ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Animal Health and Welfare (Scotland) Bill introduced in the Scottish Parliament on 5 October 2005. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 47–EN.

POLICY OBJECTIVE OF THE BILL

Overview

2. The Bill has 2 main themes. The first is to enhance the ability of the Scottish Ministers to respond to an animal disease outbreak and to minimise the risk of disease spreading. The second is to modernise, strengthen and consolidate Scottish animal welfare legislation for domestic and captive animals. This will include a duty to ensure the welfare of animals for which people are responsible and enable steps to be taken to remove animals at risk of suffering, thus preventing animal cruelty before it actually happens. The effect of the Bill will be to protect Scotland’s important livestock industry from the worst effects of fast spreading diseases and to ensure animals are protected from abuse and unnecessary suffering as well as introducing a new duty of care to ensure that animals are adequately housed, properly fed and able to exhibit normal behaviour.

Background

3. Following the Foot and Mouth Disease (FMD) outbreak in 2001 and the Reports from the subsequent Inquiries, it was clear that the powers available to Ministers in the Animal Health Act 1981 (“the 1981 Act”) needed to be reviewed. Since 1981 there have been a number of developments in the science of disease control, these include the identification of new and emerging disease threats and heightened awareness of disease risks. Although the 1981 Act broadly served its purpose in controlling the spread of and eradicating FMD, there was a view that the legislation should be revised to make some powers more explicit and to increase the disease control powers to make the legislation relevant to new and emerging diseases. Building upon the existing legal base of the 1981 Act, the Scottish Executive Environment and Rural Affairs Department consulted in February 2003 on initial proposals for changes to that Act and on new powers also to deal with animal disease. There were 31 responses to that consultation. In general, the proposals for legislation were welcomed. Since then work has continued with stakeholders to refine these proposals which are now set out in the Bill.
4. The Scottish Executive Environment and Rural Affairs Department issued another consultation paper, in March 2003, this time on proposals to amend the Protection of Animals (Scotland) Act 1912. These proposals were aimed at addressing the specific problem of the lack of statutory powers available to local authorities to remove neglected farm livestock to a place of safety. The responses from a number of organisations indicated that there was a clear desire for a much wider reform of existing animal welfare legislation. This Bill now consolidates and updates that legislation, retains and strengthens the specific offences of animal cruelty and animal fighting and sets out obligations on people to promote and ensure the welfare of all animals (including domestic pets) for which they are responsible.

5. Since the 1912 Act was implemented there has been increasing public awareness that an animal does not suffer solely as a result of physical abuse caused by deliberate acts or neglect. There is equal concern about the quality of an animal’s life, its general welfare and its environment. It is felt, at least by some animal welfare organisations, that mainly due to legislation from the European Community, these needs have to an extent been addressed in the legislation now in place for farm livestock, animal transport and animals in zoological collections. However, there is some concern that the legislation for domestic, companion, and sport animals is confusing, unwieldy, insufficient and outdated. This Bill intends to address these issues by modernising, strengthening, and improving the existing legislation. It also gives Scottish Ministers the power to introduce secondary legislation to regulate a range of animal businesses and activities and for them to give advice on animal welfare by issuing statutory Codes of Practice.

**ANIMAL HEALTH (PART 1)**

**Introduction**

6. The intention behind amending the 1981 Act is to maximise the ability of Scottish Ministers to respond swiftly to a serious animal disease outbreak and to minimise its impact on animal health and welfare and on society as a whole. Some of the powers provided by the health provisions of the Bill would only be used in a confirmed fast spreading animal disease outbreak, and would affect mainly livestock species such as sheep, cattle, pigs, goats, poultry and farmed deer, although in certain circumstances other species may be involved, depending on their susceptibility to the disease in question. The Bill also includes provision aimed at increasing the level of biosecurity (management practices to reduce the possibility of disease occurring or spreading) within the Scottish agricultural and related industries. The powers being sought would support a wider programme of work designed to minimise the risk of disease occurring and/or spreading, and where it does emerge, a swift response to eliminate it.

7. It is hoped that the new slaughter powers contained within the Bill will never have to be used. However, they are considered essential to support an effective and speedy response to disease outbreaks where they do occur. The Bill reflects developments in science, better understanding of disease risk, and lessons from recent animal health and welfare experiences, for example Bovine Spongiform Encephalopathy (BSE) and FMD.

8. The Bill also takes into account the conclusions of Lord Phillips’ Inquiry (1999) into BSE. Finding 156 stated: “Where an animal disease is identified, which could be transmitted to animals or humans via a range of possible routes, powers under UK and European law which
enable Ministers to order the slaughter of animals, and the destruction of animal tissues or anything which might carry infection, should not be restricted merely because it cannot be established as a reasonable probability, as opposed to mere possibility: that the disease is transmissible; or that a particular animal may be affected by the disease in question; or that particular organs or tissues in an animal may carry infection”. Underlying science on animal disease is continuing to develop, particularly in areas such as vaccination against disease and in Transmissible Spongiform Encephalopathy (TSE) research. The powers contained in the Bill maximise the flexibility to use future scientific and veterinary developments in any disease control response, as soon as they are available.

**Power of Slaughter to Prevent Spread of Disease**

9. The proposed new slaughter powers in section 1 of the Bill extend existing slaughter powers in the 1981 Act which generally relate to animals affected, suspected, exposed to or in contact with disease. The new powers could mean the slaughter of animals not subject to any of the 4 criteria mentioned above, yet nonetheless having the potential to spread disease. The use of the power would be determined by Scottish Ministers on the basis of veterinary and scientific advice.

10. The proposed new powers would apply to the diseases named in the new Schedule 3A and to any other fast spreading disease of animals (as defined by section 87 of the 1981 Act) that the Scottish Ministers may by order specify. The use of the powers by Scottish Ministers would not be automatic and would only be required where other preferred disease control options were proving insufficient to deal with the specific circumstances of the disease outbreak. Viruses can, for example, be wind-borne and travel considerable distances, possibly necessitating a swift response to minimise the risk of disease taking hold in new areas of the country.

11. The new powers in paragraph 6 of Schedule 3A would allow the slaughter of animals (meaning any mammal except man) amphibians and birds to prevent the spread of any disease of animals (defined by section 87 of the 1981 Act) (including those diseases covered by paragraphs 1 -5). These powers would be necessary if an animal disease which affected farmed livestock was being transmitted by wild animals. For example, wild animals such as foxes can transmit diseases to farmed animals and in order to control an outbreak of disease it may be necessary to slaughter foxes.

12. The new powers would also allow the slaughter of animals that had been vaccinated against disease. While this would not be the preferred policy route – for example, the Scottish FMD Contingency Plan highlights Ministers’ preference for a vaccination to live approach – the power may be needed given the potential that infection can be masked by vaccination. It is possible that a vaccinated animal could be infected prior to its vaccination yet show no clinical signs of disease. Such a vaccinated animal poses a risk to others. Current science does not allow a simple differentiation to be made between a vaccinated animal and an infected animal. While the potential of such disease carrier status is low for currently known strains of, for example, the FMD virus, it is possible that future strains may show a greater tendency to produce the carrier state.
13. Scottish Ministers would be required to pay compensation in respect of any animal (as defined by section 87 of the 1981 Act) slaughtered under these new powers. An order under the 1981 Act could be made to allow compensation to be paid for other birds or animals or amphibians slaughtered if that was considered appropriate. The power to determine, by order, compensation rates for diseases, where animals are slaughtered, would allow the Scottish Ministers to specify the appropriate monetary value at the time at which the slaughter takes place. A decision on the level of compensation cannot reasonably be made until the exact circumstances of the particular animal disease outbreak are known.

14. In short, the section 1 powers would enhance Scottish Ministers’ ability to tackle disease outbreaks where they emerge, though in reality the more traditional disease control methods should mean that the use of these extended powers will be exceptional.

**Slaughter of treated animals**

15. Section 2 of the Bill provides a power to the Scottish Ministers to slaughter any animal (meaning any mammal except man) or bird which has previously been treated with serum or vaccine or both to prevent the spread of disease. Their subsequent slaughter would be for the purpose of obtaining, or contributing to the obtaining of, disease free status. This power applies to animals treated in relation to the diseases listed in section 16B(1) of the 1981 Act. However, by virtue of subsection (2) of section 16B, Ministers would also be able to extend, by order, the power to slaughter treated animals or birds to prevent the spread of other diseases of animals currently unknown or, where known, where its nature might radically change. The order once laid would cease to have effect if not approved by resolution of the Parliament within 28 days except where Parliament is dissolved or in recess.

16. For any disease which is potentially fast spreading, treatment by vaccine may, or may not, be entirely effective across all the animals receiving treatment. In the case of a new disease, there may be considerable uncertainty as to its nature – number of viral strains, likelihood of genetic re-assortment to produce new strains, etc. A significant body of scientific work would be necessary to characterise the new disease. For all these reasons, it might be considered of greater benefit to slaughter treated animals or birds to regain disease free status earlier than might otherwise be provided for in international or EU terms.

17. Scottish Ministers would be required to pay compensation for any animal (as defined by section 87 of the 1981 Act) slaughtered under this power. An order under the 1981 Act could be made to allow compensation to be paid for other birds or animals slaughtered if that was considered appropriate. The power to determine, by order, compensation rates for diseases where animals are slaughtered would allow the Scottish Ministers to specify the appropriate monetary value at the time at which the slaughter takes place. A decision on the level of compensation cannot reasonably be made until the exact circumstances of the particular animal disease outbreak are known.

**Biosecurity Codes**

18. Section 3 of the Bill makes provision for Scottish Ministers, by order, to issue biosecurity codes. Biosecurity, meaning measures taken to reduce the risk of animal disease occurring or spreading to other animals or to humans, is fundamental to preventing and/or controlling the
outbreak of another fast spreading disease similar to FMD in 2001. The proposed power would allow Scottish Ministers, by order, to make a number of codes to deal with a range of scenarios relevant to particular diseases of animals (as defined by the 1981 Act) and groups or species of animals (meaning any mammal except man) amphibians or birds. For example, Scottish Ministers may wish to issue a code for cattle and a separate one for sheep. Similarly, it may be considered prudent to issue separate codes for individual animal diseases depending upon the threat each disease presents. As animal diseases can spread between farmed and non-farmed animals the power to extend biosecurity codes to other animals is required. This would give the Scottish Ministers a further tool to combat a disease outbreak. Biosecurity codes will be of particular significance during a serious disease outbreak but would also apply on a day to day (non-outbreak scenario) basis. Scottish Ministers may choose initially to issue only one code to cover a large number of specified animals, for example livestock. In summary, flexibility is necessary to allow: more than one code to be made given the wide range of diseases that exist; for a code to relate to a new disease that emerges; and to ensure that all susceptible species are considered in the measures to be taken to prevent the spread of a particular disease.

19. In November 2002, the Parliament approved a biosecurity code (“Codes of Recommendations for the Welfare of Livestock: Animal Health and Biosecurity”). This code was made under part 1, section 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34) and sent at that time to all farmers and to related interests. However, it is proposed that part 1 of the 1968 Act will be revoked by means of this Bill. It is envisaged that the new code(s) will have particular regard to those measures set out in the 2002 Code and the Bill gives greater clarity to the disease control reasons for the code(s).

20. Consulting with interested parties before any new code(s) is made, should ensure that the measures are practical, that they are carefully formulated in the code(s) and that they are enforceable. Some biosecurity measures will be mandatory given their importance in disease prevention terms, others will be best practice. It will be important to achieve balance and not unduly to constrict the normal activities of those who tend the creatures to which the code applies. Measures, such as specifying that keepers of animals and their staff should be trained in the principles of hygiene and disease security, and that stock replacements should come with accreditation of their health status are likely to be of particular significance.

21. Section 3 of the Bill also proposes an emergency order making procedure, to allow the Scottish Ministers to make statutory instruments at a time of disease emergency, for example when a fast spreading disease was evident and no appropriate biosecurity code was already in existence, or in circumstances where it was an unknown virulent disease of animals, again spreading quickly across areas. In these circumstances, it might not be possible to consult quickly with interested parties. The order would cease to have effect at the end of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order had been approved by the Scottish Parliament except where Parliament is dissolved or in recess.

Tests and Samples

22. Section 4 of the Bill provides powers of entry to premises to inspectors, appointed or authorised by Scottish Ministers, in order to ascertain whether animal disease exists or has existed in the recent past. Generally, entry to carry out these functions will be in areas close to disease infected or suspected premises and contact holdings, i.e. premises linked to where
infection is suspected or where it has been confirmed. The power may be needed to access animals (meaning any mammal except man), amphibians or birds quickly in order to check for any indication of disease. Such information would support the epidemiological assessment of any disease outbreak and inform the precise nature of the disease control response. The power is also needed to identify early signs of disease thereby reducing the risk of further disease spread.

23. This section also provides Scottish Ministers with the opportunity to arrange for samples, which have already been taken under existing powers, to be re-tested or examined for evidence of other infections or diseases. Every year many thousands of blood samples are routinely taken from cattle and sheep and also from other species such as deer and horses. It is hoped that, over time, the use of information from re-testing will provide better value from the already significant public sector involvement in collecting the samples and allow a more widespread understanding of animal diseases across Scotland.

24. Scottish Ministers do not intend routinely to store every sample collected in the course of official surveys or disease control programmes, but there may be occasions when surveillance samples will be used to ascertain the prevalence of another disease before launching a control initiative.

25. What would happen if a re-test of a sample provided a positive result for any particular disease would depend on the disease in question. In practice, under the proposed new power, it is not envisaged that action against disease at individual farm or premises level would be taken. The principal reasons for this are that (a) the disease might be non-notifiable (if legislation provides that a disease is “notifiable”, the person responsible for the animal must notify the State Veterinary Service of its occurrence in their animals), (b) the samples might have been in store for a long time and (c) it is unlikely that Scottish Ministers would rely on a survey using re-tested samples to look for evidence of serious disease conditions. The more likely outcome would be for a further visit to be made and a new test undertaken.

Animal Gatherings

26. Section 5 of the Bill provides powers in relation to the licensing of animal gatherings. An animal gathering is an occasion at which animals are brought together. “Animal” in this section will take its meaning from section 87 of the 1981 Act. It could cover any gathering of animals not owned by the same person, such as a market show, exhibition, sale or collection centre. It would not however cover the gathering of animals on land over which more than one person has a right of use provided all the animals are owned by persons with the right to use that land.

27. Animals being gathered together in one place can result in disease being spread quickly across distances. This is due to the close contact of animals from a variety of places around Scotland, and elsewhere, followed by onward movement. Licensing powers, coupled with powers to regulate animal gatherings, should help significantly reduce the risk of disease spreading.

28. Section 5 of the Bill, which focuses on the activity of the gathering of animals, proposes giving Scottish Ministers the power, by order, to license such occasions in a way which would allow the licence giving authority the flexibility to ensure that the conditions attached to licences
are appropriate for the individual purposes for which the animals are to be gathered. Not all animal gatherings would require a licence; this would depend on an assessment of disease risk, particularly in respect of any fast spreading diseases that might occur. The intention is that such assessments would be a matter for the State Veterinary Service on behalf of Scottish Ministers. There is no proposal to charge for either the assessment or licence.

29. In general, and depending on the nature of any disease(s) threat, licences would tend to be needed for events such as livestock markets (mainly sheep and cattle) and livestock shows/exhibitions, but not for occasions such as Pony Club Gymkhanas, Common Ridings or Dog Shows. The order made under section 5 is expected to specify a list of general conditions which would apply to every licence issued. Depending on the nature of the animal gathering, and the species involved, some specific conditions might also be necessary.

30. Ministers would consult with relevant interested parties prior to the making of any order making provision for, or in connection with, the licensing of any animal gathering.

**Treatment**

31. The existing Animal Health Act 1981, in section 16, gives Scottish Ministers the power to treat any animal or bird with a vaccine or serum or both if the animal or bird has been in contact with diseased animals or birds; or appears to have been exposed to the infection; or is in an infected area. However, this power does not permit the use of vaccination beyond these circumstances. Such vaccination could provide a barrier against further spread of disease. The potential use of this wider treatment power, as part of a disease control strategy, is increasingly emerging as a possibility with recent scientific developments. It is believed that in the right circumstances, this wider power will be invaluable in helping to bring disease under control and minimising its impact, particularly in reducing the number of animals, which may have to be compulsorily slaughtered. This new power of treatment will allow all mammals (except man) and birds to be treated with serum or vaccine (or both). This could be necessary to control a disease which is being transmitted from non-farmed animals or birds to farmed animals.

**Seizure of Carcases etc.**

32. Section 7 of the Bill provides Scottish Ministers with powers, if the powers in sections 1, 2 or 10 of the Bill are used, to seize and dispose of anything which appears to them might be capable of carrying or transmitting disease. Section 7 would also oblige the Scottish Ministers, to pay compensation for those things seized by them which are not carcases of animals or things produced by or obtained from those animals. Separate provision is made to allow the Scottish Ministers to, at their discretion, pay compensation for all seized carcases or other things obtained from or produced by animals, irrespective of the disease. Section 7 provides the flexibility to make different compensation arrangements depending on the circumstances at the time of exercising the power.

**Specified Diseases and Deliberate Infection of Animals**

33. Section 9 of the Bill makes it a criminal offence to infect, either knowingly or recklessly, or to intend to infect an animal with any of the 16 fast spreading major diseases listed in Schedule 2B (to be inserted by section 8 of the Bill) The specified diseases are of concern
because of the distress they cause to the infected animals as well as the potentially damaging impact on the rural economy. An offence would also be committed by acquiring or taking possession of an animal, its carcase, or anything obtained from, produced by or used in connection with it, that a person knows, ought to know, or reasonably suspects is infected. A person guilty of an offence would be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both. On conviction on indictment, imprisonment would be for a term not exceeding 2 years or an unlimited fine or both.

34. During a disease outbreak, if an animal has to be compulsorily slaughtered, the owner of that animal may be entitled to compensation. But section 9 provides that, if a person is convicted of an offence under section 28C, then either any amount of compensation for the slaughtered animal would not be paid by Scottish Ministers or, if already paid, would be recoverable by Scottish Ministers. Similarly, any compensation payable for animals, which were held on the same premises at the same time or any part of the time as the animals to which the offence of deliberate infection related, would not be paid or would be recoverable by Scottish Ministers.

35. Section 9 also provides that a court, on convicting a person of the offence of deliberate infection, may make an order (either a deprivation order or a disqualification order). A deprivation order deprives a person of ownership or possession (or both) of an animal and would arrange for the destruction, sale or other disposal of that animal. A disqualification order disqualifies that person from owning, keeping, dealing in, or transporting animals (as defined by section 87). Section 9 specifies that a disqualification order may apply to animals generally or to animals of a particular kind.

36. Once a disqualification order has been made, the court is able to make a seizure order allowing a person appointed to go to the defendant’s property and remove any animals remaining there which the defendant has been disqualified from owning or keeping, in order to do what the court has ordered.

   This might include:
   - care for them for a fixed period of time (as specified by the court)
   - sell the animals at a fair price
   - dispose of the animals other than by sale
   - arrange for the slaughter of the animals.

37. The court may have good reasons for allowing a convicted person to keep an animal or not to impose a future ban on animal keeping. However it is important that the reasons for failing to make a disqualification or deprivation order where somebody has been convicted of an offence in the Bill are made public. If the court decides not to make a disqualification order or an order depriving the defendant of ownership of the animal or animals which have been subject of the conviction, then it shall state its reasons.
Livestock Genotypes: Specification, Breeding and Slaughter

38. Scottish Ministers believe that new powers are needed to deal with the possible emergence of Transmissible Spongiform Encephalopathies (TSEs) in any livestock. The powers support the plan to respond to the identified theoretical risk of Bovine Spongiform Encephalopathy (BSE) in sheep.

39. There is currently no cure or vaccine for TSEs. European Regulations lay down the rules for the prevention, control and eradication of TSEs in cattle and small ruminants. These are implemented through the TSE (Scotland) Regulations 2002 (as amended). Action can be taken on animals on the affected holding and on animals from other holdings and common grazings associated with such a herd/flock. The selective slaughter and control measures introduced following the 1996 BSE crisis in cattle have led to a reduction in the incidence of BSE in cattle.

40. TSEs in livestock species that develop the disease are controlled through the slaughter of affected animals, the associated flock/herd and any possible contact herds/flocks. However, it is possible to identify whether sheep are naturally resistant or susceptible to TSEs by testing a blood sample or tissue containing the animal’s DNA. Selective breeding to increase the levels of natural genetic resistance already provides a powerful means of controlling scrapie, also a TSE. This is the aim of the National Scrapie Plan (NSP). It is anticipated that scientific developments may make it possible to identify whether other livestock species are naturally resistant to TSE and to identify which genotypes of those livestock species are more resistance.

41. The policy intention in section 10 of the Bill is to be able to take an appropriate and proportionate response to finding a TSE in a livestock species whether in Scotland or elsewhere. BSE has been found under natural conditions in cattle and goats. In Great Britain, the only other livestock species in which a TSE has been found under natural conditions is scrapie in sheep and goats. Ministers believe it is good governance to be prepared with legislation to deal with other TSEs in other livestock species should they emerge. Any response taken by Scottish Ministers would be based on the latest scientific advice. The scenario in which the TSE is found will be a critical factor in determining the response of Ministers.

42. The means by which, for example, the discovery of a TSE in a sheep would be controlled would require specific slaughter and re-stocking strategies based on the animals’ natural genetic makeup. These strategies are detailed in the UK’s Overarching Plan “The UK contingency plan for the emergence of naturally occurring BSE in sheep”. This dictates a specific control policy based on testing, identification, slaughter and replacement of stock, over a medium to long timescale. At present scientific knowledge does not indicate that TSEs in other livestock species can be controlled genetically by such genetic selection.

43. Following confirmation of a TSE in a specific livestock the Scottish Ministers would where possible, by order, specify livestock genotypes which were known to be susceptible to that TSE infection. They would also have the power to make regulations to permit inspectors to take samples to ascertain genotypes of and identify livestock. Following testing, the livestock with the susceptible genotypes would normally be subject to a restriction notice requiring them to be sterilised/castrated or slaughtered. Breeding could continue from livestock of the more resistant genotypes thus enabling the introduction of a more widespread breeding programme similar to
the NSP. Livestock whose genotype has not been ascertained because of welfare needs, urgency or because of a lack of scientific knowledge could be slaughtered for the purpose of preventing TSE.

Powers of Entry

44. Section 11 of the Bill deals with powers of entry to premises for the purpose of ascertaining whether a power under section 32 or Schedule 3 of the 1981 Act or sections 1 or 2 of the Bill should be exercised, or doing anything in pursuance of the exercise of that power.

45. In addition, provision is made for the issuing of a warrant by a Sheriff or Justice of the Peace to inspectors, appointed or authorised by Scottish Ministers. A warrant could authorise the inspector to enter (if necessary using reasonable force) any premises to ascertain whether any power conferred by or under the 1981 Act (as amended) should be exercised, or to do anything in pursuance of the exercise of that power.

46. Speed is essential in responding to disease outbreaks. This is because the disease virus can spread very quickly by means of, for example, viral plumes and contact between animals. Quick access to premises is essential to examine animals for any disease; to slaughter; or vaccinate; or otherwise treat the animals; to take blood or other tissue samples for analysis; and/or to monitor the animals for disease. It is hoped that most animal keepers, faced with a serious disease outbreak, will cooperate with the attempts by inspectors to gain access to animals, even sometimes at unsocial hours, to get the disease in question quickly under control. Quick entry to premises is also important given the approach set out in the Scottish Executive’s contingency plans which provide information to all stakeholders about the nature and rationale for the relevant disease control response.

47. The amendment to the 1981 Act, by means of section 11 of the Bill, clarifies the powers whereby an inspector, appointed or authorised by Scottish Ministers, can gain entry to any land, building or other place where animals are or were recently located. Entry would be subject to there being reasonable grounds for doing so and, if necessary, the issuing of a time limited (one month) warrant or notice of intention of obtaining one. The inspector would also be able to take with them other persons or equipment which the inspector considers necessary to assist in any of the above tasks.

48. Where entry is refused and/or reasonable force is required to gain entry the Bill provisions would enable an inspector to obtain a warrant authorising such entry. During the 2001 FMD outbreak, inspectors and constables experienced difficulties in gaining entry to premises which were suspected of having disease. This provision should tackle a perceived weakness in the enforcement powers under the 1981 Act.

Inspection of Vehicles

49. In any outbreak it is vitally important to restrict disease from moving out of an Infected Area (as declared by the Scottish Ministers under section 17 of the 1981 Act). Section 12 of the Bill would allow inspectors, as defined in section 89 of the 1981 Act, and in practice usually animal health inspectors, provided they are accompanied by a uniformed police constable, to
stop, detain and inspect vehicles to check for compliance with the 1981 Act, or any orders or regulations made under it. This could be, for example, checking that animals are not being illegally moved, that vehicles are properly cleansed and disinfected or that carcasses or other items are not being illegally removed. This power would only be used within an Infected Area as declared by Scottish Ministers, and would form part of a suite of heightened biosecurity controls and enforcement measures that form part of the Executive’s disease control contingency plans.

**Offences: Penalties and Time Limits**

50. Section 13 of the Bill revises and brings up-to-date the penalties (financial and/or custodial) for offences committed under the 1981 Act (including those provided by the provisions of the Bill) where a penalty is not specified by any other provision of the Act. Section 75 of the 1981 Act is considered to no longer reflect modern sentencing practice and policy and is unnecessarily complicated. A straightforward and modernised provision for fines and/or imprisonment for offences committed under the 1981 Act is therefore proposed. On summary conviction, there would be provision for a term not exceeding 6 months, a fine not exceeding level 5 on the standard scale fixed by the Criminal Procedure (Scotland) Act 1995, or both.

51. Experience in enforcing the 1981 Act has shown that not all offences committed under the Act become known to the enforcing authority until late into, and sometimes beyond, the 6 months’ period during which a prosecution can be brought. This is particularly true in a disease outbreak where veterinary and other resources are directed at stopping its spread. Detailed investigation of events tends to follow later. The updated section 75 of the 1981 Act, achieved by means of section 13 of the Bill, will enable a prosecution to be raised within 6 months of the contravention coming to the attention of the enforcement authority rather than when alleged to have been committed. However, it would not be possible to bring proceedings more than 3 years after the offence was alleged to have been committed.

**ANIMAL WELFARE (PART 2)**

**Background**

52. The European Community has given high priority to farmed animal welfare. However, legislation relating to the welfare of non-farmed animals has not made similar progress and noticeably lower standards require to be met for pet, companion, sporting and captive animals. For many years animal welfare organisations have been campaigning against what they see as double standards in animal welfare law. The policy aim of the welfare provisions in Part 2 of the Bill is to revise and consolidate legislation concerning the welfare of animals kept by man except in relation to the scientific testing of animals under the Animals (Scientific Procedures) Act 1986. This Act is entirely a reserved matter and is the policy responsibility of the Home Office. The consultation paper issued by the Scottish Executive in March 2004 attracted 325 written responses from a wide range of organisations and individuals. There was widespread support for a radical reform of the existing legislation and, in particular, total support for the requirement that a duty to promote animal welfare should be placed on all people responsible for animals.
Unless animal welfare legislation is strengthened and consolidated, the gap between the standards which require to be met for farmed and non-farmed animals is likely to increase. Some overseas countries have already modernised their welfare laws – Sweden and New Zealand have been particularly successful. The Department of Environment, Food and Rural Affairs (Defra) intend to introduce an Animal Welfare Bill to the Westminster Parliament, covering England and Wales, and unless the Scottish Executive introduces a similar Bill, animal welfare legislation in Scotland could be unfavourably compared to the rest of Great Britain.

The proposed new animal welfare legislation, contained in Part 2 of the Bill, will bring together some 22 animal welfare related Acts into a single statute in modern, simple and relevant language. It is proposed that in addition to substantive provisions, the Bill will contain wide ranging powers enabling Scottish Ministers to make regulations and Codes of Practice. This will enable the legislation to evolve in line with knowledge of and attitudes towards animal welfare without the need for changes to be made to primary legislation.

There are three main criticisms which may be made of the current state of animal welfare legislation in this country. In the first place, it is very old. The offences in connection with animal cruelty are found in sections 1 to 1B and 8 of the Protection of Animals (Scotland) Act 1912. Although still a useful piece of legislation, the Act contains provisions which are now extremely out of date and some of its provisions address the problems of animal abuse in the 19th century. For example, in Section 8, the use of any dog for the purpose of drawing a cart, carriage, truck or barrow on any public highway is prohibited. Performing animals are protected under the Performing Animals (Regulation) Act 1925, and the sale of pets is governed by the Pet Animals Act 1951. Neither statute sufficiently covers modern practices. For example, it can be argued that the 1951 Act does not allow for the licensing of the sale of pets at pet fairs, although some local authorities issue licenses for such events. At best, the law on pet fairs is unclear.

In the second place, and partly as a result of its antiquity, the current legislation is complicated by the fact that it has been very frequently supplemented and amended.

In the third place, certain provisions require clarification and some shortcomings in the present legislation need to be addressed. For example, disqualifications from having custody of animals, imposed as a result of convictions under the Protection of Animals (Scotland) Act 1912, are frequently evaded by the owner or keeper who purports to give care of the animals to another member of his family or to a farm manager. This has been a specific concern of both the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA) and the State Veterinary Service (SVS). The Scottish Executive also wishes to extend the power of enforcing authorities to remove animals at risk of suffering from their owners or keepers in an emergency.

Animals covered in this Part of the Bill

The policy is to protect all sentient animals which are under the control of man. This is limited to vertebrate animals. Advice from veterinarians is that non-vertebrate animals are unlikely to be sentient. Neither will the provisions in the Bill extend to unborn animals. It is unlikely that a prosecution for an offence of cruelty would be feasible in relation to animals below a certain level of sophistication since it will be difficult to prove that they had suffered. However, as it is possible that further scientific evidence will be forthcoming in the future, the
Bill will make it possible for this definition of “animal” to be extended by a Scottish Statutory Instrument if approved by the Scottish Parliament.

59. The provisions in Part 2 of the Bill are intended to cover all animals which are owned or kept by man but will exclude wild animals living in the wild. It is not intended to include wild animals which are intermittently fed, such as garden birds, squirrels or hedgehogs. Nor will it include pheasants or other game birds after they have been released, although the Bill will cover game birds whilst they are reared prior to release. It will not include a managed fishery of wild fish, but fish in a fish farm will be covered. Animals normally domesticated in the British Isles will be covered by the Bill, whether or not they are owned or kept by man. Some domestic animals such as cats, cattle and goats are occasionally wild or feral. It is the policy intention that the Bill should extend to such animals. Wild animals which are captured temporarily, such as wild animals kept for a short time at a sanctuary or by an individual, and animals captured in a snare or trap, will be covered. There will be a duty to avoid cruelty and to ensure the welfare of these animals, although that will not preclude the killing of the animal concerned provided that is done in an appropriate and humane manner.

60. Wild fish in the sea or in rivers are clearly outside the scope of the Bill. Fishing and angling have been exempted from the provisions of the Bill. If fish brought on board fishing vessels were to be included, the “keeper” of the fish would have a duty of care to ensure the welfare of the fish. This is not an obligation which should be placed on fishermen as it could be argued that each fish would have to be individually humanely slaughtered and this is impractical. Angling has also been exempted from the Bill for the further reason that there could be a conflict with legislation which requires salmon caught out of season or without an appropriate permit, to be returned to the river. The issue here is that the fish may have been injured when caught, or landed or when the hook was removed, and not fit to fend for itself when returned to the river. If angling were not exempted, anglers could find themselves in breach of the provision which deals with abandonment which will impose a duty of care on that person to ensure that an animal’s re-introduction to the wild is carried out in accordance with best practice.

Prevention of Harm

61. The policy aim is to provide that cruelty towards any protected animal should be an offence. This idea may be expressed as causing unnecessary suffering which is a term used in the 1912 Act (see section 1). Cruelty against wild mammals is prohibited by the Wild Mammals Protection Act 1996 (a short Act of seven sections). The meaning of “suffering” is widely understood. However, whether suffering is necessary or not leaves a wide discretion to the courts to weigh up the nature and extent of the suffering caused and the circumstances in which it is caused in order to determine whether it is “necessary”. This will be clear in many cases, but not in all. To give more guidance to the courts, a non-exhaustive list of factors is provided which should be taken into account by the court in assessing whether suffering is necessary or not.

62. The cruelty offence would be committed either through the commission of a deliberate act by any person or, in the case of a person responsible for an animal, by a failure to act when appropriate. In other words, cruelty can be caused by neglect as well as deliberate maltreatment. The policy intention is that the offence will include not only assaults on animals such as beating, burning etc, but also neglect, starving, exposure or lack of supervision which cause suffering.
63. Some mutilations are currently prohibited, some may be performed only by a veterinary practitioner, some only under anaesthetic, and some only after a precondition has been fulfilled. It is intended that mutilations will only be permitted if they can be shown to improve the welfare of the individual animal or others in its group. It will be necessary to allow certain mutilations such as the pinioning of duck wings which enable these birds to be kept outside cages but which also prevents their escape. This is important where they are kept for conservation purposes. Tail docking of dogs was the issue which attracted the most comments during the consultation in 2004 and has emerged as perhaps the most controversial issue. A draft Order specifying which mutilations will continue to be permitted, and the circumstances in which they will be permitted, will be available at the time the Bill progresses through its Parliamentary stages. The policy intention is to prohibit the docking of puppies’ tails for cosmetic and breed standard reasons.

64. Generally an animal fight involves putting two animals such as dogs or cocks together so that they fight each other. Baiting involves the use of dogs to set upon another animal and attack it. It may be the case that baiting is really a form of fighting, albeit involving stronger and weaker animals. The policy is to ensure that the definition of fighting will cover fighting between animals, baiting of an animal by one or more other animals, and fighting between man and animals. The Bill will prohibit:

- Organising or promoting an animal fight. This is intended to cover the person or persons responsible for arranging the fight.
- Attending an animal fight. It is the intention that all those present at a fight should be guilty of an offence.
- Publishing an advertisement for an animal fight. This should include any act intended to disseminate information about the fight, such as putting up a poster, as well as advertising in a publication.
- Allowing premises to be used for an animal fight, or receiving money for admission to premises which are to be used or are being used for an animal fight.
- Betting money or receiving money in bets on the outcome of an animal fight.
- Keeping or training animals for the purposes of fighting. Currently, the Dangerous Dogs Act 1991 prohibits the possession of four types of dog which are considered dangerous and/or are commonly kept for the purposes of fighting (see section 1 of that Act). It is possible to keep other types of dog and to train them to fight, or to keep other types of animal which are trained to fight each other. This provision will therefore allow prosecution for keeping animals where it is possible to prove that they are intended for use in fighting.
- Owning or possessing equipment which is designed or adapted for use in animal fights. Currently, section 1 of the Cockfighting Act 1952 makes it unlawful to possess any instrument or appliance designed or adapted for use in connection with the fighting of any domestic fowl, provided the court is satisfied that it is possessed for that purpose. The Scottish Executive wish to keep a similar provision and also to extend it to cover all types of animal fighting.

65. The above offences will not apply to undercover police officers or animal welfare officers who attend a fight in the course of their work.
66. Where an animal is found by the court to be taking part in a fight or where an animal is judged to be being kept or trained for the purposes of fighting, the Bill will authorise the police or other authorised inspectors to seize those animals. This power will not be dependant on showing that the animal was suffering or in danger of suffering. For example, it might be necessary to remove an animal for public safety reasons.

67. The Bill will also allow courts to make orders for the confiscation, destruction or other disposal of animals, and to disqualify people from owning or keeping animals upon conviction for an offence under the Bill.

**Promotion of Welfare**

68. The policy aim is to impose a duty on owners and keepers of animals to take reasonable steps to ensure the welfare of the animals in their care. It has been argued that the 1912 Act is deficient in the sense that it only allows prosecutions once cruelty or unnecessary suffering has occurred. This was a recurrent theme in the responses to the consultation exercises in 2003 and 2004. In many cases, it is possible to identify animals which are being cared for inadequately. In some cases this inadequate care may lead to suffering if it continues. The intention is that cruelty will be prevented before it occurs. The approach in the Bill is to concentrate on a positive duty to care for animals properly and to *promote* their welfare, rather than simply to avoid causing unnecessary suffering. Therefore a duty to ensure the welfare of all animals covered by the Bill will be imposed on owners or keepers as far as they reasonably can to the extent required by good practice. The duty will not only apply to farmed animals but also to other owned or kept animals such as domestic pets and those kept for commercial purposes other than farming, such as dog breeding, pet shops and riding stables.

69. In the case of animals kept by children under the age of 16, then the responsibility for caring for the animal should lie with the parent or other adult who has parental responsibility for that child or with whom the child and the animal habitually reside.

70. Certain matters are important for welfare. For example, it is important to provide appropriate accommodation, lying areas etc, appropriate and sufficient food and access to clean water, and appropriate treatment for illness. Therefore, the Bill includes a non-exhaustive list of examples of the different needs for the guidance of those responsible for animals and the courts.

71. It is not thought helpful to require that animals be free to express natural behaviour as this may be both impractical in a captive situation and also inconsistent with the welfare needs of other animals or of the other welfare needs of the animals themselves. For example, it is natural behaviour for some animals to hunt but this may not be practical. It may be natural behaviour for animals to experience hunger or starvation for periods, but this may not be seen as desirable in a captive situation. Whether or not it is consistent with good welfare for an animal to experience hunger or be able to hunt, will depend on the type of animal and its circumstances in captivity. Nevertheless it is intended that where practicable, animals should be able to exhibit normal behaviour.

72. The fact that an animal is being farmed will be relevant in considering whether its welfare needs are being reasonably met. In other words, a farmed animal will not be able to enjoy the
same freedoms as a similar animal in the wild might do. This will not necessarily mean that its
owner or keeper is failing to cater for its welfare needs, provided the animal is being kept in
accordance with recognised good practice.

73. It will not be inconsistent with the duty to ensure the welfare of an animal to kill that
animal, provided the killing is done in an appropriate and humane manner and/or is done in
accordance with any relevant regulations or codes of practice. In some circumstances the
welfare of the animals may require that the animal be killed.

74. In order to define more clearly what is required for different types of animal, it is the
intention to publish codes of practice and/or regulations relating to different types of animal. In
relation to farmed animals, such regulations and codes of recommendations are already in place.
The content of codes and regulations will differ depending on the type of animal concerned. In
addition to regulations or codes dealing with different types of animal, the Bill will give Scottish
Ministers the power to make regulations or codes dealing with certain specific issues and
operations such as tethering, shoeing of horses, riding stables, and animal boarding
establishments.

75. The Bill enables Scottish Ministers to make secondary legislation in order to improve
animal welfare in a variety of situations. In the vast majority of cases, it is intended that this
secondary legislation should be in the form of regulations. Some existing legislation covering
the welfare of animals kept for farming purposes, the welfare of animals at slaughter and killing,
the welfare of animals during transport, the welfare of animals at market, the use of animals in
sport and entertainment, and the regulation of buildings and accommodation used to house
animals, will be repealed and replaced by Regulations under the new Act. It is the policy to
introduce a licensing scheme which will regulate the trade in young pet animals by dealers.

76. The sale of dogs from dog breeding establishments is presently regulated and these
establishments are required to be licensed by local authorities. There are no similar provisions
relating to the sale of kittens or other pet animals, nor the increasing trade in the buying and
selling of young puppies and kittens by dealers. It is the policy aim to allow this legitimate trade
to continue but only under strict controls as it is essential that the welfare of the animals do not
suffer. Regulations will control the activities of those people who trade in pet animals. The
Scottish Executive believes that regulation is the best way to ensure that the trade is operated to
the highest standard.

77. The Bill gives Scottish Ministers a power to make regulations which will regulate this
trade by requiring that dealers who buy young pet animals for onward sale are licensed by local
authorities and which establish minimum conditions for licences. The conditions for such a
licence will include a requirement to keep records which detail the origin, transportation, and
new home of the animal. In addition, each puppy will need to be kept for at least 7 days before
being sold on and a veterinary health check will need to be given.

78. The policy is also to enable regulations to be made requiring the licensing or registration
of certain activities with a view to promoting the welfare of the animals concerned. The
following are most likely to be licensed:
• **Dog breeding.** This is currently governed by the Breeding of Dogs Acts 1973 and 1991 and the Breeding and Sale of Dogs (Welfare) Act 1999. Consideration is being given to the introduction of the following provisions in addition to those contained in the existing legislation:
  - veterinarian screening of breeding dogs for genetic and medical disorders;
  - identification of breeding dogs;
  - a duty on dog breeders to give advice to customers;
  - puppies will need to be socialised before sale;
  - professional dog breeders to need qualifications;
  - no puppies to be transported until they are at least 8 weeks old.

• **Riding establishments.** These are currently governed by a licensing procedure set out in the Riding Establishments Acts 1964 and 1970. The policy is to ensure that there will be a minimum qualification for riding instructors, and a veterinarian will need to be present at all annual inspections of riding establishments, although inspections may be carried out by specialists other than veterinarians. There will also be a Code of Practice for riding establishments.

• **Boarding establishments.** These are currently licensed under the Animal Boarding Establishments Act 1963. However, this licensing is restricted to the boarding of cats and dogs. The provisions of this legislation may be extended to quarantine kennels and to include the commercial boarding of other pet animals, such as rabbits, rodents, reptiles and birds.

• **Sale of pet animals from pet shops.** This is currently governed by the Pet Animals Act 1951. New regulations will require pet shops and all commercial establishments selling pets to be licensed. Additional provisions will ensure that pet sellers obtain and distribute care leaflets or other suitable information with the pets they sell and have some form of qualification showing the expertise of the person in charge of the pet shop.

• **Sale of animals at pet fairs.** A pet fair is an event, usually of one or two days’ duration, held at a temporary venue such as an exhibition centre, where enthusiasts set up individual stalls where they display and sell animals. It is the intention to require pet fairs to be licensed.

79. Registration as an alternative to full licensing may be sufficient for some small establishments and certain activities. Thus there is a power in the Bill to allow this.

80. The following activity is likely to require registration:

• **Livery stables.** These are establishments where horses are housed and fed on behalf of their owners. Some livery stables offer “DIY” services where housing is provided and the owner is responsible for some or all of the feeding, exercise and grooming of their horse(s). In some of these DIY establishments the responsibility for the welfare of the animal is left with the horse owner and not the livery stable owner. Where accommodation for horses is being provided as part of a commercial enterprise, the stable owner or operator must be ultimately responsible for the welfare of the animals, as they are on their premises and under their control. At present no livery stable is required to be registered, but the British Horse Society currently runs a voluntary registration scheme for these premises. A requirement will be introduced
for the registration of livery stables, including some DIY operations, and a statutory Code of Practice for livery stables will be published. A combined licence/registration should be available for livery stables which also offer riding school facilities.

81. The Bill includes a power to make regulations which would prohibit the keeping of certain animals, e.g. the private keeping of primates. There is concern that: some individuals are illegally acquiring specimens of endangered primate species; the keeping of alien invasive species is not under tight enough control; and many of these species do not survive well in captivity. The Dangerous Wild Animals Act 1976 is currently being reviewed and one of the recommendations which went out for consultation in 2004 was for certain small primates to be delisted as they are not considered a risk to the public. As a consequence the policy is to ensure that Scottish Ministers can have the option to ban the private keeping of these animals (and other animals which may be endangered, but not dangerous) by regulation.

82. Abandonment of animals is currently an offence under section 1 of the Abandonment of Animals Act 1960. The policy is to retain abandonment as a specific offence. Provision is included in the Bill which prohibits abandoning an animal or leaving an animal without making proper provision for its welfare. The length of time for which an animal may be left unattended will depend on the type of animal and the provision which has been made for it, such as the leaving out of food and arranging for its shelter. If the owner or keeper can show that they had reasonable excuse for leaving the animal, then the provisions of this section will not apply. An example of this could be an elderly owner who is unexpectedly taken to hospital. It is not necessary for the purposes of prosecution to show that the animal was caused unnecessary suffering, but only that the animal had been left with insufficient provision for its welfare.

83. There have been concerns that children as young as 12 are legally able to purchase animals from pet shops, possibly on a whim and without parental consent or knowledge. This issue attracted considerable comment in the responses to the consultation in 2004. Respondents strongly believed that the age limit should be increased to at least 16. Section 3 of the Pet Animals Act 1951 makes it an offence to sell an animal as a pet to a person under the age of 12. The policy is to make a similar provision in the new Bill but to raise the age to 16. Nothing in this provision prevents a person under 16 from “owning” an animal or having that animal registered in their name. However, the responsibility for the welfare of the animal will be the responsibility of the parent or guardian of the child.

84. The practice of giving animals as prizes is, perhaps, less common than it was. Nevertheless, there are still occasions when animals (often goldfish or small rodents) are used as prizes at funfairs. The policy is to instil a greater responsibility towards animals, and to encourage people to think carefully before taking on the responsibility of animal ownership (even goldfish or white mice). “Winning” an animal is considered inconsistent with the need for people to think carefully about an animal’s welfare needs before becoming its owner or keeper. Thus, the Bill places a complete ban on the giving of animals as prizes.
Animals in Distress

85. The policy intention is that inspectors (appointed or authorised by Scottish Ministers or local authorities) and the police should have powers to remove or even destroy animals in an emergency. These powers are intended to be exercisable before any proceedings for an offence under the Bill have been commenced. They will apply to any animals, whether found on a farm, in a private dwelling, on a public highway, on commercial premises such as a pet shop or anywhere else. In order to be able to kill or remove animals, it will normally be necessary to obtain prior certification from a veterinarian. The only exception to the requirement for veterinary certification would be where action is so urgent that it is not reasonable in the circumstances to summon or wait for a vet. Thus, for example, it would be possible to secure the immediate removal of a dog from an overheating car if this appears necessary. In the vast majority of cases, it will be necessary to summon a vet and to request the vet’s expert advice as to what should be done with an animal.

86. Where it is the opinion of the veterinary surgeon that the animal is in such a condition that it is appropriate to do so, an inspector or constable may kill that animal *in situ* or remove it to be killed.

87. Where it appears to an inspector or police officer that animals are suffering, then they will have a power to remove any animals if a veterinary surgeon certifies they are suffering or are likely to suffer if they remain where they are.

88. Where some animals in the care of the same person are found to be suffering then this may justify removing all other animals in that person’s care. However, it is anticipated that the removal of animals which are not actually suffering or likely to suffer imminently will be extremely rare. In most cases, if removal of all animals in the care of a person is thought necessary, then this will be done under the authority of a court order. Removal will not be necessary if adequate provision can be made for the welfare of the animals if they remain where they are. They may remain where they are, for example, if another person is willing to look after them at that place. Under the existing law, the only action that can be taken prior to the commencement of proceedings is the mercy killing of animals. If a prosecution under the 1912 Act is commenced, then only the animals to which a prosecution for causing unnecessary suffering relates can be removed (see section 3 of that Act). This change will mean that animals can be removed before suffering actually occurs. In other words, cruelty will be prevented.

89. Instead of removing animals, arrangements can be made for the care of the animals where they are. In such cases, it will be necessary for the inspector, or persons acting on behalf of the inspector, to enter premises from time to time in order to care for the animals there.

90. Any costs incurred in removing the animals and caring for them, or in caring for them on the owner’s or keeper’s premises, can be recovered from the owner or keeper as a civil debt.

91. Where animals have been seized it will be necessary for the matter to be brought before a court. The Bill allows the owner or keeper of the animals (or other person with a sufficient concern for the animals) to apply for an order to be made in respect of the person to whom the animals should be returned.
92. Certain parties can apply to the court for an order allowing:
   - treatment to be administered to the animal;
   - the destruction of the animals;
   - the sale of the animals; or
   - the disposal of the animals otherwise than by way of sale.

Welfare Bodies and Codes

93. A power has also been included to make regulations to establish an advisory body, to define and describe its functions in relation to animal welfare, and to facilitate working arrangements between bodies responsible for animal welfare.

94. It is felt that a great deal of useful information and advice can be given to owners and keepers of animals in the form of Codes of Practice. These codes will be used to amplify the conditions which it is felt are required in order to ensure the welfare of animals. They will, therefore, be particularly relevant in assessing whether the duty of care to ensure welfare has been complied with. Scottish Ministers will have a power to make and amend Codes of Practice and it is intended that such codes should be subject to draft affirmative procedure in the Parliament.

95. Section 34 of the Bill also provides Scottish Ministers with the ability to issue, following consultation, welfare codes with the aim of protecting the welfare of animals.

96. The bodies or persons with whom it will be appropriate to consult will vary depending on the nature and content of the code. Therefore it is important that Ministers should be obliged to consult with such persons or bodies as they feel appropriate before making a code of practice. Such a requirement has been written into the Bill.

97. A failure on the part of an animal owner or keeper to observe the provisions of a code should not of itself render the owner or keeper liable to any proceedings. However, in the course of proceedings for any offence under the Bill, the provisions of the code will be admissible as evidence in the proceedings. This will be relevant where a breach of the duty to ensure welfare is alleged, and if the prosecution are able to show that there was a breach of the code, then this may be evidence of guilt, but will not necessarily be conclusive. The defendant may be able to show that, even though the code has not been followed, the animal was being properly cared for by some other means, or that the failure in those particular circumstances, had no adverse effects on the welfare of the animal in question. On the other hand, where the defence is able to show that the code was complied with, then this may be taken into account by the court as tending to show that an offence has not been committed. Where a defendant is able to show compliance with a code of Practice, then a conviction for causing unnecessary suffering or failure to ensure welfare will be more difficult to achieve.
**Post-conviction Orders**

98. Where the owner of an animal has been convicted of an offence, then it is important that the court is able to make an order depriving that person of ownership of the animal or animals, which have been the subject of the offence. In such an order the court can, for example, order that the local authority shall secure that it is carried out.

99. Where the owner of an animal has been convicted of an offence, the court may be able to order the destruction of the animal which is the subject of the offence only if (based on veterinary evidence) the court thinks this is appropriate in the interests of the welfare of the animal concerned (except for animals involved in animal fighting cases). The court will be able to make any directions it thinks necessary to carry out the order. In certain cases, it may be appropriate to order the destruction of the animal where the keeper rather than the owner has been convicted. In such a case, the court should be obliged to give the owner an opportunity to be heard provided it is practicable to do so (e.g. where he can be contacted through reasonable enquiries).

100. Currently the Protection of Animals Act 1954 allows the court to disqualify a convicted person “for having custody of” animals. There are two major difficulties with this power. In the first place, it only allows the court to disqualify the defendant “for having custody of” any animal. In practice, those who enforce this provision have difficulty deciding when a person is retaining custody of an animal and is therefore in breach of their disqualification order. Cases quite frequently arise where the disqualified owner of a domestic animal allegedly gives the animal to a spouse, child, sibling or someone else. Alternatively the disqualified farmer may continue in business by hiring a farm manager, or by continuing to deal in animals and arranging their transport. Some farmers who have been disqualified continue to farm using managers. The Scottish Executive believes that disqualification should deprive that person of the right to work with animals in any capacity. Therefore a provision has been included which widens the scope of the disqualification to catch the following activities in relation to any animal: owning, keeping, arranging to keep, dealing in or controlling, whether directly or indirectly.

101. A second problem is that, in existing legislation, the imposition of a disqualification order does not allow the court to make any consequential orders as to the fate of the animals remaining in the care of that person. There is currently no power for the court to make any orders ancillary to disqualification in order to ensure that animals are removed from the care of the owner. Thus in extreme cases, a person might be repeatedly fined for continuing to keep animals despite a continuing disqualification order. If the animals are not suffering, the court cannot make any order relating to them. Where a person is in continuing breach of their disqualification order, the policy objective is to enable the court to direct that the animals be removed from the care of the defendant and also to make any other directions or orders in order to ensure the appropriate disposal of the animals. For the appropriate disposal the local authority or other suitable organisation or person, should be able to enter the defendant’s premises and remove (or if appropriate kill) the animals which are continuing to be kept by or at the instruction of the disqualified person.

102. Once a disqualification order has been made, the court is able to make a seizure order allowing a person appointed to go on to the defendant’s property and remove any animals
remaining there which the defendant has been disqualified from owning or keeping, in order to do what the court has ordered.

This might include:

- caring for them for a fixed period of time (as specified by the court);
- selling the animals at a fair price;
- disposing of the animals other than by sale; or
- arranging for the slaughter of the animals.

103. There has been considerable criticism from a number of animal welfare bodies, the press and the general public about the light sentences sometimes given to people convicted of animal cruelty. The court may have very good reasons for allowing a convicted person to keep an animal or not to impose a future ban on animal keeping. It is important that the reasons for failing to make a disqualification or deprivation order where somebody has been convicted of an offence in the Bill are made public. If the court decides not to make a disqualification order or an order depriving the defendant of ownership of the animals which have been the subject of the convictions, then it shall state the reasons in open court.

**Offences and Penalties**

104. The Bill makes provision whereby animal fighting prosecutions can be brought within six months from the date on which evidence of the offence is discovered, provided this is within three years from the date on which the offence was committed. Animal fights are often well organised and secret, therefore difficult to detect. They often come to light some time after the offence has been committed. This will allow prosecutions to be brought some time after the event.

105. Offences specified in the bill are capable of being committed by a company. Therefore the Bill includes a provision which specifies that where an offence is committed with the consent or connivance of, or attributable to, any neglect on the part of any director, manager, secretary or other similar officer, then that person shall be deemed guilty. It is important to ensure that an individual in a company can be held accountable for his or her failings, rather than abnegate their responsibility to the company. A fine of £5,000 may be insignificant to a company but a term of imprisonment for a company director or official will indicate the serious nature of the offence.

106. All welfare offences under the proposed Bill will be subject to summary procedure. Having any part in animal fighting is the most serious type of animal abuse and should be punished with the most severe penalties. Thus the Bill makes provision that any offence to do with animal fighting may attract a sentence of 12 months imprisonment or a fine not exceeding £20,000, or both. Other offences, including breach of the duty of care to ensure welfare, should attract a maximum sentence of 6 months or a fine not exceeding level 5, or both.

**Powers of Authorised Persons**

107. Where animals are to be kept under licence or registration, then it may be necessary to inspect the premises where they are kept prior to issuing the licence or allowing registration.
Thereafter, inspection may be necessary in order to ascertain whether the licence or registration conditions are being met or an offence under the proposed Bill is being committed. Inspections will also be required where there are grounds for suspecting that animals are being kept without a licence in circumstances where a licence or registration is necessary. In all these situations, the Bill gives inspectors the power to enter premises and, in certain circumstances, to be able to apply for a warrant.

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

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

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

(a) inspectors appointed for the purposes of this Act by Scottish Ministers. This is intended to cover veterinarians employed by the SVS but may from time to time include other inspectors appointed for the purposes of the Bill. SVS inspectors will generally inspect farms and other premises where farmed livestock are kept, for example markets and slaughterhouses.

(b) inspectors appointed by the local authority for the purposes of this Act. This will normally mean a trading standards officer, or an environmental health officer but is not being restricted to these two.

(c) The Scottish SPCA will continue to carry out inspections and it is intended that individual inspectors will be authorised by the Scottish Ministers for certain purposes, such as to take possession of animals which are suffering or are in danger of suffering.

(d) the police. It is anticipated that they will become involved only rarely. The police will not normally carry out animal welfare inspections on their own initiative, or generally be involved with animal welfare inspections, and certainly not on a routine basis. However, they may need to accompany inspectors or the Scottish SPCA on a visit where a power of entry is required or if, for example, a breach of the peace is anticipated. They may also need to accompany an inspector who is executing a warrant to enter premises, including a dwelling.

111. Local authorities will have the power to inspect premises (except domestic premises) and have been given the power to appoint inspectors. They are able to appoint such persons as they think fit for the most efficient carrying out of their inspection and enforcement duties. This will enable the appointment of veterinarians or other appropriate experts for certain duties. For example, the inspection of riding stables should be carried out by an expert in horses who may not be a qualified vet.
112. The police have been given express power to arrest without warrant those whom they have reasonable cause to suspect are committing or have committed an offence to do with animal fighting or an offence of cruelty towards an animal.

113. Provisions have been made for inspectors (appointed or authorised by Scottish Ministers or local authorities) and the police to have power to enter any vehicle (including a road vehicle, ship or aircraft), land or premises, other than premises used as a dwelling (entry into premises used as a dwelling can only be permitted where authorised by a warrant). This power can be exercised at all reasonable hours. The power of entry is exercisable for the purpose of ascertaining whether or not an offence has been committed, as well as where reasonable grounds exist for suspecting that an offence has been committed.

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

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

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

117. Inspectors are able to take with them other persons or equipment as they consider necessary. Depending on the circumstances of the case, it may be necessary to take a veterinary surgeon, other specialist advisor (such as an animal nutritionist), a police officer, an official from the Scottish SPCA, a slaughterman, a haulier, and so on. Inspectors are able to carry out searches, inspections, measurements and tests and to take any samples, whether from animals or otherwise. This may include the removal of a whole carcase, if necessary, for post mortem examination. Inspectors are able to inspect documents or other records including computer records as necessary and require them to be produced for inspection. This could include receipts for feed or medical purchases, cattle passports, medical bills etc. Inspectors should also be able to seize or copy such documents or other items as they think appropriate for the purposes of
securing or preserving evidence. Inspectors will have a power to mark animals if necessary. For example, they may need to mark animals which will be removed or cared for, or they may need to mark animals in order to assist with the presentation of evidence in subsequent proceedings. The owner or keeper of animals which are the subject of the investigation will be obliged to assist the inspector or police officer in carrying out their investigation. Any failure to provide such assistance as is reasonably required, for example, to gather animals for inspection, will be an offence. Inspectors will not be liable in any civil or criminal proceedings for anything they do in seeking to perform their functions under the Bill if their action was done in good faith and there were reasonable grounds for doing it.

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

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

ALTERNATIVE APPROACHES

PART 1

120. As the implementation of these powers requires a legal base, other policy methods for achieving a similar outcome were not seriously considered. Since the 1981 Act was enacted some of the fast spreading diseases that have occurred have been Foot and Mouth Disease (2001); Swine Fever (2000); Newcastle Disease (1997); and Avian Influenza (1992). The experience is that tackling these diseases, resultant inquiries, technical advances in diagnosis or in vaccination, and the increase in the international movements of animals and their products, have all resulted in pressure to update the 1981 Act to reflect better veterinary and scientific developments. Updated legislation has already been introduced in England and Wales, by the Animal Health Act 2002, but the powers do not apply to Scotland. So, in another fast spreading disease situation occurring in Great Britain, measures to tackle the disease quickly could potentially be different. The alternative to updating the Animal Health Act 1981, which applies throughout Great Britain, would be to rely on its existing provisions to protect Scotland from diseases that could have potentially devastating effects on the livestock sector, and more broadly on the rural and wider economy. By updating animal health legislation in Scotland, Scottish Ministers believe they will have greater flexibility to bring disease under control.
PART 2

121. There is no effective alternative to replacing the existing animal welfare legislation with completely new legislation. Voluntary Codes of Practice would not achieve the policy aims to impose a duty of care on animal owners, ban animals being used as prizes, raise the age at which people can buy animals, extend the number of animal businesses requiring a licence, increase the penalties for offences of deliberate animal cruelty and of animal fighting, and allow animals in danger of suffering to be removed.

122. The Protection of Animals (Scotland) Act 1912 is the basis for most animal welfare legislation. It is over 90 years old and has been amended many times since it came into force. Further animal welfare provisions are contained in a series of Acts produced at frequent intervals during the 20th century. Whilst it would, in theory be possible to amend all the Acts required to achieve all of the policy aims described above, additional legislation would still be required, for example, to licence pet dealers. The amending of some 2 dozen Acts would be a mammoth task and it would still leave a plethora of legislation. Thus, it was considered sensible to take this opportunity to consolidate animal welfare legislation into a single Bill with extensive order making powers which will ensure that the making of amendments to the legislation in future years will be simpler and whilst requiring the agreement of Parliament, will not need Parliamentary time to amend Primary Legislation.

CONSULTATION

123. The Scottish Executive Environment and Rural Affairs Department has undertaken a comprehensive programme of consultation on these proposals. In February 2003 the Department consulted on the proposals to amend the Animal Health Act 1981 which currently provides the basis for the Department’s response to disease outbreaks. A consultation document “Animal Disease Control: Proposals for Legislation in Scotland” was issued to a wide range of interested organisations.

124. There were 31 general responses to the 2003 consultation, of which 5 returned “no comment”. Overall the proposals for legislation were welcomed. Of the 16 responses on the proposal to extend the power to slaughter animals where considered necessary for rapid disease control or prevention, 14 expressed support. Of the 17 responses submitted covering the Executive’s proposal to introduce an Animal Health Biosecurity Code, 13 responses stated agreement with the proposal. Eighteen out of the 31 respondents covered the proposal that an offence be created for those found to have breached specified biosecurity measures, of which 2 stated their disapproval. On the principle of the creation of a new power to inspect vehicles randomly, 14 of the 17 responses received on this proposal registered agreement. Eight out of the 31 responders responded to part two of the consultation on TSEs. There was acceptance and support for the National Scrapie Plan, with the suggestion of making the scheme compulsory, whilst recognising the need to retain valuable genetic material.

125. On 21 March 2003 the Department issued a consultation paper on proposals to amend the Protection of Animals (Scotland) Act 1912. These proposals aimed to address the specific problem of the lack of statutory powers available to local authorities to remove neglected farm livestock which were at risk of suffering. A total of 27 responses were received which all supported the proposals. Comments from the animal welfare organisations to that paper showed
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a clear desire for a much wider reform of existing animal welfare legislation. These comments were taken on board and it was decided to expand the scope of these limited proposals and to investigate the possibility of replacing existing animal welfare legislation (some over 90 years old) with a new Act. Thus a further consultation paper, “Proposals to Revise Existing Animal Welfare Legislation”, was issued on 31 March 2004 which, in addition to extending the earlier proposal to cover all domestic and captive animals, suggested a wide ranging review of animal welfare legislation. In addition to this consultation paper, 13 consultation meetings were held, 4 general meetings (in Inverness, Aberdeen, Glasgow and Edinburgh) and 9 focus groups examining specific areas of the proposals.

126. A total of 325 written responses were received and included all the main stakeholder groups. Many were substantial documents and it was clear that responders had given a great deal of time and thought to their contributions. The paper sought views on 19 different areas and all received significant comments from responders. All the responses were summarised, analysed and then published as “Analysis of Responses” on 28 February 2005. This was published on the Scottish Executive website at www.scotland.gov.uk/library/5/environment/preawl-00.asp. The responses clearly indicated that there was a widespread belief that there was a need to modernise and strengthen Scottish animal welfare legislation. The proposals to introduce a duty to ensure the welfare of all protected animals were welcomed with enthusiasm and support. The vast majority of responders were supportive of most of the proposals. The one significant area to attract adverse comment from a large number of responders was the proposal to prohibit the tail docking of puppies. The opposition to this proposal was significant but by no means universal, and was mainly from dog breed societies and shooting interests.

127. Comments on the proposals, which in many cases provided a great wealth of detail, have played a key role in the development of the Bill.

128. Both the animal health and animal welfare proposals have been combined in the Animal Health and Welfare Bill. The draft Bill and consultation paper were issued on 16 May 2005. In addition 4 consultation meetings were held in Inverness, Aberdeen, Glasgow and Edinburgh. This consultation posed a series of 17 questions on animal health and 26 questions on animal welfare.

129. A total of 166 responses were received to the consultation. A total of 71 responses commented on the health provisions and 156 commented on the welfare provisions. A further 66 commented on both parts of the Bill. Each of the proposals received a significant number of responses, with the health proposals each receiving between 28 and 51 responses and the welfare ones between 34 and 88 responses.

130. A copy of the analysis of the responses has been published and is available on the Scottish Executive's website at www.scotland.gov.uk/publications. Copies have been sent to responders, and further ones are available from SEERAD. Copies of the responses which have not been marked as confidential, have also been placed in the Scottish Executive Library.

131. There was significant support from those who responded to the health part of the Bill that Scottish Ministers should have greater flexibility of action to deal with foreign, fast spreading diseases. However, Scottish Ministers should take into account sound veterinary and scientific...
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advice, involve stakeholders, have regard to the interests of the whole rural economy, and be proportionate and pragmatic. The same considerations applied to any slaughter of vaccinated animals; vaccination should be used in preference to slaughter and slaughter only used as a last resort. There should be clarity about whether a vaccinated animal was infected or a carrier of disease. There was strong support in being able to vaccinate beyond the current infected area limit. Concern was expressed about the possible slaughter of pet farm animals and animals in sanctuaries.

132. There was significant support on the need for criminal offences to apply to the proposed new biosecurity codes. These codes had to be practical, formulated and enforceable. A majority supported the proposed licensing of animal gatherings and licensing of animal dealers though clarification was needed of the definitions used. There was concern that small companion animal type events would have to be licensed. There was strong support that inspectors should have entry powers to check for animal diseases and, if necessary, take samples for analysis. There was some concern about using those samples again for other diagnostic purposes without the consent of the animal keeper. There was strong support on the need to extend the powers to seize and safely dispose of carcasses, and on updating the penalty provisions across the 1981 Act. A majority supported the proposal that it should be a crime to infect deliberately an animal with disease though concern was expressed about the adequacy of detection. There were suggestions for other diseases, besides the 15 mentioned in the Bill consultation, to be included. All who responded agreed that the courts should have the power to ban those convicted of deliberate infection from the future keeping of, or dealing in, animals.

133. There was general agreement with Scottish Ministers’ proposed powers to deal with Transmissible Spongiform Encephalopathies. However, regular reviews should be undertaken to ensure that actions remained proportionate and relevant. Any decision to slaughter genotypes should be taken in consultation with the industry. There was concern that not enough is known about the biology, epidemiology and possible reservoirs of TSEs.

134. The welfare proposals were generally well received and there was enthusiastic support for them. This included key proposals such as the duty of care (supported by all 45 responders), animal fights (supported by 45 of the 49 responders who stated an opinion), abandonment (supported by 40 of the 46 responders stating an opinion), the prohibition on the giving of pets as prizes (supported by all except 1 of the 39 responders), the prohibition on the selling of animals to persons under 16 years of age (supported by 41 of the 44 responders) as well as the powers that are available to courts to deal with animals taken into possession (supported by 36 of the 38 responders). The importance of these proposals and their impact on improving animal welfare was also recognised and acknowledged. There were a number of comments made on the proposals. These included the definition of “animal”. Ten responders of the 64 who commented felt that this should include invertebrates as there was already evidence that they could feel pain. There was concern at the proposals to ban mutilation, especially by a number of dog owners and dog breeders and dog breed societies, 26 of the 35 responders stated that they did not want the practice of tail docking in dogs to be prohibited. Four responders emphasised the importance of proper consultation on the exemptions to this prohibition, and the need for these to come into effect on the same day as the Bill, as certain practices which are routinely undertaken on farms will become prohibited. One other area of debate was the proposal to allow a person, in exceptional circumstances, to destroy an animal. Four responders felt that this was inappropriate.
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and that it would not lead to the humane destruction of animals, or also within “exceptional circumstances”.

**EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

135. This Bill is compliant with equal opportunities legislation. The draft Bill and consultation paper were sent to the Equal Opportunities Commission Scotland, the Commission for Racial Equality, Disability Rights Commission and the Guide Dogs for the Blind Association. No adverse comments were received.

136. The Bill does not give rise to any issues under the European Convention of Human Rights. In the event of an outbreak of disease every step will be taken to control and eradicate the outbreak as soon as possible. Such actions will be implemented when and where necessary and will be based on a veterinary assessment of both the disease and the anticipated impact of the control measures.

137. No consultation responses suggested that the Bill contained issues for island communities and it is not anticipated that this Bill will have any differential impact on them.

138. Local authorities will continue to be one of the organisations responsible for the implementation of animal health and welfare legislation. Part 1 of the Bill provides a power to Scottish Ministers, by Order, to license animal gatherings for the purpose of preventing the spread of disease. Local authorities are already required, under the existing Animal Health Act 1981, to undertake enforcement functions and these will continue in the context of those animal gatherings that require to be licensed. Part 2 of the Bill will give additional powers to local authorities by allowing them to take possession of animals which are in danger of suffering rather than waiting until suffering occurs. This may result in additional seizures of animals, but is unlikely to be significant.

139. The fundamental aim of sustainable development is to ensure a better quality of life for all, now and in the future. This Bill will assist in that the animal health proposals will contribute to reducing the spread of animal disease should another outbreak occur in Scotland, thereby reducing its impact on the environment, the economy and society generally.
ANIMAL HEALTH AND WELFARE (SCOTLAND) BILL

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