

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 29 March 2006

Session 2

£5.00

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

11th Meeting 2006, 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 (Highland 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

SENIOR ASSISTANT CLERK

Katherine Wright

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 5

THE FOLLOWING ALSO ATTENDED:

Rhona Brankin (Deputy Minister for Environment and Rural
Development)

Dr Elaine Murray (Dumfries) (Lab)

CLERK TO THE COMMITTEE

Mark Brough

Scottish Parliament

Environment and Rural Development Committee

Wednesday 29 March 2006

[THE CONVENER *opened the meeting at 10:04*]

Animal Health and Welfare (Scotland) Bill: Stage 2

The Convener (Sarah Boyack): I call the meeting to order and welcome committee members, members of the public and the press to our 11th meeting this year. I remind everyone to ensure that their mobiles and BlackBerries are switched to silent. We have a visiting member—Elaine Murray—who is interested in item 1.

Item 1 is the final day of stage 2 consideration of the Animal Health and Welfare (Scotland) Bill. As a guillotine is in operation, we will simply need to get through the amendments. Members should have in front of them a copy of the bill, the marshalled list and the groupings of amendments. I welcome the Deputy Minister for Environment and Rural Development, Rhona Brankin, and her officials.

After section 20

The Convener: Group 1 is on live feeding. Amendment 162, in the name of Elaine Smith, is the only amendment in the group.

Elaine Smith (Coatbridge and Chryston) (Lab): Amendment 162 is a probing amendment, so I will move it only to allow us to have the discussion. At present, the bill does not specifically prohibit the feeding of live vertebrates as prey. The practice seems to be a bit of a grey area, as an offence would be committed only if it was proven that unnecessary suffering occurred.

The feeding of one live animal to another is repulsive. The prey animal—usually a mouse or a rat—becomes terrified before being eaten alive by a snake or other reptile. Live feeding can also cause distress to the predator animal. For example, the Scottish Society for the Prevention of Cruelty to Animals was involved in a case in which a snake was caused unnecessary suffering by wounds inflicted by a rat or mouse prior to the snake eating it.

Live feeding is also widely considered to be unnecessary. Leading zoo collections no longer regard it as a necessity and many specialist texts recommend the feeding of dead prey. Scottish SPCA animal welfare centres feed exotic animals

in their care with pre-killed animals and doing so does not compromise the welfare of the exotic animals.

Of course, the practice of live feeding might be necessary in a tiny minority of circumstances, such as when a caught wild animal requires to be weaned off live prey. When the committee took evidence at stage 1, that example was used to justify feeding with live animals. Amendment 162 would permit live feeding only when certified as necessary by a veterinary surgeon, so it would cover that example.

I move amendment 162.

The Convener: As no other committee members wish to comment, I ask the minister to respond.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I reassure Elaine Smith that, under the bill as introduced, it would be an offence for a person to feed a live protected animal to another animal. As soon as an animal comes under man's control, it becomes a protected animal. Under section 17, it will be an offence to cause a protected animal unnecessary suffering. I make it clear that live feeding would already be caught by the bill, so I ask the committee to reject amendment 162.

Elaine Smith: I am pleased to have that clarification from the minister. I am still a wee bit unclear about the issue of unnecessary suffering but, given what the minister has said, I seek leave to withdraw amendment 162.

Amendment 162, by agreement, withdrawn.

The Convener: Group 2 is on the import and sale of dogs. Amendment 163, in the name of Mark Ruskell, is the only amendment in the group.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Those of us who took an interest in Christine Grahame's proposed member's bill on the transportation and sale of puppies were shocked and saddened by her consultation paper's description of the nature of the sickening dog importation industry. It is an extremely lucrative business. Each week, between 200 and 300 puppies come into Scotland from Ireland. Depending on the breed, they can fetch between £200 and £800 apiece. Some farms in Ireland—there are on both sides of the Irish border—rake in perhaps £1 million a year from the trade.

Another issue is paramilitary funding. I will not comment on that, because it is primarily an issue for the police, but we must realise that if unscrupulous people make money from this evil trade and then put the money into paramilitary activities, it is a serious matter for police investigation. The trade is an evil one, and evil people put their money into evil things.

The puppy farms have extremely low standards and poor conditions. The animals receive poor veterinary care and are kept in cramped barns that are often blacked out and filthy. Pups are often weaned from their mothers far too early and are then transported to Scotland in abominable conditions, sometimes harbouring disease such as parvovirus.

We need to tackle the issue. Amendment 163 proposes regulation that will not stop the importation of puppies, but will ensure that puppies that are brought to Scotland meet the strict requirements of the Breeding of Dogs Act 1973, as amended. That legislation is not replicated in Northern Ireland or the Republic of Ireland. Although it is not our job to legislate for other countries, it is important that, where we see animals suffering, we play our part in stopping it. Surprisingly, amendment 163 has been welcomed by the media and many non-governmental organisations in the Republic of Ireland and Northern Ireland. The Irish SPCA and the Ulster SPCA back it and realise that the trade is evil.

As a result of Christine Grahame's work on the trade in puppies, the Executive wishes to make regulations to license dealers. I welcome that, but it will not address the issue of imported puppies that are sold not through reputable dealers, but—in effect—in car parks throughout Scotland. Amendment 163 would regulate the trade at the point of importation—the ferry ports at which the puppies are brought into Scotland. I urge members to support it.

I move amendment 163.

Mr Alasdair Morrison (Western Isles) (Lab): I have a simple observation and a question for clarification, although it does not deal with the substantive issues that Mark Ruskell raised. He said that amendment 163 has been welcomed by the media, which I do not understand at all. When did we ever, and why should we, as legislators apply to any piece of legislation the test of whether it is welcomed or denounced by the media?

Rhona Brankin: We share the concerns about the trade, but we want to tackle the issue differently. Amendment 163 seeks to make it an offence to import and sell dogs in Scotland that have been reared on an establishment that does not meet the standards that are specified in the Breeding of Dogs Act 1973. There is a fundamental problem with the amendment. As the United Kingdom is a member of the European Union, and is therefore subject to internal market rules under article 28 of the treaty of Rome, UK Administrations cannot simply ban the importation of puppies or other young animals.

In any event, the Executive is taking steps to address the problem of unlicensed dealing in pet

animals. An example copy of the draft regulations on dealers in kittens and puppies was issued to the conveners of the Environment and Rural Development Committee and the Subordinate Legislation Committee on Tuesday 21 March. The regulations will be fully consulted on soon after the bill has received royal assent and they will form one of the first pieces of secondary legislation to be made under the bill.

Introducing the measures in secondary legislation rather than in the bill is the most appropriate way of progressing, as it will allow the regulations to be updated and amended as necessary to take into account developments in the trade in young companion animals as they occur. Introducing the measures in the bill would mean that they could not be updated. I therefore ask the committee to reject amendment 163.

10:15

The Convener: No other members wish to comment, so I invite Mark Ruskell to wind up.

Mr Ruskell: I shall deal with the substantive points that have been made. It is possible to restrict EU trade if there are overriding public morality or animal health issues. That is a grey area, and I believe that it is possible to ban the importation of puppies using that exemption in EU law. It is through the media that public morality is expressed and debated in our society. There has been a vigorous debate in the Northern Irish media about the issue, and representative organisations such as the Ulster SPCA have been vigorous in their support for such a move, so it is important that we recognise the public support that exists.

The minister has not addressed my initial point about the adequacy of the regulations that she intends to make to license imports. What will happen at ports when puppies continue to be brought into Scotland by unscrupulous dealers? The regulations that she proposes will not address that issue, so there remains an unsolved problem.

The Convener: The question is, that amendment 163 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Rob (Highlands and Islands) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 163 disagreed to.

Section 21—Animal fights

The Convener: Amendment 155, in the name of the minister, is grouped with amendment 155A.

Rhona Brankin: Amendment 155 addresses significant concerns that were expressed by the committee during stage 1 about the absence of an offence relating to recordings of animal fights.

I shall explain the rationale behind the proposed offences. Section 21 seeks to ensure the welfare of animals by prohibiting animal fights. It makes it an offence to arrange such a fight, to take part in one, to participate in making or carrying out arrangements for one, or to bet on the outcome of one. However, there is a further problem that must be addressed—the promotion of animal fights using recordings of them. Those who are involved in animal fights sometimes publish or supply recordings of them with a view to encouraging more fights. To stop animal fights being promoted in that way, we intend to make it an offence to show, supply or publish a recording of an animal fight or to possess such a recording with intent to supply. In doing so, we must be careful not to undermine the approach taken in existing legislation on recordings or the general criminal law by introducing piecemeal recordings offences across the statute book.

Amendment 155 introduces four new offences under section 21 that closely mirror the approach taken in the Department for Environment, Food and Rural Affairs's Animal Welfare Bill. The offence of supply will capture commercial and non-commercial distribution. The offence of publishing will include publishing by whatever means, including via the internet. The offence of showing will capture the person who shows a film to another person. The fourth offence is that of possessing a recording with the intent to supply it. That formulation has been carefully chosen because it addresses the problem of the use of recordings to promote animal fights and their distribution to those who are involved or to those who might want to be involved in such activities. Those offence provisions will help to stamp out animal fighting and the criminal activities associated with it, because they target the most lucrative and public aspects of that criminality.

The committee recommended an offence of simple possession. Indeed, amendment 155A, in the name of Maureen Macmillan, seeks to deliver that. I have given the matter further consideration, but I have concluded that there is no justification for making simple possession an offence. Doing so would send out the wrong signal. At present,

simple possession of only one material—child pornography—is an offence. I do not think that we can draw a parallel with that. I hope that everyone agrees that child pornography is of a different order. The fact that it has been singled out so that simply possessing it is a crime makes clear society's particular abhorrence of the abuse of children in that way.

I do not want to erode the clear and important distinction between child pornography and other material. In addition, doing so would be unnecessary. As I said, amendment 155 will make possession with intent to supply an offence. That will address the problem, which is the distribution of recordings to promote animal fights at which animals will suffer.

I am interested to hear what Maureen Macmillan has to say, and I am happy to discuss the matter with her before stage 3, but I ask the committee to agree to amendment 155 and I ask Maureen Macmillan to not move amendment 155A.

I move amendment 155.

Maureen Macmillan (Highlands and Islands) (Lab): I welcome Executive amendment 155, because we want to make it an offence to do all that it prohibits. However, I want an explanation of the phrase

“with the intention of supplying it to another person.”

I understand what the minister says, and I certainly do not want to draw a comparison between child pornography and animal cruelty, other than the parallel that both involve innocent victims who cannot stand up for themselves.

If somebody has a recording of an animal fight, that shows that they colluded in what went on. I do not wish to press my amendment 155A now, but I would like more conversation with the minister on that point, because I feel that a loophole will be left for people to argue that, although they have a video of an animal fight, they have done nothing wrong and they are in no way connected with the abhorrent practice of staging animal fights. If I could be assured of more conversation with the minister, I would be happy not to press amendment 155A.

I move amendment 155A.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I would like further clarification from the minister. I do not see why she is unwilling to remove the phrase

“with the intention of supplying it to another person.”

Why would a person need or want to possess a video recording of an animal fight? Surely the bill should cover that. I understand that SSPCA inspectors and the police often find video evidence of animal fights in raids on the properties of known

animal fighters, but they cannot lodge cases as possession is not an offence and, under the bill, it is not proposed to be. Why on earth would anybody want to have such a video?

Nora Radcliffe (Gordon) (LD): Like Ted Brocklebank, I am concerned that possessing a recording will be an offence only if someone intends to supply it to another person. What worries me is how that is proved in a court of law. That condition seems to provide a defence against the allegation of having committed an offence. Someone could say, "Yes, I have a recording, but how will you prove that I planned to supply it to somebody else?" I presume that the wording was not plucked out of the air and that it mirrors other legislation, so perhaps the minister can explain how intent to supply is proved from possession. It would be useful to have that reassurance.

Mr Morrison: In light of what we have just heard from colleagues, is it illegal to attend an animal fight?

Rhona Brankin: Yes.

Mr Morrison: But it is not illegal to possess a video of an animal fight?

Rhona Brankin: No.

The Convener: We raised the issue in our stage 1 report because of the extent of the evidence that we heard on the subject. All members are enthusiastic about adding the provisions of amendment 155, which represent a huge step forward. Our concerns relate to what they will mean in practice and whether they are tough enough. We welcome any reassurance that you can give us on those concerns, minister. We find it difficult to understand why it should be an offence to promote the sale of a video but not illegal to possess one. That is the issue that people are struggling with.

Rhona Brankin: Yes. First, I make it absolutely clear that, under the bill, it will be illegal to attend an animal fight.

The bill is about animal welfare. We have to be careful about the potential for read-acrosses. The bill is not about the possession of obscene material, but about making it an offence to show, supply or publish a recording of an animal fight or to possess such a recording with the intent to supply. The advice that I have received from our lawyers is that that is sufficient to deal with the problem.

If we introduce—in what could be seen as a piecemeal way—offences on recordings across the statute book, we could create the danger of read-acrosses to other areas of the criminal law. I am happy to get more information for and to have discussions with Maureen Macmillan. I am assured that our proposals will allow us to take

strong enough action to deal with the problem. As I said, I am happy to work to clarify that for Maureen Macmillan. I hope that I can give the Parliament further clarification at stage 3.

Maureen Macmillan: I am happy to have the minister's assurances. I welcome her offer of discussions with her and perhaps her legal advisers. It would be helpful to explore the potential for read-acrosses that the minister said might be an unintentional consequence of my amendment 155A. However, the Executive's provisions might offer a loophole to people who are involved with animal fighting by enabling them to argue that, because they did not intend to supply the video to another person, they are innocent of any crime.

On the basis that the minister and I will discuss the matter fully at a later date, I seek leave to withdraw amendment 155A.

Amendment 155A, by agreement, withdrawn.

Amendment 155 agreed to.

Section 21, as amended, agreed to.

Section 22 agreed to.

After section 22

The Convener: We move to group 4 on care notices. Amendment 133, in the name of the minister, is in a group on its own.

Rhona Brankin: Amendment 133 reflects the Executive's strong commitment to measures that will not only prevent animal cruelty but will ensure animal welfare. Having listened carefully to the evidence that the committee took at stage 1, we became convinced that the introduction of care notices will prevent animal welfare problems, if they are discovered, from escalating. Such orders will give an individual the opportunity to comply with the welfare provisions under section 22 of the bill.

The inclusion of an offence provision if the care notice is not complied with will give the notice teeth. To a large extent, we have chosen to follow the example that is provided under the Welfare of Farmed Animals (Scotland) Regulations 2000 and which is followed by the state veterinary service. The experience of the state veterinary service is that the vast majority of notices are complied with; the fact that a notice that is served under the aforementioned regulations states clearly that it will be an offence to fail to comply must aid compliance.

10:30

Amendment 133 will provide a shield from prosecution during the compliance period that is specified in the care notice, so that the person to whom the notice is addressed has the opportunity

to take the steps that are specified, if he or she so wishes.

Only inspectors as defined in section 44 of the bill will be able to issue the notices. As the committee will be aware, the Executive has already made a commitment that individual SSPCA inspectors will be authorised as inspectors in relation to sections 29 to 32 of the bill, which deal with animals in distress. We have decided to authorise suitably qualified SSPCA inspectors to issue care notices.

The two other groups of inspectors in the bill—local authority inspectors and the state veterinary service—are, in the main, concerned with farmed animals. The SSPCA is mainly concerned with companion animals, so it is appropriate that the welfare of companion animals will also be safeguarded by the use of statutory care notices. Section 44 will not oblige inspectors to issue care notices; it will only empower them to do so because inspectors should be able to proceed directly to prosecution in appropriate cases. We hope that, in the majority of cases, a care notice will provide a far more satisfactory outcome for any animals involved than would a prosecution, but that might not always be the case. Therefore, it is right to give inspectors that discretion.

I move amendment 133.

Nora Radcliffe: I welcome the option that will be given to animal inspectors. In many cases that they will come across, much good will and affection will be felt towards the animal and any cruelty will be the result of ignorance or a lack of awareness. The care notice is a useful way of allowing an inspector to educate and inform a pet owner so that cruelty can be avoided without the need to prosecute a well-meaning but ill-informed owner.

The Convener: I agree with Nora Radcliffe's comments. I am glad that the minister has examined the evidence that we took at stage 1.

Amendment 133 agreed to.

Section 23—Provision for securing welfare

Amendments 164 and 104 not moved.

Section 23 agreed to.

After section 23

The Convener: Amendment 165, in the name of Richard Lochhead, is in a group on its own. Rob Gibson will move it in Richard Lochhead's stead.

Rob Gibson (Highlands and Islands) (SNP): At present, the extent to which the Scottish Executive intends to regulate the sale of animals on the internet is not clear. Amendment 165 would introduce a new section to deal specifically with

internet trade in animals. Such a new section would leave no ambiguity about the responsibilities of people involved in such sales, even if they did not have responsibility for the animal, as defined in section 16 of the bill.

The definition of responsibility in section 16 relates only to people who are directly in charge or in ownership of an animal or who have care and control of an animal. Owners of auction websites and internet service providers will never have responsibility for animals in that way, but their sites facilitate internet trade in animals by private individuals, so they should take some responsibility for what happens to the animals.

It will be interesting to hear what the minister has to say. Although the bill in England and Wales has gone so far, it is important for us to find out whether the Executive will introduce regulations to address internet trade in live animals, and whether such regulations would cover sites that facilitate trade in animals as well as those that sell animals directly—online pet shops, for example. If amendment 165 were to receive the committee's support, it would deal with the matter sensibly.

I move amendment 165.

Rhona Brankin: Amendment 165 seeks to ensure that the Executive will make regulations relating to the internet selling of animals within one year of the bill's receiving royal assent. The Executive has already made a commitment to introduce such regulations relating to the sale of animals in general, including via the internet. However, other pressing areas of secondary legislation are required under the bill, such as the regulation of animal sanctuaries, livery yards and animal boarding premises. In addition, given the nature of the internet, this is an area in which a common approach between Scotland and England and Wales will be appropriate. My officials will work closely with DEFRA officials to ensure that a workable proposal is consulted on and brought before Parliament as soon as is practicable.

Requiring that regulations must be made within one year of royal assent may adversely affect the degree of consultation that could be undertaken on the regulations and, ultimately, the quality of the regulations. There is also concern that the Scottish ministers would have no power to amend the regulations because the regulation-making power—and, therefore, the implied power to amend and repeal the regulations—is strictly time limited. For those reasons, I ask the committee to reject amendment 165.

Rob Gibson: The minister has addressed the issue of a common approach between England and Wales and Scotland, but I point out that the internet is a worldwide phenomenon. There is a large and growing trade in animals on the internet.

If the Scottish Executive Environment and Rural Affairs Department is unable to carry out the work, perhaps some of the people who are being removed from certain sections of SEERAD could be moved into work on the mass of secondary legislation in the bill. To give such matters as reasons to vote against a sensible amendment does not answer the argument. I will press amendment 165 and seek the support of other members of the committee.

Nora Radcliffe: Is it appropriate to ask for clarification from the minister before we vote?

The Convener: Yes, if that would help.

Nora Radcliffe: Would regulations' being made within one year prejudice any amendments to regulations that were made outwith that one-year period? Is that part of the reason for rejecting amendment 165?

Rhona Brankin: I am sorry—I did not hear your question.

Nora Radcliffe: Part of your reasoning for rejecting amendment 165 is that, if regulations had to be made within one year of the eventual act's receiving royal assent, that would jeopardise any regulations that were made outwith that period. Is that correct?

Rhona Brankin: Potentially, that is the situation. We have also covered the matter in section 24 in relation to the sale of animals generally, including via the internet. We acknowledge the issues that have been raised and we are content that we are dealing with them. Of course, there will be consultation and we need to ensure that we are able to return to the matter. It is difficult to predict the time that that will take, but we need to get it right. We will consult DEFRA officials and anybody else whom we need to consult in order to get this right.

Rob Gibson: I think that, nevertheless, we should put the matter to the test. It is possible to return to the issue at stage 3, but I hope that my colleagues will support amendment 165.

Mr Morrison: On a point of order, convener. Is it not the prerogative of the Presiding Officer to allow something that has been debated here to be brought back at stage 3?

The Convener: Yes.

Mr Morrison: That is what I thought.

The Convener: It is entirely up to the Presiding Officer to decide.

Mr Morrison: It cannot be determined by a member of the committee.

The Convener: It cannot, although members have, on numerous occasions, said that they

intend to bring an amendment back at stage 3. That does not guarantee that it will be on the marshalled list.

Rob Gibson: Thanks for that clarification, convener. I agree with you.

The Convener: It does not matter whether you agree with me. [*Laughter.*]

The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gibson, Rob (Highlands and Islands) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 165 disagreed to.

Section 24—Licensing etc of activities involving animals

The Convener: Amendment 166, in the name of Ted Brocklebank, is grouped with amendments 166A, 166B, 167, 167A and 171. The text that would be inserted by amendment 167 would replace the text that would be inserted by amendment 166, and text that would be inserted by amendment 171 would replace text that would be inserted by amendment 167 if all the amendments were agreed to. I hope that helps.

Mr Brocklebank: Amendment 166 is a probing amendment. Late on in the taking of evidence, it became apparent to me after a visit to a falconry in Fife, accompanied by an SSPCA officer, that there might be a problem relating to falcons in Scotland and that they might not be covered specifically by the bill. It was drawn to my attention that falconry is a fast-growing sporting business in Scotland, that falcons have particular needs and that particular safeguards have to be taken with falcons. My understanding is that there are no regulations governing the operation of falconries in Scotland; in other words, if someone happened to come across a young peregrine falcon or a young hawk, they could rear it in their shed, acquire other birds and set up in business as a falconer.

Falcons, as some members may understand, require particularly careful treatment. I understand that many burgeoning falconries take their birds to

supermarkets and places of that kind to drum up business and advertise their wares. That can cause stress to the birds, and deaths have occurred as a result. Through this probing amendment, I seek assurance that there is the possibility of introducing regulations in respect of people who operate falconries. I have received a submission from a falconer who goes over the ground thoroughly and believes that the industry is long overdue some kind of regulation purely to safeguard the birds. I am interested in hearing what the minister has to say on the matter.

I move amendment 166.

Rob Gibson: I hope that Ted Brocklebank accepts that, although it is suggested that the amendments in the group are direct alternatives, they would not all achieve the same things. Amendment 166 focuses on falconry; amendment 166B focuses on livery stables. The common element in amendments 166A and 167 is our concerns to ensure that licensing under section 1 shall be applied to animal sanctuaries; that the definition of animal sanctuaries shall be given in regulations, to avoid their having to be defined in the bill; and that it will be possible for definitions to be updated as understanding develops and as people find ways of defining their operations that may not have been included in any original definition.

If we were to agree to amendment 167, it would be possible for us to state that animal sanctuaries are an element that requires licensing. That would be the tidier way to proceed. I urge members seriously to consider my proposal because it is the best way to include the provision. I am happy to move amendment 166A, which would amend Ted Brocklebank's amendment 166 and, were amendment 166A to fall, I would move amendment 167.

I move amendment 166A.

10:45

The Convener: It should be Elaine Murray next, to speak to amendments 166B, 167A and 171, but she has left the meeting. Unless any other member moves those amendments, they will fall. I understand that Elaine intended to move the amendments on a probing basis. If the minister was minded to comment on the record on the licensing of livery stables, I think that that would meet Elaine's objective. As no one intends to move the amendments, we move to open discussion.

Mr Brocklebank: On Rob Gibson's definition of an animal sanctuary, I am sure that he has taken into account that what I propose in relation to falcons is not a sanctuary for damaged or injured falcons. What I propose relates to people who operate falconries as profit-making businesses.

The Convener: All the amendments are trying to do slightly different things within the same category. I ask the minister what her current thoughts are on animal sanctuaries. We discussed that issue at stage 1; further thoughts from the Executive would be helpful.

Rhona Brankin: Amendments 166, 166A, 166B, 167, 167A and 171 are redundant because the bill provides the power for ministers to regulate all activities involving animals for which a person is responsible. Simply adding activities to the list of activities that Scottish ministers may wish to license would have no material effect on the bill.

I can give the committee some reassurance on animal sanctuaries. Although Elaine Murray is not here, I will refer to livery yards. Our initial intention was to regulate animal sanctuaries via registration during the second tranche of regulations that would be brought in under the bill. However, given the concern about such establishments that was expressed during stage 1, I give the commitment that we shall bring forward the timing of the regulation and include it in the first tranche of regulations under the bill. We will also consult on how best to regulate animal sanctuaries. However, we believe that a process that includes licensing of larger establishments and registration of smaller ones will achieve the required proportionate response.

Activities that will be regulated in the first tranche will include animal boarding establishments, riding establishments, pet shops, pet vending, pet dealers and livery yards. We always intended to include livery yards in the first tranche of regulations under the bill—that continues to be the case—but we have been persuaded that licensing, as opposed to registration, is the most appropriate method of regulating those establishments.

I ask the committee to reject amendments 166, 166A, 166B, 167, 167A and 171.

Mr Brocklebank: I have read section 24 on the licensing of activities involving animals and I am prepared to accept what the minister has told us. I would like to consult and seek further advice from the people who brought the problems before me and which amendment 166 seeks to address. However, I do not propose to press amendment 166.

The Convener: I ask Rob Gibson to say whether he wishes to press or to seek to withdraw amendment 166A.

Rob Gibson: Given that the substantive part of what I seek to amend will be withdrawn, I seek the committee's agreement to withdraw amendment 166A.

Amendment 166A, by agreement, withdrawn.

Amendment 166B not moved.

Amendment 166, by agreement, withdrawn.

Amendment 167 moved—[Rob Gibson].

Amendment 167A not moved.

The Convener: The question is, that amendment 167 be agreed to. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Rob (Highlands and Islands) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 167 disagreed to.

Amendment 171 not moved.

Section 24 agreed to.

Section 25—Prohibition on keeping certain animals

The Convener: Amendment 156, in the name of Elaine Smith, is grouped with amendments 157, 134, 135, 158, 159, 136, 136A and 160.

Elaine Smith: In lodging my probing amendment 156, on which amendments 157, 158, 159, 136A and 160 are consequential, I seek clarification from the minister on the Scottish Executive's plans with regard to keeping primates as pets. When we discussed the issue at stage 1, the minister confirmed that section 25(4)(f) allows for exemptions from a prohibition. For example, under that provision, specialist establishments such as zoos will not be prohibited from keeping primates. Executive amendments 134, 135 and 136 will clarify the matter further.

I am not, however, clear about what the Scottish Executive plans to do about the keeping of primates as pets. In the policy memorandum, the Executive uses the example of the private keeping of primates to highlight the power in section 25 to prohibit the keeping of certain animals. Moreover, in a letter to the committee dated 13 January, the Executive outlined how it expects that power to be applied with regard to primates as pets and, in its response to our stage 1 report, stated:

"Primates give the greatest cause for concern."

However, in its response to our stage 1 report

and to a letter from the International Fund for Animal Welfare, the Scottish Executive

"stressed that, at this stage"

it had

"no plans to ban the keeping on domestic or other premises of any animal."

It seems a bit strange that, having given itself the power, having described how that power would be used and having identified primates as

"the greatest cause for concern"

the Executive now stresses that it has no plans to use section 25 to prohibit the keeping of primates as pets and that there will need to be a full public consultation on the issue.

In June, the IFAW published a report called "Born to be wild: Primates are not pets" that considered the welfare implications of owning primates as pets and concluded that, as wild animals, they are simply not suitable for keeping as pets. They are highly intelligent and are likely to feel suffering and distress similar to what humans feel. Moreover, they are complex social and emotional animals that require a high level of husbandry and care that will change depending on their life stage. In cases where owners are no longer able to provide care, primates that are not abandoned or euthanised by the owner can face dreadful physical treatment and terrible conditions for the rest of their lives.

Subsection (3) of section 22, "Ensuring welfare of animals", identifies an animal's needs for the purpose of its welfare being ensured as:

"(a) its need for a suitable environment,

(b) its need for a suitable diet,

(c) its need to be able to exhibit normal behaviour patterns,

(d) any need it has to be housed with, or apart from, other animals,

(e) its need to be protected from suffering, injury and disease."

I fail to see how the pet ownership of primates could provide fully for any of those needs. Can the minister clarify whether the Scottish Executive intends to use the power under section 25 to prohibit the keeping of primates as pets? When is the consultation likely to begin?

I move amendment 156.

Rhona Brankin: Amendments 134 to 136 should reassure the committee that we have been listening throughout the legislative process. Amendment 134 will give the assurance that was asked for by both the committee and the zoo industry that section 25, which prohibits the keeping of certain animals, will not be used to prohibit any animal from being kept at a licensed zoo.

Amendment 135 will improve the drafting of the bill. Amendment 136 will provide a safeguard for the order-making power in section 25 by providing that the minister must consider whether adequate provision for the welfare of animals can be made, and is likely to be made, at premises of that type. Amendment 136 follows a recommendation from the Subordinate Legislation Committee. I ask the committee to agree to those three amendments.

I now turn to Elaine Smith's amendments. It is true that primates are the animals that give the greatest cause for concern when they are kept in domestic premises. Primates are wild animals and, given their intelligence and complex social and emotional needs, it is highly unlikely that their welfare needs can be fully met by pet ownership. However, we do not have any firm evidence on how widespread that is. We estimate that there are between 150 and 300 private primate keepers in Scotland, but in order to ensure that we have more reliable evidence, any ban on private keeping would require a full and detailed public consultation, which would necessarily take some time.

The private keeping of primates is not a top priority, given the other more pressing areas of secondary legislation that are required under the bill, such as the regulation of animal sanctuaries, livery yards, animal boarding premises, pet shops and pet vending. I do not believe that to give the Executive what might be an unrealistic period of one year in which to introduce regulations to prohibit the keeping of primates in domestic or other premises is workable.

The keeping of unusual pets in domestic or other premises is not confined to primates, and we should perhaps consult more widely on the keeping of unusual pets. Any such consultation would provoke debate, and we could acquire more substantive evidence of the scale of ownership in Scotland, which would help to form policy for regulation of this area in the future. We need that evidence before we would be able to make regulations under section 25.

Elaine Smith: I am pleased that the minister agrees that it is virtually impossible to see how primates could have their welfare needs fully met as pets. I hear what the minister says about the matter not being a top priority, but primates that are being kept as pets in private ownership will continue to suffer until the issue is dealt with. Therefore, it should be dealt with as promptly as possible.

I am pleased that other unusual pets would be covered—I would not want to exclude animals other than primates. We would all acknowledge, as would the International Fund for Animal Welfare, that a full and detailed consultation must take place before any decision is made on the

matter, but the issue must be taken forward as a matter of urgency. If a year is not a realistic period, I am interested to hear clarification about what might be a realistic period. The matter is not a top priority, but it should be addressed sooner rather than later.

11:00

The Convener: Minister, do you have plans for the timescale?

Rhona Brankin: We are not able to make such regulations in the first tranche of regulations, but failure to ensure the welfare of an animal is an offence under section 22. I am happy to discuss that with Elaine Smith and to clarify the extent to which the bill covers the matter.

The Convener: Elaine, do you want to press your amendment or withdraw it?

Elaine Smith: I accept the Executive's commitment to address the issue. I would have preferred a commitment to a particular timescale for consultation, but I seek to withdraw my amendment.

Amendment 156, by agreement, withdrawn.

Amendment 157 not moved.

Amendments 134 and 135 moved—[Rhona Brankin]—and agreed to.

Amendments 158 and 159 not moved.

Amendment 136 moved—[Rhona Brankin].

Amendment 136A not moved.

Amendment 136 agreed to.

Amendment 160 not moved.

Section 25, as amended, agreed to.

After section 25

The Convener: Group 8 is on the prohibition on keeping certain animals in circuses. Amendment 105, in the name of Mark Ruskell, is the only amendment in the group.

Mr Ruskell: The bill gives us an historic opportunity to sweep away some of the anachronistic traditions that have affected animal welfare for many years but which have no place in 21st century Scotland. The use of wild animals in circuses is one of the traditions that we need to use the bill to ban.

There is a wider debate about whether any animals have a place in circuses. My view is that some domestic animals do perhaps have a place, but I do not believe that there is a robust case for wild animals continuing to play a role in circuses. I am talking about animals such as lions, zebras and elephants, which evolved on the plains of

Africa. They are not domestic animals. They have particular welfare needs that cannot be met in the circus environment.

Many organisations have monitored circuses and done much excellent work on the issue over the years. They include the Born Free Foundation and the Royal Society for the Prevention of Cruelty to Animals. A report on the issues was published last year. The animals face cramped conditions in beast wagons, restricted movement due to tethering and chaining, repeated and extended transportation and repeated loading and unloading at different venues. They also face inadequate and unnatural social environments. Lions live in solitary conditions, but in a circus environment they are forced to live side by side. The opposite is true for zebras, which are used to living in herds on the plains of Africa. In a circus environment, only one or two zebras might live in the same caged area, which causes a huge amount of stress. The lack of privacy and high noise levels in circus environments make them completely unsuitable for such animals.

There is evidence that the animals display stress responses and signs of mental and physical suffering such as bouts of abnormal behaviour. There are health risks from inadequate hygiene and dietary deficiencies. The bill should give the Scottish ministers the power to ban the keeping of certain animals in circuses. Ministers in Westminster have that power. In addition, if circuses are to be allowed to carry on using certain animals, the Scottish ministers should have the power to regulate the winter holdings in which such animals are kept when circuses are not touring.

I move amendment 105.

The Convener: Do members want to comment on amendment 105?

Elaine Smith: I was not sure whether we should hear from the minister first.

The Convener: That is at my discretion. I thought that we would hear members' comments first. People might want to ask questions.

Elaine Smith: What Mark Ruskell said makes perfect sense. I agree with the principle behind amendment 105 and I am keen to hear the minister's response.

Mr Brocklebank: I do not disagree with the fundamentals of Mark Ruskell's proposal, but I add a caveat. How might we legislate to prevent circuses from seeking to fall within the legal definition of a zoo? It is understandable that we do not want animals to be transported around the country as part of a circus, but would amendment 105 open the door to the creation of so-called zoos that were previously circuses? Perhaps the minister can address that point.

Maureen Macmillan: I am concerned about the proposed definition of "circus" in amendment 105. Perhaps the minister can tell us whether the definition would cover what Mark Ruskell intends it to cover. For example, would dolphinariums and sea life centres fall into that category? Would we want that to happen?

The Convener: I am a little uncomfortable about supporting at stage 2 an amendment on a matter about which we did not take evidence at stage 1. However, I agree with the key points that Mark Ruskell made and I would be interested in hearing the Executive's position. There should be proper consultation and a public debate in Scotland about the issue. At the end of such a process I would be surprised if we did not reach the conclusions that are reflected in amendment 105. We should use the opportunity that the amendment presents to ascertain whether we can start a debate. From the briefings that I have seen from the Born Free Foundation and the animal welfare lobby I get the impression that animals are being kept in circumstances that we probably do not want to support.

In the debate on the previous group of amendments, it was commented that section 22 is about failure to ensure the welfare of an animal. The bill is about the welfare of animals and although we have not discussed circuses the issue is important and perhaps should have come up at stage 1. We should seize the opportunity to generate debate, whether or not we support amendment 105. I ask the minister to tell us what the Executive will do.

Rhona Brankin: Amendment 105 would ban the keeping of certain animals in circuses and I understand the strength of feeling on the matter. However, we believe that we should not specify in the bill every individual concern about animal welfare. The purpose of asking the Parliament to delegate powers to ministers is to allow us to deal with the issues in a flexible and adaptable manner so that we do not end up with rigid and unwieldy primary legislation. As with animal sanctuaries, it is better to handle circuses in a discrete piece of secondary legislation. Although Mark Ruskell's amendment 105 attempts to deliver flexibility, it is not the best way in which to handle the issue.

It is important to say that I sympathise with the view that circuses may not be able to meet some wild animals' welfare needs. The bill will be a significant step forward in dealing with the matter. For example, the requirement in section 22, on ensuring the welfare of animals, applies as much to circus proprietors who are responsible for animals as to farmers or pet owners. However, having listened carefully to the arguments that were made during the stage 1 debate, I intend to make regulations under section 23 to ban the use in travelling circuses of certain non-domesticated

species whose welfare needs cannot be met satisfactorily in that environment. Although there are at present no static circuses in Scotland, I also intend to review licensing conditions for such circuses to ensure that appropriate animal welfare standards are reached. Furthermore, individuals or organisations that train performing animals will be subject to inspection.

Those measures will be in addition to the existing proposal for a code of practice for circuses with performing animals, to deal with issues such as training activity, trainer competences and animals' accommodation needs when travelling. The ban on certain animals will apply to travelling circuses only. Zoo performances, performances in the audiovisual industries and performances in static circuses will not be affected. We intend to consult fully with industry and welfare organisations and other Government departments on the content of draft regulations and then issue them for public consultation.

I will answer some of the questions that have been raised. Winter holdings will be regulated under section 23. DEFRA will have no more powers to regulate circuses than we will have. The sea life centres will be covered in the same way as zoos will be covered. The definition of the term "circus" will be considered during the consultation process.

On the basis of the commitment that I have given, I urge the committee to reject Mr Ruskell's amendment 105.

Mr Ruskell: I welcome the minister's clarification of the licensing regime and of the issues to do with dolphinariums and other establishments. I also welcome the ministerial intention to make secondary legislation under section 23, which is important.

As I said, the bill gives us an historic opportunity. It is regrettable that we did not take strong evidence on the issue at stage 1, although there was a big debate on the matter in Westminster's Select Committee on Environment, Food and Rural Affairs. My only concern is similar to the concern that Elaine Smith raised in relation to primates. What about the timescale? We do not want a situation in which circuses with wild animals are banned in England and Wales and then decide to transfer their operations to Scotland for a summer season, to keep going for another year, or perhaps two or three years, while we get round to making secondary legislation. We do not want an industry with bad animal welfare practices to relocate to Scotland for a couple of seasons because it can get away with it. I welcome the minister's intention, but my question is when it will be realised. I seek clarification on that before I decide whether to press or withdraw amendment 105.

Rhona Brankin: Our primary legislation will come into force before DEFRA's does. The intention is to make regulations at the same time. I emphasise that we will have the strengthened situation under section 22, on ensuring the welfare of animals. That section will apply as much to a circus proprietor who is responsible for an animal as to a farmer or pet owner. Thus, the bill will strengthen the position even before we make the specific regulations, which will be introduced as soon as is practicable.

11:15

The Convener: Will that be by the time that the DEFRA legislation kicks in?

Rhona Brankin: That is our intention.

Amendment 105, by agreement, withdrawn.

Section 26—Abandonment

The Convener: Group 9 is on abandonment. Amendment 137, in the name of the minister, is grouped with amendments 138, 139, 140, 168, 146, 147 and 151.

Rhona Brankin: Amendments 137 to 140 will clarify the offence of abandonment. Having listened to concerns raised by key stakeholders, including the Scottish SPCA and the Scottish Gamekeepers Association, we have lodged amendments 137 to 140 to ensure that the abandonment offence more closely replicates the approach of the existing Abandonment of Animals Act 1960.

Under section 26, an offence could be committed in two ways. If a person, without reasonable excuse, abandons an animal for which the person is responsible and does so in circumstances likely to cause the animal suffering, or if the person, without reasonable excuse, leaves unattended an animal for which the person is responsible and fails to make adequate provision for its welfare, the person will be deemed to have committed an offence.

Amendments 146 and 147 will include abandonment in the list of offences for which a deprivation or disqualification order can be made. Amendment 151 will simply extend the range of offences in respect of which a warrant for entry, search and seizure may be granted. As there may be physical evidence on a premises that a person has abandoned an animal, it is necessary to ensure that powers for warrants for entry, search and seizure are available. I ask the committee to agree to those amendments.

Amendment 168, in the name of Richard Lochhead, seeks to provide that an offence of abandonment would be deemed to occur only after the animal had been abandoned for 24

hours. We believe that it is not useful to insert such a qualification on the face of the bill. Once section 26 has been amended by the Executive amendments, the bill will make it clear that the offence of abandonment is committed only if a person, without reasonable excuse, abandons an animal for which they are responsible and does so in circumstances that are likely to cause the animal unnecessary suffering. The courts should have the discretion to make decisions based on all the circumstances of each case without including an arbitrary time period of 24 hours.

If amendment 168 is agreed to, the offence of abandonment will be weakened considerably. The amendment would mean that a person who abandoned their dog on the hard shoulder of a motorway would not be deemed to have abandoned the animal until a period of 24 hours had elapsed. Amendment 168 therefore undermines animal welfare provision and I ask the committee to reject the amendment on that basis.

I move amendment 137.

Rob Gibson: I am aware that the issue turns on the nature of abandonment, which can vary from case to case. However, evidence from Scottish SPCA inspectors suggests that whether an animal has been left for 24 hours—currently, such a period has no statutory authority—should be regarded as a sufficient guide to whether the animal has been abandoned.

As the minister said, section 26 creates two separate offences of abandonment. The first offence is committed if a person abandons an animal for which they are responsible. However, the bill provides no definition of abandonment. The second offence is committed if a person, without reasonable cause or excuse, leaves an animal for which they are responsible and fails to make adequate provision for its welfare. Section 26 gives some guidance on what constitutes adequate provision for an animal's welfare, which includes the animal's need for feed, water, shelter and warmth.

Case studies show that abandonment can occur in so many various ways that it is important to define what abandonment means. The SSPCA has grave concerns that section 26 will allow a person to leave their animal for a long period of time as long as some provision was made for its welfare. A cat might have an automatic feeder, which might stop working, but the bill does not clearly define whether that would be abandonment.

Because the bill distinguishes between abandoning an animal and leaving an animal, without defining what constitutes abandonment, the SSPCA and Richard Lochhead—who lodged amendment 168—believe that we should ensure

that any animal left for more than 24 hours has legally been abandoned, regardless of what provision has been made for its welfare.

I understand the minister's point about the abandonment of dogs on motorways. In general, the danger for an animal probably kicks in after a day or so, but in that particular case it may kick in earlier because of the number of cars about. However, it is unclear whether abandonment is suitably defined in section 26. I therefore ask the committee to add to section 26 the following sentence:

"For the purposes of subsection (1), abandonment is deemed to occur after a period of 24 hours has elapsed."

Nora Radcliffe: I had some sympathy with the idea of specifying that 24 hours should be the maximum length of time for which an animal could be left unattended. I found myself thinking back to the Nature Conservation (Scotland) Act 2004, which specifies that snares have to be checked at least once a day so that no animal is left suffering for more than 24 hours.

I understand the minister's point that attaching the 24-hour period to the definition of abandonment would weaken the provision. However, I wonder whether, between now and stage 3, we can find a way of attaching the 24-hour period to the definition of when an animal has been left unattended. That would be a useful clarification if there were a prosecution. Even if it had food and water, a domestic cat or dog might, if left unattended, get caught up in a blind cord, for example. If no one was checking on it, at least daily, the animal could be left suffering for a long time.

There is merit in specifying a 24-hour period when we are considering how long an animal may be left unattended, as long as we can do so without weakening the offence of abandonment, which, in some circumstances, should apply immediately the animal is abandoned.

Elaine Smith: I agree with Nora Radcliffe. After learning what Rob Gibson and the SSPCA had to say, I am interested to know whether the Executive could have another look at the issue before stage 3. I am also interested to know what the consequences would be if amendment 168 were accepted. The example has been given of abandoning a dog on a motorway. An unintended consequence might be that, if someone was seen abandoning a dog and was reported, they could, if 24 hours had not elapsed, claim that they did not abandon the dog.

Rhona Brankin: Amendments 137 to 140 will clarify the offence of abandonment. We have considered the law on abandonment and we feel that existing case law gives clear guidance. However, the amendments give additional clarification.

We would have great difficulty in accepting that a period of 24 hours should be specified. In some cases, 24 hours could be too long; and I have cited a case in which amendment 168 could have a perverse effect. A person could be deemed not to have abandoned an animal until 24 hours had elapsed.

Amendment 137 agreed to.

Amendments 138 to 140 moved—[Rhona Brankin]—and agreed to.

Amendment 168 moved—[Rob Gibson].

The Convener: The question is, that amendment 168 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gibson, Mr Rob (Highlands and Islands) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 168 disagreed to.

Section 26, as amended, agreed to.

Sections 27 and 28 agreed to.

Section 29—Taking possession of animals

The Convener: We move to group 10, on animals in distress. Amendment 79, in the name of the minister, is grouped with amendments 80, 141, 142, 169 and 170.

Rhona Brankin: Amendments 79 and 80 clarify the powers of inspectors and constables to destroy a protected animal. The amendments will rephrase section 29 to make it clear that the provision is not about destruction of a protected animal. The reference to section 32 will make it clear that if an inspector or constable considers it appropriate to destroy an animal, he or she must do so in accordance with section 32. The amendments are intended to alleviate concerns that were expressed by the Convention of Scottish Local Authorities to the Environment and Rural Development Committee about the relationship between sections 29 and 32.

Amendments 141 and 142 are necessary to ensure that where an animal is taken by an inspector or constable for welfare reasons, its

dependent offspring can also be taken and looked after. Amendment 141 will allow an inspector or constable, when taking into possession a parent animal that is in distress, to be able also to take its dependent offspring, even if they show no signs of distress. That is needed to prevent the dependent offspring from suffering as a result of separation from the parent, were the parent alone to be seized. Amendment 142 will extend the provisions of section 39(4) to such dependent offspring, so that they can be removed to a place of safety and cared for.

Amendments 169 and 170 deal with the destruction of an animal. Amendment 169 will make it possible for only a veterinary surgeon to arrange for destruction of an animal. Amendment 170 will make it more difficult—indeed, it will make it virtually impossible—for an inspector or a constable to destroy an animal without certification from a veterinary surgeon. I do not consider that amendments 169 and 170 are proportionate. The committee will be aware that the Protection of Animals (Scotland) Act 1912 allows some flexibility as to the destruction of an animal so that it can be undertaken by a veterinary surgeon, an inspector or a constable, according to circumstances. That has worked well in practice and I believe that that flexibility should continue.

Amendments 169 and 170 would have a number of undesirable consequences. First, they would mean that greater reliance would be placed on veterinary surgeons to undertake the provision. That is undesirable not only in terms of the use of vets as a resource, but in their practical working arrangements. As was pointed out in evidence during stage 1, there is a tendency for veterinary surgeons to specialise in certain types of animals. What that means in practical terms is that even if a vet is called upon to destroy an animal, he or she may not have the necessary knowledge and skills. The amendments would prevent other people—such as local authority inspectors and Scottish SPCA inspectors—from destroying an animal, even when they have suitable training, knowledge and skills. That would be an unnecessary waste of resources.

I ask the committee to accept amendments 79, 80, 141 and 142, and to resist amendments 169 and 170.

I move amendment 79.

11:30

Rob Gibson: Amendments 169 and 170 were lodged based on the experience of vets. If a veterinary surgeon is present to certify the animal, it is surely unthinkable that an inspector or constable would carry out euthanasia—the vet would do that. There is no part of Scotland where

an inspector or constable would not be able to contact a veterinary surgeon by phone to seek advice.

There might be occasions when there has been a road-traffic accident in a remote area—perhaps involving deer, sheep or cattle—and communication is difficult. However, vets whom I know have been called out by the police to destroy animals that are lying on a road after road-traffic accidents only to find that simple treatment and removal of the animal to a place of safety were all that was required, rather than euthanasia. My amendments attempt to acknowledge those practical circumstances, which arise in remote parts of Scotland, although they may also arise in other parts of Scotland. I do not believe that the minister's explanation of the matter or her rejection of my amendments take into account the circumstances that I have described.

Mr Ruskell: Taking us back to what we discussed last week, I am thinking about how this relates to the definition of what is an appropriate and humane way to kill an animal and whether veterinary surgeons are needed to conduct that. Can the minister clarify how that sits within the bill?

Rhona Brankin: On Rob Gibson's point, even if a vet was present at a road-traffic accident, a professional slaughterman or knacker might be called on to euthanise the animal.

Can Mark Ruskell please clarify the point that he made? It was not clear to us.

Mr Ruskell: Last week, we had a debate about what is an appropriate and humane manner in which to destroy an animal. If that is not adequately defined in the bill, we should perhaps support a provision that would require a veterinary surgeon to be in attendance when it is difficult to ascertain what will be an appropriate and humane way in which to kill an animal. The example of a road accident is good. Does that help?

Rhona Brankin: Our view is that it is appropriate for the courts to make the decision about what constitutes a humane way in which to kill an animal. As society's views change and move on, courts will be able to reflect that. We think that it is important to have that flexibility.

The Convener: Does that help?

Mr Ruskell: A bit.

Amendment 79 agreed to.

Amendments 80, 141 and 142 moved—[Rhona Brankin]—and agreed to.

Section 29, as amended, agreed.

Section 30 agreed to.

Section 31—Disposal orders where animals taken

Amendment 81 moved—[Rhona Brankin]—and agreed to.

Section 31, as amended, agreed to.

Section 32—Resort to destruction of animals

Amendment 169 moved—[Rob Gibson].

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gibson, Mr Rob (Highlands and Islands) (SNP)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)

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

Macmillan, Maureen (Highlands and Islands) (Lab)

Morrison, Mr Alasdair (Western Isles) (Lab)

Radcliffe, Nora (Gordon) (LD)

Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 1.

Amendment 169 disagreed to.

Amendment 170 not moved.

Section 32 agreed to.

Section 33 agreed to.

Section 34—Animal welfare codes

The Convener: Amendment 143, in the name of the minister, is grouped with amendments 144 and 145.

Rhona Brankin: The amendments in the group are technical amendments that will provide that the draft affirmative procedure will apply to both modification and revocation of an animal welfare code that is made under the bill. I ask the committee to agree to the amendments 143 to 145.

I move amendment 143.

Amendment 143 agreed to.

Amendments 144 and 145 moved—[Rhona Brankin]—and agreed to.

Section 34, as amended, agreed to.

Section 35—Deprivation orders

Amendments 82 and 146 moved—[Rhona Brankin]—and agreed to.

Section 35, as amended, agreed to.

Section 36—Disqualification orders

Amendments 83, 84 and 147 moved—[Rhona Brankin]—and agreed to.

Section 36, as amended, agreed to.

Section 37—Seizure orders where disqualification breached

Amendments 85 and 86 moved—[Rhona Brankin]—and agreed to.

Section 37, as amended, agreed to.

Section 38 agreed to.

Section 39—Appeals against orders

Amendments 87 to 91 moved—[Rhona Brankin]—and agreed to.

Section 39, as amended, agreed to.

Section 40—Proceedings for animal fighting offences

The Convener: Amendment 127, in the name of Maureen Macmillan, is grouped with amendment 128.

Maureen Macmillan: Amendments 127 and 128 deal with the legal process that will apply when an offence has been committed. Section 40 lays out the process for dealing with offences regarding the staging and recording of animal fights. I welcome the extension of time limits to deal with such offences, but I wish to explore with the minister whether time extensions for the gathering of evidence could be granted for other offences under the bill. That would be welcomed by the SSPCA and the Association of Chief Police Officers in Scotland, which feel that the present six-month window for gathering evidence and presenting a case is insufficient, given the nature of many of the offences in question.

I remind the committee that I wish to insert into section 40 a provision that would allow for a period of a year for offences under sections 17, 18, 19, 20, 22 or 26 to be brought to court. Section 17 relates to the offence of causing unnecessary suffering; section 18 relates to mutilation; section 19 relates to cruel operations; section 20 relates to poisoning; section 22 relates to failure to ensure the welfare of an animal; and section 26 relates to abandonment. I know that we are talking about a legal process and I suspect that the minister will give me a legal reason for why what I propose has not been done.

I move amendment 127.

Mr Brocklebank: I have some sympathy with Maureen Macmillan's amendments. I understand from the SSPCA that its inspectors find that the current six-month period for gathering evidence is

inadequate for many animal-related offences. Many such offences, particularly abandonment, require extensive evidence gathering. The SSPCA has pointed out to me that, given that animals cannot testify as witnesses, key witnesses are required to come forward. It can take time to find such witnesses and to put together a case. Unless the minister can clarify her position, I will continue to have a lot of sympathy with Maureen Macmillan's amendments.

Mr Ruskell: I say in anticipation of the minister's legal answer that it is important that we listen to the experiences of the people who work at the sharp end of animal welfare—the SSPCA inspectors. When I went around Perthshire with an SSPCA inspector six months ago, I was struck by just how difficult it is to gather evidence in order to bring prosecutions. Even with the welcome provisions in the bill, particularly those on unnecessary suffering and the duty of care, it will still be difficult in all cases to gather enough evidence to bring a case within six months. I welcome amendment 127 and will back it.

Rhona Brankin: I, too, have sympathy with extending the time periods for prosecutions under the bill. However, that has to be balanced with the potentially serious human rights implications that amendment 127 could have.

The decision to extend the time limit in relation to offences under section 21 on animal fighting was not taken lightly. We think that animal fighting is an exceptional offence that justifies an exceptional approach. Animal fights are often well organised, secret and difficult to detect. If they come to light at all, that often happens some time after the offence has been committed.

We do not think that the same level of difficulty of detection applies to offences relating to unnecessary suffering, mutilations, cruel operations, administration of poisons, failure to ensure the welfare of animals or abandonment. Those are all statutory offences that will be tried summarily and prosecutions should therefore be brought within six months of the offence having been committed, as provided for by the Criminal Procedure (Scotland) Act 1995.

There is a serious purpose to the general application of time limits, which is to ensure timeous and fair trials. The rights of the individual have to be fairly balanced against those of society as a whole. In relation to the offences in question, we believe that that balance will be achieved by maintaining the six-month limit.

If, in the future, the time limit proves to be a major barrier to securing convictions, the matter could be reconsidered, but we are content that the six-month time limit is appropriate.

I ask the committee to reject amendments 127 and 128.

11:45

Maureen Macmillan: I understand what the minister is saying about summary proceedings, the six-month rule and so on. She perhaps does not want there to be anomalies. Will cases relating to animal fights be heard on indictment?

Rhona Brankin: There are not any indictable offences.

Maureen Macmillan: They are all summary causes. So you have already broken the six-month rule in relation to animal fights.

Rhona Brankin: Yes.

Maureen Macmillan: In that case, I would like to discuss the matter with you further to see whether we can make some progress.

The Convener: Would Maureen Macmillan like to press or withdraw amendment 127?

Maureen Macmillan: I seek to withdraw amendment 127 and take the opportunity to discuss the matter with the minister before stage 3.

Amendment 127, by agreement, withdrawn.

Amendment 128 not moved.

Section 40 agreed to.

Section 41 agreed to.

Section 42—Penalties for offences

The Convener: Amendment 148, is in a group on its own.

Rhona Brankin: Amendment 148 will increase the penalty that can be imposed for severe acts of animal abuse to a term of imprisonment not exceeding 12 months or a fine not exceeding £20,000, or both. The amendment reflects concerns that were raised by the committee during stage 1 to the effect that more serious penalties should be available for appropriate offences. We therefore anticipate and hope that the amendment will be widely welcomed by the committee and by stakeholders more generally. It is an important change and I ask the committee to agree to the amendment.

I move amendment 148.

The Convener: It is now open to members to comment on the amendment.

Nora Radcliffe: I assure the minister that we welcome the amendment.

The Convener: Everyone is delighted with it.

Amendment 148 agreed to.

Section 42, as amended, agreed to.

Section 43 agreed to.

Before section 44

Amendment 149 moved—[Rhona Brankin]—and agreed to.

Section 44—Inspectors and constables

Amendment 92 moved—[Rhona Brankin]—and agreed to.

The Convener: Amendment 150 is in a group on its own.

Rhona Brankin: Amendment 150 seeks to give inspectors who are appointed or authorised under part 2 of the bill protection from civil and criminal liability, provided that they act on reasonable grounds and in good faith. The liability of the appointing authority will not be affected by the provision.

Members may recollect that the provision was contained in part 2 of the draft Animal Health and Welfare (Scotland) Bill, but was not included in the bill that was introduced into the Scottish Parliament. As a result of the committee's comments in its stage 1 report, I have given further consideration to the appropriateness of the provision. On reflection, I now believe that the provision was appropriate and proportionate and that it should be reinserted into the bill.

I ask the committee to agree to the amendment.

I move amendment 150.

The Convener: Members are nodding and nobody wishes to speak. I thank the deputy minister. It is good to hear that she has considered further the suggestions in our stage 1 report.

Amendment 150 agreed to.

Section 44, as amended, agreed to.

Schedule 1

POWERS OF INSPECTORS AND CONSTABLES FOR PART 2

Amendments 151 and 93 moved—[Rhona Brankin]—and agreed to.

Schedule 1, as amended, agreed to.

Section 45 agreed to.

After section 45

Amendment 125 not moved.

Section 46—Regulations

The Convener: Amendment 152 is in a group on its own.

Rhona Brankin: Amendment 152 will permit Scottish ministers to make regulations that will make different provisions for different cases or classes of case. That means that ministers can be

precise when they draw up regulations. For example, the amendment will make it clear that, in drawing up the regulations on mutilations, ministers can state that tail docking is permitted for lambs and pigs but that the practice is not permitted for dogs. As drafted, section 46 does not give ministers powers to make different provisions for different cases or classes of case. I ask the committee to agree to the amendment.

I move amendment 152.

Elaine Smith: I am interested in the reasons for excluding lambs and pigs. At stage 1 we discussed whether things are done because they have always been done or whether they are done for reasons of animal welfare. Will you clarify that?

Rhona Brankin: It is a question of flexibility. We are not saying that that is something that we definitely intend to do. The issue was pointed out by our solicitors who were drafting the mutilations regulations. We require the provision for flexibility.

The Convener: The question is, that amendment 152 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 152 agreed to.

Section 46, as amended, agreed to.

Section 47 agreed to.

Schedule 2

MODIFICATION OF ENACTMENTS

Amendments 94 to 97 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 16 is on modification of enactments. Amendment 98, in the name of the minister, is grouped with amendments 99 to 101.

Rhona Brankin: Amendments 98 and 101 will correct the scope of a repeal that is made by the bill. Section 1 of the Docking and Nicking of Horses Act 1949, which prohibits the docking and nicking of horses, will be superseded by the bill and the associated mutilations regulations. It is therefore listed to be repealed in schedule 2 to the bill. Section 2 of the 1949 act bans the importing of

docked horses, which should be retained. Sections 3 and 4 of that act provide necessary definitions in order to interpret section 2, so they, too, should be retained. Amendments 98 and 101 will ensure that sections 2, 3 and 4 of the 1949 act are kept.

Amendment 99 will make a formatting change. Amendment 100 will ensure that section 5 of the Agriculture (Miscellaneous Provisions) Act 1968 is not repealed by schedule 2. That section deals with the extension of classes of operations in which anaesthetics must be used and states that ministers may, after consultation of the Royal College of Veterinary Surgeons and appropriate persons, specify by order the circumstances in which some minor operations must be carried out under anaesthetic. Although some of those procedures would be included in the exemptions made under section 18(3), on mutilations, I wish to retain the power in primary legislation. That will also allow the use of anaesthetic for specified procedures to be kept under review. I ask the committee to support the amendments.

I move amendment 98.

Amendment 98 agreed to.

Amendments 99 to 101 moved—[Rhona Brankin]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 48 to 50 agreed to.

Long title agreed to.

The Convener: That concludes stage 2—there is much delight and relief about that. I thank colleagues for working their way through the bill. We had a lot more amendments than we would normally expect, but it is the nature of the bill that there are big general principles and lots of detailed issues that will change the management and care of animals. I hope that we all agree that we have improved the bill by amending it.

I record my thanks to the minister and her officials for responding to so many of the points that we made in our stage 1 report. It is always good to see those issues being brought back to us. We have been offered further meetings and clarification of a few issues before stage 3. It would be helpful if the minister could give us a note on where we stand with the regulations that will be published after the bill is enacted. Some of the priorities have been moved around, so it would be helpful, before stage 3, to get a summary of where we are at. That would also be helpful for stakeholders, including the animal welfare groups, farm managers, countryside managers and anyone else who is responsible for animals. They will want to know what the next stage of the process is and when they will be expected to provide comments or consultation responses.

Rhona Brankin: I am happy to provide a note on that.

The Convener: I thank everyone for their efforts. We will have a brief pause while the minister and her officials leave.

11:58

Meeting suspended.

12:03

On resuming—

Subordinate Legislation

**Sheep and Goats
(Identification and Traceability) (Scotland)
Regulations 2006 (SSI 2006/73)**

**Older Cattle (Disposal) (Scotland)
Amendment Regulations 2006
(SSI 2006/82)**

**Beef Carcase (Classification) (Scotland)
Amendment Regulations 2006
(SSI 2006/118)**

**Dairy Produce Quotas (Scotland)
Amendment Regulations 2006
(SSI 2006/119)**

The Convener: Agenda item 2 is consideration of subordinate legislation. We have nine instruments to consider under the negative procedure today. The first four—Scottish statutory instrument 2006/73, SSI 2006/82, SSI 2006/118 and SSI 2006/119—relate to agriculture. The Subordinate Legislation Committee has considered the instruments and has commented on the sheep and goats regulations and the dairy produce quotas regulations. Members have extracts from that committee's 13th and 14th reports. If colleagues have no comments on the regulations, are they content to make no recommendation to the Parliament?

Members *indicated agreement.*

**Provision of Water and Sewerage Services
(Reasonable Cost) (Scotland) Regulations
2006 (SSI 2006/120)**

**Water Environment and Water Services
(Scotland) Act 2003
(Designation of Responsible Authorities
and Functions) Order 2006 (SSI 2006/126)**

**Water Environment
(Consequential Provisions) (Scotland)
Order 2006 (SSI 2006/127)**

**Waste Management Licensing
(Water Environment) (Scotland)
Regulations 2006 (SSI 2006/128)**

**Water Environment (Oil Storage)
(Scotland) Regulations 2006 (SSI 2006/133)**

The Convener: SSI 2006/120, SSI 2006/126, SSI 2006/127, SSI 2006/128 and SSI 2006/133 all relate to water. SSI 2006/120 concerns the connection of developments to water infrastructure, which the committee considered recently, and the other instruments relate to the water environment.

SSI 2006/126, SSI 2006/127 and SSI 2006/128 are connected to issues that the Deputy Minister for Environment and Rural Development covered when she spoke to the motion on the draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006—under the affirmative procedure—on 15 March. Members have the Subordinate Legislation Committee's comments on SSI 2006/120, SSI 2006/127 and SSI 2006/128, which are in the extracts from that committee's 14th report of 2006.

For completeness, I point out that the Executive's annual report on implementation of the water framework directive was published on Monday. A lot of activity is being undertaken to produce the detail for implementation.

Do members have comments on the instruments?

Mr Ruskell: I will comment on SSI 2006/126. It is welcome that Scottish Water has been designated a responsible authority, which will cement its responsibility to deliver sustainable development. However, an outstanding issue is the Water Industry Commission for Scotland's role in sustainable development. The commission should not have a duty to deliver sustainable development and it should not be a responsible authority, but its ability to have regard to such matters is an outstanding issue. That relates to the Water Services etc (Scotland) Act 2005, which we

considered, but it is also pertinent to the debate that we had last week with the Minister for Environment and Rural Development and to the on-going question of Scottish Water's ability to deliver sustainable development.

The Convener: Do members agree to ask the minister for clarification?

Members indicated agreement.

The Convener: Do other members have comments? I welcome the fact that progress has been made.

Maureen Macmillan: I have a comment on the SSI 2006/120. Will the minister tell us what effect the regulations will have on single-house developments in rural areas? Who would be thought of as the developer and what costs might be incurred?

The Convener: We can ask for that information. The significance of the regulations is that they will replace the previous calculations with the new regime that we debated when we dealt with what became the Water Services etc (Scotland) Act 2005.

Are members content with the instruments and happy to make no recommendation to the Parliament?

Members indicated agreement.

The Convener: Finally, I have a brief comment to make on the Animal Health and Welfare (Scotland) Bill, which we have just dealt with at stage 2. Members may now lodge stage 3 amendments with the committee clerks. We do not yet have a date for stage 3, but the clerks are open for business to receive amendments or provide advice.

I remind members that our next meeting is on 19 April, when we will have our first day of evidence on the Crofting Reform etc Bill.

Meeting closed at 12:08.

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