



**Environment and Rural Development Committee**

**30th Meeting, 2005**

**Wednesday 23 November 2005**

The Committee will meet at 10.30 am in Committee Room 1

1. **Animal Health and Welfare (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

Panel 1

Mike Radford, Reader in Animal Welfare Law, School of Law, University of Aberdeen;

Panel 2

Brian Hosie, Group Services Manager, Scottish Agricultural College Veterinary Service;

Professor Julie Fitzpatrick, Scientific Director and Chief Executive, Moredun Research Institute; and

Derick McIntosh, Head of Veterinary Services (Scotland), State Veterinary Service.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Avian Influenza (Preventive Measures) (Scotland) Regulations 2005, (SSI 2005/530); and

the Avian Influenza (Preventive Measures in Zoos) (Scotland) Regulations 2005, (SSI 2005/531),

and may take evidence from the following Scottish Executive officials—

Charles Milne, Chief Veterinary Officer (Scotland); and

Neil Ritchie, Head of Animal Health and Welfare Strategy Branch.

3. **Environmental Levy on Plastic Bags (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

**Mark Brough**  
 Clerk to the Committee  
 Direct Tel: 0131-348-5240

The following papers are attached:

<u>Agenda Item 1</u>	
Briefing paper ( <i>for members only</i> )	ERD/S2/05/30/1a
SPICe briefing paper on Animal Health (SB 05/70)	<a href="#">ERD/S2/05/30/1b</a>
SPICe briefing paper on Animal Welfare (SB 05/71)	<a href="#">ERD/S2/05/30/1c</a>
Submission from Mike Radford, University of Aberdeen	<a href="#">ERD/S2/05/30/1d</a>
Submission from Scottish Agricultural College Veterinary Service	<a href="#">ERD/S2/05/30/1e</a>
Submission from Moredun Research Institute	<a href="#">ERD/S2/05/30/1f</a>
Submission from State Veterinary Service	<a href="#">ERD/S2/05/30/1g</a>
<u>Agenda Item 2</u>	
<a href="#">The Avian Influenza (Preventive Measures) (Scotland) Regulations 2005, (SSI 2005/530)</a>	ERD/S2/05/30/2a
<a href="#">The Avian Influenza (Preventive Measures in Zoos) (Scotland) Regulations 2005, (SSI 2005/531)</a>	ERD/S2/05/30/2b
Extract from the Subordinate Legislation Committee's 41st Report.	ERD/S2/05/30/2c
<u>Agenda Item 3</u>	
Draft report ( <i>for members only</i> )	ERD/S2/05/30/3a

# SPICe briefing

17 November 2005

05/70

## ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL PART 1 – ANIMAL HEALTH

TOM EDWARDS

The Animal Health and Welfare (Scotland) Bill was introduced to the Parliament on 5 October 2005. It is in three parts: Part 1 contains provisions on animal health; Part 2 contains provisions on animal welfare; and Part 3 contains general provisions.

This briefing looks at the animal health provisions in Part 1. The briefing is in 4 main sections:

- Background information on infectious animal diseases included in the Bill
- Powers to slaughter and vaccinate animals to control disease outbreaks
- Powers to control the spread of disease by improving “biosecurity”
- Powers to prevent the spread of Transmissible Spongiform Encephalopathies

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## KEY POINTS OF THIS BRIEFING

- Legislation on all animal health matters is devolved to the Scottish Parliament and policy and implementation is the responsibility of Scottish Ministers and the Scottish Executive
- Outbreaks of infectious animal diseases can have devastating consequences
- Part 1 of the Bill would enhance Scottish Ministers powers to prevent the spread of infectious animal diseases
- The 2001 Foot and Mouth disease outbreak was controlled by slaughtering infected animals, and animals thought to be at risk of the disease. Vaccination was not used, mainly for trade reasons.
- Rules on vaccination and trade have changed which make vaccination a more viable option for use in a future outbreak
- Ministers' powers to slaughter animals they suspect of being infected are subjective
- The Animal Health Act 2002 gave Ministers wider powers to slaughter animals to control Foot and Mouth disease in England and Wales. This was controversial
- The Bill would give Ministers wider powers to slaughter animals in Scotland in the event of an outbreak of five types of disease, including Foot and Mouth disease
- It would also give them an extended power to vaccinate, and other powers to improve biosecurity and control the spread of disease
- Compensating farmers for slaughtering animals is costly, and is borne by the taxpayer. The government is considering ways of sharing these costs between the taxpayer and the farming industry
- Transmissible Spongiform Encephalopathies (TSEs) are literally "spongy brain diseases" which can be passed between animals
- Part 1 of the Bill would give Ministers new powers to control TSEs
- These would provide a statutory underpinning for a plan to control scrapie (a TSE which affects sheep)
- They would also create a legal basis for responding to the theoretical risk that BSE can develop in sheep, and provide powers to respond to a TSE in other livestock, if one occurred

## INTRODUCTION

### GOVERNANCE OF ANIMAL HEALTH

The [Office International des Epizooties](#) (OIE) is an international organisation founded in 1924 and based in Paris which works to stamp out infectious animal diseases and through which a framework of international law and agreements on disease control has been established. The UK is a member of the OIE, as are all the Member States of the EU.

Within the European Union, the European Commission [Directorate General for Health and Consumer Protection](#) (DG SANCO) is responsible for creating the framework of EU law setting common rules for animal disease control in the Member States. This has been an important part of establishing the Common Market in livestock and animal produce.

Within Great Britain (GB), the State Veterinary Service (SVS) advises all GB agriculture ministers on animal health matters and manages the response to outbreaks of infectious animal diseases. After devolution it remains a GB wide agency, in recognition of the fact that GB is a single epidemiological unit for the purposes of disease control. Scottish Ministers are advised by the Assistant Chief Veterinary Officer, who is based within SEERAD. The SVS has its origins in an organisation established by the government following an outbreak of Rinderpest (a cattle plague) which occurred in 1866-67.

Under the terms of the Scotland Act 1998 legislation on all animal health matters is devolved to the Scottish Parliament and policy and implementation is the responsibility of Scottish Ministers and the [Scottish Executive](#).

Highly infectious animal diseases can have devastating consequences. The outbreak of foot and mouth disease which occurred in the GB in 2001 resulted in the slaughter of 6.5 million animals ([Department for Environment, Food and Rural Affairs \(DEFRA\)](#) 2005). Compensation and other payments to farmers totalled £1.4 billion. Total costs to the exchequer were £3 billion. In the private sector the areas most affected were agriculture, the food chain and supporting services, which incurred costs of £0.6 billion, and tourism and supporting industries, which lost between £4.5 billion and £5.4 billion. The Treasury has estimated that the net economic effect of the outbreak was 0.2% of GDP (National Audit Office 2002).

In Scotland the disease did not spread North of the Borders and Dumfries and Galloway, but 1.1 million animals were slaughtered, at a cost of £171m in compensation payments, and with an additional loss of farm income of £60m and losses in tourism of £200-250m (Royal Society of Edinburgh 2002).

Part 1 of the Bill would enhance Scottish Ministers' powers to prevent the spread of infectious animal diseases. The Bill would give Ministers emergency powers to take what can be drastic action required to bring a disease outbreak under control. Similar emergency powers already exist in England and Wales by virtue of the Animal Health Act 2002. A discussion of the creation, use and appropriateness of emergency powers in a democracy is provided by Barclay (2004) in the context of the [Civil Contingencies Bill](#) which was considered at Westminster in the 2003-04 session and has now been enacted.

These new powers would build on an extensive framework of legislation and policy. For example, in the case of foot and mouth disease the powers that Scottish Ministers take, principally from the Animal Health Act 1981 (c.22, as amended) ('the 1981 Act') and the Foot

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and Mouth Disease Order 1983, must be exercised within the framework set by an EU directive (and numerous other pieces of [EU law](#)) and OIE rules. The GB administrations have also set objectives for disease control under a 10 year Animal Health and Welfare Strategy, and the Scottish Executive's specific policy for responding to a foot and mouth disease outbreak is set out in a contingency plan.

Part 1 of the Bill would also give Scottish Ministers new powers to control Transmissible Spongiform Encephalopathies (TSEs), which pose a potential risk to human health if meat from infected animals enters the human food chain.

## INFECTIOUS ANIMAL DISEASES

Epizootics are highly infectious and cause epidemics among animals. Many of these diseases are also called “exotic” diseases because they are foreign to GB rather than being endemic (present) here. The Scottish Executive (2003) explains that:

Few of the diseases, which threaten livestock, are new. Some have persisted due to relatively poor standards of disease control abroad or because wildlife has retained disease. In most cases their re-emergence is due to the vast increase in the international movements of animals and their products. In some countries livestock husbandry systems, which are of low density or low productivity, can cope with some of the diseases. However, modern farming methods frequently bring together large numbers of livestock for breeding, production or marketing. Epidemics require a high density of susceptible animals.

Some epizootic diseases are ‘notifiable diseases’ because their occurrence must be notified to the State Veterinary Service under the 1981 Act. The DEFRA [website](#) has a list of all the notifiable diseases with links to factsheets and the date at which they last occurred in GB. There is also more technical information on the [OIE website](#).

Until May 2005 the OIE also listed diseases according to their seriousness<sup>1</sup>. The 15 most serious diseases were included on the [OIE List A](#), all of which are notifiable diseases in GB. These 15 diseases, with Bovine Brucellosis are included in the Bill as follows.

### DISEASES INCLUDED IN S.1 OF THE BILL

The Bill would specifically give Ministers enhanced powers to slaughter animals and make emergency orders following an outbreak of 5 kinds of animal disease:

**Cattle plague** – also known as **Rinderpest**, is a contagious disease that principally affects cattle, but can occasionally affect sheep, goats and camels, certain wild ruminants and pigs. Cattle plague was a major disease of livestock through most of the nineteenth century in Great Britain. It last occurred here in 1877 but it survives in other parts of the world, notably in Africa where it has had a serious impact on livestock, and also on wild animals – 60% of the buffalo in the Tsavo National Park in Kenya were lost in an outbreak in 1994-95.

Pleuro-pneumonia - **Contagious Bovine Pleuro-pneumonia** affects the lungs of cattle and other closely related ruminants, and is caused by a mycoplasma. It was a major disease of livestock in the nineteenth century. In the 1870s the government introduced a policy of compulsory slaughter of diseased animals for which the owner was compensated, restriction on movements and disinfection of infected premises. The alternative of inoculation was considered

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<sup>1</sup> Although the OIE no longer divide animal diseases into Lists A, B & C they still recognise that certain diseases are of international importance and publicise reports received from the veterinary services of member governments  
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but was rejected. The disease was eradicated from GB by 1898 and has not recurred. It does survive in other parts of the world.

**Foot-and-mouth disease** (FMD) is an acute infectious disease, which causes fever, followed by the development of vesicles (blisters) - chiefly in the mouth and on the feet. The disease is caused by a virus of which there are seven 'types', each producing the same symptoms, and distinguishable only in the laboratory. FMD is probably more infectious than any other disease affecting man or animals and spreads rapidly if uncontrolled. Among farm stock, cattle, sheep, pigs, goats and deer are susceptible. Elephants, hedgehogs, rats and any cloven-footed animals can also contract it. FMD is endemic in parts of Asia, Africa, the Middle East and South America, with sporadic outbreaks in disease-free areas. After being free of FMD for many years, the UK suffered a return of the disease in 2001.

**Swine fever** – There are two diseases in this group, both of which are highly contagious viral diseases of pigs which can only be distinguished in the laboratory. In its acute form **Classical swine fever** (CSF) can kill many animals in an infected herd. It was eradicated from Great Britain in 1966. Since then there have been outbreaks in 1971 and 1986. A more serious outbreak in East Anglia in 2000 affected 16 farms. A total of 74,793 pigs including those on contact farms were slaughtered to eradicate the disease. The cause of this outbreak was not established but is thought to result from pigs eating a contaminated imported pork product. Some strains of **African swine fever** (ASF) can cause severe disease and high mortality. African swine fever is present in most sub-Saharan African countries. It spread to southern Europe in 1957 but has persisted only in Sardinia (Italy). There have been no reported outbreaks of ASF in other European countries since the outbreak in 1999 in Portugal. This disease has never been recorded in the United Kingdom.

**Diseases of poultry** – There are two notifiable diseases of poultry, Newcastle disease and Avian Influenza (fowl plague or bird flu). The definition of diseases of poultry in the 1981 Act also includes fowl cholera, infectious bronchitis, infectious laryngotracheitis, pullorum disease, fowl typhoid, fowl pox and fowl paralysis but these are not notifiable diseases in GB and hence not currently the subject of official controls. **Newcastle disease** is a highly contagious viral disease of birds. Chickens, turkeys, geese, ducks, pheasants, guinea fowl and other wild and captive birds e.g. ostriches, emus and rhea can be affected by the disease. In GB, isolated cases of this disease were first reported in the 1930s. From 1947 outbreaks occurred here over the next 30 years, and there were further isolated cases in 1984 and 1996-7. Recent serious outbreaks of Newcastle disease occurred in Denmark in 2002, and in California in 2003. On 15 July 2005 an outbreak of Newcastle Disease (ND) was [confirmed](#) in pheasants on premises in Surrey. Following cleansing and disinfection of the infected premises, surveillance visits to premises within the infected area and no further reports of suspected disease, it was decided that infected area restrictions could be lifted on 25 August 2005.

**Avian influenza** is a highly contagious viral disease affecting many species of birds. Highly pathogenic avian influenza viruses (HPAI) can cause severe disease in susceptible birds and low pathogenic avian influenza viruses (LPAI) generally cause mild disease or no disease at all. There is evidence that some viruses of low pathogenicity may mutate and become highly pathogenic.

Avian influenza is one of the most important poultry diseases, and serious outbreaks of disease have been reported in many countries. In the UK it was last confirmed in a flock of turkeys in Norfolk in 1991. The UK has also had a recent case of HPAI in a bird quarantine facility. There have been recent HPAI outbreaks in Australia, Pakistan, Hong Kong, Italy, Chile and Mexico. A serious outbreak in the Netherlands in 2003 which spread to Belgium and Germany affected

some 250 farms and necessitated the slaughter of more than 28 million poultry. Another serious epidemic of this disease is still ongoing in China and parts of South East Asia. There were also a small number of cases of avian influenza in the USA and Canada early in 2004. More recently there have been confirmed outbreaks in Russia, Mongolia, Kazakhstan, Turkey, Romania and Croatia. HPAI is a particular concern because it can be zoonotic – it can be passed from animals to humans. The strain involved in most of the outbreaks during the last 18 months has shown the ability to jump the species barrier occasionally and cause severe disease, with high mortality, in humans. It has not shown the ability to move easily between humans. The [Scottish Executive](#) and [DEFRA](#) websites have FAQ on Avian Influenza. The Scottish Executive (2005a) published a [contingency plan](#) for dealing with Newcastle disease and Avian Influenza in October 2005. There were two [Ministerial Statements](#) on this plan and on health preparations on the 2 November 2005 (Scottish Parliament 2005).

## **OTHER DISEASES INCLUDED IN THE BILL**

The Bill also lists some other diseases in respect of which Ministers have powers to make emergency orders<sup>2</sup>:

**African horse sickness** is a fatal and highly infectious viral disease spread by biting insects which affects horses, mules and donkeys. There are nine strains of the virus. The disease is not directly contagious between horses, and is endemic in sub-Saharan Africa. The disease has spread as far north as Morocco and the Middle East. There has never been a case in the UK.

**Bluetongue** is an insect-borne viral disease to which all species of ruminants are susceptible, although sheep are most severely affected, with up to 70% fatality in infected flocks. Cattle tend to harbour Bluetongue without showing signs of disease. 24 types of the virus have been identified. It is present in most tropical and sub-tropical countries. Since 1999 there have been widespread outbreaks of Bluetongue in Greece, Italy, Corsica (France) and the Balearic Islands (Spain). Cases also occurred in Europe in Bulgaria, Croatia, Macedonia, Kosovo and Yugoslavia. These cases have been far north and west of its normal distribution. It appears that the virus has spread from both Turkey and North Africa. In July 2001 it appeared that the virus might have wintered in Corfu and Italy. One possible reason for the changing pattern of Bluetongue disease in the Mediterranean region is climate changes. Further changes could lead to the disease spreading northward. Bluetongue has never been recorded in Great Britain.

**Bovine brucellosis** known as "contagious abortion", is caused by infection with the bacterium *Brucella abortus*, which can also cause "[undulant fever](#)" in humans. Brucellosis of cattle is a notifiable disease which was eradicated from cattle in Great Britain in 1979, but has been reintroduced on several occasions by imported cattle. In 2003, brucellosis was confirmed in four cattle herds in Scotland and most recently in March 2004 it was confirmed in a beef suckler herd in Cornwall. Since brucellosis of cattle is still present in many countries including Ireland and several other countries of the European Union, prevention of brucellosis in Great Britain relies on thorough checks of imported cattle and continuing herd surveillance which is based on monthly testing of bulk milk samples from dairy herds and blood testing of beef breeding herds every two years.

**Lumpy skin disease** is a viral disease of cattle which is occasionally fatal. It has been a serious problem in southern and eastern Africa, and more recently has extended northwards through sub-Saharan West Africa. It has never occurred in Great Britain.

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<sup>2</sup> Ministers would also have this power in respect of the 5 types of disease listed in the preceding section  
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**Peste des petits ruminants** also known as Goat Plague, has never occurred in GB. It is a rinderpest-like disease of goats and sheep. Economically it is the most important animal disease in southern equatorial Africa, being a major constraint on the availability of meat.

**Rift Valley Fever** is an infectious zoonotic<sup>3</sup> viral disease affecting sheep, goats, and cattle. Historically limited to Africa in earlier years, it causes enormous waste of livestock, especially in wet conditions. In 2001 Rift Valley Fever also occurred in Saudi Arabia and the Yemen. The human form of the disease, although rarely fatal, causes temporary incapacitation. An outbreak in South Africa in 1951 was estimated to have infected 20,000 people and killed 100,000 sheep and cattle. In Egypt in 1977 there were 18,000 human cases of this disease with 698 deaths. The disease has never occurred in GB.

**Sheep pox and goat pox** are probably caused by the same virus. The virus is most likely to occur with crowding and gathering of stock. In susceptible populations mortality may be high among young animals, in some cases up to 100%. Sheep pox and goat pox occur in Africa north of the equator, in the Middle East and Central Asia as well as India. European sheep breeds are highly susceptible to the virus. Sheep pox first appeared in Great Britain in 1847, in a flock of imported sheep, and the last outbreak in this country was in 1866. Most of Europe and the Americas are now free from endemic sheep pox, although the disease occurred in Greece in 2000.

**Swine vesicular disease** is a viral disease of pigs. The first outbreak in Great Britain was in 1972. Over the next ten years 532 cases involving a total of 322,081 pigs were confirmed before the disease was eradicated from this county in 1982. It has persisted in Italy, where in 2002 there were 171 outbreaks of this disease, with a further 31 cases in 2003, and further outbreaks through 2004. The rest of Europe is now free of the disease apart from Portugal, with two cases in 2004.

**Vesicular stomatitis** can only be distinguished from FMD in the laboratory. In pigs similar symptoms can also be caused by swine vesicular disease and vesicular exanthema. Vesicular stomatitis was first recognised in horses in the American Civil War, although infection in pigs was not reported until 1943. This disease is distributed in North, Central and South America. Transmission is by biting flies.

## **SLAUGHTER AND VACCINATION**

No two outbreaks of the same disease are the same, and each outbreak requires a different response to bring it under control. This is even more true when legislating to anticipate potential responses to a multitude of exotic diseases. The major outbreaks of FMD which occurred in the UK in 1967 and 2001 had different characteristics, particularly in the way they spread around the country.

However, the 2001 FMD outbreak does provide a recent example of how the options for dealing with a disease outbreak once one has occurred - slaughtering animals and vaccinating them (or a combination of the two) – have been deployed. The following sections look at the role of slaughter and vaccination in the 2001 outbreak; at the powers available to the government at the time; at the new powers which have been created in England and Wales; at the proposals for new powers in Scotland included in the Bill; and a selection of comments from responses to the Draft Bill consultation.

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<sup>3</sup> Can be transmitted to humans

## **SLAUGHTER IN THE 2001 FMD OUTBREAK**

In 2001 the disease was spread to Scotland by infected sheep sold at Longtown Market between 13 and 22 February. The first cases in Scotland were confirmed on 1 March and involved a dealer in Lockerbie and a Canonbie farmer who both purchased sheep at the market. Subsequent cases were a result either of direct movements of infected sheep from Longtown Market, movements of sheep through the dealer network, direct contact of livestock, local spread and mechanical transmission by vehicle and personnel movements.

The Scottish Executive (2002b) pursued a policy of slaughtering infected animals. The difficulty of spotting the disease symptoms in sheep was a major factor in slowing down the response. It became apparent that the disease could be spreading rapidly, so animals which showed symptoms were slaughtered, rather than waiting for blood test results. Veterinary staff also identified “dangerous contacts” – farms which had possibly been infected by movements of humans or animals and these were also culled. All animals which had been through Longtown market between 15 and 22 February were traced and culled. By 12 March the disease was still spreading rapidly. The SVS advised that there was a hidden reservoir of infection in sheep which had the potential to cause further infection. Following this advice the Scottish Executive decided to slaughter all sheep within 3km of infected premises (a 3km cordon is the designated protection zone under EU legislation). On 24 March, following further scientific advice, the Scottish Executive announced that in addition to this “pre-emptive cull” of sheep, there would be a “contiguous cull” of all susceptible animals on farms adjacent to an infected premises. The scientists also emphasised the need to act quickly to bring the disease under control and recommended a cull target of 24 hours for infected farms, and 48 hours for contiguous premises, which the Scottish Executive adopted.

## **VACCINATION IN THE 2001 FMD OUTBREAK**

Since 1990, EU law has prohibited blanket vaccination against FMD in advance of an outbreak. It requires outbreaks to be “stamped out” by slaughtering and destroying infected animals. The fact that there are several strains of FMD, and that the disease itself is constantly changing would make blanket vaccination costly and probably ineffective. However, EU law does allow emergency vaccination. Emergency vaccination can take one of two forms. ‘Ring or Protective vaccination’ can be used to encircle an outbreak of FMD to form a ‘firebreak’. ‘Suppressive vaccination’ can be used to damp-down the incidence of disease in an infected area.

[OIE rules](#) prohibit importing animals and animal products from countries in which FMD occurs. The ban may not be lifted until at least three months after the last case, when all infected and vaccinated animals have been slaughtered (OIE 2005). At the time of the 2001 outbreak if vaccinated animals were not slaughtered, the ban applied for twelve months. Different rules apply to trade within the EU: restrictions can be applied on a ‘regional’ basis to infected areas. Trade implications were therefore a major factor in deciding whether to vaccinate, as vaccination could have prevented the resumption of the export trade for 9 months.

In the 2001 FMD outbreak, vaccination was never used in Scotland, but was never ruled out (Scottish Executive 2002a):

In Scotland vaccination was looked at in the latter half of March [2001] in the context of the geography of the outbreak and the local epidemiology, and the efficacy of the stamping out measures. There was a strong feeling from both the vets on the ground and the industry that the strengthened disease control policies should be given a chance to work before vaccination was used. By early April these policies could already be seen to be working and, as opposed to Cumbria and Devon, few disposal problems and cases of farmer opposition were experienced.

Veterinary advice was that vaccination would not speed up eradication or prevent further incidence of disease and would divert limited resources away from disease control operations. In addition it did not receive industry support and could not be delivered without it. It was not therefore pursued as a control option.

Vaccination was considered in England for use in Cumbria and in Devon but was not used in the end. There were a small number of cases of FMD in Ireland, France and the Netherlands resulting from the movement of infected sheep from the UK. The Netherlands carried out emergency (suppressive) vaccination. For trade reasons the vaccinated animals were subsequently slaughtered in order to re-establish the health status of the country without delay (European Commission 2002).

### **NEW RULES ON VACCINATION**

During 2002 the OIE amended its animal health code. The amendments shorten the period for regaining FMD free status where emergency vaccination is practised from 12 months to 6 months, as long as the absence of the disease can be demonstrated by testing of vaccinated animals. This approach is called a “vaccinate to live” policy. Disease free status can still be regained in 3 months after the last case where infected animals are slaughtered or are vaccinated and then slaughtered (OIE 2005).

A new directive (Council of the European Union 2003) which was adopted by the Council of Ministers in September 2003 takes account of this and sets the same period for resumption of intra-EU trade after an outbreak has been controlled with a “vaccinate to live” policy.

The approach the Scottish Executive (2005b) would take in deciding whether or not to vaccinate in a future FMD outbreak is set out in the FMD contingency plan:

80. The decisions on when, where and how to deploy vaccination depend on a large number of factors. The Directive sets out criteria to be taken into account when considering a vaccination programme; these are however indicative rather than prescriptive, and veterinary and epidemiological judgement will always be the major factor in such decisions. With this in mind, it is possible to follow a structured decision making process.

81. The first point to establish is whether the disease can be eradicated by "stamping out" - culling on infected and dangerous contact premises (IPs and DCs). Factors to be assessed here include: strain of virus, transmission characteristics of virus, species affected, epidemiology of outbreaks, resource constraints and economic consequences.

82. If the disease can be controlled in this way, the disease strategy concentrates on the stamping out route. If not, the next step, in line with the Scottish Executive's Response to the FMD Inquiries, is to consider vaccination:

Within this option there are the technical issues such as epidemiological assessment of whether vaccination will suppress virus production before spread; the shape of the vaccination zone (which must be large enough to contain the spread of the virus and take account of airborne spread and natural barriers); production of enough of the relevant strain of vaccine; status of tests to differentiate infected from vaccinated animals. There are also economic/social issues such as the implications for export markets, public and industry acceptance of vaccination itself and of products from vaccinated animals, views of other Member States, costs of mounting the vaccination programme and any subsequent regionalisation as required by the Directive. Resource issues relate to availability of manpower to undertake the programme of vaccination and tagging, logistics of a cold chain supply to

preserve the potency of the vaccine and data/IT support to ensure that reliable records are kept.

83. If, in the light of the above, the decision is taken to vaccinate, then the next step is to decide between protective and suppressive modes of vaccination. Further issues to be examined here include pressure on slaughter and disposal capacity, the effect on regaining export status (3 months for suppressive and stamping out, 6 months for protective vaccination), identification and records of vaccinated animals. [...]

84. Consideration of strategies other than 'vaccinate to live' - protective vaccination - in no way implies that the Scottish Executive is moving away from the position set out in its Response to the main FMD Inquiries. However, as the criteria above demonstrate, the decision is a multifactorial one and ultimately will be governed by the circumstances of an actual outbreak.

85. If neither of these modes is deemed acceptable, then the option of vaccination must fall and extended culling strategies will be considered.

### **EXISTING POWERS OF SLAUGHTER AND VACCINATION IN SCOTLAND**

Ministers' powers to slaughter and vaccinate animals to control the spread of disease are mainly derived from the Animal Health Act 1981. Schedule 3 of the Act empowers Ministers to slaughter animals to control 5 types of disease: cattle plague; pleuro-pneumonia; foot and mouth disease; swine fever; and diseases of poultry. Ministers' powers are similarly drawn for each type of disease. For example in the case of foot and mouth disease:

- (1) The Minister may, if he thinks fit, in any case cause to be slaughtered-
  - (a) any animals affected with foot-and-mouth disease, or suspected of being so affected; and
  - (b) any animals which are or have been in the same field, shed, or other place, or in the same herd or flock, or otherwise in contact with animals affected with foot-and-mouth disease, or which appear to the Minister to have been in any way exposed to the infection of foot-and-mouth disease.

There is some subjectivity about the Minister's power to slaughter animals in (b) "which appear to the Minister to have been in any way exposed to the infection". This power was used to implement the contiguous cull and the pre-emptive cull. Six judicial reviews were instigated against Scottish Ministers and opposed the keeper's inclusion in the pre-emptive cull or their designation as 'dangerous contacts'. Scottish Ministers' decision to cull was upheld in five of the cases considered by the High Court. (In the sixth case the Scottish Executive did not proceed with its intention to slaughter the animals in question). The cases were successfully defended because the scientific advice which Ministers had acted upon supported the case that the Minister had reasonable grounds for his view that these animals had been exposed to the disease.

Section 32 of the Act also gives Ministers the power to slaughter animals (including wild animals) affected with other types of disease, but this power is limited to animals which are either affected with the disease, or which have been exposed to infection.

Section 16 of the Act gives Ministers the power to vaccinate animals and birds, but this power is limited to an animal or bird:

- (a) which has been in contact with a diseased animal or bird, or
- (b) which appears to the Ministers to be or to have been in any way exposed to the infection of disease; or
- (c) which is in an infected area.

## POWERS IN ENGLAND AND WALES

Ministers' powers to slaughter and vaccinate animals under the Animal Health Act 1981 have been extended in England and Wales by virtue of the Animal Health Act 2002. Tromans (2003) has written a [commentary](#) on the Act. Background is also available in a [paper](#) by Barclay (2001) on the Animal Health Bill as introduced to Parliament.

The government introduced the Animal Health Bill to the House of Commons on 30 October 2001. This was before the 2001 FMD outbreak had ended in England, and was also before any of the 3 independent inquiries which the government had established had reported. After the Bill had been introduced the government launched a [consultation](#) on the way the powers would be implemented (DEFRA 2002). The Bill completed its Commons Stages by 13 December 2001. The Bill encountered strong opposition in the House of Lords.

The government was concerned that, although the vast majority of farmers had accepted its culling policy, the ambiguity of the powers in the Animal Health Act 1981 meant that they could be challenged. This was unsatisfactory given the need to act rapidly to contain the disease. In the House of Lords Second Reading [debate](#) on 14 January 2002, the Minister, Lord Whitty, gave the example of FMD in North Yorkshire, which had spread close to the pigkeeping area of East Yorkshire and Lincolnshire (House of Lords 2002a). Farmers were challenging the culling of their stock, which ran the risk of the disease spreading into the pigkeeping area, which would have resulted in the slaughter of many millions more animals. The Lords' main objections to the Bill were that the powers were draconian and lacked proper safeguards to prevent abuse, that they missed the real problem of illegal imports and the under-resourcing of the SVS, that a consultation on how to implement the powers in the Bill was ongoing, and that the government had not had the benefit of the conclusions of the FMD inquiries.

On 26 March 2002, as the Bill began its [Committee stage](#), Lord Moran moved an amendment that consideration of the Bill be suspended until the FMD inquiries had reported, and the DEFRA consultation on the implementation of the powers in the Bill had concluded. This amendment was passed by 130 votes to 124 (House of Lords 2002b). The contentious powers on slaughter were not discussed in Committee [again](#) until the 7 October 2002<sup>4</sup> (House of Lords 2002c). The Bill finally completed its passage through the Lords on 29 October 2002, and through Parliament on 7 November 2002.

The Act amends Schedule 3 of the Animal Health Act 1981, and gives Ministers wider powers to slaughter animals in the event of an outbreak of Foot and Mouth disease so that the law in force in England and Wales now reads:

- (1) The Minister may, if he thinks fit, in any case cause to be slaughtered--
  - (a) any animals affected with foot-and-mouth disease, or suspected of being so affected;
  - (b) any animals which are or have been in the same field, shed, or other place, or in the same herd or flock, or otherwise in contact with animals affected with foot-and-mouth disease, or which appear to the Minister to have been in any way exposed to the infection of foot-and-mouth disease;
  - (c) any animals the Secretary of State thinks should be slaughtered with a view to preventing the spread of foot-and-mouth disease.

(1A) The Secretary of State may exercise the power under sub-paragraph (1)(c) whether or not animals--

- (a) are affected with foot-and-mouth disease or suspected of being so affected;

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<sup>4</sup> On 18 July 2002 the Lords agreed a government motion to consider other Parts of the Bill in Committee *providing research and information services to the Scottish Parliament*

- (b) are or have been in contact with animals so affected;
- (c) have been exposed to the infection of foot-and-mouth disease;
- (d) have been treated with vaccine against foot-and-mouth disease.

Section 2 of the Act introduces a new section 32A into the Animal Health Act 1981 which allows Ministers to make an order which amends Schedule 3 of the Animal Health Act to give extended powers of slaughter for other diseases. An order made under this section must be approved under the affirmative procedure.

Following the consultation on how the powers should be implemented the government amended the Bill to introduce safeguards on the general power of slaughter. Section 3 of the Act introduces Section 32B to the Animal Health Act 1981 which requires the Secretary of State to prepare a document known as the Disease Control (Slaughter) Protocol indicating:

- a) the purposes for which any power to which this section applies will be exercised;
- b) the principal factors to be taken into account in deciding whether to exercise the power;
- c) the procedure to be followed in deciding whether in any circumstances or description of circumstances the power is to be exercised, which shall include the application of such methods of detecting disease in animals as may be available;
- d) the procedure to be followed by persons who have functions in relation to the exercise of the power;
- e) the means by which a particular decision to exercise the power may be reviewed.

The Protocol must be consulted on in draft, published and kept under review. The powers of slaughter cannot be used unless the Protocol has been published. Before exercising any of the additional powers of slaughter conferred by the Act, the Secretary of State must set out his reasons for wanting to use that power, and why he has not chosen to use vaccination.

Section 5 of the Act creates an explicit power to slaughter vaccinated animals which could be used in conjunction with a vaccinate to slaughter policy.

Section 15 of the Act also places a duty on the Secretary of State to consider vaccination in the event of an outbreak of FMD (by inserting new section 14B into the Animal Health Act 1981). The background to the provision lies in an amendment by the Countess of Mar requiring the Secretary of State to carry out a 'vaccinate to live' policy in areas where no FMD had been detected. This amendment was agreed to by 171 votes to 123 in the House of Lords, but was then rejected by the House of Commons which proposed the new section in lieu (Tromans 2003).

## **POWERS IN THE BILL**

The need for clear legal powers in the event of an animal disease outbreak was one of the lessons learned from the 2001 FMD outbreak. The [report](#) of the Foot and Mouth Disease Lessons Learned Inquiry (2001) recommended that:

The animal health legislative framework should be robust, unambiguous and fit for purpose. This was not the case during the 2001 epidemic. The powers available in the Animal Health Act 1981 should be re-examined, possibly in the context of a wider review of animal health legislation, to remove any ambiguity over the legal basis for future disease control strategies. Provision should be made for the possible application of pre-emptive culling policies, if justified by well-informed veterinary and scientific advice, and judged to be appropriate to the circumstances.

Section 1 of the Animal Health and Welfare (Scotland) Bill ('the Bill') would introduce a new schedule 3A into the Animal Health Act 1981. This new Schedule would give Scottish Ministers the power to slaughter animals in the event of an outbreak of 5 types of disease: cattle plague; pleuro-pneumonia; foot and mouth disease; swine fever; and diseases of poultry. The general idea is to remove the ambiguities of the present drafting and give Ministers explicit powers to slaughter animals in the event of a disease outbreak.

The powers are much wider than the existing law. For example "with a view to preventing the spread of foot and mouth disease, Ministers may, if they think fit, cause any animal to be slaughtered". Where the disease is species specific, eg in the case of swine fever, the new power would be restricted to allow the slaughter of any pig (rather than any animal).

However, paragraph 7 of the schedule would give Ministers a much wider power to slaughter any animals, birds, or amphibians whether or not they are affected with the disease, have been contact with affected animals, have been exposed to the disease or have been vaccinated against it. This power is designed to allow the slaughter of wildlife, if that was a route by which a disease was being spread.

Section 2 of the Bill would give Ministers an explicit power to slaughter vaccinated animals. This would be used in order to regain EU or other international disease-free status following an outbreak. If vaccinated animals had to be slaughtered for another reason this could be done under the powers in section 1.

Section 6 of the Bill would give Ministers a wider power to vaccinate animals than they currently have.

#### **COMMENT ON THE POWERS IN THE BILL**

The Scottish Agricultural College (Scottish Executive 2005f) said:

It is essential that culling be based on veterinary advice and a veterinary risk assessment. Evidence provided by recent papers shows that veterinary advice at the site of the outbreak is essential.

The Scottish Rural Property and Business Association (Scottish Executive 2005g) said that it:

This is a very wide power however to kill animals even if they have not been exposed to the disease, there is no suspicion of the animals being affected and even if they have been vaccinated. There must be a check on the exercise of this flexibility in the proposed drafting. We believe the Scottish Ministers should only act to slaughter animals on the balance of veterinary advice current at the time.

Making the comparison with the powers in the Animal Health Act 2002 the Scottish SPCA (Scottish Executive 2005h) said that it was:

Legislation which, by virtue of its definitions of relevant animals and diseases, permits the killing of any animal in the country, whether suspected of infection or not. Understandably, therefore, the Scottish SPCA places great importance on the assurance given in paragraph 4 of the consultation paper that most of the legislative powers in the draft Bill would be for use only "in the event of a serious and fast-spreading disease outbreak". As the consultation paper is not binding on this or future Executives, the Scottish SPCA would welcome a statement in the Scottish Parliament, from the Minister, to that effect.

Advocates for Animals (Scottish Executive 2005i) said that:

*providing research and information services to the Scottish Parliament*

Rather than listening to the criticisms of their actions in 2001, the Scottish Executive now proposes to give itself even wider powers to slaughter animals in the event of a disease outbreak. Under Paragraph 7 of the proposed new Schedule 3A to the Animal Health Act 1981 the Scottish Executive will have the power to slaughter animals whether or not the animals are affected with the disease or suspected of being so affected; whether or not they are or have been in contact with animals so affected; and whether or not they have been in any way exposed to the disease. In short, the Executive's powers to slaughter animals will be completely untrammelled.

Advocates believes that the Executive's powers to slaughter animals should strike a balance between on the one hand disease control through 'stamping out' and, on the other, the wish of many animal owners and the wider public to prevent unnecessary widespread culling. The Bill's proposals completely fail to strike such a balance.

Many people feel that disease should be tackled through a range of measures including vaccination, with widespread slaughter being used only very sparingly as a last resort. In seeking new, very extended slaughter powers, the Executive appears to be ignoring this view and signalling their willingness to rely on mass culling in the event of future disease outbreaks.

The National Farmers Union of Scotland (NFUS 2005j) also commented on vaccination:

Ring vaccination to slaughter is deeply unacceptable. NFUS recognises that in extreme circumstances, when animals at risk cannot be disposed of, ring vaccination to slaughter may have a role but only as a last resort [...] The time period over which vaccinates have carrier status is critical. SEERAD should be proactive in urging the OIE to identify protocols for allowing vaccinated animals back into the food chain. [...] Work must also be undertaken to investigate any consequences of a vaccinate to live policy which sees vaccinated animal entering the food chain. Government may provide assurances on the safety of products derived from vaccinated animals but there remains the potential for serious market disruption.

## **COMPENSATION FOR SLAUGHTERED ANIMALS**

In the event of a serious outbreak of animal disease the cost of compensating farmers for the value of stock which is slaughtered can be costly – compensation payments in the 2001 FMD outbreak totalled over £1 billion. Under a concordat on animal disease compensation, the costs of compensating Scottish farmers are met by DEFRA. Some of these costs can in turn be claimed by DEFRA from the European Union budget.

Why should farmers be compensated by the public purse when on one view, the action the state is taking (also at its own expense) is protecting the farmer from liabilities they might otherwise incur if disease spread from their farm to infect their neighbours? There are 3 main rationales for this:

- it is arguable that farmers are entitled to this compensation as they are being deprived of their possessions, and otherwise they could make a case under the European Convention of Human Rights
- compensation encourages compliance with the law – in the past when attempts have been made to control disease without compensating, there have been incidents where animals have been concealed, which runs the risk of prolonging an outbreak, or even spreading one more widely
- animal diseases can have an effect on the economy as a whole, there is therefore a public benefit argument for getting the disease under control as quickly as possible, and compensation helps with this

The 1981 Act provides that farmers should be compensated for the value of stock destroyed. For example, where animals infected with FMD are slaughtered the Act provides that the amount of compensation shall be equivalent to their value immediately before they were infected, and in other cases (eg a dangerous contact) their value at the time they were slaughtered (Sch 3(3)).

Schedule 3A, which the Bill would introduce into the 1981 Act, could conceivably allow the slaughter of many different types of animal, including wild animals. Paragraph 8 of the schedule provides that Ministers would have to pay compensation in respect of any animals which they slaughter “of such amount as they may specify by order”. The amount of compensation paid would depend on the type of animal (subparagraph 8(2)).

Subsection 2 (6) would also require Ministers to pay compensation for slaughtering vaccinated animals.

The SRPBA (2005) commented on the compensation provisions:

A common issue for much of Part 1 of the Bill is the matter of compensation. Each time a power is given to destroy animals, there appear to be separate provisions dealing with compensation. For example sections 1(8), 2(5), 8 (inserting 36ZB to the 1981 Act) and 10 (inserting S36V) all deal with compensation and have differing criteria and qualifications. This will result in the legislation being unnecessarily confusing.

SRPBA believes it would be clearer if there was simply one compensation clause, under which any owner who has suffered loss under any of the provisions in part 1 would be fully compensated based on independent valuations at the time, and the basis for valuation should be set out clearly. The farmer should not be required to shoulder any of the financial burden arising as a result of the loss of animals through these powers being exercised.

The joint GB Animal Health and Welfare Strategy (DEFRA, Scottish Executive & Welsh Assembly Government 2005) says that:

In farming where both animal owners and taxpayers bear some share of the costs of prevention and control of diseases, the present position is favourable to the farming industry and costly to the taxpayer. Granted that the farming industry is characterised by a large number of small businesses, it remains the case that in principle the taxpayer should really only be expected to pay for genuine public good. The distribution of costs should not only better reflect where the balance of responsibilities lie for managing the risks, but also take account of those who benefit from measures to manage them.

Animal owners should individually and collectively take responsibility for managing animal health and welfare risks. For example, the need for farmers to maintain good biosecurity is not, and never has been, optional. Taxpayers cannot be expected to pay for the animal health and welfare costs and risks to farmers which affect their own businesses. When Government intervention is only or primarily in the interests of the farming industry, then it is right to expect that the costs should be borne by industry. This already happens in some European countries in the event of certain disease outbreaks. As part of the ongoing search for best practice under this strategy we will examine international practice to assess the relevance to circumstances in Great Britain.

Moving towards a more appropriate balance between the taxpayer and industry for the costs of animal health and welfare cannot happen overnight and will inevitably require full consultation. It will be necessary to establish and agree a number of guiding principles to ensure a consistent approach including how incentives, such as rewarding best practices, can

be used in any schemes. Government will be considering the economic impact on industry of any cost sharing and cost recovery proposals in relation to any future decisions.

The Scottish Executive (2005c) implementation plan says that:

The Outline Strategy committed Government to reviewing the services it provides to livestock keepers, to ensure that an appropriate tax payer / industry balance is in place in terms of who pays for what. In making this commitment Scottish Ministers have made it clear that any changes will need to be justified; before putting any extra costs on them, Government must clearly demonstrate that it is meeting its obligations to the industry. It is also imperative that any additional costs incurred by industry are affordable.

The House of Commons Public Accounts Committee (2003 & 2005) [reported](#) on the 2001 FMD outbreak in March 2003. It published a follow up [report](#) on 1 November 2005. This report highlighted the sharing of the costs of dealing with disease outbreaks as an unresolved issue. It summarised the work the government has been doing in this regard:

1. Compensation for slaughtered animals accounted for £1.4 billion of the cost of the 2001 outbreak. The European Commission disallowed some 60% of the UK's claim for reimbursement of compensation costs, agreeing to pay only £254 million of the £652 million claimed. The Commission considered that there had been poor control over compensation arrangements and it estimated that payments to UK farmers were around two to three times the true value of the animals slaughtered. The Department's approach in 2001 had been based on controlling overall costs by rapid eradication of the disease.

2. For the future, the Department intended to appoint livestock valuers from an approved national list, paid by the hour rather than as a percentage of the valuations, with four "monitor" valuers to quality assure the valuers' work. The Department had also issued detailed instructions on how valuations should be undertaken. The Department was introducing standard valuations and compensation for animals (including cattle) slaughtered for other types of animal disease, but would need new primary legislation to do so for Foot and Mouth. The Meat and Livestock Commission would, however, disseminate market information to valuers to inform the valuation of standard animals. The difficulties of validating the reasonableness of valuations placed on pedigree and other valuable animals remained.

3. The Department no longer planned to pay compensation for animals slaughtered on welfare grounds although it would pay for the cost of disposal. It considered farmers to be responsible for their animals, and for feeding them, and its current contingency plan made provision for licensed movements to ease welfare problems.

4. The European Commission had disallowed 80% of UK expenditure on the cleansing and disinfection of farms affected by the outbreak. In dealing with the 2001 outbreak the Department could have required farmers to meet the cost of cleaning and disinfecting farms. Instead, the Department reimbursed farmers at an average cost of £30,000 a farm. This approach had led, in the Department's view, to a thorough and consistent process, reducing the likelihood of re-infection, and it remained current policy. Whether the cost should be passed on to farmers would be part of its consultation exercise on an animal disease levy.

5. Four years after the end of the 2001 Foot and Mouth epidemic, the Department had still not settled extended contractual disputes with 76 contractors who had claimed some £40 million. The poor financial controls over expenditure, highlighted in our predecessors' Report, contributed to the Department's difficulties in verifying sums claimed. The Department has put in place new contracting arrangements for future outbreaks, including contingency contracts and prearranged prices to reduce the scope for contractual disputes.

6. The Department confirmed its intention to bring forward proposals for sharing the cost of outbreaks in its Animal Health and Welfare Strategy published in 2004. It intended to consider the issue as part of a more general review of the regulation of charging in the farming sector more generally. Consultation on the broader agenda would take place later in 2005. The Department had been unsuccessful in its initial plans to link the amount of compensation payable to the standards of biosecurity maintained by the farmer. In the Department's view, biosecurity could not be assessed objectively. The Department was, however, considering proposals for an animal disease levy to share the future costs of disease outbreaks with the industry. Standards of poor biosecurity might be taken into account in such a scheme, for example through lower charges for those farmers with better biosecurity.

The National Farmers Union of Scotland (2005) responded to the report:

NFUS has stressed that farmers have a critical role to play in disease prevention through continued improvements in biosecurity. However, it is completely unacceptable to ask the industry to pick up the cost of disease outbreaks such as foot and mouth or bird flu which are imported into the UK, when our border controls, over which the industry has no control, remain inadequate. NFUS President John Kinnaird said:

“Taxpayers would have been best served by this Committee report if it had concentrated on spending money to prevent disease ever entering the country, rather than arguing how to manage it and who picks up the bill once it has arrived.

There is no question that the industry has a duty to ensure biosecurity is as robust as possible and to do everything else in its power to reduce the risk of disease. However, it has no control over the disease coming into the UK in the first place. The industry will do its bit, but the UK Government simply cannot wash its hands of its own responsibility to prevent disease entering this country.

The National Audit Office has already painted a pretty damning picture of our meat import controls. We are laid open to further disease outbreaks and, to make matters worse, this report effectively asks farms to live under this threat and foot the bill for something over which they have no control and government is failing to adequately address.

There are many lessons to be learned from foot and mouth, particularly in relation to biosecurity and the valuation system. However, no lesson is more important than the need to strengthen our defences against imported disease. That should be the motivation behind government activity, not an attempt to save money by passing the cost of these disasters onto the victims.”

At EU level, the European Commission (2001) [initiated](#) a debate on risk and crisis management in agriculture in 2001. It produced a [Communication](#) on the subject in 2005. This foresees 3 main options for further work at EU level, which could involve contributions from the EU budget:

- insuring against natural disasters
- supporting mutual funds
- providing cover against income crises.

## **BIOSECURITY – CONTROLLING THE SPREAD OF DISEASE**

An onion provides an analogy for thinking about the different controls which are in place to prevent exotic diseases from getting into the country and causing an outbreak.

The outer skin of the onion – the international controls which exist on trade in animals and animal products, and to prevent illegal imports - are beyond the scope of the Bill. The inner

skins of the onion are the biosecurity measures which seek to limit the spread of a disease once it has entered the country. The heart of the onion consists of the actions taken to stamp out a disease outbreak when it has occurred – slaughter and vaccination.

The 1981 Act provides a basis for imposing many biosecurity measures in the event of an outbreak – for example, controlling the movements of people and animals, the designation of farms where an outbreak has occurred as infected premises and the establishment of controlled areas around them. The Bill would provide some new powers to complement these.

## **BIOSECURITY CODE**

A [statutory code](#) for animal health and biosecurity was produced in 2002 (Scottish Executive 2002b). The code contains recommendations for livestock keepers intended to minimise the spread of disease. It is accompanied by non-statutory advice for visitors to farms and recreational users of farmland.

The code was made under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968. Most codes which are made under that section relate to animal welfare. Section 34 in Part 2 of the Bill would create a new power to make animal welfare codes. Schedule 2 of the Bill would repeal s.3 of the 1968 Act. A new statutory basis for making a biosecurity code is therefore needed. This would be provided by section 3 of the Bill.

It would be an offence not to comply with the requirements of a biosecurity code made under section 3 of the Bill. This is different from the existing code. The wording of the 1968 Act means that a person who breaks the code does not commit an offence, but evidence of their having broken it can be used to support a prosecution under section 1 of the Act for neglecting animals.

A biosecurity code could not be made unless a draft code had been approved by the Parliament under the affirmative procedure.

Annex B of the [Memorandum on Delegated Powers](#) provides more information on what might be included in a new code made under section 3 (Scottish Executive 2005d). It says that the code would have 4 main sections:

- (a) planning ahead to avoid disease;
- (b) action required on first signs or suspicion of disease;
- (c) avoidance measures vis-à-vis the spread of disease; and
- (d) key advice for visitors to farm properties.

## **EMERGENCY BIOSECURITY ORDERS**

Section 3 of the Bill would insert new section 6D to the 1981 Act which would give Ministers increased powers to make emergency biosecurity orders to deal with 16 types of diseases which would be listed in a new Schedule 2B to the 1981 Act. Section 8 of the Bill would allow Ministers to add to the list of diseases by an order which would have to be approved affirmatively by the Parliament within 28 days or it would cease to have effect. The Scottish Agricultural College (Scottish Executive 2005f) said it thought that rabies, tuberculosis and Transmissible Spongiform Encephalopathies should be added to this list.

The type of measures which could be in an Emergency Biosecurity Order are the same as the type of measures which could be included in a biosecurity code.

The Scottish Rural Property and Business Association (Scottish Executive 2005g) commented that the power to make emergency orders was very wide. It asked

What does “some other emergency” actually mean in this context? We feel there should be some attempt to better define the types of emergency, which would justify an emergency order.

## **ANIMAL GATHERINGS**

The 2001 FMD outbreak spread so widely and so quickly because infected animals were moved long distances around the country. It drew attention to the extent to which animals can be bought and sold many times by farmers and professional livestock dealers. This helps make the market in livestock function, but from a biosecurity point of view, it creates a major headache. In the event of an outbreak tracing the movements of all the animals which have been in a market on a particular day, the animals they mixed with, and where they went next, is a laborious, complex task.

There are a number of EU laws which require cattle, sheep and pigs to be identifiable, and their movements to be traceable. The laws were made so animals can be found more easily if there is a disease outbreak.

Whenever animals mix together, as at a market, there is a biosecurity risk. Infections can be spread eg by animals in adjacent pens, or by farmers and handlers touching animals.

Section 5 of the Bill would give Ministers the power to make orders to license animal gatherings for the purpose of preventing the spread of disease. An order made under the section would be subject to the affirmative procedure.

An “animal gathering” has the wide definition of “an occasion at which animals are brought together for any purpose”. This is subject to an exception in subsection (4). This would cover a farmer gathering animals on their farm and crofters gathering their stock on a common grazing.

The Policy Memorandum says that “animal” in this section will take its meaning from section 87 of the 1981 Act.

Section 87 of the 1981 Act defines animals for the purpose of disease control as cattle, sheep, goats, other ruminants and pigs. Ministers can extend this definition by Order to include “any kind of mammal except man” and “any kind of four-footed beast which is not a mammal”.

The [Memorandum on Delegated Powers](#) (Scottish Executive 2005d) says that:

the policy intention is to focus on the licensing of livestock (cattle, sheep, goats, pigs and poultry) gatherings rather than on events such as dog shows, caged bird shows, common ridings and the like. However, it should be borne in mind that fast spreading diseases can occur across any species, and this could necessitate the licensing of gatherings of any susceptible species.

Annex B of the Memorandum gives further details. It says that licences would need to be obtained in advance of holding an animal gathering and licences:

would be subject to such conditions as the veterinary inspector considers necessary to control the introduction into, or spread of disease within or from, the licensed premises. The licence conditions will reflect the nature/type of the gathering concerned. It will be time limited. The licence will also specify the name of the licensee, the premises in which the animal gathering will take place and the area to which the animals may be given access.

The licensing scheme would make provision to the effect that each licence would contain a requirement that there should be a 27 day period between different animal gatherings at the same premises. The intention is that this will allow full biosecurity cleansing and disinfection of the premises and all equipment. This restriction will not apply if the entire licensed premises are totally paved and capable of being effectively cleansed and disinfected at the end of each animal gathering ie after the last animal had departed from the premises.

Local authorities would enforce the licence conditions.

The Institute of Auctioneers and Appraisers in Scotland (Scottish Executive 2005k), which represents all Scotland's live auction markets, said it believed animal gatherings should be licensed and that all gatherings should have the same standards and controls which are in place at live auction markets.

## **TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHIES (TSEs)**

Transmissible Spongiform Encephalopathies (TSEs) are literally "spongy brain diseases" which can be passed between animals. In some cases, for example in the case of Bovine Spongiform Encephalopathy (BSE) of cattle, and Creutzfeld-Jacob Disease (CJD) of humans, it is thought that the diseases are linked. Eating meat of cattle with BSE (particularly certain tissues) is thought to be a cause of CJD in humans.

There is currently no cure or vaccine for TSEs. They are caused by unconventional disease agents which differ from bacteria or viruses and take many months or years to develop once the animal has been infected. Unlike the epizootic diseases also included in Part 1 of the Bill, TSEs are not highly infectious, although the exact mechanisms by which they are transmitted from animal to animal are not well understood.

### **BSE**

Controlling BSE and the risk to human health has been the subject of an extensive body of legislation at both the national and EU level. The way the government handled the BSE crisis up to 1996 has been the subject of one of the most extensive [public inquiries](#) of recent times.

European Regulations lay down the rules for the prevention, control and eradication of TSEs in cattle, sheep and goats. These are implemented through the TSE (Scotland) Regulations 2002 (as amended).

BSE has been found under natural conditions in cattle and one case has been found in a goat in France. In Great Britain, the only other livestock species in which a TSE has been found under natural conditions is scrapie in sheep and goats. The powers in the Bill provide a statutory underpinning for the control of scrapie but would also create a legal basis for responding to the theoretical risk that BSE can develop in sheep, and would also provide powers to respond to a TSE in other livestock, if one occurred.

### **SCRAPIE**

Scrapie is a fatal TSE of sheep and goats. It has been present in this country (and many others) for over 200 years. The scrapie agent appears to be transmitted between animals in an infected flock and between flocks. The way in which it is transmitted is not fully understood, but infected birth fluids, membranes and afterbirth could spread the disease agent during lambing. The agent can persist in the environment and may act as a source of infection to other sheep for some time. Scrapie usually affects only one or two animals in a flock at any one time but larger outbreaks can happen (Scottish Executive 2003).

Scrapie has been a notifiable disease since 1993 with compulsory slaughter and compensation for suspected animals since 1998. There are many signs of scrapie and most animals show a combination. No one sign is definitive of scrapie and it can therefore be a difficult disease to recognise. It is probable that many cases of scrapie go unrecognised or unreported. Scrapie itself has not been shown to be a risk to man but there is the possibility that another variant may emerge at some point in the future that might pose a greater risk to animal or human health.

### **Control of Scrapie**

Research has demonstrated that it is possible to identify whether sheep are naturally resistant or susceptible to scrapie. Selective breeding to increase levels of natural genetic resistance provides a powerful tool for the control of scrapie, and this forms the basis of the [National Scrapie Plan](#) (Scottish Executive, DEFRA & Welsh Assembly 2005d). The GB-wide plan was launched in July 2001. The Netherlands and France have similar control programmes in place. Participation by sheep farmers is voluntary at present but a compulsory breeding programme to eradicate scrapie is required by EU law.

The aim of the Plan is to reduce and over time eliminate scrapie from the national sheep flock by selective breeding from sheep which are resistant. Sheep are tested for resistance, and only those with the most resistant genes are used to breed rams. When these rams are used, over time their resistant genes will spread throughout the sheep flock, increasing resistance to scrapie.

Section 10 of the Bill provides a legal basis for making the measures in the National Scrapie Plan compulsory. Similar provisions have been enacted in England and Wales in Part 2 of the Animal Health Act.

Some breeds of sheep are more susceptible to scrapie than others. However, even in those scarcer breeds which have a small gene pool, it will be possible to gradually breed scrapie resistance without losing a breed entirely.

## **SOURCES**

*Animal Health and Welfare (Scotland) Bill [as introduced] Session 2 (2005)*. SP Bill 47. Edinburgh: Scottish Parliament. Available at:  
<http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd.pdf>

*Animal Health and Welfare (Scotland) Bill: Explanatory Notes (and Other Accompanying Documents) Session 2 (2005)*. SP Bill 47-EN. Edinburgh: Scottish Parliament. Available at:  
<http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd-en.pdf>

*Animal Health and Welfare (Scotland) Bill: Policy Memorandum Session 2 (2005)*. SP Bill 47-PM. Edinburgh: Scottish Parliament. Available at:  
<http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd-pm.pdf>

Barclay, C. (2001) *The Animal Health Bill*. House of Commons Library Research Paper 01/89. London: House of Commons Library. Available at:  
<http://www.parliament.uk/commons/lib/research/rp2001/rp01-089.pdf>

Barclay, C. (2004) *The Civil Contingencies Bill*. House of Commons Library Research Paper 04/07. London: House of Commons Library. Available at:  
<http://www.parliament.uk/commons/lib/research/rp2004/rp04-007.pdf>

Council of the European Union. (2003) *Council Directive 2003/85/EC of 29 September 2003 on Community Measures for the Control of Foot-and-Mouth Disease Repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and Amending Directive 92/46/EEC* [Online]. OJ L306, 22 November 2003. Available at:  
[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_306/l\\_30620031122en00010087.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_306/l_30620031122en00010087.pdf)

Department for the Environment, Food and Rural Affairs. (2002) *Consultation on implementation of powers in Animal Health Bill*. London: DEFRA. Available at:  
<http://www.defra.gov.uk/corporate/consult/ahbill/paper.htm>

Department for the Environment, Food and Rural Affairs. (2005) *Frequently Asked Questions on FMD Statistics*. [Online]. Available at:  
<http://www.defra.gov.uk/footandmouth/cases/statistics/statsfaq.htm>

DEFRA, Scottish Executive & Welsh Assembly Government. (2005) *Animal Health and Welfare Strategy for Great Britain*. London: DEFRA. Available at:  
<http://www.scotland.gov.uk/Resource/Doc/35596/0014443.pdf>

European Commission. (2001) *Risk Management Tools for EU Agriculture with a special focus on insurance*. Working Document. Brussels: European Commission. Available at:  
[http://europa.eu.int/comm/agriculture/publi/insurance/index\\_en.htm](http://europa.eu.int/comm/agriculture/publi/insurance/index_en.htm)

European Commission. (2002) *Proposal for a Council Directive on Community measures for the control of foot-and-mouth disease and amending Directive 92/46/EEC*. COM(2002)736. Brussels: European Commission.

European Commission. (2005) *Risk and Crisis Management in Agriculture*. COM(2005)74. Brussels: European Commission. Available at:  
[http://europa.eu.int/comm/agriculture/publi/communications/risk/index\\_en.htm](http://europa.eu.int/comm/agriculture/publi/communications/risk/index_en.htm)

Foot and Mouth Disease Lessons Learned Inquiry. (2001) *Foot and Mouth Disease: Lessons to be Learned Inquiry Report*. HC 888. London: TSO. Available at:  
[http://archive.cabinetoffice.gov.uk/fmd/fmd\\_report/report/index.htm](http://archive.cabinetoffice.gov.uk/fmd/fmd_report/report/index.htm)

House of Commons Public Accounts Committee. (2003) *The 2001 Outbreak of Foot and Mouth Disease*. HC 487. Fifth report 2002-03. London: HMSO. Available at:  
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmpubacc/487/48702.htm>

House of Commons Public Accounts Committee. (2005) *Foot and Mouth Disease: applying the lessons*. HC 563. Ninth report 2005-06. London: HMSO. Available at:  
<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpubacc/563/56302.htm>

House of Lords. (2002a) *House of Lords Hansard, 14 January 2002*. Col 835-54. London: HMSO. Available at:  
[http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo020114/text/20114-03.htm#20114-03\\_head2](http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo020114/text/20114-03.htm#20114-03_head2)

House of Lords. (2002b) *House of Lords Hansard, 26 March 2002*. Col 166-202. London: HMSO. Available at:  
[http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo020326/text/20326-03.htm#20326-03\\_head2](http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo020326/text/20326-03.htm#20326-03_head2)

House of Lords. (2002c) *House of Lords Hansard, 7 October 2002*. Col 21-89. London: HMSO. Available at:

[http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo021007/text/21007-06.htm#21007-06\\_head0](http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo021007/text/21007-06.htm#21007-06_head0)

National Audit Office. (2002) *The 2001 Outbreak of Foot and Mouth Disease*. HC 939. London: TSO. Available at: [http://www.nao.org.uk/publications/nao\\_reports/01-02/0102939.pdf](http://www.nao.org.uk/publications/nao_reports/01-02/0102939.pdf)

National Farmers Union of Scotland. (2005) *Disease Levy Proposal Unacceptable*. News Article No. 197/05 of 1 November 2005. [Online] Available at: [http://www.nfus.org.uk/news\\_detail.asp?newsID=703&homepage=yes](http://www.nfus.org.uk/news_detail.asp?newsID=703&homepage=yes)

Office International des Epizooties. (2005) *Terrestrial Animal Health Code*. Chapter 2.2.10 – Foot and Mouth Disease. Paris: OIE. Available at: [http://www.oie.int/eng/normes/mcode/en\\_chapitre\\_2.2.10.htm](http://www.oie.int/eng/normes/mcode/en_chapitre_2.2.10.htm)

Royal Society of Edinburgh. (2002) *Inquiry into Foot and Mouth Disease in Scotland*. Edinburgh: Royal Society. Available at: [http://www.royalsoced.org.uk/enquiries/footandmouth/fm\\_mw.pdf](http://www.royalsoced.org.uk/enquiries/footandmouth/fm_mw.pdf)

Scottish Executive. (2002a) *Foot and Mouth Disease in Scotland – The Scottish Executive's response*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/library5/agri/fmds-00.asp>

Scottish Executive. (2002b) *Codes of Recommendations for the Welfare of Livestock: Animal Health and Biosecurity*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Publications/2002/11/15800/13887>

Scottish Executive. (2003) *Animal Disease Control: Proposals for legislation in Scotland*. Scottish Executive: Edinburgh. Available at: <http://www.scotland.gov.uk/consultations/agriculture/adcp-00.asp>

Scottish Executive. (2005a) *Scotland's Avian Influenza and Newcastle disease contingency plan*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Publications/2005/10/17113357/33579>

Scottish Executive. (2005b) *Foot and mouth disease contingency plan*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Publications/2005/10/17113441/34417>

Scottish Executive. (2005c) *Animal Health and Welfare in Scotland: Implementing the Animal Health and Welfare Strategy*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Publications/2003/12/18658/30618>

Scottish Executive. (2005d) *Animal Health and Welfare (Scotland) Bill - Memorandum on delegated powers*. Edinburgh: Scottish Executive. Available at: <http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd-dpm.pdf>

Scottish Executive. (2005e) *Draft Animal Health and Welfare (Scotland) Bill Consultation: Draft Bill*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Resource/Doc/972/0011920.pdf>

Scottish Executive. (2005f) *Draft Animal Health and Welfare (Scotland) Bill Consultation: Draft Bill*. Response by Scottish Agricultural College. [Unpublished]

Scottish Executive. (2005g) *Draft Animal Health and Welfare (Scotland) Bill Consultation: Draft Bill*. Response by Scottish Rural Property and Business Association. [Online] Available at: [http://www.srpba.com/uploads/1826/Animal%20Bill%202005%20\(Final\).doc](http://www.srpba.com/uploads/1826/Animal%20Bill%202005%20(Final).doc)

Scottish Executive. (2005h) *Draft Animal Health and Welfare (Scotland) Bill Consultation: Draft Bill*. Response by Scottish Society for the Prevention of Cruelty to Animals. [Online]. Available at: <http://www.scottishspca.org/campaign/consultations/Scottish%20SPCA%20final%20response.pdf>

Scottish Executive. (2005i) *Draft Animal Health and Welfare (Scotland) Bill Consultation: Draft Bill*. Response by Advocates for Animals. [Online] Available at: <http://www.advocatesforanimals.org.uk/campaigns/political/scotland11.html>

Scottish Executive. (2005j) *Draft Animal Health and Welfare (Scotland) Bill Consultation: Draft Bill*. Response by Institute of Auctioneers and Appraisers in Scotland. [Unpublished]

Scottish Executive. (2005k) *Draft Animal Health and Welfare (Scotland) Bill Consultation: Draft Bill*. Response by Royal Society of Edinburgh. [Unpublished]

Scottish Executive, Department for the Environment, Food and Rural Affairs & National Assembly for Wales. (2005) *National Scrapie Plan*. [Online]. Available at: <http://www.scotland.gov.uk/Topics/Agriculture/animal-welfare/Diseases/SpecificDisease/Scrapie/Eradication>

Scottish Parliament. (2005) *Official Report 2 November 2005*. Col 20227-44. Edinburgh: Astron. Available at: <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-05/sor1102-02.htm#Col20227>

Tromans, S. (2003) *Animal Health Act 2002, Annotations by Stephen Tromans, Barrister*. [Online]. Available at: [http://www.farmtalking.com/the\\_law\\_the\\_animal\\_health\\_act\\_tromens\\_170203.html](http://www.farmtalking.com/the_law_the_animal_health_act_tromens_170203.html)

# SPICe briefing

17 November 2005

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## ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

### PART 2 – ANIMAL WELFARE

TOM EDWARDS

The Animal Health and Welfare (Scotland) Bill was introduced to the Parliament on 5 October 2005. It is in three parts: Part 1 contains provisions on animal health; Part 2 contains provisions on animal welfare; and Part 3 contains general provisions.

This briefing looks at the animal welfare provisions in Part 2. The briefing does not set out to describe all the provisions of the Bill, but focuses on some of the main points including:

- The definitions used in the Bill
- Preventing unnecessary suffering
- Mutilations (procedures carried out on animals)
- Animal fights
- New provisions to ensure animal welfare
- New powers for Ministers to prohibit the keeping of certain animals; license activities; and make regulations and statutory codes to improve animal welfare

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## KEY POINTS OF THIS BRIEFING

- Humans use animals for many purposes, and the welfare of animals must be construed accordingly
- The current law on animal protection is contained in several statutes, principally the Protection of Animals Act 1912 (c.14)
- The law on the welfare of farm animals stems from a substantial body of EU law. Part 2 of the Bill would not change the law on farm animal welfare
- The Bill would amend and extend the existing statutory framework. It would repeal 19 Acts entirely, and repeal the 1912 Act, apart from 4 sections
- The Bill would define “animals” for its purposes as vertebrates (creatures with a backbone) i.e. mammals, birds, fish, amphibians and reptiles
- The Bill would also define “protected animals” on which additional protections would be conferred
- The Bill would not affect sea fishing or angling, but would apply to fish farming
- The Bill would make it clear that only persons over 16 can be responsible for animals
- The Bill would create an offence of causing an animal to suffer unnecessarily
- The Bill would provide a new basis for regulating “mutilations” – procedures which involve interfering with the bones or sensitive tissue of an animal
- The Bill would create separate offences related to animal fights and abandoning animals
- A major change the Bill would make is that animal keepers would have to ensure the basic welfare needs of their animals are met
- The Bill would give Ministers powers to regulate, licence and make statutory codes to improve animal welfare
- The Bill would make fresh provisions for seizing animals which are suffering, and for preventing those convicted of offences from keeping animals (deprivation and disqualification orders)
- The Bill would prohibit the giving of an animal as a prize, and would make it illegal to sell an animal to a person under 16
- The Bill would be enforced by the police and “inspectors” who would be appointed by Ministers. Inspectors would be local authority staff and individual Scottish SPCA officers (but not all Scottish SPCA officers)

## INTRODUCTION

Humans are unique among all species in that they keep other animals for many different purposes: food; clothing; transport; draught power; hunting; guarding; companionship; as symbols of power; for study; entertainment; and to prevent their extinction.

There are divergent views on the ways that humans should be allowed to use animals. In some cases where there has been consensus legislation has been enacted to ban the use of animals for certain purposes. Historically, the banning of bear and bull baiting and cockfighting provide examples. More recently, Parliamentary time both at Holyrood and at Westminster has been spent legislating on foxhunting.

The dictionary defines welfare as “the state of faring or doing well; freedom from calamity; enjoyment of health and prosperity.” (Chambers 1998)

The way that definition applies to animals other than humans must be understood in connection with the different ways animals are used by humans. The Farm Animal Welfare Council (FAWC) has pioneered a way in which animal welfare could be understood as comprising [5 freedoms](#). Although their work is limited to the field of farm animals, the 5 freedoms could provide a basis for a definition applicable to all animals:

The welfare of an animal includes its physical and mental state and we consider that good animal welfare implies both fitness and a sense of well-being. Any animal kept by man must, at least, be protected from unnecessary suffering.

We believe that an animal's welfare, whether on farm, in transit, at market or at a place of slaughter should be considered in terms of 'five freedoms'. These freedoms define ideal states rather than standards for acceptable welfare. They form a logical and comprehensive framework for analysis of welfare within any system together with the steps and compromises necessary to safeguard and improve welfare within the proper constraints of an effective livestock industry.

1. Freedom from Hunger and Thirst – by ready access to fresh water and a diet to maintain full health and vigour.
2. Freedom from Discomfort – by providing an appropriate environment including shelter and a comfortable resting area.
3. Freedom from Pain, Injury or Disease – by prevention or rapid diagnosis and treatment.
4. Freedom to Express Normal Behaviour – by providing sufficient space, proper facilities and company of the animal's own kind.
5. Freedom from Fear and Distress – by ensuring conditions and treatment which avoid mental suffering.

In 2004 the Scottish SPCA (2005a) received 96,697 calls from the public reporting animal welfare incidents and tasked 8,000 of these for investigation. As a result Scottish SPCA inspectors reported 30 cases to the Procurator Fiscal, and 34 cases reached the Sheriff court, resulting in 32 convictions. 67 cases were pending in Jan 2005. Between January and September 2005 the Scottish SPCA reported 65 cases to the Procurator Fiscal and there were an additional 11 joint police/Scottish SPCA reports.

Part 2 of the Bill provides a framework through which many aspects of man's relationship with other kinds of animals could be regulated to improve the welfare of animals.

It does this by modernising much of the existing law on the subject, and by establishing general principles. The Scottish Executive intends that where necessary these general principles will be given specific effect by making subordinate legislation or statutory codes of practice once the Bill has been enacted. In this way a more comprehensive framework of law on animal welfare could be created, building on the foundations of existing legislation at both domestic and EU levels. An argument in favour of this is that the Executive is seeking to regulate many different types of practice, and specifying all the detailed provisions needed to account for different circumstances would make the Bill long and unwieldy. Subordinate legislation can also be amended more easily. An argument against it is that Parliament has less say on the content of subordinate legislation as it can only approve or reject the Executive's proposals and cannot amend them.

The Scottish Executive (2004) consulted on proposals for revising animal welfare law in March 2004. The consultation document set out a number of areas in which the Executive sought views on its proposals for further regulation. A draft Bill and an accompanying consultation paper were published in May 2005 (Scottish Executive 2005a & b). The consultation paper gave an indication of the order in which the Executive intends to bring forward regulations to address these issues:

It is intended that the regulations and Codes of Practice made under the Bill will be introduced in two stages. Broadly, these sectors are split between the areas for which there is current regulation and those for which there is none. It also acknowledges that some areas, such as pet dealing, which is included in the first tranche of regulations, are urgently in need of reform.

The table below shows the areas in which the Executive would take action once the Bill had been enacted and brought into force.

<b>Expected date</b>	<b>Regulation/Code of Practice</b>	<b>Effect</b>
Summer 2006	Tail docking and mutilations (new proposal)	7,000 dogs registered per year from traditionally docked breeds
Summer 2006	Pet dealers (new proposal)	6 people are known to be puppy dealers, but the exact number involved is unknown
Summer 2007	Animal boarding establishments (already regulated)	600
Summer 2007	Riding establishments (already regulated)	315
Summer 2008	Pet shops (already regulated)	360 pet shops
Summer 2008	Pet fairs (new proposal)	22 one day pet-fairs per year
Summer 2008	Livery yards (new proposal)	3,000 to 4,000 in Scotland
Summer 2008	Sellers of pet animals provide written information to prospective purchasers	360 pet shops plus 153 dog breeding establishments

First stage	Tethering of equines (new proposal)	Between 64,000 and 100,000 equines in Scotland of which 320 to 500 are tethered
First stage	Rearing of game birds for sport shooting (new proposal)	15 game farmers, but c.50% of birds are reared by gamekeepers themselves who would also be covered by code
Second stage	Animal sanctuaries (new proposal)	c.100
Second stage	Greyhounds (new proposal)	
Second stage	Couping of horses (new proposal)	

## CURRENT LAW

The existing domestic law on animal protection is contained in a number of statutes. The principal statute is the Protection of Animals (Scotland) Act 1912 (c.14). It would be almost entirely repealed by the Bill, and therefore the Bill contains a redrafting of its provisions. Although practitioners have found that the Act has stood the test of time in situations where an animal has suffered at the hands of man, it is felt that its drafting could be clearer. For instance, subsection 1(1) of the Act contains over 25 possible offences (Scottish SPCA 2005a).

Other domestic legislation on animal welfare has often been enacted for specific purposes. The Bill would repeal the following Acts entirely (in so far as they extend to Scotland):

- Protection of Animals (Scotland) Act 1912 Amendment Act 1921 (c.22)
- Performing Animals (Regulation) Act 1925 (c.38)
- Protection of Animals (Amendment) Act 1927 (c.27)
- Protection of Animals Act 1934 (c.21)
- Protection of Animals (Cruelty to Dogs) (Scotland) Act 1934 (c.25)
- Docking and Nicking of Horses Act 1949 (c.70)
- Pet Animals Act 1951 (c.35)
- Cockfighting Act 1952 (c.59)
- Protection of Animals (Amendment) Act 1954 (c.40)
- Abandonment of Animals Act 1960 (c.43)
- Animal Boarding Establishments Act 1963 (c.43)
- Riding Establishments Act 1964 (c.70)
- Riding Establishments Act 1970 (c.32)
- Breeding of Dogs Act 1973 (c.60)
- Pet Animals Act 1951 (Amendment) Act 1983 (c.26)
- Protection of Animals (Amendment) Act 1988 (c.29)
- Breeding of Dogs Act 1991 (c.64),
- Protection of Animals (Scotland) Act 1993 (c.15),
- Breeding and Sale of Dogs (Welfare) Act 1999 (c.11)

The Bill would also repeal Part 1 of the Agriculture (Miscellaneous Provisions) Act 1968. One law on which the Executive consulted but which the Bill would not repeal is the Dangerous Wild Animals Act 1976 (c.38).

The law relating to farm animals is almost exclusively determined by European Union law. This has developed in order to set common welfare standards in farming under the CAP as part of creating a common market in agricultural produce. For example, EU law sets minimum standards for keeping animals on farms, for transporting them, and for slaughtering them. Accordingly, it is not anticipated that in itself the Bill will have any direct effect on the requirements respecting animals kept for farming purposes.

A full discussion of animal welfare law in Britain is provided by Radford (2001).

## DEFINITION OF ANIMAL AND RESPONSIBILITY

### TAXONOMY

The definitions in the Bill are based on taxonomy - the science of classifying animals. Modern taxonomy is based on a system established in the 1750s by Swedish botanist Carolus Linnaeus. The system uses different hierarchical levels called taxa to group related animals.

All organisms are divided into one of 5 kingdoms e.g. kingdom animalia contains all animals. Each kingdom is divided into groups. These groups are based upon the structure of the animal's body. The largest divisions are phyla (singular, phylum). The word phylum means "race" or "tribe." Large phyla can be divided into sub-phyla. Each phylum is divided into classes, the classes into orders, and the orders into families. Families are subdivided into genera (singular, genus), and each genus is divided into species. All known species have a two part latin name – their genus first and then their species, for example, domestic cattle are *Bos domesticus*.

The most evolved animals at the top of the animal kingdom are in the phylum Chordata.

Vertebrates are members of the subphylum Vertebrata, the predominant subphylum of the phylum Chordata. They have backbones, from which they derive their name. Vertebrates include all fish, amphibians, reptiles, birds and mammals.

Invertebrates are animals without backbones. More than 90 percent of living animals are invertebrates. Worldwide in distribution, they range in size from minute protozoans to giant squids. Apart from the absence of a backbone, invertebrates have little in common. They are generally soft-bodied animals without a rigid internal skeleton but often with a hard outer skeleton (as in most molluscs, crustaceans, and insects). The taxonomic term Invertebrata, formerly used in contrast to Vertebrata, has no validity in modern classifications (Encyclopaedia Britannica).

### ANIMAL

Section 14 defines an animal as a vertebrate other than man, but does not include embryos (eggs) or fetuses (unborn babies). Scottish Ministers would be able to extend the definition of animals to include invertebrates, and also to change the definition of animal to include fetuses or embryos. The meaning of vertebrate and invertebrate is given in subsection 14(6):

"vertebrate" means any creature of the Sub-phylum Vertebrata of the Phylum Chordata,

"invertebrate" means any creature not of that Sub-phylum

The Game Conservancy Trust (2005) thought that the definition of animal was a good one because it was based on taxonomy, and

Because of this it is clear cut, unambiguous and very unlikely to change with new research. It provides little or no basis for argument in the courts – which is also a good thing.

But also added that

Allowing the Minister to extend the law to include any invertebrate he chooses is a thoroughly bad idea. We are opposed to this. It will lead to a whole list of special pleadings on behalf of lobsters, cuttlefish, tarantulas and crickets. Similarly we think it will raise a series of hopeless debates on a subject on which the science is very unclear even for vertebrates let alone for the likes of molluscs and arthropods [insects]

The Scottish SPCA (2005) supports the inclusion of certain cephalopods (e.g. octopuses) and crustaceans (e.g. lobsters) in the definition of animal on the grounds that they can experience pain and suffering. They give the example of the inclusion of the octopus within the definition of protected animal under the Animals (Scientific Procedures) Act 1986 (c.14). Advocates for Animals also think these animals should be included within the definition of animal used in the Bill. They have produced a [report](#) on the subject (Advocates for Animals 2005). The Shellfish Network (2005) argue that there is evidence to show that shellfish are capable of feeling pain and should be included within the definition of animal.

## **PROTECTED ANIMAL**

Section 15 contains a definition of 'protected animal' which would be treated separately for the purpose of some provisions of the Bill. An animal is a protected animal if it is:

- (a) of a kind which is commonly domesticated in the British Islands,
- (b) under the control of man on a permanent or temporary basis, or
- (c) not living in a wild state.

In the majority of circumstances it will be self evident whether an animal falls within the definition of a protected animal, but there is some uncertainty as to how it will apply, particularly in relation to wild animals with which man comes into contact.

For example, Larsen traps are cage traps used to catch crows and magpies. They work by having a live crow or magpie in one half of the trap – the call bird. The call bird itself is usually a bird which has been caught and kept alive. When wild crows are breeding they are territorial. This means they fly down to the trap and try to get at the call bird to chase them out of their territory. In so doing they fly into, and are caught in the trap. Other birds, e.g. buzzards are also sometimes caught in the trap as they may fly in to eat the food in the trap or to try and get at the call bird. Any animal caught in this way would be a protected animal according to the definition in the Bill.

The SRPBA (2005) commented on the definition of "protected animal":

The definition in section 15 however does seem to be an exhaustive list. It indicates that satisfying any one of the three criteria (a), (b) or (c) would qualify an animal as "protected". SRPBA believes this is an error and the definition should be (a) AND either (b) and/or (c). If the definition in the Bill was to be enacted it would result in what we believe would be unintended consequences.

For example, in the legitimate use of Larsen traps for pest control purposes, the pest species and the decoy would in theory become under “temporary control” and therefore “protected animals”. This would raise some anomalies, for example, would the release of non-target species would then constitute abandonment of a protected animal? Would the catching of a non-target species (even if it is later released) in a Larsen trap constitute unnecessary suffering?

The term “commonly domesticated in the British Isles” is also likely to cause problems. This is too vague for primary legislation and open to too many interpretations. We feel there should be some attempt to quantify the meaning of “commonly”.

Radford (2005) also commented on these provisions:

I agree that these three categories are appropriate and sufficiently wide. I am sure that Parliamentary Counsel is satisfied that there is no ambiguity in the drafting of section 15, but I wonder whether there might be uncertainty among those who will implement and interpret the legislation as to whether it encompasses two or three categories?

It is clearly essential that the term ‘protected animal’ is clear and certain. As presently drafted it is arguable that subsections (a) and (b) define a single type of animal. That is to say, in order to be classed as a protected animal, it is required to be of a kind which is commonly domesticated in the British Islands and under the control of man on a permanent or temporary basis.

The effect of such false interpretation can be appreciated by reference to a feral cat. If clause 15 is correctly interpreted and applied, a feral cat would fall within its provisions as a kind of animal which is commonly domesticated in the British Islands, notwithstanding that it does not meet the criteria of (b) or (c). If, however, the clause is incorrectly interpreted to mean that an animal must fulfil the terms of (a) and (b), then a feral cat would not fall within the scope of the legislation.

For the avoidance of doubt would it be desirable to include the word ‘or’ at the end of subsection 15(a)?

The definition of protected animal is qualified by the exceptions in section 43. This excludes scientific experimentation on animals from the provisions of Part 2 of the Bill. This is a reserved matter under Head B.7 of Schedule 5 to the Scotland Act 1998.

Although the definitions of animal and protected animal include fish, section 43 of the Bill would also provide an exception “for anything done in the normal course of fishing”. The Explanatory Notes say that “this is intended to exclude sea fishing and angling from the provisions of Part 2, but will not exclude fish farming.”

## **RESPONSIBILITY FOR ANIMALS**

Section 16 defines who is responsible for an animal for the purposes of Part 2 of the Bill. A person can only be responsible for an animal if they are over 16 years of age. A person could be responsible for an animal on a permanent or temporary basis. They would always be responsible for an animal if they own it, or if they are in charge of it. They would also be responsible for what happened to an animal if they abandoned it. Abandonment is dealt with in section 26 of the Bill.

The Scottish SPCA (2005b) support this change as they draw attention to court cases where adults have successfully claimed that they were not responsible for an animal because it belonged to their children. Under Scots law children are not judged to be responsible for

criminal actions if they are under the age of 8 (under section 41 of the Criminal Procedure (Scotland) Act 1995 (c46)).

## UNNECESSARY SUFFERING

Section 17 of the Bill contains a redrafting of the offences of cruelty from subsections 1 (a) and (b) of the Protection of Animals Act 1912 (c.14). That Act lists a number of cruel acts which it is an offence to carry out on an animal:

### *s 1 Offences of cruelty*

(1) If any person--

(a) shall cruelly beat, kick, ill-treat, over-ride, over-drive, over-load, torture, infuriate, or terrify any animal, or shall cause or procure, or, being the owner, permit any animal to be so used, or shall, by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of any act, cause any unnecessary suffering, or, being the owner, permit any unnecessary suffering to be so caused to any animal; or

(b) shall convey or carry, or cause or procure, or, being the owner, permit to be conveyed or carried, any animal in such manner or position as to cause that animal any unnecessary suffering;

[...]

such person shall be guilty of an offence of cruelty within the meaning of this Act, and shall be liable upon summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

The Bill takes a different approach - instead of listing a number of cruel acts it would create an offence of causing an animal to suffer unnecessarily. This would apply to both actions and omissions i.e. neglect (as is presently the case). A person would also have to take reasonable steps to prevent another person causing their animal to suffer unnecessarily. These offences are qualified by a consideration in subsection 17 (4) of the extent to which suffering is unnecessary. The list of considerations is not exhaustive and include:

- (a) whether the suffering could reasonably have been avoided or reduced,
- (b) whether the conduct concerned was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment,
- (c) whether the conduct concerned was for a legitimate purpose, for example-
  - (i) the purpose of benefiting the animal, or
  - (ii) the purpose of protecting a person, property or another animal,
- (d) whether the suffering was proportionate to the purpose of the conduct concerned,
- (e) whether the conduct concerned was in the circumstances that of a reasonably competent and humane person.

## MUTILATIONS

### ***The Royal College of Veterinary Surgeons (RCVS)***

The [RCVS](#) was established in 1844 by Royal Charter to be the governing body of the veterinary profession. Its statutory duties are currently set out in the Veterinary Surgeons Act 1966 (c.36) [as amended]. These are to maintain a register of veterinary surgeons eligible to practise in the UK; to regulate veterinary education and to regulate professional conduct. It also awards qualifications to vets and veterinary nurses, and promotes the study of veterinary science. Only those registered with the RCVS can carry out acts of veterinary surgery.

The current law which determines the procedures which can lawfully be carried out on animals is in the Veterinary Surgeons Act 1966 (c.36). Section 19 of the Act provides that only vets may carry out veterinary surgery, apart from certain exceptions set out in that section and in Schedule 3 of the Act. The exceptions cover procedures carried out by e.g. student vets. The exceptions in Schedule 3 provide that certain procedures routinely carried out on farm animals can be carried out by lay people: tail docking of lambs and piglets; castration of lambs, calves and piglets; teeth clipping of piglets; horn de-budding of cattle; and beak trimming of chickens being the main ones.

Schedule 3 of the 1966 Act also allows a lay person to remove a puppy's dew claws before its eyes are open. Dew claws are rudimentary fifth toes on the inside of dog's ankles.

The issue of which procedures should be allowed to be carried out on animals has a long history. The RCVS first set up a working party to look into the issue in 1974, which reported in 1976 and which was reconvened in 1980. The results of the 1980 review led to changes in the law on procedures which could be carried out on farm animals through the making of the Welfare of Livestock (Prohibited Operations) Regulations 1982. The working party was reconvened in 1984 with terms of reference to "consider animal mutilations in general with a view to pressing for the banning of a number of mutilations by statute or other appropriate means". Its report was formally adopted by the RCVS in 1986 and is [annexed](#) to the RCVS Guide to Professional Conduct (2005). This report noted the emotiveness of the term "mutilation" but agreed that it could be used for "all procedures, carried out with or without instruments, which involve interference with the sensitive tissues or the bone structure of an animal". The report divides a long list of procedures into 4 categories: those already covered by legislation on which no further action is needed; acceptable procedures; and unacceptable procedures, which the RCVS considers should be banned.

Since the regulation of the health professions, including vets, is a reserved matter under Head G2 of the Scotland Act 1998 (c.46), the Scottish Parliament could not pass legislation which amended the 1966 Act.

Section 18 of the Bill would provide a new statutory basis for regulating the procedures which could be carried out on animals. It would make it an offence to carry out procedures on animals which interfere with the sensitive tissue of the animal or its bone structure, except where they are carried out for medical purposes e.g. the amputation of a limb following an accident. Scottish Ministers would also be able to make regulations exempting other procedures. These regulations would be made under the affirmative procedure. The Scottish Executive (2005c) has said that it will publish draft regulations on mutilations while the Bill is being considered by the Parliament. The Executive does not wish to change the law which applies to farm animals. The main procedure which the Scottish Executive wishes to bring to an end through these regulations is the tail docking of dogs.

## **TAIL DOCKING OF DOGS**

Historically dogs' tails have been docked for many reasons, including to prevent rabies, strengthen the back and to increase running speed. There were also tax reasons (DEFRA 2002):

Docking of tails on farmers' or drovers' dogs used for herding and driving cattle and sheep originated in early Georgian times in England as it exempted the owner from a tax levied upon working dogs with tails. Many other types or breeds of dogs were also similarly docked to avoid this tax and although the tax was repealed in 1796 the habit of docking has persisted until modern times.

In 1991 Schedule 3 of the 1966 Act was amended so that tail docking could only be carried out by a vet from 1 July 1993 when the amendment came into force. Docking may be carried out without anaesthesia, but must be done before a puppy's eyes are open, which normally occurs at 10-14 days. Most vets who carry out the procedure aim to do so before 3 days of age. Docking is either done surgically or by placing a specialised rubber band at the required length on the tail. The blood supply to the end of the tail is constricted, and the end of the tail comes away within about three days.

The RCVS (2005) position on docking of dog's tails is [annexed](#) to the Guide to Professional Conduct:

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

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

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

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

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

The Scottish Executive (2005c) says the regulations on mutilations would include an exception to the prohibition on docking which would allow a vet to dock where they are satisfied that the dogs from the litter are likely to work as gundogs or sniffer dogs. The example of a working spaniel is often given to show why there should be an exception for working dogs. Spaniels have "feathering" (long hairs) on their tail if undocked. Working spaniels are used to flush game out of thick cover. The fear is that if an undocked dog is working in bramble bushes that it can catch its tail on the thorns and injure itself. The Scottish Countryside Alliance (2005), Scottish Gamekeepers Association (2005) and the British Association for Shooting and Conservation (2005) all supported an exception to cover working dogs for this reason.

The British Veterinary Association (Scottish Branch 2005) said that they could see "little reason to dock some hunting dogs and not others", and said the only exception to a ban on docking should be for medical or surgical reasons. [Vets4docking](#) (2002) refute the case against docking

on a number of grounds, and believe it should be up to individual vets to decide whether to dock dogs tails or not.

The Council for Docked Breeds (2005) has campaigned on this issue since it was founded in 1991 following the change to the law on tail docking of dogs. It is totally opposed to a ban on docking. The Council also commented that the position on dew claw removal was not clear.

The Kennel club (2005) also opposes a ban on docking:

Since research concludes tail docking is not harmful to puppies, amending current legislation is unnecessary and breeders of traditionally docked breeds should be able to exercise choice over whether to dock their dog's tails, in conjunction with their veterinary surgeon. [...] Since the draft Bill currently defines animal on the ability to experience suffering and cruelty, the Executive [should] further examine research that has been conducted by various professors. In addition to Professor Hales, these include Professor Rudolf Fritsch who distinguishes between groups of newborn animals, including dogs, and confirms they are relatively immature at birth and up to around two weeks of age therefore cannot feel the same degree of pain as human babies, lambs and calves. Since no conclusive evidence exists to say that docking has a detrimental effect on dogs, and there have been many instances where undocked tails have become damaged and chronically inflamed, docking should be exempted from the list of mutilations.

The Anti-Docking Alliance (2005) campaigns to end tail docking. It advocates a total ban on tail docking except for truly therapeutic reasons, e.g. disease or injury. They have suggested that a total ban could be reviewed, and if, after a 3 year period, there was evidence that there was an increased number of cases of tail injury seen by vets, a suitable exception to a ban on docking could be introduced. They compared a number of similar dog breeds, some of which are docked, some of which are undocked. The Alliance thinks that removal of dew claws from puppies should only be allowed to be carried out by a vet under anaesthetic. The Dogs Trust (2005) and Scottish SPCA (2005b) also advocate a total ban on docking, except for medical treatment.

The [Regulatory Impact Assessment](#) which accompanied the publication of the Animal Welfare Bill which is currently being considered by the UK Parliament suggests that tail docking will not be banned in England and Wales (DEFRA 2005):

There was widespread support from animal welfare organisations, including the RSPCA, and the veterinary associations for a ban on the docking of dogs' tails for non-therapeutic reasons. However, a ban would be opposed by breed societies and the Kennel Club. The sporting shooting lobby do not oppose a ban on docking for cosmetic reasons, but they do oppose a ban on docking for working dogs, with spaniels, hunter pointer retriever breeds and working terriers being the types identified as needing an exemption. Sincere views were held by those who both support and oppose a ban on cosmetic docking and our preference is that there should continue to be freedom of choice.

## **ANIMAL FIGHTS**

The current law on animal fights is in sections 1(c), 1A and 1B of the Protection of Animals Act 1912. The Bill would repeal these sections and introduce a new provision on animal fights at section 21. The Scottish SPCA (2005) recognised that animal fights are one of the most serious offences of unnecessary suffering and cruelty to animals and felt that it was appropriate that they should be dealt with separately in the Bill. The Scottish SPCA (2005b) has expressed a desire to see the Bill make an offence of recording or being in possession of a recording of an animal fight. This is because recordings of animal fights are often used in promotion.

The Bill 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 British Association for Shooting and Conservation (BASC 2005) said it had

Concerns over the wider implementation of these provisions. A large number of country sports participants train animals that will come under the protected animal definition. These include birds of prey, terriers, ferrets etc. While much, if not all, of the training has nothing to do with fighting, or animal fights, it could be argued that the natural behaviour of these animals involves fighting, wrestling or baiting. Would a falconer flying a bird at a rabbit, a gamekeeper using a terrier to despatch fox cubs or a ferreter using his or her ferret to flush rabbits fall foul of section 21(1)(a) [...]? We argue that this section should be more clearly written to take better account of such activities.

The Scottish Countryside Alliance (2005) explained that:

No true animal respecting country sports participant would ever place an animal (protected or otherwise) with another animal (or human) for the purpose of fighting, wrestling or baiting. We therefore applaud the wording of 21(5) which emphasises that an offence occurs when a “protected animal” is placed.....for the purpose of fighting, wrestling or baiting”. We would like to be reassured that this offence will not be committed as a result of lawfully conducted activities such as falconry, ratting, rabbiting, terrier work etc. The DEFRA Bill team have confirmed that as the main purpose of falconry, ferreting, terrier work is to flush (and often kill) pest species, never for the “purposes of fighting, wrestling or baiting”, these activities would not be covered by the offence.

## **ENSURING WELFARE**

A major change to the current law would be introduced by section 22 of the Bill. Presently, an offence is only committed if it can be demonstrated beyond reasonable doubt that the animal has actually suffered (this usually has to be backed up by a veterinary certificate). This is undesirable because the treatment of an animal can be inadequate, to the extent that its welfare is seriously compromised, without it being possible to prove that it has suffered.

Section 22 of the Bill would change this position by making it an offence not to take reasonable steps to ensure that the needs of animal are met “to the extent required by good practice”. In construing this, regard must be had to any lawful purpose for which an animal is kept or any lawful activity undertaken in relation to an animal. An animal’s needs are defined in subsection 3 as including:

- (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,
- (e) its need to be protected from suffering, injury and disease.

These provisions are modelled on the 5 freedoms set out by the Farm Animal Welfare Council. For most types of farm animal, good practice is already set out in a series of statutory codes made by the Scottish Executive under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968. These codes are based on the advice of the Farm Animal Welfare Council. Codes have been produced for cattle, sheep, pigs and laying hens. For other types of animal, e.g. companion animals, codes could be produced under section 34 after the Bill had been enacted and brought into force.

Section 23 of the Bill would give Scottish Ministers a new power to make regulations to “secure” the welfare of animals. Subsection 3 provides a non-exhaustive list of the purposes regulations could be made for:

- (a) the prevention of suffering,
- (b) the way in which animals are looked after and the conditions in which they are kept,
- (c) the identification of animals (whether by use of marks, microchips or otherwise),
- (d) the breeding and rearing of animals,
- (e) how animals are transported,
- (f) how animals are prepared for killing and are killed,
- (g) hygiene,
- (h) the prevention of disease and of the spread of disease,
- (i) the keeping of records.

The Scottish Executive (2005c) has explained that this new power:

will allow flexibility for the Scottish Ministers to introduce detailed regulations stipulating animal welfare standards for particular types (or breeds) of animals, as judged necessary. Such a level of detail is not considered appropriate for primary legislation.

## LICENSING

Section 24 of the Bill would provide a statutory basis for licensing activities involving animals. Licences for different activities would be required by regulations which could be made under section 24. Regulations would be made under the affirmative procedure.

At present, several different activities involving animals are subject to licensing regimes. For example, pet shops are licensed under the Pet Animals Act 1951 (c.35), catteries and boarding kennels are licensed under the Animal Boarding Establishments Act 1963, and riding stables under the Riding Establishments Acts of 1964 (c.70) and 1970 (c.32). Other similar activities e.g. pet fairs – one off events at which pets are sold, and livery stables – are not subject to any licensing regime. The Scottish Executive (2005c) intends that they should be licensed. It would make new regulations setting out a licensing regime for each of these activities once the Bill had been enacted and brought into force.

Dog breeding establishments in Scotland are licensed under the Breeding and Sale of Dogs (Welfare) Act 1999. Concerns have been expressed about the welfare of young puppies imported from other countries, mainly Ireland. This led Christine Grahame MSP to make a proposal for a Transportation and Sale of Puppies (Scotland) Bill in November 2003. Information about the issue and a copy of Christine Grahame’s consultation is available on the [Scottish SPCA website](#). The Scottish Executive has accepted the need for regulation of this practice and has undertaken to produce draft Regulations while the Bill is before Parliament. The Executive (2005c) says that the regulations will:

protect the welfare of young companion animals which are bought and resold for profit by dealers. Concerns have been raised regarding whether these animals are: transported in appropriate conditions; allowed to rest after their journey; identified; healthy and disease free; and checked by a veterinary surgeon before being resold. The trade will not be prohibited but will be regulated and only legally conducted by people licensed by local authorities. It will be essential for dealers to have suitable premises for the animals (similar to rearing establishments) before any licence would be issued.

## PROHIBITION ON KEEPING CERTAIN ANIMALS

Section 25 would allow Scottish Ministers to make regulations prohibiting the keeping of animals, either in homes, or at other premises. Regulations would be made under the affirmative procedure. The International Fund for Animal Welfare (IFAW 2005) produced a [report](#) which estimated that there could be up to 3,000 primates (apes and monkeys) kept as pets in the UK. It concluded that it was almost impossible for a pet owner to provide the correct physical, social or behavioural environment to ensure the welfare of primates and recommended that they should not be kept as pets.

The Scottish Executive (2005c) has explained why the power is necessary:

It is considered that detail as to the types of animals which may be subject to the provision is not suitable for primary legislation. It is not intended to specify all animals which could possibly be kept in domestic (or other) premises, and which it is considered cannot properly be looked after in such premises. Rather, it is intended that as problems are foreseen or emerge regulations can be made. The use of a regulation making power under this section provides the Scottish Ministers with the flexibility to respond to developments. The draft affirmative procedure will allow the appropriate level of scrutiny and debate once the regulations have been informed by the consultation process.

The Scottish Exotic Animals Society (2005) said that:

We do not agree with this section. We see no reason for the Scottish Ministers to be given this power. Where an animal is endangered it is necessary to have CITES papers for the animal, where an animal is dangerous it is included on the Dangerous Wild Animals Act and as such needs veterinary inspections to receive the licence. Where an animal is deemed unsuitable to be kept by the general public (for the protection of the animal) we feel it would be much more practical to add the animal to the DWAA list or to create a similar Act to protect animals falling under this description. This would prohibit the keeping of the animal without a licence and mean that a vet would check the facilities the person has to keep the animal. [...] We feel this power is greatly dangerous to law abiding citizens, as it gives the potential for a Minister with a grudge against certain animals to be prohibit them from being kept.

## ABANDONMENT

The current law is in the Abandonment of Animals Act 1960. Section 1 of that Act creates the offence of abandoning an animal without reasonable cause or excuse in circumstances likely to cause the animal unnecessary suffering.

The Bill would repeal this Act and section 26 would provide new provision on abandonment. While the Scottish SPCA (2005) welcomed the inclusion of abandonment as a separate offence it also drew attention to the fact that:

Under the draft Bill, the offence is only committed once an animal's needs have not been met, taking into account the kind of animal, its age and state of health, the length of time it has been left and its requirements. Under current legislation, the offence is committed as soon as the animal is abandoned [...]

10.14 By convention, a period of 24 hours for animals confined unsupervised in a dwelling house has become accepted as the point for intervention, but the circumstances would then be open to consideration by the court. Attempting to set longer periods would be a retrograde step.

10.15 For example, snakes do not need regular feeding or exercise as some animals do: some can survive for many months without feeding, as long as they have adequate UV

lighting, temperature and humidity control. Under the proposed legislation, it would be legal to leave a snake unsupervised for a period of months if its needs were provided for, although most people would regard this animal as having been abandoned. Providing for the animal to survive under normal circumstances does not provide for the unforeseen, such as loss of electricity. Under the 1960 Act, the snake's owner would be liable as soon as he had abandoned it in a manner likely to cause unnecessary suffering, whether or not its needs were being met at the time of intervention.

10.16 A cat owner may decide to go away for a week, leaving a cat with a series of automated feeders. Under the proposed legislation, this would not be an offence as long as those automated feeders were to work, but again this does not provide for unforeseeable circumstances, such as illness, accident, or fire. Under the 1960 Act, the offence would have been committed regardless of what provisions were made for the animal.

The Scottish SPCA suggested that the provision should be redrawn on account of this.

## ANIMAL WELFARE CODES

Section 34 of the Bill would give Scottish Ministers the power to make statutory animal welfare codes. This power would replace an existing power to make codes for farm animal welfare in section 3 of the Agriculture (Miscellaneous Provisions) Act 1968, which the Bill would repeal. It would allow codes to be drawn up for animals not presently covered by a code. There must be consultation with interested parties before a code can be produced. It would not be an offence not to comply with a code, but evidence of non-compliance could be used in a prosecution under the other offence provisions of the Bill (when enacted and in force). Codes would be approved by Parliament under the affirmative procedure, in the same way as farm animal codes are under the 1968 Act. The most recent codes to be approved by the Parliament under this procedure are for pigs and cattle, which were [debated](#) in the Scottish Parliament Environment and Rural Development Committee (2003).

The Scottish Executive (2005c) has already indicated its intention to draw up codes for non-farm animals – on the tethering of horses and ponies; on game-bird rearing, and on greyhounds.

## SOURCES

Advocates for Animals. (2005) *Cephalopods and Decapod Crustaceans – Their capacity for experiencing pain and suffering*. Edinburgh: Advocates for Animals. Available at: <http://www.advocatesforanimals.org.uk/pdf/crustreport.pdf>

*Animal Health and Welfare (Scotland) Bill [as introduced] Session 2 (2005)*. SP Bill 47. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd.pdf>

*Animal Health and Welfare (Scotland) Bill: Explanatory Notes (and Other Accompanying Documents) Session 2 (2005)*. SP Bill 47-EN. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd-en.pdf>

*Animal Health and Welfare (Scotland) Bill: Policy Memorandum Session 2 (2005)*. SP Bill 47-PM. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd-pm.pdf>

Anti Docking Alliance. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]

- British Association for Shooting and Conservation. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]
- British Veterinary Association. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]
- Chambers. (1998) *The Chambers dictionary*. Edinburgh: Chambers Harrap Publishers.
- Council for Docked Breeds (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]
- DEFRA. (2002) *Information on tail docking provided for the Animal Welfare Division*. [Online]. Available at: <http://www.defra.gov.uk/animalH/welfare/domestic/awbillconsulttaildocking.pdf>
- DEFRA. (2005) *Animal Welfare Bill – Regulatory Impact Assessment*. London: DEFRA. Available at: <http://www.defra.gov.uk/animalh/welfare/bill/pdf/ria.pdf>
- Dogs Trust. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]
- Encyclopaedia Britannica. [Online]. Available at: <http://search.eb.com> (requires subscription)
- Farm Animal Welfare Council. *5 Freedoms*. [Online]. Available at: <http://www.fawc.org.uk/freedoms.htm>
- International Fund for Animal Welfare. (2005) *Born to be wild - Primates are not pets*. London: IFAW. Available at: [http://www.ifaw.org/ifaw/dfiles/file\\_553.pdf](http://www.ifaw.org/ifaw/dfiles/file_553.pdf)
- Kennel Club. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]
- Radford, M. (2001) *Animal welfare law in Britain – Regulation and responsibility*. Oxford: OUP.
- Radford, M. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]
- Royal College of Veterinary Surgeons. (2005) *Guide to Professional Conduct*. London: RCVS. Available at: <http://www.rcvs.org.uk/PrintFullArticle.asp?NodeID=89642#Top>
- Scottish Countryside Alliance. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]
- Scottish Executive. (2004) *Proposal to Revise Existing Animal Welfare Legislation - A Consultation Document*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/consultations/rural/anwl-00.asp>
- Scottish Executive. (2005a) *Draft Animal Health and Welfare (Scotland) Bill*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Publications/2005/05/1683736/37494>
- Scottish Executive. (2005b) *Draft Animal Health and Welfare (Scotland) Bill, Consultation Paper and Draft Regulatory Impact Assessment*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Publications/2005/05/1683736/37410>
- Scottish Executive. (2005c) *Animal Health and Welfare (Scotland) Bill - Memorandum on delegated powers*. Edinburgh: Scottish Executive. Available at: <http://www.scottish.parliament.uk/business/bills/pdfs/b47s2-introd-dpm.pdf>

Scottish Exotic Animals Society. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]

Scottish Gamekeepers Association. (2005) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Unpublished]

Scottish Parliament Environment and Rural Development Committee. (2003) *Official Report 4<sup>th</sup> meeting 2003, Session 2, 10 September 2003*. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/business/committees/historic/environment/or-03/Col138>

Scottish SPCA. (2005a) *Personal Communication* [Unpublished]

Scottish SPCA. (2005b) *Response to Draft Animal Health and Welfare (Scotland) Bill*. [Online]. Available at: <http://www.scottishspca.org/campaign/consultations/Scottish%20SPCA%20final%20response.pdf>

Vets4docking. (2002) *Submission to DEFRA* [Online]. Available at: <http://www.vets4docking.org.uk/intro.htm>

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**THE ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL**

**INTRODUCTION**

1. This submission focuses exclusively on Part 2 of the Bill.
2. Legal regulation of the way in which animals are treated is essential in order to offset the otherwise unconstrained property rights under common law which allow an owner to do with his animals as he wishes. The first animal protection legislation for Scotland was enacted in 1850, and for more than a century its primary focus was on the prohibition of cruelty (presently represented by the Protection of Animals Acts). However, during the last 30 or so years there has developed in relation to some classes of animals a parallel body of legislation concerned with standards of animal welfare.

**SHORTCOMINGS IN THE LAW**

3. There is a compelling case for legislative reform. Five general shortcomings in the present law can be identified:
  - (i) **The nature of the legislation:** The scope and character of the Protection of Animals Acts are outdated, inadequate, and unwieldy. The principal cause is a lack of enabling powers: without recourse to the enactment of further primary legislation, they cannot be updated to reflect developing scientific knowledge, changing ethical considerations, or perceived weaknesses in their application. Those reforms which have been introduced are typically *ad hoc* and piecemeal in nature, and are now spread inconveniently across a large number of statutes.
  - (ii) **The offence of cruelty:** The present wording defining the offence of cruelty, which is essentially the same as that applying in England, is unsatisfactory. The English High Court has recently described it as "unnecessarily confusing", and suggested that "it is surely high time" that the policy underlying the legislation be expressed in "clear, intelligible modern language" (*Isted v Crown Prosecution Service* (1998), per Brooke LJ).

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<sup>1</sup> This submission represents the author's personal views, and it should not be inferred that they are necessarily those of any organisation with which he is associated.

- (iii) **Provisions relating to welfare:** The law fails, in respect of many animals, to define how they ought to be treated. A person may be prosecuted for treating them cruelly, but the offence of cruelty merely defines the standard below which conduct towards animals becomes unlawful; it imposes no requirement to improve upon that basic benchmark. Adequate protection requires all those who assume responsibility for an animal to be placed under a positive duty to ensure its welfare.
- (iv) **The regulatory regime:** Some commercial activities involving animals are subject to licensing or registration, but many others are not. Even where such regulation exists, it often fails to promote modern concepts of welfare or to contain appropriate provisions to enable authorities adequately to ensure the interests of the animals involved.
- (v) **Enforcement:** There is legitimate concern that effective enforcement is compromised by a combination of inadequate powers, a failure by some enforcement authorities properly to carry out their functions, and a reluctance by the courts to use their powers to protect the interests of animals.

#### **GENERAL COMMENTS ON THE BILL**

4. Notwithstanding reservations about some specific provisions, the principles and policy underlying the Bill are enthusiastically endorsed. The Bill addresses each of the shortcomings identified above, and its significance cannot be overstated. It is undoubtedly the case that the Bill has the potential to put in place an enduring legislative framework to protect animals from abuse, ignorance and neglect, and positively to promote high standards of care and treatment.
5. In order to achieve these objectives, however, the legislation must be clear in its meaning, appropriate in its application, and effective in its implementation. To this end, the Committee's attention is drawn to the following issues:
6. **The meaning of 'animal' (clause 14)** – there is an argument that the policy presently to restrict the reach of the Bill to vertebrates is inconsistent with other legislation.
7. **The meaning of 'protected animals' (clause 15)** – although in most cases it will be self-evident whether an animal falls within this definition, it is submitted that there is room for considerable uncertainty at the margins, especially in situations where humans come into contact with wild animals. In particular, it would be helpful if the meaning of 'under the control of man' in 15(b) could be further defined.

8. **Unnecessary suffering (clause 17)** - As presently defined, an offence of cruelty may be committed by eight different courses of behaviour spread across a number of different statutes, and much of the wording dates back to the nineteenth century. There is a wide consensus that this situation requires reform. At the same time, however, it is the case that the specific offence on which the vast majority of prosecutions is based—namely, wantonly or unreasonably doing or omitting to do any act causing unnecessary suffering to any animal—is generally regarded to have successfully stood the test of time. The major criticism which has been made of it is the requirement that an animal has actually to have suffered before an offence is committed. This has made it difficult for enforcement authorities to prevent suffering, especially in cases of neglect, where the animal's condition may deteriorate gradually over a period of time. However, this particular issue will be adequately addressed by the introduction of the duty to ensure the welfare of animals, and the associated powers which are proposed to support it.
9. Despite criticism which has been made of it over the years, it is sensible to retain the concept of "unnecessary suffering", not least because it largely works in practice. However, in redrafting the offence, it is essential that the advantages of the existing definition are preserved, and the meaning and application of the new offence is straightforward and certain.
10. There is little legal authority in Scottish law on the present statutory definition of cruelty. The matter has, however, received rather more consideration in the English High court. Although not binding on the Scottish courts, this case law is of persuasive authority. Some of the wording of the new offence, especially that contained in clause 17(4), echoes the judicial language to be found in those decisions. It is unclear, however, whether the present drafting is intended to replicate the status quo, or is intended to change the law. If it is the former, my view is that it does not do so. In any event, it is a matter of concern that the wording adopted will cause confusion, rather than provide the courts with guidance as to how they should apply the specified criteria. Moreover, as the list is not exhaustive, it is uncertain what other considerations may be taken into account.
11. At present, the offence of cruelty arises from causing both physical and mental suffering. It is desirable that this should be expressly stated in the Bill.
12. **Mutilation (clause 18)** – This issue has aroused considerable controversy in both Scotland and England. The Committee will undoubtedly receive submissions from those representing both sides of the dog tail docking debate, and I shall not dwell on the issue, except to say that if the practice did not already exist, it is scarcely conceivable that it would be considered acceptable to introduce a procedure of removing a very significant appendage merely for the sake of

appearance and the delectation of the owner. The Executive's stated intention to prohibit the docking of puppies' tails for cosmetic and breed standard reasons is therefore warmly welcomed. It is to be hoped that England and Wales adopt a similar policy. If they fail to do so, further consideration would have to be given to the means of securing in Scotland effective compliance with the prohibition.

13. **Animal fights (clause 21)** - The definition of an animal fight – “an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting” – suggests that a fight has actually to take place before the offence is committed. If so, it is submitted that this does not provide sufficient protection, and the meaning should be extended to include acts preparatory to a fight, provided the prosecution can demonstrate that the defendant intended that a fight should take place. It is also a cause for concern that the offence appears to be committed only if the specified actions can be related to a specific fight, rather than to involvement in fighting generally. If this is so, it would represent a significant change from the present position.
14. **Ensuring the welfare of animals (clause 22)** - In extending responsibility to promote welfare to all animals, this clause addresses one of the fundamental weaknesses in the present law, and is greatly to be welcomed. As has been widely acknowledged, it is the most significant clause in the Bill. It is essential, therefore, that there is a general understanding of the nature of the duty which it imposes. Indeed, the wording is extremely unusual for defining an offence. Just how unusual can be demonstrated by the fact that there are only four instances in the entire statute book of similar wording in the definition of an offence,<sup>2</sup> but none is directly comparable to the present provision.
15. There are four issues which merit consideration. First, on the basis of the wording of clause 22(1), it is assumed that this is to be a strict liability offence. That is to say, the person's state of mind at the time the offence is committed is irrelevant: criminal liability turns exclusively on the person's conduct.
16. If it is indeed a strict liability offence, this is entirely welcome in terms of its impact. However, the relatively low threshold means that it is essential that there should be a general understanding as to its meaning, and consideration should be given to including safeguards against it being used in an oppressive manner. The latter point is discussed further below.
17. Second, the English Bill uses the term “reasonable in all the circumstances”, whereas the Scottish Bill omits “all”. One can speculate on the significance, if any, of this difference in drafting. It is

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<sup>2</sup> Wireless Telegraphy Act 1949, s 1B(1)(b); Theft Act 1968, s 24A(1)(c); Prevention of Oil Pollution Act 1971, s 7(1)(a); Merchant Shipping Act 1995, s 134(1)(b).

important, however, that the relevant circumstances should be circumscribed so as not to extend to factors which might excuse inadequate welfare. For example, the intention to protect animals would clearly be undermined if a court were able to take account as a mitigating factor circumstances which directly contributed to poor welfare, such as the person's ignorance or incapacity (financial, domestic, physical, or mental) to care for the animal to an acceptable standard.

18. Third, it is regrettable that the concept of "good practice" has been adopted; it is submitted that a term such as "in an appropriate manner" would be preferable to "to the extent required by good practice". The latter suggests the existence of an objective standard against which a person's standard of care can be compared, and might encourage a "tick-box" mentality. "Appropriate manner" much better conveys the complex nature of welfare assessment, which involves looking at each animal as an individual, weighing a variety of factors, together with the exercise of considerable judgement. It is important to appreciate in this context that assessing welfare is ultimately concerned with outcomes; that is to say, the consequences for the animal and its resultant state. The focus is on the individual: each animal has its own welfare, and individual animals may respond differently in similar circumstances.
19. Finally, there is the issue of enforcement. Mention was made above that it may be necessary to provide safeguards against the oppressive enforcement of this offence. At the same time, it is important to appreciate that the impact and effectiveness of the welfare offence will not be achieved primarily through prosecution. Rather, in the vast majority of cases, its significance will be in allowing those who enforce the law to intervene, identify problems, and assist in correcting the situation.
20. To this end, it is submitted that consideration should be given to introducing a power enabling an inspector appointed under the legislation to issue a care notice in circumstances where they consider the treatment of an animal is inadequate. This care notice would set out the basis on which it is alleged that the person to whom it is issued is in contravention of the duty of care; the steps they are advised to take to resolve the situation; and a reasonable period during which they will be expected to comply with its provisions. In order both to prevent oppressive or disproportionate enforcement of the duty of care provision, and to inform and advise those whose standard of care has slipped below that which is required by law, it is suggested that, *except in circumstances where an animal has been taken into possession under the authority of clause 29*, the Bill should specify that no person may be prosecuted for an offence under clause 22 unless they have first been issued with a care order. Whether failure to comply with a care order should constitute an offence is a matter for further consideration.

21. **Provision for securing welfare; Licensing etc. of activities involving animals (clauses 23 and 24)** – These clauses are both crucially important. Not only do they complement clause 22, thereby giving further effect to the duty to ensure an animal's welfare, but, by enabling this to be done using secondary legislation, it will enable the law to be amended and updated much more easily than hitherto. This is recognised that the scope of the enabling powers is potentially very extensive. It is, however, necessary if the legislation is effectively to provide adequate protection now and in the future.
22. It is appreciated that drawing-up, consulting on, and presenting to Parliament regulations under these clauses represents a significant commitment in time and resources. It is essential that the Department is adequately resourced for this undertaking, if the legislation is to be successful.
23. **Sale of animals to children (clause 27)** – In supporting this provision, it is relevant to confirm that neither this clause or clause 16(4) prevents a child from owning, being given, or assuming day-to-day responsibility for an animal. Rather, their effect is that, where an animal is purchased, the transaction must be undertaken by an adult; and, in law, an adult will be held responsible for the welfare of an animal belonging to a child.
24. **Post-conviction orders – (clause 35, 36 and 38)** - These clauses contain a number of new provisions which have the potential to make enforcement much more effective, and these are strongly supported.
25. However, given the particular abhorrence of the offence relating to fighting, it is submitted that, upon conviction, the court should be required to make a deprivation order in respect of any animal of the relevant species owned by the convicted person. Similarly, any person convicted of an offence of fighting should be subject to mandatory, lifetime disqualification in respect of animals of the relevant kind.
26. It is submitted that in clause 35(4), the words “or instead of” should be deleted. Their inclusion suggests that deprivation is a form of punishment which may be imposed as an alternative to a fine or imprisonment. It should not be regarded as such. Deprivation should be seen not as part of the punishment, but as an animal protection measure, intended to prevent the animal(s) involved in the offence from the risk of further abuse or neglect, and providing the legal authority for their ownership to be transferred to another person. This should be made clear on the face of the Bill. The same comment applies to the similar wording in clause 36(5).
27. The new duty placed on the court in clause 35(3) and 36(4) to explain its decision is welcomed. However, while it is accepted that the courts should (except in relation to offences for fighting) retain a discretion to decide whether to impose a deprivation or disqualification order, it is

submitted that this discretion should be severely limited. Emphasising the fact that these are animal protection measures rather than part of the punishment, the court should be required to give priority to the interests of animal welfare and protection in deciding whether or not to make a deprivation or disqualification order.

28. Clause 38 restates the present law. It is unclear why a person against whom a disqualification order has been made should be permitted to apply to have it removed after one year, and (if refused) annually thereafter. The principle underlying this provision requires reconsideration.

## **FURTHER COMMENTS**

29. First, it is desirable that the Bill includes a specific power authorising a local authority to arrange for another local authority to carry out its responsibilities under the legislation.
30. Second, one would like to see on the face of the Bill specific provisions intended to promote transparency. In particular, there should be in relation to enforcement authorities some form of reporting and recording of their activities. This would provide an insight into the rigour, consistency, and competency with which they are carrying out their responsibilities. It would promote public accountability and, one would hope, confidence. It would also identify shortcomings, and allow them to be addressed. If this function were to be undertaken by SEERAD, it would be desirable for an independent person or body also to be involved in the process.
31. Third, the issue of enforcement generally needs further consideration. On the one hand, if the legislation is to be effective it is essential that those charged with its enforcement take their responsibilities seriously and make available adequate resources. On the other, it is essential to appreciate that effective enforcement will not be measured by bringing offenders before the courts, except in the most serious cases. Rather, enforcement will require those responsible to have sufficiently flexible powers; the necessary experience, competence and judgement; and the appropriate determination and sensitivity to identify problems and persuade those responsible to address the situation without the need to pursue a prosecution.
32. Finally, the Committee will be aware that an Animal Welfare Bill relating to England and Wales, containing similar provisions to Part 2 of the present Bill, has been introduced to the Westminster Parliament. Wherever possible, it is desirable that the two pieces of legislation should be consistent with one another. However, there are already some potentially significant differences between the two Bills, and it would seem that Ministers in London and Edinburgh may decide to apply their powers in rather different ways. This is the nature of devolution; if the Scottish Parliament or the Executive is persuaded of

the merits of the case, they should be prepared to provide greater protection to animals in Scotland than that enjoyed by animals elsewhere in Britain. Nevertheless, consideration must be given to the practical issues which may arise if the law relating to the protection of animals differs between Scotland and other parts of the United Kingdom, especially England.

## **CONCLUSION**

33. This paper has focused primarily on suggestions which, in the view of the author, would strengthen the Bill's effectiveness in protecting animals, promoting their welfare, and defining the extent of the responsibilities which it imposes. Because of the constraints on the length of the submission, a number of technical issues have not been commented upon. If it would be of assistance to the Committee, the author would be pleased to make a further written submission on the detail of the Bill.
34. One would also wish to take this opportunity to bring to the attention of the Committee the way in which the Minister and his officials have gone about preparing the Bill. In particular, the degree of openness, participation, and consultation with interested parties which they have encouraged is greatly to be commended.
35. The Bill represents a once-in-a-generation opportunity to establish an effective and durable legislative framework. Its provisions will make very valuable and significant improvements to the law. They are extensive, necessary, and long overdue. It is greatly to be hoped that the Committee will endorse the policies which it seeks to promote.

SUBMISSION FROM THE SCOTTISH AGRICULTURAL COLLEGE  
VETERINARY SERVICES

**Views on the Animal Health and Welfare (Scotland) Bill 2005**

SAC welcomes the opportunity to comment on this Bill.

We are pleased to support the general principles of the Bill as it importantly extends the concept of duty of care for animals to cover many of the important uses of animals in Scotland. Our comments are as follows:

**Part 1 - Animal Health**

- Whether the extent of the powers is appropriate and proportionate.

*The experience gained in the 2001 FMD outbreak provided clear evidence that Scottish Ministers should have greater flexibility in action when dealing with exotic, fast spreading animal diseases. The powers detailed in this Bill appear to be appropriate and proportionate.*

- Whether the right balance is struck between the need to act quickly to control the spread of disease in the event of an outbreak and the need for checks on these powers, and the consideration of other options.

*We are comfortable that the right balance has been struck. The current concern about the spread of avian influenza from the Far East to Europe highlights the need for Ministers to be able to take immediate and effective action to control the spread of disease. We stated in our response to the draft Animal Health and Welfare (Scotland) Bill consultation that culling of animals must be based on veterinary advice and a veterinary risk assessment. We cited the evidence provided by recent papers (Thrusfield et al, 2005, The foot and mouth disease epidemic in Dumfries and Galloway, 2001 Parts 1&2, Veterinary Record Vol. 156, pages 229-252 & 269-278) showed that veterinary advice at the site of the outbreak is essential. We hope that this opinion will be taken into consideration in the unfortunate event that the new slaughter powers contained within the Bill have to be used. The opportunity to vaccinate and slaughter vaccinated animals are evidence of the fact that the Bill reflects developments in science, better understanding of disease risk and lessons from recent animal health experiences.*

- The likely effects of the power to regulate animal gatherings

*The proposed powers appear flexible and appropriate. Our concerns about farm sales where a farmer or auctioneer sells stock from a single farm or unit remain. We noted that during the aftermath of the FMD outbreak in 2001 a small number of farmers selling stock by “video auction” and other remote systems were reported to invite prospective purchasers to “view” the livestock for sale on their farm. There was a significant risk that prospective purchasers could have spread disease among these farms. We anticipate that this risk would be addressed by the proposed biosecurity codes.*

- The powers to control the spread of Transmissible Spongiform Encephalopathies (TSEs), in particular the power to require the slaughter of animals of a certain genotype to breed resistance to TSEs.

*These provisions reflect the developments of science over the past 15 years. SAC has been at the forefront of these developments that assist in the control of TSEs in sheep. We are pleased that progress in selection for reduced susceptibility to TSEs in sheep has reached the stage that slaughter of the national flock is no longer inevitable were BSE to be found in sheep in the UK. The overall approach is welcome but we would caution that some owners keep their animals for purposes other than food production. These owners may welcome the opportunity to retain susceptible genotypes under the condition that they could not enter the food chain. This exception may be of importance for some rare breeds of sheep which lack the required genetic resistance to scrapie.*

- How these proposals compare to best practice in other countries and the overall development of disease control legislation.

*We particularly welcome the powers to allow the slaughter of wild animals that can transmit disease to farmed livestock. In New Zealand the control of the wild possums has been a major factor in the more effective control of tuberculosis in farmed livestock. In New Zealand the possum is an introduced species and the killing of possums has not generated any public concern. In this country the badger appears to have an important role in the transmission of tuberculosis to cattle in parts of England and Wales. The significance of this risk is the matter of some debate at present but it may well be that control of the rapidly expanding badger population is a requirement to prevent the further spread of tuberculosis, which is a significant zoonotic disease.*

*We are also pleased that the biosecurity codes will have the same authority in law as the codes of recommendation for the welfare of farmed livestock. There remains a danger that animal keepers may become confused unless very clear guidance is given as to what is proposed under the biosecurity codes. There appear to be 3 levels in the proposed codes*

- *mandatory compliance at all times*
- *new guidance only at certain times*
- *for guidance but mandatory during disease outbreaks.*

*We look forward to assisting in the consideration of these codes in the future and to provide advice on how clarification may be achieved.*

## **Part 2 - Animal Welfare**

- The definition of “animal”

*The definition of “animal” is clear in the legislation. However there are difficulties with such a restricted definition. Many species of animal are kept by, owned by, managed by and are dependent on people. The definition excludes spiders, (e.g., Tarantula) and insects (e.g., Stick Insects) which are sometimes kept as pets, bees kept to produce honey and worms and maggots kept for bait etc. We note that the policy is “to protect all sentient animals which are under the control of man”. We question the veterinary advice that non-vertebrate animals are unlikely to be sentient. We suggest that this limitation while entirely practical, could result in the Bill requiring a revision in the not too distant future when invertebrate animals and unborn animals may be shown to be sentient.*

- the balance between the flexibility of creating powers for Ministers to regulate animal welfare by secondary legislation and including detailed provision in the Bill

*We are comfortable with the balance struck in the Bill between primary and secondary legislation.*

- The provisions on the mutilations of animals and ensuring welfare of animals

*We appreciate that the docking of dogs was the most controversial issue during the consultation period. We note that the intention is to*

*prohibit the docking of puppy's tails for cosmetic and breed standard reasons. We are concerned that Scotland may be out of step with the new legislation in England and Wales and would caution against such a discrepancy emerging. This could only result in dogs being taken from Scotland into England for the docking of tails and for policing of this Scottish Legislation to be rendered virtually impossible. Otherwise we look forward to a progressive improvement in standards with respect to the welfare of farm animals which undergo minor mutilations for husbandry reasons.*

- How these proposals compare to best practice in other countries and the overall development of animal welfare legislation

*Scotland is in the forefront of animal welfare legislation by placing a duty of care on the owners and keepers of animals. We welcome the intention to publish Codes of Practice and/or Regulations relating to the different types of animals in addition to farmed animals. The guidance contained within these codes will be of immense value to animal owners and keepers. However to be of value to such a wide audience considerable care must be taken in the preparation of these codes and support given to these bodies who are charged with promoting and explaining the codes to animal owners and keepers.*

- Additional comments

**Section 4:** *We welcome the arrangements which will allow for samples which have already been taken under existing powers, to be re-tested or examined for evidence of other infections or diseases. We believe that these samples could be of immense value in providing disease surveillance information.*

**Section 17:** We feel this section on unnecessary suffering should be linked to the later section (22) on positive duty of care by inserting a sentence in Section 17 (1) such as: *"All those who care for animals are encouraged to adopt the highest standards of care and husbandry"* (see Section 22).

**Section 22:** It would be appropriate to emphasise that welfare covers physical and mental health in animals. Section 22 (1) could read *..*"to ensure the physical and mental needs of an animal..*"* Section 22 (3) is effectively a variant of FAWC's 5 Freedoms, and it would be appropriate to make some reference to the 5 Freedoms e.g. Section 22: *"(3) For the purposes of subsection (1), the 5 Freedoms can be used to define an animal's needs which include."* In Section 22 (3) it would be appropriate

to consider adding an additional need relating to appropriate human care (see the FAWC website for wording on the importance of stockmanship). Going back to the issue of protection of the pre-term animal, section 23 (3d) could perhaps be reworded such that the term rearing also covers pre-term life.

**Section 33:** Care should be taken to ensure that any Animal Welfare bodies created in Scotland do not replicate the activities of the Farm Animal Welfare Council which is an UK wide body that advises Government Ministers on animal welfare matters.

**Section 43:** There is no logical reason, based on the definition of animal, or on the needs defined in the Bill (e.g. protection against pain and unnecessary suffering) to exclude the welfare of farmed fish and crustaceans.

## Other Matters

How helpful do you find these documents?

*The policy memorandum is a valuable addition to the Bill. It provides useful background information and clarification of the provisions contained in the Bill.*

Are the financial consequences of the Bill sufficiently clear?

*Yes, we believe they are.*

Are the effects of the Bill on issues such as equal opportunities and sustainable development accurately and clearly described?

*No comment*

Do you have any comments on the consultation the Scottish Executive carried out prior to the introduction of the Bill?

*We are very satisfied that a sufficient consultation period was allowed and that the consultation process gave due regard to all the opinions presented. We believe that The Scottish Executive can take great credit from the time and effort of its' staff in carrying out this consultation process. An important provision of the Bill is to raise the minimum age a child may buy an animal from 12 to 16 years of age. We agree with this provision but in retrospect wonder whether the views of young people were specifically sought.*

**Agenda Item 1**

**Environment and Rural  
Development Committee**

23 November 2005  
ERD/S2/05/30/1f

SUBMISSION FROM MOREDUN RESEARCH INSTITUTE

**Written response by Professor Julie Fitzpatrick, Director of the Moredun Research Institute**

**Stage 1. Consideration of the Animal Health and Welfare (Scotland) Bill**

I consider the extent of the powers proposed to be appropriate and proportionate. Specific exceptions to this are detailed in comments on Parts 1 and 2 below.

These proposals generally compare well to those in other countries in terms of both animal health and animal welfare. It is important that the Bill allows for the results of ongoing and future research to be incorporated and it seems that this is best addressed through secondary legislation.

**Part 1. Animal Health**

In general, I am supportive of the inclusions proposed, especially the increased focus on the means of preventing or reducing the spread of disease, rather than acting once it has occurred.

This *Section Powers of slaughter* refers mainly to animals kept for production eg livestock and poultry. The companion animal species are included under those in *Additional power of slaughter* Section 6 (1) and compulsory euthanasia in these species, were it to occur, is likely to have significant and unexpected impact to animal owners and the public. Euthanasia of vaccinates may not be appropriate for all diseases.

The use of the term “treatment” to include vaccines in Section 2 *Slaughter of treated animals* and in other sections, implies that vaccines might only be administered in the presence of disease or infection, rather than specifically as a means of preventing disease or infection.

The definition in Section 3(4) of a “creature” in terms of biosecurity potentially causes confusion with the use of the term “animal” in the earlier sections of the Bill.

The reference to detection of diseases through identification of antibodies in Section 6E *Tests and samples; Scotland*, is too simplistic as current and future technologies use methods of detecting the causative agent or disease in the live animal. Suggest add “or other biological indicator of causative agent, disease or host response”, or similar to cover this.

The inclusion of the section on deliberate infection of animals and the penalties incurred (deprivation of entitlement to compensation, deprivation and disqualification orders) as a result of these actions is welcomed.

It is considered important that the Animal Health and Welfare (Scotland) Bill is as similar as possible to those on mainland UK (England and Wales). Differences particularly in the animal health aspects of the Bill could inadvertently result in the movement of animals to avoid specific requirements applicable to different administrations.

It is not clear under *Section 36P Restriction to breeding* what is implied by “sterilisation”, rather than castration, which is generally used and accepted as appropriate.

Sections 36 X includes animals kept for fattening. The term “finishing” is more appropriate in the current industry.

## **Part 2. Animal Welfare**

In general, I am supportive of the inclusions proposed, especially the focus on taking action when suffering of animals is anticipated or suspected under “Duty of care”, rather than waiting until the offence has occurred.

There is significant scientific evidence that some invertebrates, primarily some Cephalopods and Crustaceans, are capable of feeling pain. It is not clear how ongoing research might be taken into account in *Section 14 Animals to which this Part applied*.

It is important that the concept of *Unnecessary suffering* in Section 17, is retained in the Bill but it is relevant to consider that it should be further defined to include physical and mental suffering as research indicates that both occur in many animal species.

The sale of recordings of animal fights should be included in the list of offences in Section 21 (2).

The decision as to whether an animal requires emergency slaughter under *Section 32 Resort to destruction of animals* is a very complex one and involves consideration of differential diagnoses and the outcome of a diagnosis in terms of survivability of an animal. The Bill as proposed may encourage premature decisions on the viability or otherwise of an animal by those who do not have adequate training in these issues and in different situations.

**Agenda Item 1**

**Environment and Rural  
Development Committee**

23 November 2005  
ERD/S2/05/30/1g

**SUBMISSION FROM THE STATE VETERINARY SERVICE**

**Briefing State Veterinary Service for Environment and Rural Development Committee**

**SVS and Chief Veterinary Officer in Scotland**

1. The State Veterinary Service is a GB-wide organisation which delivers animal health and welfare policy on behalf of the Scottish Executive, the Welsh Assembly and DEFRA. In Scotland, it is directly accountable to Scottish Ministers.
2. The Chief Veterinary Officer Scotland leads a small team of veterinary advisers in Pentland House in Edinburgh and provides independent veterinary advice to Scottish Ministers.
3. The CVO Scotland is also responsible for implementing Scottish animal health and welfare policies. This work is carried out by veterinary and lay staff located in five Animal Health Offices and seven sub offices under the direction of the Head of Operations Scotland. Local private veterinary practices also work on behalf of the SVS for certain procedures or farm visits.

**Operational role of the SVS**

4. In the role of delivering government policy on animal health and welfare, the SVS has numerous responsibilities. The majority of work however is focussed on the prevention, detection and management of animal diseases in livestock. This helps to support the livestock industry and allow it to continue to compete internationally. It also helps to ensure the safety of the human food chain.

5. The following are the main responsibilities of the SVS in Scotland

Animal disease - endemics

Animal disease - exotics

Emergency preparedness

Farm Animal Welfare

Imports and export certification

Administration of Government schemes

Animal by-products and catering waste

## **Animal Disease - endemics**

6. Certain diseases that are continually present, or 'endemic' to Britain are termed 'notifiable', as they must be notified to the SVS if they are suspected in stock. Notifiable diseases include tuberculosis and BSE in cattle and scrapie in sheep.

### **Prevention**

7. The SVS has a policy of education and support for farmers to promote good practice, particularly to reduce the potential for disease spread. Managing schemes such as the National Scrapie Plan (NSP), that tests sheep to see if they are susceptible or resistant to developing scrapie if they are exposed to the disease.

### **Detection**

8. The SVS has in place surveillance programmes for notifiable and reportable diseases which are currently provided free of charge to farmers eg tuberculosis and brucellosis surveillance.

### **Management**

9. Where endemic disease is detected, the SVS organises for the disposal of infected animals and the testing of any other stock that may have been in contact with disease to ensure that they have not been infected. Movement restrictions may be imposed to prevent further spread, until there is certainty that the disease has been controlled.

## **Animal Disease - exotics**

10. Other animal diseases that may enter Britain from abroad are termed 'exotics' as they are not normally present in this country. These include infections such as foot and mouth disease, swine fever, avian influenza and rabies

### **Prevention**

11. Prevention is undoubtedly better than cure when it comes to exotic diseases. The SVS inspects imported livestock on a risk assessed basis to ensure that the animals are disease free and keeps a track of where they are transported to enable tracing to be undertaken if necessary. The SVS promotes bio-security standards and educates farmers and the public to help reduce the risk of disease transmission between animals, should it be present.

### **Detection**

12. SVS field staff investigate any suspicion of exotic disease incursions and work closely with private vets and farmers to encourage them to report any suspected infection.

## **Management**

13. In the event of exotic disease being confirmed, the SVS will act quickly to contain the spread of the disease. This involves restrictions on the movement of animals and a programme of swift examination and testing of stock that has come into contact with the infected animal or that live in close proximity. As with endemic disease, the safe disposal of infected animals is organised by the SVS. Emergency contingency plans are produced for a number of exotic diseases that would be put into action if a case of that disease was confirmed.

## **Emergency Preparedness**

14. Because exotic diseases are potentially damaging for animal and on occasion human health, and because of the impact on the livestock industry, preparation is essential to minimise the impact of an outbreak. There are three main aspects to preparation for these potential emergencies:

- Contingency planning
- Ensuring adequate systems are in place and sufficient stocks of equipment and medicines are maintained.
- Training and contingency exercises with operational partners.

15. A dedicated emergency preparedness team draft and maintain contingency plans in liaison with colleagues in Defra, SEERAD and the Welsh Assembly to ensure that all are best ready to deal with exotic diseases. The team also plan and run contingency exercises both centrally and at the Animal Health Divisional Offices. 'Exercise Hornbeam' was a recent GB-wide exercise based on a foot and mouth disease outbreak. These exercises test the plans and systems which are in place and highlight what works well and areas where improvement is needed.

## **Animal welfare**

16. Ensuring high standards of farm animal welfare is an important part of the work of the SVS. There are numerous laws and detailed legislation that livestock keepers, haulage firms, market operators and traders must adhere to. Along with partners in Local Authorities across the country, the SVS help to ensure compliance.

## **Inspections**

17. The SVS checks farms, markets and animals during transport to ensure that conditions are appropriate and that animals do not suffer cruelty or unnecessary pain or distress.

## **Education**

18. The SVS works together with livestock keepers, transporters and traders to provide them with advice and knowledge of best practice. This way, they are better equipped to maintain or improve conditions as necessary and operate within the law.

## **Enforcement**

19. Where welfare problems do arise, the Local Authority, police or a private organisation such as the Scottish SPCA may decide to prosecute the offender in court, sometimes on SVS advice. SVS field staff are often called as expert witnesses to testify against the defendant.

## **Imports and export certification**

20. The SVS is responsible for ensuring that all animals that are imported or exported are done so in compliance with GB and European regulations.

### **Imports**

21. The SVS has a presence at Border Inspection Posts in ports and airports throughout the GB. Inspections are conducted of animals transported from outside the EU to check their health, welfare and accompanying health certification. The SVS is responsible for animals other than livestock; checking on pets transported under the PETS Travel Scheme and other animals such as horses or those destined for zoos. Animal products and animal related products such as feed, are also the responsibility of the SVS. Random inspections of imported consignments from within the EU are conducted on a risk assessed basis when they arrive at their destinations, to ensure they comply with health requirements and have been imported legally.

### **Exports**

22. Agreements between the UK and other countries mean that exported animals must have been inspected by a vet at their point of origin. They must then be accompanied by an Export Health Certificate which is checked by the SVS to ensure that the certificates have been issued correctly and that adequate preparations have been made to feed, water and rest animals on their journey. The SVS are responsible for TRACES, an electronic messaging system, which notifies receiving Member States of exported consignments.

## **Administration of Government schemes**

23. Being at the front line of government delivery puts the SVS in an ideal place to administer animal health and welfare schemes on behalf of policy colleagues. Tasks include processing applications and then completing farm visits to ensure that they meet the relevant criteria. The schemes are designed to target specific areas of the industry and offer incentives to promote best practice or disease eradication.

Scheme members generally benefit from free testing or certification in return for complying with stricter rules than are generally applied. An additional benefit for members is an increased value to their products or stock.

24. The schemes currently administered include:

The National Scrapie Plan (NSP)

The Poultry Health Scheme

The Deer Health Scheme

## **Animal by-products and catering waste**

### **By-products**

25. Animal by-products are defined as any animal products that are not destined for the human food chain. These include meat used in pet foods, products such as cooking oil and leather, and waste from abattoirs and other processors. The SVS is responsible for inspecting premises and equipment that process animal carcasses either to produce other products or to dispose of them, working with partner organisations, to check that government regulations and guidelines are adhered to. This helps to ensure that potentially harmful products do not contaminate either humans or livestock.

### **Catering waste**

26. Essentially, catering waste containing meat or other animal derived products such as milk or cheese, is a by-product too, and is not permitted to enter the human food chain. This waste must be disposed of in a certain way.

27. International catering waste that finds its way to Great Britain on board ships and aeroplanes has to be disposed of safely, as it potentially contains products from animals that may have exotic diseases.

28. Once again, the SVS helps to ensure that regulations and best practice are being followed and that the risk of contamination is minimal.

## **The role of the SVS under the new Animal Health and Welfare (Scotland) Bill**

### **Part 1 – Animal Health**

29. The role of the SVS in Scotland under the provisions of Part 1 (Animal Health) of the Bill include Animal Disease and Emergency Preparedness. The prevention, detection and control of fast spreading, mainly exotic, diseases fall within the remit of the SVS under the existing provisions of the Animal Health Act 1981.

30. Sections 1 and 2 of the Bill deal with slaughter powers and veterinary advice on the appropriate disease control mechanisms would, as now, be provided by the Chief Veterinary Officer (Scotland) to the Scottish Ministers.

31. Sections 3 to 8 of the Bill are concerned with the prevention of the spread of disease. In the case of creating new biosecurity codes (section 3), on which the industry and related interests would be consulted, veterinary advice will, as was the case with the Executive's 2002 Biosecurity Code, underpin the codes advisory and mandatory provisions. The further testing of samples (section 4) will enable the SVS to gain a more widespread understanding of diseases across Scotland and form part of existing surveillance measures for disease. The SVS will have further responsibilities under the animal licensing provisions (section 5). These will include disease risk assessments to ensure that sensible hygiene, biosecurity and movement conditions apply to proposed animal gatherings. The primary focus will be on livestock gatherings, particularly sheep, cattle and poultry/birds. Sections 6 and 7, dealing with treatment (vaccination) and the seizure of carcasses are, in SVS and animal disease terms, little different to existing disease control components. Section 8 lists 16 diseases of significance given their ability to spread very quickly to other animals of the same species, different species and/or to other geographic areas.

32. Section 9 makes it an offence to infect deliberately an animal with one of the 16 diseases mentioned in section 8. Such action, in the view of the SVS, is unacceptable on animal welfare and wider consequences grounds.

33. Section 10 deals with Transmissible Spongiform Encephalopathies (TSEs), a complex group of diseases on which research continues. Again, the role of the SVS in Scotland in the event of, for example, BSE being scientifically proven in sheep, would be to give advice to the Scottish Ministers on the implications of such a finding. Whilst the response would depend on the specific circumstances and scientific advice, the SVS would use the powers provided by the Bill to support their response to this animal health concern.

34. Sections 11 to 13, which make provision for powers of entry, warrant procedures etc and offences, are matters where the opinion of the SVS will continue to be crucial. That opinion will be based on a local animal disease risk assessment, including possible actions ranging from required slaughter, or vaccination, and/or blood or tissue sampling, records and identification checking through to keeping the animals under surveillance.

## **Part 2 – Welfare**

35. It is intended that members of the SVS will be authorised as “inspectors” for the purposes of Part 2 of the Bill.

36. This will mean that members of the SVS have a role similar for all “protected animals” to the one they already under take in regards of livestock. Members of the SVS will work in partnership with Local Authority inspectors and Scottish SPCA inspectors to ensure compliance with the provisions of the welfare part of the Bill.

37. Where animals are to be kept under licence or registration, then it may be necessary to inspect the premises where they are kept prior to issuing the licence or allowing registration. Thereafter, inspection may be necessary in order to ascertain whether the licence or registration conditions are being met or an offence under the

proposed Bill is being committed. Inspections will also be required where there are grounds for suspecting that animals are being kept without a licence in circumstances where a licence or registration is necessary. In all these situations, the Bill gives inspectors the power to enter premises and, in certain circumstances, to be able to apply for a warrant.

38. No licence or registration is currently required in order to keep farmed animals. It is envisaged that inspections will take place on a random basis as part of ongoing surveys, because there is reason to suspect a problem possibly as a result of a complaint, or because welfare is considered in the course of another form of inspection. Thus, for example, an inspector of the SVS may consider welfare during the course of a farm visit to discuss an animal health matter with the farmer. Inspectors of local government have also been given powers of entry to investigate the welfare of farmed animals.

39. Where non-agricultural animals such as domestic pets are kept on premises which are not licensed or registered then it is probable that inspections will generally occur only as a result of complaints. In general, inspections to do with domestic pets will be carried out by the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA). The Scottish SPCA will be given a power of entry under the Bill but only to deal with animals in distress.

40. The Bill provides for the following persons to carry out inspections as outlined above:

- inspectors appointed for the purposes of this Act by Scottish Ministers. This is intended to cover veterinarians employed by the SVS but may from time to time include other inspectors appointed for the purposes of the Bill. SVS inspectors will generally inspect farms and other premises where farmed livestock are kept, for example markets and slaughterhouses.
- inspectors appointed by the local authority for the purposes of this Act. This will usually be trading standards officers, or environmental health officer but is not being restricted to these roles.
- the Scottish SPCA will continue to carry out inspections and it is intended that individual inspectors will be authorised by the Scottish Ministers for certain purposes, such as to take possession of animals which are suffering or are in danger of suffering.
- It is anticipated that the police will become involved only rarely. The police will not normally carry out animal welfare inspections on their own initiative, or generally be involved with animal welfare inspections, and certainly not on a routine basis. However, they may need to accompany inspectors or the Scottish SPCA on a visit where a power of entry is required or if, for example, a breach of the peace is anticipated. They may also need to accompany an inspector who is executing a warrant to enter premises, including a dwelling.

41. Provisions have been made for inspectors (appointed or authorised by Scottish Ministers or local authorities) and the police to have power to enter any

vehicle (including a road vehicle, ship or aircraft), land or premises, other than premises used as a dwelling (entry into premises used as a dwelling can only be permitted where authorised by a warrant). This power can be exercised at all reasonable hours. The power of entry is exercisable for the purpose of ascertaining whether or not an offence has been committed, as well as where reasonable grounds exist for suspecting that an offence has been committed.

42. The Bill makes it an offence to obstruct an inspector, to fail to comply with any proper request of the inspector or to fail to offer such assistance or information as the inspector may reasonably require. This is intended to cover the situation where the inspector is prevented from entering any premises or part of any premises, where they are impeded in carrying out any of their permitted activities once they are on the premises, or where there is a failure to provide any assistance which is reasonably required by the inspector. For example, the inspector may require the owner or keeper of animals to collect the animals for inspection.

43. In some situations, it will be necessary to obtain immediate entry despite the fact that the occupier is refusing to allow it, or where there is no occupier present. In such situations, there is a power of entry which allows the use of reasonable force to gain access to premises and vehicles and to allow the carrying out of any lawful activity, such as the examination of animals, once on the premises. The use of force in this way is restricted to situations where there are reasonable grounds for believing that animals present are suffering or likely to suffer if immediate entry is not secured.

44. Where it is not possible to obtain admittance to the premises with the agreement of the occupier for the purpose of ascertaining whether an offence under Part 2 of the Bill has been committed, then the Bill makes provision for the inspector or police officer to obtain a warrant which will enable entry with the use of reasonable force. Entry into premises used as a dwelling will always be under the authority of a warrant. It is anticipated that there will be situations where the welfare of the animal or the need to preserve evidence (such as searching for equipment used in animal fights), will necessitate the need to obtain a warrant without notice to the occupier and without previously seeking entry. This provision has been made in the Bill.

45. Inspectors are able to take with them other persons or equipment as they consider necessary. Depending on the circumstances of the case, it may be necessary to take a veterinary surgeon, other specialist advisor (such as an animal nutritionist), a police officer, an official from the Scottish SPCA, a slaughterman, a haulier, and so on. Inspectors are able to carry out searches, inspections, measurements and tests and to take any samples, whether from animals or otherwise. This may include the removal of a whole carcass, if necessary, for post mortem examination. Inspectors are able to inspect documents or other records including computer records as necessary and require them to be produced for inspection. This could include receipts for feed or medical purchases, cattle passports, medical bills etc.

46. Inspectors should also be able to seize or copy such documents or other items as they think appropriate for the purposes of securing or preserving evidence.

Inspectors will have a power to mark animals if necessary. For example, they may need to mark animals which will be removed or cared for, or they may need to mark animals in order to assist with the presentation of evidence in subsequent proceedings. The owner or keeper of animals which are the subject of the investigation will be obliged to assist the inspector or police officer in carrying out their investigation. Any failure to provide such assistance as is reasonably required, for example, to gather animals for inspection, will be an offence.

47. The Bill gives the police, or an inspector if accompanied by a constable, the power to stop and detain a vehicle or vessel (such as an aircraft or hovercraft) if they believe that it is carrying animals, for example, the constable or inspector reasonably believes that the animals are suffering or are in danger of suffering if action is not taken. The time of the detention should be sufficient to allow the search or inspection to be carried out.

48. These powers are needed by inspectors to enable them to enforce the provisions of the Bill. Without powers of inspection and entry and the ability to seek warrants where applicable, it would be difficult for inspectors to check that the animal welfare legislation was being complied with. It would be impossible to take possession of animals which were suffering or were in immediate danger of suffering unless the police were involved. This could place an additional and unnecessary burden on the police who are not always best placed to judge when the welfare of an animal is compromised. The knowledge and expertise on animal welfare matters lies with the State Veterinary Service, the Animal Health and Welfare Officers of the local authorities and the Scottish SPCA inspectors.

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Avian Influenza (Preventive Measures) (Scotland) Regulations 2005, (SSI 2005/530)						
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development						
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		<b>Other</b>	NL		NP	
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>				
<b>Purpose of Instrument</b>	These Regulations make provision for the implementation of Commission Decision 2005/734/EC (amended by 2005/745/EC), providing biosecurity measures to reduce the risk of the most virulent strain of Avian Influenza occurring and/or spreading in susceptible birds.						

<b>Laid Date</b>	28 <sup>th</sup> October 2005	<b>40 day date</b>	6 <sup>th</sup> December 2005
<b>1<sup>st</sup> SLC Meeting</b>	8 <sup>th</sup> November 2005	<b>20 day date</b>	17 <sup>th</sup> November 2005
<b>Lead Committee Report Due</b>	28 <sup>th</sup> November 2005	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	John Lodge, ext. 46941
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>	✓	<b>PO Letter dated</b>	28 <sup>th</sup> October 2005	<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>				<b>Partially Revokes</b>			
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/Directives</b>	2005/734/EC, 2005/745/EC, 2005/744/EC			
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Avian Influenza (Preventive Measures in Zoos) (Scotland) Regulations 2005, (SSI 2005/531)						
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development						
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		<b>Other</b>	NL		NP	
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>				
<b>Purpose of Instrument</b>	These Regulations make provision for the implementation of Commission Decision 2005/744/EC, providing biosecurity measures to reduce the risk of the most virulent strain of Avian Influenza occurring and/or spreading in susceptible birds kept in zoos.						

<b>Laid Date</b>	28 <sup>th</sup> October 2005	<b>40 day date</b>	6 <sup>th</sup> December 2005
<b>1<sup>st</sup> SLC Meeting</b>	8 <sup>th</sup> November 2005	<b>20 day date</b>	17 <sup>th</sup> November 2005
<b>Lead Committee Report Due</b>	28 <sup>th</sup> November 2005	<b>Other Committee Report Due</b>	

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<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>	✓	<b>PO Letter dated</b>	28 <sup>th</sup> October 2005	<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>				<b>Partially Revokes</b>			
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/Directives</b>	2004/734/EC, 2005/745/EC, 2005/744/EC			
<b>Additional Information</b>								

SSI DESIGNATION FORM

## **Subordinate Legislation Committee**

### **Extract from the 41<sup>st</sup> Report, 2005 (Session 2)**

#### **Subordinate Legislation**

The Committee reports to the Parliament as follows—

#### **The Avian Influenza (Preventive Measures) (Scotland) Regulations 2005, (SSI 2005/530)**

1. The Committee asked the Executive why regulation 9 of this instrument did not provide any of the usual limits to the exercise of the power of entry, for example, specifying the times within which the power is to be exercised.
2. The Executive has explained that the reason for not including time restrictions is to ensure that all required steps are being taken to prevent the transmission of the virus in the interests of protecting the health of both animal and humans.
3. **The Committee is satisfied with the Executive's explanation as to the exercise of the power and draws the attention of the lead Committee and Parliament to the Executive's response for information only.**

#### **The Avian Influenza (Preventive Measures in Zoos) (Scotland) Regulations 2005, (SSI 2005/531)**

4. The Committee was concerned as to whether regulation 5(2) meets the requirements that vaccination must be carried out "under the supervision of an official veterinarian of the competent authorities", imposed by Commission Decision 2005/744/EC and asked the Executive for clarification.
5. The Executive's response to the Committee explains that Scottish Ministers are required to take the advice of the Chief Veterinary Officer (Scotland) in relation to the manner in which the vaccination is carried out. The Executive considers that this fulfils the requirement in regulation 5(2).
6. The Committee was also concerned as to how the conditions in Annex II of the Decision are to be enforced. The Executive has explained that where not carried out by Ministers, vaccination must be carried out in accordance with their instructions and that these would necessarily require compliance with Annex II.
7. **The Committee is content with the Executive's explanation of these points and draws the Executive's response to the attention of the lead Committee and Parliament for information only.**

**THE AVIAN INFLUENZA (PREVENTIVE MEASURES) (SCOTLAND) REGULATIONS 2005, (SSI 2005/530)**

On 8<sup>th</sup> November the Committee asked the Executive for an explanation of the following-

1. "The Committee notes that provisions concerning powers of entry usually provide limits to the exercise of the power, for example, specifying the time within which the power is to be exercised, and asks the Executive for clarification of why no similar limits are specified in relation to the power in regulation 9 of this instrument."

**The Executive responds as follows:**

Regulation 9 allows a veterinary inspector or inspector to enter any premises on producing, if requested, some duly authenticated document showing their authority, to ascertain whether the Regulations or any declaration, notice or licence under them are being complied with. There is, however, no restriction placed on the time within which the power may be exercised due to the virulent, fast spreading nature of the Avian Influenza virus, certain sub-types of which are capable of infecting humans. The Scottish Ministers do not wish to place any time restrictions on entry to premises as entry may be required at any time to ensure all required steps are being taken to prevent the transmission of the virus. This power to enter at any time is considered to be necessary in the interests of protecting the health of both animals and humans.

Wherever possible the Scottish Ministers will seek to exercise the power at a reasonable hour. However, for the above reasons the flexibility provided by the provision is considered essential.

The provision as currently drafted allows entry at any time and, while the phrase "at any time" is commonly used in provisions conferring powers of entry to specify this, the omission of that phrase is not considered to lead to any uncertainty or defect in the drafting.

## **THE AVIAN INFLUENZA (PREVENTIVE MEASURES IN ZOOS) (SCOTLAND) REGULATIONS 2005, (SSI 2005/531)**

On 8 November 2005, the Subordinate Legislation Committee, having considered the above instrument, sought an explanation of the following matters—

1. The Committee expressed concern as to whether regulation 5(2) meets the requirement that vaccination must be carried out “under the supervision of an official veterinarian of the competent authorities”, imposed by Commission Decision 2005/744/EC.
2. The Committee also asked the Executive to explain how the conditions in Annex II of the Decision are to be enforced.

### **The Scottish Executive responds as follows:-**

1. The Executive welcomes the opportunity to explain the operation of regulation 5(2) to the Committee. That regulation requires vaccination to be carried out by, or under the supervision of, the Scottish Ministers. The Scottish Ministers must exercise their functions under that regulation in a manner which is compatible with Community law. In matters relating to animal health, the Scottish Ministers are advised by the Chief Veterinary Officer (Scotland). Therefore, in carrying out their functions under regulation 5(2), the Scottish Ministers are required to take the advice of the Chief Veterinary Officer (Scotland) in relation to the manner in which vaccination is carried out. The requirement that vaccination is carried out under the supervision of an official veterinarian of the competent authorities is therefore met.

2. In relation to how the conditions in Annex II of the Decision are to be enforced - where not carried out by the Scottish Ministers, vaccination must be carried out in accordance with the instructions of the Scottish Ministers, and these instructions would necessarily require compliance with Annex II to the Decision. In the Executive's view, failure to comply with the instructions (given under the authority of the regulations) without lawful authority or excuse would be an offence under section 73(b) of the Animal Health Act 1981 as read with regulation 7(1)(g). In terms of regulation 7(5), the Regulations fall to be enforced by the local authority unless otherwise directed by the Scottish Ministers.