ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 7 December 2005

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
32nd Meeting 2005, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)
*Rob Gibson (Highlands and Islands) (SNP)
*Richard Lochhead (North East Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)
*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Trish Godman (West Renfrewshire) (Lab)
Jim Mather (Highlands and Islands) (SNP)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING GAVE EVIDENCE:

Rhona Brankin (Deputy Minister for Environment and Rural Development)
Matt Collis (International Fund for Animal Welfare)
Christopher Dickie (Scottish Exotic Animal Society)
Dr Mark Eisler (University of Edinburgh)
Lynne Hill (Royal College of Veterinary Surgeons)
Barry McCaffrey (Scottish Executive Legal and Parliamentary Services)
John Paterson (Scottish Executive Legal and Parliamentary Services)
Mike Robson (British Veterinary Association)
Peter Scott (Performing Animals Welfare Standards International)
Peter Stevenson (Advocates for Animals)
Ian Strachan (Scottish Executive Environment and Rural Affairs Department)
Professor Christopher Wathes (Farm Animal Welfare Council)
David Windmill (Royal Zoological Society of Scotland)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Christine Lambourne

LOCATION

Committee Room 4

Scottish Parliament

Environment and Rural Development Committee

Wednesday 7 December 2005

[THE CONVENER *opened the meeting at 10:08*]

Item in Private

The Convener (Sarah Boyack): I welcome members, the press and the public to this morning's meeting, and I remind everybody to switch their phones and BlackBerries to silent. We have received no apologies.

Our first agenda item is to invite members to consider taking item 6, which is consideration of evidence received on the Animal Welfare Bill, in private. Once we have heard the evidence, we will need to discuss it; that is what we have done before when dealing with Sewel motions. Are members happy with that?

Members *indicated agreement*.

The Convener: Once we have decided on our report, it will be made public.

Animal Health and Welfare (Scotland) Bill: Stage 1

10:09

The Convener: Agenda item 2 is the third of our six planned evidence sessions at stage 1 of the Animal Health and Welfare (Scotland) Bill, which was introduced on 5 October. Our role, as the lead committee, is to consider the provisions in the bill and to report to Parliament with a recommendation on whether the general principles of the bill should be agreed to. For our evidence sessions, many witnesses with specific expertise on or an interest in key elements of the bill will come before us. We issued an open call for written evidence and have received a number of submissions, which have been circulated to members. Members of the public who are interested can find those submissions on the committee's web page.

I welcome our first panel of witnesses: Professor Christopher Wathes, chair of the Farm Animal Welfare Council, and Peter Stevenson, political adviser for Advocates for Animals. With this panel, we hope to focus on the animal welfare provisions and, in particular, on how they relate to farmed animals. We shall also hear comments from Advocates for Animals on the animal health provisions, so we could explore a range of issues. As with previous witnesses, we will not take opening statements, but members have been able to read the written evidence that the witnesses submitted.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): Before we begin, may I raise again a matter that I raised earlier? There appears to be a delay in issuing the *Official Report* of our meetings. Last week's report, for example, arrived only this morning, and I know that one or two of the witnesses have had difficulty because they could not, through webcasts or by other means, find out what went on at last week's meeting. Can you give us any background on why it is taking so long to produce the *Official Report*?

The Convener: Thank you for raising that point with me earlier. In essence, the reason is pressure of work in the official report, partly because of the tram bills committees, which are meeting in addition to regular committees. However, we have investigated the matter and it is possible to see the evidence sessions that we have held thus far on the webcast. We shall endeavour to ensure that members have exactly the right web address so that their constituents can view the meeting. That is probably the best way to help at the moment.

Mr Brocklebank: Thank you.

The Convener: Who would like to kick off with questions?

Elaine Smith (Coatbridge and Chryston) (Lab): I have a question for Mr Stevenson from Advocates for Animals about vaccination policy. Your submission states that you advocate a vaccinate-to-live policy, and I am interested in hearing more detailed comments on that. Why should it not be a vaccinate-to-slaughter policy? Could you spell out your objections for us?

Peter Stevenson (Advocates for Animals): There was a feeling at the time of the 2001 outbreak of foot-and-mouth disease—and that feeling has grown in a number of scientific reports since then—that more use should have been made of vaccination. I do not think that anybody is claiming that a major disease outbreak can be dealt with by vaccination alone, but the Royal Society's report "Infectious diseases in livestock" suggests that a combination of methods should be used. Of course infected animals and those animals that have had dangerous contact with infected animals have to be slaughtered, but there is a growing feeling that the idea of simply mass-slaughtering all the animals within quite a wide radius of an infected farm should be called into question more and more and that vaccination has an important role to play.

Many people in animal protection organisations and many members of the public feel uncomfortable with the idea that one might vaccinate animals and then just slaughter them anyway. They feel that, if one is vaccinating animals, that should be done to allow them to live out their natural commercial lives, so that they would be slaughtered at the normal age for their species. Indeed, the bill makes it clear that the only reason for vaccinating to kill would be to allow an earlier return to international trade. Under the complex OIE rules that determine when one can go back to trading after a disease outbreak, vaccinating to live would delay a return to trade, by and large, by only about three months. That is not a long delay.

10:15

Elaine Smith: Are you saying that it is somehow cruel to vaccinate and then slaughter an animal to avoid that three-month delay? Why is that such an issue for you? After all, you have said that these animals are for commercial purposes. Why should they not be vaccinated, if it benefits trade?

Peter Stevenson: I am offended by the idea that a huge number of animals have to be slaughtered to control an outbreak of disease, no matter whether the slaughter happens immediately or after vaccination—unless such a measure is absolutely necessary because the animals are infected or have been in dangerous contact. To me, the whole point of vaccination is to reduce the number of animals that have to be culled—after all, in 2001, millions of animals were slaughtered—and to allow them to live to the normal commercial age. I do not think that the mere desire to get back to trading a little bit earlier is a good reason for having a vaccinate-to-kill policy. We should have a vaccinate-to-live policy. The bill should be amended to ensure that the minister is able to introduce a vaccinate-to-kill policy only if veterinary advice shows that it is needed to control a disease outbreak and not just because it allows people to get back to trading a bit more quickly.

Elaine Smith: In your submission, you say that the desire for

"extended slaughter powers runs counter to the widely accepted view that vaccination rather than mass killing should play a leading role in tackling any future FMD outbreak"

and that you believe that

"the existing slaughter powers are already sufficiently wide and that … new powers"

could be "open to abuse". Why might the Executive abuse those new powers?

Peter Stevenson: The existing powers are very broad. For example, I—and, I think, many people—believe that under the powers that were used in 2001, far too many perfectly healthy animals were killed. That is the view not just of our non-governmental organisation, but of the lessons-learned inquiry.

On the new powers, as a solicitor—albeit an English one—I have seen no legislation, on animal welfare or otherwise, that has been drawn so broadly. Under the bill, the minister can slaughter animals if they are infected, if they have been in contact with an infected animal or if they have been exposed to any infected animal, if he thinks fit. That provision is extraordinarily broad. It could never be challenged in the courts under a judicial review, because in such actions one must be able to show that the minister has acted unlawfully. The bill gives the minister a blank cheque.

The new extended powers must be reined in, at least by stipulating that the minister must act on veterinary advice. Moreover, I would prefer it if, instead of the minister being able to slaughter animals if he thinks fit, he were able to do so if he thought it was necessary to control the disease outbreak. The powers are far too wide.

Elaine Smith: So to improve the bill you suggest that there needs to be more justification for slaughter.

Peter Stevenson: Yes. Basically, the minister should act on veterinary advice. I am sure that he

would assure us that that would happen, but the point is that such a requirement should be specified in the legislation.

Mr Brocklebank: From what I understand, you think that the ministerial powers on slaughtering are too extensive and that they should be accompanied by a stipulation that ministers must follow veterinary advice. However, at our previous meeting, it was suggested that ministers sometimes have to act with such speed that, because not enough vets are available, it is not always possible to get that advice as quickly as possible. Do you accept that?

Peter Stevenson: No. I find it inconceivable that, in a major disease outbreak, the minister will not be able to speak to the chief veterinary officer or another senior veterinary officer, if only on a mobile phone. If necessary, a minister can get the appropriate veterinary advice speedily.

Mr Brocklebank: How could that be phrased or covered in the bill to make it legally watertight? I presume that, in any case, the minister would not take such a step without some kind of veterinary advice.

Peter Stevenson: A similar phrase is used in other parts of the bill. For example, section 14 gives ministers the power to extend the definition of animal to other animals that are not currently included

"on the basis of scientific evidence".

That phrase, or a similar one such as "on the basis of veterinary advice" would be appropriate.

The second amendment that I would like is for the term "if they think fit" to be tightened up, because it is terribly broad. In relation to the use of the proposed new powers rather than the existing ones, the phrase should be "if they think it is necessary to control the outbreak effectively". That higher test is needed. Mass slaughter should not be the first resort; it should be nearer to being the last resort, particularly with the proposed new extended powers.

Mr Brocklebank: Is the bill tight enough on the action that people can take if the ministers decide, with veterinary advice, that a person's animals must be slaughtered? Are you satisfied that there is sufficient right of appeal against that? During the foot-and-mouth disease outbreak, people with sanctuaries and other facilities in which animals were under protection had to go to the legal system to get affidavits to protect the animals. Should there be more legal guidance on what people can do in such circumstances?

Peter Stevenson: There will be no right of appeal in relation to the new extended powers. In responding to members of the public who have written about the issue, the Executive has stated that judicial review is possible. That suggestion is a little naughty—I do not see how, as the bill is drafted, anyone could go to judicial review on the issue, because to do so one would have to show that a minister had acted unlawfully. However, as the power is so broad, the minister would not have acted unlawfully—he would just have said, "I think fit." If the wording was circumscribed so that veterinary advice was required and so that the requirement was not just that the ministers thought fit, but that they thought that the slaughter was necessary to control the outbreak, judicial review might be possible.

Some of the animals in sanctuaries and pet farm animals that were slaughtered during the foot-and-mouth outbreak were perfectly healthy, but the Executive took an inflexible attitude. The compensation that will be required under the bill might be what commercial farmers want but, for people who have pet farm animals or a sanctuary, monetary compensation is not the issue. I would like a higher test when it comes to slaughtering pet farm animals or animals in sanctuaries so that ministers would have to show that the animals had been infected or had been in dangerous contact with an infected animal. I would like a higher hurdle in relation to those animals.

Rob Gibson (Highlands and Islands) (SNP): The evidence from the Shetland Sheep Society states:

"Vaccination for eventual slaughter is not an acceptable option. Contiguous stock should be tested for disease: positive result invokes slaughter, negative result could invoke vaccination. Contiguous stock should be isolated and monitored. More use should be made of diagnostic tests."

Do the panel members think that that would be an appropriate approach for rare breeds?

Peter Stevenson: Yes. I should have included rare breeds in my comments on pet farm animals and animals in sanctuaries, for which special provision must be made. I did not catch all the comments from the Shetland Sheep Society, but I agree broadly that we should move to slaughter only after tests have shown that the animals are infected and that if we are vaccinating, we should vaccinate to live and not to kill. That is particularly important with rare breeds.

Rob Gibson: We are talking about beasts that are found mainly on fairly remote islands, but diseases can nevertheless be carried to those places. However, some breeds are so rare that a special approach might be required. Does the other panel member agree with Peter Stevenson?

Professor Christopher Wathes (Farm Animal Welfare Council): It would be useful to get special exemptions in particular circumstances.

Rob Gibson: Because of the rarity of certain breeds.

During the cull in 2001 in Wigtownshire, healthy beasts were slaughtered on 109 farms, while infected beasts were slaughtered on only one farm. That compares with ratios of 13:1 in Wales and 27:1 in Gloucestershire. We found ourselves calling that a success. Was it a successful way of dealing with the outbreak?

Peter Stevenson: No. Clearly, it was not a success and far too many healthy animals were slaughtered. Indeed, the lessons-learned inquiry that was set up after the outbreak said that most contiguous premises—in other words, those on which animals were slaughtered—were not infected and probably would not have become infected.

I like to think that, when we next face a disease outbreak, we will not go down the road that we went down in 2001 and that a much more subtle and varied approach to controlling disease will be taken than simply slaughtering every animal in a 3km radius of an infected farm.

Rob Gibson: Do you have a suggestion about the wording in this case? That is the nub of the problem. You say that the powers are too wide, but how can they be stated given that there have to be exceptions or alterations to the approach, two examples of which I have given you?

Peter Stevenson: Certainly, any wording must be included in the bill; it is not enough to rely on assurances from the Executive. That is not to say that one does not trust the Executive, but the fact is that ministers change. There must be some form of wording that would permit the slaughter of rare breeds, sanctuary animals and those on pet farms only if the minister had established that the animals were infected or had possibly been in contact with an infected animal. That would tighten the situation.

The Convener: We heard evidence from earlier panels about the forward planning that would take place and the monitoring of various diseases that would be done as outbreaks occurred. That was one of the issues that we discussed at great length with the first couple of witness panels.

Maureen Macmillan will introduce a new topic.

Maureen Macmillan (Highlands and Islands) (Lab): I want to ask about animal mutilations or acts of surgery—people who disapprove of them call them the former and people who agree with them call them the latter. We have had evidence from farmers to the effect that those acts of surgery are necessary for the welfare of some farm animals. Professor Wathes, in your submission, you question whether some of the mutilations would be necessary if there were better understanding of the husbandry of animals such as pigs. For example, rather than cutting off pigs' tails, we could address the reasons for tail biting.

Professor Wathes: Pending the outcome of current research into the causes of tail biting and other injurious behaviours in pigs, it is sensible to allow the form of mutilation known as tail docking. The main contention of the Farm Animal Welfare Council is that the appropriate legislative framework should be in place. Because mutilation is the lesser of two evils, our main concern was about implementation, not whether mutilation should be allowed.

Maureen Macmillan: Are you happy with current practice on farms in relation to the acts of surgery?

Professor Wathes: Where veterinary advice shows that such acts are in the long-term best interests of the animals, the short-term suffering that is entailed by the mutilation is justified by the long-term gain.

Maureen Macmillan: Mr Stevenson, do you have the same views?

Peter Stevenson: I take a rather different view, I am afraid. From both scientific and practical experience, the factors that are involved in tail biting have been known for a long time. Often, it is to do with keeping pigs in barren environments so that there is nothing that they can do with their foraging and rooting instincts. In a barren pig pen, they will tend to turn to whatever is there, which will tend to be the tails of other pigs. Tail biting starts off almost as chewing rather than as an aggressive behaviour. However, as the pigs see blood, the chewing begins to develop into biting.

A range of factors can be used to prevent tail biting. The law—at a European Union level and, therefore, at a Scottish level—prohibits the routine tail docking of pigs and says that it can be done only if the farmer has first taken other measures to stop tail biting. If he has taken those other measures, such as giving the pigs more space and straw, but those measures have failed, he can then tail dock. The permission to tail dock is narrow.

What worries me from investigations that we have made on Scottish farms is that a substantial number of Scottish farmers are ignoring European and Scottish law and are just carrying on routinely tail docking illegally. We have real problems. Pig farmers should be required to comply with the law. Enough is known for us to say that the current law is good and that tail docking should be permitted only if other methods of dealing with tail biting have failed.

10:30

Maureen Macmillan: So the law exists already, but it is not being adhered to.

Peter Stevenson: Yes, the law has been in force since 2003.

Maureen Macmillan: There is controversy about whether working dogs should have their tails docked. The argument for docking is that their tails might be damaged when they go after game through briars and brambles. I believe that neither of you is comfortable with that argument.

Professor Wathes: I would like to confine my advice to the committee to farm animals rather than working dogs.

Maureen Macmillan: I understand that. I am sure that Peter Stevenson will have something to say.

Peter Stevenson: Yes. We believe that tail docking of dogs, like tail docking of pigs, should not be happening. The bill as drafted prohibits mutilations but allows the minister to make exceptions. We hope that those exceptions will be as narrow as possible. Docking of a dog's tail should be carried out only for therapeutic reasons, such as if a dog has a diseased or injured tail, which the vet advises needs to be amputated wholly or in part. However, the idea of docking working dogs' tails on a preventive or prophylactic basis is unacceptable and the argument for it is not borne out by the evidence. With working dogs such as terriers and various spaniels, tail docking is arbitrary. Some breeds traditionally have their tails docked, but others do not. Tail docking is being carried out for cosmetic and breed standard reasons.

The evidence is that few dogs have tail injuries and most of those injuries can be dealt with by simple first aid. They are not a huge trauma. To subject every puppy of certain breeds to the mutilation of tail docking, which the science has established is painful—sometimes acutely and sometimes for a prolonged period—just because a few of them might injure their tails is totally unacceptable. Tail docking should be carried out only for therapeutic reasons and not as a preventive measure.

Professor Wathes: I would like to make two further points. First, FAWC is looking into the welfare consequences of tail docking and castration of lambs, on which it will publish a report next year advising ministers on the practicalities of local anaesthetics and analgesics. Secondly, I congratulate the Scottish Executive on introducing an animal health and welfare plan under the rural development programme, which will mean that certain mutilations of farm animals will need to be considered alongside veterinary advice. Those plans have not yet been introduced in England and Wales; Scotland is pioneering their development and implementation here, which is excellent news for farm animal welfare in the long run.

Maureen Macmillan: Thank you for that endorsement of the Scottish Executive and Parliament.

I want to press Peter Stevenson a bit more about the tail docking of dogs. You said that there was scientific advice that the practice is cruel and painful for the dog. Is it painful even for tiny puppies?

Peter Stevenson: Yes.

Maureen Macmillan: I have heard that when a pup is only a few days old, its tail can be docked perfectly painlessly.

Peter Stevenson: That is one of the myths perpetuated by those who wish to carry on tail docking of puppies. The scientific evidence shows that, if anything, a young puppy will feel the pain more than an older dog. I cannot remember all the details, but the issue is to do with the make-up of the dog's nervous system. The idea that a young puppy will not feel the pain is simply scientifically incorrect. Similar research has been done on lambs. A few years ago there used to be a notion that tail docking and castration of very young lambs was not painful, but all the scientific research shows that it is painful. The amount of pain is pretty well the same at any age; it is not reduced because the lamb is young. The idea that a young puppy does not feel it is scientifically unfounded.

Maureen Macmillan: Will you let us know how to get hold of that scientific research?

Peter Stevenson: Yes, of course. If I may, I will write to the clerk to cite the research.

The Convener: We would appreciate that, because the issue of whether pain and suffering are involved is obviously contentious.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): The bill puts a duty of care on a wider range of people than just farmers; it also puts a duty of care on people who keep domestic animals, which will require inspection and enforcement. What are your views on the financial implications of the extra work that will result from the bill?

Professor Wathes: You touch on an incredibly complex area—the economics of farm animal welfare. What is it that determines that the price of bottled water is two to three times that of bottled milk in the supermarket? FAWC will probably investigate the economics of farm animal welfare—including the costs of regulation and

other issues—in a report in the next few years. It is tricky to understand fully where the costs are incurred and by whom they are borne. An investigation would allow us to expose once and for all who is making a profit out of farming.

Mr Ruskell: Do you believe that the financial memorandum that accompanies the bill adequately lays out the additional costs of the legislation?

Professor Wathes: We stated in our submission that we were a little surprised that more funds would not be made available to local authorities to enforce the bill, but we have not done the detailed financial calculations on how much extra we think local authorities would need.

Peter Stevenson: The financial implications for the individual owners of animals are not necessarily that great, as in the end those people are being asked merely to treat the animals according to reasonable standards. However, there are implications for local authorities. Local authorities already license things such as pet shops, kennels and the keeping of dangerous wild animals, but they will now be asked to license and therefore enforce conditions in other areas, such as the welcome provision that dealers in puppies—in particular, we are thinking of puppies that come from puppy farms in Ireland—will also have to be licensed. The resource implications will not only be financial, but will relate to expertise.

We already have a problem. Although some local authorities do an excellent job of enforcing animal welfare legislation, others do not. Local authorities are already stretched, as there are so many areas in which they have to enforce the law and they do not always have the expertise—many local authorities do not have even one employee whose full-time task is the enforcement of the range of animal welfare legislation that they are meant to enforce. The Executive must work with local authorities to find out how they can be given more resources and expertise. Otherwise, we will find that a lot of the legislation is not enforced or is inconsistently enforced and that standards of enforcement vary considerably between authorities.

Mr Ruskell: You mentioned that local authorities might have to spend more to roll out the licensing that the bill provides for. What about other issues on which the bill touches? Have their implications been laid out adequately in the financial memorandum? I am thinking in particular about situations when people breach the duty of care. Will that have financial implications if there are more requirements for the police or local authority inspectors to visit premises?

Peter Stevenson: Yes. That is another area in which the police and local authorities will get involved. That will have implications. My biggest worry, apart from the obvious financial one, is the lack of expertise. I am not saying that all authorities lack the expertise, but some do. Some of the areas concerned are difficult. If the same person has to go and look at pet shops, puppy farms, dangerous wild animals and boarding kennels, they will need an awfully broad range of expertise.

Another concern is the Executive's proposal, in one of the accompanying documents, for the various licences generally to run for three years—currently, they usually run for just one year or slightly longer. I do not mind the licence running for three years but it is imperative that inspections under the licence be undertaken by the local authority annually. After all, a lot of things can go wrong in a year. An establishment that is well run now could deteriorate rapidly over a year. If it is going to be inspected only once every three years, that is a problem. Therefore, despite the resource implications, inspections should be annual—with the obvious proviso that, if the authority finds a real problem, it may suspend or withdraw the licence.

The Convener: At the moment, the licence lasts for one year, so an automatic inspection goes with the granting of the licence. Are you saying that there would automatically be three-yearly inspections if the licences were provided on a three-year basis?

Peter Stevenson: At the moment, circumstances vary with each little bit of legislation, so it is hard to make a general statement. The Executive seems to want three-year licences, which would worry me if it meant having three-yearly inspections. I do not have a problem with the three-year licences as long as there is an annual inspection so that, if a problem arises, the licence can be withdrawn before it runs its full three years.

The Convener: We can take up that issue with the minister when he comes before us in a few weeks' time.

Thank you very much for that evidence. We have two other panels to hear from, so I imagine that one or two of the questions will arise again.

10:42

Meeting suspended.

10:43

On resuming—

The Convener: I welcome members of panel 2. We have with us Mike Robson, president of the Scottish branch of the British Veterinary

Association; Lynne Hill, president of the Royal College of Veterinary Surgeons; and Dr Mark Eisler, head of the animal health and welfare division of the Royal (Dick) School of Veterinary Studies at the University of Edinburgh. I thank you all for coming this morning and for giving us your written statements in advance.

We have invited you to give us a broad overview of the health and welfare provisions in the bill, particularly from the perspective of the business and regulation of the veterinary profession. Quite a few questions have already come up, both this morning and previously, about the role of vets in providing ministers with advice. The role of farmers has also been mentioned. There is a lot to discuss and Nora Radcliffe will kick off.

Nora Radcliffe (Gordon) (LD): I notice that the British Veterinary Association thinks that the definition of "animal" in the bill could be widened, because there is scientific evidence that invertebrates suffer pain. Could you expand on that a little?

Mike Robson (British Veterinary Association): That was noted as an omission. Given the information that has recently been made available, we felt it appropriate that the definition should be expanded to cover those categories of animals.

Nora Radcliffe: The bill contains provision to expand the definition. You think that it can now be expanded in the light of current evidence.

Mike Robson: Yes.

Nora Radcliffe: With your combined expertise, perhaps you could talk about mutilation, in particular the question whether very young puppies suffer pain if their tails are docked.

10:45

Mike Robson: I have been in practice for quite a number of years and it is about 10 years since we stopped doing any docking. The perception from practice is that the dogs certainly feel pain. I have no doubt about that. I do not have evidence to cite for you, but the point is generally accepted in veterinary circles in several countries, some of which are already more progressive in their attitudes towards tail docking in dogs. For instance, in Austria, our colleagues are obliged to report to the authorities owners of dogs that have been docked.

Dr Mark Eisler (University of Edinburgh): There is some evidence from work in other animals, particularly mice, that amputation of part of the tail can produce a substantial long-term—and possibly permanent—increase in the sensitivity to painful stimulation of the tail and hind limbs. I do not have the reference for that work available today, but I can obtain it for you.

Lynne Hill (Royal College of Veterinary Surgeons): I agree. Even animals that have their tails docked for therapeutic reasons—when the tail has been amputated correctly and under general anaesthetic—can continue to show some pain from the tail. The procedure can have longer-term effects.

Nora Radcliffe: I suppose that it mirrors what humans feel with an amputated limb.

Lynne Hill: Yes.

Nora Radcliffe: The other area that I want to explore with you is the training of inspectors. Do you have views about the level of training that would be required and who should train inspectors?

Mike Robson: The British Veterinary Association has not discussed that matter, but it is obvious from the discussions earlier this morning that it is a real problem. In our submission, we noted concern about inspectors being asked to make life-and-death decisions about animals. It can be challenging for a vet to make an on-the-spot diagnosis; without a vet's experience and training, it is virtually impossible to make such a diagnosis. An animal that one might perceive to be in dire straits might not be at all, so there is a real danger of somebody who is not qualified to give a diagnosis making the wrong decision. There is obviously a role for better communication or a line of command leading back to veterinary advice for inspectors in the field. At the moment, that is not straightforward for local authorities, because there are no longer—and have not been for years—any county veterinary surgeons.

There is an obvious need for training, because animal welfare is fraught with problems of definition and recognition. There is currently a Europe-wide project to give better definitions to welfare standards. I hope that the bill is flexible enough to incorporate those standards as they become clearer. We have an opportunity to enhance the standard of inspection.

Lynne Hill: The Royal College of Veterinary Surgeons feels that nobody should undertake any type of inspection—whether an inspection of premises or an inspection that is even more important to animal welfare—without sufficient and proper training. We would always support a proper training scheme, which would have to involve veterinary surgeons training inspectors. That is vital for the public interest and for public confidence in inspections.

The Convener: That issue was raised with the previous panel of witnesses, who were concerned that local authorities might be stretched in trying to provide the right range of expertise, given their new responsibilities under the bill. Should safeguards be built into the bill or should they be

introduced through secondary legislation? How should the training issue be resolved?

Lynne Hill: The bill should assume that there will be training of inspectors. That should be built in as a fundamental starting point. If it were to come later, that would be too late and wrong.

I also support what was said earlier about the three-yearly inspections of premises used for purposes licensed under section 24. The Royal College of Veterinary Surgeons is concerned that a situation can change greatly within three years. Although the licensing could be for longer, we feel strongly that premises should be inspected annually, in general terms. I accept that the bill says that there might be a grading, with some being inspected every year, some every 18 months and some even less frequently, but we think that there should be an annual inspection.

Mr Ruskell: You have no doubt heard the evidence that has been presented to the committee about ministerial powers over slaughter. We have had advice to the effect that a requirement for veterinary advice should be built into the bill. What are your views on that? I am particularly interested to know exactly when and how in a disease outbreak you feel that veterinary advice should be introduced. We are trying to work out how ministers should be taking advice, which body they should go to and at what point in the process the advice should be introduced.

Lynne Hill: With a disease outbreak, there must be veterinary advice from the start. It has to be available almost before the outbreak takes place, which is why, within the Department for Environment, Food and Rural Affairs, there are contingency plans for disease. DEFRA has set up links and committees that will enable it to call on certain people's expertise at any point. Veterinary advice must be available in anticipation of a disease outbreak and must be absolutely involved from the beginning of an outbreak.

One concern of the veterinary profession has been about the contiguous cull that took place during the foot-and-mouth outbreak. As has been stated, the evidence that is coming out now shows that a number of people who could have given veterinary advice would have had a different opinion on whether the contiguous cull should have taken place and doubt whether it had any effect on disease control, because the disease was under control before the contiguous cull was started. Our concerns at this point are that, if the minister is given the powers but it is not a requirement that veterinary advice must be forthcoming and taken into account from an early stage, we could make similar mistakes again.

Mr Ruskell: Is there a statutory requirement for veterinary advice to be built into the contingency planning process at the moment?

Lynne Hill: I do not know the answer to that. I know that a number of committees have veterinary advice within them and, obviously, the chief veterinary officer would be involved. One of the problems last time was that the advice from the modellers was sometimes at odds with the veterinary advice. My colleagues might be able to talk further about that.

Dr Eisler: I endorse what Lynne Hill has just said. It is important that the advice that is given is multidisciplinary. Different groups of experts will bring different skills to the table in deciding on a policy to control a disease outbreak in real time. I think that the veterinary profession has a great deal to offer because of its extensive range of practical experience of controlling animal disease and its intimate knowledge of the workings of farms, the movement of animals and the nature of animal diseases. That is not to say that valuable input cannot be made by other groups, such as epidemiological modellers. There are pitfalls, though, in taking advice exclusively from one group without considering the weight of evidence and encouraging dialogue among those different groups in order to formulate the best strategy.

Mr Ruskell: Under the bill, should ministers be consulting only veterinary surgeons or should a range of stakeholders be included? We have had calls for veterinary advice to be included in the bill but you suggested that the views of epidemiological modellers would also be useful. I know that they featured heavily in the foot-and-mouth outbreak. Does their participation have to be specified in the bill?

Dr Eisler: No, but it could be specified that a range of disciplines should be consulted. The veterinary profession should be specifically identified because controlling infectious animal diseases is a core activity of veterinary surgeons. Their omission would be wholly unacceptable.

Mike Robson: Although we rather tend to hark back to foot-and-mouth disease as an example, we should remember that the bill covers all diseases and that, at some point, novel diseases that we are not familiar with are likely to emerge. With the carte blanche that the minister will have to control something that might not be well defined or to which there might not be any neat answers, we have to be careful that in such circumstances he does not shoot from the hip instead of acting under a proper protocol. It strikes me that the bill does not provide for any approach to a novel disease. Indeed, most of part 1 is based on modelling that was carried out on the foot-and-mouth outbreak.

I certainly agree that veterinary input is essential at the initiation of any measures. However, as we have said, people such as virologists and immunologists are also involved in animal disease

and their knowledge is essential in allowing us to reach appropriate decisions.

Dr Eisler: It is also worth mentioning that many emerging human diseases are, in fact, zoonotic diseases that originate in animals. One good example is the recent outbreak of west Nile virus in the United States, which has spread widely across North America and caused a large number of human fatalities. The considerable delay in identifying the agent of the outbreak resulted from a lack of communication between the veterinary and medical professions. As a result, given the importance and extent of the threat of zoonotic diseases in the emerging disease category, we should also point out that including the medical profession in the process and encouraging dialogue between the medical and veterinary professions on new, unforeseen disease outbreaks should be given prominence.

The Convener: I notice that quite a range of people could be involved in such a process. I see from my notes from previous meetings that people have raised the issue of the advance planning, discussion and dialogue that should take place with key parties before any outbreak happens. From your comments, it appears that contacting people after an outbreak does not give enough time to establish such networks. Perhaps the answer lies partly in the upfront work on long-term emergency planning that we discussed last week, as such an approach will allow people to know who the experts are and whom to call on in such crises.

We got the sense that diseases are being monitored all the time, so we must ensure that that work is plugged directly into the overall management of these matters. Could aspects of that advance planning be included in the bill or form part of its background? Instead of focusing on how we deal with a new disease that no one is able to identify, do you have any views on the day-to-day, regular monitoring of west Nile virus, avian flu and other diseases that could affect farmed animals?

Mike Robson: The Scottish Executive Environment and Rural Affairs Department is very aware of the need for disease surveillance and various steps are being taken to improve the situation. For example, part of the animal health and welfare strategy is to monitor disease levels at the farming end through the database of farm animals.

Rob Gibson: With the previous panel of witnesses, I took the liberty of quoting from the Royal (Dick) School of Veterinary Studies submission on the number of healthy animals that were killed in Wigtownshire as a result of foot-and-mouth disease compared with the number of animals that were actually affected by the disease. The submission also says:

> "Moreover, subsequent analyses of the 2001 field data, reported in peer-reviewed journals, consistently refute the value, need, or desirability of such a culling policy".

In the light of that statement, do you think that the minister should have such wide powers to slaughter animals in the event of a disease outbreak?

11:00

Dr Eisler: Wide powers are useful, but they must be used judiciously. As you rightly point out, in the case of the foot-and-mouth disease outbreak there are, with hindsight, grave question marks over the usefulness of the contiguous cull, particularly given the extent of the slaughter. I am reluctant to say that powers of slaughter should be limited in the legislation, because we live in a world that is threatened by a number of emerging diseases, many of which are particularly virulent and potentially damaging to both livestock and humans, so it is prudent to continue to have available the instruments of slaughter so that a cull can be implemented rapidly if appropriate advice is given that indicates that that is the correct thing to do.

Rob Gibson: Do other members of the panel have a view?

Lynne Hill: I agree with Mark Eisler on that point. It is also important that if there is to be a contiguous cull or a similar type of action following veterinary advice we take more account of individual cases—not only sanctuaries and rare breeds, but individual circumstances of which the veterinary surgeon on the ground in the area will be aware but of which the department, far away in a separate place, may not be aware. Individual circumstances must be taken into account more if there is another disease outbreak. Individual circumstances were taken into account on a certain number of occasions—I know of cases when that happened—but in other cases the approach was that everything in an area would be killed and individual farms were not taken into account.

Rob Gibson: Are the new powers in the bill on vaccination acceptable?

Mike Robson: The new powers are valuable, but each case is different.

I was involved in the foot-and-mouth situation in south-west Scotland for a few weeks. The decision to have a widespread cull of sheep was taken at a point—it was in March or April—when we were not confident that we had succeeded in closing the outbreak. The stocking density of that part of Scotland is phenomenally high. In the winter, most of the animals are housed, so they were in relative

isolation from one another but, come spring, they would all go out to grass and there would be wall-to-wall livestock from Moffat down to the end of Wigtown. There was a strong feeling that if we had not solved the problem before turnout, we would totally lose control. Therefore, at the time, there was an excellent reason for carrying out the cull.

Other factors could have helped us. Diagnosis of that outbreak was encumbered by the practicalities. Only a small percentage of animals in infected flocks showed clinical symptoms. We had no field test to diagnose the disease, so inevitably there was a lag between sampling animals and confirming the disease, in which time the disease could spread. The profession was in a fix.

That was a specific situation. If there was an outbreak of a different disease that does not spread in the same way we might not be dealing with the same scenario; it is important not to generalise on the basis of one disease. Ring vaccination policies are an obvious option that we would consider, provided that we had the appropriate vaccine. We may not have on the shelf a stock of every vaccine for every conceivable disease.

Rob Gibson: The Shetland Sheep Society states in its submission that it hopes that there would be more use of diagnostic tests. I think that you are confirming that such provision should be available more widely rather than only for rare breeds. Should the bill reflect the possibility of using more diagnostic tests?

Mike Robson: I think that there was a comment about trying to improve diagnostic tests. Every effort should be made to do that. It would be relatively simple to do so for foot-and-mouth disease as it is a well documented, well researched and well monitored disease. As I say, such tests may not be so practical for other diseases.

Nora Radcliffe: How long is it until a vaccination prevents an animal from getting infected? Is there a delay?

Mike Robson: There is a delay, but it varies. It depends on the vaccine and the disease.

Nora Radcliffe: Within what parameters? Is it days or weeks?

Mike Robson: From a few days to a couple of weeks.

Nora Radcliffe: It is useful to bear that in mind.

Mr Brocklebank: I want to raise an issue that I do not think the bill covers, although I wonder whether it should. I wanted to raise it with the previous two witnesses, but I did not get the opportunity. The issue is ritual slaughter. I am talking not about ritual slaughter in abattoirs, but about the ritual slaughter of animals of which there is growing evidence in many English cities, particularly in some sectors of the community. The practice may or may not eventually spread to Scotland. Should the bill cover that sort of activity?

Mike Robson: I defer to Lynne Hill on that.

Lynne Hill: I am not going to answer that. In fact, I was going to suggest that Mike Robson should answer it because the matter does not fall within the remit of the RCVS.

Dr Eisler: The bill should cover such activity. Clearly, it has potential to cause animals suffering and to compromise animal welfare. Therefore, to walk away from the issue and say that it should not be covered by legislation is patently wrong.

Mike Robson: Does it not come under meat hygiene legislation, which covers conditions of slaughter that are inappropriate for producing a hygienic product?

Mr Brocklebank: I am not sure. I understand that there is legislation covering abattoirs. People have views on whether ritual slaughter should be allowed in abattoirs. As sectors of the community grow and decide that they want to carry out slaughter of their animals in that way—and if that starts to happen here in Scotland—we should pay close attention to the matter. Perhaps the Animal Health and Welfare (Scotland) Bill is the appropriate vehicle for that.

Lynne Hill: Anything that has the potential to cause animals suffering and that is not done in a correct manner needs to be attended to under legislation. If the issue is not covered by the meat hygiene or abattoir legislation—I do not know the legislation well enough to be sure whether or not it is covered—it should be included somewhere. Obviously, it is important that animals are treated correctly and with respect.

Dr Eisler: The practice might be covered by the Welfare of Animals (Slaughter or Killing) Regulations 1995.

The Convener: The matter has now been raised and put on to the agenda. We have a little bit of time to consider the issue over the next couple of weeks. I see that there have been some hurried discussions between the clerks and the Scottish Parliament information centre on the matter, and we can potentially return to it next week, to clarify whether it comes under the duty of care or the bill's slaughter provisions. We will see whether or not it fits somewhere in the bill. Presumably, the critical issue is not the intent but the process of the slaughter and the impact on the animals. None of us is sure about the issue, so we can return to it.

Elaine Smith: I want to ask about animal fights, but first I want to ask a supplementary to something that was said in reply to Nora Radcliffe. If I heard him correctly, Mr Robson said that dogs' tails have not been docked for 10 years.

Mike Robson: There was initial UK Government legislation and the Royal College of Veterinary Surgeons produced guidance on the ethical aspect. The RCVS advised that vets should be selective and dock only working dogs that were deemed to be at risk. Most practices have stopped docking pups' tails, but a few of them operate according to the guidance in selected cases.

Elaine Smith: Do you have any comment to make on pigs' tails, which we heard about earlier?

Mike Robson: The problem is that, although we know many of the causes of tail biting among pigs, we cannot identify them in some circumstances. There is also a potential practical problem with pig producers who produce weaners. They grow the pigs to a certain stage and then move them on to finishers or fatteners. Tail biting tends to take place in the fattening areas rather than in the early rearing areas, but if one buys pigs that are already docked from several sources there can be practical problems. Once the problem has arisen, it is far too late, and it is horrific to see tail biting, because they actually chew off the ends of the tails, so the base of the spine is exposed. It is horrific. There are practical problems in defining when tails should be docked and what the risk is for newborn pigs when we do not know where they will end up or how they will be moved around, because there will be a change of ownership in the process.

Elaine Smith: Thank you.

I would like to move on to animal fights. Your submission states that you support the section in the bill on animal fights, but you mention that much of the money that is made from animal fights is made from recording them and selling on the recordings, which does not seem to be covered in the section on fights. Would you suggest new wording for that section?

Mike Robson: Yes. I am not a lawyer, but we suggest that recording fights should be added to the crime.

Elaine Smith: Presumably, that would have to be carefully worded, because lawful authorities might be recording animal fights for the purpose of law enforcement.

Mike Robson: Yes. We presume that wording could be found to make recording such events for financial gain or similar unauthorised purposes a crime.

Elaine Smith: Section 21(5) states:

"an 'animal fight' is an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting."

What is your understanding of the term "protected animal" in that subsection? Have you looked at it that closely?

Mike Robson: I assume that it is talking about badgers.

Elaine Smith: I might want to clarify the detail, convener, for the benefit of committee members.

Another submission on animal fighting, from the Scottish Exotic Animal Society, states:

"fights between most animals should be included … however many reptiles naturally fight—to trigger a breeding response".

Do you have any comments on that?

Mike Robson: I am quite ignorant of the sexual habits of reptiles, I am afraid. I could not answer that question.

Elaine Smith: We could pick that up later.

Dr Eisler: Such animals would not be kept for the purpose of fighting or of training them for fighting. If fighting is a natural activity for those animals and part of their biology, that could be quite clearly distinguished.

Elaine Smith: Does the bill as drafted cover that situation?

Dr Eisler: I think so, yes, because it talks about a person who

"keeps or trains an animal for an animal fight"

and I do not think that those animals would be kept or trained for the purpose of fighting.

Elaine Smith: Like you, I find the fighting of animals abhorrent, but we would not want the legislation to cover things that it is not meant to cover.

Maureen Macmillan: Section 28 will prohibit the offering of animals as prizes, and there are no exceptions. However, NFU Scotland has pointed out that, on occasion, farmers gatherings offer a valuable prize such as a cattle beast, and it feels that an exception should be made for such prizes in farming company. The Showmen's Guild of Great Britain is also worried that the traditional goldfish won at the fair will be prohibited. It feels that it has safeguards in place: anyone who is given a goldfish as a prize will be given information on how to look after it; and showmen will be careful about who is given such a prize and will ensure that someone who is over 16 is present.

What are your views on the issue? Do you think that a total ban is necessary, or could some exceptions be made if there were safeguards?

Mike Robson: On farm animals, if the competition was restricted to livestock owners in the first place, there is probably no potential problem. However, at quite a lot of the more public events that will not necessarily be the case.

Dr Eisler: The onus should be placed on the organisation awarding the prize to ensure that the individual to whom the animal is given is competent to keep it. If that is done satisfactorily, it could be argued that placing a blanket ban on giving animals as prizes is draconian.

11:15

Maureen Macmillan: That is interesting. Thank you.

The Convener: I have a final question, which is similar to the question with which we kicked off on inspections and best practice. One of the suggestions from the Royal (Dick) School of Veterinary Studies at the University of Edinburgh is that animal welfare in farming establishments should be tied to subsidy payments. Is that a practical suggestion? Would it concentrate farmers' minds? Who would be responsible for that?

Dr Eisler: I agree that there might be practical difficulties with that, but where farmers are not paying due heed to animal welfare, awarding subsidies might encourage them to do so. I am not a lawyer and I would not like to comment on the practicability of that or on what the right wording in legislation would be. However, it is inappropriate to give farmers subsidies for keeping animals in a manner that compromises their welfare.

The Convener: We might want to test with the minister mechanisms to reinforce good practice and whether to withdraw public subsidy if an establishment is not being run in line with legislation.

Lynne Hill: The animal welfare strategy that is already in place in Scotland was alluded to earlier. Herd health planning, annual visitation by a veterinary surgeon and farm planning link in closely to issues of welfare on the farm; due note of welfare issues is taken in planning. The Government helps to support that at present. We support the strategy.

Mike Robson: I agree with that point. There is a Government target that by 2012 80 per cent of livestock units should be operating herd or flock health plans that will involve an annual veterinary visit and input. That covers the welfare aspects. Legislation is hardening in this area to make welfare an essential part of livestock keeping. There is concern that farmers avoid licensing, although we license various other people. We need to have veterinary supervision and advice. The strategy provides an excellent route for that. Farmers can see the advantage in planning.

The Convener: That is helpful. Rob Gibson has a brief question. I am conscious that we are running very late, so it should be very brief.

Rob Gibson: I hope that it will be. At previous meetings, there has been controversy about the extent to which the definition of a protected animal as one that is

"under the control of man"

applies to certain wild animals, particularly deer. Do the witnesses have a view on the potential for tightening up the legislation so that it does not conflict with legitimate shooting?

Mike Robson: I acknowledge the problem. Obviously, there are farmed deer, which have been fenced in for some time, and we are seeing the fencing in of estates to control deer. The line between the two is narrow. I do not have any bright ideas on legislation. There is concern about the transition.

The Convener: No other witnesses are volunteering an answer. The issue will return.

I thank you all very much for your comments.

We will have a short suspension to allow the members of panel 3 to take their seats.

11:20

Meeting suspended.

11:22

On resuming—

The Convener: I welcome our third panel of witnesses and thank them all for coming. Peter Scott is a consultant veterinary officer with Performing Animals Welfare Standards International; Christopher Dickie is the secretary of the Scottish Exotic Animal Society; Matt Collis is the parliamentary officer of the International Fund for Animal Welfare; and David Windmill is the chief executive of the Royal Zoological Society of Scotland.

We will ask you about the animal welfare provisions and about how animals are kept in certain situations. In particular, we would like to discuss how the provisions generally relate to the care of exotic animals and the proposed power to prohibit the keeping of certain animals. We hope to have quite a focused discussion. We will not hear opening statements from the witnesses, but I thank you very much for your written submissions, which we have been able to read in advance of this evidence-taking session; no doubt they will spark off questions from colleagues.

Ted Brocklebank has caught my eye first, so he can kick off.

Mr Brocklebank: The question is for David Windmill. In your submission, you state:

"The Animal Health and Welfare Bill currently being considered by the UK Parliament does not have the equivalent of Clause 25 (Prohibition of keeping certain animals) of the Scottish Bill."

In your view, that

"would place the Society at a considerable disadvantage to English and Welsh zoos."

Could you explain that?

David Windmill (Royal Zoological Society of Scotland): Yes. An issue of consistency is involved. The Royal Zoological Society of Scotland is involved in many animal breeding programmes and in maintaining animals' conservation status. If a minister were to tell people that they were not allowed to hold a particular type of animal, that could prevent us from taking part in such worldwide conservation breeding programmes. We would then be kept out of that particular area of conservation work, which we want to be involved in. We would be put at a potential disadvantage compared with zoos not only in England and Wales, but in Europe.

Mr Brocklebank: I suppose that there is an argument, which will presumably be developed, to the effect that there are big question marks over exotic or rare animals being kept in captivity in any case. Do you want to talk about the specific animals that you might not be allowed—

David Windmill: No. The Royal Zoological Society of Scotland should not be prohibited in any way from considering holding certain animals provided that we can provide the correct welfare and management conditions. That does not necessarily mean that we will hold those animals, but we should be able to consider holding any exotic animal if we can meet the correct welfare standards.

Mr Brocklebank: So you think that section 25 of the Scottish bill should be removed?

David Windmill: I recognise that there may be issues to do with animals being kept in domestic or unsuitable premises. However, zoos in Scotland are governed by the Zoo Licensing Act 1981 and fairly ferocious welfare standards must be met before the zoos become licensed. I do not see the point in having more legislation that may conflict with the existing legislation and add many complications to our lives.

The Convener: Section 25 mentions "domestic premises" and "other premises". What would "other premises" be? What is the definition of "other premises"? The phrase is broad. Do the other witnesses have a view on that?

Peter Scott (Performing Animals Welfare Standards International): Why should anyone be prevented from keeping animals if they meet the same appropriate welfare standards that zoos meet? I do not understand the basis for having such a double standard.

The Convener: But the zoo representatives are worried that zoos will be excluded.

Peter Scott: I support the zoos if they can provide the appropriate facilities in which to keep a species well and if its welfare is acceptable, but I do not see why a person with a private collection should be prevented from keeping that collection simply because they have a domestic situation—which might be extremely extensive—as long as suitable welfare standards are achieved. We should consider the welfare standards and not the species.

Matt Collis (International Fund for Animal Welfare): There is something else in section 25, as it is currently framed, that we have possibly neglected. Section 25 states that the regulations may include "provision … for exemptions". There is no reason not to have that provision and to look specifically at domestic situations while giving exemptions to the likes of zoos. However, we must be clear in distinguishing between situations in which animals are held in captivity in zoos—in which there will be a considerable amount of scientific expertise and contributions to international captive breeding programmes, which David Windmill mentioned—and what a domestic keeper can contribute. It is clear that the welfare standards in most captive domestic environments are not at the same level as those in zoos. That is not a comment on what zoos should hold—I am distinguishing between domestic situations and situations in zoos, which play a part in captive international breeding programmes that domestic situations never will.

Christopher Dickie (Scottish Exotic Animal Society): My submission mentions a couple who were private keepers and bred many species of marmosets and tamarins. They were among the first people in the United Kingdom—perhaps in the world—to breed certain species; indeed, I think that they were the first to reintroduce pygmy marmosets back into a colony. Zoos throughout the world—including Edinburgh zoo—have dealt with the keepers, who have now stopped what they were doing. Their rearing notes are used by zoos throughout the world. Without those keepers, we would not have the husbandry knowledge that we currently have.

Perhaps having a licensing system that is similar to that in the Dangerous Wild Animals Act 1976 would be more appropriate, so that much more stringent restrictions can be placed on who can keep animals. Proper care must be provided.

Many private keepers can provide the same—or perhaps even better—care that a zoo can provide. They might have more funds and might not have to rely on receiving funds from the public. They might have more time and more personal relationships with the animals and can therefore build up knowledge.

11:30

Peter Scott: There are countless examples of species that have been bred in captivity in private hands rather than in zoos. Most zoos worldwide use techniques that were developed by John Stoodley in his private collection of parrots. He was a private keeper who had an extensive collection of parrots and who worked from home. He also lectured worldwide.

There are similar examples of private keepers of reptiles. There are many aquarists who work with public aquariums and individual species and who also provide facilities to hold spare and breeding stock. Many examples can be cited, from the past 50 years at least, to support private keepers keeping such animals. Nobody is saying that everybody keeps animals to appropriate standards—that is where licensing comes in. Plenty of pet homes keep animals very badly, but there are plenty of dogs' homes that look after dogs badly. One cannot single out one species as an example to target.

The Convener: We can reflect on that. We got into that subject because of the zoos' worry that the bill would automatically exclude them from keeping certain animals, but now we are debating who else might be excluded. It would be interesting to get the minister's perspective on the objective behind the provision and to ask why it has been drafted differently from the United Kingdom bill.

Maureen Macmillan: I notice that the IFAW would rather that live animals were not sold over the internet. It is concerned that the internet is not mentioned in the guidance to the bill. Are you concerned about the sale of animals as pets over the internet? During the foot-and-mouth disease outbreak, the internet was used as a way of promoting genuine cattle and sheep sales, and I would not like to see that possibility being excluded.

Matt Collis: The focus of our work on internet sales is on pet animals. The worry is that although the legislation and the accompanying draft regulations mention sales of pets, they do not mention internet selling at all. From the recent report that I forwarded that looked at internet sales of wild animals as exotic pets, it is clear that this is a growing phenomenon. If we ignore internet sales in the early stage of the bill, we run the risk of the bill being out of date already.

The issue is addressed in the Westminster Animal Welfare Bill under the selling of pets. Therefore, there is a possibility of cross-border issues arising and of people relocating their businesses here to sell via the internet. We will not have the provisions that England and Wales will have to ensure the welfare of animals that are bought and sold in that manner, which would be to our disadvantage.

Maureen Macmillan: How would you regulate internet sites from abroad?

Matt Collis: That is not possible under the bill. However, the issue should be taken up by the UK Government at an international level and through international agreements.

Maureen Macmillan: Is it a huge problem? Are there many such sites?

Matt Collis: Yes. We did a week-long intensive survey that looked at five specific areas of animals in which we had an interest. We found more than 9,000 specimens for sale in the space of one week. That was not just on UK websites, but on sites from all over the world. That demonstrates the scale of the problem, which desperately needs attention not just in the UK but internationally.

We should ensure that the provisions that cover the welfare of animals that are sold as pets by people in this country to other people in this country are dealt with appropriately. There are issues about people not seeing the animal that they buy; they may not know what condition it will be in when it arrives and they may not be able to trace the seller if there are welfare concerns.

The anonymous nature of the internet allows such things to happen. That is why we believe that internet sales should be covered in the regulations that look at the selling of pets.

Christopher Dickie: I agree with some of that. There is a loophole in the pet shop regulations that allows traders to buy in animals to sell them on without requiring a licence. That should be resolved.

However, the internet is a valuable resource for people who breed animals and regulations should not restrict people who breed animals then sell them on. For example, it is sometimes hard to find things for reptiles through phone contacts. There are classified websites that people can visit. Often those websites include pictures, and a lot of sellers agree that the animals can be looked at before they are bought. Therefore it is not in the breeder's interest in most cases to sell the animal to somebody who is unable to look after it. Sellers are interested in the welfare of the animals that they produce.

Maureen Macmillan: So a reputable breeder would not object to being licensed for internet sales?

Christopher Dickie: I am not sure how people would respond to that. I was talking specifically about traders who buy animals from a breeder, then sell them on. The pet shop licence covers visits to pet shops. However, if buyers do not visit the premises and an animal is sent by courier, the seller does not require that licence. Many people have raised that point before. Breeders should be left alone; they are breeding their own animals. Perhaps there could be tighter controls on what they have to do. I do not see a licence coming into that.

Maureen Macmillan: Are you saying that, even once they start to sell the animals, there should not be regulation?

Christopher Dickie: There should not be much difference between selling animals on the internet and perhaps selling them by phone. Somebody could phone up a breeder and ask whether they could send them a particular animal by courier. What is the difference between that and somebody buying an animal off the internet?

Maureen Macmillan: That area makes me feel slightly anxious. Do any of the others wish to comment?

Peter Scott: Distance-selling regulations cover some of that area. It is difficult to draw a distinction between someone simply putting an advertisement on the internet to demonstrate that they have an animal available for others to look at and their actually selling that animal. The problem is where that line strays into ticking a box, handing over credit card details and receiving an animal by post. That is more uncomfortable and, potentially, it ought to be licensed. However, it may be licensed already under the distance-selling regulations.

Maureen Macmillan: Yes. What is the difference between doing that and putting an advertisement in the local paper selling kittens or whatever?

Matt Collis: There is a definite and important distinction between selling and just advertising. Obviously, some people may want to see the advertised animal that they wish to buy. That is a difference. We suggest that codes of practice should perhaps be put in place to regulate that level of advertising. Those codes should say that whether the animals are being sold on the internet, through free advertisements or in pet shops, certain things should be taken into account when they are advertised. For example, consideration should be given to transport and whether the animal will be moved over a long distance.

The UK bill proposes that people who sell via the internet should be licensed like pet shops, because that is, in essence, what they are. The difference is just that their premises may not be visited to buy the animal. That is a step forward, but we must not forget that sites such as chatrooms and auction sites allow private individuals to sell. It has been said that those people should be covered by a statutory code of practice to ensure that the animals' welfare needs are covered in such situations.

The Convener: Okay. Perhaps there is an unintentional loophole in that regard, to which it will be worth returning. That is another matter—there are a lot of them—on which we can test the minister when he comes before us.

Elaine Smith: My questions are for Mr Dickie. Your submission says that you are concerned about unnecessary suffering, which is covered in section 17. In particular, you mention the feeding of live rodents to other animals. Why are you concerned about that? Do you have any suggestions for how those concerns could be overcome?

Christopher Dickie: From my understanding, some snakes have difficulty in feeding, particularly if they have been caught in the wild and brought into captivity. Some people are for that and some are against, so I cannot comment. The snakes may have difficulty in moving straight on to commercially available rodents that are sold frozen and are then thawed.

The snakes are meant to react to the sense of heat, as they would in the wild, but some will not react unless the rodent is moving. Some people use pre-killed rodents, in which case they kill them immediately before feeding so that the snake has a freshly killed animal. In extreme cases, I believe that it is currently legal to feed a live mouse to a snake under veterinary advice if the vet says that there is no other way. I am not totally sure of the legality of that, but a couple of people have raised concerns with me that, if their snakes could not feed, it would affect their welfare. Surely the owner has to try every way possible to make the snake feed, although there is a conflict of interest between the mouse and the snake in how exactly feeding is carried out.

Elaine Smith: Are you saying that some snakes in captivity would die rather than eat defrosted rodents?

Christopher Dickie: Yes.

Elaine Smith: I wondered about that. I am sure that some cats would like to eat live birds but, personally, I would rather feed them Whiskas.

Christopher Dickie: I am totally for that if the animal will eat it. I am not saying that we should stop selling frozen rodents and just use live rodents. Live rodents are necessary in extreme cases in which a snake will not feed in any other way. Surely, if the snake will not feed, it will

eventually die, which is unnecessary suffering for the snake.

Elaine Smith: But you think that section 17 would mean that a person would be breaking the law if they fed such a snake live rodents.

Christopher Dickie: Yes. Perhaps we could do with further comment on that from the veterinary profession.

Elaine Smith: You might have heard me asking the previous panel of witnesses about animal fights, on which you have raised an issue. Will you comment on that?

Christopher Dickie: In captivity as well as in the wild, it is natural behaviour for bearded dragons and other lizards to do ritual displays to each other and then for the male to grab the female behind the head to position himself for mating. That can sometimes cause slight bleeding and, in my understanding of the bill, could be classed as an animal fight. I think that a lot of snakes do the same, but I am more interested in lizards, so I have better expertise in them.

Elaine Smith: Are you happy that the previous witnesses seemed to think that the drafting of the bill does not class such behaviour as an animal fight?

Christopher Dickie: I cannot remember examining those provisions in the bill as introduced. I have not received a hard copy of the bill; I have only looked at it on the internet.

Elaine Smith: Do you accept that the previous witnesses seemed to think that the bill would not cover such behaviour?

Christopher Dickie: Yes, if they are happy with it, but I would prefer to see the provisions myself, of course.

Elaine Smith: Perhaps we could get further comment on that, convener.

The Convener: Yes.

Mr Ruskell: The International Fund for Animal Welfare's submission talks about the registration of larger animal sanctuaries under the bill and says that, as a result of those provisions coming into force, there might be a substantial need to rehome certain animals, which would put pressure on the smaller animal sanctuaries in particular. Will you expand on that? The committee is concerned about introducing appropriate regulation. We do not want smaller sanctuaries to go under, but what is the appropriate level of regulation for the smaller sanctuaries, which the bill will not cover?

Matt Collis: It is important to remember that the bill is an animal welfare bill and is about ensuring welfare standards for animals wherever they might be homed. Therefore, if there is a risk that a certain area in which animals might be homed is not covered, we are in danger of doing animals a disservice; that is true particularly if they have become in need of rehoming because of previous cruelty or welfare problems and they have ended up somewhere where, no matter how well intentioned the care, the welfare standards cannot be met. I am not saying that that applies to all small sanctuaries, but there may be one or two for which it is the case.

It is important that all sanctuaries be covered, but the burden of regulation can vary depending on a sanctuary's size and the complexity of the animals that are homed in it. Obviously, a hedgehog sanctuary will have very different issues to one that houses primates. Primates are highly intelligent animals with extremely complex needs, so a lot more would need to be taken into account in an inspection of a primate sanctuary and a lot more expertise would be needed to perform such an inspection. An inspection of a smaller sanctuary might not require the same level of expertise, so the charge for inspection could be significantly lower so as not to put too much of a burden on such sanctuaries.

As you said, we do not want the sanctuaries to go under—animals might need to be rehoused in them—but, equally, we cannot just leave them to one side and assume that everything is fine. There might be cases in which an animal that is in need of rehoming as a result of poor welfare gets diverted to another place that is not addressed in the bill or not until 2008.

11:45

Mr Ruskell: You would like more sanctuaries to be brought under the provisions of this bill.

Matt Collis: Yes, but I think that the licensing system should be responsive to the size of the sanctuary and the species held, because that will determine the facilities for husbandry and care that are needed in those sanctuaries.

Mr Ruskell: Would that put an additional burden on inspectors? We have heard about the financial implications of all the additional licensing and other activities that might come out in the bill.

Matt Collis: It would, but the level of that burden would depend on the level of inspection that is required, which would depend on what that sanctuary is holding. I would endorse the points that Advocates for Animals made about expertise in local authorities and inspectorates. A sanctuary that houses particularly unusual animals will be in need of a level of expertise that inspectors might not have at the moment.

Mr Ruskell: So, there is an issue about training.

Matt Collis: There is a need for the inspectors to be trained so that they are capable of dealing with various animals. That is as important as the possibility that more inspectors or capacity might be needed to do the work.

The Convener: I have a question that relates to the IFAW's comments about the keeping of primates as pets. Do you have any information about the number of people who keep primates in Scotland? To what extent is that an issue? What might happen to those animals if a ban were to be introduced? What is it about primates that makes them a special case among animals? If there is an issue about keeping primates as pets, why can they be kept in zoos?

Matt Collis: Over the past few years, the Scottish Society for the Prevention of Cruelty to Animals has had a number of calls about escaped monkeys, cases of neglect, sanctuaries and whether it is possible to adopt primates as pets. The Captive Animals Protection Society, which has investigated breeders and traders of primates, believes that one or two of the major UK dealers are based in the Edinburgh area. Over the past few years, there have been quite a few adverts offering to sell or to buy primates. The problem is UK-wide, however; it does not affect only Scotland. It is difficult to give exact figures because of the lack of a regulatory environment. The only regulation or licensing of primates that we have is under the Dangerous Wild Animals Act 1976.

Mike Radford, from whom you have taken evidence, and others were commissioned by DEFRA to analyse the implementation of that act. They found a non-compliance rate of about 85 per cent, which means that the animals that are registered might be only the tip of the iceberg. The primates that are the most commonly held in the UK, such as marmosets, do not require licences, so their numbers are not reflected in the licensing figures.

The bill outlines the needs of animals. Primates are a special case, because it is hard to see how anyone can provide for their needs in a domestic setting. I will use the squirrel monkey as an example. As it is one of the species that is licensed, we know that there are at least 90 of them in the UK.

Squirrel monkeys are wild animals. They live in social groups of up to 50 individuals; they have a lifespan of 21 years; they occupy home ranges of 60 to 130 hectares; and they spend less than 1 per cent of their time on the ground. It does not take much more than basic understanding to realise that it would be difficult for the private owner of a pet to meet those needs. In zoos, however, there is a level of scientific expertise and skill. Zoos also play a role in international captive breeding programmes and in education, research and conservation. A distinction can be drawn between private owners and zoos in terms of the purpose of keeping the animals. In zoos, there is a specific conservation and research aim, but for private individuals—no matter how many claims of altruism they may make—the aim is never, I think, the reintroduction of a species. There is a clear distinction between keeping an animal in captivity for conservation and research and keeping an animal as a pet.

The Convener: That was a helpful clarification. There do not seem to be any more questions so I thank all the witnesses for the evidence that they have given today and previously.

11:50

Meeting suspended.

11:52

On resuming—

Subordinate Legislation

Plant Health Fees (Scotland) Amendment Regulations 2005 (SSI 2005/555)

Less Favoured Area Support Scheme (Scotland) Regulations 2005 (SSI 2005/569)

The Convener: For agenda item 3, we have two instruments to consider under the negative procedure. We discussed the instruments last week and the committee decided to defer consideration of them to allow the minister to get back to us on a number of issues that members raised. We have received a response from the minister, which has been circulated.

Do members have any comments on the plant health fees instrument? Elaine Smith raised particular questions: are you happy with the minister's response?

Elaine Smith: I was able to read it only on the internet last night—I was not able to print it—but I think that it answers most of the questions. I remain slightly concerned about illegal imports, although I believe that that issue has been touched on. However, I accept most of the minister's answers. We should move on with the instrument.

The Convener: Do any other members wish to comment on the plant health instrument?

Members: No.

The Convener: The second instrument to be considered under the negative procedure concerns the less favoured area support scheme. Both Rob Gibson and Alasdair Morrison raised issues last week. Are you happy with the minister's response?

Mr Alasdair Morrison (Western Isles) (Lab): The last section in Ross Finnie's letter is headed "Information on payments of agricultural subsidies".

At least two members of the committee have suggested that such information should be available to the public. The second last sentence in the section is:

"Our position is different from that taken by DEFRA because of different views on the requirements of the Data Protection Act".

The Data Protection Act 1998 is United Kingdom legislation and is applicable to all parts of the United Kingdom. I am not sure how a sub-state Government can take a different view from the national sovereign Government.

The Convener: Rob, you also raised the question last week. Do you have any thoughts, having seen the minister's letter?

Rob Gibson: Indeed. At our meeting of 12 January, Ross Finnie said:

"We have not yet come to a view on what is the most appropriate way in which to do that, as we have not been able to discuss the matter as yet with the relevant people."—[*Official Report*, *Environment and Rural Development Committee*, 12 January 2005; c 1479.]

My question on the letter relates to the first paragraph of the section that is headed, "Information on payments of agricultural subsidies", in which the minister says:

"I announced last January that we would be releasing subsidy information on the new Single Farm Payment and the new Rural Development Regulation schemes. We expect to be doing that shortly after payments commence, probably early January 2006."

Although the LFASS payments seem to fall within the rural development regulation schemes, I would like to have that confirmed. I would also like the minister to confirm that, in the light of what he said last January, publication will be per applicant and not by parish as was the case in the past. Despite the minister's letter, I still do not have a clear answer to the question.

The Convener: Okay. After we received the letter from the minister, Mark Brough, our clerk, went back to the Executive to ask for further clarification. I ask him to bring us up to speed on the Executive view.

Mark Brough (Clerk): The explanation that I got from officials is that a distinction is made between past subsidy information and that which will apply to future schemes. The Executive's position is that it is not appropriate to identify subsidy information for individual past claims because applicants were not forewarned that their details would be used in that way.

However, officials confirmed that information on individual payments under the new single farm payment scheme and the rural development regulation schemes—which include the land management contracts—will be published from January 2006 when the payments begin. Applicants to those schemes will be forewarned that their details will be used in that way. Officials also said that no decision has yet been taken on how that will apply to the less favoured area support scheme.

Rob Gibson: In other words, the minister did not answer our question clearly. We are mystified—or at least I am—as to why we are still unable to access individual information a year on from when the minister appeared before the committee. We should find out why. It would be a dereliction of our duty for us to pass this SSI

before we have that information. We ought to have the information, especially if DEFRA can release it.

Mr Morrison: That reinforces my point. How can the Scottish Executive—a sub-state Government—take a different interpretation of UK legislation? The information that the Executive has given us does not answer the question why the Data Protection Act 1998 is being interpreted and applied in England and Wales differently from in Scotland.

The Convener: Mark Brough is just whispering in my ear that the freedom of information commissioner has been asked to determine whether information can be released under the LFASS. Is that for past or future schemes?

Mark Brough: We are not 100 per cent sure.

The Convener: We know that the issue is with the freedom of information commissioner. Ross Finnie's letter does not comment on that, so we do not have the Executive's view on the matter.

We are in a difficult position. Today is the last day when we can make our report on the regulations to the Parliament. We stretched out the process to try to get more information from the minister. However, we do not want to stop the passage of the regulations because that would stop payments under the scheme.

Mr Morrison: The convener is correct; that is the responsible position to adopt.

The Convener: Right. It may not be desirable for us to stop the regulations. Mark Brough has just informed me that another LFASS instrument will come before us in the next few weeks, which gives us the potential to return to the issue when that instrument appears on our agenda.

I think that members want to record our general sense that the information should be in the public domain. I think that we also want to say that we cannot understand why interpretation of UK legislation should be different in Scotland from interpretation in England and Wales. I propose that we pass those comments to the minister and say that, given that we have been waiting for such a long time for a direct answer on the matter, we hope that it will be clarified before the next LFASS regulations come before the committee. Are colleagues happy with that interpretation of our views?

Mr Morrison: Yes, very.

Nora Radcliffe: Yes, but with the caveat that the matter might never be determined until there is some case law. Such legislation is subject to interpretation, which is firmed up by court judgments.

12:00

The Convener: My difficulty with the minister's response is that I do not know why UK legislation is being interpreted differently—

Nora Radcliffe: Perhaps because it has not been challenged in court there is no case law and therefore no judgment by the courts on which interpretation is correct.

The Convener: The minister says:

"Our position is different from that taken by DEFRA because of different views on the requirements of the Data Protection Act regarding the processing of personal information."

What Nora Radcliffe said does not really answer that point.

Nora Radcliffe: I can see how the situation can arise, but I do not know how it can be resolved.

The Convener: We are talking about a policy issue that centres on how legislation should be interpreted. Any challenge to the interpretation would result in case law. However, the minister seems to be saying that DEFRA and SEERAD hold different views on how the Data Protection Act 1998 should apply in this case.

Mr Morrison: But the civil servants who are involved are all members of the same body.

The Convener: From what the minister has told us and from what we know of the current position, I do not think that we can interpret anything. We have not received the clarity on the LFASS that we really wanted after what happened last week. The response provides extra information on the single farm payment and new rural development regulation schemes, but we received all that last January. We now know that when payments commence in January 2006, that information will be made public, but we do not have any information on the LFASS.

Mr Ruskell: I wonder whether it would be appropriate to write to the Scottish information commissioner for an estimate of when there will be a determination on the case; if it is made in the next couple of weeks, it might well inform debates on the Scottish statutory instruments that will be laid before Christmas. However, if the determination is some way off, it will be some time before we get the information.

Mr Morrison: One fundamental point should be highlighted. We are talking about different interpretations of UK legislation in different parts of the UK. It would be unthinkable for the Treasury and Her Majesty's Revenue and Customs to apply taxation laws differently in Scotland or, indeed, for legislation relating to road traffic offences or the Driver and Vehicle Licensing Agency to have a different application here. The involvement of the

information commissioner is a separate although important issue; the main issue is interpretations of legislation by the same civil service in the UK.

The Convener: I do not think that we can go much beyond—

Mr Morrison: I am sorry, convener—I wanted to say that you have outlined the correct and responsible approach to take. We should not delay things. The payments have to be made, but we need clarification on Mr Finnie's letter.

The Convener: That is what I have proposed. We can certainly find out from the information commissioner how long any determination is likely to take.

Rob Gibson: Last January, Ross Finnie said:

"we are not entirely clear on the matter, because of the way in which the regulations are worded—indeed, our lawyers are wrestling with that problem."—[*Official Report*, *Environment and Rural Development Committee*, 12 January 2005; c 1478.]

We should make it clear to the information commissioner and the minister that the lawyers have been wrestling with the determination for far too long.

The Convener: That particular interpretation issue, which was more to do with the rural development regulation schemes, has been clarified. The outstanding issue concerns the LFASS.

I think that we are all of one mind on the matter: we will raise our points with the minister, and expect responses to them. After all, the issue has been outstanding for an incredibly long time.

Notwithstanding those comments on the LFASS, are members content with the instruments and happy to make no recommendation on them to Parliament?

Members *indicated agreement*.

The Convener: I suspend the meeting briefly to allow the minister to come to the table for item 4.

12:04

Meeting suspended.

12:05

On resuming—

Contaminated Land (Scotland) Regulations 2005 (Draft)

The Convener: Agenda item 4 is consideration of more subordinate legislation. The draft Contaminated Land (Scotland) Regulations 2005 are subject to the affirmative procedure. I welcome to the committee Rhona Brankin, who is the Deputy Minister for Environment and Rural Development, and her officials.

Parliament must approve the draft regulations before the Scottish statutory instrument can be made. We have a motion in the name of the deputy minister that invites the committee to recommend to Parliament that the draft regulations be approved. Members have a copy of the draft regulations, the Executive note and the regulatory impact assessment. The Subordinate Legislation Committee has made brief comments on the draft regulations and members have a copy of an extract from its 43rd report of 2005.

Before we move to the debate on the motion, we have the opportunity to clarify any purely technical matters or to get explanations of detail while the officials are at the table. Once the motion has been moved, the officials cannot participate in the debate. I invite the deputy minister to introduce her officials and to make any opening remarks. Once we have had asked questions or asked for points of clarification, we will debate the motion.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I am accompanied by Barry McCaffrey and Bob Cuthbertson from the Scottish Executive, and by Caroline Thornton from the Scottish Environment Protection Agency.

The Convener: Do you want to make opening remarks or shall we move straight to questions?

Rhona Brankin: I would like to make some opening remarks, but I do not know whether it is appropriate to make them at this juncture.

The Convener: You could make some brief comments now, but we will have the formal debate later on.

Rhona Brankin: Would it be more appropriate to keep my remarks for the debate?

The Convener: Yes, if you want.

Rhona Brankin: That is fine.

The Convener: Do colleagues have points for clarification or questions?

Mr Ruskell: The minister will be aware of the situation at Longannet, where it will no longer be possible to burn sewage sludge from 26 December. How do the draft regulations relate to the alternative option for dealing with sewage sludge, which is to put it on contaminated land for remediation purposes? Will the draft regulations impact on that activity in any way? Do they relate to regulation under the Water Environment and Water Services (Scotland) Act 2003?

Barry McCaffrey (Scottish Executive Legal and Parliamentary Services): I do not think that the draft regulations will have any direct impact on

the issue at Longannet. The activity of spreading sludge on land may engage other appropriate controls if that waste is to be dealt with under the Waste Management Licensing Regulations 1994 (SI 1994/1056). If the activity in question could impact on the water environment, it may be subject to regulatory control under the Water Environment (Controlled Activities) (Scotland) Regulations 2005, which will also come into force in April next year.

Rhona Brankin: The draft regulations apply to land that would fall under the contaminated land regime. As has been stated, there are other regimes, such as the Water Environment and Water Services (Scotland) Act 2003 regime, of which the Water Environment (Controlled Activities) (Scotland) Regulations 2005 are a part.

Mr Ruskell: Are the draft regulations intended to implement that regime for contaminated land?

Barry McCaffrey: The draft regulations will update the contaminated land provisions in part IIA of the Environmental Protection Act 1990 to reflect the terminology that is used in the Water Environment and Water Services (Scotland) Act 2003. They are not intended to displace the existing controls that may be engaged to regulate activities that might impact on the environment. For example, if the spreading of sludge were to impact on the water environment, the Water Environment (Controlled Activities) (Scotland) Regulations 2005 would normally come into play to regulate that activity.

If you are talking about activities that involve the handling of waste in circumstances in which the Waste Management Licensing Regulations 1994 may come into play, then—as the minister said—controls are in place to regulate activities that might impact on the environment at large.

Mr Ruskell: We have regulations on the use of sewage sludge in agriculture, but we do not have specific regulations on the use of sludge on contaminated land. Is it correct that the draft regulations do not cover that? We have the waste management licensing regulations but there are no regulations specifically about the use of sludge on contaminated land.

Barry McCaffrey: That is not specifically covered in the draft regulations. The provisions in part IIA of the Environmental Protection Act 1990 are designed to ensure that there is a regime to deal with the significant contamination of land in circumstances in which other enforcement regimes or regulatory regimes are not engaged.

Mr Ruskell: Do you intend to introduce regulations on the use of sludge on contaminated land to meet the agriculture sludge use regulations or do you regard the draft regulations, in conjunction with the controlled activities regulations, as being adequate?

Rhona Brankin: We regard the draft regulations as part of a package or as one of the tools in the toolbox. We can use them when it is appropriate to do so, but the controlled activities system under the Water Environment and Water Services (Scotland) Act 2003 also contains a series of controls.

Barry McCaffrey: I am sorry that I did not bring my copy of the Waste Management Licensing Regulations 1994 this morning, but I believe that they contain provisions on spreading sludge on land. A system is in place to license that activity and to issue exemptions in appropriate circumstances. It is fair to say that the draft Contaminated Land (Scotland) Regulations 2005 are not intended per se to regulate activities such as spreading sewage on land; rather, they are intended to update provisions that allow appropriate remediation powers to deal with cases of significant contamination of land. As the minister said, the regulations are an extra tool in the box and they will sit on top of other regulatory controls that already regulate activities on land that might impact on the environment at large.

Rhona Brankin: I hesitate to use the phrase "watering down" in this context, but in no way could the draft regulations be described as a watering down of the regime. The change that we are bringing forward today is largely a technical change that will help to clarify matters to local authorities and other bodies that are involved in the contaminated land regime. I reassure members that the regulations will in no way lessen the existing pollution control framework.

Mr Ruskell: Okay. We will return to the matter in the new year when we consider some public petitions that have come to the committee, but for now I am happy with those comments.

Nora Radcliffe: My reading of the draft regulations is that they seek to change the wording so that it is consistent throughout the legislation. They will not change the regulatory powers or provisions but will clarify that, when SEPA acts, a local authority would not act, and vice versa. Is that reading of the instrument accurate?

Rhona Brankin: Yes. In essence, different pieces of legislation apply. In cases of more significant pollution—for example, where there is historic contamination of land—the contaminated land regime applies. We are making it clearer to bodies that are required to designate land as contaminated—such as local authorities—what the trigger mechanism would be. We want to make sure that the legislation is clear about that; that is the basis on which we bring the regulation to the committee.

12:15

The Convener: There are no technical points or points for clarification. In that case, I ask the deputy minister to move the motion in her name.

Rhona Brankin: I would like to offer a bit more clarification. The Contaminated Land (Scotland) Regulations 2005 (Draft) propose amendments to part IIA of the Environmental Protection Act 1990 and consequential amendments to the Contaminated Land (Scotland) Regulations 2000. The purpose of the proposed changes is primarily to prevent disproportionate regulation being applied to contaminated land that causes only trivial amounts of pollution to the water environment and to align the contaminated land regime and the relevant provisions of the Water Environment and Water Services (Scotland) Act 2003.

Under current definitions, land is contaminated if it contains polluting substances that either cause, or are likely to cause, significant harm to human health or to the wider environment. Land is also considered to be contaminated if it contains substances that cause, or are likely to cause, pollution to controlled waters. That means that although actual or possible harm must be significant, any degree of pollution or likely pollution of controlled waters may result in the polluting land being designated as contaminated. In order to remedy that anomaly, the draft regulations will amend the present definition of contaminated land. The amendment will ensure that the contaminated land regime will apply to land only where significant pollution is being caused, or is likely to be caused, to the water environment.

We are also taking this opportunity to modify the contaminated land regime to bring it into line with the provisions of the Water Environment and Water Services (Scotland) Act 2003. The purpose of the amendments is to accommodate changes in terminology—replacement of the definition "controlled waters" in part IIA of the Environmental Protection Act 1990 with "water environment". Our purpose is also to ensure consistency of approach in the operation of the pollution control regimes that are provided for under part IIA of the Environmental Protection Act 1990, and under the 2003 act, regarding contaminated land as a source of water pollution.

The committee might be interested to know that it is my intention to draft statutory guidance to accompany the regulations when they are laid before Parliament for consideration. For that reason, suitable provisions to amend the existing guidance-making powers are also proposed.

I emphasise that the amendments will place no additional financial burdens on the regulatory bodies, local authorities or SEPA. Land that causes only trivial amounts of water pollution will no longer come within the scope of the contaminated land regime. That will result in the removal of any potential remediation costs that would fall on the regulatory bodies for sites that might previously have met the definition of contaminated land. Similarly, the draft regulations will place no additional financial burden on people who own or who occupy contaminated land or who may be liable for dealing with contamination.

To conclude, the proposed regulations introduce operational and technical amendments to the contaminated land regime. The present arrangements for implementing and enforcing the regime as set out in the earlier legislation will continue. The amendments that are introduced by the draft regulations will have no material impact on those arrangements, but will provide clarification on certain aspects of the regime with regard to pollution of the water environment and its interaction with the 2003 act.

It is important to say that the protection of human health and the environment remain our top priorities, and that nothing that we propose today compromises that. I commend the regulations to the committee.

I move,

That the Environment and Rural Development Committee recommends that the draft Contaminated Land (Scotland) Regulations 2005 be approved.

The Convener: I open the meeting to debate. We have up to an hour and a half, but I would not look kindly on anyone who took the meeting on that long.

Maureen Macmillan: This contribution may be facetious, but we could probably take an hour and a half to discuss the meaning of "significant".

Will the minister have a chance to sum up at the end?

The Convener: Yes—at my discretion.

Maureen Macmillan: I wonder whether the guidance will attempt to define "significant". I am sorry, convener—I am now raising questions that I should probably have raised before. These things are always topsy-turvy.

The Convener: When I read the regulations, I found them hard going; when I read the Subordinate Legislation Committee's report on the regulations, I found that hard going as well. The minister's comments about statutory guidance are welcome. Because we are talking about amendments to existing regulations, it is pretty hard to follow what the changes are. Anyone who has to apply the regulations would welcome an easy read giving a boiled-down interpretation of

what the changes mean. Without such an interpretation, they would find the regulations hard going. You say, minister, that there will not be any significant regulatory burden on anyone, but people should know exactly what the regulations mean and how they will be applied.

Mark Ruskell spoke about the relationship between these regulations and the other ways of controlling activities—activities such as dealing with sewage sludge. People have to know which regulations apply. I therefore welcome the fact that the minister will produce guidance. That will be of help to everybody.

Mr Ruskell: I am remembering the Environmental Assessment (Scotland) Bill and getting a sense of déjà vu. I reinforce what Maureen Macmillan said: the definition of "significant" will obviously be significant. A robust definition is required because we do not want to create loopholes.

The Convener: As no one else wants to contribute, I ask the minister whether she wants to respond to those comments.

Rhona Brankin: I agree that it is important that the regulations clarify what is meant by "significant"; they will be designed to do that. I understand that the regulations will come back to this committee and that the guidance will have to be approved. Committee members will therefore have a chance to look at it.

Mr Morrison: Hold me back.

Rhona Brankin: I am sure that you are looking forward to that, Mr Morrison.

Mr Ruskell: More legislative litter perhaps.

The Convener: One at a time.

Rhona Brankin: I also take the convener's point about the need for an easy read. This is a complex subject and the purpose of the regulations is to clarify it for the stakeholders as they try to decide which piece of legislation affects them. I accept that there should be clarification of the relationship between these regulations and other waste-control regulations.

I take on board all the points that have been made.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Contaminated Land (Scotland) Regulations 2005 be approved.

The Convener: I thank the minister and her officials, and ask her to remain for item 5.

Animal Welfare Bill

12:24

The Convener: Agenda item 5 is the Animal Welfare Bill, which is UK legislation. The minister has advised the committee that the Executive intends to seek the Parliament's consent to the UK Parliament legislating on certain devolved matters through the Animal Welfare Bill. That bill is currently before the Westminster Parliament and it makes provisions on animal welfare that are similar to those in part 2 of the Animal Health and Welfare (Scotland) Bill. The Sewel convention requires the Parliament to consent to the UK Parliament legislating in this way and the committee has agreed to take evidence from the Deputy Minister for Environment and Rural Development before considering our report to the Parliament. Colleagues will note that a revised memorandum has been issued by the minister. It was circulated to members on Monday.

I therefore welcome Rhona Brankin and her officials. I invite the minister to introduce her officials and to make a short opening statement. We will then go to colleagues for questions.

Rhona Brankin: My officials are Claire Tosh, John Paterson, Heather Holmes and Ian Strachan, all from the Scottish Executive.

The Convener: Is there anything that you wish to say as a short opening statement?

Rhona Brankin: Yes, thank you.

The Sewel motion seeks the Scottish Parliament's approval for the Animal Welfare Bill, which is currently going through Westminster, to contain provisions that would enable a disqualification order made by a court in England or Wales, prohibiting a person from owning or keeping animals, to be effective throughout Great Britain.

Once we have passed the Animal Health and Welfare (Scotland) Bill, which was introduced on 5 October, an order will be sought under section 104 of the Scotland Act 1998 that will ensure that a disqualification order made by a Scottish court will also be effective in England and Wales. That will achieve the position on reciprocal recognition of decrees that pertains under the current law and that we want to maintain.

Disqualification orders are normally made only in the most severe cases of animal cruelty and abuse and it would clearly be wrong for a convicted person who was disqualified from keeping animals in one part of Great Britain to be able to move to another part and thereby continue to keep animals or to run an animal business.

The Sewel motion has received the full support of the SSPCA and other animal welfare organisations. It will not give Westminster the power to decide animal welfare legislation for Scotland. Members will be aware that we have introduced the Animal Health and Welfare (Scotland) Bill to Parliament for that purpose. The Sewel motion seeks only to enable reciprocal recognition of disqualification orders. I consider that this is a positive and beneficial use of the Sewel convention and, in combination with the section 104 order, it will ensure that, while the legislation for the protection of animals in Scotland and south of the border is strengthened, we will maintain the reciprocity of effect that exists in current legislation.

Richard Lochhead (North East Scotland) (SNP): No one will argue with the principle that disqualification orders should be recognised on both sides of the border. However, there are concerns about the Sewel motion in this context. Sewel motions are controversial at the best of times, but on this occasion we seem to have a situation where there are animal health and welfare bills going through the Parliaments north and south of the border, so ministers had the opportunity to amend the Scottish bill.

I understand that the original motivation for the Sewel motion was that there might have been a gap between the introduction of the bills. It turns out that there was only one week between the introduction of each bill. The minister's most recent correspondence seems to show that the goalposts have been moved, because she is now saying that the real reason for the Sewel motion was the time that it will take for the bills to go through their respective Parliaments. Why do we have a Sewel motion when our Scottish legislation is going through Parliament at the same time as the mirror legislation south of the border? No one is against the principle of cross-border arrangements for animal welfare, but surely a Sewel motion is the lazy, easy option.

12:30

Rhona Brankin: Absolutely not. We regard the Sewel motion as the best option, regardless of constitutional positions. The DEFRA Animal Welfare Bill has only been introduced to Parliament and it is not yet clear what will happen during its passage. The bill's provisions could change, which could mean that references to it in the Scottish bill might be rendered meaningless, inaccurate or redundant. Therefore, to counter the separate provision, an order would have to be made under the Scottish bill to amend references.

The fact that the Animal Welfare Bill is proceeding through Westminster at around the same time as our bill is proceeding does not remove possible inherent complications in meeting what is, in effect, a moving target—I refer, for example, to the numbering of clauses, the insertion of different provisions or changes to the substance of the provisions. Obviously, we have carefully considered the matter and we think that the complications will be avoided by using a Sewel motion. The Sewel mechanism is designed for exactly that purpose. We think that its use will be a most effective way of ensuring that there is a coherent mechanism for dealing with breaches of disqualification orders, irrespective of where they were made. The purpose of the Sewel is to allow a good thing to happen.

Richard Lochhead: If I understand you correctly, you are suggesting that amendments to the Scottish bill could be rendered meaningless by the UK bill. Why can the UK bill not take into account the Scottish bill and ensure that amendments are not rendered meaningless? Why must we follow Westminster's lead? Why can Westminster not ensure that its bill is compatible with the Scottish bill?

John Paterson (Scottish Executive Legal and Parliamentary Services): That is exactly what the Sewel motion will allow.

Mr Morrison: Exactly.

The Convener: People should speak one at a time. Mr Paterson, please continue.

John Paterson: The Sewel motion will allow those provisions of the Westminster bill that will apply in Scotland to be followed through in order that the best fit is achieved with respect to the parts of the bill that relate to the creation of disqualification orders in England and Wales. If we want those provisions to be cleanly followed through, the best place for them is the Animal Welfare Bill. The draftsman can then follow his changes to one part of the bill in another part of the bill, as can the Parliament.

On the law relating to Scotland, a disqualification order that is made by a court in Scotland under the enacted Animal Health and Welfare (Scotland) Bill will have a reciprocal effect in England by virtue of an order under section 104 of the Scotland Act 1998, which will be made after our bill is enacted. I hope that that clarifies matters.

Richard Lochhead: It does. I accept that there are two ways of legislating on such issues—Scotland can legislate or a Sewel motion can be used to allow Westminster to legislate—but my point is that, in the light of the coincidence of two bills on animal welfare, surely the preferred option is to allow Scotland to legislate. The minister's correspondence says that that would be perfectly legitimate, but that she has chosen to go down the alternative route of allowing Westminster to legislate. Should precedence not always be given to legislating in Scotland where that is possible?

Rhona Brankin: The bottom line is that preference is given to the best way of making the legislation. We need to ensure that we enable the proposed legislation to proceed without referring to constitutional issues—that is the best way of ensuring that the legislation is enacted on both sides of the border. I assure Richard Lochhead that we considered the matter carefully.

Mr Morrison: We should be perfectly clear that the meaningless points that have been made in the past few minutes have absolutely nothing to do with animal welfare or competent legislation. Exactly why the mechanism in question is being applied and why the route in question has been proposed has been ably explained by the minister and reinforced by her official. All that we have heard from the Scottish National Party in the past 10 minutes is the same old typical, dreary nationalistic dirge that it plays whenever the words "UK", "Great Britain" and "Westminster" are mentioned. We should short-circuit this meaningless discussion on a constitutional matter because it is irrelevant to the committee.

Mr Ruskell: In the previous evidence session we heard about banning animal sales on the internet in England and Wales. Some of the NGOs were concerned that if there is such a ban south of the border, people who sell animals on the internet may move to Scotland to do it. To avoid anomalies, have you considered mirroring that power in the Scottish bill or even considered it as part of a Sewel motion to allow that provision to apply north and south of the border?

Rhona Brankin: I am being told that that will be in secondary legislation; it will not be on the face of the bill. Would you like to say something, Ian?

Ian Strachan (Scottish Executive Environment and Rural Affairs Department): Certainly. The UK Animal Welfare Bill does not have anything about the sale of animals on its face, despite recent press reports. The sale of animals will be covered in secondary legislation at Westminster and in Scotland. That secondary legislation will be introduced only after full consultation and with the committee's approval.

Mr Ruskell: Great, that has clarified things.

The Convener: That is helpful. That point was raised earlier.

Rob Gibson: Where is a disqualification order made? Are other member states in the European Union notified about people who are subject to them? The free movement of labour potentially means that somebody who held animals here could go to another country in the European Union. What mechanism do you envisage in the Animal Welfare (Scotland) Bill to deal with that?

Ian Strachan: The courts will make a disqualification order that will be recorded in a database for the United Kingdom. We have to set up that database and I have given no thought to expanding it to the European Union. As you suggest, we must think about that. However, there will at least be a database for the UK, which we do not have at the moment.

Rob Gibson: Do you think that you should look at that seriously? I can think of people who have been disqualified and are perhaps in jail at the moment, but who could possibly go to another country and do the same thing.

Rhona Brankin: That will be looked at, and I am happy to do so.

John Paterson: The only thing that I would say is that I would have thought that ensuring the applicability of disqualification orders and so forth outside of Great Britain would be a matter for the European Commission. The UK could feed into that process, but we obviously would not be in a position to direct other countries as to how they treat the orders.

Rhona Brankin: We are happy to come back to the committee to deal specifically with this matter.

The Convener: The point about people leaving Scotland or the UK with a disqualification order is interesting. If there is similar animal welfare legislation in other European Union countries, people who have a very bad track record, or who have been successfully prosecuted in another country, could potentially come into Scotland. It raises a whole agenda beyond what we were initially thinking about in this bill.

Rhona Brankin: We will come back to you on that.

The Convener: As no one has any further points, I thank the minister and her officials very much for answering our questions.

As we agreed earlier, we move into private session.

12:39

Meeting continued in private until 12:46.

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