Draft Animal Welfare Bill

This paper provides background and briefing on the Draft Animal Welfare Bill, contained in the Queen’s Speech and remitted to the Environment, Planning and Countryside Committee in Plenary on 1 December 2004.

Introduction

The Launch of the Draft Animal Welfare Bill was published by the Department for the Environment, Food and Rural Affairs (Defra) on 14 July 2004.1 This followed an initial public consultation on what should be contained in future animal welfare legislation in early 2002.2

The Draft Bill has undergone pre-legislative scrutiny by the Environment, Food and Rural Affairs (EFRA) Committee of the House of Commons. The report of the Committee was published on 8 December 2004.3

Aims and provisions of the Draft Bill

The draft Bill is intended to protect the welfare of companion and kept animals, including farmed animals, and to consolidate and modernise existing animal welfare law, which is currently governed by over 20 pieces of legislation, mainly the Protection of Animals Act 1911 and the Agriculture (Miscellaneous Provisions) Act 1968. The Draft Bill does not include animals used in scientific research4, or wild animals living in the wild. The Draft Bill applies to England and Wales – Scotland is developing its own animal welfare legislation.

The Draft Bill defines an animal as “a vertebrate other than man”5. The EFRA Committee recommends that Defra consider extending this definition to include some invertebrates such as cuttlefish and octopus. The Committee also suggests that the Draft Bill as it stands may put commercial and recreational fishermen at risk of prosecution.

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4 Responsibility for animal research and the Animal (Scientific Procedures) Act 1986, rests with the Home Office.
5 This definition may be extended to include invertebrates or the foetal, larval or embryonic forms of an animal by order of the national authority, that being the Secretary for State in relation to England or the National Assembly for Wales in relation to Wales.
Some of the main provisions of the Draft Bill are:

♦ Introduces a new offence where failure to take reasonable steps to ensure an animal's welfare amounts to an offence. This is intended to allow action to be taken if foreseeable harm to the animal is likely, which is not possible under existing legislation. (Clause 3)

♦ Prohibits the selling of animals to under 16s. (Clause 4)

♦ Prohibits giving animals as prizes. (Clause 5)

♦ Creates a general power to make regulations for promoting the welfare of animals and the issuing of codes of practice to provide guidance on the care of animals. (Clauses 6 - 10)

♦ Extends the powers in relation to taking possession of animals in distress so that they may be removed immediately, before proceedings are begun; may be removed if they are likely to suffer if no action is taken and extends the power to all animals, not just those kept for commercial purposes. (Clauses 11 – 14)

♦ Extends the activities that people banned from keeping animals may not take part in and provides provision for animals to be removed from those that have been disqualified from keeping them. This will prohibit people that have been banned from keeping animals arranging for others to keep them on their behalf. (Clause 26)

♦ Sets maximum fines and jail sentences for offences under the Draft Bill. (Clause 24).

EFRA Committee report

The Committee and witnesses were almost all in favour of some form of updating of animal welfare legislation. In taking evidence, the Committee received 220 written memoranda and took oral evidence from 51 organisations or individuals. The report makes 101 recommendations suggesting modifications to either the draft Bill or the policy underlying it. Many of these relate to simplifying or clarifying parts of the Draft Bill, including some of the definitions used, such as "animal", "protected animal", "keeper".

Some of the main recommendations and comments made in the report are:

♦ Review the definition of “an animal” (see above) and the extent to which animals living in different circumstances are protected. The Committee feels that part of the definition of a protected animal as one “temporarily in the custody of man” may be interpreted in different ways and could leave recreational and commercial fishermen open to prosecution. The Government intends to amend the Bill to specifically exempt fishing from the cruelty and welfare offences.

The report points out that legislation in other countries provides a broader definition of an “animal” but specifically excludes activities such as hunting, pest control,
conservation or destroying for food purposes. The Committee recommends the Bill adopt this approach of a broad definition with specific exemptions.

♦ As it stands, the Draft Bill may downgrade the protection of animals in circumstances where suffering is a consequence of direct negligence on behalf of the keeper. This would be covered by the "welfare" offence, rather than the "cruelty" offence and, as such, would carry lesser penalties. The Committee recommends that this be amended.

♦ Similarly, the abandonment of an animal would also be covered by the “welfare” offence, unless the animal subsequently suffered as a consequence of the abandonment. Abandoning an animal is currently an offence of cruelty under the Abandonment of Animals Act 1960, whether or not the animal subsequently suffers. The Committee recommends that the Draft Bill be revised to retain the act of abandonment as a cruelty offence.

♦ Section 6 provides powers to make regulations on a broad range of animal welfare issues and the Committee recommends that the Draft Bill be altered to ensure that any regulations made under this section are justified by scientific evidence and that consultation on regulations proposed under this section takes place.

♦ The Committee also recommends that the Draft Bill provide clearer instructions about the way licensing powers given under clause 6 should be exercised.

♦ Concerns were raised by several organisation about the possible role that the RSPCA and other NGO officers could play as inspectors (clause 44). The Committee recommended that more clarification was needed concerning who could be appointed as an inspector and what their role and powers would be, ensuring that there could be no confusion over the titles of those with responsibility for enforcing the Animal Welfare legislation and officers of charitable organisations.

Implications for Wales

The Draft Bill would make all the regulation and order making powers exercisable by the National Assembly for Wales. No parliamentary procedures are attached to the issuing of codes by the National Assembly for Wales, whereas in England, Secretary of State must lay draft codes before both House of Parliament. The regulation and order making powers are laid out in clauses 6 to 10 of the Draft Bill. In Wales, the making of Codes falls under Standing Order 29, which requires them to be laid before the Assembly.

Clause 6 would give powers to make regulations regarding the welfare of animals and includes provisions to make regulations concerning matters such as licensing activities involving animals, the identification of animals, breeding animals and establishing bodies to advise on welfare of animals. It also gives powers to create offences in relation to breaching regulations and to set fees and charges for carrying out activities that are regulated.

Clause 9 would give powers to issue and revoke codes of practice providing guidance on the welfare of animals.

The EFRA Committee report states that the Draft Bill:
"would delegate a very broad power, to the Secretary of State for England and the National Assembly in Wales, to make regulations to promote the welfare of kept animals."

Concern was expressed that it was not explicit in the Draft Bill that consultation was required for draft regulations, only for codes of practice. On the range of powers conferred by the Draft Bill and the issue of consultation, the Committee was:

“...unconvinced by the Government's justification for the breadth of this power. We therefore recommend that the regulation-making authority should be required to consult on draft regulations and to certify that draft regulations are justified either on the basis of scientific evidence or because they meet a genuine welfare need evidenced by the consultation procedure.”

In Wales Standing Order 24, requires a public procedure through Committees and normally a consultation on the principles of subordinate Legislation, unless decided otherwise.

Clause 44, which refers to the appointment of inspectors makes no explicit mention of Wales, only of the Secretary of State. The Committee recommends that the Bill be amended to specify how inspectors will be appointed in Wales.


The EFRA Committee report and the evidence presented to the Committee is available on the internet at: http://www.publications.parliament.uk/pa/cm200405/cmselec/cmenvfru/52/5202.htm
A  Comments / evidence from Welsh organisations

This Appendix provides a summary of evidence submitted from Welsh organisations.6

The Farmers Union of Wales (FUW)

The FUW raises a number of concerns and points to specific Welsh farming practices that could be mis-construed as abandonment, such as the hefting of sheep onto hills for months at a time. It also points out that what could be classed as lack of welfare for some animals is quite normal for others, such as the conditions that hill sheep live in compared with those of more lowland breeds.

Other concerns raised include those mentioned elsewhere, but also relate to the issue of proper training for those taking decisions on an animal’s welfare – e.g. small animal vets may not be properly trained to take decisions regarding farm animals.

Countryside Council for Wales (CCW)

CCW stated that as the statutory adviser to government on sustaining natural beauty, wildlife and the opportunity for outdoor enjoyment throughout Wales and its inshore waters, it did not have any comments from a statutory protection point of view, but generally welcomed the Draft Bill.

Rhondda Animal Aid

Rhondda Animal Aid wished to draw attention to the practice of many local authorities in Wales transporting stray dogs to England. They commented that they would like the welfare of domestic animals, such as dogs, during transportation to be mentioned more explicitly.

West Wales Animal Aid

West Wales Animal Aid broadly welcomed the Draft Bill but felt that the proposals concerned with registering animal sanctuaries under secondary legislation were too weak. It also felt that the Draft Bill should have addressed the issue of animals in circuses and that this should be banned, as should the tethering of horses.

Wales’ Opponents of Pheasant Shooting (WOOPS!)

WOOPS! believes that birds bred and reared for the purpose of game shooting are “kept by man” and, therefore, fall under the remit of the Draft Bill, making it an offence to kill a game bird, other than in a humane manner. Furthermore, it states that as the Draft Bill expects to have little impact on the game rearing industry that it is sending mixed messages.

WOOPS! states that game rearing for pleasure shooting is counter to the general thrust of the Draft Animal Welfare Bill and calls on the Secretary of State and the National Assembly for Wales to phase out the release and shooting of game birds under the powers that the Draft Bill would confer.

6 This does not include evidence that may have been submitted by individuals from Wales, as it is not possible to determine where individuals providing evidence to the Committee are from.
All Party Animal Welfare Group, National Assembly for Wales (APGAW Wales)

APGAW Wales welcomes the Draft Bill but seeks further clarification on the status of horses, outlining the confusion that has surround the status of the horse (as pet or farm animal) for some time.

The APGAW Wales also expressed concern regarding animal sanctuaries and the definition of an animal sanctuary and the status of animal rescue centres within the definition.

The level of fines / sanctions, although raised by the Draft Bill were still not considered sufficient to act as a deterrent.

In terms of tail-docking of dogs, the APGAW Wales did not want to see any exemptions to a ban on tail-docking allowed for dogs and also wished the use of animals in circuses to be prohibited.

Greyhound Rescue Wales

Greyhound Rescue Wales welcomed the Draft Bill, especially the proposal for secondary legislation relating specifically to racing greyhounds, however, it strongly opposes self-regulation by the sector and favour local authority regulation. It also mentions the need for greater clarity about what constitutes an animal sanctuary.

West Wales' Fife Fancy Canary Club

Concerns were raised regarding the effect that licensing premises for the sale of animals may have on animal meets / societies, where venues may be used for exchanging / buying animals by experienced breeders.
B Secondary legislation proposed under the Draft Bill

A range of secondary legislation is proposed under the Draft Bill including:

- Licensing of Dog and Cat Boarding
- Licensing of Livery Yards
- Licensing of Riding Schools
- Pet Shops and Pet Fairs
- Regulations and Code of Practice for Game Rearing
- Exemptions to a ban on mutilations
- Regulations to define the promotion of welfare offence
- Code on Tethering
- Animal Sanctuaries
- Performing Animals
- Racing greyhounds
- Dog Breeding