



Environment and Rural Development Committee

34th Meeting, 2005

Wednesday 21 December 2005

The Committee will meet at 10.15 am in Committee Room 2

1. **Items in private:** The Committee will decide whether to take Item 4 in private. The Committee will also decide whether to consider the evidence received to date on the Animal Health and Welfare (Scotland) Bill in private at its next meeting and whether to consider a draft Stage 1 report on the Bill in private at future meetings.
2. **Animal Health and Welfare (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

Panel 1

Alex Hogg, Chairman, Scottish Gamekeepers' Association;

Dr Colin Shedden, Director, British Association for Shooting and Conservation;

Douglas Batchelor, Chief Executive, League Against Cruel Sports;

Hugh Rose, Scottish Secretary, British Deer Society;

Panel 2

Gillian Bain, (Senior Animal Health and Welfare Officer, Highland Council), COSLA;

Stuart Shearlaw, Senior Inspector, Central Scotland Police Animal Health and Welfare Department;

Alan Stewart, (Wildlife and Environment Officer, Tayside Police), Association of Chief Police Officers in Scotland;

Superintendent Mike Flynn, Scottish SPCA; and

Mark Fuchter, Head of the Prohibitions and Restrictions Policy Group, HM Revenue and Customs.

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

the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Regulations 2005, (SSI 2005/599);

the Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2005, (SSI 2005/614); and

the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2005, (SSI 2005/615).

4. **Work programme:** The Committee will consider its future work programme.

Mark Brough
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The following papers are attached:

<u>Agenda Item 2</u>	
Briefing paper (<i>for members only</i>)	ERD/S2/05/34/2a
Submission from the Scottish Gamekeepers' Association	ERD/S2/05/34/2b
Submission from the British Association for Shooting and Conservation	ERD/S2/05/34/2c
Submission from the League Against Cruel Sports	ERD/S2/05/34/2d
Submission from the British Deer Society	ERD/S2/05/34/2e
Submission from COSLA	ERD/S2/05/34/2f
Submission from Central Scotland Police Animal Health and Welfare Department	ERD/S2/05/34/2g
Submission from ACPOS	ERD/S2/05/34/2h
Submission from the Scottish SPCA	ERD/S2/05/34/2i
Submission from HM Revenue and Customs	ERD/S2/05/34/2j
<u>Agenda Item 3</u>	
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations 2005, (SSI 2005/599)	ERD/S2/05/34/3a
The Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2005, (SSI 2005/614)	ERD/S2/05/34/3b
The Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2005, (SSI 2005/615)	ERD/S2/05/34/3c
<u>Agenda Item 4</u>	
Paper from the Convener (<i>for members only</i>)	ERD/S2/05/34/4a

SUBMISSION FROM THE SCOTTISH GAMEKEEPERS' ASSOCIATION

PART 2 - Animal Welfare

The Scottish Gamekeepers Association (SGA) welcomes the introduction of the Animal Health and Welfare (Scotland) Bill which aims to improve the welfare of Scotland's animals.

Representing Scotland's professional Wildlife Managers, the SGA has over 3,000 members. Whilst we welcome the spirit of the Bill, we are concerned that certain clauses in the Animal Health and Welfare (Scotland) Bill need clarification as in some instances the intention is not clear on the face of the Bill.

Clause 14: we would like the phrase, "on the basis of scientific evidence" to be replaced with, "on the *balance* of *peer reviewed* scientific evidence" to ensure that the powers bestowed on Scottish Ministers by Clause 14 (3) are not implemented on the basis of unsubstantiated or unsound scientific evidence.

Clause 15: As we stated in our response to the consultation on the Bill, this clause defines a "protected animal" according to three sub-Clauses. The use of the word 'or' in 15 (b), together with the comments on this Clause in the Draft Regulatory Impact Assessment (page 20) makes it clear that a "protected animal" can be an animal that falls into any one of the three categories defined in the sub-Clauses (a), (b) and (c), and that as drafted it does not have to qualify under all three.

Many people (not just wildlife managers) use humane traps to catch rabbits. As the Bill stands, a rabbit caught in one of these traps would be "under the control of man on a temporary basis" and therefore a 'protected animal'. We would like to see an animal being a "protected animal" only if it meets the criteria in all three sub-Clauses.

Clause 16 (1) "Responsibility for Animals" defines responsibility for 'animals' whereas the intention surely is to define responsibility for '*protected animals*'. We do not accept that a person has a responsibility for an animal which is not a protected animal, correctly defined as set out above and suggest that this and all subClauses are amended at stage 2.

Clause 16 (5) extends the concept of responsibility (to meet the animals needs in accordance with Clause 22) beyond the point of 'abandonment'. How, for example, does one ensure that a released animal is 'protected from injury, suffering and disease' This point would be addressed if Clauses 16 and 22 only related to 'protected animals' and if sub-Clause 16 (5) was deleted. See also our very important comments on 'abandonment in Clause 26 below.

Clause 18 "Mutilation"

This Clause makes any mutilation illegal but it allows Scottish Ministers to specify by regulations circumstances in which it does not apply.

The same issue arises in relation to the docking of tails of dogs and livestock, the castration and spaying of animals, the tagging of livestock and the removal of dew claws in puppies destined to become working dogs.

The docking of working dog's tails is of particular importance to wildlife managers. A dog working in thick undergrowth could break its tail. How do you stop a dog wagging its tail? If it is broken, this would be an agonising experience for that animal and a situation which no wildlife manager will countenance.

If the docking of working dogs' tails is made illegal it may well be that, in order to **avoid** animal suffering, wildlife managers find themselves in front of Sheriffs at no little expense to the Scottish taxpayer.

Many gundogs will end up as family pets rather than as working dogs but their instincts will be the same. Will allowing a 'pet' dog to go into cover knowing that its tail may be damaged constitute an offence?

We urge Ministers to reconsider this proposal that may well criminalise law abiding citizens and would recommend that working dogs breeds be defined by breed and type to avoid the latter complication arising.

We are concerned that **Clause 20** could prohibit the use of rat poison under 15(a).

Clause 22 (3) is, we feel, unworkable and unachievable. How will the police deal with every person living in a high rise flat with a dog or a cat...?

Clause 23 Allowing criminal offences to be created by secondary legislation seems questionable... it certainly would set an undemocratic precedent.

Clause 24 "If it isn't broken, don't fix it" seems an appropriate maxim. Without an acknowledged problem, licenses and registration only add to increasing and unnecessary bureaucracy.

Clause 26 (1) "Abandonment" makes it an offence to abandon an animal for which one is responsible. Whilst we fully support the principal of prohibiting the abandonment of domestic animals such as dogs, this effectively also bans the release of gamebirds and is therefore wholly unacceptable to the Scottish Gamekeepers Association.

Game shooting contributes enormously to the rural economy in Scotland and also to biodiversity. Game is a healthy food. It is in a wildlife manager's best interest to ensure that the environment into which they release the birds is not detrimental to the welfare of the animals concerned.

The SGA does however hope that local authorities or any one else who releases urban foxes into the rural environment will in future be committing an offence under this Act (Clause 15?). This practice is extremely cruel and must be halted forthwith!

The equivalent clauses have been dropped from the Bill at Westminster and we feel that the Executive would also wish to pledge support for game management.

Clause 33 If the Scottish Executive form an Animal Welfare Body, individuals with acknowledged 'industry' experience and expertise should form a substantial part of the group.

Clause 44 may well lead to inspectors with no experience being appointed and granted disproportionate powers.

Supplementary submission from the Scottish Gamekeepers' Association

To: The Scottish Parliament's Environment & Rural Development Committee

Animal Health & Welfare (Scotland) Bill

The Scottish Gamekeepers Association (SGA) welcomes the improvements to Scotland's animal health and welfare as proposed under this Bill and congratulates the Scottish Executive on all the hard work that has gone into the drafting of this proposed legislation.

Following discussions with the Bill's Team Leader, the concerns outlined in our response to the Environment & Rural Development Committee's call for written evidence have now been satisfied at this stage.

We would however like to take this opportunity to comment on some of the evidence given to date on 'mutilation'.

In his evidence to the committee, Professor Wathes stated: *"Where veterinary advice shows that such acts are in the long-term best interests of the animals, the short-term suffering that is entailed by the mutilation is justified by the long-term gain."*

The SGA agrees with the Professor.

Peter Stevenson stated: *"We believe that tail docking of dogs, like tail docking of pigs, should not be happening.... However, the idea of docking working dogs' tails on a preventive or prophylactic basis is unacceptable and the argument for it is not borne out by the evidence. With working dogs such as terriers and various spaniels, tail docking is arbitrary. Some breeds traditionally have their tails docked, but others do not. Tail docking is being carried out for cosmetic and breed standard reasons. The evidence is that few dogs have tail injuries and most of those injuries can be dealt with by simple first aid. They are not a huge trauma."*

The SGA disagrees with Mr Stevenson.

Clause 44 – Inspectors and constables. We very much hope that the Scottish Executive will ensure that any Inspector appointed or authorised by them will ensure that they have relevant experience in the field for which they are appointed. Someone with small animal expertise gained in an urban environment is unlikely to have adequate experience in large animals such as horses and cows.

**SUBMISSION BY THE BRITISH ASSOCIATION FOR SHOOTING AND
CONSERVATION (SCOTLAND)**

Introduction

BASC Scotland is happy to provide this written submission on the above Bill. Most of our comments relate to Part 2 of Bill, since this is the area that will affect the interests of our members and others involved in sporting shooting, deer stalking, gamekeeping and pest control the most. In addition, the important role played by dogs in the shooting field, and in many areas of pest control, will be also be included.

Part 1 – Animal Health

While we have made some comment on this part of the Bill during earlier consultations we do not feel that it is necessary to make detailed comment at this stage.

We are pleased to note that under Schedule 2b “Highly pathogenic avian influenza” is specifically referred to.

Part 2 – Animal Welfare

BASC Scotland is wholeheartedly committed to ensuring that animals in Scotland, kept for sport, companionship etc. are healthy and treated compassionately. Examples of this commitment include our advisory Codes of Practice.

Our main interest in this Bill relates to Sections 14 to 23, 26, 33 and 34. These relate to the potential impact of this Bill upon routine land management procedures such as trapping and snaring of pest species, the role of and the working utilisation of gundogs and terriers, the rearing and release of gamebirds and the important role of Codes of Practice as implemented under this Bill. Underlying much of this is a fundamental worry over a number of the definitions used to describe different categories of animal and different levels of protection.

Section 14

We are happy to accept the definition of “animal” as a vertebrate and would argue that this definition should be applicable to Part 1.

Sections 15, 16 and 17

In our response to the draft Bill we raised concerns over the definition of “protected animal”. We maintain these concerns.

Under this definition “protected animal” will include those of a kind that are commonly domesticated and/or under the control of man on a permanent or temporary basis. It is also intended that this would exclude those living in “a wild state”. The Explanatory Notes state that this would not include “a wild

animal living in a wild state". The Policy Memorandum clearly illustrates that a grey area does exist since it includes feral animals, such as cats, as well as "wild animals kept for a short time". This would include animals captured and retained in a snare or a trap.

Our concerns over this definition are:

- It includes animals "commonly domesticated". This potentially includes a wide range of animals such as cats, deer, rabbits, gamebirds and waterfowl. While the Explanatory Notes mentions some animals that would be included in this category it does not specifically exclude others. It would be helpful if we could be assured that certain animals, such as rabbits, deer, gamebirds and waterfowl, are not included.
- If it also includes animals under the control of man, even on a temporary basis, then all animals that are temporarily confined, whether intentionally or not, could be included. This would mean that included in the "protected animal" category would be all animals, whether legally trapped or snared (magpies, crows, foxes, mink etc), over the period of their confinement whether or not they are commonly domesticated. This could also include species such as deer or rabbits that were unintentionally confined by fencing, for instance.
- While the Policy Memorandum does state that this would not cover "pheasants or other gamebirds after they have been released" they would fall under the protected animal category as a kind normally domesticated and if they were subsequently "caught up" for restocking purposes. In addition, there will be a period of possibly weeks when pheasants are being progressively released (rather than abandoned) and would be in an undefined category between "protected animal" and "living in a wild state".

We suggest that, for clarity, Section 15 (a) and 15 (b) be joined by the word "or" and Section 15 (b) and 15 (c) be joined by "*but*" rather than "or".

This definition (amended or not) places additional obligations on pest controllers, gamekeepers and others to ensure that a trapped, caged or snared protected animal is not caused unnecessary suffering (Section 17). This is compounded by Section 16 introducing "responsibility for an animal" – not a protected animal. Therefore, the welfare provisions for both protected animals and animals for which a person is responsible are pretty much the same.

From a gamekeeping perspective, any animal trapped, caged or snared must be protected from "unnecessary suffering". In fact, the welfare provisions applied to "animals for which a person is responsible" are therefore greater than for "protected animals" since the former are protected from "unnecessary suffering by an act or an omission" (17(2)(a)) whereas the later are only protected from "unnecessary suffering by an act" (17(1)(a)).

The overlap and unnecessary confusion created by the definition of “protected animals” (Section 15) and “being responsible for an animal” (Section 16) is compounded by different offences for “unnecessary suffering” (Section 17). We suggest that our concerns would be addressed to some extent by:

- Section 16 clearly stating that “*A person is not responsible for an animal living in a wild state.*”
- Section 17(5) stating “This section does not apply to the destruction of an animal in an appropriate and humane manner *or to that animal’s legal confinement prior to destruction.*” (See also Section 21.)

Section 18 – Mutilation

BASC Scotland supports the unambiguous definition of mutilation contained in the Bill. We also support freedom of choice over whether dogs’ tails should be docked or not. We support the continuation of the present arrangement whereby breeders of working gundogs, terriers etc can choose whether or not to have newly born whelps docked by a veterinary surgeon.

We look forward to seeing the draft order/s specifying which mutilations can continue to be permitted. We hope that this covers all working dogs commonly docked, including terriers, and not just “gun or sniffer” dogs as referred to in the memorandum on delegated powers (77) and that it also covers game rearing practices such as beak trimming, the use of bits and specs, wing clipping etc.

Section 20 – Administration of Poisons etc.

While we do not see that this section affecting our own interests as such, we are confused over the offence of a person administering poison etc. applying only to protected animals. It would appear from Section 20 (2) that the person responsible for an animal can only be guilty if he or she permits other persons to do this, rather than doing it directly themselves. The policy assumption that all animals “for which a person is responsible” is a subset of “protected animals” is not clear.

That aside we were more concerned to read in the Explanatory Notes (111) that “vermin ... are not considered protected animals”. Rats are commonly domesticated so we assumed they would fall under the category of protected animals when under the control of man when in a trap, for instance. If rats are not protected animals by virtue of their being “vermin” we need to know what other animals fall into this category. (See comments on Section 15, 16 and 17.) We are not aware of a strict legal definition for vermin in any other legislation applicable to Scotland.

Section 22 – Ensuring Welfare of Animals

Again, our main concern in this section relates to animals that have been trapped but not immediately despatched. The best example would be live capture of rabbits in what are known as rabbit boxes. When used these boxes can legally catch significant numbers of rabbits in one night. Rabbits would be held in the box until dawn, at which point they would be removed

and despatched. A rabbit box containing 20 rabbits would not be seen to satisfy the “animal’s needs” since no food would be available, normal behaviour would not be displayed nor can there be a guarantee of protection from suffering. Again, the amendment of Section 22 (5) to the wording suggested in 17 (5) would negate these serious concerns.

Section 23, 24 and 25

We are happy with the provisions contained in these sections but reserve the right to comment as and when specific regulations are made.

Section 26 - Abandonment

While gamekeepers and many others involved in shooting release birds for sporting purposes – an estimated 20 million pheasants are released each year in the UK – we would not regard any of these birds as having been abandoned. When birds are released they are done so progressively, from release pens. Provision is made to ensure adequate and appropriate food and water, and that the habitat is appropriate with respect to shelter and roosting sites, for instance. In addition, rigorous legal predator control is also undertaken. This is not abandonment and we are not aware of any charges of abandonment having been brought, in this context, under the 1960 Act.

However, it may well be that amendment to this section could ensure that the perfectly legitimate and acceptable, from a welfare perspective, act of releasing gamebirds is clearly distanced from abandonment. This amendment would also benefit those who release birds and animals back to the wild, after injury, and those releasing birds and animals to restore threatened populations. Our suggested amendment would be to revert to the 1960 Act and add at the end of Section 26 (1) “... *in circumstances likely to cause the animal any unnecessary suffering.*”

Section 33 – Animal Welfare Bodies

We support the suggestion that an animal welfare body may be established to advise on matters relating to protected animals.

Section 34 – Animal Welfare Codes

We support the notion that codes of practice should be made and used to provide practical guidance. We also support the suggested legal statues of such codes. BASC also uses codes of practice to ensure that high standards are maintained and those that are relevant with respect to animal welfare include:

- Code of Good Shooting Practice
- Respect for Quarry
- Gundog Owners
- Trapping Pest Birds
- Trapping Pest Mammals
- Fox Snaring

We note that a code of game bird rearing is to be adopted and we suggest that, as intimated in Section 34(4)(b), the current Game Farmers’ Association

Code is adopted or revised. Consideration should be given to the desirability, or otherwise, from a welfare perspective, of raised cage laying systems that have already been criticised by both BASC and by a number of other organisations with an interest in animal welfare.

Agenda Item 2

**Environment and Rural
Development Committee**

21 December 2005
ERD/S2/05/34/2d

LEAGUE AGAINST CRUEL SPORTS

1. The League Against Cruel Sports campaigns to protect the welfare of animals used in, or affected by, 'sporting' practices. Our interest is therefore focused on part two of the Bill – the welfare section.
2. We welcome the introduction of this Bill, and in particular the introduction of entirely new legislation, such as the promotion of welfare and the ban on mutilations. We are also pleased to see the modernising of older legislation, such as unnecessary suffering, and the strengthening of the law on offences such as animal fights.
3. We join the rest of the animal welfare community in especially welcoming clause 22, the promotion of welfare. It is a major advance in animal welfare law to require the taking of reasonable steps to ensure that the needs of an animal. However, we do not believe that the insertion of the phrases 'in the circumstances' and 'to the extent required by good practice' into the wording of the clause adds to its clarity. Clearly, there will be a variety of views of what is reasonable in different circumstances, and what good practice entails. Similarly, we are concerned that such circumstances currently include 'any lawful purpose for which the animal is kept.' We do not believe that lawful activity justifies a failure to take reasonable steps to secure welfare. As such section 22(2) seems unnecessary.
4. While the issue of mental suffering is not explicitly included in wording of Bill, we are pleased to note the acceptance in paragraph 102 of the explanatory notes published alongside the Bill, that 'suffering' implicitly includes 'mental suffering'.
5. We are pleased to see the inclusion of the word 'appropriate' into the clause 22 (4) regarding humane destruction. We feel that it is not appropriate to routinely destroy animals, for example greyhounds at the end of their racing careers, which may only be 2 or 3 years into the animal's life, even if this is done humanely.
6. As has been mentioned in our submission on the draft Bill, we regret that the Bill distinguished between wild and 'protected' animals. We do not recognise a distinction between wild and 'protected' animals in terms of our moral obligations. Similarly, we do not believe that the duty of care should apply only to animals for which someone is responsible. While the duty of care to another animal may be different, it is not non-existent.

7. We note that the Bill retains the **abandonment offence** in clauses 16(5) and 26, and welcome this, as it has not been included in the published version of the Animal Welfare Bill in England and Wales. However, the statement in the policy memorandum published with the Bill suggesting that reared pheasants and other gamebirds will not be covered after release causes us concern. It is clear that the Bill will cover gamebirds whilst they are reared prior to release, but when exactly they are classed as 'released' is not clarified.

Artificially reared gamebirds are held in release pens prior to being given free range in the surrounding area. Before and after the doors of the release pen are opened, the birds are fed by gamekeepers, and predator control is undertaken to protect the birds. Medication may be given to protect from disease and parasites, for example the wormer 'Flubenvet' as advertised for use in the release pen by leading game feed manufacturer Marsdens¹, and used in parasite prevention field trials by the Game Conservancy Trust². Therefore, after the release pens are open, though the birds are free to come and go as they will, they cannot truly be considered wild. Feeding and care of the birds generally ends with the shooting season, at which point there are significant concerns over their ability to find sufficient food, survive and reproduce³.

It is widely accepted that the majority of artificially reared gamebirds which are dumped into the countryside for shooting will be neither shot nor survive to the next season. In 2004, Charles Nodder of the National Gamekeepers Association told the EFRA select committee looking at the Draft Animal Welfare Bill that only 40% of released pheasants are shot⁴, and research by the Game Conservancy Trust has found that the majority of the remainder die before the end of the shooting season⁵. This contradicts the evidence given by the Game Farmers Association in your previous consultation which stated that all released gamebirds are 'fit and able to survive in the wild'. It is morally unacceptable and against the principles of the Bill not to protect reared gamebirds abandoned in this way.

8. We welcome on principle the ban on **mutilations** in clause 18 of the Bill, but have concerns regarding Ministers' plans to propose "authorised" mutilations. Paragraph 77 of the memorandum on delegated powers states that there will be an exception from the mutilations prohibition for 'gun and sniffer dogs'. As in previous submissions, we note the lack of research to prove that tail

¹ http://217.77.6.104/bocmpauls/marsdens/page.jhtml?page_id=marsdens_faq#1300009

² 'Pheasant parasites', Roger Draycott, Game Conservancy Trust

³ Draycott, R.A.H (2002) Effects of supplementary feeding on the body condition and breeding success of released pheasants *Acta Universitatis Ouluensis A* 392: 1-41

⁴ Efra committee evidence on the Draft Animal Welfare Bill (England and Wales), question Q420

⁵ 'Fate of released pheasants', Clare Turner and Rufus Sage, Game Conservancy Trust

docking of 'sporting' dogs is necessary⁶, and suggest that these dogs are not used in cover where there is a concern for the animal's welfare.

9. We are deeply concerned by paragraph 74 of the memorandum on delegated powers, which states that beak trimming will continue to be permitted for poultry. As no mention is made here of gamebirds specifically, we are suspect that the author may be referring to all farmed birds under the heading 'poultry'. Beak trimming is the most invasive and painful of the 'aggression management' options available to game farmers, and it is considered unacceptable by shooting research body the Game Conservancy Trust⁷.
10. We also have concerns regarding the clarity of the definition of mutilation. While "interference with" sensitive tissues or bone structure would seem to prohibit the fitting of "masks" to game birds where these pierce the nasal septum, it is not clear whether it covers the fitting of bits or the fitting of masks that rest against or cause constant pressure on sensitive tissues. We note that the RCVS, on whose report the definition of mutilation is based, have not considered the issue of such treatment of game birds for nearly twenty years.
11. We note the absence of any reference in the memorandum on delegated powers to the clipping of birds' wings. We assume, based on the fact that the more serious mutilation of wing pinioning (not practiced on reared gamebirds) will be exempt from the prohibition of mutilations, that wing clipping of birds will also remain legal. Reared gamebirds have their wings clipped to prevent them flying away. The clipping of a bird's wing or wings inhibits its natural behaviour, as it prevents flying. It is also recognised as a stressful procedure, as described by Martin Spray of the Wildfowl and Wetlands Trust during the EFRA select committee hearings for the Draft Animal Welfare Bill (England and Wales)⁸. It is common practice with game birds to only clip one wing⁹, causing the bird to be unbalanced.
12. We welcome the acceptance in paragraph 188 of the memorandum on delegated powers that reared gamebirds require a set of minimum standards to bring their welfare provisions into line with other farmed birds. However, as outlined in our submission on the draft bill, we have serious concerns with the acceptance (as highlighted in paragraph 189 of the memorandum) that the GFA code will be the basis of this, and that it will provide 'guidance' on important matters such as temperature and ventilation, rather than minimum standards. As with other codes of practice, we would seek assurance that

⁶ section 5.5 of DEFRA's 'Review of the scientific aspects and veterinary opinions relating to tail docking in dogs'

⁷ Game Conservancy Trust Review 2004

⁸ Evidence to the EFRA committee on the Draft Animal Welfare Bill (England and Wales), 2004 Question 442

⁹ Charles Nodder, National Gamekeepers Organisation, in evidence to the EFRA committee on the Draft Animal Welfare Bill (England and Wales), 2004

preparation of the code would include consultation with stakeholders including animal welfare groups.

We particularly seek to highlight our concern with the phrase 'controlling aggressive behaviour' in paragraph 190. This indicates an assumption that 'aggressive' behaviour should be controlled rather than avoided. We draw the committee's attention to a recent study in Denmark¹⁰, which found that under the examined management conditions, it was possible to rear pheasant chicks until they were five to six weeks old (pheasants are shipped at six weeks) without beak trimming or biting while maintaining plumage and skin in good conditions, providing the group sizes and stocking densities were considerably lower than those normally used in commercial game farms.

13. We welcome the strengthening of legislation on animal fights in clause 21 of the Bill. It is right that wild animals put together for the purpose of animal fights are considered temporarily under the control of man, and therefore it is an offence to do so, as explained in paragraph 118 of the explanatory notes.
14. However, we should state our concern about the continued legality, within the Protection of Wild Mammals (Scotland) Act of fox hunting with terriers below ground. Despite the safeguards in that Act, it is still possible for animal fights to take place as an unintended consequence of a legal activity. We regret that the Bill does not address this point.
15. We believe the balance between **regulations and codes of practice** under the Bill to be important. Where there is clear potential for animals to suffer, the emphasis should lie on the former rather than the latter. Failure to do this would lead to the undesirable situation where prosecution would have to prove the detrimental effect of an activity each time the issue goes to court. We are pleased that the Animal Health and Welfare (Scotland) Bill retains full powers in clause 23 to make regulations for the purposes of securing welfare.
16. We welcome the increase in police powers made in Schedule 1 of the Bill, which allow a warrant to be granted before actual animal suffering takes place.
17. We are concerned at the extended definition of "domestic premises" for which entry is not permitted without warrant. While we accept that warrants should be required to enter a home, we are not persuaded that this restriction should also apply to out-buildings merely by virtue of their "belonging to" a house. Some out buildings are used for farming or industrial purposes and these should not be treated as part of domestic premises.

¹⁰ Kjaer, J.B. (2004) Effects of stocking density and group size on the condition of the skin and feathers of pheasant chicks Veterinary Record 154: 556-558

League Against Cruel Sports Supplementary Submission of Evidence

1. This supplementary submission follows the recent developments in terms of the Avian Flu H5N1 virus, and the impact that a UK outbreak would have on the farming of birds.
2. Avian flu risks are present in the shooting industry in two forms; firstly in the rearing of gamebirds and mallards, and secondly in the release of these birds into the wild.
3. Of particular concern are mallards released (and therefore living in artificially high numbers) on flight ponds on shooting estates¹¹. Artificially high numbers inevitably give an increased risk of infection, and reared ducks on the pond can share water and food with wild ducks, putting them into the highest risk area. There are no specific regulations relating to the release of native wildfowl (mallards) into the wild¹², and no official record of the numbers of mallards released every year on shooting estates, but figures provided to the Game Conservancy Trust suggest that it is, on average, 34,988¹³.
4. The BVA advise¹⁴ that “outdoor flocks present the greatest risk of avian influenza becoming established in the UK because there is a greater opportunity with these husbandry systems for infected wild birds carrying virus to mix with domestic poultry ... generally the larger the flock, the greater the chance of mutation to a dangerous form.” Gamebirds are reared in flocks with outdoor access, the extent of which varies from site to site.
5. Also of concern is the release of 20-35 million pheasants into the countryside each year, of which estimates have been made that “about 8m are released by more than 200 sporting estates in Scotland¹⁵”. John Dalton BVMS MRCVS, of Dalton’s Game Consultancy Ltd., a veterinary practice specialising in gamebirds, says in the BVA submission¹⁶ that “with several million birds being released into the wild on an annual basis they must constitute a biological risk.”
6. The BVA commented on the proposed EC directive on controls for avian influenza. They said¹⁷ that “BVA would like to stress that game birds are a

¹¹ See for example an estate near Harrietsham advertised on www.shooting4all.com

¹² 17 November 2005, Official Report, column 1383W

¹³ 6 Dec 2005, Official Report, column 1093W

¹⁴ *ibid.* para 17

¹⁵ Bird flu: shooting estates fear ban *The Sunday Times* November 27, 2005

¹⁶ Annex to British Veterinary Association comments to Defra consultation on EC directive on controls for avian influenza, para 4.6.

¹⁷ *ibid.*, annex B, para 5

- significant biosecurity risk due to the fact that several million birds are released into the wild on an annual basis. The recent Newcastle Disease problem has highlighted the specific issues regarding the management of game birds in rearing pens and release pens and BVA believes that there does need to be some degree of regulation of the game industry”
7. “It would be possible to have some control over their movement and biosecurity at this [rearing] stage, although it is agreed that it would be almost impossible at the release stage. The presence of game shoots around hatcheries, breeder farms and factories are also considered to be a significant risk to biosecurity.”
 8. Yet the Avian Influenza (Preventive Measures) (Scotland) Regulations 2005, covers gamebirds which are “reared or kept in captivity” for restocking shooting estates, but does not cover gamebirds and wildfowl once they are released. There is no requirement for owners/keepers of such released birds to register.
 9. There is recognition that in the event of an increase in the risk of Avian Flu, a ban on the release of gamebirds in Scotland may be required. In a recent Sunday Times article, a spokesman for the Scottish executive warned: “Once released (pheasants and partridges) are considered wild birds. If the disease risk changes we would consider making the housing of birds a legal obligation and pheasants still in their pens would be required to be kept in.”¹⁸
 10. The Animal Health and Welfare (Scotland) Bill would be the ideal place to give the Scottish Executive powers to licence the release of gamebirds and wildfowl into the wild.

¹⁸ Bird flu: shooting estates fear ban The Sunday Times November 27, 2005

SUBMISSION FROM THE BRITISH DEER SOCIETY

EVIDENCE ON ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

The British Deer Society (BDS) was founded in 1963 and is the only national body representing the welfare interests of wild deer throughout the UK. We have a total UK membership of over 6000 members of whom about 1000 including many gamekeepers and deer stalkers are registered with a Scottish address.

GENERAL POINTS.

Part I (Animal Health) BDS has few comments to make on Part 1 of the Bill as it stands which is not surprising when all wild deer welfare issues have been removed from it.

Disease control measures affecting wild deer are for the most part already covered in the specific disease control legislation and BDS has been involved with the development of the various Bills concerned. However we would suggest that Transmissible Spongiform Encephalopathy (TSE) and Rabies are included in the disease list at Schedule 2B.

Part 2 (Animal Welfare). The welfare of farmed, park and wild deer which have been "taken" into captivity are all areas of BDS concern and included within the scope of the Bill.

Definitions. Definitions need to be clarified:

"Animal" – all deer are animals.

"Suffering" - how will suffering be measured? The degree of suffering may vary considerably depending on circumstances and the degree of domestication of the animal concerned. A farmed deer born in captivity or well tamed will be used to many different stimuli. If deer which had just been taken from the wild were subjected to similar treatment, it could amount to cruelty.

"Unnecessary" – how is this to be defined? If it is necessary to drive recently-captured wild deer into a crush in order to kill them safely, is any method of doing so acceptable because it is deemed to be "necessary" by the perpetrator?

"Protected animal" status must be given to:

1. **Farmed deer** - deer are a commonly domesticated species;
2. **Park deer** – these are enclosed deer basically treated like wild deer but because they are captive dependent on man to a greater or lesser degree.
3. **Captive wild deer** – any deer having been "taken" from the wild i.e. trapped alive whether legally or illegally must be considered "protected" by this law;
4. **Any deer** which is abandoned or released into the wild.

Legal Ownership and Responsibility for Welfare of Protected Animals.

The ownership and legal welfare responsibility for wild deer (or indeed any animal) which has been “taken” needs to be made clear in the Act.

1. Wild deer, by definition, belong to nobody before being taken or killed.
2. The right to take wild deer usually belongs to the land owner or someone to whom that right has been granted by the landowner.
 - In some circumstances a tenant or occupier has a right to take wild deer over which the landowner has no control.
 - The Deer Commission for Scotland and those acting on its also have a right behalf under certain circumstances to take deer without the landowner’s permission and by means which he cannot control.
3. Wild deer which have been trapped or taken are owned by the person who took them (even if they were taken illegally). Therefore, the person who actually set the trap (whether legally or illegally) in which the deer are taken should probably be considered the legal owner and responsible for the welfare of any deer contained within it.
4. If the legal “owner” of a trapped animal is a company or Government Agency, the Bill should make clear whether the corporate owner or the employees are responsible for the animal’s welfare or for causing any suffering.

Trapping Wild Deer. Wild deer panic very easily when netted or trapped especially if subjected to any stress such as herding or shooting and can suffer very serious welfare consequences as a result. They tend to struggle in nets and charge fences or try to jump them often injuring themselves and other deer in the process. In panic, adult deer (especially the males) attack other animals with their antlers and hooves causing serious injuries. Even temporary trapping in nets e.g. for research purposes can have serious welfare consequences. Stress levels in wild deer being handled by humans are very high and can actually cause animals to “die of fright”. Post capture myopathy is another well-documented consequence of capture which can cause great suffering or death even after the animal is released.

Mutilations. Ear clipping, ear tagging, castration and freeze branding – all commonly carried out on domestic stock presumably do not count as “mutilations” if done to deer while they are protected animals. However any attempt to carry out such operations on recently caught, wild deer is fraught with risk. Tail docking is not an issue for deer but the situation concerning the removal of a deer’s antlers (particularly whilst still in velvet) needs to be properly clarified in the Bill.

Releasing Deer into the Wild. BDS strongly discourages the rehabilitation and release of injured wild deer. Deer are not an endangered species and the Society policy is that any deer which is too seriously injured to be treated and released immediately should be humanely dispatched without further delay. However the treatment, rehabilitation and release of deer species are not illegal provided the animal has been taken legally and the Wildlife and Countryside Act is obeyed. Such activities raise serious welfare issues. The transport of any injured deer is actually illegal. Deer need to be kept separate from other animals especially dogs which they regard as predators. Post-capture myopathy has been mentioned above and there have been occasions in the past when deer have been

release into the wild unable to survive properly or with inappropriate collars fitted for research purposes. The Bill should cover such circumstances.

Statutory Controls. In view of the potentially-serious welfare problems already described which are likely to be encountered whenever wild deer are trapped alive (whether for research, for translocation or release back into the wild, domestication or for slaughter in the trap), BDS believes this activity should be subject to licensing to ensure that the welfare of the animals involved is not prejudiced. This is already the case in England and Wales but the Deer (Scotland) Act 1996 would need to be amended to achieve the same degree of control in Scotland.

COMMENTS ON THE CONSULTATION PROCESS PRIOR TO THE ANIMAL WELFARE BILL

Change to the Scope of the Bill. At a meeting held at Pentland House on 11th June 2004, Scottish Executive made clear their intention that the Animal Welfare Bill would be used as a legislative vehicle to make the necessary changes to other laws including the Deer (Scotland) Act 1996 required to achieve improvements in animal welfare. This had been stated in the original consultation document [March 2004 - Page 2 Paragraph 5] where the Deer (Scotland) Act (with the wrong date - 1999 instead of 1996) is included as one of the Acts requiring to be modernised. Page 18 Paragraph 4 of the subsequent consultation document issued in May 2005 also confirms the Scottish Executive's original intention.

After the consultation process was completed, an Analysis of Responses was published in February 2005. At Page 304, this document stated that all wild deer responses were now being excluded from the Bill. It claimed that all deer-related responses to the initial consultation had been sent to the Deer Commission for Scotland for consideration with the Commission's consultation over wild deer Close Seasons.

In the event this statement proved to be untrue.

On 24th June 2005 [after the DCS Close Season consultation had closed] DCS confirmed to BDS that it had received nothing from Scottish Executive on the subject of animal welfare and was completely unaware of the Executive's intention to send all deer responses to the Animal Welfare consultation to the Commission for inclusion in its own Close Seasons consultation.

BDS VIEWS ON THE CONSULTATION PROCESS

BDS anticipated in a second submission and letter sent to Scottish Executive that DCS would set aside or ignore all the responses to the Animal Welfare consultation when it reported to the Minister on their own Close Season consultation. In the event this was exactly what happened although it now appears Scottish Executive may never have sent them to DCS for consideration as it claimed to have done.

BDS considers this failure by Scottish Executive to accept views about wild deer welfare indicates not only a failure in the Government's original intention to improve the protection for all animals but was also an unsatisfactory way in which to proceed because:

- Some of the welfare amendments which BDS proposed were actually modifications to the powers of DCS e.g. the removal of its exemption from prosecution under the Deer Act for committing what would otherwise be illegal acts with severe deer welfare consequences. It is NOT appropriate to expect DCS to recommend a modification to its own powers and liabilities.
- The required changes to the Deer (Scotland) Act cannot be made without primary legislation and there is no published plan in the Parliamentary timetable to amend the Deer (Scotland) Act.

These points have already been raised subsequently with the Scottish Executive without any satisfactory answer being offered. They now need to be brought to the attention of the Minister and Scottish Parliament.

**SUBMISSION FROM THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES
(COSLA)****ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL****INTRODUCTION**

COSLA would like to thank you for the opportunity to comment and give its views on the Animal Health and Welfare (Scotland) Bill.

COSLA is the representative voice of Scottish local government and also acts as the employer's association on behalf of all Scottish Councils. COSLA's key objectives include (amongst many other)

- to influence the resourcing of local government by addressing issues of priorities, accountability, flexibility and resource deficit
- to promote the role, image and credibility of local government.

COSLA warmly welcomes the introduction of this Bill and the proposed improvements, consolidation and modernisation it will bring to the legislation relating to both animal health and animal welfare. As the provisions relating to Animal Welfare are likely to have greater impact on Local Authorities than Animal Health the majority of our comments relate to Part 2 of the Bill.

BACKGROUND

In Scotland, local authorities assumed responsibility for animal health and welfare enforcement after local government reorganisation in the mid seventies. Local authority regulatory service departments (Trading Standards, Environmental Health or joint departments) carry out the role in all of the 32 Scottish authorities with one notable exception - Central Scotland Police. The following table details the personnel available for Animal Health and Welfare in a sample of authorities.

Table 1 – Animal Health and Welfare Enforcement

Council	No of authorised officers	No of full time equivalent officers	No of specialist officers	No with Animal Health and Welfare Certificate ¹ or DCA ²	Comments
Highland	30	3	3	2	
Stirling	8	3	4	2	Also cover Falkirk and Clackmannanshire
Dumfries & Galloway	11	1.7	2 (1 vacancy at present)	1	
East Lothian	5	1	1	2	

¹ Trading Standards Institute Certificate in Animal Health and Welfare

² Trading Standards Institute Diploma in Consumer Affairs including Animal Health Paper(s)

It can be seen from the example that while some authorities employ full time animal health and welfare officers, some with many years experience, others have officers carrying out this role as part of their general enforcement duties, but many of these officers still have a great deal of experience in Animal Health & Welfare. A growing number have formal animal-related qualifications .

Local Authorities have for many years been the principal enforcers of The Animal Health Act 1981 (as amended by The Animal Health & Welfare Act 1984) and the various animal health and welfare Regulations made under The European Communities Act 1972.

While the role of local authorities has to a certain extent concentrated on farm livestock, several orders and regulations relate to all mammals (excluding man), birds, vertebrates and cold blooded animals or various other fairly extensive definitions e.g.

The Welfare of Animals (Transport) Order 1997 – full list as above

Importation Orders - includes all carnivores, bats, insects, marsupials, primates and rodents

The Welfare of Animals at Markets Order 1990 -cattle, sheep, goats and all other ruminating animals, pigs, rabbits and poultry

Local Authorities also have the function of licensing Zoos, Pet Shops, Dangerous Wild Animals, Animal Boarding Establishments, Horse Riding Establishments and Dog Breeding Establishments and therefore they have to have a wide general knowledge of the many different species which can include hamsters, budgies and gold fish as well as the more exotic species such as primates, reptiles and ostriches.

Local Authorities are appointed to enforce the legislation not to interpret it therefore it is important that the legislation is clear and unequivocal. Several definitions in the Bill, detailed below, give rise to concerns and they must be made clear either via rewording of the legislation or through accompanying guidance so that court time is not wasted on deciding the apparent meaning.

Part 1 Animal Health

COSLA assumes the Scottish Ministers would always seek veterinary advice before utilising the powers of slaughter contained within the Bill but there should be a specific proviso that they base decisions on all relevant advice available at the time, subject to any time constraints.

A Bio-security Code can be useful in highlighting the general principles of bio-security and the preventive measures that should be taken to prevent or minimise the spread of disease, both exotic and endemic. Unfortunately such a code, will not work unless the whole agriculture industry fully embraces it and for this reason COSLA believes that breaches of bio-security should only be made an offence during actual notifiable disease outbreaks and be enacted by means of appropriate legislation.

COSLA considers that targeting animal gatherings (specifically livestock gatherings) is very important for assisting with disease control. Currently there are a number of premises, in general operated by livestock agents or dealers, trading large numbers of animals under the guise of a farming operation and exploiting loopholes within the current legislation. Animals traded via these premises go largely unregulated as they do not have to comply with the strict bio-security and animal welfare rules which Livestock Markets currently must comply with (e.g. Markets Sales and Lairs Order and the

Welfare of Animals at Markets Order). It is important that Local Authority Animal Health and Welfare Inspectors know where and when such “animal gatherings” are occurring and that they have the ability to inspect them to check on compliance with the various pieces of animal health and welfare that apply, just as they currently do with livestock markets. Licensing of “animal gatherings” will enable specific conditions to be attached to such premises and give the ability for any licence to be revoked if acceptable standards are not maintained.

The Animals and Animal Products (Import and Export) (Scotland) Regulations 2000 gives a definition of a “dealer” as “any person who buys and sells animals commercially either directly or indirectly, who has a regular turnover of these animals and who within 30 days of purchasing animals resells or relocates them from the first premises to other premises not within his ownership” For disease control purposes it is important that “livestock agents” are also regulated.

Part 2 Animal Welfare

The definition of “animal” for the purposes of this part of the Bill has led to much discussion. The use of taxonomy to define animals is welcomed as it leaves no doubt as to the animals caught but “vertebrates” may not include all sentient animals. COSLA believes the definition should take account of current scientific evidence in relation to non vertebrate animals and include/ exclude according to best advice.

The definition of “protected animal” requires clarification as a number of anomalies appear to exist (e.g. released pheasants, rodent pests).

COSLA while supporting the line taken on "Mutilations" (section 18) is concerned that without a consistent UK wide approach enforcement will be impossible as obvious loopholes will no doubt be fully exploited.

The requirement for responsible persons to ensure the welfare of animals is very welcome but COSLA believes that the wording of Section 22(1) and in particular the words “to the extent required by good practice” could undermine it particularly where no written code of good practice exist for a species. The ability to introduce such codes is important as they promote good practice and aid enforcement & prosecution when appropriate care is not being taken. The existing Codes relating to the various species of livestock have proved very worthwhile in the past and the number of species covered by such codes should be extended.

COSLA accepts that some premises should be registered instead of licensed as long as adequate powers of inspection and the ability to revoke registration (subject to appropriate appeal mechanism) are included. The extension of the time a licence is valid for is welcomed but again inspectors must have the ability to inspect the premises other than when licence is up for renewal

- To check standards maintained
- At time of renewal premises know they will be inspected and so may make a special effort
- Animal welfare can deteriorate extremely quickly especially if health or financial problems exist

COSLA is concerned that there is an increasing number of “Animal Sanctuaries” appearing and while some are well managed others (often the smaller ones) start as a

whim and have inadequate (if any) financial backing and COSLA considers that all such premises should be licensed.

Pet fairs were believed by many to be illegal under the current legislation and are now to be permitted. COSLA believes that this is a retrograde step.

COSLA is concerned that the powers given to an inspector or constable in Sections 29(1) and 32(2) appear to conflict with each other and clarification is required.

Particularly welcome among these provisions is the extension of disqualification orders so that a convicted person cannot circumvent them, as before, by passing ownership to another member of the household or business (S36 (3)). The requirement for a court to state reasons for deciding not to impose orders will also be very useful in ensuring that courts and prosecutors have regard to the penalties available to them such as disqualification.

COSLA is concerned at the removal of a statement from Section 44 (Formerly Section 46(3) of the original draft) that:

"An inspector incurs no civil or criminal liability for anything which the inspector does in purported exercise of any functions conferred on the inspector by a provision of this Part, or by regulations made under this Part, where the inspector acts on reasonable grounds and in good faith."

We wish to see this re-instated, and not simply to rely on it being implicit in Schedule 1. Without the security of having it down in black and white, there may be occasions where inspectors may think twice about taking certain actions because they are worried that their actions may incur civil or criminal action being taken against them.

General

All too often the role of enforcement is seen as the submission of reports to the Procurator Fiscal. In reality such action is usually the final resort after advice, persuasion and warnings (both verbal & written) have all failed to have the desired effect. All 32 Local Authorities signed up to the Enforcement Concordat promoted by the Cabinet Office in 1998. Amongst other things this promotes Openness, Proportionality and Consistency in enforcement all of which are essential to ensure the accountability of Councils as expected and demanded by the general public. To ensure consistency in enforcement there is a well established network for communication as detailed in Appendix 1.

Unfortunately all too often Central Government ask for statistics in relation to prosecution cases reported to the Procurator Fiscals but as explained above this is meaningless as it does not truly represent the work of local authorities.

In line with many other pieces of legislation there should be incorporated a power enabling inspectors/ veterinary officers to serve a notice which could stipulate any believed contraventions and the appropriate action that should be taken to rectify them. In the majority of incidents this is likely to have the desired effect but if it does not the notice can be produced in court to show that advice was given to the accused but it was ignored.

Local authority inspectors are trained, skilled and experienced in covering a wide remit, and comments made in other parties' submissions to the Committee do not accurately depict the standards to be found in Scottish local authorities.

Concern has been expressed earlier that inspectors of the local authority and others could destroy an animal found to be in extremis. COSLA would like to reassure everyone of the professional approach taken by Animal Health and Welfare Officers and that the powers given in section 32(2) of the Bill are very unlikely, if ever to be used. The role of the local authority inspector is to enforce legislation in a professional and accountable manner: current practice is that a veterinary surgeon would be consulted, both for accurate assessment of the animal and the gathering of corroborative evidence.

Powers contained within The Welfare of Animals (Transport) Order 1997 (Article 18) already enable local authority inspectors to have animals humanely destroyed and this power has never been challenged. There is no evidence that this power has been brought into question. As required by the Welfare of Animals (Slaughter or Killing) Regulations 1995 no person should kill any animal unless they have the knowledge and skill necessary to perform those tasks humanely. It may be appropriate for some local authority inspectors to be trained to humanely destroy animals but as this will be a power that will seldom, if ever be required, it is more likely that they will arrange for someone with the appropriate skills to carry out the task.

The majority of local authorities use the COSLA or LACORS (Local Authorities Coordinators of Regulatory Services) Systems for Risk assessment of premises and with some small alterations this should be able to encompass any new premises that require to be covered.

Farm Animal Welfare Council is "concerned about the apparent lack of any additional financial resources from Government to support this major initiative" and so are local authorities. Adequate funding is essential if this Bill is to have the desired affect of promoting and ensuring the welfare of animals.

Resource Implications

There is no doubt that local authorities will have an increased workload as a result of this new legislation, however it is not easy to calculate how much extra resource individual authorities will need to devote to guarantee effective enforcement.

Some authorities will have to recruit extra staff, and some, if not all, will have to provide extra training for existing staff. There will be new equipment costs as well as the resource costs involved in removing animals to a place of safety, should the need arise, under the additional powers given by Part 2 of the Bill, as was demonstrated by the example in COSLA'S original submission.

It would be desirable to have a central fund available which could be available to Local Authorities in exceptional circumstances.

COSLA would wish to see all inspectors, whether new or current, being given appropriate training and funding to enable them to carry out effective enforcement of this new legislation.

COSLA would be in favour of a national database on convictions, offences etc. being available to enforcement staff. The Data Protection Act while it is important to take

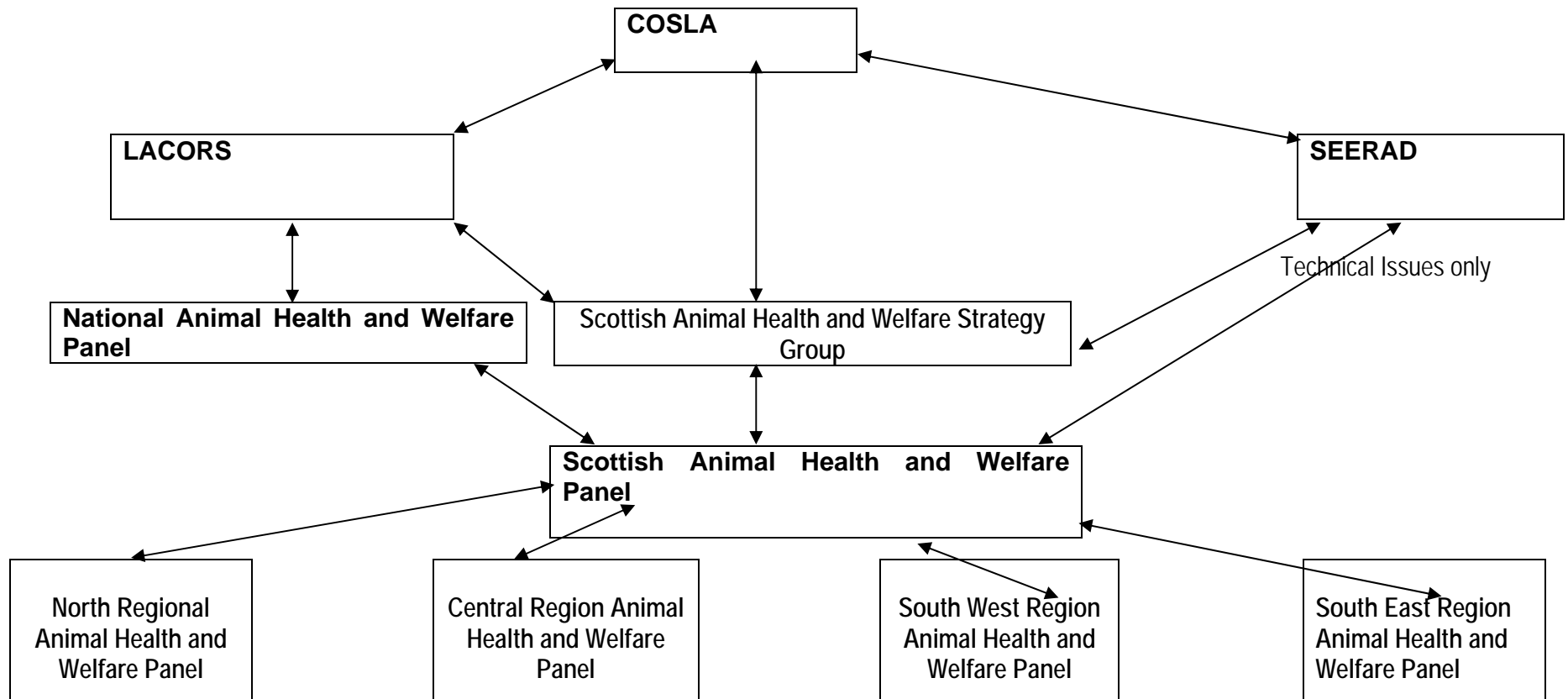
account of its provisions should not be used as an excuse to limit access by enforcement personnel. The Cattle Tracing System run using the British Cattle Movement Service Database is a good example of how a successful system operates.

Conclusion

COSLA in general supports the provisions of the Animal Health and Welfare (Scotland) Bill. We would strongly maintain however that in order to meet the policy objectives set for the Bill, adequate resources will need to be allocated to ensure effective implementation and particularly so to local authorities.

I hope the Committee will find this submission of use in its deliberations towards the new legislation.

• SCOTTISH ANIMAL HEALTH AND WELFARE ENFORCEMENT COMMUNICATIONS STRUCTURE



- **SCOTTISH ANIMAL HEALTH AND WELFARE ENFORCEMENT COMMUNICATIONS STRUCTURE**

COSLA – Convention of Scottish Local Authorities

Scottish Animal Health & Welfare Strategy Group

2 x Society of Chief Officers of Environmental Health in Scotland
2 x Society of Chief Officers of Trading Standards in Scotland
2 x Scottish Animal Health & Welfare Panel)
1 x COSLA /LACORS representative

Scottish Animal Health & Welfare Panel

2 x North Region Animal Health and Welfare Panel
2 x Central Region Animal Health and Welfare Panel
2 x South West Region Animal Health and Welfare Panel
2 x South East Region Animal Health and Welfare Panel

North Region Animal Health and Welfare Panel - Aberdeen City, Aberdeenshire, Comhairle nan Eilean Siar, Highland, Moray, Orkney and Shetland.

Central Region Animal Health and Welfare Panel - Angus, Argyll and Bute, Clackmannanshire, Dundee City, East Dumbartonshire, Fife, Perth and Kinross, Stirling, West Dunbartonshire.

South West Region Animal Health and Welfare Panel - Dumfries and Galloway, East Ayrshire, East Renfrewshire, Inverclyde, North Ayrshire, Renfrewshire, South Ayrshire. (Bute [Argyll and Bute Council])

South East Region Animal Health and Welfare Panel - City of Edinburgh, East Lothian, Falkirk, Glasgow City, Midlothian, North Lanarkshire, Scottish Borders, South Lanarkshire, West Lothian.

LACORS - Local Authorities Coordinators of Regulatory Services

National Animal Health & Welfare Panel – includes 2 representatives from Scottish Animal Health & Welfare Panel

SEERAD – Scottish Executive Environment and Rural Affairs Department

**SUBMISSION FROM CENTRAL SCOTLAND POLICE ANIMAL HEALTH
AND WELFARE DEPARTMENT**

Animal Health and Welfare (Scotland) Bill

It must be made clear at the outset that this reply will give the perspective of the above department as opposed to that of the Police. It would not be appropriate for this department to speak on Police matters and if a general Police perspective is required a view should be sought from the Association of Chief Police Officers of Scotland (ACPOS).

Central Scotland Police Animal Health and Welfare Department carries out the Local Authority animal health and welfare enforcement role on behalf Clackmannanshire, Falkirk and Stirling Councils. This role is normally carried out by Trading Standards or Environmental Health in other Council areas throughout Scotland and the UK. The department is made up of three full time civilian Inspectors (not Police Officers) all of whom have extensive agricultural experience and have undergone a wide range of training on their role and responsibilities.

Central Scotland Police area is a diverse farming area with approximately 900 livestock keepers ranging from extensive hill sheep farms through to the predominately arable and intensive livestock fattening farms on the flood plain of the River Forth. The area also has two relatively large livestock markets handling approximately 600000 animals each year and two abattoirs with a third undergoing construction.

We welcome this opportunity to submit evidence on the Animal Health and Welfare (Scotland) Bill.

Part 1 – Animal Health

It is our opinion that greater energy and resources should be channelled into prevention of disease being imported into the country. Whereby this may be difficult within the free market that is the EU, as an Island nation the UK should be able to do better by making use of our natural barriers. It was noted in the evidence given by QMS that greater prominence, and thereby the perception of importance is give to this issue in Ireland as an example. It is also of note that other island nations such as New Zealand have very strict Biosecurity rules to help prevent the disease being imported into the country and lessons could be learned from them.

Section 3

In our opinion the biggest issue with regard to biosecurity within the farming community is that far too few are willing to embrace the concept, things have improved but many still only pay lip service to it. Remembering back to 2001

and the FMD outbreak one of this departments most vivid recollections was the reluctance of the farming community to carry out even the most simple biosecurity measures such as cleansing and disinfection of footwear prior to entering or leaving a livestock market. In order to get them to comply with any form of Code would, in our opinion, take a major shift in attitude.

Whereby a Biosecurity Code can be helpful in a non disease situation, in a disease situation where it is proposed that it would take direct effect it may not be the most appropriate format for these types of measures. It is our experience of Codes that they tend to use imprecise forms of language which make enforcement more difficult. In our opinion it may be more appropriate to encompass Emergency Biosecurity Measures within a Schedule to the Bill which would only take effect in a Disease Outbreak situation if enacted by an Emergency Order to avoid that problem and leave the Biosecurity Code for non disease situations.

Section 5

Regulation of "animal gatherings" is important. Whereby it is recognised that any form of gathering provides potential risks for disease control it must be recognised that some present less than others. Whereby it may be appropriate for some form of control to be exercised over all of these types of events it would be helpful if this could be done via a risk based analysis of the type of event.

Targeting specifically livestock gatherings is hugely important for assisting with disease control. There are a number of premises trading large numbers of animals under the guise of a farming operation and this has already been alluded to in the evidence from the Institute of Auctioneers. We would support some form of licensing of all of these types of events or gatherings.

Concern has been raised about how to define a "dealer" but a definition is already given in the Animals and Animal Products (Import and Export)(Scotland) Regulations 2000:

"dealer" means any person who buys and sells animals commercially either directly or indirectly, who has a regular turnover of these animals and who within 30 days of purchasing animals resells or relocates them from the first premises to other premises not within his ownership.

Part 2 – Animal Welfare

Section 18

With the removal of the equivalent "Mutilations" Section from the English Bill we have concerns as to whether it is still possible to proceed with this Section of the Bill. Whereby we support in principle the Section, without a consistent UK wide approach we would have concerns that those in opposition to the ban will simply exploit the loophole which would make a mockery of the legislation and of enforcement bodies. If this Section is to be continued in isolation within the Scottish Bill, how the issue is going to be enforced will have to be looked at carefully.

Section 22

The first paragraph is, in our opinion, badly drafted and weakens the intent of the Section.

Whereby we can see the intent of Paragraph 3(d) it could cause problems for people whom wish to keep a single animal as a "pet".

Section 24

In general the move towards licensing of more activities is welcomed and will be helpful in increasing welfare standards of animals by tightening the regulatory burden on activities which were previously difficult to police.

The move from annual licensing to three yearly licences or registration for five years is in our opinion a retrograde step in terms of animal welfare. In our opinion it would be better to give the Local Authority autonomy to vary the period of validity up to a maximum of three years for licensing or five years for registration and this could be done on a risk based analysis.

Sections 29

The confusion relating to an inspector's powers to have an animal destroyed within these Sections has not been clarified. In my opinion Section 29(1) conflicts directly with Section 32(2).

The power to take possession of animals where they are in distress or likely to be caused suffering are welcomed. However the costs associated with this were not reflected in the draft RIA nor in the Financial Memorandum included with the Explanatory Notes and the Executive must examine this issue thoroughly. The power to seize animals is being given to all authorised Inspectors under the Bill, this includes Local Authorities, not just Scottish SPCA Officers as are mentioned in the Financial Memorandum. Whereby we do not envisage any greater likelihood of these powers being invoked when the Bill becomes Statute the cost involved in such an operation are largely glossed over.

The costs involved in the seizure of a single animal are relative small, however this is not the case where livestock are involved and the seizure of the animals on a small to average sized farm could very quickly extend to tens of thousands of pounds.

Paragraph 274 of the Financial Memorandum states that the Bill will allow enforcers to intervene and take action at an earlier stage and that this will reduce costs. On paper this is the case but the assumption of the paragraph is that enforcers know that a problem exists. There is no guarantee that costs will be reduced due to earlier intervention as this is dependent on the enforcers being alerted to the problem.

Paragraph 276 in the Financial Memorandum states that "the Bill will allow the Court to make an order allowing the animal to be sold or disposed of before

the outcome of any prosecution". What it fails to mention is that this may be several weeks down the line from when the animals were seized. Section 30(2) of the Bill allows the owner of the animal to make application to the court to have the animal returned and the legal process of any application for this would have to be seen through before the animals could be sold or disposed of. Whereby it may be the case as currently happens that a single animal is often likely to be signed over to the Scottish SPCA this is most unlikely in the situation of livestock being seized from a farm due the perceived monetary value of the animals.

Section 32

Much has been said about the appropriateness of Inspectors have the power to destroy an animal in specified circumstances without the necessity of a veterinary opinion. We feel it is important to point out that Local Authority Inspectors already have the power to require an animal to be humanely destroyed without the requirement for a veterinary opinion. Article 18 of the Welfare of Animals in Transport Order 1997 (WATO) allows an Inspector to require an animal to be humanely destroyed. There has been no suggestion that this longstanding power has been abused and in our opinion the powers afforded by this Section are only a further extension of a power we already have in certain circumstances.

It is also our opinion that the powers afforded in Section 32(2) would only ever be used by Inspectors suitably trained to meet the requirements of the Welfare of Animals (Slaughter and Killing) Regulations.

Section 36

Care must be taken to ensure that Disqualification Orders imposed post conviction in other parts of the UK also apply in Scotland and vice versa and it is noted that this was discussed during the evidence gathering session on the 7th of December.

Section 44

In common with other animal health and welfare enforcement agencies and COSLA we would like to express our concern at the removal of the statement from this Section (Formerly Section 46(3) of the original draft) that:

"An inspector incurs no civil or criminal liability for anything which the inspector does in purported exercise of any functions conferred on the inspector by a provision of this Part, or by regulations made under this Part, where the inspector acts on reasonable grounds and in good faith."

We would like to have this re-instated, and not to have to rely on it being implicit in Schedule 1. Again in common with others, we note that the English Bill has retained the statement.

Conclusion

In general Central Scotland Police Animal Health and Welfare Department support this Bill and its objectives but would ask that when it is finally given approval that adequate resources are allocated to Local Authorities to allow effective implementation thereby achieving those objectives.

SUBMISSION FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS
IN SCOTLAND

Animal Health and Welfare (Scotland) Bill

Introduction

The police have little, if any, involvement in Part 1 of this Bill, the part relating to animal health so my comments are solely in relation to Part 2, Animal Welfare.

Though the enforcement of animal welfare issues could not be considered as 'core policing' nor as part and parcel of routine police work, the police have a responsibility to be aware of legislation dealing with animal cruelty or welfare issues and to deal with these issues as and when they are encountered or reported to them. Enforcement may be carried out by the police themselves, or in conjunction with others, such as local authorities, Scottish SPCA inspectors or vets. Indeed experience shows that joint investigations are often the most successful as they combine a range of knowledge, experience and skills.

In many cases cruelty issues are revealed during the investigation of a separate complaint to which the police have been called. Examples even just recently in Tayside include the discovery during enquiries into disorder and dishonesty incidents that a dog had been strangled, a dog had been kicked almost to death and that 2 dogs had been set on a cat.

All police forces in Scotland have police wildlife crime officers, and while offences committed against domestic or captive animals is not always part of their official remit, they inevitably get asked for advice when such a case is reported. As such, the 90 or so wildlife crime officers in Scotland keep abreast of all legislation that relates to wild, captive or domestic animals and form a reservoir of knowledge that can be tapped into by all police officers.

The Bill

Overall I think the Bill is an excellent piece of work which was much needed. I would make the following comments for consideration:

Sections 17, 18, 19 and 20 – *permitting an offence*

These sections have the offence of '*permit that (the offence) to happen*'. This wording seems similar to '*causing or permitting*' an offence under some of the road traffic legislation, where the owner of the vehicle has vicarious liability. It is different from some other legislation, including the Wildlife and Countryside Act 1981, where the offence of the owner is to **knowingly** cause or permit the offence to take place. Could the absence of the word **knowingly** result in

'Person A' as defined in the Bill being accused of permitting an offence that he had no prior knowledge or reasonable expectation would happen.

An example might be a 15 year-old child left at home in charge of a pet while her parents are out. On the parents' return they find that the child, for whatever reason, has committed an act of cruelty towards the pet. Am I reading the Bill correctly that a parent, as Person A, can then be charged with 'permitting that offence to happen' or 'failing to take such steps as are reasonable to prevent that happening'?

Section 21 – animal fights

No right-thinking person has any sympathy towards the activity of arranged animal fighting. Many of those involved in animal cruelty, especially animal fights, record the events by taking photographs or video footage. Apart from for training purposes by enforcement agencies, or possibly by the media as a means of enlightening the public to this cruel activity there can be no legitimate reason for any person possessing such photographs or video footage. Conversely there are many reasons why these photos and video footage may be of use to criminals. It therefore seems appropriate to include the possession of these items, without reasonable excuse, as an offence within this section.

Section 22 – welfare provisions

This is an excellent section that was lacking under former legislation

Section 26 – abandonment

To investigate the abandonment of an animal and trace the person responsible often takes considerable time and effort. Unlike many animal welfare offences the person responsible is not usually immediately linked to the animal that has been abandoned. Indeed the fact that an animal has been abandoned may not come to light until some considerable time. With this section being subject to a time bar of 6 months from the date on which the offence took place this is likely in some case to unduly constrain the investigation and consequently the public interest in achieving a satisfactory conclusion. There may therefore be justification in extending the time bar for this offence.

Section 42 – penalties

The fact that all offences under Part 2 of the are likely to be punishable by imprisonment allows the police, if justified, to detain a suspect under Section 14 of the Criminal Procedure (Scotland) Act 1995. This will be advantageous to efficient enforcement.

Section 44 and Schedule 1 – police powers

Police powers, with and without warrant, are adequate to enforce the provisions and are clearer than under the Protection of Animals (Scotland) Act 1912.

Training

Animal welfare legislation and its practical application in enforcement is already well covered in the illustrated CD Rom *Wildlife and the Law*. The production and updating of the CD Rom is funded by Scottish Executive and carried out by me. The provisions of this Bill, once enacted, will be included in the fourth edition which will be produced during early to mid 2006. This CD Rom is issued to all wildlife crime officers and to the Scottish Police College.

In addition, wildlife crime officers receive some training in animal welfare issues from the Scottish SPCA. Wildlife crime officers therefore are the link in policing between animal-related legislation and its efficient enforcement by all police officers.

Impact on Policing

Enforcement of the Animal Health and Welfare (Scotland) Bill does not add any additional responsibilities to the police. The operational policing impact and financial impact should be negligible.

Police Health and Safety Implications

There is always a degree of risk to police officers when handling animals. Relevant risk assessments are discussed on the CD Rom *Wildlife and the Law*.

SUBMISSION FROM THE SCOTTISH SPCA

Written submission to the Environment and Rural Development Committee on the Animal Health and Welfare (Scotland) Bill

The Scottish SPCA welcomes this opportunity to comment on the Animal Health and Welfare (Scotland) Bill (hereinafter referred to as the Bill). **The Society is pleased to support the general principles of this Bill.**

Introduction: The Scottish SPCA

The Scottish SPCA is Scotland's oldest and largest animal welfare organisation. The Society's main objective is to prevent cruelty to animals and to promote kindness and humanity in their treatment.

The Scottish SPCA's 49-strong Inspectorate is recognised by the Crown Office as a specialist reporting agency in cases of breaches of animal welfare legislation. Most investigations result from complaints by members of the public. Scottish SPCA involvement in animal welfare cases in Scotland exceeds that of SEERAD and local authority witnesses put together.

In 2004, the Society received 96,697 calls from members of the public and tasked nearly 8,000 of these for investigation. As a result, Scottish SPCA Inspectors reported 30 cases to Procurators Fiscal, and 34 cases reached the Sheriff Court, resulting in 32 convictions. 67 cases were pending in January 2005. Between January and December 2005 the Society reported 109 cases to the Procurators Fiscal and 15 joint police/ Scottish SPCA cases.

The Scottish SPCA is primarily interested in the welfare part of the Bill given the vital day-to-day enforcement work of Scottish SPCA Inspectors, and the Society's main objective as defined above. However, we will comment on both parts of the Bill given our unique experiences during the Foot and Mouth Disease crisis in 2001, and given that animal health and animal welfare are vitally linked – an unhealthy animal is an animal with poor welfare.

Part I: Animal Health

The Scottish SPCA understands that the intention of Part I of the Bill is to allow Scottish Ministers to act quickly in the event of a future exotic disease outbreak. The Scottish SPCA played a significant role in addressing the 2001 Foot and Mouth Disease (FMD) crisis and is aware of the welfare problems created by such an outbreak.

The Scottish SPCA is opposed to the mass culling of healthy animals and resolutely believes that the slaughter of animals should not routinely be regarded as a welfare option. **Therefore, the Society would only accept**

such slaughter on the basis of the latest available scientific and veterinary advice.

Because of this, the Society welcomes the policy intention that these extensive powers would only be used in the event of a serious and fast-spreading disease outbreak. As the accompanying documents of the Bill are not legally binding, **the Society would welcome a statement in the Scottish Parliament from the Minister confirming this policy intention.**

The Scottish SPCA firmly believes that prevention of animal diseases must be a priority for the Scottish Executive. The preventative clauses in the Bill, such as measures on biosecurity, deliberate infection and animal gatherings are therefore welcomed.

In the event of an outbreak of FMD or another notifiable disease, the Scottish SPCA believes that an independent monitor should be appointed to oversee the welfare of the animals at slaughter. The Society has acted in this way in the past (in the FMD outbreak of 2001) and would be happy to offer the assistance and expertise of its Inspectors again. The Society has been involved in Scottish Executive contingency planning on both FMD and, more recently, Avian Influenza.

Part II Animal Welfare

The Scottish SPCA strongly welcomes part II of the Bill. While the Protection of Animals (Scotland) Act 1912 (hereinafter referred to as the 1912 Act) has proven satisfactory in addressing clear-cut cases of causing unnecessary suffering to an animal, it has generally proved inadequate in *preventing* cruelty and suffering in animals. Scottish SPCA Inspectors have frequently encountered situations in which animals have been in situations of neglect or distress but have not actually been deemed to have suffered unnecessarily, meaning that no action could be taken.

The 1912 Act also has shown itself to be inflexible and difficult to change. As a result, numerous amendments to the Act have been passed in the ninety-three years since it came into force. These have meant that animal welfare has been tackled in a piecemeal and generally inconsistent way. This is reflected in the fact that some animal related activities, such as animal boarding establishments require licensing and inspections whereas others, such as animal sanctuaries, do not.

The Scottish SPCA is satisfied that, in the main, part II of the Animal Health and Welfare Bill suitably tackles the inadequacies in the 1912 Act. The detailed comments that follow will focus primarily on areas that we feel do not adequately replace the 1912 Act, and on those areas that we would like to see the Bill take further.

Definition of animal

The Scottish SPCA would support a broadening of the definition of “animal” under the Bill to include certain cephalopods and crustaceans.

Protected Animal

Scottish SPCA Inspectors have raised the concern that the definition of “protected animal” (Section 15) may lead to confusion as to whether under the control of man is the direct control (e.g. keeping a rabbit in a hutch) or inadvertent control (e.g. seagulls becoming trapped under netting). We therefore feel that clarification of the definition is required.

Unnecessary suffering

Scottish SPCA Inspectors have generally found the 1912 Act to be comprehensive in its application to cases where unnecessary suffering has been caused. Whilst understanding the need to update the archaic language contained in the 1912 Act, the Society has some concerns that Section 17 does not explicitly offer as full protection to animals subject to mental suffering as the 1912 Act does. Although the explanatory notes do state that the offence under Section 17 is intended to apply to both mental and physical suffering, **the Society would welcome this made clear on the face of the Bill.** Scottish SPCA Inspectors have had successful prosecutions of animals caused unnecessary suffering through being terrified and we can provide further details on these cases if required.

The Scottish SPCA abhors the practice of feeding live bait to animals and considers that it is unnecessary in all but a very small minority of cases. Therefore regard should be had to including this under Section 17.

The use of the terms ‘appropriate and humane’ in relation the destruction of an animal contained both in Section 17(5) and 22(4) causes some concern. **We would like to see this clarified by means of a code of practice detailing what exactly is deemed appropriate and what is humane in destroying an animal.**

Mutilation

The Scottish SPCA warmly welcomes the new offence of mutilation contained under Section 18 of the Bill. The Society is opposed to the routine docking of dogs’ tails and **advocates a complete ban on this practice except in situations of emergency pain relief.** There does not appear to be sufficient evidence to warrant the continuation of tail docking in any dogs, and the Society looks forward to contributing more to this debate throughout the passage of the Bill.

Animal fights

The offence contained under Section 21 relating to animal fights is very much welcomed, and the Scottish Executive is to be applauded on the inclusion of a specific offence for possessing equipment designed or adapted for use at an animal fight. This is currently enshrined in the Cockfighting Act 1952 but does not apply to all animal fights.

The Scottish SPCA considers that the Bill is an ideal place to legislate against the recording of animal fights. Scottish SPCA Inspectors have been made aware of videos of animal fights being used to promote animal fights. This clearly makes the recording and possession of recordings of such fights a major welfare concern.

Ensuring the welfare of animals

The Scottish SPCA strongly welcomes the creation of a specific offence of failing to ensure an animal's welfare needs.

Despite significantly altering the threshold for legally acceptable standards of animal care, it is unlikely that this new offence will result in an explosion in prosecutions for everyone failing to meet the welfare needs of their animal. Rather, this offence will allow Inspectors to intervene at an earlier stage to safeguard an animal's welfare if deemed necessary, and will provide a valuable deterrent to those very few animal owners that keep their animals on the boundaries of acceptable and unacceptable welfare standards.

Like Mike Radford, the first witness to give evidence in front of the committee, the Society advocates the use of "Animal Care Orders", which will state in writing where a person has gone wrong in relation to the welfare needs of an animal. Coupled with Codes of Practice drawn up under the Bill, this offence will also be a valuable educative tool in informing animal owners of their responsibilities towards their animal, and will serve to strengthen cases in which multiple offences have been committed.

The needs as defined under Section 21 of the Bill are based loosely on the "Five Freedoms" as set out by the Farm Animal Welfare Council. The Scottish SPCA suggests that these needs should include an animal's need to be protected from fear and distress as contained in the Five Freedoms.

Licensing etc of animal related activities

The Scottish SPCA strongly welcomes the provisions for ensuring the welfare of animals, through licensing, registration or regulations. The Society recognises that enabling Scottish Ministers to legislate specifically on animal welfare under sections 23 and 24 allows for greater flexibility and responsiveness in law-making. This is vital due to the evolving nature of animal welfare science.

However, the Scottish SPCA has some concern over the schemes described in the financial memorandum accompanying the Bill for the inspection of licensed and registered premises. It is proposed that activities currently subject to annual licensing and inspection will, under the Bill, be subject to three year licenses with annual inspections only occurring on the premises deemed to be 'high risk'. 'Medium risk' premises would be inspected every 18 months, and 'low risk' premises every three years. **The Society believes that the current annual inspections are necessary to safeguards the animals' welfare.** Additionally, it is not clear how the risk status of these

establishments would be categorised, and the Scottish SPCA looks forward to further debate on this issue.

The Scottish SPCA welcomes the Bill's intention to bring about secondary legislation relating to animal sanctuaries, but considers that there are problems with the proposals relating to this as detailed under the financial memorandum accompanying the Bill. The Society is concerned that these will not be licensed but rather the fifty largest will be registered and subject to five-yearly inspections. The Scottish SPCA deals with a small number of cases each year where an individual takes in animals with the intention of caring for them, and very soon finds that the means, the accommodation and the financial resources are inadequate. Often these problematic sanctuaries are not large sanctuaries and thus, under the proposed regime, would be exempt from either registration or inspection.

Furthermore, five-yearly inspections are unlikely to prove satisfactory in addressing welfare problems within sanctuaries, with five years exceeding the life expectancy of some small animals.

The Scottish SPCA is also concerned that the Scottish Executive does not intend to bring about secondary legislation on animal sanctuaries until 2008. This is a pressing issue that needs to be addressed soon after the Bill is passed, and the Society would welcome movement on the issue in the nearer future. **The Society would therefore urge the Environment and Rural Development Committee to request that the Executive reconsider the intention to register the fifty largest animal sanctuaries in 2008, and instead to seriously consider a licensing scheme for animal sanctuaries.**

Abandonment

The Scottish SPCA welcomes the inclusion of a separate offence of abandonment under the Animal Health and Welfare Bill. Scottish SPCA control centres received over 1,400 telephone calls from members of the public regarding abandoned or suspected abandoned animals in 2004.

However, the Society has very real concerns that the offence as detailed in the Bill will actually offer less protection to animals in Scotland than is currently offered under the Abandonment of Animals Act 1960. This Act makes it an offence "to cause or procure the abandonment of an animal, temporarily or not, in circumstances likely to cause suffering", making abandonment an offence regardless of whether or not the animal has actually suffered.

The offence as contained in the Bill significantly weakens current legislation by stipulating that a person abandons an animal if the person fails to make adequate provision for its welfare. These provisions are defined on the face of the Bill. This means that an animal may be 'abandoned' for a significant period of time, but as long as certain provisions have been made by its owner, no offence has taken place

The Scottish SPCA therefore believes that the abandonment offence should be redrafted to ensure that an offence is committed if an animal is abandoned, temporarily or not, in circumstances likely to cause suffering.

Sale of animals to children, Offering animals as prizes

The Scottish SPCA strongly welcomes the above provisions and considers them in line with modern attitudes towards animals.

Animals in distress

The Scottish SPCA welcomes that an inspector or a constable may act to alleviate an animal's suffering both if it is suffering and if it is likely to suffer. This underpins the offence detailed at Section 22, and will assist in the prevention of suffering.

Post-conviction orders

The post conviction orders, as detailed at Sections 35, 36 and 38 will serve well to protect animals from individuals convicted of offences under the Bill. Particularly welcome is the requirement for the court to state its reasons for failing to impose a deprivation or disqualification order.

The Scottish SPCA has been involved in cases in which a disqualification order is imposed upon a person for an offence under the 1912 Act, but where animals kept by other people in the same household are cared for by the disqualified person. The provision at 36(3) that a disqualified person is also disqualified from being party to arrangements under which the keeping of animals may be controlled or influenced is therefore extremely important.

The Sewel Motion to ensure parity between disqualification orders north and south of the border is very much welcomed the Scottish SPCA. The Society has been involved in a number of cases in which an individual, disqualified for animal cruelty offences in England, has come to Scotland and breached animal welfare legislation.

It would be desirable for disqualification orders to be available to the courts in cases when an offence under Section 25 (Abandonment) has taken place.

Proceedings for animal fighting offences

The Scottish SPCA welcomes the extension of the time period for bringing proceedings forward for animal fighting offences from 6 months to 3 years. Animal fighting cases often require lengthy evidence-gathering.

However, this should be extended to other offences under the Bill. Evidence relating to offences involving neglect or cruelty often takes longer to gather than other offences. Scottish SPCA Inspectors have frequently been involved in cases in which a significant piece of evidence has come to light after the six

month period is up. In most cases, this problem is simply because the victims in animal related offences cannot themselves testify as witnesses. **The draft Animal Health and Welfare Bill initially included this extension for all offences under the Bill and the Society would like to see an amendment to the Bill that would reinstate this.**

Penalties for offences

The increased penalty of £20,000 and six months imprisonment is strongly welcomed. However, it would be desirable for this increased penalty to apply also to acts of deliberate and malicious cruelty against animals, and acts of cruelty which generate significant profit to the perpetrator. **An amendment to this effect is required.**

Inspectors and constables

The policy intention to individually authorise Scottish SPCA Inspectors to act under Sections 29-32 of the Act is strongly welcomed. The Scottish SPCA currently exercise a wide range of functions connected with animal welfare, such as: applying for warrants through the Procurators Fiscal; certain powers deriving from the 1912 Act coupled with its current status as a reporting agency; together with common law powers to intervene in cases of necessity.

Scottish SPCA Inspectors currently undergo a rigorous five-month training period, in which time they are taught and examined on a wide range of legislation relating to animal welfare. The Scottish SPCA training manual is Crown Office approved. Inspectors are also encouraged to develop expertise in specialist areas of animal welfare, from the welfare of farmed animals to the welfare of exotic animals. All new Inspectors are recruited from a background in animal husbandry, with an emphasis on livestock. **It is therefore appropriate that the codification of powers of inspectors to deal with animals in distress be extended to individual Scottish SPCA Inspectors on completion of their training.**

Expenditure, training and expertise

The Scottish SPCA has concerns over the assertion that the welfare part of the Bill will incur “no net effect” on the expenditure of local authorities”. **The Bill will require significant investment both into manpower and expertise in order for local authorities to carry out the additional functions outlined under the Bill and in proposed secondary legislation.** By their very nature, these bodies have traditionally been involved in cases of licensing, animal health matters and issues of commercial animal welfare. Therefore investment would be required in training on issues relating to the welfare of companion, exotic and captive wild animals.

Additional information

The Scottish SPCA will be pleased to supply any further information about its work to the Committee. All committee members have been invited to spend

time with a Scottish SPCA Inspector in their constituency, and this offer applies throughout the passage of the Bill through Parliament.

Summary of Key Points:

The Scottish SPCA:

- **Supports the general principles of the Animal Health and Welfare (Scotland) Bill**
- **Maintains reservations about the potentially excessive use of precautionary slaughter powers**
- **Would like to see the Bill explicitly make an offence of causing mental suffering to an animal**
- **Has concerns over the meaning of “appropriate and humane” destruction in the Bill**
- **Would like to see the Bill ban all tail docking in dogs except for in situations of emergency pain relief**
- **Would like to see the Bill make an offence of recording, possessing or distributing the recording of animal fights**
- **Has concerns over the reduction of inspections of licensed premises to three years, and urges the Committee to ask the Executive to review their intentions on this**
- **Wishes to see the time period for proceedings relating to all offences extended to three years**
- **Wishes to see the penalties for acts of deliberate and malicious cruelty aligned with those of animal fighting under the Bill**

SUBMISSION FROM HM REVENUE AND CUSTOMS

INTRODUCTION

1. This memorandum is in response to the request for comments from HM Revenue & Customs (HMRC) on the Animal Health and Welfare (Scotland) Bill; in particular, enforcement and regulation of the provisions, including offences, licensing and inspection.
2. We understand that there are no proposed import/export controls in this Bill.

THE ROLE OF HMRC

3. HMRC's responsibilities for the control of third country imports and exports of animals are defined within EU and national legislation. Domestic and Intra-EU traffic moving in free circulation is not subject to customs controls and therefore not a matter for HMRC to enforce.

LEGISLATIVE FRAMEWORK

4. HMRC deal with imports and/or export of:
 1. Live Animals
 2. Flora, fauna, and their parts or derivatives listed under The Convention on International Trade in Endangered Species of Fauna and Flora (CITES)
 3. Products Of Animal Origin (POAO)
5. HMRC's high-level responsibilities are outlined below:

Live Animals

6. HMRC carry out import controls in relation to traffic to and from third countries in accordance with Commission Regulation 282/2004 of 18 February 2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community.
7. HMRC check the third country import declaration to confirm the competent authority has issued a relevant health certificate or permit, and withhold clearance where that certificate or permit has not been issued. The State Veterinary Service (SVS) take charge of uncleared animals.

The Convention on International Trade in Endangered Species of Fauna and Flora (CITES)

8. HMRC enforce import and export controls in relation to traffic to and from third countries in CITES listed species and their parts or derivatives in accordance with:

- Council Regulation (EC) No 338/97 of 9 December 1996 (on the protection of species of wild fauna and flora by regulating trade therein)
 - Commission Regulation (EC) 1808/2001 of 30 August 2001 (laying down detailed rules concerning the implementation of Council Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein)
9. These European Regulations impose controls designed to regulate throughout the Community the movement of endangered species. HMRC contributes to a multi-agency approach to prevent and deter the illegal international trade in endangered species by:
- ensuring that declared trade is accompanied by the correct documents
 - detecting illegal goods at import or export and taking enforcement action including seizure and confiscation of the goods and prosecution in appropriate cases.

Products of Animal Origin

10. The legislative basis under which Customs operates in Scotland is The Products of Animal Origin (Third Country Imports) (Scotland) Regulations, as subsequently amended (SSI 2002 no 445). This draws its legal base primarily from
- Council Directive 97/78/EC of 18 December 1997, laying down the principles governing the organization of veterinary checks on products entering the Community from third countries;
 - Commission Regulation (EC) 745/2004 of 16 April 2004 laying down measures with regard to imports of products of animal origin for personal consumption.
11. HMRC check the third country import declaration to confirm the competent authority has issued a relevant health certificate or permit, and withhold clearance where that certificate or permit has not been issued.
12. HMRC are responsible for anti-smuggling controls, deterring and detecting illegal third country imports into Great Britain and targeting resources on those routes of entry considered to make the greatest contribution to the flow of disease. HMRC seize offending items and arrange for disposal by incineration, in compliance with the Animal By-Products Regulations.

Customs & Excise Management Act 1979

13. General customs' requirements in relation to imports and exports are common throughout the EU and are set out in Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code. HMRC's enforcement powers are mainly derived from the Customs and Excise Management Act 1979 (CEMA), which sets out the principal offences and

sanctions in the event of an illegal import or export. The most relevant provisions are:

Section 49: makes imported prohibited and restricted goods liable to forfeiture;

Section 68: makes prohibited and restricted goods at export liable to forfeiture, and creates offences in relation to their export;

Section 139: powers to detain or seize goods liable to forfeiture;

Section 141: powers to seize goods packed or found with goods liable to seizure;

Section 167: offences in relation to false or reckless declarations or documents;

Section 170: offences in relation to the import of prohibited and restricted goods.

THE ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

14. The following areas are of interest to HMRC:

- clause 3: Biosecurity Codes
- clause 9: Deliberate Infection of Animals
- part 2 (clause 14 et seq): Animal Welfare
- clause 25: Prohibition on keeping certain animals.
- clause 49: Crown Application
- clause 8 of schedule 2: repeal of the Docking and Nicking of Horses Act 1949

Clause 3 – Biosecurity Codes

15. The clause that impacts on HMRC is the insertion of section 6F (Samples - Further Testing) into the Animal Health Act 1981. This new section provides for testing of specimens taken from animals.

16. We are content in principle to make any seized (CITES listed) animals or products available for testing. However, we would need to ensure that any agreed testing arrangement complied with the Animal By-Products Regulations.

Clause 9 – Deliberate Infection Of Animals

17. This clause introduces, for example, a new section 28C to the 1981 Act installing an offence if someone takes possession of an animal or bird (or carcass thereof) which the person knows, ought reasonably to know or reasonably suspects to be infected with a disease specified in Schedule 2B to the 1981 Act.

18. This impacts on HMRC controls in that where we seize CITES animals or birds, or carcasses under either our CITES or POAO powers, it may be apparent that the animal, bird or carcass is diseased. We believe our possession of the animal, bird or carcass in such circumstances would be considered as "lawful authority or excuse".

Part 2 (clause 14 et seq) – Animal Welfare

19. We use trained dogs and handlers to search for illegally imported prohibited or restricted goods including drugs, cash, tobacco and products of animal origin. This Bill introduces new and strengthened legislation to prevent cruelty, promote welfare and protect animals in distress. We place a high value on the welfare of our dogs, and are content with the welfare responsibilities this Bill will bring to HMRC.

Clause 25 – Prohibition On Keeping Certain Animals – link with CITES

20. This clause creates an enabling power to introduce legislation to prohibit the keeping of certain animals at certain premises in Scotland.
21. In contrast, Council Regulation 338/97 sets down the rules relating to introduction of CITES animals into the Community. It establishes a system of permits and requires that they are issued only when the competent scientific authority is satisfied that the intended accommodation is adequate to conserve and care for the live animal properly. The Joint Nature and Conservation Committee (JNCC) are the UK's competent scientific authority and permits are issued by the Management Authority – Defra in the UK.
22. Our view is that should any animal, even one prohibited within the meaning of clause 25, be presented to HMRC, we may only refuse to allow entry into the UK if a CITES or another customs irregularity was identified. This means that if, for example, an animal prohibited within the meaning of clause 25 were CITES listed, and had the relevant permits to allow importation, we would not be able to refuse. In that context we also note that the example used in the policy memorandum relates to primates, which are all CITES listed.
23. We arrange for the care and welfare of any animal we seize, and take this role seriously, particularly as they are endangered or rare species. The animal will typically be housed at a secure Animal Reception Centre or other specialist premises. They may be being held as evidence in court proceedings. We must be able to secure the chain of evidence for any such proceedings.

Clause 8 of schedule 2 – Docking And Nicking Of Horses

24. This Bill repeals the Docking and Nicking of Horses Act 1949 and installs the offence of carrying out a prohibited procedure (clause 18). The approach in the England and Wales Animal Welfare Bill has been to repeal section 1 of the 1949 Act and amend the definition of "docking" in Section 3.

25. The effect of these Bills, as drafted, will thus be to create an import prohibition covering part of the UK only; the result being that it would be completely lawful to import a docked/nicked horse into Scotland and transport it into England, thus avoiding the import prohibition applicable there. We understand that this was not the intention, and that both Defra and SEERAD propose to introduce amendments to the relevant clauses in the two Bills to ensure that the import prohibition applies across the UK.

SSI DESIGNATION FORM

SSI Title & No:	The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations 2005, (SSI 2005/599)					
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	These Regulations consolidate and replace the provisions of the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations 2000. The Regulations implement Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC (as amended) and establish a legislative framework for the control of pesticide residues in food.					

Laid Date	30 th November 2005	40 day date	24 th January 2006
1st SLC Meeting	6 th December 2005	20 day date	20 th December 2005
Lead Committee Report Due	16 th January 2006	Other Committee Report Due	

SE Contact	Mary Lourie, ext. 44403
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes	See Schedule 4		Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment	✓	European Regulations/ Directives	90/643/EEC, 86/362/EEC, 76/865/EEC, 86/363/EEC, 2005/37/EC, 2005/46/EC, 2005/48/EC			
Additional Information	Transposition Note							

SSI DESIGNATION FORM

SSI Title & No:	The Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2005, (SSI 2005/614)					
Responsible Minister	Rhona Brankin, Deputy Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	These Regulations amend the Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2001 to permit the placing on the market of 7 fuels named in the Order for use in smoke control areas. The Regulations also amend the details of 3 fuels which have previously been authorised.					

Laid Date	1 st December 2005	40 day date	25 th January 2006
1st SLC Meeting	13 th December 2005	20 day date	21 st December 2005
Lead Committee Report Due	16 th January 2006	Other Committee Report Due	

SE Contact	Linda Story, ext. 41521
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes				Partially Revokes			
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives				
Additional Information								

SSI DESIGNATION FORM

SSI Title & No:	The Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2005, (SSI 2005/615)					
Responsible Minister	Rhona Brankin, Deputy Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	This Order exempts those fireplaces described in column 1 of the Schedule, and which comply with the conditions specified in column 2, from the prohibitions under section 20 of the Clean Air Act 1993. The Order also amends SSI 1999/58 to extend an existing class description of exempted fireplace and the conditions to be complied with in relation to it.					

Laid Date	1 st December 2005	40 day date	25 th January 2006
1st SLC Meeting	13 th December 2005	20 day date	21 st December 2005
Lead Committee Report Due	16 th January 2006	Other Committee Report Due	

SE Contact	Linda Story, ext. 41521
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes				Partially Revokes			
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives				
Additional Information								