

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Tuesday 6 March 2007

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

10th Meeting 2007, Session 2

CONVENER

*Maureen Macmillan (Highlands and Islands) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Rob Gibson (Highlands and Islands) (SNP)

Richard Lochhead (Moray) (SNP)

Mr Alasdair Morrison (Western Isles) (Lab)

*Peter Peacock (Highlands and Islands) (Lab)

Nora Radcliffe (Gordon) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

*Trish Godman (West Renfrewshire) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

THE FOLLOWING GAVE EVIDENCE:

Ross Finnie (Minister for Environment and Rural Development)

Simon Stockwell (Scottish Executive Environment and Rural Affairs Department)

Ian Strachan (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 5

Scottish Parliament

Environment and Rural Development Committee

Tuesday 6 March 2007

[THE CONVENER *opened the meeting at 10:31*]

Subordinate Legislation

Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 (Draft)

The Convener (Maureen Macmillan): Good morning, ladies and gentlemen. I welcome members of the public and press, and, of course, members, to the meeting.

We have apologies from Richard Lochhead, Alasdair Morrison and Nora Radcliffe. Trish Godman is here as substitute for Alasdair Morrison. Alex Fergusson is visiting the committee and we might have other visiting members during the morning.

Under agenda item 1, we have two affirmative instruments to consider. The first is the draft Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007. The Parliament must approve the draft regulations before they can be made. We have a motion in the name of the Minister for Environment and Rural Development, Ross Finnie, inviting the committee to recommend to the Parliament that they be approved. I welcome Ross Finnie and his officials.

The Subordinate Legislation Committee has considered the draft regulations and has raised points in its report, an extract of which has been circulated to members. Before we debate the motion, we will have a session to clarify any technical matters and to allow the detail to be explained while officials are at the table, because officials cannot participate in the debate once the motion has been moved.

I invite the minister to introduce his officials and make any opening remarks.

The Minister for Environment and Rural Development (Ross Finnie): Good morning members and convener. I am joined by Dr Mike Lamont from the animal health regional office and by Ian Strachan and Claire McGill from animal health and welfare.

Section 20 of the Animal Health and Welfare (Scotland) Act 2006 makes it an offence for a person to interfere with an animal's bone structure

or sensitive tissue unless the procedure is for a medical reason or has been specifically exempted by regulations. The draft regulations would exempt certain procedures from the general prohibition of the act.

Section 20 has not yet come into force. If it had and the regulations had not been approved, it would have been an offence for farmers and vets to perform the many procedures that are routinely carried out on livestock for identification, herd or flock welfare, handler safety and general animal husbandry. If we had not made exemptions, it would have been an offence to insert ear tags into cattle and microchips into pets, and to neuter cats and dogs. We therefore intend to enact section 20 contemporaneously with the draft regulations.

Procedures such as the amputation of a diseased or badly damaged limb, an operation to remove a growth or to repair tissue or animal dentistry do not need to be exempted because they are carried out for medical reasons. Procedures such as horse shoeing, hoof trimming and horn branding do not need to be exempted because they do not interfere with the sensitive tissue or bone structure of the animal.

The procedures that are exempted under the draft regulations are detailed in the schedules. I should point out that each schedule deals with a specific kind of animal, so it does not follow that a procedure that is permitted for one species is permitted for other species. For example, ear tipping is allowed to be done on feral cats but not on any other kind of animal, and tail docking is permitted for pigs and sheep, but not for other animals.

The branding of horses has been treated differently from other procedures. If someone wishes to carry out that procedure they will have to seek authorisation from the Scottish Executive. Hot branding is the safest way to identify wild and semi-wild horses that are difficult to handle, but if the draft regulations had not introduced a requirement to seek specific authorisation, we would have permitted the hot branding of all equines.

We have not exempted the tail docking of working dogs. I know that that was a highly controversial matter—members will recall that we said during the stage 3 debate that we would introduce these regulations, so there would be an opportunity for those who believed that the initial consultation became somewhat confused to clarify the situation. A number of people believed that, because tail docking for cosmetic reasons was discussed at the same time as tail docking for working dogs, the two issues might have been conflated. When we consulted people on this specific regulation, we therefore stated clearly that we expected to receive their views on tail docking

working dogs. We made that quite clear so that we could clear up any possible confusion that might have arisen during the first consultation on the bill.

We consulted extensively and have received a variety of views from both sides of the argument. There is no doubt in my mind that the Royal College of Veterinary Surgeons, the British Veterinary Association, the British Small Animal Veterinary Association and, in relation to its interest in animal health and welfare, the Moredun Research Institute, provided compelling evidence that clearly supports non-exemption. Those organisations clearly addressed the issue of working dogs. We clarified that with them in case there could be any doubt, and that was their overwhelming view.

I do not suggest that individual veterinary surgeons do not have contrary views, and I am not criticising them—they all have the best of good motives—but the overwhelming majority of their professional bodies agree with us. It is also true that the majority of veterinary surgeons do not dock dogs and most veterinary practices do not permit it.

There was evidence from both sides but, on balance, we agreed with the professional bodies, which are deeply concerned about the issue and have concluded that the right decision is not to exempt working dogs' tails.

The Convener: Thank you. I invite members to ask questions or seek clarification. Members should remember that we are not in the debate at this stage.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I have been informed that, during 2006, two thirds of injuries to working dogs were to spaniels with long tails and that there were no reported injuries to spaniels with docked tails. Do you have that evidence, or can you comment on it?

Ross Finnie: I do not have that specific evidence. Ian Strachan might be able to comment.

Ian Strachan (Scottish Executive Environment and Rural Affairs Department): I think that that information might come from a survey that was carried out as part of the consultation. Over a period of six weeks, the survey obtained information about injuries to the tails of working dogs. It did not look at injuries that took place during a certain period; rather, the information was gathered over a certain period. What has been said is correct, but the information gathering was not scientific as the only information that was collected was information that was volunteered.

Mr Brocklebank: Was that information taken into account in the decision that was reached?

Ross Finnie: Yes—if we are talking about the same thing. I need to be careful here because although Ted Brocklebank has presented the matter in good faith, Ian Strachan is certainly referring to survey data that were produced as part of the consultation process. Therefore, the direct answer to the question is yes. The information was taken into account along with the submissions—both for and against—that we received. As I said in my opening remarks, clear evidence was put to us from both sides of that argument, but I have indicated where the balance lay.

Peter Peacock (Highlands and Islands) (Lab): I am grateful to the minister for clarifying the background to his point about tail docking dogs. Like other members, I have received representations from Gerard Eadie—who is well known in Scotland—who came across as having a very genuine concern about the damage that he has seen inflicted on the tails of dogs such as spaniels, German pointers and terriers. He seemed to speak from the point of view of great concern for the dogs that he and others own. In light of the minister's decision not to exempt the docking of working dogs' tails, despite those representations, will he respond to Mr Eadie's point that, historically, working dogs' tails have been docked and, ergo, there is less evidence of damage to dogs' tails than might otherwise have been the case? If, when the draft regulations are being implemented, there is growing evidence that damage is occurring because fewer working dogs are having their tails docked, will the minister be free to introduce an amendment to the regulations to protect such dogs? That is my first point.

Secondly, Mr Eadie pointed out that, notwithstanding whatever regulations are introduced in Scotland, people will be able to take their dog south of the border to have its tail docked and then bring it back. Will the minister clarify the technicalities about that? Will the draft regulations prevent someone from doing that or make such action illegal?

Ross Finnie: I, too, have received correspondence from Mr Eadie, which I certainly treated very seriously. He was not alone; a number of people felt strongly about the issue. We met others, such as the Scottish Gamekeepers Association, who produced DVD evidence that we studied with care. We understood those concerns. I am bound to say, however, that I would have been really concerned if we had not absolutely clarified with the professional veterinary bodies that they understood that we were seeking their professional views not in general terms but explicitly on tail docking working dogs. It seems to me that the professional bodies ought to have been well aware of the arguments that were put to us, but they came to the conclusion that we have accepted.

The second question was about what would happen if new evidence or a different body of evidence emerged. Just as veterinary practices on farmed animals are almost bound to develop, there will almost certainly be changes in the particular requirements of, for example, pigs and sheep. One could not put a timescale on it, but such developments are certainly possible. That is why the requirements are embodied in regulations, which can be amended without recourse to primary legislation. The purpose and intent in the construct of the act was that procedures such as mutilation would be subject to a total ban but exemptions would be provided for by statutory instrument. That is the direct answer to the question.

I ask Ian Strachan to respond to the point about the difference in practice north and south of the border.

10:45

Ian Strachan: Mr Peacock sought clarification on whether people could take puppies outwith Scotland—

Ross Finnie: Does this apply just to working dogs?

Ian Strachan: No, this applies to any dog. Under section 20(3) of the Animal Health and Welfare (Scotland) Act 2006, it is an offence to take a protected animal—in this case, a dog—out of Scotland for the purpose of having a prohibited procedure conducted on the animal. The application of the provision goes wider than the docking of dogs' tails but, in practice, it means that it would be an offence to take a working dog to England—or, indeed, to take a Rottweiler, a boxer or any other type of dog to Ireland—to have its tail docked.

Peter Peacock: But purchasing a dog whose tail has been docked south of the border and bringing it north would not be illegal.

Ian Strachan: If a working dog had had its tail legally docked in England—or, indeed, if a boxer, Rottweiler or any other traditionally docked breed had had its tail docked in Ireland—it would not be an offence to buy that dog and bring it into Scotland. If we had done something like that, we could have made it an offence for someone who moved to Scotland to bring the family pet.

Peter Peacock: I understand that. I just wanted to clarify the point.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): Convener, I have a supplementary question on that point.

The Convener: I will take Alex Fergusson's supplementary question. I will then take Rob

Gibson's question before I come back to Alex Fergusson for his main question.

Alex Fergusson: Thank you.

In practice, there will be nothing to stop the owner of a pregnant bitch in Scotland selling the bitch for a nominal sum—or a non-nominal sum—to a friend or fellow breeder down south who, following the birth of the pups, will dock the pups' tails. Presumably, it would be perfectly legal for those dogs to be bought and to be brought back to Scotland. I point that out because I am afraid that, however well intentioned the provision might be, it will be practically impossible to police.

Ian Strachan: In fact, the law would not require the person to sell and buy the animal; it would be legal to take a pregnant bitch to England—or Ireland, or somewhere else—to have its puppies, for those puppies to be docked and for the animals to be brought back to Scotland. The reason is that an animal in the foetal state is not defined as an animal under the act.

Alex Fergusson: Does that not make the regulation look a bit daft?

Ross Finnie: Only if you insist that everything that is done in England must be done in Scotland and vice versa.

Alex Fergusson: That is not my position.

Rob Gibson (Highlands and Islands) (SNP): The Executive note to the draft regulations states that the Executive received 160 responses to the consultation. How many of them were on tail docking dogs?

Ian Strachan: I think that the total was 122.

Rob Gibson: I am interested in how the draft regulations have been presented to us. They contain many provisions on other animals about which there is little controversy. Did the minister consider introducing separate regulations on tail docking dogs, especially working dogs?

Ross Finnie: No, not really. Section 20 of the Animal Health and Welfare (Scotland) Act 2006 prohibits all mutilations but, as I explained in my answer to Peter Peacock, it provides that exemptions may be made by statutory instrument. The schedules to the draft regulations lay out the provisions on the different species separately, to avoid confusion. There was no particular reason why we should have made a separate set of regulations for dogs. I referred to the contents of the act in my opening remarks because I was invited by the convener to make a presentation on the draft regulations. Although the essential controversy has been over working dogs' tails, the regulations provide exemptions for other species, as well as dogs.

Rob Gibson: You suggested that there would be a five-year review, and there has been some discussion about shortening that period. Given the potential evidence on tail docking dogs, it would be possible to hold a review after a shorter period and to specify that in the regulations rather than rely on the gesture of offered evidence. Given the strong evidence on both sides of the argument, were you not tempted to separate the issues and create the potential for reviewing tail docking dogs much earlier than five years?

Ross Finnie: We are not obliged to wait five years before we can have a review, but it is an absolute imperative to review the situation by five years. As I said in response to Peter Peacock, because of the way in which the regulations have been constructed, if overwhelming evidence appeared in relation to any aspect of mutilations, and to working dogs in particular, it would be perfectly possible for Parliament to revisit the issue because we are not required to go back to primary legislation.

Rob Gibson: Are you satisfied that tail docking adult dogs, which might be required because of an injury, would be more or less painful than tail docking puppies?

Ross Finnie: In assessing the evidence, I have tried to avoid putting myself in the position of a veterinary surgeon. I have listened extremely carefully to those who have represented the case for exempting tail docking working dogs, including veterinary surgeons. I have also taken account of advice from the professional bodies that represent the overwhelming majority of veterinary surgeons. It is not appropriate for a minister to try to adjudicate on degrees of pain, but it is proper for a minister to take proper cognisance of the evidence that is put to him on both sides of an argument and to come to a view. It was a difficult decision because there were veterinary surgeons on both sides of the argument. All I am saying is that the professional bodies concluded overwhelmingly that tail docking working dogs should not be exempted.

Alex Fergusson: The vast majority of veterinary surgeons do not come across working dogs during their working lives. It is rural veterinary surgeons who come across such dogs.

We are using the general term “working dogs” and I understand why. Nobody would suggest that collie dogs, for instance, need their tails docked to be able to work. English pointers rarely require tail docking and neither do Labradors. Spaniels, German pointers and terriers are the three breeds whose tails are mostly docked. Was any thought given to making the regulations breed specific?

Ross Finnie: We had no specific request to do that. Points were made to us in relation to those

specific breeds and constructive suggestions were made about the nature, degree and extent of tail docking. There were submissions not only about tail docking at a prescribed length, but several constructive points were made about how it should be done, at what point it should be done and how one should specify the practice. I do not recall any specific request—except maybe there was one. However, there was no general request to break the regulations down into categories as Alex Fergusson suggests.

Alex Fergusson: Thank you. I am sure that the minister will accept that working dog breeders who have their puppies’ tails docked do so not out of any desire to hurt the animals but to prevent future injury to those animals. Is that fair to say?

Ross Finnie: That is fair to say, although there are issues to consider. I will not try to get into people’s minds, because that is always dangerous. Evidence was produced as to why some people carry out tail docking of puppies traditionally—because that is the way it has been done. I do not want to get into that.

If I was taken with any part of the argument, it was by the people who produced specific evidence. I take your point about the nature of veterinary practices that deal only with working dogs. I would be very surprised if reputable bodies did not take their own soundings before signing letters to ministers who had asked them expressly for their opinions on working dogs.

Alex Fergusson: I take that point on board as well, but the point—

The Convener: Thank you, Alex. Let us move on to questions from Elaine Smith and Trish Godman.

Elaine Smith (Coatbridge and Chryston) (Lab): If I remember correctly, in reply to a question about the five-year review you said that five years was the maximum and that the situation could be reviewed before then if evidence to make it necessary was presented. I am interested in who would gather that evidence.

Ross Finnie: I do not wish to speculate on whether the review would happen earlier—although in fact I am doing that, so I will try to be careful. Elaine Smith and I might presume that if evidence from individual farms or rural organisations began to emerge, there could be an overwhelming case for earlier review in the first instance, but it would be for those bodies to bring such evidence to members of the Scottish Parliament. After all, this Parliament is well equipped, both in terms of its Public Petitions Committee and elsewhere, to enable members of the public and others to make proper representations about matters that concern them.

It would then be for the Parliament to decide whether to make representations to ministers. We try to operate on the basis that we do not close our minds. I do not know precisely how the situation would proceed; all I am saying is that the opportunity to amend the regulations exists, as it does for every Scottish statutory instrument.

Elaine Smith: That is fine. In fact, I am on the side of the regulations today. You said that the arguments are finely balanced. I see that, too, given the representations that have been made to me. If you are saying that evidence might suggest that you should review the situation early, you need to know that the evidence exists. I suggest that you might want to monitor such evidence through your department. Earlier, when we discussed a point that Ted Brocklebank raised, there was some dubiety about where the evidence came from—from a survey or somewhere else.

To what extent would you consider injuries to dogs? What kind of injuries would require tails to be docked? Surely evidence would have to be gathered properly. If you put the regulations in place, the onus ought to be on the Executive to carry out monitoring.

Ian Strachan: If there is evidence of tail damage to working dogs, it will come from veterinary practices because the dogs will have to go to the vet for treatment. That will be the litmus test. If there is damage—

Elaine Smith: Are you going to produce a form that vets will have to fill in if working dogs with damaged tails are presented to them, so that you are able to monitor the situation properly?

Ian Strachan: I would be a little concerned about doing something as blunt as that. There is bound to be tail damage among working dogs. There is bound to be an increase in tail damage because you cannot damage what you do not have.

Mr Brocklebank: That is the very point.

Ian Strachan: Yes, but the issue is about the extent of the damage—whether it is just a small cut or severe damage.

Elaine Smith: But the Executive will not know that unless it monitors the situation by issuing a form to vets so that they can record whether the damage is small or severe. That has to be monitored and I do not think that we can rely on the Public Petitions Committee to do that job.

The Convener: Well, minister?

Ross Finnie: I am open to evidence. There are a variety of areas in which we do not collect evidence routinely. I hear what Elaine Smith says and I do not disagree about the difficulty of gathering such evidence. I will have to give some

thought to what she says because it is not routine practice to gather such evidence. The state veterinary service and large and small vet practices speak fairly regularly, so it is not as if we are entirely ignorant of what is going on in private veterinary practices. The state veterinary service sees that and we see it in various bodies' journals. I would have to give thought to Elaine Smith's question about how, if evidence started to emerge, it would be gathered more systematically than in the survey that Ted Brocklebank and I discussed, which contained a variety of questions but was not as conclusive on some issues as it was on others.

11:00

The Convener: The committee believes that it is important to have robust evidence as soon as the regulations are in place, if the Parliament votes for them.

Trish Godman (West Renfrewshire) (Lab): Elaine Smith asked what would have been my first question and Ross Finnie's answer was that the regulations could be amended on the basis of evidence. How that evidence is gathered will be extremely important.

I will follow up a question that Alex Fergusson asked. Would being breed specific be technically possible or would that be slightly difficult? I understand why Alex Fergusson proposed that, but I wonder whether the regulations could be so specific.

Ross Finnie: I presume that that matter could come into play if further regulations were made. One cannot limit what amendment might be made—that might be how the matter drove. Alex Fergusson asked an interesting question but, in the balance of the evidence that we received, that line was not pursued with any diligence. His proposal is not unique, but he put it with more force than has been used.

Eleanor Scott (Highlands and Islands) (Green): I have two brief questions about birds. The regulations say that beak trimming and debeaking of hens can be performed only until 31 December 2010. Is that because battery cages are about to be outlawed in the European Union?

Ian Strachan: Yes. That is because other legislation prohibits the beak tipping of laying hens after that date.

Eleanor Scott: Pinioning is a major procedure that involves removing some of the bones in the wing of a game bird. I understand that the procedure is usually undertaken on reared pheasants so that they do not fly away before they are ready to be shot. For most procedures that are major for the animals, the regulations refer to training or to the person who performs the

procedure. For pinioning, the regulations just say that it

"May be performed on any bird other than poultry".

Why do the regulations not refer to the training of the person who will perform that major procedure?

Ross Finnie: You refer to schedule 3 to the regulations. I am looking for the section—

Eleanor Scott: It is under "Condition"—

Ross Finnie: No—I am looking for the provision that says whether the procedure should be performed by a vet. Can someone find it? *[Interruption.]* For the answer, you must cross-refer to the Veterinary Surgeons Act 1966, which provides for that procedure, so it is required to be supervised by a vet.

Eleanor Scott: I am glad to have that clarification.

Ross Finnie: So am I.

The Convener: The regulations say that the tails of farmed sheep that are kept on agricultural land can be docked but the tails of other sheep cannot be. What other sheep exist? Where do we find non-farmed sheep? Are they hill sheep?

Ross Finnie: They are pets.

The Convener: Pet sheep—why did I not think of that?

I have been told that the regulations in Scotland that apply to farmed animals are different from those in England and Wales, but I see the officials looking—

Ross Finnie: If you care to write, I will be happy to respond to the committee. I am not aware of any difference, but you may well be right—I am not saying that you are not.

The Convener: Thank you.

We move to the debate on the motion and I invite the minister to make an opening statement and move the motion.

Ross Finnie: I do not really have anything to add. The comments around the table reflect much of the evidence that was to the contrary, by and large. As I said, we took full account of all the evidence on tail docking. It was not easy, but I have explained why, on balance, we took the decision that we did. I have also spoken about evidence gathering. Elaine Smith asked an interesting question about that, to which we will have to return.

I move,

That the Environment and Rural Development Committee recommends that the draft Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 be approved.

Mr Brocklebank: I have been proud to be a member of the committee in the past two years. By and large, it has done very good work, with which I have been proud to be associated. The one major exception has been the Executive's failure to accept the argument for exempting working dogs from the ban on tail docking.

Like almost everyone who has experience of field sports and like our Westminster counterparts, I believe that the minister's decision is misguided and could inflict unnecessary pain and suffering on working dogs—the reverse of what the minister claims that the regulations will achieve. It is also illogical, as the tails and testicles of lambs and pigs will still be able to be removed without anaesthetic.

Even worse, as I have consistently argued and as we have heard again this morning, the ban will be almost impossible to police. We have heard that it will be possible for pregnant bitches to be taken across the border to England, where the pups can be born and the pups' tails can be docked, after which the pups can be transported back north of the border, without any money changing hands. All that the regulations will do is add to the traffic that goes north and south of the border. Who knows how much that will increase carbon emissions?

A previous deputy minister has claimed, and the minister said today, that the regulations might be amended if the ban resulted in increased tail damage, but why should our working dogs be condemned to suffer for three or five years until ministers may be forced to change their minds, especially when injuries to adult dogs that result in amputation are known to require expensive and extensive surgery?

Good legislation does not alienate the sector that it affects most directly. From time to time, all of us can disagree with legislators but, if we are honest, we will see some merit in the proposed legislation. In the near-unanimous view of people who operate working dogs, absolutely nothing recommends the regulations, which will lead only to more suffering.

I have consistently voted to exempt working dogs from the legislation and I guess that I have usually been the only committee member to do so. I remind members that just because someone is in the minority, that does not necessarily make them wrong. Today, I will vote again for an exemption for working dogs. The regulations are unnecessary and unworkable.

Alex Fergusson: I declare that I am wearing the blackface sheep breeders tie. I was not going to mention that, but pet sheep were referred to. I understand that the tailing of sheep is performed to prevent faecal build-up on the tail, which has

consequent health problems. Anybody who knows anything about sheep will know that pet sheep normally suffer from that more than do traditionally farmed sheep, so the provisions on that in the regulations are ill thought out.

On working dogs' tails, I believe strongly that breeders dock their pups' tails to avoid future injury to their dogs and out of love and affection for the breed with which they work. It seems to me that, for that reason, docking would qualify as a prophylactic medicine and that therefore anybody who was prosecuted under the legislation could make a strong case that they were carrying out a medical procedure as a form of prophylactic medicine to prevent future pain. I understand that medical procedures are exempt under the legislation.

We have a simple equation in front of us. Once a working dog's tail is damaged, it will never be truly healed. If the tail is docked, pain free, when the dog is a puppy, it will hardly ever be damaged. It was freely admitted by officials that the regulations, if passed, will increase damage to working dogs' tails. It has been freely admitted that the legislation is full of holes, because dogs can travel south, whelp there, and return after docking procedures have been carried out. I understand the minister entirely when he says that England and Scotland do not need to have the same regulations. Of course we do not—that is why we have devolution. However, there are some occasions when it is far more sensible to have the same regulations north and south of the border, and I believe that this is one of them. The regulations will increase damage, injury and pain to working dogs and I urge the committee to reject them.

Elaine Smith: I say to Ted Brocklebank that I do not think that someone who is in a minority is necessarily wrong, but this is not about absolute right and wrong. The minister has said that the Executive had to weigh up the evidence and that the arguments were finely balanced. We should remember that, because of the evidence, it was perhaps not a simple decision. When we took evidence, it was asked whether, by removing a dog's tail, we are removing the dogginess of the dog. On balance, I would be keen to support the regulations, with no exemption for working dogs. However, I am keen for the Executive to consider the monitoring and research issue that I raised earlier.

I say to Ted Brocklebank that no one wants dogs to suffer as a result of the regulations. That is not what this is about. We need good monitoring and research to show what is happening. If suffering is happening, clearly the legislation should be reviewed.

I am a bit more relaxed about the differences between the legislation in Scotland and the

legislation in England. If the legislation is working in Scotland, perhaps England will consider reviewing its legislation. That should also be monitored. I am minded to support the regulations as they stand. The minister said that he would look into monitoring and research—that is important, but we must support the regulations today.

Rob Gibson: In answer to my first question, the minister told us that 120 of the 160 responses to the consultation related to tail docking of working dogs. I am extremely surprised that, despite a mutilation being a mutilation, he has not sought to separate tail docking from the other items in the regulations, which, in the main, are non-controversial. I am concerned that the minister has said that he will come back with his impression of whether the legislation should be breed specific, and of how evidence will be collected. Frankly, I think that this is not the best way of going about such important secondary legislation. The way in which the regulations have been presented is far too non-specific on what are very specific points. While many parts of the regulations are not controversial, we would have been better served if they had been presented differently.

Although the evidence from the institutions was overwhelming, the arguments from areas of the country that use working dogs needed to be expressed in a great deal more detail. The committee would have wanted to have heard more of those arguments. I am being completely consistent here—I might well say something similar about the next item. When regulations are made, people should be clear about what is involved in them. I am concerned that these regulations are not as clear as they should be.

11:15

Eleanor Scott: I was not going to say anything about dogs, but I will say a little bit because they have very much been the focus of the debate. However, there are many other procedures being permitted under the regulations that would bear close scrutiny but which have not had it. I would take issue with Rob Gibson. The regulations say nothing about dogs—that is all in the primary legislation.

On tail docking, I support the fact that there is no exemption for working dogs in the regulations. I recognise the arguments. When a practice has been a long-standing tradition, which people believe is for the best for the welfare of the animal in question, it is difficult to turn that on its head and abandon it. I hope that the effects will not be as bad as some people have suggested—others have said to the contrary. Spaniels seem to be one of the most concerning breeds because of their feathery tails. I hope that the owners of dogs such as spaniels will clip the hair on their tails, so

that they are less likely to be damaged. I am sure that they will do that because, as I know perfectly well, all the owners of working dogs have their dogs' welfare very much at heart. I support the regulations from that point of view.

Some of the other procedures that are permitted by the regulations are quite controversial. Some of them are necessary from the point of view of animal welfare within our intensive agriculture systems. There are changes going on—for example, one of the procedures is time limited because of EU changes to poultry husbandry. I would want a close review to take place of all those procedures, the reasons for them and the farming practices that lead to their being necessary. A five-year review is mentioned at the end of the regulations. I would want something more than that. In the light of evolving agricultural practices, I would want all mutilations that are not done primarily for reasons of animal welfare but done to enable us to handle the animals in those intensive systems to be constantly reviewed.

Peter Peacock: To follow up Elaine Smith's point, the minister said in his opening remarks that the arguments are finely balanced. I would say that they are extremely finely balanced. It is a very difficult decision indeed. When I spoke a week or so ago to Mr Eadie, whom I mentioned earlier, I was extremely impressed by his compassion and genuine concern for the welfare of the animals that he looks after. He spoke passionately about that. I am sure that he represents a view that is consistent among all those who have working dogs.

The minister said that the representations from the veterinary organisations—we have had letters from the Scottish SPCA—support his position. That is why the issue is so finely balanced. It would be pretty difficult for a minister in these circumstances to ignore the professional advice of the vets and the likes of the SSPCA, which is a well-respected organisation. In that sense, the minister is not erring in introducing the regulations. Given the advice that he has received, it would be difficult for him to take a different position.

Rob Gibson asked whether the minister could have handled the regulations differently by separating out the different exemptions. I am not sure that that would be right either. We would have dozens of orders before us. We have had a good discussion about the regulations and have made progress on some of the issues. The minister has not erred in that sense either. I would find it reassuring if the minister were able to give a clear commitment to reflect on the points that have been raised—particularly by Elaine Smith—about monitoring what happens in future. We should not defer monitoring but should monitor concurrently with the implementation of the regulations. I hope that the minister can cover that when he sums up.

To reflect on the point made by Alex Fergusson, there is no breed-specific argument within the broader argument about tail docking. As a result of the arguments that I have heard around the table I will leave the table happy to support the regulations. However, I would be much happier if I was assured that there would be close monitoring of the regulations and that the minister would not hesitate to seek an amendment to the order if the evidence clearly showed that the circumstances were changing in light of the changing procedures that had been agreed.

The Convener: Thank you. I invite the minister to wind up the debate and address members' points about tail docking, as well as Eleanor Scott's point about the procedures that are carried out on farm animals.

Ross Finnie: On Eleanor Scott's point, I think that I am correct in saying—I hope that my memory is not letting me down—that issues to do with developments in veterinary and agricultural practices were considered during stage 1 of the Animal Health and Welfare (Scotland) Bill, when the chief veterinary officer gave evidence. However, for the record, I repeat that we are cognisant of changes and developments in veterinary practice that could impact on farming practice, although they will not necessarily take place overnight, as I think I said to Alex Fergusson. Changes in practice might require us to review the exemptions that are granted, so the situation will be constantly kept under review by Mike Lamont and the rest of the state veterinary service. I hope that Eleanor Scott is reassured by that.

Rob Gibson, Ted Brocklebank and Alex Fergusson presented their cases in good faith and made it clear that they are persuaded that damage will be done. The same could be said for those veterinary surgeons who represented the groups that came before us and wrote to us. On the other side of the argument, there are people who are equally adamant that procedures should not be exempted. As Peter Peacock said, the Royal College of Veterinary Surgeons, the British Veterinary Association, the British Small Animal Veterinary Association, and the Moredun Research Institute in Scotland, which is primarily concerned with animal health and welfare, all expressed that view. We must assume that none of those organisations is motivated by anything other than concern for animals and we must come to a view on that basis.

Elaine Smith made a fair point. I will talk to people in the animal health and welfare division of the Environment and Rural Affairs Department about how we might systematically monitor the situation, so I will not try to answer her question off the top of my head.

Many representations have been made on both sides of the argument, which is finely balanced—certainly for people whose principal job is regulation. We might have expected that if anyone was going to argue for an exemption on medical or prophylactic grounds it would be the veterinary associations that would do so, but they chose not to make that argument.

The Convener: The question is, that motion S2M-5579 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, Eleanor (Highlands and Islands) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

AGAINST

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

ABSTENTIONS

Gibson, Rob (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 5, Against 1, Abstentions 1.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 be approved.

The Convener: I suspend the meeting briefly to allow a changeover of officials.

11:24

Meeting suspended.

11:27

On resuming—

National Waste Management Plan for Scotland Regulations 2007 (Draft)

The Convener: The second affirmative instrument is the draft National Waste Management Plan for Scotland Regulations 2007. Motion S2M-5621, in the name of the Minister for Environment and Rural Development, Ross Finnie, invites the committee to recommend to the Parliament that the draft regulations be approved. The Subordinate Legislation Committee has considered the draft regulations and has not raised any points on them.

Before we come to the debate on the motion, we will have a short session to clarify any purely technical matters and allow for any explanation of detail while an Executive official is at the table. I

invite the minister to introduce his official and to make any opening remarks.

Ross Finnie: I am joined for the discussion on the draft regulations by Simon Stockwell, from the Executive's waste strategy team.

The draft regulations require Scottish ministers to have a national waste management plan that sets out policies in relation to the recovery and disposal of waste in Scotland. They lay down that, when we prepare and amend the national waste management plan, we need to comply with public participation procedures as laid down in the EU public participation directive.

In line with the directive, the draft regulations also state that we do not need to comply with the public participation procedures contained in the regulations if the plan is being made for the sole purpose of national defence or civil emergencies, or—and I stress the importance of this—if we carry out a strategic environmental assessment. In practical terms, we would expect the national waste management plan and any amendments to it to be subject to a strategic environmental assessment, which would itself include public consultation.

The draft regulations also place the duty to have a national waste management plan on the Scottish ministers, unlike the current position, which is that the Scottish Environment Protection Agency has responsibility for preparing a national waste strategy. I should make this important distinction: it is important for us, as Scottish ministers, to be responsible for the policy, which does not mean that we do not have access to SEPA's expertise, including in drawing up the policy. Indeed, as SEPA is the regulatory body, it is likely that it will bring out the policy. We are not suggesting that its expertise should be cut off; we are simply saying that responsibility for the plan and the policy should be vested in ministers.

Regulation 3(6) lays down that existing documents, including the national waste plan and the national waste strategy, continue to have effect as the national waste management plan until they are replaced or amended by Scottish ministers. Responsibility will then transfer, but the existing documents will remain in effect until then. As I said, there will be public consultation and participation, the only exemption being when a plan is made for defence or civil emergency reasons.

11:30

The Convener: I invite members to ask questions or request any points of clarification.

Rob Gibson: I have one or two points to make about the evidence from the people who were

consulted. Did the evidence contain any theme with regard to how the waste management strategy should be managed? Are there any overwhelming concerns about the process of consultation and the consultees' remarks?

Simon Stockwell (Scottish Executive Environment and Rural Affairs Department):

Two overriding themes emerged from the consultation responses: first, a need was identified for clarity on SEPA's future role in the national waste management plan; and a second need was identified for clarity with respect to the Executive itself having sufficient resources to implement the plan.

Rob Gibson: Were those comments published on the web or are they in hard copy only?

Simon Stockwell: They are in hard copy only at the moment, in the Executive's library in Saughton House.

Rob Gibson: On the Executive's approach to working up the plan, how have you assessed the suitability of the Scottish Executive Environment and Rural Affairs Department and its staff for taking over what is a major duty?

Ross Finnie: The lengthy and detailed discussions about the form and structure of the original national waste plan and strategy and the area waste plans, which came together to form the national waste plan, took place at stakeholder meetings that I chaired. Other organisations were represented, but the proposals were largely supported by representatives of the Convention of Scottish Local Authorities.

Essentially, we are dealing with responsibility for implementing the statutory requirement to collect, which lies with local government. The detailed expertise on certain aspects was provided by SEPA. A series of extensive meetings were held, largely under my chairmanship, regarding the structure, purpose and possible requirements of the area waste plans and related issues. We drew up the national waste plan and the provisions that allowed local authorities to do the work, but the detailed expertise was provided jointly by SEPA and local authorities.

Rob Gibson: There are two aspects that I would like to take a little further. I was involved with area plans and so on at a local level as a stakeholder, before my election. People do not always get what they want, or even what the majority want. Modifications are made to plans, which can be somewhat unfortunate if there is a different and overwhelming local view.

It could be suggested that you are amalgamating information from local authorities and that your approach is merely to take that information and try to use it in future. Given

people's experience of the previous process, what ability will they have at a local level to affect the way in which the national plan is to be developed?

Ross Finnie: The motivation behind the area waste plans was in no way to prevent or prohibit local councils or members of the public from contributing fully to their development. How that work was carried out by local authorities is a matter for them.

The area waste plan structure came about as a result of the working group's recognition that, as a consequence of the previous system of collecting biodegradable municipal waste—which was perhaps one of our most efficient systems in economic terms, although it was one of our most disastrous in environmental terms—local authorities had almost no infrastructure in relation to waste collection, save for the wheelie bins, wheelie bin collection vehicles, transfer stations and larger vehicles to take waste to landfill. There were also issues to do with local authority expertise, given that the system was relatively simple.

The area waste plans were, therefore, an attempt to assist local authorities and were widely discussed with COSLA. At a strategic level, they endeavour to do two things. First, they should ensure that there is no unnecessary duplication across Scotland of reinvestment in equipment and so on. Secondly, they should help local authorities to build up in-house expertise in a different system of collection management. The area waste plans, and the national waste plan that followed them, were an attempt not to stifle, but to assist local authorities, especially in the purchase of the necessary equipment for a completely different system of waste management.

Rob Gibson: I have a final question on this point, and a separate one about the process.

The Convener: Other members still want to ask questions.

Rob Gibson: That is all that I intend to ask. We are talking about £1 billion being spent between now and 2020. It is a bit different from the tail-docking issue—it is quite big financial stuff.

Given the fact that the minister had an overview in drawing up the waste plans, did the inclusion of waste-to-heat as an alternative to landfill, rather than something that was just the responsibility of local authorities, come from the top down?

Ross Finnie: Waste for heat was always an issue. Some local authorities—at least, Dundee City Council—had already constructed a heat-from-waste plant before the plan was finalised. The group that put together a strategic view on the area waste plans considered evidence of the very different performances of mainland European

states and other member states in reducing, reusing and recycling. That evidence showed that even the best-performing of those states had taken advantage of quite modern techniques of producing heat from waste. That was always considered as part of the plan.

Rob Gibson: I have a small question about the process. Internally, within the department, it has taken a while to get the programme to the stage that it is at. What external assessment has been made of the process that you are going through? Has there been more than one external assessment?

Simon Stockwell: We have regular gateway reviews of the process of implementing the national waste plan, involving people within the Executive and an external consultant interviewing some of the key stakeholders, such as local authorities, SEPA and the private waste industry. Somebody from Friends of the Earth or WWF was interviewed the last time, too. That work gives us an update on how we are performing, on what the stakeholders think and on whether there are any recommendations for future changes.

Rob Gibson: Has the latest of those reviews been successful?

The Convener: Can we move on? Other members are waiting to ask questions.

Eleanor Scott: My questions will probably be daft-lassie questions, as I found it difficult to understand what the draft regulations were saying. Are we keeping the 11 existing waste areas?

Ross Finnie: Yes, we are trying to.

Eleanor Scott: Currently, those areas produce their waste plans from the bottom up. Does the national waste management plan take a top-down approach, telling those waste areas what to do?

Ross Finnie: Scottish ministers are responsible to the Parliament for policy. Therefore, it was anomalous for SEPA to be technically responsible for policy in a major area that has developed in the way that it has developed. I am at pains to point out that I do not want to diminish the role and value of SEPA's expertise in any way, but it is entirely proper to be clear about who should be responsible for the delivery of the national waste management plan and the strategy. The committee tends to call me rather than SEPA to meetings on such matters, which is right. We are trying to remedy a structural anomaly.

There are issues to do with having a strategic overview and trying to get the best balance, which largely rests on the expensive capital investment that must be made to transform how waste is gathered and disposed of in Scotland. We have brought about such a transformation in the past four or five years. As I said to Rob Gibson, under

the previous system, we completely dismantled almost all the equipment and effectively dismantled the personnel, who had real expertise. We need to build those up. A strategic overview will avoid excessive capacity being put in place or unnecessary joint expenditure by local authorities.

Eleanor Scott: I am happy with the buck stopping with the minister.

I was not clear whether the draft regulations refer to all Scotland's waste or only to municipal waste.

Simon Stockwell: They relate to all waste. The national waste plan has, until now, concentrated on municipal waste, although it also covers other waste. The draft regulations cover all controlled waste.

Eleanor Scott: Were the existing area waste plans only for municipal waste?

Simon Stockwell: They had a chapter on non-municipal waste, but they were mainly about municipal waste. We hope to publish a framework on non-municipal waste fairly soon. We recognise that more needs to be done about non-municipal waste, but the plans currently concentrate largely on municipal waste.

Eleanor Scott: The schedule mentions encouraging

"the use of waste as a source of energy"

as an objective. Will pressure be put on authorities that do not want to go down that road?

Ross Finnie: No. We are clear that the hierarchy of reducing, reusing and recycling waste remains unchanged. We would not want to promote or to support actively any local authority's arguments that it had residual waste that ought to be used for heat recovery unless it could demonstrate that it had met the requirements of the hierarchy.

Eleanor Scott: Finally, with closer ministerial involvement in waste, can we consider revising some of the sillier definitions of waste?

Ross Finnie: That will depend. We would have to have a more detailed discussion about the matter across the piece. Some definitions of waste are largely the result of slightly older European directives. I am not sure that it is necessarily simply a matter of redefining waste: for example, I have not been persuaded that the definition of waste must be changed as a result of matters that are caught by the animal by-product regulations.

There is a powerful case for a new directive in which modern technological developments, whether in transesterification or anaerobic digestion, are specified and which would declassify as waste the product that emerges from

waste that is subjected to a specified procedure. That would be an important development, which I would support, as there is a real inhibitor on developing the extent to which certain waste can be recycled.

The Convener: There are no further questions from members, so we move to the debate. I invite the minister to move motion S2M-5621.

Motion moved,

That the Environment and Rural Development Committee recommends that the draft National Waste Management Plan for Scotland Regulations 2007 be approved.—[*Ross Finnie.*]

11:45

Rob Gibson: I probed the minister on the process by which the plan was adopted in the department and I was interested to hear about the gateway reviews. However, I was not able to get an answer to my question about the state of play after the most recent review. Was there a glowing report? We are interested in having a Government that takes us forward as strongly as possible. I support the process and am concerned that it should work, so I am interested in hearing answers to other questions. Can the minister share more information with the committee on that aspect of the process? In general, we must believe that the department has the capacity and skills to take the matter fully forward, which is what we have wanted for a long time.

Eleanor Scott: I was most interested, from a political perspective, in the list of objectives for the purposes of the national waste management plan. I am happy about most of the objectives that are listed, but I am slightly concerned that one objective is:

“Encouraging ... the use of waste as a source of energy.”

The use of waste as a source of energy should not be an objective; it should be a tool that is available as a last resort for waste that cannot be dealt with in other ways. I was reassured by the minister's comment that the waste hierarchy will continue to underpin our approach, so the inclusion of that objective will not make me vote against the draft regulations. However, I would be concerned if authorities that did not want to use waste as a source of energy were being leaned on to go down that route.

Ross Finnie: Members should bear it in mind that although we have tried to approach the matter positively by upping the ante on recycling targets and by addressing issues to do with the reduction and reuse of waste, local authorities must comply with the statutory requirements of the landfill directive, concomitant with which is the possibility of strictures on local authorities, which are caught between a rock and a hard place in that regard.

We must be satisfied that we are talking about residual waste, after the maximum effort has been made to reduce, reuse and recycle. We have to develop further in that context. The most technically challenging issue in the immediate future is probably food waste. We must not just reduce food waste, for obvious reasons to do with purchasing patterns, we must also address contamination issues, given that a substantial amount—17 per cent, I think—of the current landfill bin is occupied by food waste.

Rob Gibson asked about performance but he was, if I might say so, being slightly Delphic, as usual. I am not quite sure whether his probing question was about phase 1 or phase 2. We will not pretend that the process has not been difficult—local authorities have also found the process difficult, for the same reasons. Radical change in the process and pattern of waste collection and distribution has created a requirement for expertise that is simply not in great supply—there is such expertise in Scotland, but it is not hugely developed. The waste industry in Scotland is developing and is very different from how it was during its ghastly history—we do not want to return to those days. There have been difficulties, but there is a review process in the civil service and we are satisfied that we can conduct that. However, I emphasise that, although we wish to take responsibility for the policy, we do not wish to claim a monopoly of wisdom, as we deploy people to implement it.

The Convener: The question is, that motion S2M-5621 be agreed to.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft National Waste Management Plan for Scotland Regulations 2007 be approved.

The Convener: I thank the minister for attending. We will now have a short suspension to allow him and his official to leave.

11:50

Meeting suspended.

11:52

On resuming—

**Avian Influenza (Preventive Measures)
(Scotland) Order 2007 (SSI 2007/69)**

**Official Controls (Animals, Feed and Food)
(Scotland) Regulations 2007 (SSI 2007/91)**

**Potatoes Originating in Egypt (Scotland)
Amendment Regulations 2007
(SSI 2007/94)**

**Common Agricultural Policy Schemes
(Cross-Compliance) (Scotland)
Amendment Regulations 2007
(SSI 2007/99)**

The Convener: Agenda item 3 is the consideration of four Scottish statutory instruments under the negative procedure. The Subordinate Legislation Committee commented on SSI 2007/69, on avian influenza, and an extract from that committee's report has been circulated to members. Do members have any comments on the instruments?

Elaine Smith: I have a question about the Avian Influenza (Preventive Measures) (Scotland) Order 2007, although as we are considering the order under the negative procedure there is nobody to ask. The order mainly consolidates previous regulations. Article 5(4) states that

"A person who becomes the keeper of 50 or more poultry"

must notify the ministers and provide certain information. I am not clear how we will ensure that people will know that they have to do that.

The Convener: We could write to the minister and ask for clarification on how that information is to be disseminated.

Elaine Smith: The only other small question is why people must notify ministers when they have more than 50 poultry. Perhaps I should know that.

Rob Gibson: It could be because, at that stage, ownership of the poultry would become a commercial operation.

The Convener: We can ask about that, too.

Elaine Smith: I am sure that there is a reason.

The Convener: Apart from that, are members content that we will make no recommendation to Parliament on the instruments?

Members indicated agreement.

Annual Report

11:54

The Convener: Agenda item 4 is our draft annual report, which is fairly factual. I have a couple of points to make. The draft report does not mention our meeting in Stornoway, although we mention the meetings in Oban and Inverness. I believe that that is because the meeting in Stornoway took place last year, but do members agree that we should just include it anyway?

Eleanor Scott: It belongs with the other meetings.

The Convener: Yes.

My other point is about our visit to Arran, which was an away day, although we did some work on crofting and the marine environment when we were there. Perhaps we could reflect that in the report.

Do members have any points to make?

Eleanor Scott: The draft report does not mention specifically our videolink to Finland, which I thought was a highlight.

The Convener: The report mentions videolinks, but not that one specifically. Perhaps we could put that in.

Elaine Smith: We should mention that the committee was up for an award.

The Convener: That we did not get.

Elaine Smith: Nevertheless, we were nominated.

The Convener: Why not? Let us make ourselves seem as important and as hard working as we are.

Elaine Smith: Absolutely.

Rob Gibson: This conversation is on the record.

The Convener: I realise that.

Eleanor Scott: The draft report does not reflect the change of convener that resulted from our previous convener's promotion to the dizzy heights of deputy minister.

The Convener: Okay.

Do members agree to the draft annual report, subject to the changes that we have discussed?

Members indicated agreement.

The Convener: The report will be published after our final committee meeting of the session—probably on Wednesday 28 March.

As was agreed at our meetings on 24 January and 28 February, we will now move into private

session to discuss two draft reports. The first is our draft legacy paper for any successor committee or committees in session 3, and the second is a draft report on our inquiry into the marine environment. I ask members of the public and press, any visiting members and the official report and broadcasting staff to leave.

11:57

Meeting continued in private until 12:25.

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