ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 14 December 2005

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE
33rd 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:

Ross Finnie (Minister for Environment and Rural Development)
Joseph Holmes (Council of Docked Breeds)
Chris Laurence (Dogs Trust)
Lou Leather (Pet Advisory Committee)
Holly Lee (Scottish Kennel Club)
Diarmid MacLean (Scottish Sea Life Sanctuary)
Helene Mauchlen (British Horse Society)
Janet Nunn (Pet Care Trust)
David Wilson (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Christine Lambourne

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 14 December 2005

[THE CONVENER *opened the meeting at 10:11*]

Item in Private

The Convener (**Sarah Boyack**)**:** Under agenda item 1, I ask members to consider taking item 4—consideration of the committee's forward work programme—in private. Item 4 is a debate on our future inquiry topics and it will involve discussion of individual witnesses. We will make our decisions public, but it would be helpful to discuss them in private first. Are members happy with that?

Members *indicated agreement*.

Animal Health and Welfare (Scotland) Bill: Stage 1

10:12

The Convener: This is the fourth of our six planned evidence sessions at stage 1 of the Animal Health and Welfare (Scotland) Bill, which was introduced in the Scottish Parliament on 5 October. Our role as the lead committee at stage 1 is to consider the provisions and to report to Parliament to recommend whether the general principles of the bill should be agreed to.

We will hear evidence from expert witnesses and from those who have an interest in issues that are raised in the bill. We made an open call for written evidence, in response to which we have received a number of submissions. They have been circulated to members and posted on the committee's web page for the benefit of the public. The date for making such submissions has passed, and we will notify people of that on our website.

I introduce and welcome our first panel of witnesses. Lou Leather is the chairperson of the Pet Advisory Committee; Janet Nunn is the chief executive of the Pet Care Trust; Helene Mauchlen is the Scottish development officer of the British Horse Society; and Diarmid MacLean is the manager of the Scottish Sea Life Sanctuary.

Thank you for coming and for giving us your written evidence in advance; members have had the opportunity to read it.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): One of the interesting issues for those of us who are not experts on horses has been the question of couping in agricultural horses such as Clydesdales. What is the purpose of couping? How would it be handled under the provisions of the bill?

Helene Mauchlen (British Horse Society): I think that couping is handled under the Farriers (Registration) Act 1975, which could be extended into Scotland after the Animal Health and Welfare (Scotland) Bill is enacted. Couping is seen as almost cosmetic in some cases. Farriers who shoe Clydesdale horses that plough have traditionally shod the horses' back hooves with shoes that have high steps—big calkins—at the back. Horses that are shod in that way will plait their back legs and walk within the furrow. However, the practice is considered to harm the horse by damaging the hock joints further up its legs.

The bill's provisions on mutilation come to mind. At the moment, anyone can trim a horse's foot, but someone who shoes a horse—apart from in Scotland, which is a derogated area—must be

registered with the Farriers Registration Council. The welfare organisations whose views I represent today—the British Horse Society, the International League for the Protection of Horses, the British Equine Veterinary Association and the National Equine Welfare Council—believe that anyone who trims a horse's foot and interferes with its sensitive tissue should have a qualification.

Couping is slightly different, because it deals with the horse's joints and it is a specialist procedure. A lot of self-policing goes on among Scottish farriers and the procedure does not happen as much as it did.

10:15

Mr Brocklebank: Are you saying that nowadays, because most horses do not pull ploughs or walk down furrows, such procedures are cosmetic and are performed to make the horse's legs conform in a particular way?

Helene Mauchlen: It is a cosmetic thing, the purpose of which is to make the horse trot with its back legs plaited in the showing ring. Many heavy horses are shown at the highland show, for example, and it is a question of what the judges are looking for. If a horse shows extravagant back leg action or has been shod wrongly, it should be put out of the ring. The Clydesdale Horse Society is taking action to ensure that horses that are extravagantly shod and whose action has been affected by shoeing are not accepted in the ring. That is what I think is happening.

Mr Brocklebank: The bill deals with the possibility of horses being poisoned with ragwort. What are the views of the British Horse Society on that? Is the argument coherent and do you welcome that possibility being covered in the bill?

Helene Mauchlen: Absolutely. Ragwort is a highly pernicious poisonous weed, which grows all over Scotland and causes a lot of damage to horses; it is sometimes called the yellow peril. At stage 2, we would like an amendment to be lodged to section 20 to deal with people who knowingly expose their equines to ragwort. Ragwort poisoning causes terrible liver damage and the symptoms are very distressing.

Our problem is proving the number of ragwort deaths that happen in Scotland. One would have to do a liver biopsy on every horse that died. Derek Knottenbelt at the University of Liverpool has developed a skin test; as soon as March comes along, that test will allow us to test a horse's skin to show that is it suffering from ragwort poisoning. We will then be able to show quite quickly what we believe, which is that many more horses die of ragwort poisoning than we are able to prove.

Mr Brocklebank: My colleague Rob Gibson has pointed out to me that the phrase "plants like ragwort" is used in the evidence. Do other plants in that family cause the same kind of poisoning?

Helene Mauchlen: Yes. Other poisonous plants will also kill a horse quickly. For example, if a horse owner knowingly exposes their pony to a yew tree, a single bite will kill it. There are several poisonous plants that can kill horses and if owners practise good pasture management, they do not expose them to such plants.

Mr Brocklebank: Should all those plants be contained in the bill?

Helene Mauchlen: Definitely. It is quite easy to get hold of that information.

The Convener: If someone is out horse riding in an area that they do not know well, would you expect them to know ragwort when they see it? Should such knowledge be assumed?

Helen Mauchlen: It would be hard for anyone who owns horses to have escaped the knowledge that ragwort is damaging to horses. That also applies to anyone who manages land. Under the criteria for good agricultural and environmental condition, farmers who receive payment for keeping the land in good condition know that ragwort is named. In addition, we run a massive education programme.

We support the notion of statutory improvement notices. If an inspector, an animal health officer or one of our welfare representatives visited a horse in a ragwort situation, it would be more difficult to say, "We expect to see an improvement in this situation" than to take the person responsible to court. However, if they were to say, "This horse is exposed to a terrible amount of ragwort, there's a fair chance the horse is eating it and we want to see it cleared up or the horse moved", that would be an example of a good statutory improvement notice. I think that members are considering that in the bill.

The Convener: Thank you. It is helpful to have clarity on how the issue might be addressed.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I have a question for Janet Nunn and Lou Leather. In your submissions, you both talk about local authorities' and ministers' powers to appoint inspectors under section 44. How are animal inspectors appointed at the moment?

Lou Leather (Pet Advisory Committee): It might be done in a series of ways. Inspectors tend to be professional officers, such as trading standards officers and environmental health officers. Animal health legislation is usually covered by trading standards officers, because it usually involves port or market work, although environmental health officers would do market work.

There is a series of local authority-based people who have background expertise in inspection. They are well trained, but not necessarily in the detail of animal welfare. If they do specific work such as market work or controlling port importations, they are aware of animal welfare through experience, but if their work is to be extended into general animal welfare, there will be a need for much more training of everybody who is involved, on both the trade and inspection sides.

In part, our concerns are to do with the fact that there seems to be a lack of clarity with regard to who would be an approved inspector. If environmental health officers were so classified, would they pass on that responsibility to animal welfare officers as they do under dog control legislation? What is the training and expertise of animal welfare officers? They might know about collecting stray dogs but, if we get on to other species, there is a clear need for better training. There is a need for a list of Government-approved organisations or bodies as a basis for determining who might be an approved inspector.

Mr Ruskell: Does that need to be included in the bill? You seem to suggest that the bill is not clear enough in that regard. The committee is anxious to create bills that are not too complex but which, at the same time, do the job and implement the policy objectives. What legislative provisions are you requesting? Is legislation needed?

Janet Nunn (Pet Care Trust): The Pet Care Trust's concern is what would happen if it was decided that inspection should be outsourced from statutory bodies with no financial interest—such as local authorities—to other organisations. I suppose that the Scottish Society for the Prevention of Cruelty to Animals would be a prime candidate for such work. It does some excellent work, but it raises funds for its own work. We would be concerned if powers were to be given to such a body to perform statutory inspections when it would also stand to gain from fundraising for work that it does in the public eye.

Mr Ruskell: Does Diarmid MacLean want to comment?

Diarmid MacLean (Scottish Sea Life Sanctuary): At the Scottish Sea Life Sanctuary, we have a good relationship with the local environmental health officer, who is accompanied for inspections by an appointed vet from, for example, Edinburgh zoo. We would be worried if an environmental health officer who was new to the job was an appointed officer, because he might be required to make a judgment on specialist care. In our case, that might concern care for seals, and we are the only people on the west coast who look after seals. There should at least be a register of appointed inspectors for certain species, who could be called upon to do inspections with environmental health officers. That happens at the moment under the Zoo Licensing Act 1981, but I do not know whether that provision could be transferred into the bill.

Helene Mauchlen: As an organisation that runs an inspectorate—we run quality assurance schemes for riding schools and livery stables—the British Horse Society enjoys a very good relationship with the Convention of Scottish Local Authorities when it comes to running courses such as those on the welfare of animals in transport. Our organisation and others like it appreciate the parts of the bill that talk about interagency co-operation.

Inspectors require fairly specific equine knowledge. The SSPCA offers the opportunity for people to spend a day with the International League for the Protection of Horses, which has a well-equipped rescue centre at Belwade farm in Aberdeenshire; great examples can be shown there. Organisations such as the ILPH and the BHS would be very willing to run a system of continuing professional development, whereby local authority inspectors could build up their equine knowledge as they progressed. Such development could be achieved through co-operation without costing loads of money. We have fairly positive experience of working with COSLA. Inspections could be facilitated by people working together.

Mr Ruskell: Is the issue about training and best practice rather than about including a provision in the bill? Diarmid MacLean referred to vets accompanying inspectors. Would you like that to be a statutory requirement?

Diarmid MacLean: Such a statutory requirement would give us protection as a business. I presume that an appointed officer who came on to site could close down the business on, at best, poor information. Such a decision would not be their fault, but it would be made because they had not been trained or did not have the expertise or experience. It would be better if there was a mandatory requirement for an inspector to have a representative with them, perhaps an experienced vet, who could provide them with specific expertise and knowledge.

Janet Nunn: The Pet Care Trust would be concerned if a vet were to become a statutory part of licensing inspection visits, because of the oncosts, which would need to be picked up. The hourly rate for a vet is expensive and given that there would be inspections for places such as pet shops, kennels and catteries—premises where healthy animals are kept—we would see such a statutory requirement as an undue burden.

Lou Leather: I am an environmental health officer by training. At the start of anybody's career,

it is difficult for them to know the detail of what is going on, but the inspection system takes that into account. If an inexperienced person goes out on an inspection, they go with an experienced person and therefore learn through the process of making visits with an experienced person.

In practice, environmental health officers have the ability under different legislation to appoint people to attend with them according to what is required at the time. The person who attends with the EHO might be a policeman, a vet or anybody else. We agree with Janet Nunn that it may not be necessary to make a veterinary visit a prerequisite, because if an inspector is used to examining a particular type of premises, they will be aware of the standard and what is required. In some cases, a veterinary visit might be deemed excessive, but in other cases it might be seen as advantageous.

Mark Ruskell asked what we would like to be included in the bill. We would look for an appropriate category of person and a requirement with regard to who might be an appointed person. As has been said, rightly, the bill could not go into too much depth, but we are trying to prevent confusion. If the bill is not sufficiently clear, there is a danger that there might be lots of subsequent claims by different people that different things should be done in the secondary legislation.

The Convener: As I understand it, the principal requirement is on the environmental health officer to act for the council to enforce the legislation. It is about the EHO's judgment, accountability and ability to draw on a range of expertise. As Helen Mauchlen said, there may be the potential for CPD. The issue is whether the bill should stipulate local authority officers or whether it should state that local authorities will have to draw on expertise—either in-house expertise or expertise from outside. I am trying to get a sense of exactly what you want to be included in the bill and what would be more appropriate in guidance.

Lou Leather: Our understanding is that the bill should at least specify the appropriate categories of person or the characteristics of the person. The detail of their qualification and the discretion for appointment would rightly be matters for secondary legislation.

Confusion has arisen about whether organisations such as the Royal Society for the Prevention of Cruelty to Animals might be enforcement bodies. I do not know about the SSPCA, but the RSPCA has certainly said that it does not wish to be an enforcing body and that it wishes to continue to do what it has always done under the Protection of Animals Act 1911 and the Protection of Animals (Scotland) Act 1912. Those bodies carry out visits and bring court cases—if they did not do so, nothing would be done whatever. As they have experience that certainly does not exist in local authorities, it seems practical to call upon them to utilise it.

10:30

Nora Radcliffe (Gordon) (LD): I have a related question. The submission from the Scottish Sea Life Sanctuary raises a good point about the use of specialised equipment; it says that the bill should state that people should not use equipment that they are not trained to use. Will you expand on that?

Diarmid MacLean: An officer who comes on to premises and sees an animal in distress may want to treat the animal there and then if they think that it is an emergency or that it is critical to treat the animal. Who would be responsible for the health and safety aspects or the proper use of the equipment by an untrained officer? Would the owner of the premises be responsible, or would the officer take on the responsibility for using the equipment without proper training and supervision? Under the bill, officers will be able to enter premises at any time, whether the owner is there or not, and make use of equipment there without any supervision. That provision needs to be tightened up.

Rob Gibson (Highlands and Islands) (SNP): I have a question that follows on from that, as it is about the power of slaughter. The Scottish Sea Life Sanctuary wants a stricter definition of the type of diseases that might lead to the use of that power. Another issue is the persons who will form the group that decides whether the power will be used. Will you expand on that?

Diarmid MacLean: Phocine distemper virus—PDV—recently swept through seals in Europe. It started in Norway, came in through the Wash and up through England and Scotland, and resulted in the death of about 30,000 animals. We took part in a study that involved rescuing animals with PDV to allow us to examine the feasibility of vaccinating them and building up resistance to the disease, as it is cyclical and returns every 15 years or so. If an officer came on to the premises and culled animals that were part of a vaccine trial, that would negate any value from the study, which could prevent the disease or reduce its impact in future years. Provision must be made for organisations that carry out responsible vaccine trials under quarantine, or which work towards controlling diseases. In such cases, officers should not have a 100 per cent right to stop the trial, if the organisation can demonstrate that it has an effective quarantine system.

Rob Gibson: I presume that that issue would be covered in secondary legislation, not in the bill.

Diarmid MacLean: Under the zoo licensing regime, we must demonstrate an effective quarantine procedure to get a licence. Responsible bodies that can demonstrate effective quarantine procedures should have protection against the powers of entry and slaughter.

Helene Mauchlen: Just as there are reasons for keeping alive animals that have diseases, there are reasons other than welfare for putting them down. It is of slight concern to the equine industry that the bill does not seem to make provision for situations in which horses have become dangerous for whatever reason. Some organisations rescue animals but then have to destroy them humanely because they are unmanageable. We would like that issue to be addressed.

Rob Gibson: That is sufficient evidence for us to consider.

The Convener: Do you want to follow up on the same issue, Richard?

Richard Lochhead (North East Scotland) (SNP): It is not exactly the same one.

The Convener: I will take Elaine Smith first and then come to you, Richard.

Elaine Smith (Coatbridge and Chryston) (Lab): My question is on a slightly different issue, but it relates to a point that the Scottish Sea Life Sanctuary made in its submission on the powers of slaughter. In essence, the question is a general one for the panel. Are the definitions of "animal" and "protected animal" that are in the bill acceptable and clear? I am picking on the Scottish Sea Life Sanctuary because its submission says:

"It is not clear from the Bill in its draft form whether species held by us would come under the terms of what constitutes an 'animal'."

Perhaps Diarmid MacLean will expand on that.

Diarmid MacLean: As an aquarium and a zoo, we keep a wide variety of animals from jellyfish to mammals—I was discussing that with other panel members before the meeting—and every one of them is susceptible to some sort of communicable disease. The question is where to draw the line: for example, is a fish an animal? We can have 30,000 herring on display in the sea life centre. If that fish population is displaying signs of disease, can we be forced to cull the whole shoal or population? Does the bill relate only to mammals or does it cover birds in aviaries, for example? The definitions should be made clearer.

Elaine Smith: Part 2 of the bill, which addresses animal welfare, says:

"'animal' means a vertebrate other than man."

Part 2 also says:

"The Scottish Ministers may by regulations … make provision which … extends the definition of 'animal' so as to include invertebrates of any description".

Does it give you any comfort that ministers could do that or should the wording be stronger?

Diarmid MacLean: That wording is very strong. Basically, it covers all animals and that is what we are looking for. We do not want any species to be excluded because people think that it is not worth saving or looking after. We are concerned about the care of all the animals for which we are responsible, whether it be a jellyfish, a herring or a seal that has been with us for a number of years. We welcome the fact that the measures extend to all animals.

Elaine Smith: Does any other panel member have a comment on the "animal" and "protected animal" definitions?

Janet Nunn: I do not have a problem with the definitions. However, I point out that, under proposed new section 36X of the Animal Health Act 1981, on interpretation, the definition of "livestock" does not allow for pets; it focuses on farmed animals. Perhaps that oversight can be corrected before the Parliament finalises the bill.

Richard Lochhead: A couple of people told me that animal sanctuaries should be licensed in the way that pet shops, for instance, are. Does the panel have any views on that?

Diarmid MacLean: As a sea life sanctuary, we are licensed under the Zoo Licensing Act 1981.

Richard Lochhead: You are licensed.

Diarmid MacLean: We hold a zoo licence. We do so voluntarily; we do not need to do that, but we think that it is good practice to do so under the principle of responsible husbandry. We open ourselves up for inspection and are very open about what we do. Licensing should become mandatory. I could lose my licence tomorrow and open up again as a community farm. We could simply change the name above the door. Licensing should be mandatory; anyone who is responsible for the care of animals should be licensed.

Richard Lochhead: No matter the size of sanctuary.

Diarmid MacLean: No, because even a small sanctuary is still responsible for the care of sentient animals. If animals are not looked after properly, they can become depressed and exhibit all sorts of behaviours. It is only responsible for us to be licensed and to be open for inspection whether by environmental health inspections or another means. The appointed vets who come in to assess our work practices look at everything from health and safety to animal husbandry. They

are independent of our company. Licensing is a responsible part of the bill.

The Convener: What would trigger that process? Presumably, there would be voluntary or professional staff who would be involved in looking after animals. Richard Lochhead's point is about how far one would extend the requirement. As you said, if somewhere calls itself a sanctuary one day and a farm the next, is it just the terminology or is it what it does that should be covered?

Diarmid MacLean: As a business, we could continue trading in exactly the same vein and just change our description, and there would be no requirement whatsoever for us to have a licence under the Zoo Licensing Act 1981. The environmental health system in place under that act has worked well for us. I do not know how far down that goes, or whether it would apply to someone who was looking after just one horse or to someone who was running a farm. That would have to be open to discussion.

The Convener: Perhaps we can bring in Helene Mauchlen on that point. The bill will introduce registration, but not licensing, of livery stables. What would the practical difference be between being licensed and being registered for the pair of you and for your businesses?

Helene Mauchlen: The difference between registration and licensing is something that I wanted to bring up. At the final stage of consultation on the draft bill, comments were sought on licensing and there was a great deal of support for that, but the bill as introduced used the word "registration", whereas in England they are going for licensing, as I understand it. Registration is a way of knowing where the horses are. Obviously, someone will have to be registered to operate, but a licence, entailing powers of entry and inspection, is much stronger. We think that if we go for registration in Scotland, horses in livery yards in Scotland will have less protection than horses in England have, and that would not be appropriate. However, having spoken to officials, I think that the plan could be to go for licensing for livery yards.

To return to the original question, animal sanctuaries should be licensed, regardless of size, because many horse owners will not take responsibility for their equines when they become old or infirm. We get a good number of calls saying, "I've got a horse with navicular and we can't ride him any more. Can you tell me where I can put him?" We have to talk those people sensitively through the process of humane destruction, because taking the final decision for their horse is the best thing that they can do, rather than allowing him to enter a downward spiral of neglect and abuse in a sanctuary where nobody is watching what goes on. The people who run sanctuaries tend to open their doors to take in all the horses whose owners cannot face having them put down, so the horses that end up getting lost in sanctuaries are the ones in greatest need, because they may be old, arthritic or suffering from bone disease. The welfare of those equines must be monitored.

Diarmid MacLean: The difference that I see between registration and licensing is that licensing entails a requirement for a minimum standard. As Helene Mauchlen has said, there is a problem about animals disappearing into sanctuaries with no further regard being given to their care as they spiral downwards. If the sanctuary is licensed and is required to provide a certain level of care, people will have the confidence to hand over an animal to a sanctuary knowing that that is the best place to look after the animal in its declining years. If the animal is injured, a sanctuary may be the best place for that animal. A sanctuary that is licensed will be overseen and inspected, so those running it will be made more responsible.

Lou Leather: If you look in a dictionary, you will see that sanctuaries are defined as places that are above the law, and we do not think that they should be. Our view is that all sanctuaries ought to be licensed. The larger charities will have far larger facilities than many of the people who are required to license their operations. What we need is a definition of sanctuary, and licensing thereafter. The issue arose from the number and sizes of premises, which varied immensely, particularly as there are many well-meaning people who take in animals but do not start out aiming to be a sanctuary. Many people will decide to take in an animal, but the scale of their operation can build so that it ends up far larger than they ever intended it to be, and they frequently do not have the ability or expertise to manage or plan for development for the proper care of the animals. A solution to the dilemma was included in a Companion Animal Welfare Council report entitled "The Report on Companion Animal Welfare Establishments: Sanctuaries, Shelters and Re-Homing Centres". Pages 39 to 43 of that report in particular deal with licensing and registration and might be worth reading.

10:45

The report's main aim was to require licences for larger premises but not necessarily for smaller premises that do a service. The concern was that putting too many restrictive licensing requirements on well-meaning people with small premises would mean that they would be unable to cope and that there would be considerable demands on the rest of the system. It was proposed that smaller premises should register and should have to notify the local authority that they exist. Local authorities

could then apply discretion in their inspection procedures and say, "Okay. You are of a certain size and are doing a certain job." They would not have to go into too much detail about how people should be operating the system. They should have the discretion to require at some stage that something should have a licence rather than be registered. As a result, many people who are doing a lot of good will not be pushed out of the market and the playing field will be levelled for the rest of the sanctuaries. I absolutely agree that all sanctuaries should be licensed.

The Convener: That is helpful.

Richard Lochhead: If a licensing regime is introduced, will some sanctuaries in Scotland not meet the conditions and have to close? I expect that you do not want to give the names of sanctuaries, but you probably know much more about sanctuaries than we do. Are there sanctuaries out there that should be shut down?

Lou Leather: It is true that some sanctuaries ought not to exist. Trying to improve animal welfare is about trying to create a level playing field and trying to apply equal standards for people who are doing the same sorts of job, and not allowing people to avoid the law by devious means.

We have heard about one premises that made itself a charity and allegedly stole dogs. It gave the animals away but required a donation, so it was able to collect money for charitable purposes. It had no overheads and made immense profits. That is not what the work is about or what a sanctuary should be. Anybody who is involved in such activities should be subject to proper licensing controls.

Richard Lochhead: I saw Helene Mauchlen and Diarmid MacLean nodding vigorously. Do you have anything to add to what has been said?

Diarmid MacLean: We are more concerned with marine mammals and our community in Scotland is very small. There is, of course, a spectrum of care levels in that community and I am sure that we are all aware of certain parts of that spectrum that should not be operating. If licensing were required, the case for closing down those places would be strengthened.

Helene Mauchlen: Some sanctuaries in Scotland's horse world seem to take an awful lot of horses willy-nilly, and one worries about the number of horses that go to them. However, on the whole, people who care enough about horses to give them a home tend to look after them.

The general principles of the bill were asked about at the outset. The duty of care and the positive responsibilities that the bill will put in place are welcome because everyone who takes responsibility for an animal will have to look after it. That will make a big difference to the regime that we have been dealing with. The British Horse Society as a welfare organisation has had to stand back and see horses suffer before any action can be taken. Some sanctuaries might have to change their ways and one or two might have to close down, but everyone who looks after horses will have to do so properly.

The Convener: Is that a useful point to end on?

Maureen Macmillan (Highlands and Islands) (Lab): No. I would like to ask a question on an issue that interests me. The bill proposes that animals should not be given as prizes, but NFU Scotland thinks that giving animals as prizes can sometimes be appropriate and the Showmen's Guild of Great Britain, whose members give out goldfish as prizes, believes that it puts enough safeguards in place. The vets who gave us evidence last week thought that animals could be offered as prizes as long as safeguards were in place. What do members of the panel think?

Lou Leather: My impression is that the goldfish as prizes provision has been dropped from the English bill, but that is a particularly bad practice. We are against it.

The Convener: So you are in favour of a ban.

Lou Leather: We are absolutely in favour of a ban. The problem is not just that animals are given as prizes, but that the prize that people win is often an animal that they do not want. They do not know what to do with it or how to care for it, but they are given no help on how to look after it. Generally, the giving of animals as prizes is not a good thing.

I acknowledge that the point that has been raised by the NFU might be a different situation. Personally, I do not know about the activities that take place at agricultural shows, but I understand that animals are given as prizes at large, national shows. Perhaps in some circumstances that might be appropriate, but we are against the general concept that animals should be given as prizes.

Helene Mauchlen: We believe that animals should not be given as prizes. Briefly, it should be borne in mind that there is a difference between winning a horse and winning a share of a syndicate.

The Convener: Do other members of the panel have any comments?

Diarmid MacLean: My only comment is that the fact that a person has won a competition does not qualify them to look after an animal. I am not sure about the farming shows that the NFU has highlighted, but it is generally true that winning a prize does not make a person qualified to look after an animal.

Janet Nunn: The Pet Care Trust has not taken a view as such on the issue, but vendors in our members' pet shops give away care leaflets whenever they sell an animal. One way of dealing with the issue might be to go down the route that pet vendors have taken. I suppose that such competitions at fêtes are an invitation to provide one's children with a treat. Certainly for our family, our first pet was a goldfish, from which we moved on to have a hamster, a dog and, now, two rabbits—we might have gerbils next year—so I suppose that that has been part of our culture. However, we perhaps need to do things more responsibly than was the case heretofore.

Maureen Macmillan: I really cannot see the difference between buying a pet and winning a pet, as the person selling a pet cannot know what the person who buys it will be like. The vendor can only perhaps provide a leaflet on how to look after the kitten, puppy or goldfish.

Janet Nunn: We normally talk things through with people. In our pet shops, we employ people who are qualified and who have completed a course such as the foundation course that we run with Barony College here in Scotland. That has moved up the standards of animal husbandry even further. We suggest to our retailers 10 tips to check whether someone is buying on impulse. We know that there are ways of running through things with people. However, people often make more than one visit to the pet shop before buying a pet, even if the pet is just a small mammal. We encourage people to read widely—they do not necessarily have to buy literature from shops as they can go to the library—before they buy.

Maureen Macmillan: That is a bit different from entering a raffle.

Janet Nunn: Yes, it is.

Diarmid MacLean: As a basic principle, people value things that they purchase much more than things that they get free. For instance, buying a pet through a reputable chain of pet shops that are overseen and follow good practice guidelines will be very different from winning an animal at a circus or a fair. There is a large difference between winning an animal and buying an animal.

Maureen Macmillan: Thank you very much. Those answers have been useful.

The Convener: We have no further questions at this stage, so I thank the witnesses very much. It has been useful to be able to go into some depth on the licensing issues so that we can get a sense of how people perceive that the bill will make a difference in practice. It is good to be able to get different perspectives on those issues.

We will have a short suspension to allow the first panel to go and the second panel to arrive.

10:54

Meeting suspended.

10:55

On resuming—

The Convener: I welcome panel 2: Joseph Holmes is honorary veterinary surgeon for the council of docked breeds; Chris Laurence is the veterinary director of the Dogs Trust; and Holly Lee is the public affairs officer of the Scottish Kennel Club. We invited the anti-docking alliance, but it was unable to attend this morning's meeting. I thank the panellists for coming. We found your written evidence helpful. We will not ask you to repeat it; instead, I invite members to ask questions. Who would like to kick off?

Mr Brocklebank: It has been alleged in evidence to us that the docking of dogs and of other animals, such as farm animals, causes them pain. I am sure that we will not come to agreement on that, but I ask the panel members to give their thoughts on the view that, although the tails of working dogs should be docked so that they are not caused pain as a result of their tails being torn or ripped, it is more difficult to make an argument for cosmetic tail docking.

The Convener: Who would like to go first?

Joseph Holmes (Council of Docked Breeds): I can go first, if you would like.

It depends on how evidence of pain is defined in the first place. The problem that I have is that what is often referred to as evidence is not scientific evidence. There is quite a difference, in that scientific experiment has its own format and its own way of producing the correct evidence. The evidence that the anti-docking lobby has produced is not borne out on closer inspection. If one looks at what is said in that evidence, one finds that it is not really proper evidence. I will not go into great detail, but there are two or three points that I want to make on that.

First, the anti-docking lobby has asserted that there is good evidence to show that the act of docking causes pain, but if one goes through the information on the anti-docking alliance website, one finds the following statement by the Australian veterinary surgeon, Robert Wansbrough:

"there have been no studies that measure the initial pain and the ongoing pathological pain inflicted on docked dogs."

Secondly, in Mr Laurence's written submission, he says:

"While there is … evidence of the effects of docking in other species we consider this to be less reliable, as extrapolation from species to species is often so."

In other words, there is a danger in jumping from one species to the next. The submission to the committee from Mr Bower, who is another veterinary surgeon, states that

"Pain is present, however … fleeting, and it can be measured. Pain is possibly the least powerful argument as it is so slight."

When Professor Morton gave evidence in front of a similar committee at Westminster, he said:

"By far and away, the bulk of evidence is on lambs and mice".

The primary allegation that pain is a feature of docking is not borne out by any evidence that one could call scientific. Much of the evidence for the allegations that are made is anecdotal and is not based on scientific experiment at all. That is my initial point on pain.

The Convener: Chris Laurence took a totally different approach in his submission.

11:00

Chris Laurence (Dogs Trust): I will certainly not try to rubbish other people's evidence. What I have presented to the committee is what I believe to be proper, peer-reviewed, scientific evidence.

Pain is subjective. I cannot tell you whether whatever you are doing at the moment is hurting you. You cannot tell me whether my back hurts at the moment. If you hit your thumb with a hammer, you could get a very large bruise that might look awful, but might not be painful. Although one can never prove whether pain is perceived, one can prove two things: whether the ability to feel pain is there in simple physical terms and whether the physiological reaction of an animal is such that it relates to what is likely to be pain.

It has been shown that, neurologically, puppies' systems are sufficiently developed at birth to produce the sensation of pain. In other words, the receptors are there, and they are joined up to the brain. If that is the case, my logic says that those receptors are capable of firing off and producing some sort of sensation in the brain. I cannot prove that that is pain, however. I can also show that the reaction that we find in an animal that perceives pain, which includes the release of stress hormones, happens in dogs. That is an indication not only that the system is joined up but that it is actually working.

There is also the question whether the pain suppression system is working properly in dogs of a very young age. I mention that in my evidence and will give an example. If we sit and rub the back of our hand for a couple of minutes, we find that, after some time, we lose some of the sensation in that hand. If we then apply a painful stimulus, the pain is far less than it would be in normal circumstances. When a vet injects a horse—at least, this was done when I was in horse practice many years ago—they first slap their hand on the side of the horse's neck a couple of times, then they stick the needle in. The horse does not react to the needle any more than it does to the slap. That is a pain suppression system in action. There is good evidence that pain suppression systems are not active in new-born puppies. Not only do I think that there is good physical and physiological evidence for pain perception in puppies, but I believe that it might be worse in puppies than it is in adult dogs.

Mr Brocklebank: Like me, you come from a generation that was vaccinated during childhood. My arm looked a mess, and I am sure that, as a child, I experienced massive pain at the time, although I have no recollection of it—and, presumably, it did me some good in later years.

Chris Laurence: Recollection of pain is not the issue; I cannot remember every time that I hurt myself as a child. The issue is whether pain is perceived at the time—it is about the simple perception of pain at the instant it happens.

Puppies scream when they are docked. I practised for nearly 30 years—I cannot claim 30 years, because I am about three months short, so I cannot quite keep up with Mr Holmes. When I practised—before only veterinary surgeons were allowed to dock—I used to dock puppies, on the principle that I would rather do it and know that it was done properly rather than have a lay person do it badly. I saw some of the consequences of poor docking. I can assure you that 99 out of 100—if not 999 out of 1,000—puppies scream when their tail is cut off. It does not matter which technique is used, and I have used a number of different techniques.

It is not the memory of pain, but the perception of pain at the time that is ethically wrong.

Mr Brocklebank: That brings us on to the next point. Presumably, the docking of working dogs to avoid their experiencing pain in later life with torn tails and so on might be justifiable. Holly Lee might be able to tell us why it should be done for cosmetic reasons.

Holly Lee (Scottish Kennel Club): If a dog is defined as a working dog, that does not necessarily mean that it will work throughout its life. It could be a working dog that is kept as a pet. It will still have the same characteristics as a working dog that is sent out to work, so its tail will be very active and will be prone to injury. Similarly, tails of breeds that are not working dogs are also prone to injury. Boxers and Dobermanns are not working dogs, but they have active tails, which can smash into coffee tables or get caught in doors, for example.

I want to pick up on the point that you raised about being vaccinated as a child. It is a common perception that docking is cruel, because people compare it to a human situation. If we ask whether it is ethical to cut off someone's limb, people will say no, because it will hurt—the person will feel that. All the scientific evidence that we have seen does not contradict the fact that a human feels pain in such situations. The evidence also makes some distinctions. It puts lambs, calves and pigs in the same category as humans; puppies are born at a different neo-natal stage, and are in the same category as mice and rats. Their senses and nervous systems are not fully developed. Tests have been done to prove that that is the case.

For example, Professor Hales touched very young puppies on their mid-side skin. If the mid-side skin of an adult dog is touched, its hind paw responds, but the puppies did not behave in that way, because their nervous systems are not developed. A puppy's nervous system does not develop fully until it is about 14 days old. That is why the Kennel Club and the council of docked breeds say that, provided that docking is done early in a dog's life, there is no reason why the dog should feel pain. A puppy should make no sound when it is docked; it should return to its mother to begin feeding and the mother should be able to lick its wound without a problem.

The Convener: So your argument is that because some pets have active tails, which they might hit against a table in future, for example, their tails should be docked at birth.

Holly Lee: Not necessarily. Our argument is simply that the decision to dock a litter of puppies should be up to the breeder. Breeders are not cruel people; it is in their interest to protect their animals. They will keep dogs for themselves or sell them on—either way, they do not want their animals to be injured. However, they know their breed best—it is their area of expertise. If they feel that dogs of that breed are likely to injure their tails, why should they not have the right to decide whether to have tails cut off?

Chris Laurence: I recognise that I speak purely from personal experience, but my experience comes from 30 years in practice. The great majority of tail injuries that I saw were on Great Danes, greyhounds and Labradors. As has been suggested, those injuries resulted from their whacking their tails against a wall or the side of a coffee table, for example. Nobody suggests that we should cut off their tails, so where is the logic? Of course working dogs cut their tails; they also cut their feet, flanks, ears, noses and all sorts of other bits, but nobody suggests cutting those off.

The system for producing reflexes is different from that for simple sensation. For a reflex, a complete loop is needed from the bit that does the sensing up to the brain and back down to a fairly complicated muscular system. That may well not be developed in neonatal puppies, but that does not mean that they do not perceive pain.

Enshrined in the Animals (Scientific Procedures) Act 1986 is the principle that, when there is doubt about whether an animal will feel pain from a procedure, it must be given appropriate analgesia or anaesthesia. That principle is enshrined in law and it would be wrong if the bill went against it and caused unnecessary pain in neonatal puppies that were destined never to damage their tails.

Mr Ruskell: Spaniels are working dogs. My knowledge is that they often have problems with their ears. If we are talking about a working standard, why has no standard evolved for docking spaniels' ears?

Joseph Holmes: Ears are injured in a completely different way from tails. An injury towards the end of a tail creates circulation problems and is more of a moving wound than an injury to an ear would be, because a tail has momentum. That is particularly noticeable in a heavy-tailed breed such as the Dobermann or Rottweiler, or even in a very enthusiastic spaniel, because the tail is thrown from side to side. If a tail has a cut or a nick, it will be banged and knocked more, and the dog will chew it, too.

An ear injury is treated more or less as a cut or abrasion is anywhere else on the body. It does not involve the circulation problems that accompany a tail injury. The factors are the position of the injury relative to the dog, the fact that the tail moves around a great deal and the weak circulation at the end of the tail. If that is breached, it is difficult to restore.

Mr Ruskell: What about a thick-tailed dog such as a Labrador?

Joseph Holmes: Labradors have short tails.

Mr Ruskell: Is there a docking standard for Labradors?

Joseph Holmes: There is no docking standard for Labradors, but they have shorter tails, which affects the risk of damage to the tip. Heavy-tailed dogs—boxers, Dobermanns, Weimaraners and Rottweilers—are docked in particular because they all have muscular, heavy and long tails.

Mr Ruskell: Can I hear other views?

Holly Lee: We have said that docking a puppy's tail is not as painful because its senses are not fully developed, but those senses are certainly fully developed later in life. If a dog injures its tail later in life, that is extremely painful. It will suffer not only pain from the injury, but pain from docking that it would not have suffered if it had been docked as a puppy. That is the reason that a

working dog should be docked in the first instance: prevention is better than cure. In addition, dogs with tails rely on those tails to communicate. If a dog that once relied on its tail for communication were docked, it would be distressed because it would have to find other means of communication.

Mr Ruskell: Why do you not have a standard for working Labradors, for example?

Holly Lee: Because we think that it should be for breeders to decide whether they have their dogs docked.

Mr Ruskell: Why do you not have a standard to allow breeders to choose whether they want to dock a Labrador for working purposes?

Holly Lee: I am not sure that I understand the question. Are you asking whether some Labradors should be docked and others should not?

Mr Ruskell: I am asking why there are docking standards for some breeds of working dogs and not for others. A Labrador is a working breed, so why is there no standard to ensure that owners can choose to dock the tail earlier in life?

Holly Lee: At the moment docking is legal, so a standard has not been needed.

Mr Ruskell: So why do you have standards for tail docking of other dogs?

Holly Lee: Because some breeds that are docked have traditionally been docked for certain reasons. That has always been the case.

Mr Ruskell: Are those health reasons?

Holly Lee: Yes.

Mr Ruskell: The health reason for a Labrador would be that, if it is a working dog and has to have its tail amputated later in life because it has been damaged, that causes distress. Why is there not a standard for docking Labradors as puppies?

Holly Lee: Because some Labradors are not bred to go out to work. They may be bred as domestic pets, and some people may not see the need to dock them. If they believe that they will not be prone to injuring their tails in the environment that they are entering, they will not see docking as a necessary preventive measure. Others will.

Mr Ruskell: Presumably, some pups from a litter of spaniels, for example, may become working dogs, whereas others will become pets. However, there is a standard for that breed.

Holly Lee: There is no standard that demands that the dogs be docked. However, if they are to be worked, they will be docked.

Mr Ruskell: I would like to hear Chris Laurence's view on the issue.

Chris Laurence: I will make a number of points. If any member would like pink-spotted wallpaper, I suggest that they acquire a dog with either a cut ear or a cut tail. They will then have pink-spotted wallpaper very quickly, because blood supply is very adequate in both ears and tails and they tend to get shaken and wagged, which spreads the blood a long way.

With adequate analgesia and anaesthesia during the surgery and afterwards, pain resulting from amputation of tails in adults is minimal. Modern analgesics are extremely effective and the veterinary profession is now very good at using them. That applies to any injury.

I return to the point that was made about communication. There is good evidence that dogs use their tails as a means of communication, and the Dogs Trust believes that that is the case. In a number of instances when people have been mobbed by cows, the dogs present have been frightened and their low tail carriage has encouraged the mobbing. If the dog is confident and holds up its tail, generally cows will not mob. Animals see how other animals carry their tail.

I have a relatively large garden, in which there is a plague of rabbits. If a fox walks through the garden in normal daylight, when the rabbits can see it, they will look at its tail carriage. If its tail carriage is low, it is indicating that it is not interested in eating, so the rabbits will carry on eating the grass. Tail carriage and the way in which the tail is wagged are an intrinsic part of a dog's communication system. In human terms, I liken it to someone not being able to use their eyebrows to express themselves. I suspect that that would be a considerable disadvantage to all of us.

Joseph Holmes: We must deal with scientific, not anecdotal, evidence with regard to communication. Despite what Mr Laurence said earlier, I do not mean to rubbish anything; indeed, I am trying to be constructive. However, we need to look at the matter dispassionately and ask whether there is any scientific evidence to substantiate this difficulty in communicating. Mr Laurence himself wrote in his submission:

> "evidence that docked dogs find it more difficult to communicate with other dogs is anecdotal".

That is the essential point: the evidence is anecdotal, not scientific. It does not matter how you describe what might happen; if Mr Laurence is correct about communication deficiencies in docked dogs, hundreds of them would be getting mugged at night by dogs with tails because they would not be able to send the right signals. That patently does not happen. Experience has shown that docked dogs receive no more injuries in fights than dogs with full tails.

11:15

Mr Ruskell: In your submission, you say:

"No competent docking operation has ever produced imbalance … urinary incontinence or adverse social interaction. Docked and undocked dogs are equally happy."

Have you proven that scientifically? Has your research been peer reviewed?

Joseph Holmes: I have seen hundreds and hundreds of docked dogs in my career, and have never isolated a single case of incontinence, perineal hernia and so on. Those conditions affect dogs with and without tails. If docked dogs had exhibited a high percentage of such secondary problems, the magazine for the profession, *The Veterinary Record*, would have called for the practice to be stopped well before now.

Mr Ruskell: The assertion that docked dogs are "equally happy" is not very scientific.

Joseph Holmes: I was really talking about dogs expressing themselves. Docked dogs do not get depressed because they have lost the means to communicate.

As for phantom limb pain, Mr Laurence's submission says:

"There is no direct evidence for this and it is difficult to perceive how the hypothesis could be proven."

Again, the submission raises a particular issue, only to conclude that it cannot be proven. As I have said repeatedly, if the matter is to be judged in legislative commitments that are based on a scientific background, we must examine all the experiments that have been carried out and decide whether they are valid and whether the evidence that they have produced is anecdotal or reliable. There is a big difference between anecdotal evidence and reliable scientific evidence.

Holly Lee: In response to Chris Laurence, I have to say that the Scottish Kennel Club does not deny that dogs use their tails to communicate. However, if a dog started its life without a tail, it would find other means to communicate. Just like a person, it would communicate with its whole body: its rear, its face and its ears. I agree that if a dog that had relied on its tail to communicate was docked, it would be distressed. After all, it would have to find new means of communication. However, if humans started life without eyebrows, we would get used to communicating without them.

Chris Laurence: If we employed Joseph Holmes's argument on that point, we would have to conclude that there was no scientific evidence to support it because no controlled studies have been carried out on any of those issues. No one has tried to dock a dog later in life to find out its reactions. The scientific evidence does not exist for any of the arguments that have just been advanced.

The Convener: Quite a few other countries permit docking only on therapeutic grounds. Has experience in those countries shown that dogs suffer many more injuries because their tails have not been docked?

Holly Lee: The number of tail injuries has increased in countries where docking has been banned. For example, since docking was banned in Sweden about 12 years ago, 23 per cent of boxer dogs have had their tail-ends cut off because of tail damage, and 16 per cent of those have required a second operation to amputate the whole tail because, initially, only the damaged part of the tail was removed.

A Kennel Club survey showed that 98 per cent of working gun dogs were docked and that, of the undocked 2 per cent, a high proportion suffered tail damage. In fact, 75 per cent of undocked Clumber spaniels suffered such damage.

The Convener: Are those statistics from Sweden?

Holly Lee: No, they are from the UK Kennel Club.

The Convener: I was asking for evidence from other countries that have banned docking.

Holly Lee: The statistics that I mentioned are from Sweden. I raised my second point because it covers the number of working dogs that are not docked and which suffer tail injuries as a result.

The Convener: What about animals that were traditionally bred as working animals but are now pets?

Holly Lee: The statistics from Sweden show that tail injuries in such cases have increased by 23 per cent.

The Convener: Will you provide a copy of that evidence?

Holly Lee: Yes.

Chris Laurence: That is just one paper and it covers only a small number of dogs, so there is some doubt about the statistical significance of the results. However, I am no statistician, so please do not ask me questions about it.

The Convener: Is there any general evidence on the issue? For example, I note that Norway banned non-therapeutic tail docking in 1987, which is quite a long time ago. I presume that, if there were significant problems, Norway would not have been followed by the other 14 countries that have gone down the same route. I am trying to get a sense of the evidence from other countries of taking the route that the bill proposes.

Chris Laurence: I know of no professional veterinary body in a country that has banned tail docking that is clamouring for its return because of a high rate of tail injuries.

The Convener: If we could get the Swedish evidence, that would be useful.

Holly Lee: We have had correspondence to the Kennel Club which shows that, if tail docking was banned in the UK, many breeders would stop breeding dogs. That could also have an impact on the statistics. However, I will get the statistics from Sweden to you.

The Convener: Thank you.

Mr Brocklebank: I have one final question on tail docking. As I understand it, the English bill and the Scottish bill contain different proposals and the English bill does not go down the tail docking route. If there is a difference in the law, might that cause problems with people taking animals to England to be docked and all kinds of cross-border shenanigans?

Chris Laurence: I do not think that we should prejudge the Westminster bill—that is my first comment.

Mr Brocklebank: That appears to be the way it is going.

Chris Laurence: The minister said that there will be a free vote in the Commons on the issue. Our view is that we will win that vote and that tail docking will be banned.

I agree that there would be a significant problem if docking was banned on one side of the border but not on the other. I foresee that puppies would be transported miles up the road to have their tails cut off. Anybody who is prepared to cut tails off puppies will be prepared to go a long way, I am afraid.

Joseph Holmes: The UK Government has adopted its preferred position, but it is interesting to note the wording that it has used to justify that. Its preference is to allow continued freedom of choice. Scientists from across the globe agree that tail docking does not cause pain, as research distinguishes between groups of newborn animals, including dogs, and confirms that they are relatively immature at birth and up to around two weeks of age, and so cannot feel the same degree of pain as human babies, lambs and calves. Therefore, it seems unnecessary to amend current legislation. It is pretty clear that the UK Government has not rushed its decision. It has obviously taken a lot of evidence and come to a considered view on the matter. I recommend its position to the committee.

The Convener: The committee will have to consider the evidence. We are looking not only to the current panel for evidence; we are taking evidence over a number of weeks and the minister is still to come before us. There will be a chance for the committee to review the evidence in the light of the views of other witnesses.

I am conscious that you also have expertise on other matters, so I want us to explore one or two other areas.

Elaine Smith: I have a question for Chris Laurence. On section 17, you state in your submission:

> "Dogs Trust supports the retention of the offence of unnecessary suffering but consider that it should be further defined to include physical and mental suffering."

I suppose that that relates to the question of whether tail docking causes continued mental suffering. You might want to comment on that, but I also wonder what further provisions you think should be included in the bill to address mental suffering.

Chris Laurence: I do not see the link with docking at all. That was not the intention behind our comment. We want the words "mental or physical suffering"—rather than just "suffering"—to be included in the bill.

The legislation of 1911 or 1912, which is where the concept of unnecessary suffering comes from, talks about "terrifying" and uses various other 19th century phrases to describe what a person may or may not be doing to a dog. However, courts find it difficult to accept that mental suffering is suffering. The way in which a dog is kept can certainly lead to mental suffering. If a dog is tied up on the end of a chain most of the day—even though someone may feed it, water it, clear up after it and exercise it a couple of times—the dog's mental state is likely to suffer because the dog is so physically restricted. The Dogs Trust takes in large numbers of dogs and we see the mental consequences of such physical restrictions.

In many rehoming centres, including ours, one finds that dogs that have been there for a while—being well fed and watered, and receiving excellent health care—will start to spin or wall-bounce if one approaches their cage. Those are what are called stereotypic behaviours, and could be used as evidence of mental suffering. The dog is restricted and has no choice in what it can do or where it can go, and that is a mental issue. To exclude "mental suffering" from "suffering" leaves a hole in the legislation that we feel should be filled.

Elaine Smith: Would mental suffering be easy to define? I go back to tail docking: I might think that it is a cause of mental suffering for a dog not to have a tail or not to be able to express itself by wagging its tail, but that would be my opinion. How would you define mental suffering?

Chris Laurence: To be blunt, that is not the issue. The issue is whether the ability exists to prosecute on the ground of mental suffering. Then it would be up to the court to decide, from the evidence presented to it, whether there was mental suffering or not. If the phrase "mental suffering" is excluded from the bill, there will never be a prosecution on the ground of purely mental suffering.

Elaine Smith: So you would not define it; you would just include the phrase "mental suffering".

Chris Laurence: Absolutely. The bill should simply refer to "mental or physical suffering". As soon as one starts to define such concepts, it is a field day for lawyers.

Elaine Smith: Yes, that is a problem, and that is why I am asking you about it.

Chris Laurence: And it is why we simply want the three words "mental or physical" to be included in the section on unnecessary suffering.

Elaine Smith: My original question was based on the written submission from the Dogs Trust, but other witnesses may wish to comment. I also want to put a question to the witness from the Scottish Kennel Club.

The Convener: Perhaps we should move on to that.

Elaine Smith: The submission from the Scottish Kennel Club mentions electric shock collars and the Dangerous Dogs Act 1991. I take it that it would like electric shock collars to be made illegal by the enactment of the Animal Health and Welfare (Scotland) Bill. Where would such a provision go in the bill? I also take it that the Kennel Club feels that the current legislation on dangerous dogs is not robust enough, but perhaps we could come back to the question on the Dangerous Dogs Act 1991.

The Convener: Yes, let us take the question on collars first, because it is linked to the issue of suffering.

Holly Lee: In the bill as it stands, I cannot see a place for a provision on banning electric shock collars. Therefore, we feel that secondary legislation should contain a provision to ban electric shock collars—we understand that the bill is an enabling bill.

Electric shock collars are undoubtedly cruel. There is no need for them in today's society in which alternative training methods exist. Clear scientific evidence has proved that electric shock collars are cruel. Of even more concern is the fact that they are freely available for anybody to use to give their dog an electric shock. The collars are also ineffective. They train dogs to respond out of fear of being punished rather than out of willingness to obey. They are a highly aversive training method.

Dogs are easily trained; they respond to being rewarded. For example, in clicker training, when a dog hears a sound and associates it with a resultant reward, it will repeat the action that led to its receiving that reward. Electric shock collars are simply painful. If they were not painful, they would not work. The dog responds, if it responds at all, to the pain, not to the person using the shock collar. The dog might not know where the shock comes from. If it knows that it comes from its handler, the relationship between dog and handler will certainly be damaged. If the dog does not know where the shock comes from, it is likely to associate the shock with something totally different. That will damage the dog mentally.

11:30

Elaine Smith: Section 17, which I have just discussed with Chris Laurence, is about unnecessary suffering and mental and physical cruelty. Does it cover what you are talking about?

Holly Lee: It goes wider than that. To me, section 17 is about obvious cruelty, such as a dog not being fed properly or not getting out to socialise with other dogs. However, an electric shock collar is not obvious cruelty, because it is around a dog's neck. People who use them could say, "I use them to train my dog. I did not realise that they were so cruel." That is why people need to be aware of other training methods. Many case studies show the immense suffering that electric shock collars cause dogs, by burning their necks for example. Electric shock collars are one size fits all, so there would be no difference between one for a Yorkshire terrier and one for a huge dog. The person who controls the remote that administers the shock would not necessarily know what they were doing. If they knew about training methods, they certainly would not use one that is so aversive.

Elaine Smith: Perhaps we could look into that.

Chris Laurence: Just to show that Holly Lee and I do not spend our lives scratching each other's eyes out, I should say that the Dogs Trust supports the view that shock collars should be banned. We see no place for them in training, and there are many other and better ways to train dogs. The bill should regulate against shock collars or call for a complete ban.

Elaine Smith: The second part of my question was about the Dangerous Dogs Act 1991. Will the Scottish Kennel Club expand on what the bill should include? Why does the Dangerous Dogs Act 1991 not meet its requirements? I presume from your evidence that breeds of dog are not necessarily dangerous. For example, all

Rottweilers may not be dangerous dogs even though they may be defined as such. Whether the dog is dangerous is down to its keeper. Is that correct? What could the bill do about that?

Holly Lee: Originally, the bill was meant to update and consolidate all existing legislation. The Dangerous Dogs Act 1991 is current legislation, and it was not reviewed when the bill was introduced. It should have been, because it has proven to be ineffective, and breed-specific legislation is not the way forward. The Dangerous Dogs Act 1991 applies after an incident has occurred; therefore, many dog attacks are not prevented. Millions of pounds have been spent on implementing the act with no real effect. The Scottish Kennel Club and other animal welfare organisations are part of a dog legislation advisory group that has researched the deficiencies of the Dangerous Dogs Act 1991. It is widely accepted that genetics play only a small part in an animal's behaviour. The environment in which an animal has been reared is likely to have a greater effect. Therefore, we propose that breed-specific legislation is not the way forward. In the wrong hands, any dog could be dangerous. However, every dog of every breed that has ever done something dangerous cannot be outlawed because of one dog. That dog may have been exposed to a certain environment and trained in a certain way.

Elaine Smith: What should we include in the bill?

Holly Lee: Section 1 of the Dangerous Dogs Act 1991, which is the breed-specific section, should be repealed. At the very least, the entire act should be reviewed.

The Convener: That act partly covers human welfare. The bill looks more at animal welfare. The Dangerous Dogs Act 1991 is less about animals and more about the welfare of humans, is it not?

Holly Lee: Yes, if a dog bites a human, the dog is considered to be dangerous.

The Convener: However, the bill deals with the duty of care of animal owners, so should we not focus on whether that duty of care is sufficient, whether there are safeguards and whether the inspection regime is correct for people who own dogs?

Holly Lee: The bill is also about the welfare of animals—it is about how people treat and train their dogs.

The Convener: The bill is, yes.

Holly Lee: That is what we would like to see from the Dangerous Dogs Act 1991 as well. We would like the duty of care to mean that, rather than dogs being destroyed just because of their breed, the person who is in control of a dog has a duty to stop it being dangerous in the first place.

The Convener: I do not know whether it is appropriate for us to use the bill that we are discussing to deal with another piece of legislation. We are not taking evidence on the Dangerous Dogs Act 1991. The debate would have to be reopened to get evidence on that issue. We can reflect on that.

Chris Laurence, did you have a comment to make?

Chris Laurence: I think that we have said enough about the Dangerous Dogs Act 1991. I will not say any more about it.

Nora Radcliffe: I want to ask the witnesses for their comments on inspectors. How should they be trained? What should the bill say about inspections?

Chris Laurence: I was sitting in the public gallery twitching during the earlier discussion about that. It is important that there is a means of assessing the competence of inspectors. The Dogs Trust's view is that the best way of doing that would be for the minister to keep a list and for him to define how people get on that list—which would be to do with their competence—and for local authorities and the Scottish Executive to be bound to use somebody off that list to carry out inspections.

It has been suggested that vets make perfect inspectors. As a vet, I disagree. Most vets specialise in the area of practice that they go into. I last saw a horse in anger in 1969 or so, so patently it would be stupid to send me along to inspect a livery yard. Equally, a vet who has been in equine practice will not have the level of competence that they would need to inspect a dog-breeding establishment. It is true that they would have a view on welfare, but they would not have the specialist knowledge. That becomes even more important for the more exotic species, such as reptiles and so on. Even minor variations in some of those species can mean that they should be kept in quite significantly different ways.

The new situation in Scotland could parallel the zoo licensing legislation that is currently in place, which requires the minister at Westminster to keep a list that combines names of specialist veterinary surgeons who work in zoos and of senior keepers for specific species. For example, the reptile keeper at London zoo is probably a good inspector of reptiles in zoos and would be equally good at inspecting reptiles in pet shops and so on.

Holly Lee: The Kennel Club largely agrees with the Dogs Trust that welfare inspectors need to be competent and trained to a certain standard. There might need to be some sort of national minimum qualification. I would not like to say what that qualification should be, as it should be for all animal welfare organisations to decide that rather

than one that has a view on dogs specifically. Certainly, however, animal inspectors will need to be trained to a high standard if they are to know what they are dealing with.

Joseph Holmes: I concur with my fellow panellists.

The Convener: That was a highly efficient use of time, Mr Holmes.

Maureen Macmillan: I want to ask about the slaughter powers in part 1, which could be used to kill dogs in the event of an outbreak of rabies, although, obviously, there are other ways of controlling rabies, such as vaccination. Do those powers cause the panel anxiety? How might that part of the bill be addressed?

Chris Laurence: That part does cause us anxiety. I am old enough to remember the 2001 foot-and-mouth disease outbreak. At that time, I was the chief veterinary officer for the RSPCA, so I was pretty intimately involved in all of the things that went wrong during that outbreak. It is now generally accepted that the contiguous cull during the epidemic was a mistake. It diverted resources away from what was important, which was killing infected animals quickly and disposing of them.

What concerns us most about the provisions in part 1 is that, if someone happens to have a dog that has been vaccinated against rabies and their next-door neighbour's dog contracts rabies and has been in direct contact with their dog, the authorities are allowed to come and kill their dog. That is an invitation for the person to smuggle their dog away, which, if, by chance, the dog is infected, will spread the infection even further. Rather than a power to destroy dogs that have had contact with infected dogs, we want control mechanisms to be put in place for a specified period—the dog could be muzzled and on a lead when it is out for a walk—until it is clear that the dog is not infected. It does not make sense to kill a vaccinated dog simply because it happens to live next door to one that has been infected.

Maureen Macmillan: You talked about a vaccinated dog that might get rabies, but if it is vaccinated—

Chris Laurence: It is extremely unlikely to get rabies, which is a good reason for not killing it. Without going into too much technical detail, I should say that the problem is that, from a blood test, it is impossible to tell the difference between a vaccinated dog and an infected one. Other than sitting and waiting to see whether a dog shows symptoms of rabies, we cannot tell whether it has the virus. The progress of the disease relates to where the virus has been picked up—it crawls up the nerves at 3mm a day. If somebody is bitten on their nose, they will die fairly quickly, but if they are bitten on their big toe, it will take some time for them to die. Therefore, we would have to lock up the dog for some time to be sure that it did not have rabies, but most responsible dog owners would far rather do that than have their dogs put down.

Maureen Macmillan: So you envisage quarantine restrictions.

Chris Laurence: Absolutely. I am thinking about house arrest, if you like, with a provision on control of the dog when it is outside the house.

Maureen Macmillan: I am not sure that I would like to be under house arrest with a dog that might have rabies.

Chris Laurence: That would be your choice but, under the bill as drafted, you would not have the choice: somebody would come and kill your dog, whether you liked it or not. That is our worry.

Maureen Macmillan: Do the other panellists have a view?

Holly Lee: We agree with the Dogs Trust on that.

Joseph Holmes: I agree with the Dogs Trust once again.

Maureen Macmillan: Peace breaks out again.

The Convener: I have a question about dog fights and animal fights generally. The Scottish Kennel Club believes that section 21 is drafted too narrowly. Your submission asks

"the Executive to consider classifying as an offence the possession of anything capable of being used in connection with an animal fight with a view to its being so used and anything that has been used in connection with an animal fight."

Will you give examples of how you think the bill is inadequate? Will dog fights not be identified properly or will people not be correctly prosecuted?

Holly Lee: I made that comment because we are worried about how many people could be prosecuted under section 21, given that animal fights, or certainly dog fights, do not last very long—they might last for only a couple of minutes. The bill implies that somebody must be caught in the act if they are to be prosecuted. However, we say that if a person does any preparation for an animal fight or possesses equipment that might have been used in a fight, it is almost certain that they will be or have been involved in a fight and they should be prosecuted. The provision should not be simply that people have to be caught observing a fight, because the fight will be over in a couple of minutes, whereas preparing for it might take a few weeks.

The Convener: The bill states:

"A person commits an offence if the person … participates in making, or carrying out, arrangements for an animal fight (including allowing premises to be used for, or charging admission to attend, an animal fight)".

I presume that that provision covers somebody who has equipment, but we can clarify that with the minister. It seems as though a person does not have to be at a fight, because if a person has made arrangements for a fight, that would be an offence.

Holly Lee: We would be grateful if that could be clarified. A further point that we would like clarified is whether it will be an offence to keep or train animals for the purposes of a fight or to train animals to be dangerous.

The Convener: Section 21 states:

"A person commits an offence if the person … keeps or trains an animal for an animal fight".

The issue is how to prove that. The offence will exist; the question is how somebody would know that.

Chris Laurence: The Dogs Trust wants to take the provisions a little further. We believe that there is a direct parallel with child pornography.

Part of the profitability of dog fights is the sale of recordings. It is an offence to have possession of any child pornography—pictures or anything else—and we would like to see an exact parallel put in place for dog fights. That would get rid of the entire industry. If it was still possible to record dog fights and to sell the recordings, the business would still be possible. We would like to do away with the whole thing.

The Convener: That is another specific point. Section 40 deals with animal fighting offences and the penalties for them. It says that proceedings may not be brought more than three years after the commission of an offence. Is that an appropriate time limit?

Chris Laurence: Yes.

The Convener: Those were my extra questions.

Elaine Smith: The Kennel Club seemed to think that there should be no time limit on bringing proceedings in relation to animal fights.

The Convener: That is why I asked.

Holly Lee: I did not comment because since drafting our written submission, the Scottish Kennel Club has changed its position. I apologise. That is the only section that has changed. We understand from outside advice that three years should be long enough.

The Convener: I thank the witnesses for putting their evidence in writing and answering questions for us. Some of the issues will also be discussed with other witnesses and with the minister.

At our next meeting on 21 December, we will hear from witnesses who have countryside interests and from organisations that are involved in the enforcement and regulation of the bill's provisions.

11:47

Meeting suspended.

11:50

On resuming—

Subordinate Legislation

Protection of Water Against Agricultural Nitrate Pollution (Scotland) Amendment Regulations 2005 (SSI 2005/593)

The Convener: Under agenda item 3, we have one instrument to consider under the negative procedure: the Protection of Water Against Agricultural Nitrate Pollution (Scotland) Amendment Regulations 2005. The Subordinate Legislation Committee has considered the regulations and has made no comments on them. No member has indicated that they would like to comment on the regulations. Are members content with the regulations and happy to make no recommendation to the Parliament?

Members *indicated agreement*.

The Convener: Apparently, the minister is on his way. We did not plan to take evidence from him before 11.45 am and the clerks thought that there would be space on the agenda for consideration of our work programme. However, I would rather we heard from the minister now, because I know that one or two members want to leave early to deal with petitions issues. We have heard that the minister will arrive in two minutes, which is not enough time for us to discuss our work programme.

11:51

Meeting suspended.

11:52

On resuming—

European Union Agriculture and Fisheries Council (December 2005)

The Convener: Item 5 on our agenda is the December 2005 European Union agriculture and fisheries council, on which colleagues will remember that we agreed to take oral evidence from the Minister for Environment and Rural Development. We have received a written response from the minister to a series of questions that we wanted to put to him. That response has been copied to all members. We have also received a Scottish Parliament information centre briefing on quotas for 2006. I welcome the minister and ask him to introduce his officials and to make a short opening statement. We will then move to questions from members.

The Minister for Environment and Rural Development (Ross Finnie): Thank you, convener. I thank the committee for its forbearance in not demanding that I appeared last week, after my return from the United Nations convention on climate change. Unfortunately, I made what one might regard as the mistake—it probably was not a mistake—of going to a Cabinet meeting straight after coming off the plane. I do not recommend that to anyone returning from Montreal. It is not necessarily a desirable activity.

All the officials who are with me deal with sea fisheries. They are Paul McCarthy, David Wilson, who is head of the fisheries and rural development group, and Simon Dryden. They all have particular expertise that will, I hope, enable us to answer any questions that members may have.

I will offer a few thoughts. The talks start next Tuesday and are scheduled to take place on Tuesday, Wednesday and Thursday. That means that I am probably the only Cabinet minister who will object to tonight's business motion, as I understand that it anticipates members getting off early on Thursday.

The Convener: Next week, but not this week.

Ross Finnie: Yes. I could not possibly support the motion, given that I will be in Brussels.

On a serious note, a number of issues remain to be resolved, the most outstanding of which is, I suppose, days at sea. That issue is still on the table. I think that the Commission acknowledges that days at sea are a matter for political discussion. The proposals are particularly aimed at those in the cod fishery and there is particular emphasis on those who use 4a gear. The three

elements of our proposals relate to the 15 per cent reduction in days; the possible tightening up of various technical gears, the importance of which is dropping off; and the reference period. My position remains unchanged. I believe that the Scottish white-fish fleet has met the requirements under the cod recovery plan, particularly in relation to 4a gear, and, as I have seen no evidence that other member states have presented that suggests that they have done likewise, I will resist the proposals.

There are proposals on beam trawlers and on effort relating to small cod that appear in the prawn and nephrops fishery. I will accept the proposal on beam trawlers without quibble, but we wish to advance—and we have advanced—technical measures that might deal with the nephrops fishery issues so that restrictions might be tackled.

One or two issues have hung over from the EU-Norway talks. We need to sign off the coastal states deal. This is the first time that we have reached a coastal states agreement on blue whiting. I regard reaching that agreement as significant because the blue whiting fishery has been overfished for a number of years and has been unregulated. One or two issues relating to allocations remain to be dealt with, but making blue whiting a regulated fishery is a significant achievement for long-term conservation. We hope that that proposal will be endorsed at the council.

We have achieved what the Scottish industry required in deals on Atlanto-Scandian herring and we have gained access to Norwegian waters at the outset, which is to be welcomed. The general allocation of pelagic stocks was expected by most Scottish pelagic fisheries; I do not think that there are any significant issues to do with that share.

Other total allowable catches will have to be finally resolved. Proposals relating to the TAC for cod—a reduction of 15 per cent, as recommended by the International Council for the Exploration of the Sea—are still on the table. The reduction in the haddock stock is a carry-forward from the EU-Norway talks. If we had applied the arithmetic as of last year to the 1999 year class, a reduction of anywhere in the region of 8 per cent, 9 per cent or 10 per cent would probably have resulted, but the increased amount is a direct result of the reassessment of the haddock biomass and the application of the agreed EU-Norway haddock management plan, the effects of which we have managed to mitigate as a consequence of securing a much higher level of swaps than has been achieved in the past five or six years.

As I said, a number of measures still need to be resolved. Talks at this stage are never easy. Member states begin to feel squeezed in their own way. As for whether we will support other member states, the only thing that we will not support is a proposal to reopen any industrial sand eel fisheries whose closure has been recommended. We will remain opposed to reopening them, although we may join the Danes on other measures that are more in our mutual interest.

I am happy to take questions.

12:00

Mr Alasdair Morrison (Western Isles) (Lab): It goes without saying that we wish the minister well next week in what I think is his sixth or seventh negotiation. First, I have a general question. I ask the minister to reflect on his experiences of representing Scottish fishermen's interests since the creation of this place in 1999. Had he followed the suggestion of those who regularly advocated a free-for-all in fisheries and the building of bigger vessels with greater catching capacity, what state would Scottish fisheries be in and what kind of negotiation would he go into?

Ross Finnie: Particularly in the North sea, the stocks that we prosecute do not all spawn in what were UK territorial waters, so I remain firmly of the view that, if we are to take seriously the management of the marine biological resource, it is essential to manage it internationally and through total co-operation between all the major stakeholders. In the EU, we cannot get away from the fact that, without active and close collaboration between us, the Danes, the Dutch, the Germans and the Belgians, the results simply would not be achieved.

My view is that the common fisheries policy as a principle has not been at fault. We can certainly point to periods in the policy's life when member states have not behaved very intelligently, but the policy is not needed to make member states behave in that way—such behaviour is not necessarily a product of it.

International agreements, international relations and close collaboration have benefited us—I am thinking particularly of the benefits of having a very close relationship with the Danes, the Dutch and the Belgians. To that end, I suppose I wish that more people—particularly the Norwegians—were inside the tent. Instead of having a more serious international negotiation, it might be happier if we were all in the same tent.

Mr Morrison: During the debate in the chamber, you said that the different way of assessing the stocks in the nephrops fishery on the west coast showed that those stocks were healthy. Is securing a satisfactory increase in the TAC contingent on acceptance of the proposed new technical measures or on a mix of the new technologies and assessing the stocks?

Ross Finnie: There is a slight separation. In effect, the Commission says that it is persuaded on the science about the stock. Its related concern is the evidence that was produced in the examination of the cod stock, in which there was increasing observation of juvenile cod in the nephrops fisheries. As a result, it proposes, separately, a reduction in effort levels in those nephrops fisheries. The technical measures that we have advanced are a serious attempt to take account of that. We have suggested larger mesh sizes and the use of square-mesh panels in the cod end, with the aim of permitting juvenile cods to escape in that fishery.

The outcome will depend on how the Commission positions the debate next week. If it becomes hung up on the fact that not much is being achieved on cod, the two issues may become more closely conflated. If so, to achieve the days-at-sea proposals that we have tabled, we will have to make more of the case that we should have days back or more exemptions because of what we are prepared to do. However, I do not think that that would affect the TAC, which I hope we will be able to confirm on its own.

Richard Lochhead: You will be aware that the run-up to Christmas is an anxious time for fishing communities as they await the outcome that will influence their livelihoods next year. The white-fish fleet has been through two decommissioning schemes and many processors have gone out of business. The Executive's latest figures show that the Scottish fleet has achieved its effort reduction targets for cod but still faces a reduction in its haddock quota, as well as a threat to reduce the number of days at sea even though we are starting from the position of having a part-time fishery. To what extent will you build into the talks the fact that we have achieved our effort reduction targets? What effort reduction has been achieved by the other member states that fish the same seas? Will you use that as a bargaining tool—in the same way that, in previous talks, we used decommissioning as a bargaining tool—to ensure that we get a just reward for our sacrifices?

Ross Finnie: The first thing that we must acknowledge is that, sadly, despite the fact that we have reached the targets for effort restriction, the state of the cod stock has not shown an improvement. Admittedly, its rate of decline has been arrested, but it is way below its safe biological biomass. That is significant.

The performance of other member states has to be split into two categories. Three member states—Germany, France and Norway—are also prosecuting saith stocks, which do not come within the ambit of the cod plan. The figures for the other member states that are engaged in the process are in the region of 55 to 58 per cent. Our figure is well above that, but it is not as if there are serious laggards that are wholly ignoring the requirement to make that effort reduction.

We will resist the three proposals for further reductions in days at sea. The proposed reduction for haddock is a result of nothing other than the scientific assessment of the haddock stock and, in particular, the overreliance on the biomass of that stock of the class of 1999.

Richard Lochhead: I assume that you will take to the talks the fact that Scotland met its targets. We achieved a 67 per cent reduction, which exceeds the target of 65 per cent. Do you know whether the other member states will produce their figures so that they can be compared with Scotland's sacrifices?

Ross Finnie: They have.

Richard Lochhead: Have you asked the Commission to make sure that those figures are available?

Ross Finnie: The figures that I quoted—55 to 58 per cent—are based on the figures that have been submitted by the other member states. They exclude the three member states to which I referred. The Fisheries Research Services figure was 67 per cent, I think, although the figure from the EU's scientific, technical and economic committee for fisheries came out a little lower than that, at 62 to 65 per cent. We have been arguing our case with the Commission. We tabled those figures some time ago and, when Commissioner Borg was in Scotland to attend the ICES conference, we made it clear that we expected him to receive figures from the other member states. The fact that we are able to quote the figures of 55 to 58 per cent is due to the fact that the other member states produced that information.

Richard Lochhead: I turn to a couple of the key stocks. We all welcome the recommended increase in the nephrops quota. On that subject, are you hopeful that you will be able to secure the increase without unworkable and draconian conditions being attached that might prevent the fleet from being able to catch it?

Secondly, on monkfish, your letter to the committee dashes the hope—particularly on the west coast of Scotland, which has enough difficulties to contend with—that there will be an increase in the monkfish quota. During the recent fisheries debate in the chamber, you said that you were hopeful of getting that increase, but your letter indicates that there is not much hope on that front.

Ross Finnie: No, that is not true; it is all a matter of timing. I will deal with nephrops first. As I indicated in my response to Alasdair Morrison, we

are satisfied that we wholly persuaded the Commission of the veracity of the scientific evidence that has been advanced about the nephrops stock. We do not anticipate any difficulty in securing the increase that has been recommended.

The one area where there is still room for debate is how one addresses the criticism in the ICES advice in relation to juvenile cod in the nephrops fishery. The Commission has proposed a number of possible management measures, including a Swedish separator. That operates successfully in Swedish waters, but we have a different fishing ground with different characteristics. Therefore, that measure would not be appropriate to the Scottish fishery.

That is why we have advanced as one of the technical measures the adoption of larger mesh sizes with square-mesh panels. We have not proposed any measure that would make it impossible for the Scottish fleet to prosecute the nephrops fishery. The measure that I mention has been demonstrated in trials and, if we can get agreement on it, it would permit juvenile fish to escape, not only because of the larger mesh size, but more particularly because of a correctly positioned square-mesh panel in the rear end of the net.

As regards monkfish, the position has for a while been that, because of the uncertainty of the stock, the Commission has been keen that there should be a restriction of effort. Last year, it took a long time before we reached agreement in the Scottish industry as to what measures might be taken. Having done that, we were then somewhat stymied by the fact that neither the French nor the Irish at that stage supported the measures that we were putting in place. Since then, the Scottish industry has said that it, too, is not wholly attracted to the measures to which it originally signed up. We are now working in close collaboration with the industry on a new set of measures.

We have lodged a draft resolution for the council to approve that is clear and, I hope, unambiguous in its terms. It states that when we submit the management plan that has been agreed by our fishermen, which will not be a matter for other member states—they will have to decide in December whether they are prepared to accept it—we can have an in-year upward revision of the TAC to be implemented before the end of the second quarter. That draft resolution has been drawn up in full collaboration with Scottish fishermen. It has also been prosecuted through the North sea regional advisory council. I think that we are close to achieving that resolution, but next week will tell. Therefore, we hope that there will be an increase in the monkfish TAC this year.

Richard Lochhead: My final point concerns the minister's ability to defend Scotland's interests at the talks. There appear to be two dangers. First, the Department for Environment, Food and Rural Affairs official Rodney Anderson is reported in today's press as saying:

> "The convention is that the country that holds the presidency operates in a rather more muted form when representing its own interests."

The UK will chair the council in December. That quotation suggests that the UK will not be of a mind to defend the UK, or Scotland for that matter, compared with normal circumstances, which are bad enough.

Secondly, given that the UK fisheries minister Ben Bradshaw will chair the council, is there not a danger that, once again, the minister has been overlooked to lead the UK delegation at the top table? For some bizarre and inexplicable reason, Ben Bradshaw has called on a junior environment minister from Whitehall—Jim Knight, whose normal responsibilities include landscape and biodiversity—to lead the UK delegation at the fishing talks. Is that not preposterous? Given that two thirds of the UK fishing industry is in Scotland, surely the minister should have been given the authority to lead on behalf of the UK.

12:15

Ross Finnie: It is preposterous for Richard Lochhead to present that as the way in which the council meetings are conducted. In the December talks, 98 per cent of council business is conducted either between member states and the Commission or between member states, the presidency and the Commission. In the many years for which I have attended these one-to-one meetings, I have never been inhibited by anybody in DEFRA from expressing the Scottish interests; nor have I ever been prevented from dominating the discussions, as we have a 58 per cent interest in the subject. The situation has been just as it will be next Tuesday, Wednesday and Thursday and just as it was last week, when we were in Brussels and I spoke to Commissioner Borg.

The member must not confuse round-table discussions at which representatives of 25 member states nod and blink with the real work of a council at which Scottish fisheries interests are represented by Scottish ministers. There is never any attempt to muzzle Scottish ministers or to prevent them from making their point clearly.

Mr Brocklebank: The committee will be delighted to hear that I will not waste its time in responding to the minister's opening statement, which was prompted by a friendly question from Alasdair Morrison, by reiterating my view that the common fisheries policy has failed consistently

over 30 years to do the job that it is supposed to do, which is to manage fish stocks. I leave that on the table on this occasion.

I congratulate the minister on the apparent increase in the TACs for nephrops, which I hope will be borne out in next week's negotiations. I am anxious to hear from him an assurance that the number of days that he will negotiate will allow us to catch the increased quotas, especially in areas where there is no question of a cod bycatch being taken. I am talking specifically about people from Pittenweem and elsewhere who do not take a cod bycatch. Will they be able to catch the full quota that the minister hopes to negotiate for them?

Ross Finnie: Yes. I am very confident about that, although proposals are on the table for a reduction in the number of days' fishing in nephrops fisheries where the cod bycatch has again raised its head in some of the scientific evidence. There is an issue of cod bycatch, but it is the catching of juvenile cod that is causing the Commission and the scientists real concern. Although it is good news that there are juvenile cod, there is concern that we may be damaging the stock.

My reason for being fairly confident is that very few of our inshore fishing fleets utilise even the restricted number of days that we have at the moment in our nephrops fishery. We have done a lot of work to check that, as we want to ensure, before we enter negotiations, that we are not saying, "I am very sympathetic to that, and by the way I've just screwed the whole thing up." We have done a lot of work on that. That is also why we want to have a tool whereby, if there is to be a slicing on those fisheries, there might be an opportunity to buy back on the basis that we are deploying technical measures that will mitigate the effect of where we were in the first place. That is the balance of the argument that we are trying to make in the negotiations.

Mr Brocklebank: You are determined not to lose any more days.

Ross Finnie: In relation to the white-fish fleet, I am absolutely adamant about that. I am prepared to have a negotiation about the nephrops TAC and I support the reduction in days for beam trawlers, as I think that they are not defensible. Taking nephrops as a whole, I am not opposed to taking account of the scientific evidence of an increased presence of juvenile cod in the nephrops fishery. I am prepared to have a discussion on that, which is why I am tabling technical measures. I am also cognisant of the work that we have done to establish the number of days that my fishermen are currently using to prosecute the nephrops fishery.

Mr Brocklebank: What about the possible opportunities for increasing the number of days should the UK agree to the administrative penalties that are contained in the draft Commission report on effort limit proposals? Is that an option?

Ross Finnie: I think that more effort will be devoted to resisting cuts in days. That is the more likely thing when it comes to deploying political capital. You might be arguing for Pittenweem but, if we take the North sea fishery as a whole, it is difficult to put a sensible argument for an increase in effort, first, if that ends up not being used—for example, with nephrops at the moment—and secondly, if it means unleashing extra effort in a fishery where there is demonstrable evidence of juvenile cod being present. It would not be responsible to adopt such an argument.

Mr Brocklebank: Going back to the earlier debate, there appears to be mixed scientific evidence about the availability of monkfish on the west coast. In the paper that you have given us, you say that it looks unlikely that you will be able to secure an increased monkfish TAC.

Ross Finnie: In December?

Mr Brocklebank: In December—although you might do so later on. Is that related to the fact that the French, and perhaps others, want to keep up the market price of monkfish, rather than to any possibility that the monks are not there? Is it a market—

Ross Finnie: No—that argument was deployed last December, when the resolution that was adopted left it open to other member states to advance arguments as to why they might or might not agree. This year, through the motion that we have tabled, we seek to eliminate that situation and to get agreement in December that, as long as we purify certain conditions relating to a cap on effort—seeking a non-restrictive quota and, as part of the deal that we signed up to last year, having many more scientific visits and allowing many more observed positions in relation to monkfish; and, on the basis of our own increased scientific effort, continuing the monitoring process so that we develop a database—we will be granted an increase in the monkfish TAC on top of our effort cap during this year.

Mr Brocklebank: During this year?

Ross Finnie: Sorry—I meant during next year.

The Convener: I want to wind up the discussion. Two members still wish to come in. I call Mark Ruskell, to be followed by Maureen Macmillan.

Rob Gibson: I would like to come in on this as well.

The Convener: I would like everyone to have one go at this and to keep things fairly brief. We cannot go on for hours on this subject.

Mr Ruskell: In the Parliament, we recently agreed the need to pursue a European fisheries fund that is innovative. What is your definition of innovation? What would you like to come out of the innovative European fisheries fund?

Ross Finnie: I have a very open mind about that. I have more of a negative list than a positive list. The one thing to which I am wholly opposed is the deployment of the fisheries fund for new build. The only innovative capital construction that I might allow would be the re-engining of an aging fleet if that meant that it increased not its effort, but its fuel efficiency. That would be for environmental reasons, as well as for cost reasons, which might be quite important.

We and the member states need to work on the question of giving funding to other developments and on the scientific issue. The real problem in getting going with the discussions on the European fisheries fund is that we have been bedevilled by the issue of new build, notwithstanding what was agreed in 2003 at the conclusion of the common fisheries policy rearrangements. Member states have been desperate about this. There has been almost no discussion of new ideas. The very first item that has come up is the desire for a major allocation of funds for new build. Any discussions on other stock developments, other scientific measures or other marine or biological efforts to broaden out the picture simply do not get started. It has been very depressing.

Any such discussions will have to come back on the agenda in early January, because the current financial instrument for fisheries guidance fund will expire at the end of 2006. We have got only six or seven months in which to have a really good go at this. As I said, the situation is very depressing.

David Wilson (Scottish Executive Environment and Rural Affairs Department): One of the clear challenges of innovation is to ensure that regulations are sufficiently flexible; they have to be drafted in such a way that they ensure access to funding for innovative projects, as and when they come forward. It is a matter not just of writing into regulations a statement of what innovation looks like, but of ensuring that the flexibility to innovate is built in, as and when it happens. As we take things forward over the next year, it is important to have regulations in place.

To some extent, the regulations are a shift on the FIFG; they open up a wider range of possible investments in coastal communities and wider sustainability issues. The proof of their success will be measured, for example, in the number of innovative projects that come forward as a result. Obviously, we will work with potential project applicants to ensure that that happens.

Maureen Macmillan: I have some questions on aquaculture, in particular on the availability of veterinary medicines and their regulation. I think that the minister said that talks and meetings are going on in that area. However, I am not sure how much you can do on the issue, given that you say in your letter:

"it is in the hands of the pharmaceutical industry to obtain full approval of products".

Later in the letter, you mention what is often the big stumbling block in the use of medicine, which is the need for

"a discharge consent from SEPA".

Is the Scottish Environment Protection Agency involved in the talks with the pharmaceutical industry? If new medicines are allowed, we do not want SEPA to prevent them from being used in the sea.

Ross Finnie: Two or three issues are involved. First, in the United Kingdom, we have always rightly prided ourselves on the regulatory approval of medicines, after due process. It is a little disappointing therefore that some of the international comparisons that the industry has made on the access to and availability of cheaper medicines relate to cases in which only partial approval was given. In that context, I find it difficult to be sympathetic, and I think that you would sympathise with my position. However, I recognise that, on a straight comparison with our major competitor, our approvals process can put us at a price disadvantage.

Farmers need to obtain discharge consents from SEPA, but their situation has more to do with the wider issue of the location of aquaculture sites than with any view that SEPA might take. As you are well aware, we get caught by the fact that, on a hydrological basis, the scouring of the sea around a number of aquaculture sites is not good. That has been found to be the case at sites where there is a lack of natural scouring by the ebb and flow of the tide. Of course, that can result not only in high levels of faeces, but in concentrations of drug residues. SEPA has a difficult to role to play; it tries to take a pragmatic view of the need for disease control, but also to apply regulations sensibly so that farms do not give rise to concentrations of drug residues. SEPA is part of the discussions; it is involved in them. We are trying to engage SEPA in the wider industry position.

The pharmaceutical industry has control of the fully approved products. However, we are trying to extend the reciprocity agreements for fully approved drugs so that our aquaculture fishermen

can access drugs—not just in terms of their availability in this country, but in other countries where they are approved. We are trying to increase the extent of that access and that might affect the market. There is not much point in our local pharmaceutical industry keeping the price of drugs higher in this country if the drugs can be obtained more cheaply elsewhere. We are trying to address what is, in some places, a slightly acute problem through a number of strains of work.

12:30

Maureen Macmillan: May I ask another question?

The Convener: Very briefly. We are running out of time.

Maureen Macmillan: I am sure that the industry welcomes the new proposal for compensation when fish have to be slaughtered, but Ross Finnie said that the mechanism still had to be agreed. I assume that it has been agreed in principle, but—

Ross Finnie: No. We are consulting on whether there ought to be compensation. We are aware that, across a number of regimes, there are proposals for compulsory slaughter. There is no question of a blank cheque being written. The purpose of the consultation is to expose cases in which an acute situation may arise. We will also try to ensure through the consultation that we do not in any way upset the balance of the fish-farm owner and operator's natural responsibility for maintaining disease-free status. The consultation may throw up some exceptional circumstances in which compensation is appropriate, but the Executive has not agreed in principle to compensation. We thought that, given the high level of correspondence that we have had on the issue over the past few years, it was only fair that the matter should be included in the consultation.

Rob Gibson: Given that the December council is for both agriculture and fisheries, will the minister get the chance to discuss with his colleagues the disclosure of subsidies to recipients in various countries? Will he come back to the committee and tell us when the less favoured area scheme payments to recipients in this country will be published?

Ross Finnie: I will not get that opportunity, because the agenda for next week's council is devoted almost exclusively to fisheries—three days are allocated to those important discussions.

At the end of the day, it is for me, not for those who advise me, to make the decision on our disclosure. That is why David Wilson and others smile and look relaxed on such occasions. All that I can say is that the advice that I received drew a distinction between making an announcement on a change of regime, including the LFAS, going forward from the reform of the common agricultural policy, and the retrospective disclosure of information. After the reform, a clear statement can be made to recipients that the information that is given in an integrated administration and control system form would be disclosed under the freedom of information regime. I received advice that it was less than clear—I appreciate that the advice has been different in different administrations—that all the provisions of the Data Protection Act 1998 could be swept aside, because of the basis on which we had garnered the information.

My position is clear. All payments that are made as agricultural subsidies from 1 January 2006 onwards will be disclosed, but I am not about retrospectively to disclose all information. Such disclosure was not recommended in the advice that I received and I remain robust in that view.

The Convener: That is on the record.

It looks as though no other members want to ask a question.

Richard Lochhead: Is there time to pack in another question?

The Convener: I would prefer to keep moving, because we still have another agenda item.

I thank the minister and his officials. We wish you well at the lengthy negotiations next week. Obviously, we will watch Ceefax for the results. I look forward to getting a fuller report in the new year, so that we can see how successful the negotiations were.

We move into private session to discuss our work programme.

12:34

Meeting continued in private until 12:58.

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