I think that would be a helpful addition to the armoury but Defra have said in their notes that they feel it is not appropriate to do so at this stage.

240. When we suggested to the Minister that improvement notices should be provided for under the draft Bill, his response was that enforcement agencies could continue to issue verbal or written warnings as part of the enforcement process and that there was nothing in the draft Bill to prevent them from doing so. He opposed making provision on the face of the Bill for improvement notices to be issued:

> … to lay down some hard and fast rule that this should always happen before a prosecution is taken out, I think, would make it more difficult for [the enforcement agencies] or would deprive them of the flexibility to take action immediately if they think a case is serious enough and they do not want to go through that kind of warning process.

241. It is interesting to note that, at least on the evidence of the RIA, Defra appears at some stage to have intended to provide for improvement notices in the draft Bill. Defra comments that:

> … improvement notices in farm welfare are still a relatively recent concept (introduced in 2000) and it was therefore considered that it would be better to allow more time for them to bed in before extending their use to all captive and domestic animals. It was therefore considered that the Bill should contain a clause allowing for the introduction of improvement notices once it is decided to issue them. Such a decision would only be made following a round of consultation on the issue of improvement notices.

There does not appear to be a clause in the draft Bill which makes provision for the introduction of improvement notices, unless the Government considers that relevant provisions could be made by way of regulations made under clause 6(1).

> 242. The Minister is clearly resistant to the idea of making provision for improvement notices in the draft Bill. However, if the Bill remains silent on the issue we consider that there is a risk that enforcement agencies will believe that they have no option but to prosecute in order to ensure an animal's welfare.[198]

Upon consideration the Committee felt that improvement notices would help to ensure that proceedings are only taken forward in appropriate cases. They also anticipate that they would save court time in addition to encouraging owners to improve animal welfare. They recommended:

> We consider that improvement notices would assist in ensuring that proceedings are commenced only in appropriate cases. They would not only save court time but could also encourage owners to improve standards of animal welfare. We recommend that, although enforcement agencies should have a discretion to issue improvement notices for protected animals, that discretion and the relevant procedural requirements should be specified on the face of the Bill. This should include a right of appeal on the part of the person to whom an improvement notice is issued. [199]

The Government responded:

> We have considered carefully whether it would be appropriate to include a requirement for improvement notices and agree that in general those responsible for animals should be given a clear indication of what they need to do to avoid prosecution under the welfare offence. Prosecution should be the last resort. This is in keeping with guidelines on enforcement. However, we also believe that prosecutors should have the discretion to proceed directly to a prosecution if that is what is required in the circumstances.
>
> Since this is a common informers' offence we do not judge it appropriate to place a requirement to issue notices on the face of the Bill. The difficulties of ensuring consistency and quality control over the contents of formal improvement notices issued by private prosecutors would detract significantly from their value to the recipient. However, we note the RSPCA's commitment to providing suitable advice before proceeding to prosecution, and public authorities which prosecute will continue to follow the relevant guidance which requires the service of a notice setting out the recommended steps to be taken. Inspectors' powers to issue improvement notices in relation to farmed animals will not be affected.[200]

Improvement notices were not included on the face of the Bill.

2. Persons authorised to act as prosecutors under the Bill

The draft Bill listed categories of person who would be authorised to perform certain functions under the draft Bill:

---

[198] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p63-64

[199] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p64

[200] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 60

- A public authority
- A person acting on behalf of a public authority or acting in their capacity as an official appointed by a public authority
- A person authorised by the appropriate national authority

There is an existing common law right for any private citizen, such as the RSPCA, to bring a prosecution under animal welfare legislation. Defra stated that this would not be affected by the draft Bill.

Some witnesses were concerned that enforcement powers would be delegated by the national authority to bodies such as the RSPCA. The Equity trade union, which spoke on behalf of its members who perform in circuses, submitted that it:

> "would like to see a neutral statutory body in charge of prosecuting cases under any new regulations, rather than a politically motivated organisation such as the RSPCA." It believed that only "a body with no pre-disposed opinions" could be a fair judge of complaints.
>
> The Federation of British Herpetologists was equally opposed to the devolution of prosecution functions to the RSPCA:
>
> > … prosecution should be dealt with by the Crown Prosecution Service … It would be entirely inappropriate for the RSPCA to continue this position they have. They are a campaigning organisation who are opposed to certain sectors so for them to be in a position to prosecute something they are campaigning against seems extraordinary.[201]

A number of witnesses seemed confused about the current status of the RSPCA with regard to prosecution powers. The RSPCA is referred to as an "authorised prosecutor" under the *Protection of Animals (Amendment) Act 2000*. This status, the RSPCA explained, should not be confused with formal prosecutor status. The RSPCA can only use its status to make an application to the court regarding the disposal of animals. Applications are made with the support of a veterinary surgeon. The organisation must still prosecute under common law in the same way as a private citizen.

The Committee felt, however, that the inclusion of 15 (2) (c), which would enable the national authority to extend the power to prosecute to other bodies, should be deleted from the draft Bill as this would imply that they intend to extend full prosecutor status to the RSPCA. They stated that "[w]e consider it wholly inappropriate that prosecution powers under the draft Bill should be able to be exercised by any organisation other than the Police, the State Veterinary Service and local authorities".[202]

The RSPCA strongly disagreed with the Committee's recommendation in this regard:

---

[201] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p65

[202] ibid, p66

> Probably due to the confused and incorrect nature of some of the evidence submitted, EFRA appears to remain confused about the meaning of the "prosecution functions" (not powers) referred to in clause 15(2)(c). Being an "approved" or "authorised" prosecutor simply means that where the police have given the RSPCA an animal to care for and after proceedings have been commenced, we are able to apply to the court for an order regarding disposal of the animal. It is not "wholly inappropriate" for the RSPCA to exercise such a limited and purely facilitative power.
>
> EFRA appears to have thought that "prosecution powers" confer the right on the authorised organisation to prosecute under the legislation. This is not the case: the RSPCA's right to prosecute derives from the common law right available to all citizens. Rather contradictorily EFRA seems to accept this position stating that the RSPCA should be able to continue to bring private prosecutions.
>
> It is important that the RSPCA should be authorised to apply to court for these orders. It usually takes many months, and sometimes more than a year, for a case to reach trial. If it has been necessary for the welfare of the animals which are the subject of proceedings to take them away from their owner, the RSPCA cares for them during that period. The expense of doing so can run into several thousands of pounds and the owner will lose the opportunity of selling or slaughtering the animals at the optimum time. The result is their value decreases while the cost of keeping them mounts. The 2000 Act solved both problems and it is, therefore, important that its provisions be carried over into the Bill.[203]

The Government said:

> This point reflects a misunderstanding. Clause 15(2)(c) referred to agreements along the lines of the agreement with the RSPCA under the Protection of Animals (Amendment) Act 2000. The 2000 Act agreement did not give power to prosecute, but power to make additional applications for disposal orders in relation to a commercial animal that was the subject of an ongoing prosecution. The RSPCA has always had the power to prosecute for offences under the 1911 Act and will continue to be able to prosecute under the Bill. Clause 15(2)(C) of the draft Bill has been superseded, and provisions relating to written agreements with the Secretary of State will appear in the clauses that deal with applications for orders relating to animals seized under the emergency powers.[204]

More information about inspectors can be found in section V .B of this paper.

D. Powers following conviction

The Committee scrutinised the powers that could be used following conviction of a person of an offence under the Bill. These could include:

- Imprisonment or fine
- Deprivation orders

---

[203] RSPCA, *EFRA Recommendations – RSPCA Response*, 13 December 2004, p9 - 10

[204] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 61

- Disqualification orders
- Seizure orders, both financial and in relation to animals
- Destruction orders

The Committee made the following recommendations regarding the level of penalties and the nature of disqualification orders.

1. Level of penalties

Clause 24 of the draft Bill set out the powers of the court to prison or fine a person found guilty of an offence under the Bill. All offences were summary only; they could only be tried at the Magistrates' Court:

> The maximum sentence that can be imposed under the draft Bill has been increased from six months to 51 weeks to reflect changes implemented under the Criminal Justice Act 2003. The maximum fine for cruelty and fighting offences has been increased from £5,000 to £20,000. Defra initially justified this increase on the basis that it reflected the seriousness of offences such as fighting and cruelty to animals for financial gain. Subsequently, however, Defra told us that the changes were a necessary result of the Criminal Justice Act 2003.
>
> 260. Although welcoming the increased penalties under the draft Bill, Paula Williamson, a solicitor with Worcestershire County Council, pointed out that making animal welfare offences summary only meant that they attracted the lesser penalties because of the limitations on magistrates' sentencing powers. Ms Williamson suggested that the offences should be made "either way"—that is, summary or indictable—which would mean that they could be dealt with either by the Magistrates' or the Crown Court. This would permit the more serious offences to be transferred to the Crown Court so higher penalties could be imposed.
>
> 261. Commenting on Ms Williamson's statement, ACPO stated:
>
> > This is as an issue of perception on the bench in a Magistrates' Court and it would change the perception of the serious nature of the most serious offences quite significantly. [Ms Williamson] is quite right, it would raise a higher likelihood of a custodial sentence being implied even in the Magistrates' Court.[205]

The Committee recommended in light of the above:

> 264. We consider that the gravity of the offences under the draft Bill should be reflected in increased sentencing powers. We recommend that certain offences should be triable 'either way'—that is, either summary or indictable—in order to give the courts the ability to impose longer sentences in appropriate cases, and we urge Defra to take this matter up with the Home Office. The offences which should be triable 'either way' should be the clause 2 fighting offence and the most serious cruelty offences under clause 1. We note that such offences would

[205] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p68-69

> necessarily involve premeditation, whereas a welfare offence might not necessarily be intentional.[206]

The Government responded:

> We have consulted further with the Home Office who have confirmed both that the sentences are proportionate and that there is no evidence for pressure from courts for sentencing powers that go beyond those contained in the draft Bill (see the written memorandum sent to the Committee by the Magistrates' Association Sentencing Committee).
>
> The Committee highlighted a seeming anomaly that theft of an animal would be an offence triable either way, whereas cruelty to an animal would not. However, the law on theft applies to theft of any object, not just animals, and so has to be triable either way to ensure that the most serious cases can go to Crown Court.[207]

a. The Bill

Clause **28** of the Bill provides the penalties for offences under the Bill. All penalties are summary only, that is, the offences are triable only in the Magistrates' Court, contrary to the Committee's recommendation. This also applies to any offences created through the introduction of regulations made under the Bill.

"Custody plus", introduced by the *Criminal Justice Act 2003*, will have an impact on the offences made under any future Animal Welfare Act i.e. offences with maximum penalties of less than 12 months have to be dealt with by the court as follows:

(a) The court may only impose a custodial sentence of up to 13 weeks and
(b) The court must impose a non-custodial licence period during which the offender is supervised.

The maximum penalty is different for various offences under the Bill.

Clause and offence	**Provided by**	**Term of imprisonment (max)**	**Level of fine (max)**
Clause 4: Unnecessary suffering Clause 7: Fighting	Clause 28 (1)	51 weeks	£20,000

[206] ibid, p69
[207] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 63

Clause 8: failure to ensure welfare Clause 11 (6): carrying on an activity without being licenced or registered as required Clause 30 (9): breaches of disqualifications	Clause 28 (2)	51 weeks	Level 5 (currently £5,000)
All other offences i.e. obstruction of inspectors	Clause 28 (4)	51 weeks	Level 4 (currently £2,500)
Offences made under secondary legislation:			
Clause 10 (4): maximum level of offences to be made under regulations; i.e. welfare offence Clause 11 (para 9, schedule 1): breach of licence conditions	Clause 28 (3)	51 weeks	Level 5

Table 1: Penalty levels under the *Animal Welfare Bill 2005*. An offence carries penalties of imprisonment or a fine or both.[208]

The *Criminal Justice Act 2003* (CJA) will have an impact on the above penalties. The CJA increased the maximum sentence that a magistrates' court can impose from 6 months to 12 months. Magistrates will be able to impose sentences of 12 months' imprisonment, but all sentences of less than 12 months will have to be sentences of "custody plus" rather than imprisonment, unless they are sentences of intermittent custody, another new form of sentence provided by the 2003 Act.

The arrangements for "custody plus" are set out in sections 181-182 of the CJA.

"Custody plus" will consist of a total sentence term , which must be expressed in weeks, of at least 28 weeks but not more than 51 weeks. The term will consist of two parts:

- a custodial period" of at least 2 weeks and not more than 13 weeks, in respect of any one offence, and
- a period when the offender is released on licence, under supervision in the community, which must be at least 26 weeks in length.

When imposing a sentence the court will have to specify the lengths of the two parts of the sentence and will have the power to attach certain conditions with which the offender must comply during the licence.

The provisions of the 2003 Act which introduced intermittent custody are being piloted but the provisions increasing the maximum sentence available to magistrates from 6 months to 12 months and those relating to custody plus are still awaiting implementation.

[208] After: The Animal Welfare Bill, Bill 58, 2005-06, Explanatory Notes, p17-18

Custody plus might roll out for offenders aged 18-20 from December 2005 and for older offenders from May 2006.[209]

2. Disqualification orders

The Committee introduced the draft proposals to make disqualification orders:

> 265. Under clause 25 of the draft Bill, an owner of an animal who is convicted of cruelty, specific fighting offences, an animal welfare offence or breach of disqualification order, would be able to be deprived of ownership of the animal. Clause 26 would permit a court to disqualify a person from engaging in a number of activities following conviction for cruelty, fighting and welfare offences. Those activities are:
>
> a) owning animals
> b) keeping, or arranging for or participating in the keeping of, animals
> c) dealing in animals, and
> d) transporting, or arranging for the transport of, animals.
>
> Disqualification can be imposed in relation to animals in general or to animals of a specific kind.
>
> 266. Clause 26 is the Government's attempt to close the loophole in the Protection of Animals (Amendment) Act 1954 which disqualifies a person only from having "custody" of animals. Offenders have circumvented disqualification by transferring ownership and therefore "custody" to a third party, although in reality the owner retains control of the animal. Paula Williamson, a solicitor with Worcestershire County Council, spent three years repeatedly prosecuting individuals who continually circumvented disqualifications orders imposed by the courts. Ms Williamson recommended that clause 26 should be expanded to include:
>
> > … having custody of an animal where custody includes control of that animal; or, and this is the crucial point, "the power to control that animal". This would catch defendants who try to argue that they have divested themselves of the custody of an animal … [clause] 26 is fine in so far as it goes, but it does not go far enough. The custody and the control and the power to control an animal is not adequately covered by [clause] 26 in its current form.[210]

The Committee recommended:

> We welcome the Government's intention to close the loophole in the current provisions on disqualification by ensuring that an offender cannot circumvent disqualification by transferring ownership and, therefore, custody of an animal. However, we consider that clause 26 does not achieve this intention and we therefore recommend that the activities prohibited by clause 26 of the draft Bill

---

[209] *Criminal Justice Act 2003* information provided by Miriam Peck, Home Affairs Section, House of Commons Library

[210] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p69-70

> should be extended to include "having custody, control or the power to control animals".

In addition, the Committee made the following recommendation on the basis, in part, of evidence submitted by Mike Radford:

> 269. We recommend that fighting should automatically attract a disqualification order. We further recommend that certain animal cruelty offences carried out for a profit, such as making 'snuff' videos, should also attract automatic disqualification to reflect the seriousness of the offence.[211]

The Government said:

> The current power to disqualify is a power to disqualify from having 'custody' of animals. The court has no power to disqualify a person from owning animals at the moment. Therefore, it is not the case that owners need to transfer 'ownership and therefore custody' in order to evade disqualification, as stated by the Committee report.
>
> We do not wish to retain the term 'custody', since this is the term which enforcement authorities currently have difficulty in interpreting. The clause will be redrafted to include an option allowing the court to disqualify a person from 'being party to an arrangement under which he is entitled to control or influence the way in which animals are kept.'[212]

The Government also stated that automatic disqualification orders would prevent the courts from imposing "sentences and orders which are proportionate and suited to the facts of the case".[213] Due to this the Government felt that such mandatory orders are unsuitable. They also believed that they may breach article 1 of the first protocol to the European Convention of Human Rights (right to peaceful enjoyment of possessions).[214]

a. The Bill

The Government inserted clause **30 (2) (d)** to the Bill in order to attempt to close the disqualification loophole as discussed above:

> (2) Disqualification under this subsection disqualifies a person—
> (a) from owning animals,
> (b) from keeping animals,
> (c) from participating in the keeping of animals, and
> (d) from being party to an arrangement under which he is entitled to control or influence the way in which animals are kept.

Automatic disqualification orders for fighting offences are not included in the Bill.

---

[211] ibid, p70
[212] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 64-65
[213] ibid
[214] ibid

VI Other issues raised by the Committee

A. The Regulatory Impact Assessment

Under Cabinet Office rules, new legislation proposed by Government Departments is required to be accompanied by an RIA to provide a justification for the legislation. The draft Bill's RIA compared the costs associated with three policy options in relation to animal welfare legislation reform: doing nothing; having a voluntary system of self-regulation; and proceeding with the draft Bill.[215]

The Committee criticised the Government for not providing more detail on the costs involved with implementation of the Bill, or explaining adequately the improvement to animal welfare that would result. This meant, they argued, that Defra would not be able to clearly demonstrate that benefits outweighed costs, "thereby undermining the case for legislative change".[216]

The Committee also criticised the costs that appeared in the RIA which seemed to be "based on often weakly evidenced cost assumptions and limited information".[217] These weak points stemmed from Defra being unable to provide:

- a comprehensive list on the number of establishments that may be affected (such as animal sanctuaries);
- the likely cost of licences;
- evidence that enforcement costs are likely to be "low";
- evidence that resources (both expertise and funding) will be available to enforcement authorities[218]

The Committee recommended a large number of changes to the RIA:

> Given that Defra has had well over two years since its initial consultation on the draft Bill in January 2002, we are both surprised and concerned that the appraisal of alternatives to regulation in the Regulatory Impact Assessment accompanying the draft Bill is not better developed. Defra's excessively simplistic assessment of options fails to quantify the benefits of the legislation or its alternatives, which limits Defra's ability to demonstrate that the benefits of the proposed legislation would exceed the costs.
>
> Defra's assessment of the probable enforcement costs arising from the implementation of the legislation as "negligible" appears to us to be simplistic in the extreme, for the following reasons:

---

[215] *Launch of the Draft Animal Welfare Bill*, Cm 6252, July 2004, p77
[216] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p71-72
[217] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p71-72
[218] ibid

- Defra appears to have ignored the probable increase—at least initially—in prosecution and conviction numbers from the new offences which the draft Bill would create.
- Defra does not appear to have accounted for the fact that proposals in secondary legislation will require appropriately skilled personnel to provide enforcement and inspection services and veterinary expertise in newly regulated areas such as animal sanctuaries, livery yards and greyhound tracks. We received evidence suggesting that there is a significant skills shortage in these areas and we are therefore concerned that the Regulatory Impact Assessment does not quantify what extra resources will be required nor how they will be provided. The Regulatory Impact Assessment states that "each piece of secondary legislation will be subject to a separate RIA and consultation once it is decided to take forward work on that particular regulation/order", which suggests to us that
- Defra has given no detailed consideration to the likely resource implications of its proposed secondary legislation.
- Defra has proposed that local authorities should operate their licensing services on the basis of full cost recovery, yet the practicalities of this proposal are nowhere discussed in the Regulatory Impact Assessment.

We consider that the Regulatory Impact Assessment accompanying the draft Bill fails to demonstrate that the benefits of the proposed legislation would exceed the costs, as is required by Cabinet Office and National Audit Office guidance. The Regulatory Impact Assessment shows evidence of a lack of thorough consideration, on the part of Defra, about the likely consequences of enacting the draft Bill. It fails to demonstrate what measurable benefits would arise from enactment and provides only weakly evidenced and limited cost information. We are concerned that Defra's poor assessment of the likely long-term implications of the draft Bill, together with the extent to which Defra proposes to defer policy decisions to secondary legislation, indicates that Defra is not yet properly prepared to legislate in this area. We therefore consider that the Regulatory Impact Assessment lacks credibility and provides an inadequate basis for pre-legislative scrutiny.

Consequently, we recommend that, before a final Bill is introduced to Parliament, Defra produces a new Regulatory Impact Assessment which better meets the requirements of Cabinet Office and National Audit Office guidance. The revised Regulatory Impact Assessment should include:

- a more thorough options appraisal
- a quantification of benefits
- a more comprehensive consideration of costs, including the costs of secondary legislation
- evidence to demonstrate that full cost recovery by local authorities is a realistic operational objective, and
- evidence to demonstrate that sufficient appropriately skilled personnel exist to provide enforcement and inspection services and veterinary expertise in newly regulated areas such as animal sanctuaries, livery yards and greyhound tracks. If such evidence is not available, Defra should explain how it proposes to address this shortage.

We also recommend that, in order to gauge whether costs are accurately reflected in its Regulatory Impact Assessment, Defra consults with the

> appropriate authorities about the likely costs of enforcement, licensing and inspection.[219]

The Government challenged the Committee's assertion that the RIA failed to meet Cabinet Office and National Audit Office guidelines and stated that they had consulted widely on the document. However, the Government did propose to make a number of changes to the RIA in response:

> […]Two tables will be inserted that demonstrate the number of visits that the RSPCA, the principal enforcer of animal welfare law, makes in a 12 month period to 'welfare cases' and the costs associated with these visits. The tables show that by having a specific welfare offence the need for so many visits to such cases will be reduced leading to savings.
>
> In addition, we have added more detail to explain the benefits, in terms of improved animal welfare, that regulation has brought to existing activities (e.g. pet shops, dog breeding, animal boarding and riding establishments) and to show that we can therefore expect similar benefits to result from the regulation of new activities.
>
> Another major criticism was that the RIA did not explain why enforcement costs for local authorities would not rise significantly. A table will be inserted that shows the average number of existing licensed activities per local authority compared with the average number proposed under the Bill. Although there will be more licensed activities under the Bill for local authorities to administer, the table shows that because of the move from 12 month to 18 month licences, the average number of inspections per local authority over a three year period will not rise significantly (from 109.2 to 121.0).
>
> We will also mention the scope for contracting staff from other agencies, e.g. the British Horse Society, to assist with licensing work where there is a need for additional help.
>
> We intend to bring forward the proposed regulation of greyhound tracks by one year from 2009/10 to 2008/9 in response to the concern that a timescale of the end of the decade was too far away. We will however emphasise the need to have time to allow the greyhound racing authorities to continue to implement change and the need for time to train local authority inspectors.
>
> […]
>
> The revised RIA will also refer to the possibility of centrally provided training to help local authorities to get to grips with new ways of working under the Bill.
>
> We will also add annexes relating to the licensing of dog breeders, animal boarding establishments and riding establishments.[220]

---

[219] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p74-75

[220] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 66-70

The full RIA to the *Animal Welfare Bill 2005* can be found at:

http://www.defra.gov.uk/animalh/welfare/bill/index.htm

B. Delegated legislation: Proposed and possible secondary legislation and codes of practice

General issues regarding the use of delegated legislation are discussed in section IV .B; specific issues are discussed here.

The RIA to the Bill sets out Government plans for the introduction of secondary legislation and codes of practice to be made following Royal Assent. It is proposed that these should be introduced in two separate tranches, the first comprising those areas for which some legislation already exists or in areas for which policy development is more advanced.[221] The RIA of the Bill gives the following timetable for their introduction, assuming Royal Assent in 2006 and adequate consultation time:

YEAR TO BE PHASED IN	REGULATION/CODE	YEAR TO BE ENFORCED
2006/7	Riding Schools Livery Yards Animal (dog & cat) Boarding Pet Shops Pet Fairs Mutilations Tethering of horses	**2007**
2008	No regulations/codes	Training and recruitment commences in preparation for the second tranche of codes and regulations.
2009	Animal Sanctuaries Greyhounds	**2009**
2010	Performing Animals	**2010**

Table 2: Timetable for the introduction of secondary legislation. After the *Animal Welfare Bill 2005* RIA, p40

The above list is not exhaustive; other areas may also be subject to secondary legislation such as the use of electric shock training aids. Clause **10** of the Bill contains a general power to adopt secondary legislation as necessary in future.

The Committee received a great deal of evidence on these powers and the debate was fairly lengthy. Due to this some of these specific issues are dealt with in the following standard notes, available from the animal welfare subject pages on the Library intranet:

[221] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p77

First tranche:

Pet fairs
Electronic shock collars and training devices
Mutilations (see also chapter III (B))
Rearing of Game Birds

Second tranche:

Animal sanctuaries
Performing animals
Greyhound racing tracks

Those issues not covered by a standard note are discussed below.

1. Licensing of riding schools; licensing of dog and cat boarding; licensing of pet shops

Although Annex L of the draft Bill mentioned that Defra planned to license riding schools, dog and cat boarding and pet shops in the first tranche of secondary legislation, no additional information was provided. The Committee did not receive any evidence on the proposal, although they obtained additional information from Defra:

> 298. Riding schools, dog and cat boarding establishments and pet shops are currently subject to legislation which requires them to be licensed. We understand, on the basis of additional information requested from Defra, that the Department set up working groups, which met between April and June, to examine these areas earlier this year. The groups' remits all appear to have been to update existing licensing requirements. Following the groups' reports to Defra, the Department put forward proposals in each of these areas, "in light of [the groups'] conclusions". Defra proposes that licensing of riding schools and dog and cat boarding establishments should be based on existing legislation, whereas licensing of pet shops should be the subject of new legislation, apparently because of the deficiencies in the existing legislation and in order to regulate both pet shops and pet fairs.

Subject to comments that the Committee made about general licensing requirements (section IV .B), the Committee had no additional points to make on the proposal. They were, however, concerned that Defra had not provided any further detail on the proposals “given that it intends to implement these proposals within a year of the Bill being enacted. A clear indication of the policy which Defra intends to implement in respect of these businesses should be made available if and when the final Bill is introduced to Parliament”.[222]

The Government responded:

---

[222] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p78

> The detail is largely contained in the existing legislation concerning these activities. We do not anticipate that the detail will change substantially, although the replacement of the previous Acts will provide some opportunity for modernisation where this is appropriate.[223]

The full proposals can be found in the Bill's RIA.

2. Licensing of livery yards

The Committee introduced the issue:

> 300. Details of Defra's proposal to license livery yards are set out in annex F to the RIA. Livery yards are currently subject only to a voluntary licensing scheme; Defra's proposal would introduce mandatory licensing and inspection for all livery yards in England. As with riding schools, dog and cat boarding establishments and pet shops, we understand that a working group set up by Defra examined livery yards earlier this year.
>
> 301. The little evidence we received on this issue was supportive of Defra's proposal. The Home of Rest for Horses described take-up of the current voluntary code as "disappointing". At this stage, we support Defra's proposal to introduce mandatory licensing and inspection for all livery yards in England.

Defra's proposal to license livery yards can be found in Annex G of the Bill's RIA:

> Self-regulation is not a viable option because of the lack of an umbrella organisation that could oversee the setting of standards for every livery yard in England and Wales. Although there is a voluntary licensing scheme operated by the BHS it only has about 1,000 members (10% of the estimated total of livery yards). The standard required to be a member of the BHS scheme is higher than what would be considered the minimum acceptable.
>
> Welfare organisations are strongly of the view that the welfare concerns they have observed at some livery yards are of such magnitude that they warrant the introduction of a full licensing scheme across the estimated total of 7- 10,000 livery yards. A licensing scheme supported by a code of practice would enable local authorities to know where livery yards were in their area and be able to respond to any complaints. Local authorities would have the power to enter, inspect and seize as well as cancel the licence.
>
> Some livery yards where there are serious welfare concerns would face probable closure. The BHS operate a scheme whereby livery yards can be "licensed" by them and the members must adhere to a code of practice. We propose to exempt from local authority licensing those yards that are licensed under the voluntary BHS scheme. A written agreement between the livery yard owner and the owner of the horse would also need to be in place in order to ascertain who was responsible for providing the horse with particular needs.

---

[223] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill: Government Reply to the Committee's Report*, 3 March 2005, HC 385, recommendation 73-74

> Welfare organisations, including the BHS, the RSPCA and the ILPH strongly support the licensing of livery yards. The preferred option is a risk managed approach, i.e. a 3 year maximum interval between inspections with a veterinarian accompanying the local authority inspector on revisits.

3. Compulsory information leaflets to be provided by animal vendors

Annex C to the draft Bill's RIA proposed a requirement that all vendors of pet animals provide information leaflets on their appropriate care to customers in order to help educate owners into correct management. Such leaflets would only be provided by pet shops and dog breeding establishments. These leaflets would be those currently produced by the Pet Care Trust which Defra describes as the "pet trade representative body".[224]

Some animal welfare organisations expressed concern that an industry body should be responsible for the provision of such leaflets:

> The Animal Protection Agency commented that:
>
> Inviting pet dealers to set their own or the public's standards of care may be akin to inviting prison inmates to devise locks! Therefore, only genuine and fully independent expert advice from non-trade-related sources should be invited to devise comprehensive information on pet care.[225]

The Committee stated their position:

> 327. We commend Defra on its proposed scheme to require pet vendors to issue appropriate information about animal husbandry and care at the point of sale. However, we are concerned that Defra has apparently failed to consider extending this requirement beyond pet shops and dog breeding establishments to other vendors of pet animals, such as vendors at pet fairs and at other types of breeding establishments. It is inconsistent to propose compulsory distribution of written information at some pet animal vending outlets and not others. The limitations of the proposal also risk undermining the purpose of the clause 3 welfare offence, which seeks to promote education about animals' welfare needs. We therefore recommend that the proposed scheme be extended to other vendors of pet animals. We recommend that the information which vendors are required to provide to prospective and actual purchasers should be able to be provided by the Pet Care Trust only if Defra first institutes a system whereby the information is checked by an independent, expert source prior to being published.[226]

The Government said that they would take into account the recommendations when drafting the regulations.

---

[224] Environment, Food and Rural Affairs Committee, *The Draft Animal Welfare Bill*, 1 December 2004, HC 52-I 2004-05, p84
[225] ibid, p85
[226] ibid

Annex E to the Bill's RIA gives more information about the proposals. The annex states that all commercial vendors of pet animals would be required to provide such leaflets, but the analysis of costs provides only an analysis of the costs to pet shops and dog breeders. It is therefore not clear from the RIA whether these provisions are to extend to all vendors.[227]

In clarification Defra stated that it intends that:

> […] all commercial vendors of animals would be required to provide care sheets, including pet fairs and internet sales. We will look at clarifying the RIA here. We will consider providing some figures for cost implications for pet fairs but we think any figures for internet sales would only be a very rough estimate.[228]

4. Sale of pet animals over the internet

Annex D to the draft Bill's RIA stated that the sale of animals over the internet would not be covered by the same provisions that would regulate pet shops. Defra suggested that a code of practice may apply in this case.

The Committee gave their position:

> 358. We support Defra's suggestion that vendors who sell pet animals over the internet in England should be subject to a code of practice, issued under clause 7, which would set out minimum welfare standards. However, given that Defra describes its policy in this area as "to be agreed", we doubt whether Defra will be in a position to issue such a code of practice within a year of any Bill being enacted, as is its stated intention. We recommend that the Government assess whether it is really in a position to issue a code of practice on internet trading within its intended timescale.

The Government, in response to the report, agreed with the Committee, but the provisions contained in the actual Bill's RIA have changed somewhat. Annex B of the RIA now proposes that internet selling should be regulated in the same way as pet shops i.e. licensed for a maximum of three years by the local authority:

> Our research suggests that there are very few internet sites, based in England, that offer the facility to purchase companion animals. We see no reason to differentiate internet sales from conventional pet shops and therefore propose the same regulatory measures. We propose to engage local authorities and those businesses who sell via the internet to explore ways of ensuring efficient and effective regulation given that it is not always possible to know where internet businesses are based.[229]

Regarding the proposals, the International Fund for Animal Welfare (IFAW) said:

---

[227] Defra, *Animal Welfare Bill Regulatory Impact Assessment*, October 2005, p25
[228] Defra, personal communication, 23 November 2005
[229] Defra, *Animal Welfare Bill Regulatory Impact Assessment*, October 2005, p21

> IFAW welcomes the confirmation that a person/company dedicated to selling of animals over the Internet would need to be licensed in the same way as a pet shop. However, this seems to suggest that [Defra has] dropped the idea of a statutory code of practice (as suggested in the draft Bill). Our concern here is that this would miss a large part of the Internet trade that takes place on sites such as auction sites […] and chat rooms. These sites are not internet based pet shops, but they do facilitate the sale of live animals over the internet by private individuals. IFAW would suggest that there is therefore a need for a code of practice to make sure these sites have a policy in place that guarantees such things as sellers can be traced (so that enforcement agencies can follow up if animals arrive at the purchaser in poor condition) and that sellers are aware of their duty to provide details about care and husbandry to buyers as suggested in another of the annexes to the RIA (annex E).[230]

[230] International Fund for Animal Welfare, personal communication, 18 November 2005