Briefing for the Public Petitions Committee

Petition Number: PE1196

Main Petitioner: Michael Brander

Subject: Calls on the Parliament to urge the Scottish Government to amend the Animal Health and Welfare (Scotland) Act 2006 as a matter of urgency to allow for the tails of working dogs to be docked.

What is tail docking?
According to the British Veterinary Association (BVA) tail docking is a term used to describe the shortening of an animal’s tail by amputation. It can be done surgically or by placing a specialised band over a puppies' tail at 2-8 days old that cuts off the blood supply to the end of the tail, which comes away within 3 days (Council of Docked Breeds).

Reasons for tail docking and criticism
The BVA refers to therapeutic tail docking, which corrects or repairs an injury to a dog’s tail; and to non-therapeutic docking, which is usually carried out in infancy, and can be divided into two types:

(i) Cosmetic docking– so that the dog conforms to a breed standard
(ii) Preventative/prophylactic docking – certain working breeds are docked as a precautionary measure based on the premise that the tail may suffer damage in later life when the dog is working.

Working dogs are generally used for hunting or pest control. The petitioner states that spaniels and “hunt, point and retrieve” breeds are “liable to damage long tails when working eagerly in thorny bushes or undergrowth, also working terriers, that may need to be extracted from burrows or rat-holes by their tails, which, if not docked are easily broken”. Advocates of tail docking argue that it does not cause pain if carried out correctly, and that injuries to tails in later life can cause pain and suffering and are difficult to treat and heal. However, critics argue that the operation causes pain; that the tail performs an important role in body shape, function and communication; and that there is little scientific evidence that working dogs are prone to such injuries.

The law in Scotland
Section 20(1) of the Animal Health and Welfare (Scotland) Act 2006 makes it an offence for a person to carry out a “prohibited procedure” on a “protected animal”. By virtue of the Act’s definitions of these terms, this offence covers the tail docking of dogs. There is an exception in the Act in relation to a procedure carried out for the purpose of medical treatment of an animal. Section 20(3) of the Act also makes it an offence for a person to take a protected animal from a place in Scotland for the purpose of having a prohibited procedure carried out on the animal at a place outwith Scotland. This provision does not appear to prevent a dog owner from taking a pregnant
dog outside Scotland for the purpose of tail docking the puppies of that dog in another jurisdiction. A recent BBC News report noted that this was occurring. Note, however, that there are regulations on commercial transport of pregnant animals.

The law in other UK jurisdictions
In England and Wales, tail docking of dogs is an offence except (a) if it is for the purpose of medical treatment; or (b) if the dog is a certified working dog that is not more than 5 days old: Animal Welfare Act 2006, section 6. A dog is certified as a working dog if a veterinary surgeon has certified:

(i) That there has been produced to the surgeon such evidence as the regulations may require for the purpose of showing that the dog is likely to be used for work in connection with certain activities (eg lawful pest control, lawful shooting of animals); and
(ii) That the dog is of a type specified by regulations.

There are different regulations in England and Wales. The Docking of Working Dogs’ Tails (England) Regulations 2007 specify the following types of dog: hunt point retrieve breeds of any type, spaniels of any type, and terriers of any type. The Docking of Working Dogs’ Tails (Wales) Regulations 2007 specify the same types of dog but restricted to certain types of breed.

In Northern Ireland, tail docking of dogs is not an offence but the operation must be carried out by a qualified veterinary surgeon (Veterinary Surgeons Act 1966) and the operation must be carried out with anaesthetic unless it is performed before the dogs’ eyes are open: Welfare of Animals Act (Northern Ireland) 1972, article 14(1)(a) and Schedule 1.

Scottish Executive and Parliament Action
In 2004, the Scottish Executive released a consultation on a proposal to revise animal welfare legislation. The analysis of responses noted that 232 responses addressed the issue of whether tail docking should be banned and whether there should be any exceptions.

In October 2005, the Executive introduced the Animal Health and Welfare (Scotland) Bill into Parliament, which provided for an offence of tail docking. The Executive stated that regulations would create an exception to the offence “…where [a] veterinary surgeon is satisfied that dogs from the litter are likely to be used as working (gun or sniffer) dogs”.

The regulation of tail docking was a “hotly disputed” issue in the Environment and Rural Development Committee’s Stage 1 inquiry on the bill. The Committee’s Stage 1 report stated (in part):

“In principle, the Committee considers that the arguments advanced for prophylactic docking of working dogs’ tails do not apply consistently across all dogs which may be described as ‘working dogs’ and still owe a considerable amount to breed standards and tradition. The Committee considers that there are also very significant problems about how any
exemption for working dogs may be formulated and applied in practice and heard a range of conflicting evidence on this issue.”

The Executive’s response to the Committee’s report stated that “…after considering all the available evidence…and the many potential difficulties which there would be with an exemption from the ban for working dogs, we have decided to impose a total ban on the tail docking of dogs.” It added, “if after the ban is in force it becomes apparent that there is an increase in tail injuries, it would still be possible to create an exemption for working dogs.” A number of non-Executive amendments were lodged at Stages 2 and 3 that would have introduced this exemption, but they were not successful.

On 12 October 2006, the Executive released a consultation on draft regulations on procedures to be exempted under section 20 of the Animal Health and Welfare (Scotland) Act 2006. The draft regulations did not include an exemption from the offence of tail docking for working dogs but comments were invited on this. The summary of responses noted that this issue “proved to be the most controversial question in this consultation”. The regulations ultimately did not contain an exemption for tail docking of working dogs. The Executive Note to the regulations explained:

“IT was not seen as necessary to allow the tail shortening or docking of working dogs, as the strength of evidence produced by those who supported tail docking/shortening was insufficient. The veterinary professional bodies were not convinced that an exemption for working dogs was necessary.”

The Scottish Government has recently contributed £10,000 towards a study to document the risks of tail injuries in dogs in the UK, to evaluate whether docking of tails reduces the risk of tail injury and to identify other major risk factors for tail injury. The study began in October 2007 and is being undertaken by the University of Bristol and the Royal Veterinary College. The study was to take 12 months but this has been extended by six months.

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