

ANIMAL WELFARE BILL

MEMORANDUM FROM THE SCOTTISH EXECUTIVE

Motion

1. The motion to be put to the Parliament is:

Animal Welfare Bill: “That the Parliament agrees the principle of reciprocal recognition of court orders in relation to animal welfare and agrees that the relevant provisions of the Animal Welfare Bill, so far as they relate to matters within the legislative competence of the Parliament, should be considered by the UK Parliament.”

Background

2. The Animal Welfare Bill, introduced in the House of Commons on 13 October 2005, updates and strengthens animal welfare legislation in England and Wales.
3. The Bill and Explanatory Notes can be found at:
http://www.parliament.uk/bills/public_bills.cfm
4. The matters dealt with in the Bill are devolved and so far as Scotland is concerned the Scottish Executive has brought forward its own legislative proposals in its Animal Health and Welfare (Scotland) Bill which was introduced into the Scottish Parliament on 5 October 2005. However, while the UK Government and Scottish Executive are legislating separately, they also believe that there should be co-operation to ensure that there is no scope for the exploitation of gaps between the animal welfare regimes north and south of the border. In this context both administrations support the maintenance of the established principle of reciprocal recognition of court orders, so that those convicted of serious cruelty to animals and consequently disqualified from keeping animals in one jurisdiction cannot escape the effect of that disqualification simply by crossing the border into the other jurisdiction.
5. If the new legislation in England and Wales is to maintain this principle it has to provide, as the existing legislation does currently, that court orders made in England and Wales should have effect in Scotland. As it would be within the devolved competence of the Scottish Parliament to legislate for a decision made by an English or Welsh court to apply in Scotland, this requires the consent of the Scottish Parliament in accordance with the Sewel Convention.

Detail

6. Disqualifications are usually made only in the most severe cases of animal cruelty. Thus it is important to retain the existing position that a person disqualified from keeping animals in one part of Great Britain would be disqualified from keeping animals in all parts of Great Britain. Clause 60 and Schedule 4 of the Animal Welfare Bill repeal for England and Wales only the existing provision in the Protection of Animals (Amendment) Act 1954 which gives rise to that position, but leave it in place for Scotland. Clause 31 of the Bill then re-enacts, with modifications for England and Wales, the power under which the courts can order disqualification. To enable a court order made under this new power to have effect throughout Great Britain, it is proposed that the relevant provisions in the Animal Welfare Bill should be extended to Scotland by Clause 41. (Correspondingly, the Bill would ensure that orders made in Scotland under existing legislation will continue to have effect throughout Great Britain.)

7. Clause 42 of the Animal Welfare Bill makes further related provision for Scotland. It provides for seizure of animals following conviction for an offence under clause 43, and gives a right of appeal by an owner of an animal following seizure. Provision is made in clauses 42 and 43 for powers for the court to make provision as to carrying out the order, as to disposal of any animal, and as to the position pending an appeal.

8. There are considerable advantages in having a reciprocal regime for disqualification orders throughout Great Britain. The most obvious being that it would then not be possible for a person disqualified from keeping animals in England to move an animal business to Scotland, and vice versa. Whilst it may be possible to refuse to issue a licence to someone wishing to relocate an animal business to Scotland, not all businesses involving animals require a licence, e.g. pet grooming establishments, dog walking and, importantly, livestock farming. The possibility of having someone relocate a livestock farming operation to Scotland after being banned from keeping animals by an English or a Welsh court is something we wish to avoid.

9. Legislative competence on animal welfare is devolved and there is no intention that Westminster should legislate substantively in this area. As noted above the Executive has introduced its Animal Health and Welfare (Scotland) Bill into the Scottish Parliament which shall be open to full debate and discussion. This motion simply seeks to coordinate the interface of the two regimes, to ensure that a ban on a person from keeping animals is applied throughout Great Britain. The motion seeks the consent of the Scottish Parliament to Westminster legislating in a devolved area for the narrow purpose of ensuring that persons convicted of the most severe cases of animal cruelty and banned from keeping animals in England and Wales are not able to avoid the effect of that ban in Scotland.

10. It should be noted that it is possible that the animal welfare or animal cruelty offences could be slightly different in Scotland compared to England and Wales, depending on the legislation that will be passed in the Scottish Parliament. However, disqualification orders are made for very serious offences of animal cruelty or abuse, even if they are not exactly the same offences in both jurisdictions. As such, and to avoid the possibility of a disqualified person moving north to keep animals, the process to give disqualification orders Great Britain wide effect is fully justified.

Consultation

11. The Scottish Society for the Prevention of Cruelty (Scottish SPCA) have expressed their full support. They consider it important that an order disqualifying on anybody from keeping animals imposed on anybody in England and Wales should extend to Scotland. They share the concern that a failure to ensure reciprocity in this matter could allow a person to relocate to Scotland to continue any unlicensed animal business such as farming, even although a court has decided that they are not a fit person to be in charge of animals.

12. A draft Animal Welfare Bill was published by Defra on 14 July 2004. This included clauses covering the recognition of English and Welsh Orders in Scotland, covered by the Sewel Motion. The draft Bill was examined and consulted on by the House of Commons Environment, Food and Rural Affairs Committee. Its report, published on 8 December 2004, did not specifically comment on the draft clauses covered by this motion, though it commented favourably on the proposals to close the loophole in the current provisions on disqualification.

Financial Implications

13. There are no financial implications for the Scottish Executive or local authorities.

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